

Copyright

Review of the
WORLD INTELLECTUAL PROPERTY
ORGANIZATION (WIPO)

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- (v) musical compositions with or without words;
- (vi) cinematographic works and works made by any process analogous to cinematography;
- (vii) photographic works and works made by any process analogous to photography provided that, by reason of the choice of subject and the conditions under which they are made, they may be considered artistic creations;
- (viii) works of drawing, painting, engraving, sculpture and lithography;
- (ix) illustrations, maps and other similar works;
- (x) plans, sketches and plastic work relating to geography, topography, engineering, architecture, scenography and science;
- (xi) works of applied art, in so far as their artistic value may be dissociated from the industrial character of the object to which they are applied;
- (xii) adaptations, translations and other alterations of original works which, provided that they have received prior authorization and do not cause a prejudice to the said original works, represent a new intellectual creation.

Article 7. — Without prejudice to the rights of the authors of the component works, collections or compilations such as selected works, miscellanies, anthologies, encyclopedias, dictionaries, newspapers, magazines, collections of legislative texts, orders and administrative, parliamentary or judicial decisions or notices shall be protected as independent intellectual works, when, by reason of the selection and arrangement of their contents, they constitute intellectual creations.

Sole paragraph. In such cases each author shall retain the right to his work and may reproduce it separately.

Article 8. — The author of an adaptation, translation, arrangement or orchestration of a work which has fallen into the public domain shall own copyright therein; such author may not, however, oppose another adaptation, translation, arrangement or orchestration, except where it is a copy of his own.

Article 9. — A copy of an artistic work made by the creator himself shall enjoy the same protection as the original.

Article 10. — The protection of an intellectual work shall extend to its title, provided that the latter is original and is not likely to create confusion with that of another work of the same type, disclosed previously by another author.

Sole paragraph. The titles of periodicals, including newspapers, shall be protected for a year following the appearance of the last issue, except in the case of annual publications, where the period shall be extended to two years.

Article 11. — The provisions of this Law shall not apply to the texts of treaties or conventions, laws, decrees, regulations, court decisions and other official documents.

CHAPTER II

Authorship of Intellectual Works

Article 12. — In order to be identified as its author, the creator of the intellectual work may use his civil identity, either complete or abbreviated as far as his initials, a pseudonym or any other conventional mark.

Article 13. — In the absence of proof to the contrary, the person who, in accordance with custom and by one of the means of identification mentioned in the foregoing Article, indicates or declares his authorship when the intellectual work is used shall be considered the author thereof.

Sole paragraph. In the absence of such indication or declaration, the person who publicly makes use of the work shall be deemed to be its author.

Article 14. — Authorship of a work of joint authorship shall be ascribed to the co-author or co-authors whose names, pseudonyms or conventional marks have been used.

Sole paragraph. A person who has merely assisted the author in the production of the intellectual work by reading it or bringing it up to date, or by supervising or directing its publication or its presentation for the theater, for the cinema, for photographing or for broadcasting in sound or image and sound, shall not be considered a co-author.

Article 15. — In the case of a work which is produced by different persons, but the production of which is organized by an individual or collective enterprise and used in its name, authorship shall vest in that enterprise.

Article 16. — The co-authors of a cinematographic work are the author of the scenario or of the literary, musical or dramatico-musical subject, the director and the producer.

Sole paragraph. In the case of animated cartoons, the creators of the drawings used in the cinematographic work shall be deemed to be the co-authors.

CHAPTER III

Registration of Intellectual Works

Article 17. — In order to protect his rights, the author of an intellectual work may register it, according to its nature, with the National Library, the Music Academy, the Academy of Fine Arts of the Federal University of Rio de Janeiro, the National Cinema Institute or the Federal Council of Engineering, Architecture and Agronomy.

(1) If the nature of the work warrants its registration with more than one of the aforementioned establishments, it shall be registered with the one with which it is most closely associated.

(2) The Executive may at any time, by decree, reorganize the registration services, and confer on other bodies the powers to which this Article refers.

(3) If the work has no connection with any of the establishments mentioned in this Article, registration may be effected with the National Copyright Council.

Article 18. — Any doubts which may arise concerning registration shall be submitted for decision to the National Copyright Council by the establishment which effects such registration.

Article 19. — Registration of the intellectual work and extracts from such registration shall be free of charge.

Article 20. — In the absence of proof to the contrary, the author is the person in whose name the registration of the intellectual work is effected, or who is named in the application for a license to build a work of engineering or architecture.

PART III The Rights of the Author

CHAPTER I Introductory Provisions

Article 21. — The author is the owner of the moral and economic rights in the intellectual work created by him.

Article 22. — No author's rights may be exercised by the person whose work has been withdrawn from circulation pursuant to a final judicial sentence.

Sole paragraph. However, the author may claim such economic profits as may have resulted from the exploitation of his work while it was in circulation.

Article 23. — Unless otherwise agreed, the co-authors of an intellectual work shall exercise their rights by common consent.

Sole paragraph. In the event of disagreement, the National Copyright Council shall make a ruling at the request of any of the co-authors.

Article 24. — When the contribution of each of the co-authors is of a different kind, each shall be entitled to exploit his own personal contribution separately, on condition that this does not prejudice the exploitation of the joint work.

CHAPTER II The Moral Rights of the Author

Article 25. — The moral rights of the author are:

- (i) the right to claim authorship of the work at any time;
- (ii) the right to have his name, pseudonym or conventional mark indicated or declared as being that of the author when his work is used;
- (iii) the right to withhold publication of his work;
- (iv) the right to ensure the integrity of the work, by opposing any modifications or acts which might, in any way, be prejudicial to it or have an adverse effect on his reputation or honor as an author;
- (v) the right to modify the work before or after its use;
- (vi) the right to withdraw the work from circulation or to suspend any previously-authorized form of use.

(1) On the death of the author the rights referred to under (i) to (iv) shall pass on to his heirs.

(2) It shall be for the State, through the intermediary of the National Copyright Council, to safeguard the integrity or the authenticity of works which have fallen into the public domain.

(3) The rights referred to under (v) and (vi) may only be exercised if third parties are indemnified for any prejudice which such exercise may cause them.

Article 26. — The director alone shall exercise the moral rights in a cinematographic work; however, he may not prevent use of the film until after a judicial sentence has become *res judicata*.

Article 27. — If the party commissioning a work which is carried out according to the architectural plan approved by him makes changes to it in the course of its construction, or after its completion, without the consent of the author of the plan, the latter may repudiate his authorship of the design of the work thus changed, in which case the owner no longer has the right to state, as a means of deriving benefit from it, that it was designed by the author of the initial plan.

Article 28. — The moral rights of the author shall be untransferable and imprescriptible.

CHAPTER III The Economic Rights of the Author and their Duration

Article 29. — The author shall have the right to use, to profit by and to dispose of the literary, artistic or scientific work, and to authorize third parties to use it or profit by it, wholly or in part.

Article 30. — The authorization of the author of the literary, artistic or scientific work shall be required for any form of use such as:

- (i) publication;
- (ii) translation into any language;
- (iii) adaptation or incorporation in a phonogram or cinematograph film;
- (iv) direct or indirect communication to the public in any form or by any process, such as:
 - (a) performance, recitation or declamation;
 - (b) broadcasting by sound or by sound and image;
 - (c) the use of loudspeakers, wire or wireless telephony or similar apparatus;
 - (d) videophonography.

Sole paragraph. If fixation has been authorized, no public performance by whatever means may take place without the prior consent of the owner of the author's economic rights.

Article 31. — Where a work of joint authorship is not divisible, none of the co-authors may, on pain of liability for losses and damages, publish the work or authorize its publication without the consent of the other co-authors, except in a collection of his own complete works.

(1) In the event of disagreement between the co-authors, the majority or, if there is no majority, the National Copyright Council shall decide at the request of any one of them.

(2) The dissenting co-author shall retain the right not to contribute to the cost of publication, on the understanding that he renounces his share of the monetary profits, and the right to refuse the indication of his name on the work.

(3) Each co-author may, however, individually and without the consent of the others, register the work and protect his own rights against third parties.

Article 32. — No person may, without the permission of the author, reproduce a work which is not in the public domain on the pretext of annotating it, making a commentary on it or improving it.

Sole paragraph. Commentaries or notes may nevertheless be published separately.

Article 33. — Correspondence may not be published without the permission of the author, but it may be incorporated as documentation in official instruments.

Article 34. — When, as a result of a revision, the author has given the work its final form, his successors may not reproduce the earlier versions.

Article 35. — The different forms of use of the intellectual work shall be independent of each other.

Article 36. — If an intellectual work has been created in compliance with an official duty or under an employment contract or a contract for services, the copyright, unless otherwise agreed, shall belong to both parties, as laid down by the National Copyright Council.

(1) The author shall have the right to incorporate the commissioned work in a book or in his complete works one year after first publication.

(2) The author shall recover the economic rights in the commissioned work if it has not been published within one year after the delivery of the originals to the person who commissioned it and who did not express any reservations on receiving them.

Article 37. — Unless otherwise agreed in the production contract, the economic rights in a cinematographic work belong to the producer thereof.

Article 38. — The acquisition of the original of a work or of one of the instruments or objects by means of which it is used shall not confer any of the author's economic rights on the party making such acquisition.

Article 39. — The author who transfers ownership of an artistic work or a manuscript, whether the original or the economic rights in the intellectual work, shall have an inalienable and untransferable right, when the work of art or the manuscript is resold, to a share in any increase in value from which the seller might derive a profit.

(1) This share shall be twenty per cent of the increase in price realized on each sale in relation to the previous one.

(2) The provisions of this Article shall not apply when the increase in price is the result of monetary depreciation only,

or when the price obtained is lower than five times the amount of the highest minimum salary applied in the country.

Article 40. — The economic rights of the author, with the exception of the monetary proceeds from their exploitation, shall remain his property, unless otherwise provided in an antenuptial settlement.

Article 41. — In the case of an anonymous or pseudonymous work, the right to exercise the author's pecuniary rights shall belong to the person who publishes the work.

Sole paragraph. If the author subsequently reveals his identity, he shall assume the exercise of his rights, with the exception of those which have been acquired by third parties.

Article 42. — The author shall enjoy the benefits of his economic rights during his lifetime.

(1) The author's children, parents or spouse shall enjoy the benefits of his economic rights where these have been passed on to them by will, as a result of his death.

(2) The other successors of the author shall enjoy the benefits of the economic rights which he has transferred to them for a period of sixty years from the first of January of the year following his death.

(3) The duration of the protection mentioned in the foregoing paragraphs shall apply also to posthumous works.

Article 43. — Where an intellectual work of joint authorship is indivisible, the term of protection provided for in paragraphs (1) and (2) of the foregoing Article shall run as from the death of the last surviving co-author.

Sole paragraph. The copyright of the co-author who dies without successors shall be added to that of the surviving co-authors.

Article 44. — The term of protection of economic rights in anonymous or pseudonymous works shall be sixty years from the first of January of the year following that of first publication.

Sole paragraph. If the author reveals his identity before the expiration of this period, the provisions of Article 42 and its paragraphs shall apply.

Article 45. — The term of protection of economic rights in cinematographic and phonographic works and works of applied art shall also be sixty years from the first of January of the year following that of their completion.

Article 46. — Works commissioned by the Union and by the States, the Communes and the Federal District shall be protected for fifteen years from their publication or their re-issue, as the case may be.

Article 47. — For the purposes of this Law, the successors of the author shall be his heirs down to the second generation, in direct or collateral line of succession, as well as his spouse, his legatees and his assignees.

Article 48. — The following works shall belong to the public domain, in addition to works in respect of which the protection of economic rights has expired:

- (i) works of authors having died without successors;
- (ii) works of unknown authors, handed down by oral tradition;
- (iii) works published in countries which are not party to treaties to which Brazil is party, and which do not grant to the authors of works published in Brazil the same treatment as to those under their jurisdiction.

CHAPTER IV

Limitations on Copyright

Article 49. — The following acts do not constitute an infringement of copyright:

- (i) reproduction;
 - (a) of extracts from published works, or even reproduction in full of small compositions not embodied in the main work, in so far as such reproduction is of a scientific, educational or religious character and mentions the source and the name of the author;
 - (b) in the daily or periodical press, of news or information articles, devoid of literary character, published in newspapers or periodicals, with a mention of the name of the author if they are signed and of the name of the publication from which they are taken;
 - (c) in newspapers or periodicals, of speeches delivered at public meetings of any kind;
 - (d) in the body of a writing, of works of art for the secondary purpose of explaining the text, provided that the name of the author and the source from which they are taken are mentioned;
 - (e) of works of art located in public places;
 - (f) of commissioned portraits or other forms of representation of the human form, when such reproduction is made by the owner of the commissioned object and provided that the person portrayed or his heirs do not object to it;
- (ii) reproduction of any work in a single copy, provided that it is not intended to be used for profit-making purposes;
- (iii) quotation in books, newspapers or magazines of passages from any work for the purposes of study, criticism or discussion;
- (iv) the summarizing of lessons given in educational establishments, for the use of the persons to whom the lessons are addressed, provided that their publication in full or in part shall be prohibited without the express authorization of the person who gave them;
- (v) radio and television transmissions and the playing of phonograms in commercial establishments, for demonstration purposes;
- (vi) theatrical and musical performances when they are made within a family circle or exclusively for teaching

purposes on educational premises, and when they are strictly devoid of any profit-making purpose;

- (vii) use of intellectual works when they are essential to the provision of judicial or administrative proofs.

Article 50. — Pastiches and parodies shall be lawful in so far as they are not real reproductions of the work on which they are based and do not discredit it.

Article 51. — The reproduction of photographs in scientific or educational works shall be lawful, provided that the name of the author is mentioned and that he is paid equitable remuneration to be fixed by the National Copyright Council.

CHAPTER V

Assignment of Copyright

Article 52. — Copyright may be wholly or partly assigned to third parties by the author or his successors, either globally or individually, personally or through the intermediary of a representative invested with special powers.

Sole paragraph. If assignment is total, it shall include all the rights of the author with the exception of those which are of a personal nature, such as the right to make modifications in the work, and those which are expressly excluded by the law.

Article 53. — Total or partial assignment of copyright, which shall always be made in writing, shall be deemed to be effected for a valuable consideration.

(1) In order to be binding on third parties, the assignment must be recorded alongside the registration referred to in Article 17.

(2) A separate mention shall be made, in the instrument evidencing the legal transaction, of the rights which are assigned and the conditions of their exercise with respect to duration, location and, if the assignment is made for a valuable consideration, the price or the remuneration involved.

Article 54. — Copyright in future works may be assigned only if the term of the assignment does not exceed a maximum of five years.

Sole paragraph. If the period specified is indefinite or in excess of five years, it shall be reduced to five years, and the remuneration provided for, if any, shall be reduced in proportion.

Article 55. — Until the contrary is proved, co-authors not mentioned at the time of the disclosure or publication of the work shall be deemed to have assigned their rights to the person in whose name it is published.

Article 56. — The handing over of the negative or of a similar means of reproduction shall be deemed to constitute assignment of the copyright in a photograph.

PART IV
Use of Intellectual Works

CHAPTER I
Publication

Article 57. — Under a publishing contract the publisher, who undertakes to reproduce by a mechanical process and to disseminate the literary, artistic or scientific work entrusted to him by the author, acquires the exclusive right to publish and exploit it.

Article 58. — Under the same contract the author may undertake to create a literary, artistic or scientific work, the publication and dissemination of which shall be entrusted to the publisher.

(1) If no period is fixed for the delivery of the work, it is understood that the author may hand it over at his convenience; the publisher may, however, fix a definite period, on expiration of which he may terminate the contract.

(2) If the author dies before the work is completed, or if it is impossible for him to complete it, the publisher may consider the contract terminated, even if he has received a substantial portion of the work, unless, where the completed portion is independent, he is prepared to publish it against payment of proportionally reduced remuneration or, with the consent of the heirs, he has it completed by another author, the latter fact being mentioned in the edition.

(3) Publication shall be prohibited if the author has expressed the wish that the work be published only in its entirety, or if his heirs so decide.

Article 59. — It is understood that the contract shall relate to one edition only, unless otherwise agreed.

Article 60. — If, in the contract or at the time of signing the contract, the author has not specified any remuneration for his work, it shall be fixed by the National Copyright Council.

Article 61. — In the absence of any provision thereon, each edition shall be deemed to have been printed in two thousand copies.

Article 62. — When the originals delivered are not in conformity with the clauses of the contract and the publisher has not refused them within thirty days following the date of receipt, the changes made by the author shall be taken to have been accepted.

Article 63. — It shall be for the publisher to fix the selling price, provided however that he may not set it so high as to impede the dissemination of the work.

Article 64. — All the copies of each edition shall be numbered, except where the economic rights of the author have been acquired by the publisher.

Sole paragraph. Any repetition of numbers, or the existence of a copy without a number or with a number higher

than the number of copies provided for in the publishing contract, shall be deemed to be an infringement, in respect of which the publisher shall be liable for damages.

Article 65. — Regardless of the terms of the contract, the publisher shall be obliged to allow the author to inspect the accounts relating to it, and to inform him of the state of publication.

Article 66. — Where the remuneration of the author is contingent on the success of sales, the publisher shall be obliged to give him an account of those sales every six months.

Article 67. — The publisher may not make any abridgement of or addition or amendment to the work without the consent of the author.

Article 68. — The publishing contract shall be terminated if three years elapse after its conclusion without the publisher publishing the work.

Article 69. — The author may not dispose of his work as long as the editions to which the publisher is entitled are not exhausted.

Sole paragraph. The publisher has the right, during the currency of the publishing contract, to demand the withdrawal from circulation of any edition of the same work made by a third party.

Article 70. — When the publisher has the right to publish a further edition of a work and has not done so after the previous one is exhausted, the author may, by way of a judicial notice, summon him to publish it within a certain period, failing which he forfeits his right, without prejudice to the damages which may be claimed by the author.

Article 71. — The author shall be entitled to make such corrections and changes to his works as he considers appropriate in successive editions, but, where these entail extraordinary expenses for the publisher, the latter shall be entitled to compensation.

Sole paragraph. The publisher may object to amendments which are prejudicial to his interests, damage his reputation or increase his responsibility.

Article 72. — If the nature of the work is such that it is necessary to bring it up to date with new editions, the publisher may, if the author refuses to do so, entrust this work to a third party and mention the fact in the edition.

CHAPTER II
Performance

Article 73. — No drama, tragedy, comedy, musical composition with or without words or work of similar character may, without the authorization of the author, be transmitted by radio, by loudspeaker system, by television or by any other similar means, or performed in public shows or events, for direct or indirect profit.

(1) For the purposes of law, the following shall be deemed to be public shows and events: performances, in premises or establishments such as theaters, cinemas, dance halls and concert halls, nightclubs, bars, clubs of all kinds, commercial and industrial premises, sports grounds, circuses, restaurants, hotels, means of passenger transport by land, sea, river or air, or any other place in which intellectual works are performed, recited or transmitted, with the participation of paid performers or by any other phonomechanical, electronic or audiovisual process.

(2) When applying for approval of a show or transmission, the organizer must, in accordance with the provisions of the legislation in force, submit to the police authority the program together with the authorization of the author, the performer and the program producer, and also the receipt for the payment, effected through a bank or post office to the credit of the Central Collection and Distribution Bureau provided for in Article 115, of the amount of royalties for the works included in the program, or an equivalent document in a form authorized by the National Copyright Council.

(3) In the case of a theater performance, payment shall be effected on the day following that of the performance, due account being taken of attendance.

Article 74. — If no definite period has been fixed for the performance, the author may assign one to the organizer in accordance with local customs.

Article 75. — The author shall have the right to object to a performance which has not been sufficiently rehearsed, and to watch the performance himself or have it watched by a delegate, for which purpose he or the delegate shall have free access during the performances to the place in which they are held.

Article 76. — The author of the work may not alter its substance without the consent of the organizer responsible for its performance.

Article 77. — The organizer may not, without the authorization of the author, communicate the manuscript of the work to a person not associated with the performance.

Article 78. — The main performers and the orchestra or chorus leaders, chosen by common consent by the author and the organizer, may not be replaced by the latter without the former's consent unless they abandon the undertaking.

Article 79. — No seizure may be made of the portion of the proceeds from shows which is reserved to the author and the performers.

CHAPTER III

Use of Artistic Works

Article 80. — Unless otherwise agreed, the creator of an artistic work, by transferring ownership of the object which constitutes that work, assigns to the party acquiring it the right to reproduce it or display it to the public.

Article 81. — Authorization to reproduce an artistic work by any process must be given in writing, and shall be deemed to be granted for a valuable consideration.

CHAPTER IV

Use of Photographic Works

Article 82. — The author of a photographic work shall have the right to reproduce it, disseminate it and put it on sale, subject to observance of the restrictions on the display, reproduction and sale of portraits, and without prejudice to the copyright in the work reproduced if it is a figurative work of art.

(1) When disclosed, the photograph shall indicate legibly the name of its author.

(2) Any reproduction of a photographic work which does not match the original perfectly is prohibited, except where previously authorized by the author.

CHAPTER V

Use of Phonograms

Article 83. — Deleted.

CHAPTER VI

Use of Cinematographic Works

Article 84. — The authorization given by the author of the intellectual work for the cinematographic production of his work shall, unless otherwise provided, constitute assignment of the right to exploit the film commercially.

(1) The exclusive character of the authorization must be written into an express provision and shall cease to exist ten years after the conclusion of the contract, subject to the right of the producer of the cinematographic work to continue to present it.

(2) The authorization provided for in this Article shall be subject to the rules governing publishing contracts, in so far as they are applicable.

Article 85. — The contract for cinematographic production shall fix:

- (i) the remuneration payable by the producer to the other co-authors of the work and to the performers, as well as the time, place and mode of payment;
- (ii) the period allotted for completion of the work;
- (iii) the producer's responsibility towards the other co-authors or performers in the case of a joint production of the cinematographic work.

Article 86. — If, in the course of the production of the cinematographic work, one of the collaborators temporarily or permanently discontinues his contribution, for any reason, he shall not forfeit his accrued rights in the part already completed, but he may not object to either its use in the work or his replacement by another person for its completion.

Article 87. — Apart from the remuneration stipulated, the other co-authors of the cinematographic work shall have

the right to receive from the producer five per cent, to be distributed among themselves, of the proceeds from commercial exploitation of the film in excess of ten times the amount of the gross cost of production.

Sole paragraph. To this end the producer shall undertake to present accounts to the other co-authors every year.

Article 88. — Unless otherwise provided, the co-authors of a cinematographic work may use the part of the work which constitutes their personal contribution in a different genre.

Sole paragraph. If the producer does not complete the cinematographic work within the agreed period, or does not show it within three years following its completion, the use referred to in this Article shall be free.

Article 89. — Royalties in respect of musical and dramatico-musical works and phonograms embodied in cinematographic works shall be payable to the copyright owners by the persons responsible for the premises or establishments to which paragraph (1) of Article 73 refers, or by the television organizations which present them.

Article 90. — Display, dissemination or presentation of photographs or films of surgical operations shall be subject to the consent of the surgeon and of the person on whom the operation was performed or, if the latter is deceased, that of his spouse or heirs.

Article 91. — The provisions of this Chapter shall apply to works produced by any process analogous to cinematography.

CHAPTER VII

Use of Works Published in Newspapers or Periodicals

Article 92. — The right of commercial exploitation of writings published in the daily or periodical press, with the exception of those which are signed or include a copyright notice, shall belong to the publisher.

Sole paragraph. The assignment of signed articles for publication in newspapers or periodicals shall be without effect, unless otherwise agreed, after a period of twenty days from the publication of the articles, on the expiration of which the author shall recover his full rights.

CHAPTER VIII

Use of Works having Fallen into the Public Domain

Article 93. — The use, in any form and by any process which is not free, of intellectual works which have fallen into the public domain shall be subject to the authorization of the National Copyright Council.

Sole paragraph. If such use is for a profit-making purpose, an amount corresponding to fifty per cent of that which would have accrued to the author of the work shall be paid to the National Copyright Council, except where the work is intended for educational purposes, in which case the percentage shall be reduced to ten per cent.

PART V Related Rights

CHAPTER I Introductory Provision

Article 94. — The rules on copyright shall apply, where appropriate, to the rights which are related to it.

CHAPTER II

The Rights of Performers and Producers of Phonograms

Article 95. — The performer, his heir or his successor shall have the right to prevent the recording, reproduction, transmission or retransmission by a broadcasting organization, or the use in any form of communication to the public, whether for a consideration or free of charge, of his performances, when he has not given his express prior consent thereto.

Sole paragraph. If various performers have taken part in the performance, their rights shall be exercised by the leader of the group.

Article 96. — Broadcasting organizations may make fixations of performances, which have been consented to by the performers, for use in a specific number of broadcasts; their preservation in the public archives shall be permitted.

Article 97. — Any duly authorized disclosure of the performance must mention the name or pseudonym of the performer.

Article 98. — The phonogram producer shall have the right to authorize or prohibit direct or indirect reproduction, transmission and retransmission by a broadcasting organization, and public performance by any means.

CHAPTER III

The Rights of Broadcasting Organizations

Article 99. — Broadcasting organizations shall have the right to authorize or prohibit the retransmission, fixation and reproduction of their broadcasts, and the communication of their transmissions to the public by television in collective gathering places, where a fee is charged for admittance.

CHAPTER IV

Stadium Rights

Article 100. — The organization to which the athlete belongs shall have the right to authorize or prohibit the fixation, transmission or retransmission, by any means or process, of a public sporting event for which a fee is charged for admittance.

Sole paragraph. Unless otherwise agreed, twenty per cent of the fee for authorization shall be distributed equally among the athletes taking part in the event concerned.

Article 101. — The provisions of the foregoing Article shall not apply to the fixation of parts of the event, with an

overall duration not exceeding three minutes, for the sole purposes of information in the press, at the cinema or on television.

CHAPTER V Duration of Related Rights

Article 102. — The duration of the protection of related rights shall be sixty years from the first of January of the year following fixation, for phonograms, following transmission, for broadcasts of broadcasting organizations, and following the holding of the event in other cases.

PART VI Associations of Owners of Copyright and of Related Rights

Article 103. — Copyright owners may form non-profit-making associations for the exercise and protection of their rights.

(1) Membership of more than one association of the same nature is prohibited.

(2) Foreigners domiciled outside the country may grant power of attorney to one such association, but they may not become members of it.

Article 104. — The act of acceding to the associations shall give them the mandate to accomplish, on behalf of their members, all the acts which are necessary for the judicial and extrajudicial protection of their copyrights and for the collection of royalties.

Sole paragraph. Notwithstanding this mandate, the copyright owners may accomplish personally the acts mentioned in this Article.

Article 105. — In order to carry out their activity within the country, the associations provided for in this Part must obtain prior authorization from the National Copyright Council.

Sole paragraph. Associations having their headquarters abroad shall be represented within the country by national associations constituted according to this Law.

Article 106. — The constitution of the association shall include:

- (i) the name, the objectives and the headquarters of the association;
- (ii) the conditions for membership, resignation and exclusion;
- (iii) the rights and duties of members;
- (iv) the sources of revenue for its administration;
- (v) the form of the constitution and operation of its deliberative and administrative bodies;
- (vi) the required conditions for amendment of the constitution and for the dissolution of the association.

Article 107. — The bodies of the association shall be:

- (i) the general assembly;
- (ii) the directorate;
- (iii) the administrative council.

Article 108. — The general assembly shall be the supreme body of the association; it shall meet at least once a year in ordinary session, and as often as necessary in extraordinary session, on convocation by the directorate or the administrative council; such convocation shall be published once in the Official Gazette and twice in a major newspaper of the area in which the association's headquarters are located, not less than eight days prior to the meeting.

(1) The general assembly shall be validly constituted, on being convened for the first time, by the presence of at least one-half of its members, representing fifty per cent of the votes, or, on being convened for the second time, by the presence of any number.

(2) At the request of one-third of the members, the National Copyright Council shall designate a representative to follow and supervise the work of the general assembly.

(3) Decisions shall be taken by a majority vote of the members present; in the case of an amendment to the constitution, the minimum quorum shall be the absolute majority of registered members.

(4) Voting by proxy is prohibited. However, a member may vote by mail in the manner laid down by the constitution.

(5) Each member shall have one vote, provided that the constitution may allow up to twenty votes per member, according to the criterion established by the National Copyright Council.

Article 109. — The directorate shall be composed of seven members, and the administrative council shall be composed of three members and three alternates.

Article 110. — Two members of the directorate and one member of the administrative council shall be the members who were at the head of the list which was placed second in the election.

Article 111. — Members of the directorate and of the administrative council shall remain in office for two years; any re-election for more than two successive periods is prohibited.

Article 112. — Members of the directorate and of the administrative council may not receive monthly remuneration exceeding ten times and three times, respectively, the minimum salary in the area in which the association's headquarters are located.

Article 113. — The accounts of associations shall comply with the rules of commercial accounting, and their books shall be certified by the National Copyright Council.

Article 114. — Associations shall be under the obligation towards the National Copyright Council to:

- (i) inform it immediately of any change in their constitution, in their directorate and in their representative and administrative bodies, as well as in the list of their members or mandators and their works;
- (ii) send it copies of agreements concluded with foreign associations, informing it of the amendments made;

- (iii) submit to it, before March 30 of each year, for the previous year:
 - (a) a report on their activities;
 - (b) an authenticated copy of their balance sheets;
 - (c) a list of the amounts distributed to their associates or mandators, and of expenditure incurred;
- (iv) provide it with such information as it may request and present their books and documents to it.

Article 115. — The associations shall, within the period and according to the rules specified by the National Copyright Council, set up a Central Collection and Distribution Bureau for the royalties deriving from public performance, notably by broadcasting and by cinematographic presentation, of musical and dramatico-musical compositions and phonograms.

(1) The Central Collection and Distribution Bureau, which shall operate on a non-profit-making basis, shall be governed by the constitution approved by the National Copyright Council.

(2) Twice every month, the Central Collection and Distribution Bureau shall present to the National Copyright Council a statement of its accounts, in accordance with the rules laid down by the Council.

(3) Articles 113 and 114 shall apply, where appropriate, to the Central Collection and Distribution Bureau.

PART VII

The National Copyright Council

Article 116. — The National Copyright Council shall be the body responsible for supervision, advice and assistance with respect to copyright and the rights related to it.

Article 117. — Apart from such other responsibilities as the Executive may entrust to it by decree, it shall be incumbent on the Council to:

- (i) decide on, direct, coordinate and supervise the measures necessary for the correct application of the laws, treaties and international conventions ratified by Brazil concerning copyright and the rights related to it;
- (ii) authorize the activities within the country of the associations provided for in the foregoing Part, in so far as the requirements of the law are complied with as well as those imposed by itself, and to remove that authorization after at least three interventions have been made as specified under (iii) below;
- (iii) supervise these associations and the Central Collection and Distribution Bureau referred to in Article 115, intervening when they fail to apply its decisions or the provisions of the Law, or when they prejudice in any way the interests of their members;
- (iv) lay down rules for the unification of rates and systems for the collection and distribution of royalties;
- (v) act as arbitrator in questions concerning royalties arising between authors, performers and their associations, and the others; both among themselves and between one another.

- (vi) manage the Copyright Fund, allocating resources to it according to rules to be established, after deduction of not more than twenty per cent per annum for the administrative costs of the Council;
- (vii) give its opinion on the desirability of amending the rules of copyright at the national or international level, and on the problems relating thereto;
- (viii) give its opinion on applications for compulsory licenses, as provided for in international treaties and conventions.

Sole paragraph. The National Copyright Council shall organize and maintain a Brazilian Copyright Information Center.

Article 118. — The police authority responsible for the censorship of shows and radio and television transmissions shall hand over to the National Copyright Council copies of programs, authorizations and payment receipts submitted to it in accordance with paragraph (2) of Article 73 and legislation in force.

Article 119. — The objective of the Copyright Fund shall be to:

- (i) encourage the creation of intellectual works, notably through the introduction of prizes and study and research grants;
- (ii) assist the social welfare bodies of associations and unions of authors or performers;
- (iii) publish the works of young authors by means of an agreement with public bodies or private publishing houses;
- (iv) finance the expenditure of the National Copyright Council;
- (v) finance the operating expenses of the National Copyright Council Museum.

Article 120. — The following shall be credited to the Copyright Fund:

- (i) proceeds from authorizations to exploit works in the public domain;
- (ii) donations from national or foreign natural persons or legal entities;
- (iii) the product of fines imposed by the National Copyright Council;
- (iv) amounts allocated to associations by the Central Collection and Distribution Bureau which have not been claimed by the members of the said associations on expiration of a period of five years;
- (v) income from other sources.

PART VIII

Sanctions for Violations of Copyright and Related Rights

CHAPTER I

Introductory Provision

Article 121. — The civil sanctions provided for in the following Chapter shall be without prejudice to such criminal sanctions as may be applicable.

CHAPTER II

Civil and Administrative Sanctions

Article 122. — Any person who prints a literary, artistic or scientific work without the authorization of the author shall surrender to the latter such copies as are seized and shall pay him for the remainder of the edition the price at which it was sold or at which it is evaluated.

Sole paragraph. If the number of copies constituting the unlawful edition is not known, the guilty party shall pay the value of two thousand copies in addition to the copies seized.

Article 123. — The author whose work has been unlawfully reproduced, disclosed or used in any way may, in so far as he is aware of the offense, apply for seizure of the copies produced or suspension of the disclosure or use of the work, without prejudice to his right to compensation for losses and damages suffered.

Article 124. — Any person who sells infringing reproductions of a work or displays them for the purposes of sale shall be jointly liable with the infringer, in terms of the foregoing Articles; if the reproductions have been made abroad, the importer and the distributor shall be liable as infringers.

Article 125. — The provisions of Articles 122 and 123 shall apply to transmissions, retransmissions, reproductions or publications made without authorization, by any means or process, of protected performances, broadcasts and phonograms.

Article 126. — Any person who, on using the intellectual work by any means or process, fails to indicate or announce as such the name, pseudonym or conventional mark of the author or performer, apart from being liable for moral injury, shall be obliged to disclose the identity of the author or performer:

- (a) in the case of a broadcasting organization, for three consecutive days, at the time of day at which the offense was committed;
- (b) in the case of a graphic or phonographic publication, by inserting *errata* in the copies which have not yet been distributed, without prejudice to a clearly visible communication three times in succession in a major newspaper of the area of the author's, publisher's or producer's domicile;
- (c) in the case of another form of use, by a communication in the press in the form specified under (b) above.

Sole paragraph. The provisions of this Article do not apply to sound programs which are exclusively musical and without words or publicity of any kind.

Article 127. — The owner of the author's economic rights or of the related rights may apply to the competent police authority for a prohibition of the performance, transmission or retransmission of the intellectual work, phonogram included, made without authorization in due form, as well as

the seizure of the gross receipts as a guarantee for his royalties.

Sole paragraph. The prohibition shall last until such time as the infringer produces evidence of authorization.

Article 128. — Owners, directors, managers, impresarios and lessees shall be jointly liable with the organizers of shows for any violation of copyrights in performances held in the premises or establishments referred to in paragraph (1) of Article 73.

Article 129. — Performers may not, in their performance, alter, delete or add words, phrases or scenes without the written authorization of the author, under penalty of a fine amounting to the minimum salary for the region where such acts are repeated, after the author has notified to the performer and the organizer, in writing, his prohibition of the addition, deletion or alteration established.

(1) The fine referred to in this Article shall be imposed by the authority which authorized the show and shall be remitted to the National Copyright Council.

(2) The performer and the organizer of the show shall be jointly liable for the payment of the fine mentioned in the foregoing paragraph.

(3) In the event of repetition of the offense, the author may revoke his authorization of the performance.

Article 130. — At the request of the copyright owner, the competent police authority shall, in the event of violation of the provisions of paragraphs (2) and (3) of Article 73, order suspension of the show for twenty-four hours in the first instance, and for forty-eight hours each time the offense is repeated.

CHAPTER III

Prescription

Article 131. — Civil action for infringement of the economic rights of the author or of related rights shall become void by prescription after five years from the day on which the infringement was committed.

PART IX

Final and Transitional Provisions

Article 132. — The Executive shall organize the National Copyright Council by decree.

Article 133. — Within one hundred and twenty days from the date on which the National Copyright Council becomes operational, currently existing associations of owners of copyrights and related rights shall comply with the provisions of this Law.

Article 134. — This Law shall enter into force on January 1, 1974, without abrogation of special legislation which is in conformity with it.

CORRESPONDENCE

Letter from Brazil

Hermano DUVAL *

prepared on their own the Conferences for the revision of the Conventions and Agreements for which they were responsible, the only assistance being provided by the Host State. They had no committees of governmental experts to help them and, with few exceptions, the only meetings in which their Director took part were those of private international organizations. Mentha's expert contribution to the preparation of the Revision Conferences held in these conditions under the Directorships of Röthlisberger and Ostertag was considerable. More especially in the copyright field, to which he was drawn by his personal preferences and in which he rapidly became an expert, he played a leading role in the preparation of the Rome Conference, which was held in 1928 and which made substantial improvements to the Berne Convention, and also, some years later, in the preparation of the Brussels Conference, which had to be postponed, however, owing to political developments and the Second World War. More of an intellectual than a man of action, Mentha carried on his specialized work in a simple fashion, far from the public, in the silence conducive to undisturbed reflection of his quiet office on the Helvetiastrasse in Berne, and generally remaining anonymous. Yet it is easy to distinguish his style in many an unsigned study, and even in the French texts, published in *La Propriété industrielle* and *Le Droit d'Auteur*, of articles originally written in German by Directors Röthlisberger and Ostertag.

It was in 1938, when Director Ostertag reached the age of retirement, that the Federal Council showed its confidence in Mentha by calling him to the succession. Rising thus to the Directorship of the International Bureaux at a time when disaster threatened, Mentha faced his new responsibilities with determination. While the storm clouds were already gathering on the horizon, he set about solving the problems raised in the international industrial property and copyright fields by the events in Austria and Czechoslovakia. Still intent on believing that the worst would not happen, he went ahead with the preparation of the Brussels Conference, and submitted to a meeting convened in Samaden from July 29 to 31, 1939, by the Rome International Institute for the Unification of Private Law preliminary drafts, written by himself, of Conventions, in relation with the Berne Convention, for the protection of certain rights neighboring on copyright. Yet all this work was swept away by the Second World War, which set Europe and the whole world on fire. During the war he endeavored, in the spirit of intellectual solidarity which was the guiding principle of the Paris and Berne Conventions, to propose his good offices to the warring parties, in an attempt to prevent the infliction of irreparable damage on the two Conventions. His efforts were by no means vain.

No sooner had the turmoil died down than Mentha took the initiative of convening an International Conference in Neuchâtel in 1947, attended by the representatives of 26 States, to which he proposed a draft Convention prepared by himself and intended to bring about the reinstatement of intellectual property rights which had not escaped the ravages of the war. The draft was adopted practically without amendment.

The Brussels Conference was finally held the following year, in 1948, and it was the last Conference to be prepared according to the methods which had become traditional in the International Intellectual Property Unions. It is no exaggeration to say that it marked the beginning of a new era in the history of the Unions.

For while the International Bureaux had weathered the storm, their star seemed to have paled. They were no longer, as they had long been, the only international center of attraction in the intellectual property field. All round them, other international organizations were springing up which brought together representatives of States that could not meet in the Helvetiastrasse building. The newly-created United Nations Organization was already taking an interest in the problems of international trade; the Council of Europe was drafting, in meetings of governmental experts, special agreements within the Paris Convention framework, a task which ought to have fallen within the province of the International Bureaux, which administered the Convention; another body which grew up independently of the Bureaux was the International Patent Institute, while Unesco, with the aid of various committees of experts, was laying the foundations of a Universal Copyright Convention, to which States allergic to the Berne Convention might accede. In order to remain true to their purpose, the International Bureaux had to adapt to the new world which was coming into being, by modernizing their working methods and their structure, and by involving the representatives of States in their work. Mentha had the wisdom not to oppose this trend. And yet he could have done so when, at the Brussels Conference, the Italian Delegation proposed, with a view to ensuring an ever more satisfactory development of the International Union for the Protection of Literary and Artistic Works, the creation at the Bureau of the Union, to assist it in its work, of a Committee of twelve members, belonging to twelve countries of the Union, chosen with due regard to an equitable representation of the various parts of the world. The French and Polish Delegations stated that they could not accept this proposal unless it had the prior approval of Director Mentha. Mentha gave his approval, not without reluctance, as he secretly preferred the working methods which he had been applying for many years and which at the time had proved satisfactory, but he did so after careful consideration and in the knowledge that the very future of the International Unions was at stake. Indeed, some months later, in an article published in *Le Droit d'Auteur* in October 1948, he welcomed the creation of a new organ of the International Union for the Protection of Literary and Artistic Works which, under its self-given name of Permanent Committee, was to become, *nomen, numen*, the center of gravity of the Union until the administrative transformation which the latter underwent later. Mentha gave the Committee able and devoted support, collaborating with its members in the drafting of the famous Berne Convention safeguard clauses which were to be incorporated in the Universal Convention, and successfully organizing the various sessions both of the Committee itself and of its sub-committees. Finally — and this was one of his last works as Director of the

International Bureaux — he himself wrote the preliminary draft International Convention which was submitted to the Joint Committee of Experts for the protection of certain rights neighboring on copyright, when it met in Rome in November 1951.

In the industrial property field, where no organ comparable to the Permanent Copyright Committee had been created, although such an organ would have been highly desirable, it is all to Mentha's credit that he authorized, on his own personal responsibility, the unofficial convening in Berne of a Committee composed of Directors of national Industrial Property Offices. Unfortunately this Committee could not meet until May 5, 1953, five days after the effective date of Director Mentha's retirement, which took place on April 30. This last measure of his, the benefits of which were reaped by his successor, was the saving of the Madrid Agreement concerning the International Registration of Marks, which, after many meetings of the Committee, was eventually revised at Nice in 1957 in such a way as to avert the denunciations which for a time had been feared by the countries party to the Agreement.

The time had come for Mentha to retire. Having been at the turning point between two eras, he was now going to watch from outside the new start of the International Unions which he had made possible. On his departure he wrote to his colleagues at the International Bureaux: "Officially I am leaving you, but I shall be with you in spirit as you set out on a broader path to work in the best interests of the Organization which you continue to serve".

Looking back on his career, Mentha had some reason to be proud. He had done much for the cause of industrial property and copyright. His work in these specialized fields had been honored by the Universities of Göttingen and Neuchâtel, both of which had awarded him honorary doctorates. He had received the Richard Strauss prize from GEMA. Was he now going to stop for a period of reflection before his final departure? Not so. It is when men of his calibre retire from the world of administration and thus escape a multitude of constraints that they are able to give the best of themselves.

Thus it was that Mentha, in the course of a retirement of more than twenty years, continued to serve the cause of intellectual property as he had done while actively working for the United International Bureaux, but no doubt with more mental detachment, and the volume of his production of learned works was probably greater than ever before.

During his membership of the Swiss National Research Committee, from 1953 to 1963, he submitted to the Federal Council, at the latter's request, significant reports on matters to be given priority with a view to the complete revision of the 1922 Copyright Act, which had already been partly revised in 1925; he also submitted suggestions on the working methods to be adopted. His findings were accepted by the Swiss Government.

Most of his hours of study, however, were devoted to the legal contributions which he submitted regularly, from 1958 onwards, to the Review of the European Broadcasting Union. With the exception of certain articles of an unnecessarily controversial nature, he applied his alert and very readable style to the analysis in depth of all the major problems of copyright, and occasionally ventured, albeit very cautiously, to propose for those problems solutions of his own which he immediately affected, with a smile, to be not unduly attached to, yet implying all the while that he was right. His exchanges with Ulmer on the subject of certain provisions of the Berne Convention as revised at Stockholm are quite amusing in this context (*EBU Review*, Nos. 110 B and 115 B). It is to be hoped that all or at least most of these writings, the last of which appeared a few days before his death, will one day be made into a collection so that they will be more accessible to readers in search of enlightenment and entertainment.

Through them, even more clearly than the lawyer and copyright specialist, it is the man who is revealed, the man as he lived and spoke: a pleasurable reunion for those who knew him and wish to preserve his memory.

At the time of parting, this is what counts.

Ch. L. M.

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- October 1 to 3, 1975 (Geneva) — Scientific Discoveries — Committee of Experts
- October 13 to 17, 1975 (Geneva) — ICIREPAT — Technical Committee for Search Systems (TCSS)
- October 20 to 25, 1975 (Geneva) — ICIREPAT — Technical Committee for Standardization (TCST)
- October 27 to November 3, 1975 (Geneva) — PCT — Interim Committees
- November 3 to 14, 1975 (Berne) — International Patent Classification (IPC) — Working Group II of the Joint ad hoc Committee
- November 17 to 21, 1975 (Geneva) — International Patent Classification (IPC) — Bureau
- November 24 to 28, 1975 (Geneva) — International Patent Classification (IPC) — 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 12, 1975 (Geneva) — ICIREPAT — Technical Coordination Committee (TCC)
- December 10 to 16, 1975 (Geneva) — Executive Committee of the Berne Union (Extraordinary Session)
- December 15 to 19, 1975 (Geneva) — International Classification of the Figurative Elements of Marks — Provisional Committee of Experts

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, 1974 (Geneva) — Technical Steering Committee
- November 7, 1974 (Geneva) — Working Group on Centralized Examination
- January 14 to 17, 1975 (Geneva) — Committee of Experts on Centralization of Examination
- February 25 to 28, 1975 (Geneva) — Committee of Experts for the Revision of the Convention
- March 4 to 6, 1975 (Geneva) — Consultative Working Committee
- March 18 to 20, 1975 (Geneva) — Technical Steering Committee
- April 15 to 18, 1975 (Geneva) — Committee of Experts on Centralization of Examination
- July 2 to 5, 1975 (Geneva) — Committee of Experts on Centralization of Examination
- October 6 and 10, 1975 (Geneva) — Consultative Working Committee
- October 7 to 10, 1975 (Geneva) — Council
- November 5 to 7, 1975 (Geneva) — Technical Steering Committee
- November 25 to 29, 1975 (Geneva) — Committee of Experts on Centralization of Examination
- December 2 to 6, 1975 (Geneva) — Committee of Experts for the Revision of the Convention

Meetings of Other International Organizations concerned with Intellectual Property

- September 11 to 13, 1974 (Brussels) — International Patent Institute — Administrative Board
- October 3 and 4, 1974 (Madrid) — International Confederation of Societies of Authors and Composers — Legal and Legislative Commission
- 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 6 to 10, 1974 (Yaoundé) — African and Malagasy Industrial Property Office — Executive Board
- 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