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Copyright

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Monthly Review of the
World Intellectual Property Organization (WIPO)

Contents

World Intellectual Property Organization

ZAMBIA

Accession to the WIPO Convention

The Government of the Republic of Zambia deposited, on February 14, 1977, its instrument of accession to the Convention Establishing the World Intellectual Property Organization (WIPO).

The Convention Establishing the World Intellectual Property Organization will enter into force, with respect to the Republic of Zambia, three months after the date of deposit of its instrument of accession, that is, on May 14, 1977.

WIPO Notification No. 96, of February 14, 1977.

Berne Union

EGYPT

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

The Government of the Arab Republic of Egypt deposited, on March 2, 1977, 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.

The instrument of accession was accompanied by the following reservations:

" 1. The accession of the Arab Republic of Egypt does not in any way imply recognition of Israel and does not lead to the entry of the Arab Republic of Egypt into relations with it as provided for by the Convention.

2. The Arab Republic of Egypt does not consider itself bound by the provisions of paragraph (1) of Article 33 of the Berne Convention concerning the jurisdiction of the International Court of Justice." *(Translation)*

The said Convention as revised will enter into force, with respect to the Arab Republic of Egypt, three months after the date of this notification, that is, on June 7, 1977.

Berne Notification No. 84, of March 7, 1977.

The Berne Union and International Copyright and Neighboring Rights in 1976 *

I. Berne Union

Member States

During 1976, the Bahamas, to which the Brussels Act (1948) of the Berne Convention for the Protection of Literary and Artistic Works had been applied, made a declaration of continued adherence to that Act; the Bahamas became a party to the said Convention as from July 10, 1973, the date of its accession to independence. The Libyan Arab Republic and Surinam deposited instruments of accession to the Paris Act (1971) of the Berne Convention and became party to the said Convention on September 28, 1976, and February 23, 1977, respectively. On the latter date, the number of States members of the International Union for the Protection of Literary and Artistic Works (Berne Union) was 68 (see Table of Member States in the January 1977 issue of this review).

Stockholm Act (1967)

As of December 31, 1976, the number of States which had ratified or acceded to the Stockholm Act (1967) of the Berne Convention with a declaration to the effect that their ratification or accession did not apply to Articles 1 to 21 and to the Protocol Regarding Developing Countries and which were still bound only by Articles 22 to 38 of the Stockholm Act (1967) (as distinct from Articles 22 to 38 of the Paris Act (1971)) of the Berne Convention was 12. Articles 22 to 38 of the Stockholm Act (1967) of the Berne Convention are also in force for five States which have ratified or acceded to the Stockholm Act (1967) of the Berne Convention in its entirety but have not subsequently ratified or acceded to the Paris Act (1971) of the Berne Convention. As regards Articles 1 to 21 of the Stockholm Act (1967) of the Berne Convention and the Protocol Regarding Developing Countries, they have not entered into force. As of October 10, 1974, on which date Articles 1 to 21 and the Appendix of the Paris Act (1971) of the Berne Convention entered into force, no State may ratify or accede to the Stockholm Act (1967) of the Berne Convention.

Paris Act (1971)

Acceptance. During 1976, three States deposited instruments of ratification or accession in respect of the Paris Act (1971) of the Berne Convention in its entirety: Libyan Arab Republic, Mauritania, Surinam. One State, the Bahamas, deposited its instrument of accession to the said Act with a declaration to the effect that its accession did not apply to Articles 1 to 21 and the Appendix. The Paris Act (1971) of the Berne Convention entered into force in 1976 for the Libyan Arab Republic (September 28, 1976) and Mauritania (September 21, 1976); it entered into force in 1977 for the Bahamas (January 8, 1977) and Surinam (February 23, 1977) (see Table of Member States in the January 1977 issue of this review).

Applicability of Articles 1 to 21 and the Appendix. At the end of 1976, 28 States were bound by Articles 1 to 21 and the Appendix of the Paris Act (1971) of the Berne Convention.

Applicability of Articles 22 to 38. At the end of 1976, 32 States were bound by Articles 22 to 38 (administrative provisions and final clauses) of the Paris Act (1971) of the Berne Convention.

Notifications under Article I of the Appendix. In accordance with Article I of the Appendix, Mexico and Surinam deposited a notification whereby each availed itself of the faculties provided for in Articles II and III of the Appendix of the Paris Act (1971) of the Berne Convention. These notifications will be effective until the expiration of ten years from the entry into force of Articles 1 to 21 and the Appendix of the Paris Act (1971) of the Berne Convention, that is, until October 10, 1984.

Declaration under Article VI of the Appendix. In accordance with Article VI(1)(ii) of the Appendix of the Paris Act, Germany (Federal Republic of), Norway and the United Kingdom have declared that they admit the application of the Appendix to works of which they are the country of origin by countries which have made a declaration under Article VI(1)(i) of the Appendix or deposited a notification under Article I of the Appendix. The declarations by Germany (Federal Republic of), Norway and the United Kingdom became effective on October 18, 1973, March 8, 1974, and September 27, 1971, respectively.

* An article on the main activities during the year 1976 of the World Intellectual Property Organization as such (that is, as distinguished from those of the Unions administered by WIPO) appears in the February 1977 issue of this review. An article on the main activities of the Paris Union and industrial property in general will be published in *Industrial Property*.

Changes in Contribution Class

With effect from January 1, 1977, three States chose a lower class for the purposes of establishing their contributions towards the budget of the Berne Union: Israel (Class VI instead of Class V), Italy (Class III instead of Class I) and Luxembourg (Class VII instead of Class VI).

Official Texts

The official text in Arabic of the Berne Convention for the Protection of Literary and Artistic Works (Paris Act, 1971) was published in October 1976.

Governing Bodies

The Assembly, the Conference of Representatives and the Executive Committee of the Berne Union held ordinary sessions in September/October 1976, during the seventh series of meetings of the Governing Bodies of WIPO and the Unions administered by WIPO. The main items discussed and the principal decisions taken by the Governing Bodies, including those of the Berne Union, are reported on in the February 1977 issue of this review.

II. International Copyright

Development Cooperation Activities Related to Copyright and Neighboring Rights

Permanent Program and Permanent Committee. See the February 1977 issue of this review, p. 40.

Training Program (*ibid.*, p. 35).

Copyright Model Law for Developing Countries (*ibid.*, p. 39).

Assistance to National and Regional Institutions in the field of copyright (*ibid.*, pp. 36 *et seq.*).

Surveys and Studies on Copyright Matters

The International Bureau, in cooperation with the Secretariat of the United Nations Educational, Scientific and Cultural Organization (UNESCO), continued the work called for by the Executive Committee of the Berne Union and the Intergovernmental Copyright Committee established under the Universal Copyright Convention, namely, the survey on problems arising from the use of audio-visual cassettes and discs, and from the transmission by cable of television programs, and on the application of the revised Paris texts of 1971 of the Berne and Universal Conventions.

Double Taxation of Copyright Royalties

A Second Committee of Governmental Experts on the Double Taxation of Copyright Royalties Remitted from One Country to Another was convened jointly by the Directors General of WIPO and Unesco in Paris in December 1976.

Thirty-seven States sent experts to the meeting. Observers from one State, from two intergovernmental organizations and from ten international non-governmental organizations also attended the meeting. Members of the Secretariats of WIPO and Unesco acted as the secretariat of the Committee.

Discussions were based on a preliminary draft double taxation convention on copyright royalties, a preliminary draft protocol annexed to the said convention, a commentary on these preliminary drafts, prepared by the Secretariats of the two Organizations, and the observations thereon received from governments and from intergovernmental and international non-governmental organizations. Consideration was also given to the elaboration of a possible model bilateral agreement designed to avoid double taxation of copyright royalties remitted from one country to another, the discussions on this item being based on a draft text of such a model bilateral agreement prepared by the Delegation of the United States of America.

The Committee expressed the view that the solution of the problems in question might be found in the adoption of a multilateral instrument limited to general principles fitting a wide variety of cases, accompanied by a model bilateral agreement certain provisions of which might be drawn up in several alternative versions so as to govern the measures taken to give practical effect to the principles contained in the said convention.

Subject to the reservations expressed by experts from certain States whose views were recorded in its report, the Committee concluded that the latter solution would require the preparation of new texts, that the Secretariats of the two Organizations should prepare such texts with the aid of specialists on tax matters, together with a commentary, that they should then be submitted to governments and interested organizations for their comments, and that a third Committee of Governmental Experts should be convened during 1977 or 1978 to prepare proposals for submission to an international conference of States to be held in 1979.

East Asian-Pacific Copyright Seminar

An East Asian-Pacific Copyright Seminar, organized jointly by the Australian Government and certain non-governmental organizations from the authors' and publishers' circles of Australia, with the cooperation of WIPO and of Unesco, was held in Sydney in August 1976.

The purpose of the Seminar was to stimulate interest and cooperation in the copyright and neighboring rights fields in the East Asian and Pacific area, as well as to provide a forum for discussion and exchange of information.

The participants included delegates from 14 countries or territories: Australia, Fiji, Hong Kong, Indonesia, Japan, Malaysia, Mongolia, New Hebrides, New Zealand, Papua New Guinea, Philippines, Republic of Korea, Thailand, Tonga. The International Federation of Producers of Phonograms and Videograms (IFPI) sent observers. Interested persons from a number of national organizations participated in an individual capacity. About 120 persons attended the Seminar.

The main topics discussed were the following: current developments in the law of copyright; publishing and mechanical rights in musical works and their utilization; performing rights in musical works and their utilization; copyright and the arts; publishing rights in literary and dramatic works and their utilization; copyright and broadcasting; copyright and performers; enforcement of copyright in sound recordings; the protection of folklore.

In addition, the delegations from the various countries and territories informed the Seminar of the status and administration of the copyright and neigboring rights laws in their respective countries or territories.

WIPO extended its cooperation through its representative, who delivered a lecture on " The Protection of Intellectual Works and the Activities of WIPO in this Field." The representative of WIPO and the representative of Unesco also chaired several working sessions of the Seminar, participated actively in the deliberations, and furnished the participants with documentation on the subject.

Computer Programs

The Advisory Group of Non-Governmental Experts on the Protection of Computer Programs held its third session in May 1976. Experts had been designated by 17 non-governmental organizations, and the governments of three States and three intergovernmental organizations were represented by observers.

In response to the recommendation of the Advisory Group adopted at its second session in June 1975, the International Bureau had prepared for the third session of the Advisory Group model provisions for national laws on the protection of computer software. These model provisions followed the guiding principles formulated by the Advisory Group at its second session and included a system for the optional deposit of computer software carrying with it certain advantages for the depositor in the field of evidence. The International Bureau also prepared for the consideration of the Advisory Group at its third session draft treaty provisions providing for minimum protection according to the same principles on the international level and establishing an optional international deposit system.

With regard to the model provisions for national laws, the Advisory Group asked the International Bureau to prepare, on the basis of the discussions, a new draft of the provisions of the model law relating to the legal protection of computer software, which should be accompanied by notes explaining certain choices, giving alternative solutions and indicating the arguments for and against the solutions suggested.

The Advisory Group expressed the view that the possible contents of a draft Agreement for the Protection of Computer Software and its International Deposit should reflect the solutions adopted in the model law and that a detailed examination of the draft Agreement should take place once the features of the model law had been established.

Finally, the Advisory Group expressed its continued interest in a survey concerning the needs of developing countries in the field of computer software and suggested that the International Bureau should make appropriate enquiries in this respect.

Protection of Type Faces

France deposited on May 17, 1976, its instrument of ratification of the Vienna Agreement for the Protection of Type Faces and their International Deposit and of the Protocol to that Agreement. The Vienna Agreement (Type Faces) and the Protocol to that Agreement are not yet in force.

Collection of Legislative Texts on Copyright

The collection of copyright laws and treaties is being kept up to date and published in cooperation with Unesco.

Relations with States

The Director General and other officials of WIPO visited the government authorities of Bolivia, Cameroon, the Ivory Coast, Madagascar, Mexico, Morocco, Pakistan, Senegal, Sri Lanka, Tunisia, Venezuela, Zaire and Zambia, as well as officials of the African Intellectual Property Organization (OAPI), in order to discuss matters concerning the Berne Union and copyright and neighboring rights in general.

Relations with International and National Organizations

WIPO was represented at meetings of the following intergovernmental and international non-governmental organizations having an interest in copyright and related matters at which questions of direct concern to WIPO were discussed: the Legal Committee on Broadcasting and Television of the Council of Europe, in Strasbourg in February 1976; the General Assembly and the Executive Committee of the International Literary and Artistic Association (ALAI), in Paris in January 1976, and its

Congress in Athens in May 1976; the General Assembly of the Union of National Radio and Television Organizations of Africa (URTNA), in Yamoussokro and Abidjan (Ivory Coast) in February 1976; the General Assembly of the International Federation of Producers of Phonograms and Videograms (IFPI), in Vienna in May 1976; the Special Intergovernmental Committee convened by Unesco to prepare a draft international recommendation for the protection of translators, in Paris in July 1976; the Symposium on New Technology and Intellectual Property Rights organized by the International Broadcast Institute (IBI), in Bellagio (Italy) in July 1976; the Congress of the International Federation of Musicians (FIM), in Stockholm in August 1976; the Congress of the International Federation of Actors (FIA), in Vienna in September 1976; the Congress of the International Confederation of Societies of Authors and Composers (CISAC), in Paris in September 1976; the Congress of the International Writers Guild (IWG), in Varna (Bulgaria) in October 1976.

III. Rome Convention

Member States

During 1976, Colombia and Guatemala deposited instruments of accession to the International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations (Rome Convention). The Rome Convention entered into force with respect to Colombia on September 17, 1976, and with respect to Guatemala on January 14, 1977. On the latter date, the number of States party to the Rome Convention was 19 (see Table of Member States in the January 1977 issue of this review).

IV. Phonograms Convention

Member States

Acceptance. During 1976, Chile, Denmark, Guatemala, Italy, Kenya and New Zealand deposited instruments of ratification or accession in respect of the Convention for the Protection of Producers of Phonograms Against Unauthorized Duplication of Their Phonograms (Phonograms Convention). The Phonograms Convention entered into force with respect to the said States on the dates indicated after each, as follows: Chile: March 24, 1977; Denmark: March 24, 1977; Guatemala: February 1, 1977; Italy: March 24, 1977; Kenya: April 21, 1976; New Zealand: August 13, 1976. As of March 24, 1977, the number of States party to the Phonograms Convention is 24 (see Table of Member States in the January 1977 issue of this review).

Declarations under Article 7(4). Two States declared, in accordance with Article 7(4) of the Phonograms Convention, that they would apply the criterion according to which protection is afforded to producers of phonograms solely on the basis of the place of first fixation instead of the criterion of the nationality of the producer: Finland and Sweden.

V. Satellites Convention

Signatures

The Convention Relating to the Distribution of Programme-Carrying Signals Transmitted by Satellite (Satellites Convention), adopted at Brussels in May 1974, has been signed by 19 States: Argentina, Austria, Belgium, Brazil, Cyprus, France, Germany (Federal Republic of), Israel, Italy, Ivory Coast, Kenya, Lebanon, Mexico, Morocco, Senegal, Spain, Switzerland, United States of America, Yugoslavia.

Acceptance

Nicaragua deposited its instrument of accession to the Satellites Convention on December 1, 1975. Kenya, Mexico and Yugoslavia deposited instruments of ratification of the Satellites Convention on January 6, 1976, March 18, 1976, and December 29, 1976, respectively. The Satellites Convention is not yet in force.

VI. National Legislation

Several laws, decrees and orders on copyright or neighboring rights, most of them promulgated earlier, were published in this review during 1976: they included those of the following countries: Bangladesh, Brazil, Finland, Germany (Federal Republic of), Hungary, Israel, Liberia, Luxembourg, Netherlands, Poland, United Kingdom. Bilateral agreements between the Soviet Union and Bulgaria and the Soviet Union and Czechoslovakia concerning the reciprocal protection of copyrights in literary, scientific and artistic works were also published.

National Legislation

SWEDEN

Law amending the Law of 1960 (No. 729) on Copyright in Literary and Artistic Works

(No. 192, of April 22, 1976)

According to the decision of Parlement concerning the Law of 1960 (No. 729) on Copyright in Literary and Artistic Works, the following is prescribed:

(i) § 29 ceases to apply;

(ii) §§ 45, 47 and 69 shall have the following wording:

§ 45. A performing artist's performance of a literary or artistic work may not without his consent be recorded on gramophone records, films, or other mechanical instruments by means of which it can be reproduced, nor may it, without such consent, be broadcast by radio or television or made available to the general public by direct transmission.

The recording of a performance on a mechanical instrument, as referred to in the first paragraph, may not be transferred to another such instrument without the consent of the performer, until twenty-five years have elapsed from the year in which the first recording took place.

The provisions of §§ 3 and 9, § 11, first paragraph, § 14, first paragraph, §§ 17, 20 and 21, § 22, first paragraph, and §§ 24, 24*a*, 27, 28, 41 and 42 shall apply to the recording, broadcasting, transmission, and re-recording mentioned in this section.

§ 47. If a sound recording referred to in § 46 is used before the end of the term therein prescribed for a radio or television broadcast, a compensation shall be paid both to the producer of the recording and to the performer whose performance is recorded. If two or more performers have participated in a performance, their right may only be claimed jointly. The performer's claim on a radio or television organization shall be made through the producer.

The provisions of § 9, § 14, first paragraph, and §§ 20, 21 and 24 shall apply accordingly. The provisions of §§ 27, 28, 41 and 42 shall apply in regard to the right of a performer.

This section shall not apply to sound films.

§ 69. The old law shall apply to contracts regarding transfer of copyright concluded before the new Act comes into force.

This Law shall come into force on July 1, 1976.

UNITED KINGDOM

The Copyright (International Conventions) (Amendment No. 3) Order 1976

(No. 2153, of December 15, 1976, coming into force on January 14, 1977)

1. — (1) This Order may be cited as the Copyright (International Conventions) (Amendment No. 3) Order 1976, and shall come into operation on 14th January 1977.

(2) The Interpretation Act 1889 shall apply to the interpretation of this Order as it applies to the interpretation of an Act of Parliament.

2. — The Copyright (International Conventions) Order 1972 [1], as amended [2], shall be further amended as follows:

(a) in Schedule 1 (which names the countries of the Berne Copyright Union) there shall be included a reference to the Bahamas;

(b) in Schedule 3 (countries in whose case copyright in sound recordings includes the exclusive right of public performance and broadcasting) there shall be included a reference to Guatemala;

(c) in Schedules 4 and 5 (countries whose broadcasting organisations have copyright protection in relation to their sound and television broadcasts) there shall be included references to Guatemala and related references to 14th January 1977 in the list of dates in those two Schedules;

(d) in Schedule 6 (which names countries to which Parts I and II of the said Order extend) the name of the Bahama Islands, and the date indicated in relation to that country, shall be omitted.

3. — (1) This Order except for Article 2*(c)* shall extend to all the countries mentioned in the Schedule hereto.

(2) Article 2*(c)* shall extend to Gibraltar and Bermuda.

SCHEDULE

Countries to which this Order extends

Bermuda	Gibraltar
Belize	Hong Kong
British Virgin Islands	Isle of Man
Cayman Islands	Montserrat
Falkland Islands and Dependencies	St. Helena and its Dependencies

EXPLANATORY NOTE

(This Note is not part of the Order)

This Order further amends the Copyright (International Conventions) Order 1972. It takes account of the attainment of independence by the Bahamas and of their accession to the Berne Copyright Convention and Guatemala's accession to the International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations.

The Order extends, so far as is appropriate, to dependent countries of the Commonwealth to which the 1972 Order extends.

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[1] See *Copyright*, 1972, p. 180.

[2] *Ibid.*, 1973, pp. 78, 109, 110, 218 and 250, 1974, p. 235, 1975, p. 177, 1976, pp. 56, 96 and 128, and 1977, p. 47.

General Studies

Computer Software Protection — Present Situation and Future Prospects

Gert KOLLE *

International Activities

Council of Europe

Legal Committee on Broadcasting and Television

(Strasbourg, January 17 to 21, 1977)

The Legal Committee on Broadcasting and Television met at the headquarters of the Council of Europe in Strasbourg from January 17 to 21, 1977, under the chairmanship of Mr. Torwald Hesser, Justice of the Supreme Court of Sweden. Experts appointed by the Governments of the following 18 States took part in the work of the Committee: Austria, Belgium, Cyprus, Denmark, France, Germany (Federal Republic of), Greece, Iceland, Italy, Luxembourg, Netherlands, Norway, Portugal, Spain, Sweden, Switzerland, Turkey and the United Kingdom. WIPO was represented, in an observer capacity, by Mr. Claude Masouyé, Director, Copyright and Public Information Department. Unesco and a number of interested international non-governmental organizations also sent observers.

Under its terms of reference, the Committee continued its study of the problems which could result from a possible revision of the 1960 European Agreement on the Protection of Television Broadcasts as supplemented by its 1965 Protocol and its 1974 Additional Protocol. [1] As at previous meetings of the Committee, study centered successively on protection of television broadcasts in respect of cable distribution and such protection in cases where direct broadcasting satellites were used.

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[1] It is recalled that Article 1 of the 1960 Agreement provides as follows:

Broadcasting organisations constituted in the territory and under the laws of a Party to this Agreement or transmitting from such territory shall enjoy, in respect of all their television broadcasts:

1. in the territory of all Parties to this Agreement, the right to authorise or prohibit:

(a) the re-broadcasting of such broadcasts;

(b) the diffusion of such broadcasts to the public by wire;

(c) the communication of such broadcasts to the public by means of any instrument for the transmission of signs, sounds or images;

(d) any fixation of such broadcasts or still photographs thereof, and any reproduction of such a fixation; and

(e) re-broadcasting, wire diffusion or public performance with the aid of the fixations or reproductions referred to in subparagraph *(d)* of this paragraph, except where the organisation in which the right vests has authorised the sale of the said fixations or reproductions to the public;

2. in the territory of any other Party to this Agreement, the same protection as that other Party may extend to organisations constituted in its territory and under its laws or transmitting from its territory, where such protection is greater than that provided for in paragraph 1 above.

Under Article 3, the States party to the Agreement may, in certain cases, withhold the protection provided for in Article 1 in respect of their own territory by making a declaration. As regards distribution of broadcasts

As regards cable distribution, the Committee held an extensive exchange of views on the scope of the reservation concerning the protection of television broadcasts either by confining it to the area of direct reception of foreign programs or by using the concept of the service area. Following this general discussion, the Committee's work was organized on the basis of a list of questions drawn up by a working party. The questions fell into two categories:

1. General questions:

(a) The withholding of the protection in respect of distribution by cable should it necessarily apply to both foreign broadcasts and broadcasts of national origin; and, if so, to what extent should the latter be exempted from protection?

(b) Provided that no other withholding of protection under Article 1, paragraph 1*(d)* and *(e)*, of the European Agreement (fixations and reproductions) is allowed, should the withholding of protection with respect to distribution by cable apply only to such distribution which is made simultaneously with broadcasting by Hertzian waves and which covers the entire broadcast (without modification of its content and without editing by the distributor)? (In particular, what is the situation with regard to national regulations concerning advertising?)

(c) In the search for a solution of the question of the possible withholding of protection in respect of cable distribution, should the prejudice, which the organization from which the broadcasts originate, may suffer in the normal exploitation of the broadcasts be taken into consideration; if so, what are the limits of the tolerable exemption?

(d) Should one, in principle, consider as being exempted from protection under the European Agreement the use of community antennae for reception in the same building or in the same community provided that such use is non-commercial?

2. Specific questions arising in the event of a solution based on the concept of the direct reception zone:

(a) Should the protection under the European Agreement be maintained as regards distribution services for profit-making purposes?

(b) Should the protection under the European Agreement be maintained as regards the distribution to users resident outside the direct reception zone of broadcasts picked up and injected into the cable network within that zone?

(c) Should the direct reception zone be finally delimited at the time of making the reservation or can this delimitation be amended afterwards in view of the factual development of the zone?

(d) Should the delimitation of the direct reception zone be made unilaterally by the State making use of the reservation or only by means of a bilateral agreement between this State and the State in which the broadcasts concerned originate?

Various points of view were expressed by the experts and recorded in the report on the meeting.

The Committee provisionally adopted a new draft wording for Article 1 of the Agreement as regards protection of broadcasts in cases where direct broadcasting satellites were used. The present criterion of the territory would be replaced by that of the nationality of the broadcasting organization in conjunction with a criterion of territorial attachment as regards the exercise of the organization's activities. The text further makes allowance for the terminology used in the 1974 Brussels Convention Relating to the Distribution of Programme-Carrying Signals Transmitted by Satellite.[2] The Committee noted in this respect that opinions varied in the field of intellectual rights as to the point of origin of a broadcast.

The Committee's agenda also contained the question of the liability of public bodies responsible for transporting and/or receiving signals carrying sound and television broadcasts. The opinions expressed on this matter were also recorded in the report of the meeting.

Finally, the Committee devoted part of its time to discussing its position within the structure of the Council of Europe following the decision taken in December 1976 by the Committee of Ministers regarding the terms of reference and working methods of the Committees existing within the framework of the Council of Europe.

The next meeting of the Committee is expected to take place from May 8 to 12, 1978.

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to the public by wire, the 1965 Protocol introduced the following amendment:

Sub-paragraph 1 *(a)* of Article 3 of the Agreement shall be amended as follows:

" *(a)* withhold the protection provided for in sub-paragraph 1 *(b)* of Article 1 as regards broadcasting organisations constituted in their territory or transmitting from such territory, and restrict the exercise of such protection, as regards broadcasts by broadcasting organisations constituted in the territory of another Party to this Agreement or transmitting from such territory, to a percentage of the transmissions by such organisations, which shall not be less than 50 % of the average weekly duration of the broadcasts of each of these organisations."

Finally, the 1974 Additional Protocol delayed by ten years (1985 in place of 1975) the starting date for the obligatory link with the membership of the Rome Convention (1961):

Paragraph 2 of Article 3 of the Protocol to the Agreement is substituted by the following:

" 2. Nevertheless, as from 1 January 1985, no State may remain or become a Party to this Agreement unless it is also a Party to the International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations, signed in Rome on 26 October 1961."

[2] Article 1 of the Agreement would read as follows: " Broadcasting organisations which are nationals of a Party to this Agreement or which broadcast from the territory of a Party to the Agreement by way of terrestrial transmitters or by means of a satellite permitting direct reception of the broadcasts by the general public shall enjoy, in respect of all their television broadcasts: ... etc."

Union of National Radio and Television Organizations of Africa (URTNA)

General Assembly

(Dakar, January 27 to 29, 1977)

The General Assembly of the Union of National Radio and Television Organizations of Africa (URTNA) held its 17th session in Dakar from January 27 to 29, 1977. The meeting was attended by representatives of the active member broadcasting organizations of the following eighteen countries: Algeria, Benin, Cameroon, Chad, Comoros, Egypt, Ethiopia, Ghana, Ivory Coast, Kenya, Mali, Mauritius, Niger, Senegal, Sudan, Tunisia, Upper Volta, Zambia; of the associate member organizations of the following six countries: Belgium, France, Germany (Federal Republic of), Ireland, Switzerland, Yugoslavia; and of the Palestine Liberation Organization (PLO). The broadcasting organization of Togo was also present in an observer capacity.

WIPO was represented by Mrs. K.-L. Liguer-Laubhouet, Deputy Director General. The following intergovernmental organizations also sent observers: United Nations Educational, Scientific and Cultural Organization (UNESCO), World Health Organization (WHO), League of Arab States, Agency for Cultural and Technical Cooperation (ACCT). In addition, the following international and national non-governmental organizations were represented by observers: European Industrial Space Study Group (Eurospace), International Institute for Communications (IIC), League of Red Cross Societies, European Broadcasting Union (EBU), German Technical Cooperation Agency (GTZ), Canadian Broadcasting Corporation (CBC) and Transtel.

The inaugural session was presided over by the President of the Republic of Senegal, His Excellency Mr. Léopold Sedar Senghor, who delivered the opening address. During this session, the WIPO representative emphasized the importance her Organization attached to the activities of URTNA and expressed the sincere wish that exchanges of information might be held on current copyright matters of special interest to the African countries, particularly the use of the Tunis Model Law on Copyright for Developing Countries and the implementation of the 1961 Rome Convention on neighboring rights.

The General Assembly's agenda included the adoption of the report of the 16th session held in Abidjan in 1976 and the report of the Administrative Council on URTNA's activities since the last session, as well as the examination of various internal and administrative matters. The broadcasting organizations of two countries, Comoros and Ethiopia, were admitted as active members and those of two further countries, Belgium and Saudi Arabia, as associate members. The admissions were approved unanimously.

On a proposal by the Chairman of the Administrative and Legal Commission, the General Assembly adopted the following recommendation in respect of copyright: (translation) " Referring to the Administrative Council's recommendation on copyright and after having heard the statement by the WIPO representative, the General Assembly invites the Secretary General to take the necessary measures to enable the Tunis Model Law on Copyright for Developing Countries, which is unfavorable to the interests of the broadcasting organizations, to be re-examined at a seminar to be organized by WIPO, Unesco and ILO, in collaboration with URTNA, with a view to its adaptation to the realities of Africa. Matters affecting neighboring rights should also be studied at that seminar."

International Institute for Communications (IIC)

Colloquium

(Monte Carlo, February 9 to 11, 1977)

As part of the Monte Carlo International Television Festival, the *Institut National de l'Audiovisuel (INA)* organized, in collaboration with the International Institute for Communications (IIC) (formerly International Broadcast Institute — IBI), a colloquium from February 9 to 11, 1977, devoted to the circulation of audiovisual products for education, instruction and culture.

The participants invited to the colloquium were specialists in international copyright matters, professors of law, lawyers, delegates of radio and television broadcasting organizations and representatives of agencies active in the audiovisual field or the space communications area. WIPO was represented by Mr. Claude Masouyé, Director, Copyright and Public Information Department.

This event was a follow-up to the Bellagio Conference of July 1976.* A wide-ranging exchange of views was held on potential problems in connection with the circulation of audiovisual products, including obstacles of various kinds which could possibly hamper such circulation.

The colloquium did not adopt any formal conclusions at the end of its debates, but a number of questions emerged which were presented for consideration and future study by the interested circles. The desire was expressed that further meetings of that kind should be organized by the International Institute for Communications and that the search for solutions should be based on achieving a balance between the interests involved. As regards methods, the need was emphasized to reconcile the conventional approaches with the implications of new technology, without, however, calling into question the existing legal instruments. As regards the substance, it was felt that identifying the needs of society and the legitimate interests of contributors to audiovisual products seemed most likely to lead, by means of a comparison of viewpoints and by negotiations, to pragmatic solutions.

* See *Copyright*, 1976, p. 228.

Calendar

WIPO Meetings

1977

March 14 to 18 (Geneva) — Permanent Program — Permanent Committee for Development Cooperation Related to Industrial Property

March 17 to 21 (Geneva) — Permanent Program — Permanent Committee for Development Cooperation Related to Copyright and Neighboring Rights

March 21 to 28 (Geneva) — International Patent Classification (IPC) — Steering Committee

March 29 to April 1 (Geneva) — International Patent Classification (IPC) — Ad hoc Working Group on the Revision of the IPC Guide

April 14 to 28 (Budapest) — Diplomatic Conference for the Conclusion of a Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure

April 18 to 22 (Geneva) — Nice Union — Temporary Working Group on the Alphabetical List of Goods and Services

April 25 to 29 (Geneva) — International Patent Classification (IPC) — Working Group V

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

May 2 to 6 (Geneva) — ICIREPAT — Technical Committee for Standardization (TCST)

May 4 to 13 (Geneva) — Nice Union — Diplomatic Conference on the Revision of the Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks

May 11 to 13 (Geneva) — Paris Union — Ad hoc Coordinating Committee for Technical Activities

May 16 to 27 (Moscow) — International Patent Classification (IPC) — Working Group IV

May 23 to 27 (Rabat) — Development Cooperation — Seminar on Copyright intended for Arab Countries
Note: Meeting convened jointly with Unesco

June 1 to 3 (Geneva) — Paris Union — Advisory Group on Computer Software

June 6 to 10 (Geneva) — Development Cooperation — Working Group on the Model Law for Developing Countries on Inventions and Know-How

June 6 to 17 (Paris) — International Patent Classification (IPC) — Working Group I

June 13 to 17 (Paris) — Berne Union — Working Gronp on Cable Television
Note: Meeting convened jointly with Unesco

June 20 to July 1 (Washington) — International Patent Classification (IPC) — Working Group II

June 27 to July 1 (Geneva) — Nice Union — Temporary Working Group on the Alphabetical List of Goods and Services

June 27 to Jnly 8 (Geneva) — Paris Union — Preparatory Intergovernmental Committee on the Revision of the Paris Convention

September 21 to 23 (Geneva) — ICIREPAT — Plenary Committee

September 26 to October 4 (Geneva) — WIPO Coordination Committee; Execntive Committees of the Paris and Berne Unions; Assemblies of the Madrid and Hagne Unions; Committee of Directors of the Madrid Union; Conference of Representatives of the Hague Union

October 10 to 18 (Geneva) — Patent Cooperation Treaty (PCT) — Interim Committees

October 17 to 28 (London) — International Patent Classification (IPC) — Working Group III

October 19 to 22 (Geneva) — Trademark Registration Treaty (TRT) — Interim Committee

October 24 to 28 (Geneva) — ICIREPAT — Technical Committee for Search Systems (TCSS)

October 24 to November 2 (Geneva) — Nice Union — Temporary Working Group on the Alphabetical List of Goods and Services

November 7 to 11 (Geneva) — Development Cooperation — Working Gronp on the Model Law for Developing Countries on Trademarks

November 7 to 11 (Paris) — ICIREPAT — Technical Committee for Standardization (TCST)

November 14 to 21 (Geneva) — International Patent Classification (IPC) — Steering Committee

November 14 to 25 (Geneva) — Paris Union — Preparatory Intergovernmental Committee on the Revision of the Paris Convention

November 22 to 25 (Geneva) — International Patent Classification (IPC) — Committee of Experts

November 28 to December 5 (Paris) — Berne Union — Executive Committee — Extraordinary Session

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

December 9 (Geneva) — Berne Union — Working Gronp on tbe Rationalization of the Publication of Laws and Treaties in tbe Fields of Copyright and Neighboring Rights

1978

February 15 to 24 (Paris) Berne Union — Committee of Governmental Experts on Double Taxation of Copyright Royalties
Note: Meeting convened jointly with Unesco

September 25 to October 2 (Geneva) — WIPO Coordination Committee; Executive Committees of the Paris and Berne Unions

1979

September 26 to October 3 (Geneva) — WIPO General Assembly, Conference and Coordination Committee; Assemblies of the Paris, Madrid, Hague, Nice, Lisbon, Locarno, IPC and Berne Unions; Conferences of Representatives of the Paris, Hague, Nice and Berne Unions; Execntive Committees of tbe Paris and Berne Unions; Committee of Directors of the Madrid Union; Council of tbe Lisbon Union

UPOV Meetings in 1977

Council: October 26 to 28

Consultative Committee: October 25 and 28

Technical Steering Committee: May 16 to 18; November 15 to 17

Committee of Experts on tbe Interpretation and Revision of the Convention: September 20 to 23

Working Gronp on Variety Denominations: in the time between September 20 to 23

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

Technical Working Party for Fruit Crops: May 10 to 12 (Madrid - Spain)

Technical Working Party for Agricultural Crops: May 24 to 26 (Hanover - Federal Republic of Germany)

Technical Working Party for Ornamental Plants: June 7 to 9 (Wageningen - Netherlands)

Technical Working Party for Forest Trees: June 14 to 16 (Orleans - France)

Technical Working Party for Vegetables: September 6 to 8 (Aarslev - Denmark)

Meetings of Other International Organizations Concerned with Intellectual Property

1977

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

May 4 to 6 (New York) — International Confederation of Societies of Authors and Composers — Legal and Legislation Committee

May 16 and 17 (Paris) — International Confederation of Societies of Authors and Composers — International Meeting on the Rights of Authors of Plastic and Graphic Arts

May 16 to 18 (Municb) — Dentscbe Gesellschaft für Dokumentation — International Symposium on Patent Information and Documentation (organized in cooperation with WIPO and the German Patent Office)

May 23 to 25 (Dnblin) — European Space Agency/European Broadcasting Union — Symposium on Direct Satellite Broadcasting

May 23 to 27 (Rio de Janeiro) — Inter-American Association of Indnstrial Property — Congress

September 8 and 9 (Antwerp) — International Literary and Artistic Association — Working Session and Executive Committee

September 18 to 21 (Edinburgh) — International League Against Unfair Competition — Working Session

October 25 to 27 (Belgrade) — Council of tbe Professional Photographers of Europe (EUROPHOT) — Congress

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)

1978

May 8 to 12 (Strasbourg) — Council of Europe — Legal Committee on Broadcasting and Television

May 12 to 20 (Munich) — International Association for the Protection of Industrial Property — Congress

May 29 to June 3 (Paris) — International Literary and Artistic Association — Congress

October 1 to 7 (Santiago de Compostela) — International Federation of Patent Agents — Congress

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Contents

Berne Union

Working Group on the Legal Problems Arising from the Use of Videocassettes and Audiovisual Discs

(Geneva, February 21 to 25, 1977)

Report

prepared by the Secretariat and adopted by the Working Group

Introduction

1. In accordance with the recommendations made by the Intergovernmental Copyright Committee and the Executive Committee of the Berne Union (hereinafter referred to as " the Copyright Committees ") at their sessions held in Geneva in December 1975, a meeting of the Working Group on the Legal Problems Arising from the Use of Videocassettes and Audiovisual Discs was held in Geneva from February 21 to 25, 1977. The Working Group was composed of specialists invited in a personal capacity by the Directors General of Unesco and WIPO. The meeting was also attended by the International Labour Organisation and observers from twelve interested international non-governmental organizations. The list of participants is annexed to this report.

2. The documentation available to the Working Group consisted of the study made by Professor Franca Klaver, which had been submitted to the above-mentioned sessions of the Copyright Committees, the comments on the study received from a number of States and international non-governmental organizations and a brief analysis of those comments drawn up by the Secretariat of the Working Group.

Opening of the Meeting

3. The meeting was opened by Mr. Claude Masouyé, Director, Copyright and Public Information Department (WIPO), and Miss Marie-Claude Dock, Director, Copyright Division (Unesco), who welcomed the participants on behalf of their respective organizations.

Election of the Chairman

4. The Working Group unanimously elected Mr. André Kerever, Maître des requêtes au Conseil d'Etat, Paris, as its Chairman.

Terms of Reference

5. It was recalled that the Copyright Committees had, *inter alia,* examined at their 1975 sessions, on the basis of the study by Professor Klaver, the legal problems arising in the field of copyright from the use of audiovisual cassettes and discs and that they had called for the convening of the present Working Group. It was further recalled that, for its part, the Intergovernmental Committee set up by Article 32 of the International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations (Rome Convention) had recommended, at its session also held in Geneva in 1975, that a parallel study of the question be undertaken in relation to the rights of performers, producers of phonograms and broadcasting organizations. The States and the interested international non-governmental organizations were consequently invited to submit comments on the problems raised by audiovisual cassettes and discs not only from the point of view of copyright but also from that of the protection of performers, producers of phonograms and broadcasting organizations. The Working Group was therefore of the opinion that it should examine the problems relating to the use of videocassettes and audiovisual discs both as regards the international copyright Conventions and as regards the above-mentioned Rome Convention, without prejudice, in the latter connection, to the ongoing procedure decided by the Intergovernmental Committee of the Rome Convention.

General Discussion

6. Professor Klaver presented her study to the Working Group. She explained that its basic aim was to identify the principal features of the legal régime applicable to videocassettes and audiovisual discs under the Berne Convention and the Universal Copyright Convention and that, accessorily, it contained a certain amount of information on the legal régime in

the light of the International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations (Rome Convention). She further emphasized that the legal problems of videocassettes and audiovisual discs had been examined from the viewpoint of the industrialized countries but that the new technique for disseminating intellectual works would also be sure to raise problems in the developing countries, particularly if they had to use videocassettes and audiovisual discs for teaching and informatory purposes.

7. After the participants had unanimously congratulated Professor Klaver on the quality of her study, the Working Group decided to adopt the following order of discussion:

— relevant terminology;
— determination of the legal status of videocassettes and audiovisual discs in the light of the copyright Conventions;
— determination of the same legal status in the light of the Rome Convention on neighboring rights;
— scope of the exceptions to protection allowed under the international Conventions.

Terminology

8. The Working Group devoted its efforts to agreeing on terms to designate, on the one hand, the material support inasmuch as it comprised sequences of sounds and images and, on the other hand, the intellectual content of the support (software) where that content might, depending on the case, consist of a pre-existing work or a work specially made for such fixation and either of those two categories of works might or might not be protected under copyright. Irrespective of the hypothesis chosen, various other contributions would have to be taken into consideration, such as that of the person who organized and took responsibility for the fixation, that of the performers, that of the producers of phonograms and that of the broadcasting organizations. Before returning to the question of terminology at the end of its deliberations, the Working Group agreed that the subject of its examination was to be exclusively software.

9. The Working Group once more noted the differences which existed as regards the nature of the works incorporated in the material supports. A distinction was made between pre-existing works and so-called videographic works, the latter being composed of a number of contributions whose amalgam constituted a work whatever the nature of the material support (magnetic tape or videodisc). Emphasis was placed in this context on the fact that under the legal concepts of Anglo-Saxon origin the fixation itself was protectable or, in other words, the work and the fixation constituted one work, whereas under the legal concepts of Roman origin the intangible work to be protected could only be either a pre-existing work or a work specially made for incorporation in the support.

10. It was also pointed out that in some opinions the expressions " videocassettes " and " audiovisual discs " referred solely to the material supports, whereas according to other views they covered not only the support but also the sequence of images and sounds incorporated in it, whether or not the latter was protected. In any event, attention was drawn to the need, from a strictly legal point of view, to avoid terms used in everyday speech to denote different situations by means of the same word and thus run the risk of creating confusion.

11. While noting that the terminology might vary as between national legislations, the Working Group expressed its preference for the term " videogram " to mean both the material support for any sequence of images and sounds and the actual fixation of the sequence, irrespective of the legal status afforded under copyright or neigboring rights to the sequence incorporated in the support. It was agreed that the term " videocopy " would designate the reproduction of a pre-existing work and the term " videographic work " would refer to a work specially made for fixing on a videogram. It was agreed that it constituted a type of audiovisual work within the meaning of the Tunis Model Law on Copyright for Developing Countries.

Determination of Legal Status in the Light of the Copyright Conventions

12. In this connection, the Working Group made a fundamental distinction between pre-existing works fixed on videograms (videocopies) and works created specially for videographic fixation (videographic works). With regard to the first case, it was pointed out that the fact of fixing the pre-existing work in no way altered its legal nature or status. As for the second case, the new work specially made for that medium, which, according to some legal concepts, might be indistinguishable from its fixation, had to be governed by a legal status which the experts undertook to define.

13. The attention of the experts was concentrated, as far as countries party to the Berne Convention were concerned, on the legal effect of the assimilation, in Article 2(1) of that Convention, of works expressed by a process analogous to cinematography to actual cinematographic works, in order to determine the extent to which such assimilation also implied application to the said works of the specific legal régime provided for cinematographic works under the said Convention.

14. It was argued in favor of assimilation that the legal régime provided by the Berne Convention for cinematographic works was very suitable for videographic works, that it facilitated their circulation and that it offered greater legal security, particularly with respect to the ownership of copyright and uniformity in rules governing relations between States. It was also pointed out that the creation of those two types of works called for the same combination of creative acts.

15. The arguments put forward against assimilation were that the legal régime applicable to cinematographic works was an exceptional one and should therefore be interpreted restrictively, especially since paragraph (5) of Article 14 of the Brussels Act (1948) of the Berne Convention, which specified that the provisions of that Article applied to reproduction or production effected by any other process analogous to cinematography, had not been included in the Stockholm Act (1967) or in the Paris Act (1971), while the new Article 14bis was silent on the subject of assimilation. Moreover, certain participants expressed the fear that assimilation of videographic works to cinematographic works might adversely affect the interests of authors in that, according to certain systems, ownership of copyright was denied them.

16. It was nevertheless acknowledged that the Berne Convention did not impose any solutions in the matter, and that it was for the national law to determine the legal status of videographic works by attributing, or not attributing, to them the status of cinematographic works.

17. The Working Group noted that under the Berne Convention the legal consequences of the assimilation of videographic works to cinematographic works would be the application of Articles 7(2) (term of protection), 14 (cinematographic and related rights, in particular the right of distribution and protection in cases of cable transmission), 14bis (special provisions concerning cinematographic works) and 15(2) (presumption of the identity of the maker of the work). If there were no such assimilation, cinematographic works would conform to the general rules applicable to other works protected under that Convention, the effect of which would not necessarily be a lesser degree of protection than that afforded by the special provisions on cinematographic works.

18. The Working Group noted that, among the rights applicable to the use of videograms, there was the right of reproduction, which, according to the spirit of the two Conventions, had to take into consideration the use to which the reproduced copies would be put. In the case in point, the latter concept had to be interpreted in the light of business practices whereby videograms could more frequently be loaned or hired than sold.

19. As far as States party to the Universal Copyright Convention were concerned, it was pointed out, as in the case of countries party to the Berne Convention, that the adoption by a country of a given system for the protection of videographic works would be bound to have an effect on the protection of videographic works originating in other countries as a result of the application of the national treatment principle written into both Conventions.

20. In any event, the Working Group considered that the legal relations between the maker of the videographic work or videocopy on the one hand, and the contributors and authors of pre-existing works on the other, should be dealt with in contracts ensuring unity in the control of the exploitation of the videogram and a minimum of legal security in such exploitation.

21. The Working Group further considered that the most awkward problem with videograms arose from their very nature: they were relatively simple, highly movable carriers, placed at the disposal of the public without there being any practical possibility of controlling the use made of them, whether private or public, commercial, lawful or unlawful. It was thought that those potential violations of the exclusive rights of authors and their successors in title might cause them serious economic prejudice, hamper the development of the new medium and adversely affect the artistic quality of productions.

Determination of Legal Status in the Light of the Provisions of the Rome Convention

22. Before embarking on the above question, the Working Group considered the situation regarding the different categories of beneficiaries under the Rome Convention, particularly performers. The experts' attention was drawn to the risk of unemployment, which was becoming greater and greater with the ever more widespread introduction of new technology permitting the multiple use of one and the same recording. It was observed that the remuneration of performers was not necessarily related to the use made of their performances and that it would be desirable that they themselves should be able to control such use.

23. The legal status of contributors to videograms being determined at the international level by the provisions of Articles 7, 10, 13 and 19 of the Rome Convention, the adverse effects of the last-mentioned Article on performers were alluded to, and it was remarked that, of all the beneficiaries of the Rome Convention, they were the least well protected. It was observed, however, that the national law was free to

give performers more extensive rights than those granted to them under the Rome Convention, and indeed that some legislators had already enacted provisions along those lines (in Mexico, for instance).

24. The Working Group considered a number of solutions to the problem of improving the present position of performers. For instance, it was proposed that a right be granted by contract that would not be a right of prohibition with regard to the use of their performances — which would tend to hamper the circulation of videograms and harm the interests of authors and other contributors — but rather a right to remuneration for certain secondary uses. However, some misgivings were expressed as to the effectiveness of such a solution, whether it took the form of collective agreements negotiated at the national level or of an international model contract, since the result depended on a degree of balance between the forces involved, and moreover the success of any contractual policy was conditioned by the legal basis on which it was founded.

25. The Working Group considered furthermore that the crisis in the performing profession was essentially an employment crisis, and that the grant of remuneration for certain uses of performances would do little to remedy the situation. It thought that the solution might lie in areas situated beyond the purview of the Rome Convention and concerned as much with labor law as with the definition of a cultural policy designed to encourage the living arts.

26. As regards the performer's position as a worker, the wish was expressed that studies should be conducted, possibly under the auspices of the Secretariat of the Intergovernmental Committee of the Rome Convention, to assess the effects of technological progress on the employment situation of performers.

27. As regards a cultural policy aimed at remedying the prejudice caused to the interests of performers by the proliferation of electronic techniques enabling the use of live performances to be dispensed with, it was suggested that the mass communication organizations devote a part of their investments to measures to promote the living arts (increase in the number of orchestras and theater companies, etc.). The Working Group was further informed of the possible adoption by the Unesco General Conference of a recommendation on the status and social position of the artist and took note of the relevant studies conducted by Unesco, in some cases in conjunction with the ILO. The Working Group felt that such an approach was capable of providing a global view of the problem as regards both the legal and the social and economic situation of performers.

28. The attention of the Working Group was also drawn to the inadvisability of revising the Rome Convention since it could have an adverse effect on the current trend towards a wider application of that Convention throughout the world, even if some of its provisions might seem obsolete in view of technological progress and no longer corresponded to the present situation, as for instance in the case of Article 19 in the audiovisual field.

29. The Working Group felt that the use of videograms would raise no major legal problems for the producers of phonograms or the broadcasting organizations since Articles 10 and 13 of the Rome Convention recognized the principle of an exclusive right in their favor.

Scope of the Exceptions to Protection Permitted by the International Conventions. Private Use

30. The attention of the Working Group first centered on the problems raised by the private use of videograms. Before examining the legal implications of such use, the experts noted the technical differences between videocassettes and videodiscs, particularly as regards the possibilities of reproduction. In the current state of technical progress, it would hardly be possible for an individual possessing limited facilities to reproduce the content of a videodisc. On the other hand, reproduction by means of a videocassette was much more simple and could be effected, depending on the type of equipment, from a television broadcast, a videodisc or another videocassette.

31. As regards the legal aspect, the Working Group noted that in most national legislations both private use and fair use were exceptions to copyright and neighboring rights, although the concept and limits of such uses could vary from country to country.

32. It was pointed out that under Article 9(2) of the Berne Convention private use was not automatically lawful. For it to be permitted, it was necessary that reproduction did not conflict with a normal exploitation of the work and did not unreasonably prejudice the legitimate interests of the author. The Working Group considered that, in view of the ease of reproducing videograms in the form of videocassettes, it was probable that such a mode of reproduction would not satisfy the restrictive conditions laid down by the above-mentioned provision and that, consequently, such reproductions were subject to the exclusive right of reproduction under the Berne Convention.

33. On examining the provisions of the Universal Copyright Convention on the right of reproduction and the exceptions to it, the Working Group considered that the level of protection introduced by the

text as revised in 1971 was no lower than that provided by the Berne Convention, and that, consequently, the exceptions to the right of reproduction permitted by the said revised text were not substantially different, as far as their scope was concerned, from those provided for in Article 9(2) of the Berne Convention. The Working Group was informed, moreover, that certain copyright owners who were nationals of the United States of America had instituted legal proceedings against the manufacturers of reproduction apparatus on grounds of violation of the exclusive right and the limits of fair use.

34. In the face of this situation, the Working Group felt it necessary to draw attention to the fact that a great number of national legislations had not considered all the consequences of the restrictive conception of the limits on the right of reproduction provided for in the two Conventions mentioned. If those limits were to be respected, the Working Group thought that, as long as the state of technical progress did not allow copyright owners effectively to exercise the prerogatives of the exclusive right in the event of the private reproduction of videograms, the only solution seemed to be the establishment of a global compensation for authors or their successors in title. It was pointed out that such payment would be in the nature not of a tax or other monetary imposition, but rather of an indemnification for being deprived of the opportunity to exercise exclusive rights.

35. The experts discussed the question whether the compensation should relate to the reproduction apparatus itself or to the material support on which the sequences of sounds and images were fixed, and indicated their preference for the latter solution.

36. It was nevertheless pointed out that, if there were technical processes making it possible to prevent the reproduction of protected works by individuals, the exclusive right could be exercised normally, and consequently the global compensation system, which was only an imperfect solution, could be abandoned.

37. As regards the owners of neighboring rights, the Working Group noted that Article 15 of the Rome Convention provided for full exemption in respect of private use and therefore the owners could not claim, as could the authors, the exclusive rights provided for in that Convention with respect to such reproductions. It was felt, however, that the dissemination of videograms and the ease of reproduction referred to above were prejudicial both to performers and to producers of phonograms and broadcasting organizations. The experts were therefore of the opinion that, although it was impossible to invoke the obligations under an international agreement, considerations of equity justified the provision by national laws for participation by the owners of neighboring rights in the proceeds of the global compensation. In this connection, mention was made of the relevant provisions in the legislation of the Federal Republic of Germany.

38. The Working Group felt it desirable that the payments in question should be received by those persons whose rights and interests were prejudiced by the private use of videograms and that collective agreements should settle the terms of distribution.

Use for Teaching Purposes

39. The Working Group first considered Article 10(2) of the Berne Convention, which made it a matter for national legislation to lay down the conditions for using works by way of illustration in teaching. The scope of the provision was clarified by the Report on the deliberations of the Stockholm Revision Conference of 1967, which stated that the word " teaching " included teaching at all levels, i. e., in educational institutions and universities, municipal and State schools, and private schools. It was further recalled that the commentary on Section 7(i)*(c)* of the Tunis Model Law on Copyright for Developing Countries, which reproduced that provision, stated that the exception to copyright could relate to only a part of the work used as an illustration in teaching and that the work itself must have been made for the purpose of teaching.

40. With regard to the Universal Copyright Convention, the Working Group referred to Article IV^{bis}, paragraph 2, which allowed exceptions to the exclusive right of reproduction, on the understanding that they were not to conflict with the spirit and provisions of the Convention, and that a reasonable degree of effective protection had to be accorded. The way in which it should be interpreted was explained in the Report on the 1971 Revision Conference, according to which, subject to the provisions on the general translation license, there could be no question of the institution by developed countries of a general system of compulsory licensing for the publication of works. The expression " general system " referred either to a system applying to a specific type of work in all its forms of use or to a system applying to all types of works in one particular form of use. Moreover, where exceptions were made they had to have a logical basis and must not be applied arbitrarily; the protection offered had therefore to be effectively enforced by national legislation.

41. Owing to the increasingly widespread use of videograms in teaching and lifelong education, the Working Group expressed the wish that the national authorities involved might become aware of the need to specify the exact conditions under which excep-

tions to the exclusive right could be allowed in accordance with the letter and the spirit of the provisions of the Conventions referred to above.

42. The Working Group also considered that, within the limits set by the Conventions, the exceptions introduced for teaching purposes should not have an adverse effect either on creative activity or on the conditions governing normal use of videograms.

Final Considerations

43. In the light of its discussions, the Working Group came to the conclusion that the international copyright Conventions already contained provisions which afforded copyright owners adequate protection as regards the use of videograms and that, consequently, the advent of the new dissemination technique did not call for a revision of the existing Conventions or the establishment of a new international instrument.

44. The Working Group also felt that, for the time being, a revision of the Rome Convention was not advisable.

45. On the other hand, the Working Group was of the opinion that it was the national legislations that should be amended to specify the relevant solutions, taking into account the considerations which had emerged from its discussions.

Closing of the Meeting

46. The Secretariat of the Working Group stated that the present report would be submitted to the Copyright Committees at their sessions to be held in Paris in November 1977.

47. After the usual thanks, the Chairman declared the meeting closed.

List of Participants

I. Members of the Working Group

Mr. Evgueni Guerassimov
Deputy Chief, Treaties Section, Legal Department, Copyright Agency of the USSR, Moscow

Mr. Robert D. Hadl
Lawyer, Washington

M. André Kerever
Maître des requêtes au Conseil d'Etat, Paris

Dr Franca Klaver, Professeur, Hilversum

Sr. Jaime Muñoz
Sub-Director de Asuntos Internacionales, Dirección General de Derecho de Autor, Secretaría de Educación Pública, México

Sr. Victor Carlos García Moreno
Asesor en materia internacional, México

M. Ndéné Ndiaye
Directeur général, Bureau sénégalais du droit d'auteur, Ministère de la culture, Dakar

M. Abderrazak Zerrad
Directeur général, Bureau marocain du droit d'auteur, Ministère de l'information, Rabat

II. Observers

(a) Intergovernmental Organization

International Labour Office (ILO): S. C. Cornwell.

(b) International Non-Governmental Organizations

European Broadcasting Union (EBU): M. Cazé. **International Confederation of Professional and Intellectual Workers (CITI):** A. L. Dupont-Willemin. **International Confederation of Societies of Authors and Composers (CISAC):** J.-L. Tournier; J.-A. Ziegler; J. Elissabide. **International Copyright Society (INTERGU):** G. Halla. **International Federation of Actors (FIA):** G. Croasdell. **International Federation of Film Producers Associations (FIAPF):** A. Brisson. **International Federation of Musicians (FIM):** R. Leuzinger. **International Federation of Producers of Phonograms and Videograms (IFPI):** S. M. Stewart; G. Davies; J. Goldsmith; W. Nick; E. Thompson. **International Literary and Artistic Association (ALAI):** J.-A. Ziegler; R. Fernay. **International Music Council (IMC):** R. Leuzinger. **International Publishers Association (IPA):** J. A. Koutchoumow. **International Writers Guild (IWG):** R. Fernay.

III. Secretariat

World Intellectual Property Organization (WIPO)

C. Masouyé *(Director, Copyright and Public Information Department)*; M. Stojanović *(Head, Legislation and Periodicals Section, Copyright Division)*.

United Nations Educational, Scientific and Cultural Organization (UNESCO)

M.-C. Dock *(Director, Copyright Division)*; D. de San *(Lawyer, Copyright Division)*.

National Legislation

ARGENTINA

I

Decree concerning Article 56 of Law No. 11 723

(No. 746, of December 18, 1973) *

Article 1. For the purposes of Article 56 of Law No. 11 723, the following shall be considered to be performers:

(a) the conductor of an orchestra, the singer, and the performing musicians, as individuals;

(b) the director of, and the actors in, cinematographic works and of recordings, with images and sound, on magnetic tapes, for television;

(c) the singer, dancer, and any other person who acts, sings, delivers, plays in, or otherwise performs a literary, cinematographic or musical work.

Article 2. The following are regarded as suitable means for transmitting the work of performers: discs, various kinds of recordings on magnetic tapes, recordings with images and sound on magnetic tapes for television, films and any other technical element that serves for the diffusion by radio or television, cinemas, dance-halls or clubs, or any other public place operating for direct or indirect commercial exploitation.

* This Decree was published in the *Boletín Oficial* of December 28, 1973. — Unesco/WIPO translation.

II

Decree containing rules for the microfilming of periodical publications

(No. 447, of August 7, 1974) *

Article 1. The proprietors of the periodical publications registered in the *Dirección Nacional del Derecho de Autor* [National Copyright Department] who microfilm their editions must inform thereof the said Department and preserve the published copies for one year, and at the end of such term shall send copies to the *Biblioteca Nacional* [National Library].

Article 2. Microfilms which are a substitution for printed copies shall remain at the disposal of the *Dirección Nacional del Derecho de Autor* which may require, free of charge, a legible enlargement, certified by the management of the periodical, of the protected works published in the latter.

* Unesco/WIPO translation.

III

Decrees containing rules on the public utilization of phonographic reproductions

(No. 1670, of December 2, 1974) *

Article 1. The text of Article 35 of Decree 41 233/34 is replaced by the following text:

" Phonographic records and other supports of phonograms may not be communicated to the public, nor transmitted or retransmitted by radio and/or television, without the express authorization of their authors or their successors in title.

Without prejudice to the rights which the law grants to the authors of literary works, to composers of music and to principal and/or secondary performers, the producers of phonograms, or their successors in title, are entitled to collect a remuneration from any person who, occasionally or permanently, obtains a direct or indirect benefit from the public use of a reproduction of the phonogram, such as broadcasting, television and similar organizations, bars, cinemas, theaters, social clubs, recreational centers, restaurants, cabarets and, in general, any person who communicates such reproductions to the public by any direct or indirect means.

It will not be necessary for any payment to be made for occasional use of a didactic character, or of patriotic commemorations in official or State-authorized educational establishments."

Article 2. The text of Article 40 of Decree 41 233/34 is replaced by the following text:

" Any person who exploits places in which musical works of any kind, with or without words, are publicly performed, or impresarios or organizers or directors of orchestras, as the case may be, or owners of, or persons having responsibility for, the users of phonographic reproductions referred to in Article 35 of this Decree, must indicate in daily lists, in strict order of performance, the titles of all works performed, the name of the author of the words and the composer of the music, together with the names or pseudonyms of the principal performers and of the producer of the phonogram, or such person's distinguishing sign or mark relevant to the reproduction concerned.

These lists shall be dated and signed, and placed at the disposal of the interested parties within thirty days from the date upon which the performance or the communication to the public took place. The interested parties or their representatives may, on their own responsibility, denounce to the Director-General of the National Copyright Registry cases of total or partial non-fulfilment of this obligation, and the person responsible shall be liable in each case to a fine of $ 5000 — for the benefit of the *Fondo Nacional de las Artes* [National Fund for the Arts], any such payment being effective without prejudice to any action which may be taken by the owners of the rights.

Any person who makes substitutions in the lists of the titles of words and/or of the names of authors of words or music, or of the principal performers, or of the producer of the phonogram, or who omits to mention a work which has been performed or communicated to the public, or who makes mention of a work which has not been performed or communicated to the public, or in any way falsifies the form or contents of the lists, shall be subject to the penalties referred to in Article 71 of the Law. "

Article 3. The fixation of the performance of a musical work upon a material base requires the previous consent of the principal performer or performers of the work in question.

Article 4. The principal performer of a musical and/or literary work is entitled to require the mention of his name or pseudonym when his performance is diffused or transmitted, and also that his name or pseudonym shall be indicated on the label and upon any corresponding packaging of the actual phonogram.

* Decrees Nos. 1670 and 1671 were published in the *Boletín Oficial* of December 12, 1974. — Unesco/WIPO translation.

(No. 1671, of December 2, 1974)

Article 1. The representation, within the national territory, of Argentine and foreign performers, and their successors in title for the purpose of collecting and administering the remuneration provided for in Article 56 of Law No. 11 723 for the public performance, transmission or retransmission by radio and/or television of their performances, fixed by phonograms and reproduced on discs or other means, shall be exercised by the *Asociación Argentina de Intérpretes (AADI)* [Argentine Association of Performers], which accordingly remains the sole organization authorized to agree with third parties for the collection, adjudication and distribution of the monies collected through the body mentioned in Article 7.

Article 2. Representation of Argentine and foreign producers of phonograms, whose production is the subject of publication, utilization or reproduction within the national territory, shall be exercised by the *Cámara Argentina de Productores e Industriales de Fonogramas (CAPIF)* [Argentine Chamber of Producers and Manufacturers of Phonograms], which is authorized as the sole organization to collect and administer, directly or indirectly, through the body mentioned in Article 7, the remuneration due to them for the public performance of their phonograms, reproduced upon discs or other means, and which derive protection under Law No. 11 723 and regulations thereunder.

Article 3. The civil associations, the Argentine Association of Performers and the Argentine Chamber of Producers and Manufacturers of Phonograms shall, where necessary, adjust their constitution and regulations to comply with the present Decree.

Article 4. The *Secretaria de Prensa y Difusión de la Presidencia de la Nación* [Secretariat of Press and Diffusion of the National Presidency], in cooperation with the Argentine Association of Performers and the Argentine Chamber of Producers and Manufacturers of Phonograms, shall fix and modify the tariffs to be paid by users for the use of discs or other reproductions of phonograms by way of their public performance or diffusion by any means.

Article 5. The remuneration to be paid by users by virtue of the rights to which this Decree refers shall be consolidated and distributed in the following manner:

(a) the 67 percent to be distributed by the Argentine Association of Performers shall be paid to the performers who, at all levels, have participated in the performance fixed upon phonograms, in accordance with the rules established by their statutes. This percentage shall be distributed as follows: principal performer(s), 67 percent; secondary performer(s) 33 percent (45 percent and 22 percent, respectively, of the total paid by the user);

(b) the 33 percent to be liquidated by the Argentine Chamber of Producers and Manufacturers of Phonograms shall be paid to the producer of phonograms who is entitled to the amount collected, or to his successors in title.

Article 6. The remuneration paid by users for the utilization in public performances of foreign phonograms which have not been published in the country, and when no agreement exists for their distribution between the collecting bodies and the owners of rights or their successors in title, shall belong to the *Fondo Nacional de las Artes* [National Fund for the Arts], which may enter into agreements with the bodies specified in this decree for their collection.

Article 7. The direct or indirect collection of the remuneration to be paid by users by virtue of the provisions of this Decree shall be effected by a body constituted by the Argentine Association of Performers and by the Argentine Chamber of Producers and Manufacturers of Phonograms, which shall be a civil association having legal status, and whose governing rules shall be determined by agreement between both organizations.

Correspondence

Letter from Australia

Report of Australian Copyright Committee on Reprographic Reproduction

D. C. PEARCE *

The long awaited Report of the Australian Copyright Committee on Reprographic Reproduction chaired by Mr. Justice Franki was published in December 1976.[1] The Report is an interesting, and indeed courageous, attempt to grapple with the seemingly intractable problem of how to reconcile the interests of copyright owners with the demands of the public to take advantage of technological development in reprography. The recommendations of the Committee are founded on two fundamental premises. Once these premises are accepted, the recommendations contained in the Report flow logically from them. The two premises are, first, that the law of copyright, in giving certain rights to copyright owners for their works, exacts in return an obligation to satisfy the demands of the public for copies of the works. The second premise is that if unauthorised copying occurs in such small quantity or under such circumstances that, in practical terms, it is not possible to police the copying or it is not economically feasible to seek payment for the copying, the action taken should not be regarded as an infringement. In short, in certain circumstances, copyright should not be viewed as a protective right but as an economic right.

In the course of its enquiry, the Committee took evidence from a wide cross section of the public, and in particular from representatives of copyright owners, libraries and educational establishments. The Committee concluded, in the light of this evidence, that there is, particularly in Australia, a very considerable public interest in ensuring a free flow of information in education and research, and that the interests of individual copyright owners must be balanced against this public interest. The Committee also concluded, on the evidence before it, that there is negligible copying from short stories, novels and other works of fiction and from biographies, histories and commentaries of a " popular " nature in Australian educational establishments. The result of this evidence and the Committee's view of the public interest, when taken into account with the two basic premises set out above, resulted in the Committee making recommendations that limit some of the existing, albeit largely unenforceable, rights of copyright owners and that extends the right of librarians and educational establishments to copy works. It is to be noted that the Committee's terms of reference excluded it from considering questions relating to reproduction of sound recordings, cinematograph films and radio and television broadcasts. The principal recommendations of the Committee may be summarised as follows:

1. The concept of " fair dealing " as a defence to an assertion of breach of copyright should be extended beyond its present terminology [2] of " for the purpose of research or private study." Two of the four members of the Committee suggested that the exemption should read " for the purpose of research or study." The other two members went further and recommended that the defence apply where a copy of a work has been made " for purposes such as research, study, private or personal use." There was thus general agreement that the expression " study " should not be limited by the word " private." The Committee considered that the limitation must have been intended to distinguish use of copyright material for private study from use for class-room instruction. This, it thought, was an artificial distinction and one which should not be continued. The two members of the Committee who considered that the expression should be extended even further were of the view that copying for personal use, provided it fell within the broad scope of a fair dealing, should not be limited. They were fairly clearly influenced by the difficulties of defining precisely what was meant by " study " and considered that copying for personal use was a more satisfactory criterion.

The Committee had, in fact, been taxed with suggestions that the whole concept of " fair dealing "

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[1] Copies may be obtained from the Australian Government Publishing Service, Canberra, Australian Capital Territory 2600.

[2] Copyright Act 1968, section 40.

should be abolished on the ground that it was too vague. Many users wished to substitute some quantitative basis on which copying would be permitted. The Committee did not accept this suggestion but it did consider that the legislation relating to copyright should set out factors that were to be taken into account in determining whether or not a dealing was fair and also that a statutory minimum should be prescribed which would be regarded as " fair " in all cases. The factors that the Committee suggested should be incorporated in legislation for the purpose of determining whether a dealing was fair were: *(a)* the purpose and character of the dealing; *(b)* the nature of the work; *(c)* the amount and substantiality of the portion taken in relation to the whole work; *(d)* whether the work could be obtained within a reasonable time at a normal commercial price; and *(e)* the effect of the dealing upon the potential market for, or value of, the work. The minimum amount of copying that the Committee considered should be regarded as a fair dealing in all cases was, in the case of copying from a periodical publication, not more than a single article (or, where more than one article related to the same subject matter, those articles) and, in the case of copying from an edition of a work, not more than one chapter or ten per cent of the number of pages in that edition, whichever was the greater. It can be seen that this last suggestion owes much for its parentage to the so-called ten per cent rule which has been informally endorsed by Copyright Councils in a number of countries. The factors suggested by the Committee as being relevant to the determination of a fair dealing amount to little more than a codification of the existing law, except in regard to factor *(d)*. This factor carries through the basic philosophy mentioned previously that there is an obligation on copyright owners to make their works available to the general public.

While there will always be some uncertainty concerning the application of an expression such as " fair dealing," the spelling out by the Committee of the factors to be taken into account should assist in removing some of the uncertainty that both copyright owners and users have encountered in the past. The enshrining of the ten per cent rule in legislation will be of considerable benefit as, while in practice it was generally followed, the bodies suggesting its adoption could not, of course, bind copyright owners to follow the suggestion. On the other hand, it must be recognised by users that any copying in quantity greater than this must be clearly " fair " if it is to be permissible. Ten per cent will in most cases be the maximum that can be copied.

One problem not dealt with by the Committee was that of copying of a microcopy. It is frequently impossible to copy less than ten per cent of a microcopy: indeed it may be impossible to copy other than the whole work. This is a matter that has been drawn to the attention of the Attorney-General for consideration when legislation based on the Committee's report is being prepared.

2. One of the more important proposals of the Committee was that the use by members of the public of self-service copying machines installed in libraries should not, of itself, impose any liability for copyright infringement upon the library, provided that notices in a form prescribed by regulation are displayed drawing users attention to the relevant provisions of the Copyright Act. This recommendation is clearly designed to overcome the difficulties created by the case of *University of New South Wales* v. *Moorehouse and Angus & Robertson (Publishers) Ltd.* [3] There the High Court of Australia indicated that a properly drawn notice might well exempt a librarian from liability for infringements made on a machine installed in a library, but the Court gave no indication of what form this notice should take. It was also not entirely clear from the decision of the High Court whether a notice in itself was sufficient or whether, in addition, some supervision of the use of the machine had to be undertaken. The Copyright Committee recommendation will overcome these problems by, in effect, thrusting the onus onto the user of a copying machine in a library to comply with the copyright laws. The librarian will not be liable for any failure on the part of the copier so to act. It is to be noted that the recommendation applies only to copying machines in libraries. The *Moorehouse* decision will still be applicable to machines used in offices or made available for copying on a commercial basis.

The recommendation of the Committee seemed an inevitable consequence of the thinking underlying the *Moorehouse* decision. The judges in that case contemplated that it would be possible for a library to avoid its liability for any infringement of copyright committed by use of a library machine if appropriate steps were taken. The difficulty was to determine from the case what would be regarded as appropriate steps. The Committee has supplied the answer to this problem. While it might be thought that the effect of the recommendation will be to allow unchecked use of machines for the purpose of producing infringing copies, the evidence presented to the Committee showed that the vast majority of copies made on library machines did not constitute an infringement, either because the works concerned were not protected by copyright or because the copying constituted a fair dealing. The recommendation of the Committee pursues the philosophy mentioned previously that where it is, in practical terms, impossible to police effectively the copying of works and, in

[3] (1975) 6 Australian Law Reports 193; discussed in *Copyright*, March 1976 at p. 87.

particular, where there can be no economic return to the copyright owner in respect of copies made, then no control should be imposed.

3. There are a very large number of proposals relating to copying by libraries which are intended to make it easier for a library to make copies of works for users, for other libraries pursuant to the inter-library loan system and for preservation purposes. Many of the recommendations stem from the terminology of the Australian Copyright Act and are intended to overcome anomalies that have been found to arise in the application of the Act in practice. It is not worthwhile setting out details of these proposed amendments here, but a number of general proposals were also put forward by the Committee. Some of the more interesting of these are, first, a library should, subject to making certain declarations, be permitted to make a copy of an entire work for a library user or for another library if the librarian has first determined, on the basis of a reasonable investigation, that an unused copy of the work cannot be obtained within a reasonable time at a normal commercial price. The right to copy a work for a library user is also conditional upon the user statisfying the requirement that the copy is wanted for research or study. This suggestion, if adopted, will go far towards overcoming one of the major complaints of librarians that Australian publishers and book sellers, while denying the right to libraries to make copies of works, do not always keep stocks of books in Australia and also that they allow books to become out of print. These assertions are denied by publishers and it is difficult to be sure which claim is correct. There are probably rights and wrongs on both sides. The approach adopted by the Committee also runs counter to the views expressed by publishers that it is only by refusing permission to copy that a sufficient market can be built up to justify importing or reprinting a book. However, the Committee has again pursued the principle that copyright owners have a responsibility to ensure that works over which they are asserting copyright are available to the public. Coypright is intended to encourage persons to make the fruits of their intellect available to the world at large. If no copies of a work are available, the public is not obtaining anything for its granting of these rights to the copyright owner. But it is important that this recommendation be not abused. Librarians must genuinely seek to obtain copies of works. The declarations relating to this copying right should disclose the steps that have been taken and it will probably be desirable for copyright owners or their representatives to check these declarations from time to time.

The philosophy referred to in the last paragraph also underlies a recommendation that would permit a library to make a replacement copy of a damaged, deteriorated, lost or stolen work, where the work cannot be obtained within a reasonable time at a normal commercial price. The Committee next recommended that a library should be able to make one microfilm or microfiche copy of any work in the collection of the library where it is intended to destroy the original. The problem of storage of books is one that besets all libraries and the Committee has taken the view that a microcopy of a work may be the only way in which it can be preserved. The making of such a copy does not cost the copyright owner a sale and there seems no reason why the Committee's recommendation should not be endorsed — unless microform copies of the work are available in which case it would seem reasonable to require the library to purchase a copy rather than be able to make its own.

A further right suggested for libraries of non-profit educational establishments is that they be permitted to make up to six copies of a single article in a periodical without infringement of copyright and without remuneration to the copyright owner. This approach is designed to overcome a problem which has troubled librarians whereby a teacher in a subject will set as a text an article in a periodical of which there may well be only one copy in the library. This often results in that single article deteriorating and in some cases being destroyed. Again this seems a sensible recommendation as copies of articles are rarely available separately and the copyright owner would not be losing a sale as students would not subscribe to the whole periodical for the sake of one article. A like recommendation would permit the making of up to six copies of more than an insubstantial part of a published work, other than an article, where the work has not been separately published. If the work has been separately published, six copies may be made of it if it has been ascertained, after reasonable enquiry, that copies of the work cannot be obtained within a reasonable time at a normal commercial price. The notion that a copy may be made of a work if it has not been separately published fits in with the attitude of the Committee that the copyright owner must make his works available to the public if he is to be able to avoid them being copied. However, the approach is of considerable significance in regard to shorter works, such as poems, that might well not be published separately. The recommendation would seem to allow copies to be made of the whole of such a work. This has great significance in regard to the next matter discussed, that of multiple copying in non-profit educational establishments.

Finally, it is suggested that all provisions of the Act relating to library copying should be extended to include archives. This would overcome an anomaly that exists in the Australian copyright legislation that is also to be found in the legislation of other jurisdictions.

4. One of the major problems that has troubled copyright owners in recent years stems from the practice adopted in many educational establishments of making multiple copies of works for distribution to students in advance of classes in an endeavour to stimulate class discussion. The Committee has tried to meet the competing claims of copyright owners for remuneration for their works and educators who wish to take advantage of this method of teaching by suggesting that the Copyright Act be amended to provide for a compulsory licensing scheme. This scheme would permit non-profit educational establishments to make multiple copies of parts of a work and, in some cases, of whole works, for class-room use or for distribution to students, subject to a record being kept of any copying taking place. In addition, there would be an obligation to pay an appropriate royalty to the owner of the copyright in the work copied or his agent, but only if such a payment were demanded within a prescribed period of time (which the Committee suggested might be three years). The works that may be copied in full are those where the work concerned is not separately published (as discussed above) or, if the work has been separately published, where copies cannot be obtained within a reasonable time at a normal commercial price. In regard to periodical publications, not more than one article in the same publication may be copied unless the articles relate to the same subject matter. In other cases, not more than a reasonable portion of a work may be copied. A " reasonable portion " would be up to ten per cent of the number of pages in an edition of a work or one chapter, whichever is the greater. The Committee disagreed on the method of fixing the royalty to be paid in respect of copying. Two members of the Committee considered that the royalty should be fixed by legislation, an analogy being drawn with the requirements relating to the payment of royalties by manufacturers of sound recordings to the owners of the copyright in musical works. These members envisaged that the royalty would be determined on the recommendation of the Copyright Tribunal after it had conducted a full enquiry. The other two members of the Committee considered that the parties should endeavour to reach agreement as to the appropriate royalty to operate as between them and for the legislation to provide that, if no agreement is reached, the Copyright Tribunal should arbitrate. These members envisaged that the parties would be, on the one side, educational establishments and, on the other, a copyright owner or an agency acting on behalf of a number of copyright owners.

The Committee envisaged that an educational establishment could elect whether or not to take advantage of the compulsory licensing scheme. If it did not do so, the present law would continue and this would, in effect, mean that many institutions breached copyright by producing multiple copies of parts of works. If, on the other hand, an establishment chose to take advantage of the compulsory licensing scheme, it could copy within the limits mentioned above but would incur an obligation to keep records. The Committee suggested that these would have to show, as a minimum, the title of the work copied, the number of pages copied, the number of copies made, the author of the work (where known), and the publisher of the work. These records would have to be available to any copyright owner or his representative. If a claim was then made by a copyright owner or his representative for the payment of royalties, the establishment would be obliged to make a payment, but if no claim was made, no liability to make a payment would arise.

The scheme could make the life of educators much easier and could provide copyright owners with a source of income that at present is, in practical terms, unavailable to them. There is no question but that extensive breaches of copyright do occur by educational establishments making multiple copies of works but these are hard to identify and their value to a copyright owner somerwhat difficult to establish. While it might be possible for a copyright owner to enjoin an institution from infringing copyright, the copyright owner is probably more interested in receiving payments for copying his works than simply preventing copies being made. It would be an unusual case in which the effect of preventing the multiple copying of a work would lead to students buying the particular work. It is to be noted that the Committee's scheme is directed to copying of part only of a work except in the special cases mentioned. Where the whole of the work is necessary for teaching purposes, the scheme will not be applicable and students will have to buy the work. Whether the scheme can function satisfactorily will depend rather upon whether or not the quantity of records that have to be kept by an institution seem worthwhile when regard is paid to the number of requests by copyright owners for payment. If a collecting agency becomes well established and representative of numerous authors, the licensing scheme will probably flourish. If, on the other hand, institutions find that the works copied are those of persons who have no interest in collecting royalties or if the cost of administration of the scheme is disproportionate to the amount of royalty that is payable to claimants, they may well elect to stay out of the scheme. This would return copyright owners to their present unsatisfactory position.

This question of providing a satisfactory arrangement for recompense to authors for multiple copying by institutions without precluding the institutions from copying was said by the Committee to be the mots difficult one posed to it. It is, of course, one that has defied solution in other countries and at the

international level. The recommendations of the Committee attempt to give a reasonable balance to the interest of both parties, and investigations are now being carried out by educational institutions and the Copyright Council in an endeavour to sort out the full practical implications of the scheme. The success or failure of the scheme will probably depend upon whether efficient and representative collecting agencies similar to the Performing Rights Societies are established.

As corollaries to the compulsory licensing scheme, the Committee recommended that the making of three copies of a copyright work for the purpose of class-room instruction should be permitted within the limitations mentioned above that are applicable to the licensing scheme, but without payment. It also suggested that the making of multiple copies of up to two pages or one per cent of the number of pages, whichever is the greater, in an edition of a work in any period of 14 days should be permitted without remuneration and without infringement of copyright, provided that the part copied did not comprise or include a separate work.

5. Finally, the Committee recommended that Crown copyright be limited by permitting the reprographic reproduction of legislative instruments and of orders, judgments or awards (including the reasons for their being made) of a court or other tribunal.

In making these recommendations, the Committee went some way towards solving the problems for copyright owners and users associated with reprographic reproduction. But technological change has resulted in ease of copying and increased difficulty in detecting that copying; problems arising from this would appear to be something that will continue to cause concern to copyright owners in the future.

Book Reviews

Les conventions internationales du droit d'auteur et des droits voisins, by *Henri Desbois, André Françon* and *André Kerever.* One volume of 452 pages. Editions Dalloz, Paris, 1976.

1. In the Introduction to the volume, the authors — eminent French jurists who, as is well known, can be considered as being among the framers of the international regulations in our field of interest, particularly over the past decade — give an outline of the work.

Part I of the volume (The international conventions on copyright) contains an analysis of the Berne Convention (Acts of 1886, 1896, 1908, 1914, 1928, 1948, 1967) and of the Universal Copyright Convention of 1952, and then moves on, for both Conventions, to the most recent stage — that of Paris, 1971. Part II (Conventions concerning the neighboring rights) is devoted to the arrangements made, in the context of other international conventions, for protecting contributions connected with the dissemination of intellectual works: in the first place the International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations (Rome, 1961); then the Convention for the Protection of Producers of Phonograms Against Unauthorized Duplication of Their Phonograms (Geneva, 1971); and, lastly, the Convention Relating to the Distribution of Programme-Carrying Signals Transmitted by Satellite (Brussels, 1974). The volume ends with a bibliographical note and with the texts (in French), as regards copyright, of the Paris Acts of the Berne Convention and the Universal Convention and, as regards neighboring rights, of the three international Conventions mentioned above.

2. Part I of the volume comprises 316 pages, while Part II has only 75 pages, so that the book is mainly devoted to the conventions on copyright in the strict sense and, more particularly (from p. 125 to p. 316), to the most recent international Acts drawn up and signed at Paris, separately but over the same period (July 1971) and concerning respectively the Berne Convention and the Universal Convention. The authors have thus drawn the reader's attention, at least in terms of the proportion of the volume devoted thereto, to the most recent stage of copyright development in the international field, notwithstanding the fact that, as they point out, the earlier Acts do not merely belong to the past but are still in force " dans la mesure où, pour des raisons diverses, des Etats d'ores et déjà liés n'ont pas cru devoir accéder aux étapes ultérieures " (to the extent that, for various reasons, States that are already bound have not deemed it necessary to move on to the later stages) (regarding the effects of subsequent Acts of a Convention, see, among my other writings, some remarks of a general character on the relationships existing among all the countries of the Union, whether or not they are bound by a common Act, in the " Report on the Work of Main Committee IV " of the Stockholm Diplomatic Conference, *Records of the Intellectual Property Conference of Stockholm (1967)*, Vol. II, p. 1215, WIPO, Geneva, 1971). In addition, as regards in particular the Paris Act of the Berne Convention, Article 34(1) provides that:

> Subject to Article 29bis, no country may ratify or accede to earlier Acts of this Convention once Articles 1 to 21 and the Appendix have entered into force.

This wise and simplifying provision in a complex field has been in application for some time already, more specifically since the date of entry into force of the Paris Act (October 10, 1974), pursuant to Article 28(2) of that Act.

The authors of the book devote only a few pages (pp. 56 to 67) to an analysis of the Stockholm Act, because of the fact that their commentary on Articles 1 to 20 (substantive provisions) is presented in connection with their examination of the subsequent Paris Act, in which those provisions were included without any change. The commentary on the Protocol Regarding Developing Countries, which forms an integral part of the Stockholm Act, could obviously have been written only in retrospect, as the authors have noted, since that instrument (which later became the Appendix to the Paris Act) never entered into force, by reason of the subsequent entry into force of the Paris Act and the automatic application of the " closing " clause mentioned above.

Thus the Stockholm Protocol was superseded by the Appendix to the Paris Act of 1971 in which, as the authors have pointed out, " ont été corrigées des erreurs et abandonnées les outrances commises quatre ans plus tôt " (mistakes and excesses committed four years earlier were put right). Despite these rather hard words by three eminent French jurists, I feel bound to reaffirm that the Stockholm Conference had the by no means negligible merit not only of having carried through far-reaching measures in the field of intellectual property, in particular as regards the revision of the Brussels Act on copyright, but also of having tackled problems that were absolutely new with a view to meeting, in our field of activity, the needs of the " third world " countries, even if in this context such problems had been solved

with too much generosity as regards the developing countries in the difficult task of seeking a balance with certain contrasting interests of the developed countries, more particularly those whose national language is fairly widely used among local populations.

Unfortunately, to the extent that the Protocol formed an integral part of the text of the Convention, it represented the hazard on which foundered the whole " ship " of the Stockholm revision of the Brussels Act of 1948. The merits of the Stockholm Protocol were, however, underlined in the General Report of the Paris Conference where we read that, without the work of the Stockholm Conference, " the present Conference could not have achieved the unanimous agreement which it had achieved in respect of those questions "; and the Conference itself expressed its recognition in general by a reference in the preamble to the Paris Act in these terms:

> The countries of the Union, . . .
>
> Recognizing the importance of the work of the Revision Conference held at Stockholm in 1967,
>
> Have resolved to revise the Act adopted by the Stockholm Conference, while maintaining without change Articles 1 to 20 and 22 to 26 of that Act.

(As regards the Stockholm Diplomatic Conference on Intellectual Property, which was of such complexity and brought into existence the World Intellectual Property Organization (WIPO), see my detailed study published in *Il Diritto di Autore*, 1967, and *Rassegna della proprietà industriale, letteraria e artistica,* Milan, 1967; regarding earlier Acts of the international conventions on copyright, see for my views the following two monographs: *La Convenzione internazionale di Berna — Commento agli Atti di Roma e di Bruxelles,* Rome, 1949; *La Convenzione universale del diritto di autore,* Rome, 1953; regarding the Paris Act, see " Le revisioni di Parigi della Convenzione universale del diritto di autore e della Convenzione di Berna," in *Il Diritto di Autore,* 1972, pp. 132 *et seq.*, and, translated into English, in *Copyright*, 1972, pp. 241 *et seq.*).

3. In their careful analysis of the Paris Conventions of 1971, the authors of the volume have followed a systematic plan, with respect to the Berne Convention, as for the earlier Acts, and have examined first problems concerning the field of application of the Convention, then problems concerning its structure, and lastly the final clauses.

On this occasion, it is obviously not feasible to examine the views of the authors on the many and varied problems involved, in particular as regards problems of interpretation, in connection with the work done in the course of the two Diplomatic Conferences, as described in detail in the relevant official Records (for the Universal Convention, *Records of the Conference for Revision of the Universal Copyright Convention*, Unesco, Paris, 1973, and, for the Berne Convention, *Records of the Paris Conference,* 1971, WIPO, Geneva, 1974). I shall limit myself, therefore, for the Berne Convention, to presenting some considerations regarding the field of application and the relevant criteria of eligibility, and also regarding the concept of country of origin (pp. 130 to 155) and, for the revised Universal Convention, regarding what the authors term " la proclamation du droit exclusif " (the proclamation of the exclusive right) (pp. 238 to 244).

I would observe, first and foremost, that the Berne Union can be said, throughout its long life, never to have ceased moving on from stage to stage both as regards the continuing increase in the number of member countries and also, by virtue of its effects on the more recent Universal Convention, as regards its general and original mission, as outlined by its founders — namely, to promote throughout the world the protection of the rights of creators of intellectual works in all the various fields of activity which, as time passes, are becoming increasingly numerous, more especially because of technical progress. At the present time, nevertheless, it is above all the chapter of the Convention that concerns the various criteria of eligibility, which are laid down in the Convention itself and are closely relevant to relations between individuals, rather than the chapter on protected works, which is of greatest significance for the internal application within each member country of the protection that the Union affords. In this field the Paris Act (which reproduces the Stockholm provisions), while aiming at extending protection under the Convention in relations between different countries, has not, unfortunately, afforded more flexible application of the system, in particular because of the inclusion, alongside the simpler criterion of the place of first publication of a work, of the criterion of the author's nationality and, lastly, that of the place of habitual residence, the latter criterion being assimilated to nationality.

As regards this chapter, the authors of the book underline the various interpretations that can be drawn from reading the Paris text in comparison with that of Brussels in which, for example, the criterion of nationality is relevant only in respect of " unpublished " works. Of particular interest, still in the same chapter, is the description of the so-called " subsidiary criteria " of eligibility for cinematographic works, works of architecture and works of the graphic or plastic arts that are incorporated in a building (pp. 139 to 142). The " promotion " of the maker, a new provision under which the coverage of the Convention extends to a cinematographic work when the maker thereof has his habitual residence or his headquarters in one of the countries of the Union (depending on whether the maker concerned is a

natural person or a corporate body), while adding to the practical difficulties of applying the Convention, has nevertheless represented recognition of the factual realities.

While Articles 3 and 4 of the Stockholm/Paris Convention provide for the various criteria of eligibility for protection, the ensuing provision, Article 5, is concerned with the so-called " country of origin. " Although this new presentation of the differences between the various concepts has not substantially modified the earlier texts, it has made them easier to understand, as is well known, by differentiating between the question of application of the Convention in the individual case (criterion of eligibility) and that of the so-called country of origin, which is relevant for extension of the protection afforded by the Convention from various aspects, in particular as regards calculation of the term of protection of a work. Thus, clarification has been given implicitly that protection under the Convention cannot be claimed in the country of origin of the work. This latter principle has been in constant practice in Italy hitherto, including in case law (in this connection, see among my writings " La Cour constitutionnelle italienne et le droit d'auteur " — *Hommage à Henri Desbois — Etudes de propriété intellectuelle,* Dalloz, Paris, 1974, pp. 302 *et seq.).* Nevertheless, in order to avoid any disparity of protection, when the protection is smaller under the purely domestic copyright situation, in comparison with the situation under the Convention, in recent years the various enactments of the Italian administration ratifying international conventions have been accompanied by appropriate amendments to the domestic legislation. This explains the slowing down of the relevant procedures (thus, Italy today is bound only by the Brussels Act of 1948 and the Universal Convention of 1952, while the bill providing for ratification of the Paris Acts is still before Parliament, together with provisions empowering the Government to issue decrees making broad amendments to the domestic legislation, while Law No. 424 of April 28, 1975, providing for the implementation in Italy of the various Acts adopted by the Stockholm Diplomatic Conference and authorizing their ratification, has led only to the ratification at international level of the Acts concerning industrial property and of the provisions of the Convention establishing WIPO).

As regards the " proclamation du droit exclusif " (proclamation of the exclusive right) in the revised Universal Convention, the authors of the book are perhaps unduly optimistic because, if it is true that the new Article IV^{bis} has checked the intention of some government delegations of strengthening the principle of a general right to compensation, within the context of protection of works under the Convention, the exceptions to the principle of the exclusive right granted to the various contracting States seem to be quite far-going (as regards the " reasonable level of effective protection," see my own interpretation in the aforementioned study of the Paris Acts). On the other hand, one cannot disregard the crisis regarding the " myth " of the exclusive and uncontrolled right in this era of the " media, " of global licensing for utilization and at a time when, in very many sectors of activity, one can perceive a weakening of the very identity of the author and of his work. I should like to add, still in connection with Article IV^{bis}, that, considering the fairly flexible wording of the provision set forth in paragraph 2, any infringements of the international obligation regarding the exclusive right would be difficult to settle in " direct " private relations where the order has not been " transformed " into domestic legal norms, the matter being more one of an obligation under public law at international level, of a direct order to the contracting State, than one of the formulation of an exclusive right that can be directly implemented in civil relations between individuals. On the other hand, obligations under public international law that do not generate obligations under private international law in the country where protection is claimed do not appear in the Universal Convention alone, but are still more explicitly envisaged in other international conventions within our field of interest. In this connection, I would mention the wording of Article 7 of the Rome Convention on neighboring rights: " . . . shall include the possibility of preventing . . . " and, above all, the wording of the more recent Brussels Convention relating to the distribution of programs by satellite: " Each Contracting State undertakes to take adequate measures to prevent . . . "

Because of the possible need for changes in domestic legislation to bring it into conformity with international obligations, with a view to the settlement of situations covered by conventions, national legislators must therefore, as mentioned above in connection with my own country, lay down appropriate provisions to ensure increasing uniformity of treatment as between situations covered by the conventions and situations of a purely national, domestic character. This desirable legislative method enhances, in practice, the benefits deriving from the general principle of assimilation, by facilitating the solution, in a given member country, of questions of civil law in our field of interest — questions that are often somewhat complex because they involve various contributions of a creative, interpretative, technical and industrial nature, which are increasingly numerous in the world of today, particularly in regard to works produced in certain sectors (for example, television) which are the subject of active exchange between one country and another.

In this context, I should like to mention the benefits that can accrue from the text of the Model Law on Copyright for Developing Countries, adopted by the Committee of Governmental Experts convened at Tunis by the Tunisian Government in March 1976, with the assistance of WIPO and Unesco, if, as we hope, the model law is utilized extensively. In practice, the adoption of such a set of rules in the domestic legislation of the various countries can afford a solution to the specific and complex legal questions that arise under the international regulation, even though the regime of protection may be substantially identical; those questions are carefully examined by the authors of the book under reference, in Part I, Title 2:1 (pp. 259 to 305), as regards the compulsory licensing established by the revised Universal Convention, and in Title 2:2 (pp. 306 to 316), as regards the reservation system and the other measures adopted under the Paris Act of the Berne Convention. From reading this detailed analysis of these varied, specific international rules established under the two Conventions, one can readily understand the reasons why, at least to date, their " direct " application has been so limited.

4. In Part II of the book which, as mentioned, is devoted to the international conventions on the so-called neighboring rights, the reader's attention will be drawn in particular to the pages concerning the 1961 Rome Convention (Title I, pp. 319 to 346). The first chapter outlines briefly the developments leading up to the Convention, the second examines the content thereof, and in the third chapter the authors consider the future " destiny " of this international instrument.

As regards the developments that led up to the Convention and the content thereof, the present writer has already had occasion to express his views, in the period immediately following the signature of the international instrument, in his monograph entitled *La Convenzione internazionale per la protezione degli artisti interpreti o esecutori, dei produttori di fonogrammi e degli organismi di radiodiffusione,* Rome, 1963, to which I would refer the reader; as regards the links between the Rome Convention and the more recent Conventions of Geneva and Brussels, likewise on neighboring rights, and more particularly as regards the chapters on " definitions " and elements of eligibility for application of these international Acts, I would refer the reader to my articles entitled " Some general considerations on the recent Geneva Convention for the protection of phonograms " (*Copyright,* 1972, p. 111) and " Satelliti spaziali di comunicazione e diritto di autore " (*Il Diritto di Autore,* 1969, pp. 1 *et seq.*) in which, in connection with this latter line of reasoning, I presented various considerations that reflect my views, although they were made prior to the Brussels Diplomatic Conference, to the extent that they referred to matters that came under preliminary discussion in a working party convened by the Director of BIRPI in Geneva, particularly on the question of the scope of the concept of broadcasting and also in relation to the Rome Convention.

As is known, to date France has not acceded to the Rome Convention nor does it have any specific legislative provisions in that respect, so that, as regards protection of the neighboring rights of performers, case law has had to base itself on the general principles for protection of personal rights. As regards the rights of performers, a similar legislative situation can be said to exist in the United States of America; and yet, despite the prominent role played by that country's delegation at the Rome Diplomatic Conference, the United States is likewise not a party to the Rome Convention.

This domestic situation of some major countries, together with the fact that the authors' associations, particularly in France, have not in the past shown themselves to be particularly favorable towards such a system of international protection, helps to explain why, although the Rome Convention entered into force in 1964, by January 1, 1977, only 19 countries had acceded to it, notwithstanding the broad range of reservations allowed.

Furthermore, fewer than 50 countries have to date adopted specific and coordinated provisions regarding neighboring rights. This situation led the Intergovernmental Committee of the Rome Convention to take the initiative with a view to a model law in this field, the adoption of which might facilitate more numerous accessions to the Rome Convention.

The authors of the book under reference are not very optimistic as regards the " fate " of the Rome Convention and have briefly stated their reasons as follows: in the first place, the problem of the protection of neighboring rights emerged in an acute form only relatively recently, so that, as already mentioned, not very many countries have to date enacted legislation in this field, while Article 26 of the Convention requires that countries intending to ratify it must already have legislation consistent with that diplomatic instrument; secondly, by reason of its structure, the Rome Convention is considered to be pursuing unduly ambitious objectives, by endeavoring to secure, simultaneously, the protection of three different categories of rights; in the third place, the Convention is said not to be favorably regarded, today, by the broadcasting organizations in that it does not any more seem appropriate for protecting their interests, particularly in view of technical developments (for example, transmission by satellite, cable television and so forth).

As the authors themselves recognize, however, the disadvantages deriving from the third reason mentioned could be overcome through an appropriate revision of the Rome Convention (and, in this connection, it should not be forgotten that the Convention has already been in existence for 15 years, over a period that has seen major transformations of a social and, still more, of a technical character); as regards the situation mentioned in the context of the first consideration, this could change following the elimination of the disadvantages of the third. There would then remain only the obstacle of the structure of this international instrument: it seems to me, however, that the very structure of the Rome Convention should be appreciated more and more at the present juncture, in that it allows the regulation, under the same international instrument, of categories of rights that are admittedly different from one another, but, because they can generally be exercised upon the same material support and because they are often related to the exercise of copyright (which if the work is in the public domain as regards its economic utilization is not merely a matter of safeguarding the personal rights of the author, but also in the interests of culture), they can be compared and balanced with each other if they are regulated by the same instrument, even though they are dealt with in separate chapters. But who knows, it is perhaps precisely because of its " progressive " structure that the Rome Convention is encountering so many difficulties.

5. This note of mine on the book by three distinguished French jurists could conclude with these considerations on the Rome Convention. Nevertheless, the fact that the legal regulation of copyright and neighboring rights in the international field is presented in one volume, though examined in separate chapters, has awakened some reflections on my part and has strengthened trends of thought that, with the reader's permission, I should like briefly to outline on this occasion.

In the course of the acute crisis of international copyright law, caused primarily by the Stockholm Protocol Regarding Developing Countries but which emerged prior to that, particularly in connection with Resolution No. 5122 adopted by the General Conference of Unesco at its 14th session in November 1966 and concerning Article XVII of the Universal Copyright Convention — a crisis that ended, though only by way of a " first act, " with the signature at Paris, at the same period of time, of the revised texts of the two Conventions — a problem that arises, if not formally, at any rate as a prior condition for effecting a complex change smoothly, is that of the simplification of international copyright protection.

As is well known, in the course of the meetings of the " Ad Hoc Preparatory Committees," established to draw up preliminary draft revisions of the two international Conventions and which both met in May 1970, though separately from one another, an attempt was made, on the basis of the so-called " Washington Recommendation " of October 1969, to establish organic and also formal links between the two Conventions, though limited at that time to problems concerning international relations between the so-called developing countries (which are increasingly difficult to characterize, particularly from the legal aspect) and any other country likewise a party to one or other of the Conventions. What was envisaged then was a joint protocol.

But this central idea, which was formulated by various participants and supported in particular by the Italian delegation, failed to secure adoption. And, as I have already had occasion to observe (see my study on the Paris meetings, already mentioned), that was the decisive turning-point in the course of events that was to lead to the separate Paris Acts of July 1971, disregarding in this way the " Washington Recommendation " with respect to differentiation or simplification. Further attempts, though more modest, were subsequently made, again by the Italian delegation, at the Paris Revision Conference of the Universal Convention, based on the idea of joint participation by Unesco and WIPO as already achieved for other international conventions in our field of interest, but they too were unsuccessful (see *Records of the Conference for Revision of the Universal Copyright Convention*, pp. 158 *et seq.*). And we now find ourselves faced with two convention texts, similar in substance, but that create a complex task for the jurists where their intrepretation is concerned because they are different from the formal aspect, and the task is still more arduous if one tries to apply the methods used for interpreting domestic legislation.

In the course of the first session of Main Committee I, to which had been entrusted the task of revising the substantive provisions (Articles 1 to 20 of the Berne Convention), Mr. A. L. Kaminstein, Register of Copyrights of the United States of America, alternate delegate in his country's government delegation to the Stockhom Diplomatic Conference, expressed his government's appreciation at being able to participate, as an observer, in that Revision Conference of the Berne Convention, which was all the more interesting because of the fact that at that time work was under way in his country to revise its own copyright legislation; and he went on to express his own hope that " the Berne Convention and the Universal Copyright Convention could be, at a later date, combined in a single Convention " (*Records of the Stockholm Conference,* Vol. II, p. 839).

The present writer had the honor to collaborate closely and on a continuing basis in the establishment of the Universal Convention, as far back as 1947 and

1949, in the two first Committees of Experts convened by Unesco and later, in connection with the drafting of the Recommendations of the third Governmental Committee that met at Washington in October/November 1950, until 1951, in the work during the official phase when the texts of the draft Universal Convention and the annexed Protocol were drawn up; thereafter, I had the honor to be a member of the Italian government delegation to the 1952 Diplomatic Conference of Geneva. And I well realize that the creative effort made at that time hastened the long-awaited accession of the United States of America and, recently, of the USSR as well as numerous third-world countries to a multilateral instrument for the defense of authors' rights that is open to accession by any country. In paying a tribute to Unesco for this constructive work I wonder, nevertheless, if the moment has not come, now that the Universal Convention has achieved such a historic task, to initiate joint studies between WIPO and Unesco with a view to putting into better order the complicated edifice of international copyright protection, I would not say through merging of the two international instruments — the Berne Convention and the Universal Convention — but through better and more articulated coordination of the two. A careful comparative study in this regard, of an essentially legal-technical character, could not but seem promising in this changing world. Even though WIPO and Unesco have already for some time been in full collaboration in many sectors of common interest, such a single study of a general character could constitute the basis for future international instruments in our field of interest, which instruments would be unitarian while articulated and flexible, on the basis of new formulae.

Such a study of a general character, however, could perhaps not be limited to the field of the copyright conventions, but could extend to the field of the so-called neighboring rights, above all in order to prevent a proliferation of international conventions in respect of individual sectors of subject matter that are closely related, or at least to hold back such a trend. The two most recent international conventions — respectively for the protection of phonograms and concerning distribution sastellites — are the result of such as procedure, which I consider pernicious. A revision of the Rome Convention with a view to solving by means of special agreements if necessary (and here I should like to recall the structure of the well-known Samaden Draft Agreements, which were linked to the Berne Convention) specific problems in the field of broadcasting and the recording of sounds, or sounds and images, could run counter to this perceptible need for unity and, above all, for simplification (see, in this connection, the document by the Italian Administration on the draft new convention on phonograms and my statements, in the name of the Italian delegation, *Acts of the International Conference of States for the protection of phonograms,* WIPO and Unesco, Geneva and Paris, 1975, pp. 186-187 and 64 respectively).

I shall end here, however, realizing that, in commenting on this highly commendable book by three eminent French jurists, I have spent too much time on my own personal reflections on the topic that I could characterize as follows: the international conventions on rights in intellectual works and in auxiliary contributions related to their performance or their technical or industrial production and to their dissemination to the public.

(WIPO Translation)

Valerio De Sanctis

Calendar

WIPO Meetings

(Not all WIPO meetings are listed. Dates are subject to possible changes.)

1977

May 2 to 6 (Geneva) — ICIREPAT — Technical Committee for Standardization (TCST)

May 4 to 13 (Geneva) — Nice Union — Diplomatic Conference on tbe Revision of the Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of tbe Registration of Marks

May 11 to 13 (Geneva) — Paris Union — Ad hoc Coordinating Committee for Tecbnical Activities

May 16 to 27 (Moscow) — International Patent Classification (IPC) — Working Group IV

May 23 to 27 (Rabat) — Development Cooperation — Seminar on Copyrigbt intended for Arab Countries
Note: Meeting convened jointly with Unesco

June 1 to 3 (Geneva) — Paris Union — Advisory Group on Computer Software

June 6 to 17 (Paris) — International Patent Classification (IPC) — Working Gronp I

June 13 to 17 (Paris) — Berne Union — Working Group on Cable Television
Note: Meeting convened jointly with Unesco

June 20 to 24 (Geneva) — Development Cooperation — Working Group on tbe Model Law for Developing Countries on Inventions and Know-How

Jnne 20 to July 1 (Washington) — International Patent Classification (IPC) — Working Group II

June 27 to July 1 (Geneva) — Nice Union — Preparatory Working Group on tbe Revision of tbe Classification

June 29 to July 8 (Geneva) — Paris Union — Preparatory Intergovernmental Committee on tbe Revision of the Paris Convention

September 21 to 23 (Geneva) — ICIREPAT — Plenary Committee

September 26 to October 4 (Geneva) — WIPO Coordination Committee; Executive Committees of tbe Paris and Berne Unions; Assembly and Committee of Directors of tbe Madrid Union

October 10 to 18 (Geneva) — Patent Cooperation Treaty (PCT) — Interim Committees

October 17 to 28 (London) — International Patent Classification (IPC) — Working Group III

October 24 to 28 (Geneva) — ICIREPAT — Technical Committee for Search Systems (TCSS)

October 24 to November 2 (Geneva) — Nice Union — Temporary Working Group on the Alphabetical List of Goods and Services

November 7 to 11 (Geneva) — Development Cooperation — Working Group on the Model Law for Developing Countries on Trademarks

November 7 to 11 (Paris) — ICIREPAT — Tecbnical Committee for Standardization (TCST)

November 14 to 21 (Geneva) — International Patent Classification (IPC) — Steering Committee

November 14 to 25 (Geneva) — Paris Union — Preparatory Intergovernmental Committee on tbe Revision of the Paris Convention

November 22 to 25 (Geneva) — International Patent Classification (IPC) — Committee of Experts

November 28 to December 6 (Paris) — Berne Union— Executive Committee — Exraordinary Session

December 7 to 9 (Geneva) — International Convention for tbe Protection of Performers, Producers of Pbonograms and Broadcasting Organizations — Intergovernmental Committee — Ordinary Session (organized jointly with ILO and Unesco)

December 8 and 9 (Geneva) — Berne Union — Working Group on the Rationalization of the Publication of Laws and Treaties in the Fields of Copyright and Neigbboring Rights

1978

February 15 to 24 (Paris) Berne Union — Committee of Governmental Experts on Double Taxation of Copyright Royalties
Note: Meeting convened jointly with Unesco

Marcb 6 to 10 (Geneva) — Permanent Program — Working Group on Technological Information derived from Patent Documentation

March 13 to 15 and 17 (Geneva) — Permanent Program — Permanent Committee for Development Cooperation Related to Industrial Property

Marcb 16, 17 and 20 (Geneva) — Permanent Program — Permanent Committee for Development Cooperation Related to Copyrigbt and Neigbboring Rigbts

September 26 to October 2 (Geneva) — WIPO Coordination Committee; Executive Committees of the Paris and Berne Unions

1979

September 24 to October 2 (Geneva) — WIPO General Assembly, Conference and Coordination Committee; Assemblies of the Paris, Madrid, Hague, Nice, Lisbon, Locarno, IPC and Berne Unions; Conferences of Representatives of the Paris, Hague, Nice and Berne Uuions; Executive Committees of the Paris and Berne Unions; Committee of Directors of the Madrid Union; Council of the Lisbon Union

UPOV Meetings in 1977

Council: December 6 to 9

Consultative Committee: December 5 and 9

Technical Steering Committee: May 16 to 18; November 15 to 17

Committee of Experts on the International Cooperation in Examination: May 17

Committee of Experts on the Interpretation and Revision of the Convention: September 20 to 23

Working Group on Variety Denominations: in the time between September 20 to 23

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

Technical Working Party for Fruit Crops: May 10 to 12 (Madrid - Spain)

Technical Working Party for Agricultural Crops: May 24 to 26 (Hanover - Federal Republic of Germany)

Technical Working Party for Ornamental Plants: June 7 to 9 (Wageningen - Netherlands)

Technical Working Party for Forest Trees: June 14 to 16 (Orleans - France)

Technical Working Party for Vegetables: September 6 to 8 (Aarslev - Denmark)

Meetings of Other International Organizations Concerned with Intellectual Property

1977

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

May 4 to 6 (New York) — International Confederation of Societies of Authors and Composers — Legal and Legislation Committee

May 13 and 14 (Munich) — International Federation of Inventors' Associations — Annual Meeting

May 16 and 17 (Paris) — International Confederation of Societies of Authors and Composers — International Meeting on the Rights of Authors of Plastic and Graphic Arts

May 16 to 18 (Munich) — Deutsche Gesellschaft für Dokumentation — International Symposium on Patent Information and Documentation (organized in cooperation with WIPO and the German Patent Office)

May 23 to 25 (Dublin) — European Space Agency/European Broadcasting Union — Symposium on Direct Satellite Broadcasting

May 23 to 27 (Rio de Janeiro) — Inter-American Association of Industrial Property — Congress

September 8 and 9 (Antwerp) — International Literary and Artistic Association — Working Session and Executive Committee

September 18 to 21 (Edinburgh) — International League Against Unfair Competition — Working Session

October 25 to 27 (Belgrade) — Council of the Professional Photographers of Europe (EUROPHOT) — Congress

November 28 to December 6 (Paris) — United Nations Educational, Scientific and Cultural Organization (UNESCO) — Intergovernmental Copyright Committee established by the Universal Copyright Convention (as revised at Paris in 1971)

1978

May 8 to 12 (Strasbourg) — Council of Europe — Legal Committee on Broadcasting and Television

May 12 to 20 (Munich) — International Association for the Protection of Industrial Property — Congress

May 29 to June 3 (Paris) — International Literary and Artistic Association — Congress

October 1 to 7 (Santiago de Compostela) — International Federation of Patent Agents — Congress