Published monthly
Annual subscription:
Sw.fr. 95.—
Each monthly issue:
Sw.fr. 10.—

Copyright

12th year — Nos. 7-8
July-August 1976

Monthly Review of the
World Intellectual Property Organization (WIPO)

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World Intellectual Property Organization

Advisory Group of Non-Governmental Experts on the Protection of Computer Programs

Third Session

(Geneva, May 17 to 20, 1976)

Note *

Convened by the Director General of WIPO in accordance with a decision taken by the Executive Committee of the Paris Union, the Advisory Group of Non-Governmental Experts on the Protection of Computer Programs (hereinafter referred to as " the Advisory Group ") held its third session in Geneva from May 17 to 20, 1976. Experts had been designated by 17 non-governmental organizations, and the governments of three States and three intergovernmental organizations were represented by observers. The session was chaired, from May 17 to 19, by Mr. W. E. Schuyler (International Association for the Protection of Industrial Property (AIPPI)) and, on May 20, by Mr. W. L. Keefauver (American Bar Association (ABA) and American Patent Law Association (APLA)). The list of participants follows this Note.

Model Law on Computer Software. Questions connected with the establishment of a model law on the protection of computer software were discussed on the basis of a document containing model provisions on legal protection, with an optional deposit system for computer software. This document had been prepared by the International Bureau along the lines suggested by the Advisory Group at its second session [1]. After a very thorough discussion, the Advisory Group asked the International Bureau to prepare a new draft of Chapter I of the model law, relating to the legal protection of computer software. Several of the provisions which should be included in the new draft were tentatively agreed upon by the Advisory Group. The Advisory Group also recommended that the new draft should be accompanied by notes explaining certain choices and giving alternative solutions. As far as Chapter II of the model law, relating to the deposit of computer software, was concerned, the Advisory Group was of the opinion that at least the next draft of the model law should contain no corresponding Chapter.

Draft Agreement on Computer Software. Questions connected with the establishment of a draft Agreement for the Protection of Computer Software and its International Deposit were discussed on the basis of a document which had been prepared by the International Bureau and which, in general, incorporated the draft provisions of the model law referred to above as well as the provisions of comparable international intellectual property agreements. Since the possible contents of that Agreement should reflect the solutions adopted in the model law, the Advisory Group considered that a detailed examination of the Agreement should take place only when the features of the model law had been established.

Future Procedure. The Advisory Group recommended that it be reconvened in order to examine the new draft of Chapter I of the model law.

List of Participants *

I. Non-Governmental Experts

American Bar Association (ABA): W. L. Keefauver; J. C. Goldstein. **American Patent Law Association (APLA):** W. L. Keefauver; J. C. Goldstein. **Chartered Institute of Patent Agents (CIPA):** J. U. Neukom. **Committee of National Institutes of Patent Agents (CNIPA):** J. E. Galama; J. U. Neukom; D. W. F. Verkade. **Council of European Industrial Federations (CEIF):** W. Boekel. **European Computer Manufacturers Association (ECMA):** J. R. Cartwright; G. Korsakoff; L. Perry. **European Industrial Research Management Association (EIRMA):** M. Kindermann. **International Association for the Protection of Industrial Property (AIPPI):** W. E. Schuyler, Jr. **International Chamher of Commerce (ICC):** P. N. Evans. **International Confederation of Societies of Authors and Composers (CISAC):** A. Hirst. **International Federation for Information Processing (IFIP):** M. L. B. Anderson; W. Rothwell. **International Federation of Automatic Control (IFAC):** C. Pellegrini. **International Federation of Patent Agents (FICPI):** J. F. Boissel. **International League Against Unfair Competition (LICCD):** P. Bassard. **International Literary and Artistic Association (ALAI):** G. Korsakoff. **Union of European Patent Attorneys and Other Representatives hefore the European Patent Office (UNION):** G. E. Kirker. **Union of Industries of the European Communities (UNICE):** W. Boekel.

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* This Note has been prepared by the International Bureau.

[1] See *Copyright*, 1975, p. 183.

* A list containing the titles and functions of the participants may be obtained from the International Bureau.

II. Governments

Netherlands: J. Dekker. **Soviet Union:** L. E. Komarov; V. Roslov. **United States of America:** L. C. Hamilton; A. J. Levine.

III. Intergovernmental Organizations

United Nations (UN): M. R. Lackner. **United Nations Educational, Scientific and Cultural Organization (UNESCO):** D. de San. **International Computing Centre (ICC):** W. A. Mackay.

IV. Officers

Chairmen: W. E. Schuyler, Jr. (AIPPI); W. L. Keefauver (ABA and APLA). *Secretary:* D. Devlin (WIPO).

V. WIPO

A. Bogsch *(Director General)*; K. Pfanner *(Deputy Director General)*; L. Baeumer *(Head, Industrial Property Division)*; D. Devlin *(Legal Officer, Special Projects Section, Industrial Property Division)*; P. Seipel *(Consultant)*.

Accessions to the WIPO Convention

MAURITANIA

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 Islamic Republic of Mauritania deposited, on June 17, 1976, its instrument of accession to the Convention Establishing the World Intellectual Property Organization (WIPO).

The Islamic Republic of Mauritania fulfills the condition set forth in Article 14(2) of the Convention by concurrently acceding to the Stockholm Act (1967) of the Paris Convention and to the Paris Act (1971) of the Berne Convention as provided for in Article 29bis of that Act.

Pursuant to Article 15(2), the Convention Establishing the World Intellectual Property Organization (WIPO) will enter into force, in respect of the Islamic Republic of Mauritania, three months after the date of deposit of the instrument of accession, that is, on September 17, 1976.

WIPO Notification No. 89, of June 21, 1976.

MAURITIUS

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 Mauritius deposited, on June 21, 1976, its instrument of accession to the Convention Establishing the World Intellectual Property Organization (WIPO).

Mauritius, which is a member of the United Nations, fulfills the condition set forth in Artiche 5(2)(i) of the said Convention.

Pursuant to Article 15(2), the Convention Establishing the World Intellectual Property Organization (WIPO) will enter into force, in respect of Mauritius, three months after the date of deposit of the instrument of accession, that is, on September 21, 1976.

WIPO Notification No. 90, of June 24, 1976.

QATAR

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 State of Qatar deposited, on June 3, 1976, its instrument of accession to the Convention Establishing the World Intellectual Property Organization (WIPO).

The State of Qatar, which is a member of the United Nations, fulfills the condition set forth in Article 5(2)(i) of the said Convention.

Pursuant to Article 15(2), the Convention Establishing the World Intellectual Property Organization (WIPO) will enter into force, in respect of the State of Qatar, three months after the date of deposit of the instrument of accession, that is, on September 3, 1976.

WIPO Notification No. 88, of June 3, 1976.

Berne Union

Tunis Model Law on Copyright *

Introduction

1. Works of the mind are intended for widespread distribution in the world beyond territorial frontiers. To render possible and promote this international dissemination and the protection of these works, and given the fact that the field of application of national copyright legislations is necessarily limited to the territory of the States which enact them, States have concluded a range of bilateral or multilateral conventions among themselves. Of the multilateral conventions the most important are the two major worldwide conventions, namely the Berne Convention for the Protection of Literary and Artistic Works and the Universal Copyright Convention.

2. To cater for the specific needs of developing countries and to facilitate the access of those countries to foreign works protected by copyright while ensuring appropriate international protection for their own works, these two Conventions were recently revised in Paris (July 1971). If a State is to adhere to the Conventions its domestic copyright legislation must conform to the Convention rules, and it was therefore deemed appropriate to provide States with a text of a model law which, if they so desired, they could take as a pattern when framing or revising domestic legislation, having regard to their particular interests.

3. This commentary has been drafted by the Secretariat of Unesco and the International Bureau of WIPO. It relates to the Model Law on Copyright for Developing Countries adopted by the Committee of Governmental Experts convened by the Tunisian Government in Tunis from February 23 to March 2, 1976 (hereinafter referred to as " the Tunis Committee "), with the assistance of the United Nations Educational, Scientific and Cultural Organization (UNESCO) and the World Intellectual Property Organization (WIPO).

Basic Features of the Model Law

4. The two basic features of the Model Law are as follows:

(i) its provisions are compatible both with the 1971 Paris Act of the Berne Convention (" the Berne Convention ") and with the Universal Copyright Convention as revised in 1971 (" the Universal Convention ");

(ii) its provisions allow for the Anglo-Saxon or the Roman legal approach of the countries for which it is intended.

5. In order to comply with these two principles it has been necessary in some cases to include alternatives in square brackets. The square brackets signify that the provision in question, which moreover usually bears a reference followed by the term " bis " (e. g., Section 4bis), is optional.

6. The Model Law follows and frequently adopts the terminology of the Berne Convention. The reason for this is that, unlike the Universal Convention, which makes use of fairly general terms, the Berne Convention contains a number of detailed provisions which should be included in national laws.

7. The provisions concerning translation and reproduction licenses which appear in the two 1971 texts are fairly similar as to their form and substance. The Model Law attempts to transpose these provisions as simply and clearly as possible to the framework of domestic law.

Commentary

8. *Subsection (1)* lays down the principle that copyright protection applies to literary, artistic and scientific works and that the beneficiaries of the protection are their authors.

9. The expression " literary, artistic and scientific works " used here and elsewhere in the Model Law is drawn from the Universal Convention. It emphasizes the fact that protection is afforded also to scientific works, but on the understanding that only the " literary " or " artistic " expression is protected by copyright and not the idea as such: the form, not the substance.

Text

SECTION 1

Works protected

(1) Authors of original literary, artistic and scientific works are entitled to the protection of their works as provided by this Law.

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* The Tunis Model Law on Copyright was adopted by the Committee of Governmental Experts convened by the Tunisian Government in Tunis from February 23 to March 2, 1976, with the assistance of WIPO and Unesco. The report on the Committee was published in the June 1976 issue of this review (pp. 139 *et seq.*).

Commentary

10. The Model Law states that works, to be protected, must be "original." The original character of a work is a matter of fact. It should, however, be noted that originality is not to be confused with novelty. Thus, two craftsmen carving a wood figurine representing an elephant each create an original work although the two figurines are similar and the subject is not a novelty. Both have engaged separately in a creative activity. This would not be the case if one of the craftsmen had simply copied the other's work.

11. The list of protected works in *subsection (2)* is not exhaustive, as is indicated by the adverb "in particular" which precedes it. To a very large extent it follows the non-limitative enumeration in Article 2(1) of the Berne Convention. Paragraphs (iv), (vi), (vii), (viii) and (ix) do, however, warrant special attention.

12. The Tunis Committee adopted this wording for *paragraph (iv)* to make it clear that musical works do not have to be written on a musical score, for instance, in order to enjoy protection. In principle, except where national legislation requires it as in countries following the Anglo-Saxon legal tradition (see paragraph (5bis) of this Section), works need not even be fixed in some material form to be protected. However, the Committee did not consider it possible, in practice, to protect improvisations *("verba volant")*. As for the expression "whether or not they include accompanying words," it is drawn from the Berne Convention. Thus the words accompanying the music are protected as well as the music itself.

13. In view of the fact that the concept of audiovisual works was still ill-defined, the Tunis Committee considered it inappropriate to assimilate them to cinematographic works, or vice versa, and decided not to devise a special legal régime for these works.

Moreover, it felt obliged to mention radiophonic works in the list of examples of protected works. It therefore adopted the wording that appears in *paragraph (vi)*: "cinematographic, radiophonic and audiovisual works."

14. In *paragraph (vii)* "tapestries" have been added to the Berne Convention list in view of the special importance of this type of artistic creation in certain developing countries.

15. It was made clear that the terms "works expressed by processes analogous to photography" in *paragraph (viii)* referred, for instance, to still pictures transmitted by television which produced the same visual effect as photographs but were not fixed in any material form.

16. Under both Conventions the protection of works of applied art is optional; it has, however, been written into the Model Law under *paragraph (ix)*, for the same reasons as those given for tapestries, namely the special importance of protecting artistic craftsmanship and applied arts in many developing countries.

17. *Subsection (3)* refers to Section 6 the protection of national folklore, which likewise is protected because in developing countries national folklore constitutes an appreciable part of the cultural heritage and is susceptible of economic exploitation, the fruits of which should not be denied to those countries.

18. *Subsection (4)* indicates that works are protected irrespective of their quality or purpose. The reason for this is that the quality or the merit of a work, which is a matter for subjective appreciation, is never taken into account when a decision is taken on its eligibility for copyright protection. Similarly, it is immaterial whether the purpose of the work

Text

(2) Literary, artistic and scientific works include in particular:

(i) books, pamphlets and other writings;

(ii) lectures, addresses, sermons and other works of the same nature;

(iii) dramatic and dramatico-musical works;

(iv) musical works, whether or not they are in written form and whether or not they include accompanying words;

(v) choreographic works and pantomimes;

(vi) cinematographic, radiophonic and audiovisual works;

(vii) works of drawing, painting, architecture, sculpture, engraving, lithography and tapestry;

(viii) photographic works, including works expressed by processes analogous to photography;

(ix) works of applied art, whether handicraft or produced on an industrial scale;

(x) illustrations, maps, plans, sketches and three-dimensional works relative to geography, topography, architecture or science.

(3) Where a work is that of national folklore, its protection is governed by Section 6.

(4) Works are protected irrespective of their quality and the purpose for which they were created.

Commentary

is utilitarian or cultural. Thus, advertising artwork or the specific form of a mass-produced object is protected by copyright even if the same work also qualifies for specific protection as a design or model under the legislation of the State concerned.

19. *Subsection (5)* provides that "the protection provided for in subsection (1) shall not be subject to any formality," since the authors of the Model Law considered that requirement of formalities was likely to entail administrative complications and render the protection more difficult to enforce. This means that the registration of works, for example, cannot be a prerequisite for the grant of protection. It should be noted, however, that the legal systems of some countries do provide for compliance with formalities as a condition for the protection of authors' rights. To cater for this situation and to ensure the protection of foreign works in such countries, Article III of the Universal Convention provides that any Contracting State which requires compliance with formalities shall regard these requirements as satisfied if, when first published, all the copies of the work bear the symbol © accompanied by the name of the copyright proprietor and the year of first publication.

20. As fixation is a frequent requirement in countries following the Anglo-Saxon legal approach, for reasons of proof in particular, *subsection (5bis)*, which is optional, provides that "... a literary, artistic or scientific work shall not be protected unless the work has been fixed in some material form." This condition excludes a very small number of works from protection, namely, those which are improvised without having been fixed in advance or at the time of performance. However, the fixation requirement cannot possibly apply to works of folklore: such works form part of the cultural heritage of peoples and their very nature lies in their being handed on from generation to generation orally or in the form of dances whose steps have never been recorded; the fixation requirement might, therefore, destroy the protection of folklore provided for under Section 6. Consequently, in the case of works of folklore, the authors of the Model Law have made an exception to the fixation rule, particularly since, if this rule were sustained, the copyright in such works might well belong to the person who takes the initiative of fixing them.

21. Since the list of protected works in Section 1 is only illustrative, some countries may wish to extend copyright expressly to other categories such as kinetic expression, graphic art, photogravure, environmental design planning, etc. In this context it is recalled that countries following the Anglo-Saxon legal approach often grant copyright protection to sound recordings and broadcasts. There is nothing to prevent this system from being maintained. In such a case it suffices to add these two categories to the list in subsection (2), but on condition that several other provisions are included in the law defining, in respect of such categories, the copyright owner, the content of copyright, its term and the exceptions to protection. Examples in this connection may be found in numerous laws of fairly recent date enacted in countries following the Anglo-Saxon legislative tradition.

22. *Subsection (1)* provides an exhaustive list of the works which are derived from pre-existing works but which nevertheless enjoy protection as if they were original works, owing to the fact that their making required some creative effort. By way of precaution, "works derived from national folklore" are expressly mentioned although it might be

Text

(5) The protection provided for in subsection (1) shall not be subject to any formality.

[(5bis) With the exception of folklore, a literary, artistic or scientific work shall not be protected unless the work has been fixed in some material form.]

SECTION 2

Derivative works

(1) The following are also protected as original works:

(i) translations, adaptations, arrangements and other transformations of literary, artistic or scientific works;

Commentary

considered a matter of course that such a work, inasmuch as it constitutes an adaptation, arrangement or other transformation of a work of folklore, will already enjoy protection under paragraph (i) of this subsection.

23. *Subsection (2)* recalls an important principle, namely, that the rights granted to translators, adaptors, compilers and any other persons who engage in work of personal creation, but on the basis of a pre-existing work, are without prejudice to the rights in the pre-existing work. This means in practice that the user of a derivative work must obtain authorization both from the author of the pre-existing work and from the author of the derivative work, unless the latter has been authorized by contract to dispose of the rights relating to the derivative work vis-à-vis third parties.

24. Since these are exceptions to the general rule of Section 1, the list of works not protected is limitative. Thus, for instance, only the decisions of administrative bodies are not protected. On the other hand, other intellectual works produced by those bodies which have required creative activity are not excluded from protection.

25. Among the author's rights it is customary to distinguish between the economic rights, that is, the prerogatives of a pecuniary nature inherent in copyright, and the so-called moral rights covered by Section 5.

26. The author's prerogatives listed in Section 4 are the exclusive rights which are granted to him subject to Sections 6 to 10. These rights are exercised in respect of the work in its entirety. However, to cater for the Anglo-Saxon legal approach, which does not consider that the author can control the use of his work unless such use covers at least a "substantial part" of the work, this possibility is provided for on an optional basis.

27. The acts to which the work may be subjected and which the author is entitled to authorize or prohibit are enumerated limitatively, bearing in mind that most of the concepts referred to, namely, "reproduction," "communication to the public," "performance" and "broadcasting" are defined in Section 18. The authors of the Model Law did not mention the right of distribution, regarding it as implicit in that of reproduction; the author, when making a contract for reproduction of his work, has the power to define the terms and conditions for the distribution of the copies with regard to quantity, price, geographical area of authorized distribution, etc. The national legislator may, however, include this right expressly in the law in order that it may be exercised separately, and this may well have advantages for the author, especially since new technologies have appeared for the distribution of works (cable television, etc.). This would be true, for instance, of an author who authorized a publisher to reproduce his work but did not wish to distribute it under a given set of circumstances

Text

(ii) collections of literary, artistic or scientific works, such as encyclopaedias and anthologies which, by reason of the selection and arrangement of their contents, constitute intellectual creations; and

(iii) works derived from national folklore.

(2) Protection of works referred to in subsection (1) is without prejudice to any protection of the pre-existing works used.

SECTION 3

Works not protected

Notwithstanding the provisions of Sections 1 and 2, protection does not extend to:

(i) laws and decisions of courts and administrative bodies, as well as official translations thereof; and

(ii) news of the day published, broadcast or publicly communicated.

SECTION 4

Economic rights

Subject to Sections 6 to 10, the author of a protected work has the exclusive right to do or authorize the following acts [in relation to the whole work or a substantial part thereof]:

(i) to reproduce the work;

(ii) to make a translation, adaptation, arrangement, or other transformation of the work;

(iii) to communicate the work to the public by performance or by broadcasting.

Commentary

or in a given country. It should be noted that the Berne Convention refers expressly to this right in connection with cinematographic works, as does, for sound recordings, the Convention for the Protection of Producers of Phonograms Against Unauthorized Duplication of Their Phonograms. The practical implications of separate recognition of this right might be, for users of works (publishers, broadcasting organizations, etc.), the need to engage in different negotiations and pay separate fees for the reproduction of the works and for their distribution to the public. The concept of the right of publication, which is closely allied to that of reproduction, was not written into the Model Law either, since it is a matter of course that, when the author authorizes the reproduction of his work, he likewise settles the conditions under which the reproduced copies will be published.

28. The rights considered above relate to the work both in its original and derivative forms.

Text

[SECTION 4bis
" *Droit de suite* "

29. By virtue of the *droit de suite* the author of a work possesses, in certain cases, an inalienable right to an interest in any sale of that work. This provision arises from a practical consideration, namely, that at the beginning of their careers little-known authors often dispose of their works at a ridiculously low price. These works may subsequently assume considerable value, and it therefore seems equitable that the author should share in the fortunes of his work and collect a percentage of the sale price for the work each time it changes owners.

30. Under *subsection (1)*, the *droit de suite* applies only to graphic or three-dimensional works of art, and possibly to the manuscripts of writers and composers, where such works and manuscripts are sold either by public auction or through a dealer, in other words in circumstances which it is possible to know and accordingly regulate: it is not too difficult to impose an obligation on auctioneers and dealers to pay to the author whose work of art or manuscript has been sold a certain percentage of the price realized. Current legislations vary with regard to this percentage, but the average appears to be 5 percent. There are also cases where the law provides for a *droit de suite* only in the case of added value, in other words where the financial proceeds of the sale are better than the previous one, and in this event the *droit de suite* is calculated on the added value only. The *droit de suite* applies only to the originals of such works, that is, to the copy or copies made by the artist himself. It is therefore natural to provide in *subsection (2)* that the *droit de suite* does not apply to works of architecture or applied art, in the latter case because the work involved is rarely the original, but generally a replica.

(1) Notwithstanding any assignment of the original work, the authors of graphic and three-dimensional works [and manuscripts] shall have an inalienable right to a share in the proceeds of any sale of that work [or manuscript] by public auction or through a dealer, whatever the methods used by the latter to carry out the operation.

(2) The foregoing shall not apply to architectural works or works of applied art.

31. Finally, unlike the author's other economic rights, the *droit de suite* is inalienable, which does not mean that it is untransferable: the author can quite well leave the right voluntarily to a third party by will or in another way, failing which it passes to his heirs *ab intestat*.

32. Since it is difficult to specify in the law itself all the terms and conditions for exercise of the *droit de suite*, the percentages (which may vary according to the proceeds of the sale) and the penalties for non-compliance by those liable for payment of the *droit de suite, subsection (3)* provides that administrative regulations will be issued for this purpose.

(3) The conditions of the exercise of this right shall be determined by regulations to be issued by the competent authority.]

Commentary

Text

SECTION 5

Moral rights

33. Whereas the Universal Convention makes no express provision for tbe author's moral rights, Article 6bis of the Berne Convention regulates the moral rights by providing that, independently of the author's economic rights, and even after their transfer, the autbor retains the right to claim authorship of the work and to object to any distortion, mutilation or other modification of, or other derogatory action in relation to, his work, whicb would be prejudicial to his honor or reputation.

34. *Subsection (1)* adopts these provisions, but it nevertheless calls for some explanation. First, the experts recognized that, as experience showed, it was impossible to mention the author's name in connection with some uses of the work, such as broadcast reporting of current events, because the name of the composer of a military march, for example, played during an event being reported by broadcast, was in most cases unknown to the broadcasting organization.

(1) The author has the right:

(i) to claim authorship of his work, in particular that his authorship be indicated in connection with any of the acts referred to in Section 4, except when the work is included incidentally or accidentally when reporting current events by means of broadcasting;

(ii) to object to, and to seek relief in connection with, any distortion, mutilation or other modification of, and any other derogatory action in relation to, his work, where such action would be or is prejudicial to his honor or reputation.

35. *Subsection (2)* provides that moral rights are "perpetual, inalienable and imprescriptible." This is the principle that was adopted by tbe authors of tbe Model Law, wbicb corresponds to the Roman legal approach.

(2) The rights referred to in subsection (1) are perpetual, inalienable and imprescriptible.

36. *Subsections (2bis), (3) and (4)* bave been placed in square brackets in order to take account of the Anglo-Saxon legal approacb, according to which moral rights, wben recognized by copyrigbt legislation, are of limited duration specified in the law, failing whicb they lapse on tbe death of the author. The conditions for the exercise of these rights are also specified.

[(2bis) The rights referred to in subsection (1) subsist for the life of the author and [50] [25] years thereafter. After his death, these rights are exercisable by his heirs.

(3) The rights referred to in subsection (1) are exercisable even where the author or his heirs do not have the rights referred to in Section 4.

(4) The rights referred to in subsection (1) may not be transferred.]

37. It should be noted that tbe definition of limited duration in subsection (2bis) is incompatible with subsection (2). However, subsection (2bis) is presented as an alternative, and itself contains two alternatives. Thus, should a country party only to the Universal Convention wish to adopt Section 5, subsection (2bis) provides for the possibility of the moral rights expiring 25 years after the author's deatb.

38. It is pointed out that, for countries that adopt the provisions in square brackets, the moral rigbts are unassignable and that, after the autbor's death, tbey are exercised by his beirs irrespective of ownership of the economic rigbts. In the absence of heirs, the moral rights may, under certain legislations, be exercised by a competent authority appointed for this purpose.

SECTION 6

Works of national folklore

39. The object of this provision is to prevent any improper exploitation and to permit adequate protection of the cultural heritage known as folklore, whicb constitutes not only a potential for economic expansion, but also a cultural legacy intimately bound up with the individual character of each people. On these twofold grounds works of folklore deserve protection, and the economic and moral rigbts in such works will be exercised, without limitation in time, by the competent national authority empowered to represent

(1) In the case of works of national folklore, the rights referred to in Sections 4 and 5(1) shall be exercised by the competent authority as defined in Section 18.

Commentary

the people that originated them. It has been proposed that this competent authority be the body responsible within the country for the administration of authors' rights.

40. Any user of a work of folklore must, as a general rule, obtain authorization from the competent authority but, if the alternative of *subsection (1bis)* is adopted, public entities may be exempted from the need for such authorization where they wish to use folklore for non-commercial purposes.

41. Like the copies of any other protected work made abroad without the author's authorization, which when imported into the national territory constitute an infringement on that territory and can be seized, copies of works of national folklore or of works derived from folklore, where they are manufactured abroad without the authorization of the competent authority, will constitute infringing copies when imported into the national territory. Their importation into and distribution in the national territory will therefore be prohibited.

42. On the basis of Article IVbis of the Universal Convention and Articles 2bis, 9, 10 and 10bis of the Berne Convention, Section 7 of the Model Law lists a number of exceptions which are in conformity with the spirit and letter of tbe two Conventions.

43. The *preamble* to Section 7 specifies that the uses of protected works permitted under this Section without the author's authorization, by way of exception to the rights granted to him under Section 4, may be made "either in the original language or in translation." This means that all the limitations provided for in Section 7 are likewise applicable in cases where the work has first to be translated to allow the permitted use to be made.

44. *Subparagraph (a) of paragraph (i)* permits specified uses of a work for the user's own personal and private use. The expression "personal and private use" is interpreted with varying degrees of restrictiveness, but as a rule this concept is the reverse of collective use and presupposes that no profit-making purpose is pursued; a case in point is the student who copies a text, or causes it to be copied, in accomplishing his work of personal research or his studies. Certain delegations on the Tunis Committee wondered whether the words "adaptation, arrangement or other transformation" should be retained, as in fact such action constitutes a serious violation of the author's moral rights. It was decided that they would be kept, however, in view of the practical impossibility of controlling such acts in the hypothetical case of their being strictly private in character.

45. *Subparagraph (b) of paragraph (i)* deals with quotations. A quotation consisting of the word-for-word reproduction of passages from a work, with a view to reviewing or criticizing tbe work or to using passages of it for purposes of illustration or explanation, can only cover extracts from works. "Press summaries," which consist almost exclusively of a compilation of extracts from articles in newspapers or periodicals, are given a special mention. A quotation may equally well be made from a book, a newspaper, a cinematograph film, a sound or visual recording, a broadcast, etc. The limits of permissible quotation depend on the extent to which it is justified by the purpose and by fair practice. In all cases the source and the name of the author of

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[(1bis) Subsection (1) shall not apply when works of national folklore are used by a public entity for non-commercial purposes.]

(2) Works of national folklore are protected by all means in accordance with subsection (1), without limitation in time.

(3) Copies of works of national folklore made abroad, and copies of translations, adaptations, arrangements, or other transformations of works of national folklore made abroad, without the authorization of the competent authority, shall be neither imported nor distributed.

SECTION 7

Fair use

Notwithstanding Section 4, the following uses of a protected work, either in the original language or in translation, are permissible without the author's consent:

(i) in the case of any work that has been lawfully published:

(a) the reproduction, translation, adaptation, arrangement or other transformation of such work exclusively for the user's own personal and private use;

(b) the inclusion, subject to the mention of the source and the name of the author, of quotations from such work in another work, provided that such quotations are compatible with fair practice and their extent does not exceed that justified by the purpose, including quotations from newspaper articles and periodicals in the form of press summaries;

Commentary

the work must be mentioned. Respect of the "extent justified by the purpose" is a factor that varies according to the circumstances of a case, and therefore can only be evaluated by the courts. Thus a quotation made in good faith, in accordance with fair practice and within the limits of requirements, for the demonstration of a proposition for instance, is lawful. If, on the other hand, it transpires that the demonstration of the proposition did not call for quotations, or if they are too long or too numerous, the courts may rule that the extent justified by the purpose has not been respected.

46. *Subparagraph (c) of paragraph (i)* permits the use of a work for illustration in teaching by means of publications, broadcasts or sound or visual recordings. In some respects this exception to copyright in the work thus used joins up with the previous exception, namely, "quotation." But there is a further restriction on the exception for the purpose of illustration: the illustrations must actually illustrate the teaching, and they are permitted only to the extent justified by the purpose. In practice this means that the publication, broadcast or sound or visual recording in which the work is used by way of illustration is itself made solely for teaching purposes. Also, as in the case of quotations, the illustration must be compatible with fair practice and in all cases the source and the name of the author of the work used must be mentioned.

47. This provision likewise authorizes communication, for teaching purposes, of a work which has been broadcast for use in schools, education, universities and professional training, terms merely designed to render more explicit the concept of use by way of illustration for teaching purposes.

48. *Paragraph (ii)* deals with articles on current economic, political or religious topics published in newspapers or periodicals, or broadcast works of the same character. Unlike press news items, which are merely impersonal statements of fact, these articles are genuine works. Like many current legislations, the Model Law allows them to be reproduced in the press or communicated to the public without the author's authorization, but on certain conditions: the articles in question must be on one of the three topics limitatively enumerated, they must have been published in the press or broadcast, and the source of the work must be clearly indicated. However, the provision specifies that the use of the work may be prohibited by an express indication to this effect.

49. *Paragraph (iii)* permits the use of any work that can be seen or heard in the course of a current event for reporting on that event by means of photography, cinematography or by other methods of communication to the public. It is essential that such use should be purely incidental or accidental, that the work used should be merely accessory to the subject of the report and that the use of the work should not exceed the extent justified by the informatory purpose of the report. It is natural in this case that, as many legislations moreover provide, there should be no necessity to seek the authorization of the author of the work thus used.

50. *Paragraph (iv)* also exempts from the author's consent the reproduction in a film or television broadcast of architectural works or works of art in two cases: if the works are permanently located in a public place, their reproduction is totally unrestricted; if not, their inclusion in the film or broadcast is permitted only if it is by way of background or incidental to the main subject.

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(c) the utilization of the work by way of illustration in publications, broadcasts or sound or visual recordings for teaching, to the extent justified by the purpose, or the communication for teaching purposes of the work broadcast for use in schools, education, universities and professional training, provided that such use is compatible with fair practice and that the source and the name of the author are mentioned in the publication, the broadcast or the recording;

(ii) in the case of any article published in newspapers or periodicals on current economic, political or religious topics, and in the case of any broadcast work of the same character, the reproduction of such article or such work in the press, or the communication of it to the public, unless the said article when published, or the said broadcast work when broadcast, is accompanied by an express indication prohibiting such uses, and provided that the source of the work when used in the said manner is clearly indicated;

(iii) for the purposes of reporting on a current event by means of photography, cinematography or communication to the public, the reproduction or making available to the public, to the extent justified by the informatory purpose, of any work that can be seen or heard in the course of the said current event;

(iv) the reproduction of works of art and of architecture, in a film or in a television broadcast, and the communication to the public of the works so reproduced, if the said works are permanently located in a place where they can be viewed by the public or are included in the

Commentary

51. *Paragraph (v)* deals with the reprography of works protected by copyright. It seemed preferable to deal with this question only in very general terms and by reference to Article 9(2) of the Berne Convention, which provides that "it shall be a matter for legislation in the countries of the Union to permit the reproduction of such [literary and artistic] works in certain special cases, provided that such reproduction does not conflict with a normal exploitation of the work and does not unreasonably prejudice the legitimate interests of the author." The latter two conditions have been taken over word for word. The "special cases" are defined in the Model Law as cases where the reproduction is "by public libraries, non-commercial documentation centers, scientific institutions and educational establishments, ... provided that such reproduction and the number of copies made are limited to the needs of their activities."

52. Finally, *paragraph (vi)* permits the reproduction, but exclusively in the press, or communication to the public of certain oral works on specified conditions. In this connection the Model Law distinguishes between:

(a) political speeches and speeches delivered during legal proceedings; their use is subject to one restriction: they may not without authorization be brought together in a collection of the author's works, even if that collection is published in the press; and

(b) lectures, addresses, sermons and other works of the same nature delivered in public. Their use is permissible only for the purposes of current information and, like political and judicial speeches, they may not be brought together in a collection of the author's works.

53. This exception to the author's right to authorize or prohibit the reproduction of his work can be accounted for on technical grounds, and it has regard to the actual conditions in which broadcasting stations operate. Ephemeral recordings are thus merely a technical broadcasting method and their making in one or more copies is lawful only on the following conditions:

(i) they must be made by the broadcasting organizations themselves by means of their own facilities;

(ii) they may not be used for purposes other than the broadcasts of the organization concerned and within the limits of the authorization to broadcast granted by the owner of the right. The broadcasting organization may neither transfer them, nor loan them, nor rent them out, nor exchange them with another broadcasting organization;

(iii) they may contain only works which that organization is authorized to broadcast, either under a contract with the owner of the right or by operation of law;

(iv) they must all be destroyed within six months of the making, unless the owner of the right has expressly agreed with the broadcasting organization on a longer period for their preservation. However, where an

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film or in the broadcast only by way of background or as incidental to the essential matters represented;

(v) the reproduction, by photographic or similar process, by public libraries, non-commercial documentation centers, scientific institutions and educational establishments, of literary, artistic or scientific works which have already been lawfully made available to the public, provided that such reproduction and the number of copies made are limited to the needs of their activities, do not conflict with the normal exploitation of the work and do not unreasonably prejudice the legitimate interests of the author;

(vi) the reproduction in the press or the communication to the public of:

(a) any political speech or speech delivered during legal proceedings, or

(b) any lecture, address, sermon or other work of the same nature delivered in public, provided that the use is exclusively for the purposes of current information,

the author retaining the right to publish a collection of such works.

SECTION 8

Ephemeral recordings

Notwithstanding Section 4, any broadcasting organization may make, for the purpose of its own broadcasts and by means of its own facilities, an ephemeral recording, in one or several copies, of any work which it is authorized to broadcast. All copies of it shall be destroyed within six months of the making or within any longer term agreed to by the author; however, where such recording has an exceptional documentary character, one copy of it may be preserved in official archives. This is without prejudice to the application of the provisions of Section 5.

Commentary

ephemeral recording has an exceptional documentary character, one copy of it may be preserved in official archives;

(v) moral rights must be respected.

54. The term " author " in this Section is to be construed as meaning the owner of the right of reproduction.

55. On the subject of cinematographic works, it should be pointed out that, as a general rule, these are fixed beforehand, and that therefore ephemeral recordings cannot be made of them, with the exception, however, of isolated sequences taken from films and included in television broadcasts.

56. Finally, it should be noted that certain delegations on the Tunis Committee had wanted it to be stated in the text of the Law that ephemeral recordings were to be permitted only for non-commercial broadcasts. Their proposal was not adopted in view of the situation in certain developing countries where all the radio stations are exclusively commercial and depend on publicity alone for their existence. The authors of the Model Law did not wish to deprive broadcasting organizations in such countries of the right to make ephemeral recordings of their broadcasts.

57. These two Sections establish the principle of the lawfulness of licenses granted by the competent authority for translation and reproduction of works on conditions specified in Appendices A and B respectively (see below). It is important to note that the issue of these licenses is to be regarded as an exceptional measure, inasmuch as it is preferable to proceed by way of negotiation between the users of works and the owners of rights.

58. According to *subsection (1)* of this Section, it is the actual person who has created a work, in other words its author, who benefits in the first instance from copyright protection. In the absence of proof to the contrary, the author is the person under whose name the work is disclosed. In the case of a work of joint authorship, that is, a work in the creation of which two or more authors have collaborated and where their individual contributions cannot be separated without destroying the work itself, the rights in such a work are owned in common by all its co-authors; the use of the work requires the consent of each one.

59. *Subsection (2)* relates to works created for an employer or on commission. For these works too the general rule laid down in subsection (1) applies in principle, which means that the rights in the work vest originally in the author who

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SECTION 9

Limitation of the right of translation

Notwithstanding Section 4, it is lawful, even without the author's authorization, to translate a work into . . . [state the language or languages in general use in the country] **and to publish the translation on the territory of the country under a license accorded by the competent authority and under the conditions specified in Appendix A.**

SECTION 10

Limitation of the right of reproduction

Notwithstanding Section 4, it is lawful, even without the author's authorization, to reproduce a work and publish a particular edition thereof on the territory of the country under a license accorded by the competent authority and under the conditions specified in Appendix B.

SECTION 11

Ownership of copyright

(1) The rights protected by this Law are owned in the first instance by the author or authors who created the work. The authors of a work of joint authorship are co-owners of the said rights. In the absence of proof to the contrary, the author of a work is the person under whose name the work is disclosed.

(2) In the case of a work created by an author for an individual or a legal entity, private or public, under a contract of service in the course of his em-

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created it. Two alternatives have been provided for, however, to cater for the Roman legal approach (A), and for the Anglo-Saxon legal approach (B).

60. Under Alternative A, copyright vests originally in the author of the work except where, in the employment contract or the commission, the author and the emloyer or the person commissioning the work have agreed in writing to the contrary, namely that original copyright vests in the employer or the person commissioning the work. The contract or the commission could also provide simply for assignment of the author's rights to the employer or the person commissioning the work.

61. Under Alternative B, the rights vest originally in the author of the work but, unless otherwise agreed, they are deemed by operation of the law to be transferred to the employer or to the person commissioning the work. This presumption of assignment causes the burden of proof to be reversed: in the event of dispute, it is for the author to prove that he has not transferred his rights. In view of its exceptional character, this presumption of transfer operates only on the conditions laid down in the law, which are to be interpreted restrictively:

(i) the work must have been created for the employer or the person commissioning the work, which means that the presumption of transfer does not extend to other works that the same author may have created for himself or for a third party;

(ii) only the economic rights mentioned in Section 4 of the Model Law are deemed transferred to the employer or the person commissioning the work. Accordingly, the author retains all the moral rights in his work (Section 5) and, where applicable, his *droit de suite* (Section 4bis);

(iii) the rights deemed transferred to the employer or the person commissioning the work are so deemed only to the extent necessary for the employer's customary activity at the time when the contract of employment or commission is concluded. Thus, for example, the author of a radio play written under contract of service for a broadcasting organization, which at the time when the contract was concluded exercised its activity only in the field of sound broadcasting, retains the right to authorize adaptation of the work for the stage and its performance;

(iv) with respect to commissioned works, the person commissioning the work must undertake to pay, or actually pay, the agreed amount.

In the course of the discussion of this provision, certain delegations considered that this presumption of the transfer of authors' rights to the employer or the person commissioning the work was not favorable to authors.

62. *Subsection (3)* deals with the legal system applicable to cinematographic works only, to the exclusion of audiovisual works and works expressed by a process analogous to cinematography. A distinction should be made here between the cinematographic work as such and the works incorporated therein, representing the various contributions to the cinematographic work.

63. As to the cinematographic work itself, paragraph (i), which defines the ownership of copyright, proposes two alternatives to cater for the Roman legal approach (Alternative A) and the Anglo-Saxon legal approach (Alternative B). According to the Roman legal approach, original copyright in a cinematographic work vests in the intellectual creators of the work, according to the rule in subsection (1). Most national legislations list these intellectual creators. They are the director, the author of the scenario, the author of the adaptation, the author of the dialogues, the author of

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ployment or of a work commissioned from the author by such an individual or legal entity,

[Alternative A: **the copyright belongs in the first instance to the former, unless otherwise stipulated in writing under the contract.**]

[Alternative B: **the rights mentioned in Section 4 are, unless otherwise stipulated in writing, deemed transferred to the employer or to the person commissioning the work to such extent as may be necessary to their customary activity at the time of the conclusion of the contract of employment or the commissioning of the work, subject to the person commissioning the work undertaking to pay the agreed amount for the creation of the work or the effective payment of this amount.**]

(3)(i) In the case of a cinematographic work, the copyright belongs

[Alternative A: **in the first instance to the intellectual creators of the work;**]

[Alternative B: **to the maker of the work;**]

(ii) the maker, who is the person or legal entity who has taken the initiative and financial responsibility for the making of the work, shall be obliged to conclude, prior to the making of the work, contracts in writing with all those whose works are to be used in the making;

(iii) unless otherwise stipulated, the contracts concluded in writing with the intellectual creators of the work shall imply a presumption of

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the musical compositions, etc. The Model Law does not do so: it leaves this to the national legislator.

According to the Anglo-Saxon legal approach, and in derogation from the rule in subsection (1), copyright vests in the maker of the work, who is defined in paragraph (ii) as the person or legal entity who has taken the initiative and financial responsibility for the making of the work. When this provision was discussed, certain delegations considered that the conferment of copyright in the cinematographic work on its maker was not favorable to the author.

In both cases (Alternatives A and B) the maker is obliged, prior to the making of the cinematographic work, to conclude contracts in writing with the intellectual creators of the work. Under paragraph (iii), these contracts imply a presumption of assignment of the rights necessary for the cinematographic exploitation of the work in favor of the maker, for a limited term, the duration of which is to be fixed in the contracts.

64. With regard to the contributions to the cinematographic work, considered separately, irrespective of whether they are the pre-existing works (novels and stories from which the scenario has been drawn, an original scenario submitted to the maker, a musical work not specially composed for the cinematographic work, etc.) or the specific contributions to the cinematographic work (specially-composed music, specially-written dialogue, décor, etc.), original copyright in these works vests in their respective authors, in accordance with the rule in subsection (1). Consequently the maker must, under paragraph (ii), prior to making the cinematographic work, conclude contracts in writing with all those whose works are to be used in it. Under paragraph (iii), these contracts imply a presumption of assignment, in favor of the maker, of the rights necessary for the cinematographic exploitation of the works in question, unless otherwise stipulated, and with the exception of pre-existing works and musical works whether pre-existing or not, with or without words.

Text

assignment of the rights necessary for the cinematographic exploitation of the work in favor of the maker, for a limited term, the duration of which shall be fixed in the said contracts;

(iv) the presumption provided for above shall not apply to pre-existing works used for the making of the work nor to musical works with or without accompanying words.

SECTION 12

Transfer of copyright

65. Like all other economic rights, those referred to in Section 4 are transferable wholly or in part, and the terms and conditions of the transfer are governed by general law. Except in the case of transfer resulting from the law itself, as under Section 11(2), Alternative B, the transfer must be made in writing to be valid.

(1) The rights referred to in Section 4 are transferable in whole or in part.

(2) Transfer, other than by operation of law, of any right referred to in Section 4 shall be in writing.

66. It should be stressed that Section 12 deals with the transfer proper of authors' rights, that is, the actual assignment of all or part of the copyright, but leaves aside the mere granting of licenses to exploit the work, which may be exclusive or non-exclusive and are governed by general law.

67. The *droit de suite* which is the subject of Section 4bis is inalienable and Section 12 is not applicable to it. Neither is it applicable, of course, to the moral rights provided for in Section 5.

68. In the event of the transfer of rights by contract, the contract must naturally specify the rights transferred, the object to which these rights relate, that is, the work in its entirety or in part, the duration of the transfer, the author's remuneration, the manner in which the work is to be exploited, the number of uses or of copies, etc. Thus *subsection (3)* provides that " transfer, in whole or in part, of any right referred to in Section 4 shall not imply the transfer of any of the other rights, " and *subsection (4)* provides that, " when a contract requires the total transfer of one of the

(3) Transfer, in whole or in part, of any right referred to in Section 4 shall not imply the transfer of any of the other rights.

(4) When a contract requires the total transfer of one of the rights referred to in Section 4, its scope shall be limited to the use provided for in the contract.

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rights referred to in Section 4, its scope shall be limited to the use provided for in the contract." This means then that everything of which the author has not expressly disposed remains reserved to him. Moreover, and especially with regard to works of art, alienation of the physical object does not imply alienation of the copyright subsisting in that object. Thus the purchaser of a painting, photograph or statue does not possess the right to reproduce these objects. This is the principle and rule of *subsection (5)*.

69. Finally, *subsection (6)*, which is optional (in square brackets), provides that, "to be valid, the contracts for the transfer of the rights mentioned in Section 4 must be approved by the competent authority as defined in Section 18, which may, where necessary, revise their terms." The purpose of this provision is to prevent and correct any abuses that might arise from inequality in the relative strength of the parties to the contract.

70. The Berne Convention and the Universal Convention lay down different terms for copyright. To take this disparity into account, the first five subsections provide for two different terms placed in square brackets, the first referring to the Berne Convention and the second to the Universal Convention.

71. The only remark prompted by Section 13 is that all of its provisions apply to the economic rights mentioned in Section 4. In principle the *droit de suite* (Section 4bis), being an economic right, should also be governed by the general provisions on the duration of protection. Accordingly, if this right is included in the legislation there should be a reference to Section 4bis as well as to Section 4.

72. Moral rights, which are provided for in Section 5, are not covered by Section 13; their duration is governed by the provisions of Section 5 itself and, as explained above, will depend on whether or not subsections (2bis) *et seq.* of this Section are adopted. For countries that do not adopt them, moral rights will be perpetual. In countries that do adopt them, the duration of the protection of moral rights will be that provided for in Section 5(2bis), in accordance with the Berne Convention. The figure twenty-five in square brackets in subsection (2) refers to a country which, being party to the Universal Convention only and hence not required to protect the author's moral rights, nevertheless does so and even allows them to subsist after the author's death, though only for the minimum term under the Universal Convention, that is, twenty-five years after the author's death.

73. Finally, it is recalled that under section 6(2) works of folklore are protected without limitation in time.

74. The Tunis Committee strongly recommended the creation of authors' organizations, which are still too few in number in developing countries: it considered that an author was not capable of dealing on his own with the administration of his economic rights and the defense of his

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(5) The transfer of ownership of the only copy or of one or several copies of a work shall not imply the transfer of the copyright in the work.

[(6) To be valid, the contracts for the transfer of the rights referred to in Section 4 must be approved by the competent authority as defined in Section 18 which may, where necessary, revise their terms.]

SECTION 13

Duration of economic rights

(1) Unless expressly provided otherwise in this Law, the rights referred to in Section 4 are protected during the life of the author and [50] [25] years after his death.

(2) In the case of a work of joint authorship, the rights referred to in Section 4 are protected during the life of the last surviving author and [50] [25] years after his death.

(3) In the case of a work published anonymously or under a pseudonym, the rights referred to in Section 4 are protected until the expiration of [50] [25] years from the date on which such work was first lawfully published, provided that, where, before the expiration of this term, the author's identity is revealed or is no longer in doubt, subsection (1) applies.

(4) In the case of a cinematographic, radiophonic or audiovisual work, the rights referred to in Section 4 are protected until the expiration of [50] [25] years from the making of the work or, if the work is made available to the public during such period with the consent of the author, [50] [25] years from the date of its communication to the public.

(5) In the case of a photographic work or a work of applied art, the rights referred to in Section 4 are protected until the expiration of [25] [10] years from the making of the work.

(6) All terms run to the end of the calendar year in which they would otherwise expire.

SECTION 14

Organization of authors

The administration of the rights referred to in Section 4 and the defense of the moral interests of authors referred to in Section 5 shall be entrusted to an organization of authors which shall be empowered

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moral interests on his national territory, and still less at the international level. It should be mentioned here that, with a view to encouraging authors' organizations, Section 17 of the Model Law provides that the receipts produced by the use of works in the public domain and of works of national folklore are to be used, *inter alia,* for that purpose.

75. *Subsection (1)* of this Section enables the copyright owner, in the event of infringement of any of the rights protected, to refer the matter to the courts. The Model Law does not specify what courts have jurisdiction in the matter, and more specifically whether they are merely judiciary courts irrespective of the nature of the parties. The question might arise, for example, where the defendant is a public administration.

76. The sanctions provided for in the Model Law are of a civil nature on the one hand and of a penal nature on the other. It should be pointed out, however, that the penal sanctions are not compulsory and may be either omitted or dealt with by simple reference to the penal code.

77. *Subsection (2)* deals with infringements regarded as violations of the national heritage.

78. *Subsection (3)* deals with the procedure for seizure. This may be ordered either by the courts, or by an administration such as the customs authorities when the infringing objects are imported, but in any event this procedure may be carried out only at the request of the owner of the rights. It may be carried out, for example, at the request of the authority which exercises the rights in works of national folklore, on the importation of copies of such works made abroad (the case provided for in Section 6(3).

79. *Subsection (4)* deals with the material proof of infringements of copyright, specifying that it can be afforded not only by statements drawn up by officers or agents of the judicial police, but also by certified statements of sworn agents of the authors' organization who are empowered to take such action. It should be pointed out that the conditions under which such agents are appointed and sworn in are determined by national legislation.

80. Under *subsection (1)* the law applies to works of nationals of the country concerned or of persons having their residence in that country, or again to works first published in the country, irrespective of their authors' nationality or habitual residence. Other works will not be protected in that country, except in the cases referred to in *subsection (2),* Alternatives X and Y. Alternative X is intended for countries with the Roman legal approach, where usually the mere fact of being party to international conventions suffices to extend the field of application of national law. Alternative Y is designed for countries with the Anglo-Saxon legal approach, where extension of the field of application of national law requires a specific act by the government.

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to act as agent for the issue of authorizations and for the collection of the royalties deriving therefrom. The structure and the operation of the organization shall be fixed in accordance with national legislation.

SECTION 15

Infringements and sanctions

(1) Any person infringing any one of the rights protected under this Law:

(i) shall he ohliged hy the court to cease such infringement;

(ii) shall he liahle for damages;

(iii) shall, if the infringement was willful, he punishahle by a fine not exceeding . . . or imprisonment not exceeding . . . months or both, provided that, in the case of recidivism, the ahove amount or term or hoth may he doubled.

(2) Any infringement of any one of these rights which is considered as a violation of the national cultural heritage may he curbed hy all legitimate means.

(3) Infringing copies, receipts arising from acts constituting an infringement of these rights and any implements used for the infringement shall be suhject to seizure.

(4) The material proof of such infringement of any one of the rights may be provided hy statements of police officers or by the certified statements of the sworn agents of the organization of authors.

SECTION 16

Field of application of Law

(1) This Law shall apply to:

(i) works of authors who are nationals of, or have their habitual residence in, the country, and

(ii) works first puhlished in the country, irrespective of the nationality or residence of their authors.

(2) [Alternative X] **This Law shall furthermore apply to all works which, hy virtue of treaties entered into hy the country, are to be protected, as well as to works of national folklore.**

(2) [Alternative Y] [Subject to Section A6 and B6] **This Law shall furthermore apply to the works:**

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(i) of authors who are nationals of, or have their habitual residence in, countries;
(ii) first published in countries;
(iii) of organizations; and
(iv) of national folklore of countries

which, with reference to this subsection, shall be named in appropriate orders promulgated by the Government.

81. *Subsection (3)* deals with the extent of application of the law in time. The principle here is that of non-retroactivity. However, the sentence in square brackets is an optional provision which proposes retroactive application of the law to works created or published before the date of its entry into force, but on condition that they are published within the periods provided for in Section 13.

(3) The provisions of this Law shall apply to works created or published subsequently to the date on which this Law comes into force. [Works created or published prior to this date shall also be protected provided that they fall within the periods provided for in Section 13.]

82. It should be noted that the Model Law makes no specific provision concerning works of architecture or artistic works incorporated in a building. In this case it is natural that the applicable law should be that of the place where the architectural work or the building is located.

SECTION 17

" Domaine public payant "

83. The Model Law provides for the introduction of a *domaine public payant*. According to this system, which is already known to certain legislations, a work that has fallen into the public domain may be used without restriction, subject however to the payment of a fee calculated as a percentage of the receipts produced by the use of the work or its adaptations. The sums collected are to be used, under Section 17, for the purposes specified therein. Receipts produced by the use of national folklore are provided for in the same way. Finally it should be noted that, for the purposes of the application of this Section, the reference to institutions for the benefit of authors also covers organizations of translators.

The user shall pay to the competent authority . . . percent of the receipts produced by the use of works in the public domain or their adaptation, including works of national folklore. The sums collected shall be used for the following purposes:

(i) to promote institutions for the benefit of authors [and of performers], such as societies of authors, cooperatives, guilds, etc.
(ii) to protect and disseminate national folklore.

SECTION 18

Definitions

84. With regard to the definitions, any comments could be readily dispensed with, since the very essence of a definition is its self-sufficiency. Nevertheless, some brief remarks would appear to be of use.

For the purposes of this Law:

(i) " broadcasting " means the transmitting, for reception by the general public, by wireless means or wire, of sounds or of images and sounds;
(ii) " communication to the public " means making a work available to the public;
(iii) " competent authority " means one or more bodies, each consisting of one or more persons appointed by the Government for the purpose of exercising jurisdiction under the provisions of this Law whenever any matter requires to be determined by such authority;
(iv) " folklore " means all literary, artistic and scientific works created on national territory by authors presumed to be nationals of such countries or by ethnic communities, passed from generation to generation and constituting one of the basic elements of the traditional cultural heritage;

85. First, it should be noted that the definitions of " publisbed works, " " works first published " and " reproduction " are based on the Convention provisions.

86. A further remark concerns the definitions of tbree allied concepts, namely, " communication to the public, " " performance " and " broadcast. " The definition of this last term is clear and it should be stressed that it also includes the distribution of sounds or of images and sounds by wire or by cable, since this is now a customary extension of broadcasting in the strict sense. Tbe definitions of " communication to the public " and " performance " are very close: the first is very general, covering all technical means of presentation such as projection equipment, for instance; the second is more specific.

87. On several occasions the law mentions the " competent authority. " This is by no means bound to be the same authority in each case and it is conceivable, for instance, that the authority that will consider applications for translation or reproduction licenses in accordance with Sections 9 and

Commentary

10 will not be the one that exercises the rights in works of national folklore under Section 6. It will be for each country to determine the jurisdiction of the competent authority or authorities provided for in the law.

Text

(v) " performance " means a public performance or delivery of a work by any means whatsoever;

(vi) " published works " means works published with the consent of their authors, whatever may be the means of manufacture of the copies, provided that the availability of such copies has been such as to satisfy the reasonable requirements of the public, having regard to the nature of the work;

(vii) " reproduction " means the making of one or more copies of a literary, artistic or scientific work, in any material form including any sound or visual recording;

(viii) " works first published " means works first published in the country, or works first published abroad but also published in the country within thirty days from the earlier publication (simultaneous publication);

(ix) " work of joint authorship " means a work created by two or more authors in collaboration, in which the individual contributions are indistinguishable from each other.

Appendices

88. As mentioned in paragraph 2 of this commentary, it was decided that a copyright model law for developing countries should be drawn up in order to assist those countries in deriving benefit from the facilities offered by the Paris Act (1971) of the Berne Convention and by the Universal Copyright Convention as revised at Paris in 1971. To this end the relevant provisions adopted at the Revision Conferences (Appendix to the Paris Act of the Berne Convention and Articles V to V^{quater} of the revised Universal Convention) constitute an important element of the Model Law. The fact that they are placed in appendices is due to considerations of a practical nature.

89. *Appendix A (translation licenses)* and *Appendix B (reproduction licenses)* contain numerous provisions which are very similar and in some cases even identical. However, instead of attempting to combine them the Model Law separates them, both because there are slight but subtle differences between the respective obligations, and because some developing countries may wish to adopt only one of them.

90. In very general terms, the provisions of the two Appendices enable nationals of the country concerned to apply for licenses to translate or reproduce a work protected by copyright and to publish the translation or reproduction, after the expiration of specified periods and on conditions determined by the aforementioned provisions of the Paris Act of the Berne Convention and of the revised Universal Copyright Convention.

91. To a large extent the text of the two Appendices to the Model Law is accordingly patterned on the relevant articles in the two Conventions, and thus requires no commentary. It is understood, however, that countries which are party to only one of the two Conventions should adapt certain provisions of the Appendices to their needs, in particular, that of Section A4(2)*(b)* in Appendix A, where notification to the Director General of one of the two Organizations (Unesco or WIPO) would be sufficient.

92. Moreover, a new provision has been included (Sections A4(1)(ii) and B4(1)(iii)) which reproduces the substance of paragraph 115 of the Report on the Universal Convention Revision Conference and of paragraphs 40 and 41 of the Report on the Berne Convention Revision Conference (Paris 1971). The object of this provision is to permit the making of copies of a reproduction or translation, as the case may be, in a country other than that where the translation or reproduction license has been issued.

Appendix A: Translation Licenses

[See Section 9]

SECTION A1

Works covered

The provisions of this Appendix apply to works which have been published in printed or analogous forms of reproduction.

SECTION A2

Application for license

(1) Any national of the country may, after the expiration of the relevant period provided by subsection (2), apply to the competent authority for a license to make a translation of the work into any of the languages indicated in Section 9 and to publish the translation in printed or analogous forms of reproduction (hereinafter referred to as " the license ").

(2) No license shall be granted until the expiration of whichever of the following periods is applicable:

(i) one year from the date of first publication of the work where the application is for a license for translation into . . . [specify here the language or languages in general use in the country which should not include English, French and Spanish or any other language in general use in any developped country party to the Berne Convention or the Universal Copyright Convention]**;**

(ii) three years from the date of first publication of the work where the application is for a license for translation into . . . [specify here the language or languages in general use in the country not covered by (i) above]**.**

SECTION A3

Grant of license

(1) Before granting a license, the competent authority shall determine that:

(i) no translation of the work into the language in question has been published in printed or analogous forms of reproduction, by or with the authorization of the owner of the right of translation, or that all previous editions in that language are out of print;

(ii) the applicant for the license has established that he either has requested, and has been denied, authorization from the owner of the right of translation or, after due diligence on his part, he was unable to find such owner;

(iii) at the same time as addressing the request referred to in (ii) above to the owner, the applicant for the license has informed any national or international information center designated for this purpose by the Government of the country in which the publisher of the work to be translated is believed to have his principal place of business;

(iv) if he could not find the owner of the right of translation, the applicant has sent, by registered airmail, a copy of his application to the publisher whose name appears on the work and another such copy to any information center referred to in (iii) above, or, in the absence of such a center, to the Unesco International Copyright Information Centre.

(2) No license shall be granted unless the owner of the right of translation, where known or located, has been given an opportunity to be heard.

(3)(a) No license shall be granted until the expiration of:

(i) a further period of six months, where the three-year period referred to in Section A2(2)(ii) applies, or

(ii) a further period of nine months, where the one-year period referred to in Section A2(2)(i) applies.

(b) Such further period shall be computed from the date on which the applicant complies with the requirements mentioned in subsection (1)(ii) and (iii) or, where the identity or the address of the owner of the right of translation is unknown, from the date on which the applicant also complies with the requirement mentioned in subsection (1)(iv).

(c) If, during either of the said further periods, a translation into the language in question has been published in printed or analogous forms of reproduction, by or with the authorization of the owner of the translation right, no license shall be granted.

(4) For works composed mainly of illustrations, a license shall be granted only if the conditions of Appendix B are also fulfilled.

(5) No license shall be granted when the author has withdrawn all copies of the work from circulation.

SECTION A4

Scope and conditions of the license

(1) Any license under this Appendix:

(i) shall be only for the purpose of teaching, scholarship or research;

(ii) shall only allow publication in a printed or analogous form of reproduction and only on the territory of the country:

Provided, however, that, where the competent authority certifies that facilities do not exist on the territory of the country for such printing or reproduction or that existing facilities are incapable for economic or practical reasons of ensuring such reproduction, the reproduction may be made outside the country if:

(a) the country where the work of reproduction is done is party to the Berne Convention or to the Universal Copyright Convention;

(b) all copies reproduced are sent to the licensee in one or more bulk shipments for distribution exclusively in the country and the contract between the licensee and the establishment doing the work of reproduction so requires;

(c) the said contract provides that the establishment engaged for doing the work of reproduction guarantees that the work of reproduction is lawful in the country where it is done; and

(d) the licensee does not entrust the work of reproduction to an establishment specially created for the purpose of having copies reproduced of works for which a license has been granted under this Appendix.

(iii) shall not extend to the export of copies made under the license, except as provided in subsection (2);

(iv) shall be non-exclusive; and

(v) shall not be transferable.

(2)(a) Copies of a translation published under a license may be sent abroad by the Government or other public entity provided that:

(i) the translation is into a language other than English, French or Spanish [NB: This provision is needed only to the extent that English, French and Spanish appear among the languages mentioned in Section 9]**;**

(ii) the recipients of the copies are individuals who are nationals of the country or are organizations grouping individuals who are nationals of the country;

(iii) the recipients will use the copies only for the purpose of teaching, scholarship or research;

(iv) both the sending of the copies abroad and their subsequent distribution to the recipients are without any commercial purpose;

(v) the Government of the foreign country to which the copies are sent has agreed to the receipt or distribution, or both, of the copies sent into that country.

(b) The Directors General of Unesco and WIPO shall be notified by the Government of any agreement referred to in subparagraph (a)(v).

(3) The license shall provide for just compensation in favor of the owner of the right of translation that is consistent with standards of royalties normally operating in the case of licenses freely negotiated between persons in the country and owners of translation rights in the country of the owner of the right of translation.

(4) If the licensee is unable, by reason of currency regulations, to transmit the compensation to the owner of the right of translation, he shall report the fact to the competent authority who shall make all efforts, by the use of international machinery, to ensure such transmittal in internationally convertible currency or its equivalent.

(5) As a condition of maintaining the validity of the license, the translation must be correct and all published copies must include the following:

(i) the original title and name of the author of the work;

(ii) a notice in the language of the translation stating that the copy is available for distribution only in the country;

(iii) if the work which is translated was published with a copyright notice, a reprint of that notice.

(6) The license shall terminate if a translation of the work in the same language and with substantially the same content as the translation published under the license is published in printed or analogous forms of reproduction in the country by or with the authorization of the owner of the right of translation, at a price reasonably related to that normally charged in the country for comparable works. Any copies already made before the license terminates may continue to be distributed until their stock is exhausted.

SECTION A5

License for broadcasting organization

(1) A license under this Appendix may also be granted to a domestic broadcasting organization, provided that all the following conditions are met:

(i) the translation is made from a copy made and acquired in accordance with the laws of the country;

(ii) the translation is only for use in broadcasts intended exclusively for teaching or for the dissemination of the results of specialized technical or scientific research to experts in a particular profession;

(iii) the translation is used exclusively for the purposes specified in (ii), above, through broadcasts that are lawfully made and that are intended for recipients in the country, including broadcasts made through the medium of sound or visual recordings that have been made lawfully and for the sole purpose of such broadcasts;

(iv) sound or visual recordings of the translation may not be used by broadcasting organizations other than those having their headquarters in the country; and

(v) all uses made of the translation are without any commercial purpose.

(2) A license may also be granted to a domestic broadcasting organization, under all of the conditions provided in subsection (1), to translate any text incorporated in an audiovisual fixation that was itself prepared and published for the sole purpose of being used in connection with systematic instructional activities.

SECTION A6

Applicability of Section 9 and this Appendix

Alternative X

(1) Section 9 and this Appendix shall apply to works whose country of origin is the country or any other country which is bound by, or has admitted the application of, the revised (1971) Universal Copyright Convention and/or the relevant provisions of the Appendix to the Paris Act (1971) of the Berne Convention for the Protection of Literary and Artistic Works.

(2) This Appendix shall cease to be applicable when the declaration made by the Government under Article V^{bis} (1) of the revised (1971) Universal Copyright Convention and/or the relevant provisions of the Appendix of the Paris Act (1971) of the Berne Convention for the Protection of Literary and Artistic Works ceases to be effective.

Alternative Y

(1) Section 9 and this Appendix shall apply to works whose country of origin is the country or any other country whose name, with reference to this Appendix, is indicated in an appropriate order promulgated by the Government.

(2) The Government may, by order promulgated by it, discontinue the application of Section 9 and this Appendix.

Appendix B: Reproduction Licenses

[See Section 10]

SECTION B1

Works covered

Subject to Section B5, the provisions of this Appendix apply to works which have been published in printed or analogous forms of reproduction.

SECTION B2

Application for license

(1) Any national of the country may, after the expiration of the relevant period provided by subsection (2), apply to the competent authority for a license to reproduce and publish a particular edition of the work in printed or analogous forms of reproduction (hereinafter referred to as " the license ").

(2) No license shall be granted until the expiration of whichever of the following periods is applicable, commencing from the date of first publication of the particular edition of the work:

(i) three years for works of technology and of the natural and physical sciences, including mathematics;
(ii) seven years for works of fiction, poetry, drama and music, and for art books;
(iii) five years for all other works.

SECTION B3

Grant of license

(1) Before granting a license, the competent authority shall determine that:

(i) no distribution, by or with the authorization of the owner of the right of reproduction, of copies in printed or analogous forms of reproduction of that particular edition has taken place in the country, to the general public or in connection with systematic instructional activities, at a price reasonably related to that normally charged in the country for comparable works, or that, under the same conditions, such copies have not been on sale in the country for a continuous period of at least six months;
(ii) the applicant for the license has established that he either has requested, and has been denied, authorization from the owner of the right of reproduction, or that, after due diligence on his part, he was unable to find such owner;
(iii) at the same time as addressing the request referred to in (ii) above, to the owner, the applicant for the license has informed any national or international information center designated for this purpose by the Government of the country in which the publisher of the work to be reproduced is believed to have his principal place of business;
(iv) if he could not find the owner of the right of reproduction, the applicant has sent, by registered airmail, a copy of his application to the publisher whose name appears on the work and another such copy to any information center referred to in (iii) above, or, in the absence of such a center, to the Unesco International Copyright Information Centre.

(2) No license shall be granted unless the owner of the right of reproduction, where known or located, has been given an opportunity to be heard.

(3) Where the three-year period referred to in Section B2(2)(i) applies, no license shall be granted until the expiration of six months computed from the date on which the applicant complies with the requirements mentioned in subsection (1)(ii) and (iii) or, where the identity or the address of the owner of the right of reproduction is unknown, from the date on which the applicant also complies with the requirement mentioned in subsection (1)(iv).

(4) Where the seven-year or five-year periods referred to in Section B2(2) (ii) or (iii) apply and where the identity or the address of the owner of the right of reproduction is unknown, no license shall be granted until the expiration of three months computed from the date on which the copies referred to in subsection (1)(iv) have been mailed.

(5) If, during the period of six or three months referred to in subsection (3) or (4), a distribution or placing on sale as described in subsection (1)(i) has taken place, no license shall be granted.

(6) No license shall be granted if the author has withdrawn from circulation all copies of the edition which is the subject of the application.

(7) Where the edition which is the subject of an application for license under this Appendix is a translation, the license shall only be granted if the translation is in a language indicated in Section 9 and was published by or with the authorization of the owner of the right of translation.

SECTION B4

Scope and conditions of the license

(1) Any license under this Appendix:

(i) shall be only for use in connection with systematic instructional activities;

(ii) shall, subject to Section B5, only allow publication in a printed or analogous form of reproduction at a price reasonably related to, or lower than, that normally charged in the country for a comparable work;

(iii) shall only allow publication on the territory of the country and shall not extend to the export of copies made under the license:

Provided, however, that where the competent authority certifies that facilities do not exist on the territory of the country for such reproduction or that existing facilities are incapable for economic or practical reasons of such reproduction, the reproduction may be made outside the country if:

(a) the country where the work of reproduction is done is party to the Berne Convention or to the Universal Copyright Convention;

(b) all copies reproduced are sent to the licensee in one or more bulk shipments for distribution exclusively in the country and the contract between the licensee and the establishment doing the work of reproduction so requires;

(c) the said contract provides that the establishment engaged for doing the work of reproduction guarantees that the work of reproduction is lawful in the country where it is done; and

(d) the licensee does not entrust the work of reproduction to an establishment specially created for the purpose of having copies reproduced of works for which a license has been granted under this Appendix;

(iv) shall be non-exclusive; and

(v) shall not be transferable.

(2) The license shall provide for just compensation in favor of the owner of the right of reproduction that is consistent with standards of royalties normally operating in the case of licenses freely negotiated between persons in the country and owners of reproduction rights in the country of the owner of the right of reproduction.

(3) If the licensee is unable, by reason of currency regulations, to transmit the compensation to the owner of the right of reproduction, he shall report the fact to the competent authority who shall make all efforts, by the use of international machinery, to ensure such transmittal in internationally convertible currency or its equivalent.

(4) As a condition of maintaining the validity of the license, the reproduction of that particular edition must be accurate and all published copies must include the following:

(i) the title and name of the author of the work;

(ii) a notice in the language of the publication stating that the copy is available for distribution only in the country;

(iii) if the edition which is reproduced bears a copyright notice, a reprint of that notice.

(5) The license shall terminate if copies of an edition of the work in printed or analogous forms of reproduction are distributed in the country, by or with the authorization of the owner of the right of reproduction, to the general public or in connection with systematic instructional activities, at a price reasonably related to that normally charged in the country for comparable works, if such edition is in the same language and is substantially the same in content as the edition which was published under the license. Any copies already made before the license terminates may continue to be distributed until their stock is exhausted.

SECTION B5

License for audiovisual fixations

Under the conditions provided in this Appendix, a license may also be granted:

(i) to reproduce in audiovisual form a lawfully made audiovisual fixation, including any protected works incorporated in it, provided that the said fixation was prepared and published for the sole purpose of being used in connection with systematic instructional activities, and

(ii) to translate any text incorporated in the said fixation into . . . [state the language or languages in general use in the country].

SECTION B6

Applicability of Section 10 and this Appendix

Alternative X

(1) Section 10 and this Appendix shall apply to works whose country of origin is the country or any other country which is bound by, or has admitted the application of, the revised (1971) Universal Copyright Convention and/or the relevant provisions of the Appendix to the Paris Act (1971) of the Berne Convention for the Protection of Literary and Artistic Works.

(2) This Appendix shall cease to be applicable when the declaration made by the Government under Article V^{bis} (1) of the revised (1971) Universal Copyright Convention and/or the relevant provisions of the Appendix to the Paris Act (1971) of the Berne Convention for the Protection of Literary and Artistic Works ceases to be effective.

Alternative Y

(1) Section 10 and this Appendix shall apply to works whose country of origin is the country or any other country whose name, with reference to this Appendix, is indicated in an appropriate order promulgated by the Government.

(2) The Government may, by order promulgated by it, discontinue the application of Section 10 and this Appendix.

MAURITANIA

Accession to the Paris Act (1971) of the Berne Convention

The Director General of the World Intellectual Property Organization (WIPO) has notified the Governments of member countries of the Berne Union that the Government of the Islamic Republic of Mauritania deposited, on June 17, 1976, its instrument of accession to the Berne Convention for the Protection of Literary and Artistic Works of September 9, 1886, as revised at Paris on July 24, 1971.

Pursuant to the provisions of Article 28(2)*(c)* and (3), the Paris Act (1971) of the Convention will enter into force, with respect to the Islamic Republic of Mauritania, three months after the date of this notification, that is, on September 21, 1976.

Berne Notification No. 80, of June 21, 1976.

MEXICO

Notification concerning Articles II and III of the Appendix to the Paris Act (1971)

The Director General of the World Intellectual Property Organization (WIPO) has notified the Governments of member countries of the Berne Union of the notification deposited by the Government of the United Mexican States in which that Government, referring to Article I of the Appendix to the Paris Act (1971) of the Berne Convention for the Protection of Literary and Artistic Works, declares that it will avail itself of the faculty provided for in Article II and the faculty provided for in Article III of the Appendix to the said Act.

In accordance with Article I(2)*(a)* of the Appendix to the said Act, the declaration of the Government of the United Mexican States is effective until the expiration of the period of ten years from the entry into force, on October 10, 1974, of Articles 1 to 21 and the Appendix of the said Convention, that is, until October 10, 1984.

Berne Notification No. 79, of June 3, 1976.

General Studies

The International Copyright Conventions and Reprography

André KEREVER *

International Activities

International Literary and Artistic Association (ALAI)

(53rd Congress, Athens, May 23 to 29, 1976)

At the invitation of its Greek Group, the International Literary and Artistic Association held its 53rd Congress in Athens from May 23 to 29, 1976.

The Congress was chaired by Professor Henri Desbois, President of ALAI, and was attended by some one hundred participants representing various national groups of ALAI or coming from the intellectual property circles of the following countries: Austria, Belgium, Denmark, Finland, France, Germany (Federal Republic of), Greece, Italy, Netherlands, Norway, Sweden, Switzerland, United Kingdom, and Turkey. A number of international non-governmental organizations sent observers, particularly the International Association for the Protection of Industrial Property (AIPPI), the International Confederation of Societies of Authors and Composers (CISAC) and the International Writers Guild (IWG).

WIPO was represented by its Director General, Dr. Arpad Bogsch, and by Mr. Claude Masouyé, Director of the Copyright and Public Information Department.

The opening session of the Congress was held in the presence of Mr. Constantin A. Tripanis, Minister for Cultural Affairs and Science of Greece, and of a number of other Greek personalities, professors of law and members of the Athens Academy.

At the working sessions, the participants heard reports on the following subjects:

trends in copyright in Greece (domestic legislation and case law; international relations) by Mr. Tassos Ioannou, lawyer, President of the Greek Group of ALAI;

reprography and copyright by Professor Cohen Jehoram (Netherlands);

teledistribution by Mrs. Denise Gaudel, Barrister at the Court of Paris;

protection of computer programs by Mr. Gert Kolle of the Max-Planck-Institute, Munich;

future prospects of *droit de suite* by Mr. Wladimir Duchemin, Director of SPADEM, Paris;

the international Copyright Information Centre by Mr. José Miguel de Azaola, Head of the Centre, Unesco;

the Tunis Model Law on Copyright by Mr. Roger Fernay, Executive Vice-President of the International Writers Guild.

At the outcome of its deliberations the Congress adopted resolutions on these various topics, the texts of which are reproduced below.

The success of the Congress was greatly assisted by the excellent organization which was in the hands of Mr. Tassos Ioannou, lawyer in Athens, President of the Greek Group of ALAI, and Mr. Victor Melas, lawyer in Athens, Secretary General of the Congress. The next Congress is to be held in Paris in 1978 and will mark the centenery of ALAI.

Resolutions *

The International Literary and Artistic Association, meeting in Congress in Athens from May 24 to 29, 1976,

1. Revision of Greek Copyright Law

(1) Is gratified to learn that a draft law to safeguard copyright in the face of changing modes of literary and artistic creation and dissemination of works is to be tabled in the Greek Parliament;

(2) Hopes that the adoption of this draft law will help to bring to an end certain activities contrary to the stipulations of current contracts for the exploitation of works of the mind;

(3) Notes with interest the measures contained in a recent draft law for the purposes of protecting visual or sound recordings in Greece in conformity with the appropriate international conventions.

2. Reprography and Copyright

(1) Notes that the General Conference of Unesco was invited not to adopt a recommendation on reprography and that future work on this subject will continue to be the responsibility of the Executive Committee of the Berne Union and the Intergovernmental Committee of the Universal Copyright Convention;

(2) Sincerely hopes that the study of the problems raised by reprography will remain a constant concern of these Committees and that the search for solutions will be set forth, at least at the regional level;

(3) Reaffirms the principle of the reprographic reproduction of protected works being subject to the right of reproduction;

(4) Considers that the countries party to the international copyright Conventions may not permit derogations from protection in this context except within the limits set out by either of the two Conventions, particularly by respecting the principle of national treatment.

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* WIPO translation.

3. Teledistribution

(1) Considers that the solution to the copyright questions raised by teledistribution is to be found in the provisions of the international copyright Conventions, particularly the Berne Convention, which should be applied strictly;

(2) Decides that the implementing rules for these provisions are to be the subject of forthcoming studies by ALAI.

4. Protection of Computer Programs

Having taken cognizance of the draft model law and draft international agreement drawn up by WIPO and examined by an advisory group of experts under the auspices of WIPO in Geneva in May 1976,

Noting that these drafts provide for various schemes of protection for software (computer programs and/or related documentation),

(1) Considers that, despite the interest it presents, copyright does not seem the altogether appropriate form for such protection;

(2) Decides to place on its agenda of work an in-depth study of the special type of legal protection envisaged by these drafts.

5. " Droit de suite "

(1) Notes the progressive recognition of *droit de suite* in legislation and doctrine;

(2) Notes that more or less substantial divergences still exist as to the concept of *droit de suite* and the rules for implementing it;

(3) Decides to continue its studies with a view to reducing these divergences.

6. International Copyright Information Centre and National Centers

(1) Considers it highly desirable that, in those countries where they do not already exist, national copyright information centers be set up as soon as possible;

(2) Considers it equally desirable that national and regional centers give the widest possible publicity to the functions they fulfil in order to facilitate the conclusion of copyright contracts with users in developing countries;

(3) Considers that the national and regional centers should combine their efforts, under the coordination of the International Centre, in order to establish a system for financing exploitation contracts concluded with users in those of the developing countries which experience difficulty in making international payments;

(4) Expresses the hope that the program for abolishing the double taxation of copyright royalties, pursued by Unesco and WIPO, will lead, in the near future, to the elaboration and application of an international convention resulting in the effective elimination of double taxation of such royalties.

7. Tunis Model Law on Copyright

Having been informed of the outcome of the deliberations of the Committee of Governmental Experts which adopted the Tunis Model Law on Copyright for Developing Countries,

Expresses the wish that the national groups of ALAI should examine the text, together with the commentary, once it has been officially communicated by WIPO and Unesco;

Wishes to emphasize already, however, on the basis of its information, the importance of the improvements made in relation to earlier drafts both as regards the doctrine of copyright and the protection of creators' interests.

Obituary

Martin Hill

(1905—1976)

Martin Hill, WIPO's Permanent Representative to the United Nations in New York, died on May 18, 1976, in Princeton, New Jersey (USA). He was 71.

In 1927 he had joined the Secretariat of the League of Nations; from then until his retirement in 1970 as Assistant Secretary-General of the United Nations for Inter-Agency Affairs his career as an international civil servant was uninterrupted. After his retirement he continued his connection with the United Nations in a number of consultative capacities.

In 1972, Martin Hill became a consultant to WIPO on relations with the United Nations; in the same year, the WIPO Coordination Committee considered a study prepared by him on the possibility and desirability of WIPO becoming a specialized agency of the United Nations system, and adopted a resolution which initiated the negotiations to that end. He continued to act as a consultant until the conclusion of those negotiations in 1974, and then accepted the post of Permanent Representative of WIPO in New York, which he held until his death.

Martin Hill brought to everything he did high qualities of both mind and heart; in his professional life, he was an outstanding example of the highest level of international civil servant: courteous, clear, profoundly knowledgeable; in his private life, he was a man of the widest cultural and human interests, a fine musician and, in his family and his large circle of personal friends, a center of affection.

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Calendar

WIPO Meetings

1976

September 6 to 10 (Geneva) — Paris and Madrid Unions — Working Group for the Computerization of Trademark Operations

September 6 to 17 (Washington) — International Patent Classification (IPC) — Working Gronp III

Septemher 21 to 24 (Geneva) — ICIREPAT — Plenary Committee (PLC)

September 27 to Octoher 5 (Geneva) — WIPO General Assemhly, Conference and Coordination Committee; Assemhlies of the Paris, Madrid, Hague, Nice, Lisbon, Locarno, IPC and Berne Unions; Conferences of Representatives of the Paris, Hagne, Nice and Berne Unions; Execntive Committees of the Paris and Berne Unions; Committee of Directors of the Madrid Union; Council of the Lishon Union — Ordinary Sessions

September 27 to October 8 (Rijswijk) — International Patent Classification (IPC) — Working Gronp II

Octoher 11 to 18 (Geneva) — International Patent Classification (IPC) — Steering Committee

Octoher 13 to 21 (Geneva) — Nice Union — Temporary Working Group

October 18 to 22 (Geneva) — ICIREPAT — Technical Committee for Standardization (TCST)

Octoher 19 to 22 (Geneva) — International Patent Classification (IPC) — Committee of Experts

Octoher 25 to 29 (Geneva) — ICIREPAT — Technical Committee for Search Systems (TCSS)

Novemher 1 to 8 (Geneva) — Patent Cooperation Treaty (PCT) — Interim Committees

Novemher 8 to 19 (Stockholm) — International Patent Classification (IPC) — Working Gronp IV

Novemher 23 to 30 (Geneva) — Paris Union — Preparatory Intergovernmental Committee on the Revision of the Paris Convention

Novemher 29 to December 3 (Geneva) — Permanent Legal-Technical Program — Working Gronp on the Model Law for Developing Countries on Inventions and Know-How

Novemher 29 to December 10 (Rijswijk) — International Patent Classification (IPC) — Working Gronp I

Decemher 6 to 9 (Lusaka) — Diplomatic Conference for the Adoption of an Agreement on the Creation of an Industrial Property Organization for English-Speaking Africa

Decemher 8 to 17 (Lusaka) — Working sessions of the Conference on Industrial Property Laws of English-Speaking Africa, and of its Committee for Patent Matters and its Committee for Trademark and Industrial Design Matters

Decemher 8 to 17 (Paris) — Berne Union — Committee of Governmental Experts on the Donble Taxation of Copyright Royalties

Note: Meeting convened jointly with Unesco

Decemher 13 to 17 (Geneva) — Nice Union — Committee of Experts

1977

February 21 to 24 (Colomho) — Permanent Legal-Technical Program — World Symposium on the Importance of the Patent System to Developing Countries

March 14 to 18 (Geneva) — Permanent Legal-Technical Program — Permanent Committee (4th Session)

Septemher 26 to Octoher 4 (Geneva) — WIPO Coordination Committee; Execntive Committees of the Paris and Berne Unions; Assemhlies of the Madrid and Hague Unions; Committee of Directors of the Madrid Union; Conference of Representatives of the Hague Union

Novemher 28 to December 5 (Paris) — Berne Union — Execntive Committee — Extraordinary Session

December 6 to 8 (Geneva) — International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations — Intergovernmental Committee — Ordinary Session (organized jointly with ILO and Unesco)

UPOV Meetings in 1976

Council: October 13 to 15

Consultative Committee: October 12 and 15

Technical Steering Committee: November 17 to 19

Committee of Experts on International Cooperation in Examination: November 16

Committee of Experts on the Interpretation and Revision of the Convention: September 14 to 17

Note: All these meetings will take place in Geneva at the headquarters of UPOV

Technical Working Party for Forest Trees: August 17 to 19 (Humlebak - Denmark)

Technical Working Party for Vegetables: September 21 to 23 (Cambridge - United Kingdom)

Meetings of Other International Organizations concerned with Intellectual Property

1976

August 30 to September 3 (Stockholm) — International Federation of Musicians — Congress

September 6 to 10 (Bndapest) — Hungarian Gronp of AIPPI and Hungarian Association for the Protection of Industrial Property — Conference on the Significance of Protection of Industrial Property in International Industrial Cooperation

September 9 to 11 (Copenhagen) — Union of European Patent Attorneys — Executive Committee

September 13 to 17 (Vienna) — International Federation of Actors — Congress

September 26 to October 2 (Montreux) — International Association for the Protection of Industrial Property — Executive Committee

September 27 to October 1 (Paris) — International Confederation of Societies of Authors and Composers — Congress

October 6 and 7 (Rijswijk) — International Patent Institute — Administrative Board

October 11 to 16 (Varna) — International Writers Guild — Congress

November 9 to 11 (Hakone) — Pacific Industrial Property Association — International Congress

1977

January 14 (Paris) — International Literary and Artistic Association — Executive Committee and General Assembly

January 17 to 21 (Strasbourg) — Council of Europe — Legal Committee on Broadcasting and Television

May 1 to 4 (Amsterdam) — Union of European Patent Attorneys — Congress and General Assembly

November 28 to December 5 (Paris) — United Nations Educational, Scientific and Cultural Organization (UNESCO) — Intergovernmental Copyright Committee established by the Universal Copyright Convention (as revised at Paris in 1971)

WIPO

WORLD INTELLECTUAL PROPERTY ORGANIZATION

GENEVA

ANNOUNCEMENT OF VACANCY

307-280/Rev.2

Competition No. 294*

EXTERNAL RELATIONS OFFICER

External Relations Section
(Development Cooperation and External Relations Division)

Category and grade: P.4

Principal duties:

The incumbent will participate in the formulation and implementation of policies and programs concerning relations between WIPO and other international organizations and governments, with particular reference to organizations of the United Nations system and governments of Latin American countries. In close cooperation with the other Divisions concerned he will assist and advise in the formulation of programs and the preparation and implementation of projects for development cooperation.

His duties will include in particular:

(a) the study and drafting of working documents of special concern to Latin American countries;

(b) correspondence and contacts with representatives of member and non-member countries;

(c) participation in meetings;

(d) collaboration in or supervision of translation and editing of documents in Spanish.

Qualifications:

(a) University degree in law or in another relevant field (in particular, political science or public administration).

(b) Professional experience in external and/or public relations work, preferably in the sphere of inter-governmental organizations or diplomatic service. Familiarity with the activities and procedures of the United Nations, its bodies and specialized agencies, would constitute an important advantage.

(c) General knowledge of intellectual property (industrial property and/or copyright), including its international aspects.

(d) Some experience in the editing of legal documents would be desirable.

(e) Excellent knowledge of Spanish (mother tongue). A very good knowledge of either English or French and at least some working knowledge of the other language.

Age limit applicable to appointment for a probationary period:

Less than 50 years of age at the date on which the appointment takes effect.

Date of entry on duty: as soon as possible.

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* Post subject to geographical distribution.

Conditions of employment:

The conditions of employment are those applicable according to the Staff Regulations and Rules of the International Bureau of WIPO. They are in conformity with those of the United Nations common system.*

- Type of appointment:	fixed-term appointment of two years, with possibility of renewal; or probationary period of two years after satisfactory completion of which a permanent appointment will be offered.
- Medical examination:	the appointment is subject to a satisfactory medical examination.
- Net annual salary:** (present scale)	P.4 level: from 42,953 Swiss francs (starting salary) to 55,320 Swiss francs (final step) by annual increments. Annual increments are subject to satisfactory service. The staff member's contribution to the pension fund represents approximately 11.5% of the above amounts.
- Annual post adjustment: (present scale)	P.4 level: from 29,776 Swiss francs (amount corresponding to the starting salary) to 37,132 Swiss francs, without dependants; from 37,860 Swiss francs (amount corresponding to the starting salary) to 47,213 Swiss francs, with dependants.
- Dependency allowances: (present amounts)	980 Swiss francs per year for dependent spouse; 1,102.50 Swiss francs per year for each dependent child; 490 Swiss francs for one dependent parent, brother or sister (where there is no dependent spouse), for whom the staff member contributes at least half the total support.
- Education grant: (present amount)	up to a maximum of 3,675 Swiss francs per scholastic year for each child under 21 years of age in full-time attendance at a school, or non-Swiss university (75% of actual costs).

- Salary, post adjustment and allowances are not subject to Swiss taxes.

- Conditions also include: payment of travel and removal expenses; installation grant; five-day week; annual leave of 30 working days; home leave; pension scheme and medical benefit scheme.

Applications:

Persons wishing to apply should write to the Head of the Administrative Division, WIPO, 32, chemin des Colombettes, 1211 Geneva 20, Switzerland for application forms. These forms, duly completed, should reach WIPO not later than October 15, 1976.

Geneva, July 15, 1976

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* The amounts of the salary and the various allowances and grants indicated below are subject to modification arising from fluctuations in the rate of exchange between the US dollar and the Swiss franc (the applicable scales are based on those of the UN expressed in dollars).

** After deduction of internal taxation.