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Copyright

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Monthly Review of the
World Intellectual Property Organization (WIPO)

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World Intellectual Property Organization

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

Fourth Session

(Geneva, June 1 to 3, 1977)

Note

Convened by the Director General of WIPO, the Advisory Group of Non-Governmental Experts on the Protection of Computer Programs held its fourth session in Geneva from June 1 to 3, 1977.

The list of the 14 non-governmental organizations which designated the experts who participated, as well as the names of those experts, are given in the list of participants which follows this Note.

The Governments of Canada, the Netherlands and the United States of America were represented by observers. Four intergovernmental organizations, three of them belonging to the United Nations system, were also represented by observers. The names of these participants are also indicated in the said list.

The meeting was chaired by Mr. William E. Schuyler, Jr.

The Advisory Group discussed in detail a document, prepared by the International Bureau, containing draft model provisions for a national law on the protection of computer software and the draft of explanatory notes to accompany them. It agreed on the text of those provisions and gave directives as to the amendments of the said explanatory notes.

The model provisions, together with the final text of the explanatory notes, will be published in one of the next issues of *Industrial Property*.

List of Participants

I. Non-Governmental Experts

American Bar Association (ABA): J. C. Goldstein; R. E. Kurtz. **Chartered Institute of Patent Agents (CIPA):** J. U. Neukom. **Committee of National Institutes of Patent Agents (CNIPA):** J. E. M. Galama. **Council of European Industrial**

Federations (CEIF): W. Boekel; G. Hommery; J. E. M. Galama. **European Computer Manufacturers Association (ECMA):** J. R. Cartwright; F. H. Cullen; L. Perry. **European Industrial Research Management Association (EIRMA):** M. Kindermann. **International Association for the Protection of Industrial Property (AIPPI):** W. E. Schuyler, Jr.; J. W. Bailey; G. D. Kolle. **International Chamber of Commerce (ICC):** P. N. Evans. **International Confederation of Societies of Authors and Composers (CISAC):** A. Hirst. **International Federation for Information Processing (IFIP):** M. L. B. Anderson; W. Rothwell. **International Federation of Patent Agents (FICPI):** J. F. Boissel. **International League Against Unfair Competition (LICCD):** P. Bassard. **International Literary and Artistic Association (ALAI):** G. Korsakoff. **Union of Industries of the European Communities (UNICE):** W. Boekel; G. Hommery; J. E. M. Galama.

II. Governments

Canada: G. K. Davidson. **Netherlands:** J. Dekker. **United States of America:** W. H. Moore; A. J. Levine; A. R. Miller.

III. United Nations

International Computing Centre (ICC): W. A. Mackay. **Inter-Organization Board for Information Systems and Related Activities (IOB):** J. Wrigley. **United Nations Educational, Scientific and Cultural Organization (UNESCO):** J.-M. Dethoor.

IV. Other Intergovernmental Organization

Intergovernmental Bureau for Informatics (IBI): F. Piera Gomez.

V. Officers

Chairman: W. E. Schuyler, Jr. (AIPPI). **Secretary:** D. Devlin (WIPO).

VI. International Bureau of WIPO

A. Bogsch (*Director General*); K. Pfanner (*Deputy Director General*); L. Baeumer (*Director, Industrial Property Division*); G. Boytha (*Head, Copyright Development Cooperation Section, Copyright Division*); D. Devlin (*Legal Officer, Special Projects Sections, Industrial Property Division*).

MALTA

Accession to the WIPO Convention

The Government of the Republic of Malta deposited, on September 7, 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 Malta, three months after the date of deposit of its instrument of accession, that is, on December 7, 1977.

WIPO Notification No. 98, of September 12, 1977.

Berne Union

MALTA

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

The Government of the Republic of Malta deposited, on September 7, 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, with the declaration provided for in Article 28(1)(b) to the effect that its accession shall not apply to Articles 1 to 21 and the Appendix.

Furthermore, the instrument of accession contains the declaration that, pursuant to Article 33(2) of the

said Act, Article 33(1) shall not apply to the Republic of Malta.

Articles 22 to 38 of the Paris Act (1971) of the said Convention will enter into force, with respect to the Republic of Malta, three months after the date of this notification, that is, on December 12, 1977.

Berne Notification No. 87, of September 12, 1977.

National Legislation

UNITED KINGDOM

The Copyright (International Conventions) (Amendment No. 3) Order 1977

(No. 1256, of July 26, 1977, coming into force on August 24, 1977)

1. — (1) This Order may be cited as the Copyright (International Conventions) (Amendment No. 3) Order 1977, and shall come into operation on 24th August 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 1972¹, as amended², shall be further amended as follows:

- (a) 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 Uruguay;
- (b) 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 Uruguay and related references to 24th August 1977 in the list of dates in each of those two Schedules.

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

(2) Article 2(b) 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	St. Helena and
and Dependencies	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 accession of Uruguay 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.

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; 1977, pp. 47, 69, 130 and 253.

General Studies

The Employee-Author and Literary and Artistic Property

Robert PLAISANT *

Correspondence

Letter from Canada

Andrew A. KEYES *

International Activities

First Continental Conference on Copyright and First Brazilian Congress on Copyright

(São Paulo, Brazil, June 5 to 10, 1977)

Two important meetings on copyright were held jointly in São Paulo, Brazil, from June 5 to 10, 1977: the First Continental Conference on Copyright and the First Brazilian Congress on Copyright. These meetings were organized by the Inter-American Copyright Institute, a non-governmental organization with headquarters in São Paulo, with the assistance of the World Intellectual Property Organization (WIPO). Over 100 specialists from Latin American countries, including the host country Brazil, and from the United States of America attended and participated in the very active discussions at both meetings. The heads of the Copyright Offices of several Latin American Governments were present, as well as senior officials from the Copyright Offices of Brazil and the United States of America. Unesco, the Inter-American Bar Association, the Inter-American Association for Industrial Property, a number of Latin American authors' societies and several Brazilian universities also sent representatives. WIPO was represented by Mr. Marino Porzio, Head of the Office of the Director General, and by Mr. G. Larrea Richerand (former Director of the Mexican Copyright Office) as consultant to WIPO.

The Continental Conference and the Brazilian Congress elected as their Chairman Mr. Antonio Chaves, Professor of Civil Law and Copyright Law at the Law Faculty of the University of São Paulo, who is also the President of the Inter-American Copyright Institute. The General Coordinator of the meetings was Professor Newton Silveira, lecturer at the Law Faculty of the University of São Paulo and Deputy Secretary General of the Inter-American Copyright Institute.

The common agenda of the Continental Conference and the Brazilian Congress included seven items covering practically all major topics related to the law of copyright and neighboring rights. Each item was discussed by a separate committee and each committee prepared draft conclusions and resolutions which were then submitted to the Plenary. The main conclusions adopted were the following:

1. *International Organizations.* The Resolution recommends that efforts be made towards activating the

role of Latin American countries in the activities of both WIPO and Unesco, and that Governments not having done so should accede to the international conventions administered by these Organizations in order to ensure better international protection of copyright and neighboring rights and better international cooperation in these fields. Moreover, it calls upon the Inter-American Copyright Institute to promote the implementation of these recommendations. It further recommends that the Institute itself endeavor to obtain the appropriate institutional status with WIPO and Unesco so that it may attend the meetings of the competent copyright organs of both Organizations.

2. *Development of Copyright Law in the Americas.* The Continental Conference and the Brazilian Congress considered the Model Law on Copyright for Developing Countries which had been prepared by an Intergovernmental Committee of Experts, convened in Tunis in March 1976 with the assistance of WIPO and Unesco, and stated that the Model Law constituted an important step in legislation from the theoretical point of view in the field of copyright, and that, in any case, it constituted "the absolute minimum protection that every national legislation should grant"; they stated further that, in view of the legal, economic, social and cultural circumstances of Latin American countries, it would be advisable to deliberate, within the overall context of these model provisions, their dovetailing and application to the Latin American situation. This should be studied by a Committee of Latin American Experts convened by WIPO and Unesco with the cooperation of the Inter-American Copyright Institute. The Resolution invites Latin American Governments to propose to the competent organs of WIPO and Unesco the necessary measures for the implementation of the recommendations contained in the Resolution. It also suggests that the Directors General of WIPO and Unesco should invite Latin American Governments and the Inter-American Copyright Institute to submit their observations in this regard, and then take the necessary preparatory measures for the holding of a meeting of the suggested Committee of Latin American Experts.

3. The Conference also suggested a list of points that Latin American countries might consider and take into account in any legislative activity in the field of copyright. These include the following:

(i) Efforts towards unification of existing laws in Latin American countries insofar as they may develop copyright and make it possible to achieve the highest degree of protection in this area.

(ii) The idea of preparing a Model Law according to traditional patterns should be completed with a comparative study based on research and experience in order to help achieve greater compatibility between the copyright laws of American countries.

(iii) The promotion of culture and the assistance that the users of its different forms should be given must be effected by means of specific measures of concrete help to those users, and not by means of a lessening of the rights conferred on authors, because in countries with a low level of legal protection the easy use of non-protected foreign works will prevent the use of the works of local authors and contribute towards stifling the development of indigenous culture.

(iv) Limitation of legal licensing to cases that do not constitute the establishment of a system of substitution of the expressed will of the author with respect to his exclusive right in his work.

(v) The principles of copyright should be based on the creative action of human ingenuity, and should not be subjected to any formality.

(vi) Only natural persons should be original copyright owners, since copyright derives from the creative action of human beings.

(vii) National laws should incorporate autonomous legal treatment for copyright. The nature of copyright should not be modifiable by any contract.

4. *Civil and Penal Repression of Violations in the Field of Copyright.* On this topic, a resolution was adopted which recommends in general that, in the field of penal repression, legislation should take into account that too severe penal repression could be counterproductive: it could make judges act with leniency, thus diminishing the efficacy of the provision. It also recommends that violations of copyright law should be clearly and specifically defined by a special law and should not be governed by analogy with general penal provisions. This specific definition should also be extended to violations of the rights of performers, to phonographic piracy and to the misappropriation of broadcasting programs. In the field of civil action, the law should establish a broad system of assumptions to facilitate the definition of cases constituting violation. Cases of violation of copyright law should be subject to a short, oral procedure.

5. *Applied Art.* In the field of applied art the meetings adopted a recommendation which recognizes the intimate relationship between copyright provisions and industrial property provisions. In order to achieve the best possible legal protection of the different forms of applied art, and their authors, the Conference recommended that the Inter-American Copyright Institute prepare a comparative study of the pertinent provisions of the legislation of Latin American countries in the field of copyright and industrial property as well as those of international treaties. It further suggested that the Director General of WIPO should identify clearly the different forms of protection at present offered by copyright laws and industrial property laws as far as applied art is concerned, and that he be invited to propose a basis for a possible specific legal framework for applied art which will provide complete and effective protection. This suggestion applies also to the Director General of Unesco with respect to copyright. The resolution finally suggests that the agenda of the Second Continental Conference organized by the Inter-American Copyright Institute should include the topic "Protection of Applied Art," so that a special working group can be established by the Institute, which will report on its work, and also so that the solution proposed by WIPO can be discussed.

6. The Committee on the Protection of Applied Art dealt also with the importance of folklore as a cultural expression of social groups linked to certain territories. In this connection it recommended that the international organizations adopt special systems to give effective protection to folklore as the collective creation of peoples. It further recommended that some form of participation of the community in which the folklore originated should be found, to apply whenever commercial exploitation by third parties took place, and that Latin American countries should consider such forms of protection in domestic legislation. It finally recommended that a form of identification of the origin of works of folklore be studied, and that this be given mandatory character in relation to the exploitation of such works.

7. This Committee also recognized that the serial reproduction of works of art had become a reality in the modern world, and it recommended that the legislation of Latin American countries expressly include this kind of reproduction as a subject of copyright protection.

8. *Reprography.* The Committee on Reprography adopted a resolution stating the requirement that authors should receive just compensation for the reproduction of their works by any process including reprography. It also stressed the advantages of estab-

lishing a system of official authorization for reproduction where interested parties did not agree on a voluntary licensing agreement. It further recommended that, if a system of compulsory licensing were established, the control of reproduction by reprography should be carried out by means of a variety

of systems, including: indication of authorities competent to collect fees and distribute them to copy-right owners; registration of reprography machines and prohibition of use of non-registered machines; obligation to have the name of the author and the title of the work on each copy, etc.

Calendar

WIPO Meetings

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

1977

- November 7 to 11 (Geneva) — Development Cooperation (Industrial Property) — Working Group on the Model Law for Developing Countries on Marks and Trade Names
- November 7 to 11 (Geneva) — ICIREPAT — Technical Committee for Search Systems (TCSS)
- November 14 to 18 (Geneva) — Revision of the Paris Convention — Working Group on Inventors Certificates
- November 14 to 18 (Geneva) — Revision of the Paris Convention — Working Group Entrusted with Questions of Special Interest to Developing Countries
- November 14 to 18 (Geneva) — Revision of the Paris Convention — Group of Developing Countries participating in the Preparatory Intergovernmental Committee on the Revision of the Paris Convention
- November 14 to 21 (Geneva) — International Patent Classification (IPC) — Steering Committee
- November 21 to 25 (Geneva) — Revision of the Paris Convention — Preparatory Intergovernmental Committee
- November 22 to 25 (Geneva) — International Patent Classification (IPC) — Committee of Experts
- November 28 to December 6 (Paris) — Berne Union — Executive Committee — Extraordinary Session
- December 7 to 9 (Geneva) — International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations — Intergovernmental Committee — Ordinary Session (convened jointly with ILO and Unesco)
- December 9 (Geneva) — Berne Union — Working Group on the Rationalization of the Publication of Laws and Treaties in the Fields of Copyright and Neighboring Rights (convened jointly with Unesco)
- December 13 to 15 (Jakarta) — Development Cooperation (Industrial Property) — Meeting among Countries of the Association of Southeast Asian Nations (ASEAN) on the Role of Industrial Property in Technological and Economic Development

1978

- January 16 and 17 (Geneva) — ICIREPAT — Plenary Committee
- January 16 to 27 (Munich) — International Patent Classification (IPC) — Working Group IV
- January 18 to 20 (Geneva) — Permanent Committee on Patent Information (PCPI) and PCT Committee for Technical Cooperation
- February 6 to 9 (?) (Geneva) — Revision of the Paris Convention — Working Group
- February 6 to 10 (?) (Geneva) — Patent Cooperation Treaty (PCT) — Working Group
- February 20 to March 3 (Rijswijk) — International Patent Classification (IPC) — Working Group II
- February 21 to 24 (Geneva) — Trademark Registration Treaty (TRT) — Interim Committee
- February 27 to March 7 (Geneva) — Diplomatic Conference for Adoption of Treaty Instituting an International Recording System of Scientific Discoveries

- March 6 to 10 (Geneva) — Nice Union — Temporary Working Group on the Alphabetical List of Goods and Services
- March 6 to 10 (Geneva) — Development Cooperation (Industrial Property) — Working Group on Technological Information derived from Patent Documentation
- March 13 to 15 and 17 (Geneva) — Permanent Committee for Development Cooperation Related to Industrial Property
- March 16, 17 and 20 (Geneva) — Permanent Committee for Development Cooperation Related to Copyright and Neighboring Rights
- April 3 to 7 (Geneva) — Patent Cooperation Treaty (PCT) — Interim Advisory Committee for Administrative Questions
- April 3 to 7 (Geneva) — Satellites Convention — Working Group on Model Provisions for the Implementation of the Convention (convened jointly with Unesco)
- April 3 to 14 (Vienna) — International Patent Classification (IPC) — Working Group I
- April 10 to 14 (?) (Geneva) — Patent Cooperation Treaty (PCT) — Assembly
- April 10 to 14 (Geneva) — ICIREPAT — Technical Committee for Standardization (TCST)
- April 17 to 21 (Geneva) — ICIREPAT — Technical Committee for Search Systems (TCSS)
- April 24 to 28 (Geneva) — International Patent Classification (IPC) — Working Group V
- April 25 to 28 (Geneva) — Budapest Union (Microorganisms) — Interim Committee
- May 3 to 5 (Geneva) — WIPO — Budget Committee
- May 7 to 10 (Cairo) — Development Cooperation (Industrial Property) — Meeting of Arab States on Technical Information
- May 22 to 26 (Geneva) — Locarno Union — Committee of Experts
- May 22 to 26 (Geneva) — Development Cooperation (Industrial Property) — Working Group on the Model Law for Developing Countries on Inventions and Know-How
- May 29 to June 9 (?) — International Patent Classification (IPC) — Working Group III
- June 5 to 7 (Geneva) — Berne Union — Working Group on New Copyright Laws
- June 5 to 9 (?) (Geneva) — Patent Cooperation Treaty (PCT) — Working Group
- June 12 to 16 (Geneva) — Development Cooperation (Industrial Property) — Working Group on the Model Law for Developing Countries on Marks and Trade Names
- June 19 to 30 (?) (Geneva) — Revision of the Paris Convention — Preparatory Intergovernmental Committee
- June 26 to July 7 (Geneva) — International Patent Classification (IPC) — Steering Committee
- July 3 to 6 (Geneva) — Paris Union — Working Group on Industrial Property Aspects of Consumer Protection
- July 3 to 13 (Paris) — Berne Union — Committee of Governmental Experts on Double Taxation of Copyright Royalties (convened jointly with Unesco)
- July 19 to 21 (Geneva) — Development Cooperation (Industrial Property) — Working Group on Promotion of Domestic Inventive and Innovative Capacity
- September 4 to 8 (Geneva) — International Patent Classification (IPC) — Committee of Experts
- September 13 to 15 (Geneva) — Patent Cooperation Treaty (PCT) — Interim Advisory Committee for Administrative Questions
- September 18 and 19 (Geneva) — ICIREPAT — Plenary Committee
- September 19 to 22 (Geneva) — Permanent Committee on Patent Information (PCPI) and PCT Committee for Technical Cooperation
- September 26 to October 2 (Geneva) — Governing Bodies (WIPO Coordination Committee and Executive Committees of the Paris and Berne Unions)
- October 2 to 13 (?) — International Patent Classification (IPC) — Working Group II
- October 9 to 12 (Geneva) — Paris Union — Committee of Experts on Legal Protection of Computer Software
- October 16 to 20 (?) (Geneva) — ICIREPAT — Technical Committee for Search Systems (TCSS)
- October 23 to 27 (Hull, Canada) (?) — ICIREPAT — Technical Committee for Standardization (TCST)
- October 23 to 27 (Geneva) — Nice Union — Preparatory Working Group on International Classification
- October 23 to November 3 (?) — International Patent Classification (IPC) — Working Group IV
- November 6 to 10 (Geneva) — Nice Union — Temporary Working Group on the Alphabetical List of Goods and Services
- November 13 to 24 (?) — International Patent Classification (IPC) — Working Group I
- November 27 to December 1 (Geneva) — Development Cooperation (Industrial Property) — Working Group on the Model Law for Developing Countries on Marks and Trade Names

December 4 to 8 (Geneva) — Paris and Madrid Unions — Committee of Experts on the Use of Computers in Trademark Operations

December 4 to 15 (?) — International Patent Classification (IPC) — Working Group III

December 11 to 19 (Geneva) — Berne Union — Committee of Governmental Experts on Cable Television (convened jointly with Unesco)

Meetings in 1978 for which dates are not yet fixed

— — — (Caracas) — Development Cooperation (Industrial Property) — Working Group on the Establishment of a Latin-American Office of Industrial Property Data

— — — (Paris) — Berne Union — Committee of Governmental Experts on Videocassettes (convened jointly with Unesco)

— — — (New Delhi) — Development Cooperation (Copyright) — Seminar on Copyright for the Asian/Pacific Region

— — — (Mexico) — Development Cooperation (Copyright) — Group of Latin-American Experts on Copyright Model Law

— — — (Geneva) — Revision of the Paris Convention — Additional meetings

1979

September 24 to October 2 (Geneva) — Governing Bodies (WIPO General Assembly, Conference and Coordination Committee; Assemblies of the Paris, Madrid, Hague, Nice, Lisbon, Locarno, IPC, PCT and Berne Unions; Conferences of Representatives of the Paris, Hague, Nice and Berne Unions; 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: November 15 to 17

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

Meetings of Other International Organizations Concerned with Intellectual Property

1977

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 16 to 18 (Athens) — International Copyright Society (INTERGU) — Congress

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

September 25 to 29 (Toronto and Montreal) — International Confederation of Societies of Authors and Composers — Congress

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

