

Published monthly
Annual subscription:
Sw.fr. 100.—
Each monthly issue:
Sw.fr. 10.—

Copyright

15th year - No. 6
June 1979

Monthly Review of the
World Intellectual Property Organization (WIPO)

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National Legislation

ECUADOR

I

Implementing Regulations under the Law on Copyright

(of November 30, 1977) *

CHAPTER I

Public Performance

Article 1. Any person who performs musical works or causes such works to be performed in public, outside the family circle, shall display the program in a visible place and shall submit a copy thereof to the authors or to the authors' society that represents them.

Article 2. Any public performance of national or foreign music, whether effected directly by an orchestra, individual performers, with or without instrumental accompaniment, ensembles, choirs, etc., or by means of discs, magnetic tapes or any other phonographic material, films with sound track, or any known or new method, whether broadcast by radio, television, advertising means, fixed or movable loudspeakers or other known or new electro-mechanical device, whatever may be the place in which it is effected — dance halls, clubs, nightclubs, sports parlors, theaters, cinemas, establishments having any other purpose or any other public place — whether or not a charge is made for admission, may not take place without the display of the written authorization of the authors or of the authors' society that represents them for the date or period concerned.

Article 3. Where the performance of music takes place under any of the circumstances referred to in the foregoing Article without the requisite prior authorization, or where that authorization is not displayed, the authors or the authors' society that represents them may report the impresario, organizer, manager of the establishment, etc., who appears to be responsible for the performance, to the police author-

ities of the appropriate jurisdictional district. Without prejudice to the infringements of the Law on Copyright, the police authorities shall not authorize the holding of dances or musical and/or theatrical events of any nature unless prior proof has been given that the use of the repertoire concerned has been authorized against payment of the appropriate royalties.

Article 4. The police authorities shall provide full collaboration without need for the submission of proof justifying ownership of copyright.

Article 5. Persons who operate establishments in which musical works of any kind, with or without words, are publicly performed, or the impresarios or organizers of broadcasting organizations or directors of orchestras, as the case may be, shall set down in daily lists, strictly respecting the order of performance, the titles of all the works performed and the names of the authors or composers thereof. In the case of the public performance of phonograms, the numbers of the discs or other carriers shall be indicated, as well as the name of the producer of the phonograms, in such a way that the performers may be identified. These lists shall be dated and signed and made available to interested parties during the month in which the performance takes place.

The authors or performers or the successors in title or assignees who exercise the rights, or the society that represents them, may apply to the civil judge of the place in which an infringement was committed for full or partial compliance with this obligation. The party responsible for the infringement shall be sentenced to payment of a fine of 5000 to 20 000 sucres, as provided in Article 122 of the Copyright Law.

This fine shall be without prejudice to the corresponding sanctions and shall be inflicted on persons who change, in their lists, the titles and/or names of the authors or composers of the works performed, or the indication of the discs and other phonographic material, or include works that are not performed or

* The Law on Copyright was enacted by Decree No. 610, of July 30, 1976, and published in the *Registro Oficial* No. 149, of August 13, 1976 (see *Copyright*, 1977, pp. 116 *et seq.*).

The Implementing Regulations were published in the *Registro Oficial* No. 495, of December 30, 1977. — WIPO translation.

false indications. The fact of the infringement being committed by a member of the staff of an authors' society shall be considered an aggravating circumstance.

Article 6. In the event of refusal to comply with the obligation to make and submit performance plans, the authors' society may revoke the authorization to use its works which it granted previously.

Article 7. Authors' societies that have been legally approved or registered at the National Copyright Register shall have the exclusive right to grant the authorization required by the law for the performance or use in public of the works of their members, and also to establish and collect the corresponding remuneration, thereafter distributing it among their members in the manner and proportions specified in their statutes.

Article 8. The foregoing provisions shall apply also to the public performance of dramatic or dramatico-musical works.

Article 9. All halls or other places of entertainment in which literary, dramatic, dramatico-musical or musical works are performed shall keep at the disposal of the author or the authors' societies that represent him a daily list in which the amount of the charges made for admission, or any other system conditioning access to the place of entertainment, is recorded.

CHAPTER II

The National Copyright Register

Article 10. The National Copyright Register shall be under the authority of the Ministry of Education and Culture and shall be entrusted with the application of the Copyright Law in matters of concern to it, for which purpose it shall possess the rights provided for in these Regulations.

Article 11. The National Copyright Register shall be competent to take part in conciliatory or arbitral proceedings in disputes arising from or related to copyright.

Article 12. It shall be the task of the National Copyright Register to deal with international matters related to copyright.

Article 13. The National Copyright Register shall propose the enactment of legal provisions for the better protection of copyright.

Article 14. The National Copyright Register shall be managed by an official who shall have the title of Doctor of Law. This official shall be empowered to propose candidates for the selection of the appropriate staff for the proper running of the Register.

Article 15. The National Copyright Register shall have the power to coordinate the functions of the Provincial Education Boards in matters within its competence.

Article 16. The Directors of Provincial Education Boards shall send to the National Copyright Register, every month, details and documentation on registrations made in the course of that period.

Article 17. The registration of works for the purposes of the protection provided for in the Law shall have declaratory value only, and shall not constitute the right.

CHAPTER III

Registration

Article 18. When applying for registration of a work, the applicant shall make a dated and legibly signed declaration, giving the following particulars:

- (a) title of the work;
- (b) name of the author, editor and printer;
- (c) place and date of publication;
- (d) number of copies;
- (e) sale price per copy;
- (f) enclosed with the application, two copies of the work to be registered.

Article 19. A foreign work may be registered under the same conditions as those required for a national work.

Article 20. The registration of cinematographic works shall require the submission of photographs showing the main scenes constituting the film, the scenario and the dialogue of the work; the name of the scriptwriter, composer, director and main actors shall be indicated, as well as the length of the film.

Article 21. The deposit of sculptures, drawings and paintings shall be made by means of a description thereof, accompanied by a photograph, which in the case of sculptures shall consist of a front view and a side view.

Article 22. In the case of discs and other phonographic material, maps, plans and photographs, a copy thereof shall be submitted together with the other material required by the Law.

Article 23. With regard to unprinted dramatic or musical works, it shall be sufficient to submit copies of the manuscript with the signature of the author.

Article 24. Abridgments, arrangements, translations, adaptations or other modifications of intellectual or artistic works shall be registered for the sole purpose of their protection, even where proof is not provided of the authorization granted by the owner of the copyright.

This registration shall not give the right to publish or use the registered work in any form except where evidence is provided of the corresponding authorization. This fact shall be recorded both in the registration and in any certificates that may be issued.

Article 25. At the time of the registrations provided for in Article 111 of the Copyright Law, the Registrar shall issue a certificate stating the fact of such registration.

Article 26. When two or more persons apply for the registration of the same work, the work shall be registered in the terms of the first application, without prejudice to the right of opposition. If a dispute should arise, the effects of registration shall be suspended until such time as a decision has been issued by the competent authority.

Article 27. For the registration of works of joint authorship, any of the co-authors may apply for registration, but shall mention the other co-authors and their respective rights.

Article 28. For an unpublished work, it shall be sufficient if a clearly legible copy is submitted together with the particulars of the author.

Article 29. The Register shall demand that foreign works published in Ecuador comply with the requirements for the protection of copyright abroad which are established by the International Conventions to which Ecuador is party.

Article 30. The following records shall be kept at the National Copyright Register:

- (a) a general record of incoming material,
- (b) a record of scientific and literary works,
- (c) a record of musical works,
- (d) a record of unpublished works,
- (e) a record of drawings and photographs,
- (f) a record of phonograms,
- (g) a record of pseudonyms,
- (h) a record of printer-publishers,
- (i) a record of producers of phonograms,
- (j) a record of contracts,
- (k) a record of authors' representatives and authors' societies,

(l) a record for such other cases as are necessary.

A file shall be kept of the works entered in the records indicated.

Article 31. The Director of the National Copyright Register shall have the task of:

- (a) organizing and taking responsibility for the operation of the National Register and Provincial Offices;
- (b) supervising the proper handling of authors' rights;
- (c) signing certificates of registration requested by interested parties;
- (d) dealing with consultations and solving administratively such problems as arise in relation to copyright;
- (e) implementing and causing to be implemented the provisions contained in the Law on Copyright currently in force.

CHAPTER IV

General Provisions

Article 32. The National Copyright Register shall be responsible for all matters concerning registration, correspondence, filing and other business of the office known as the Intellectual Property Register.

Article 33. All pending applications and files, and classified material concerning the recognition granted by the former Law on Intellectual Property, shall be transferred to the National Copyright Directorate. Interested parties who wish to avail themselves of the optional registration introduced by the Law currently in force may apply to the Register for the registration of such of their works as are recognized as being in conformity with the former legislation.

Transitional Provision

During the initial period of organization of the Provincial Copyright Registers, the Director of the Provincial Board of Education shall have the powers and duties established by the Law and these Regulations for the purposes of the registration of works.

II

Decree of the Supreme Council of the Government

(No. 2821, of August 25, 1978) *

*The Supreme Council of the Government
Considering:*

That the producers of phonograms have the right to authorize or prohibit the direct or indirect reproduction of their phonograms, and that they may, in accordance with the Law on Copyright, take legal action, jointly with the author or the authors' society that represents him, against unlawful reproduction of phonograms or other devices or machines on which the work is fixed;

That the Convention for the Protection of Producers of Phonograms Against Unauthorized Duplication of Their Phonograms, signed in Geneva on October 29, 1971, of which Ecuador is a signatory, provides that the Contracting States undertake to protect producers of phonograms against piracy, and that, in accordance with our legal system and in the light of social and economic realities, such protection should be afforded by means of a combination of the specific right under Article 62 of the Law on Copyright and a criminal sanction appropriate to the infringement being punished, and that joint action may be initiated by the owners of the copyright: authors, performers and producers of phonograms; and

By virtue of the powers conferred on it:

Decrees as follows:

Article 1. Any person who unlawfully reproduces a phonogram without the consent of the legitimate

producer, and any person who stocks, distributes or sells illegal copies with a view to their commercialization shall be punished with imprisonment from two to five years and a fine of 5000 to 20 000 sucres.

Without prejudice to the confiscation of the copies and of the materials used for the unlawful reproduction, authors, performers and producers of phonograms may exercise the right to claim redress for the damages and prejudice suffered.

Article 2. The proceeds from the fines imposed in accordance with the foregoing Article shall be used for the purposes specified in Article 137 of the Law on Copyright.

Article 3. Authorization for the reproduction of a phonogram shall necessarily be evidenced in writing and shall constitute the only proof sufficient for the taking of the legal action provided for in this Decree.

Article 4. The procedure for the institution of both civil and criminal court proceedings against the infringements specified in this Decree shall be that set forth in Part III of the Law on Copyright and its regulatory provisions.

Article 5. The implementation of this Decree, which shall enter into force on the date of its publication in the *Registro Oficial*, is entrusted to the Ministers, Secretaries of State responsible for Education and Culture and Government Affairs.

* WIPO translation.

CHILE

Law amending Law No. 17.336

(No. 17.773) *

Sole Article. Article 10 of Law No. 17.336, of October 2, 1970,¹ is replaced by the following:

" *Article 10.* The protection granted by this law shall extend throughout the life of the author, that of his spouse and that of his daughters who

are unmarried or widowed or, if married, whose spouse is affected by a permanent disability preventing him from engaging in any form of work, and it shall extend for a further thirty years, counted from the date of the author's death, in respect of his heirs, legatees and assigns.

The protection provided for in the preceding paragraph shall be retroactive in respect of the author's spouse and the daughters referred to."

* Published in the *Diario Oficial de la Republica de Chile* of October 18, 1972.

¹ See *Copyright*, 1971, p. 211.

General Studies

Legislative Developments in Latin America

Action of the Anti-Piracy Committee of the Pan-American Council of CISAC-FLAPF

Carlos A. VILLALBA * and Miguel A. EMERY **

Correspondence

Letter from the United Kingdom

Denis de FREITAS *

International Activities

International Confederation of Societies of Authors and Composers (CISAC)

Legal and Legislation Committee

(Madrid, May 8 to 10, 1979)

The Legal and Legislation Committee of CISAC met in Madrid from May 8 to 10, 1979, at the invitation of the General Society of Authors of Spain (SGAE). Almost all members of the Committee were present at the session, either as members designated by the societies of authors or in a personal capacity, or again with a standing invitation from the Committee. They came from the following countries: Austria, Belgium, Brazil, Denmark, France, Germany (Federal Republic of), Greece, Hungary, Israel, Italy, Soviet Union, Spain, Sweden, United Kingdom, United States of America, Uruguay.

WIPO, which had been invited in an observer capacity, was represented by Mr. Claude Masouyé, Director, Copyright and Public Information Department, and Mr. Shahid Alikhan, Director, Copyright Division.

Prior to the beginning of the session, a ceremony was held in the Biblioteca Nacional in Madrid to mark the centenary of the Spanish Law concerning Intellectual Property of January 10, 1879. The ceremony was presided over by His Majesty King Juan Carlos of Spain. Also present were Mr. Manuel Clavero Arevalo, Minister of Culture in the Spanish Government, Mr. Federico Moreno Torroba, President of the General Society of Authors of Spain, Mr. Joaquin Calvo Sotelo, Honorary President of CISAC, Mr. Luis Franciso Rebello, Vice-President of CISAC, together with numerous well-known figures in Spanish arts and letters.

To open their discussions, the members of the Legal and Legislation Committee of CISAC elected as their Chairman Mr. Walter Dillenz of the Austrian Society of Authors, Composers and Music Publishers (AKM).

The agenda included consideration of the following items, presented by the respective rapporteurs:

- One hundred years of the Spanish law on intellectual property: Mr. Segovia Galindo (Spain).
- Conflicts between the Rome Treaty and the international copyright conventions: Professor André Françon (France).
- Sound and audiovisual reproduction for personal use: Professor Mario Fabiani (Italy).
- Public performance rights in records: Mr. Victor Hazan (Israel).
- Protection of elaborated ideas: Mr. Denis de Freitas (United Kingdom).
- Compilation shows: Mrs. G. Hamilton (United Kingdom).
- Renegotiation of contracts where there is disproportion between the agreed remuneration of the author and the profits obtained from using the work: Mr. Walter Dillenz (Austria).
- Guarantee of the authors' rights through legal norms. Experience acquired in the USSR: Mr. Y. Roudakov (Soviet Union).

In addition, the Committee received for information two reports drawn up by the societies of composers of Mexico and Czechoslovakia, respectively, on the orchestration and arrangement of music and on the arrangement of works of the classical repertoire.

The Committee also heard a number of communications on developments in copyright doctrine and case law in various countries, including Belgium, France, Germany (Federal Republic of) and the United States of America, and communications on the preparation of new copyright legislation in Israel and Spain.

The Committee agreed to hold its next session early in 1980 at a date and venue yet to be decided.

International Federation of Producers of Phonograms and Videograms (IFPI)

Council

* (Palma de Mallorca, May 15 and 16, 1979)

The 1979 session of the IFPI Council was held in Palma de Mallorca on May 15 and 16, 1979. It was attended by the members of the Board and the delegates of the IFPI national groups from the following countries: Austria, Belgium, Brazil, Canada, Denmark, Finland, France, Germany (Federal Republic of), Greece, Hungary, India, Ireland, Israel, Italy, Japan, Malaysia, Netherlands, New Zealand, Norway, Portugal, Singapore, Spain, Sweden, Switzerland, Thailand, United Kingdom, United States of America, Yugoslavia.

WIPO, which had been invited to participate in the discussions, was represented by Mr. Claude Masouyé, Director, Copyright and Public Information Department.

In addition to a number of matters of a purely administrative or financial nature, the agenda included the consideration of two important questions: the fight against phonogram piracy and the practical implementation of the Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations, particularly its Article 12. A number of reports were submitted on these two themes and were followed by wide-ranging discussions. Various measures were considered to combat the illicit reproduction of records and cassettes, both from a technical point of view and as regards the legal remedies available. As far as private use was concerned, the IFPI Council favored the application of a system of compensatory payments for reproduction equipment and virgin recording material, and expressed the hope that both the collection and distribution of such monies would be effected by one and

the same body. As regards the implementation of the provisions entered in the Rome Convention, the IFPI Council expressed its keen satisfaction with the outcome of the Subcommittee of the Intergovernmental Committee of the Rome Convention which met in Geneva at the end of January 1979 * and declared its willingness to submit, if necessary, any related information to the Intergovernmental Committee itself when it meets in October 1979 to pronounce, *inter alia*, on the recommendations drawn up by the Subcommittee.

The agenda of the IFPI Council also contained reports on a number of studies conducted under the auspices of the Commission of the European Communities and affecting the interests of IFPI, on the recognition of sound recordings as cultural material and on statistics concerning the activities of the phonograph industry. Information was also given to the IFPI Council on the status of ratification and accession procedures in various countries in respect of the 1961 Rome Convention and the 1971 Phonograms Convention. The IFPI Council noted that, in many cases, the information given was most encouraging.

Finally, the IFPI Council was informed that Mr. Stephen Stewart's request to take his retirement had been accepted and that the post of Director General of IFPI would be occupied from October 1, 1979, onwards by Mr. John Hall.

At the invitation of the Indian group, the IFPI Council decided to hold its 1980 session in New Delhi.

* See *Copyright*, 1979, p. 101.

Calendar

WIPO Meetings

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

1979

- July 2 to 6 (Paris) — Berne Union and Universal Copyright Convention — Working Group on the overall problems posed for developing countries concerning access to works protected under copyright conventions (convened jointly with Unesco)**
- July 2 to 6 (Geneva) — Permanent Committee on Patent Information (PCPI) — Working Group on Search Information**
- September 11 to 14 (Geneva) — Permanent Committee on Patent Information (PCPI) — Working Group on Patent Information for Developing Countries**
- September 17 to 20 (Geneva) — Development Cooperation (Copyright) — Working Group on Support to National Authors and Performers**
- September 17 to 21 (Geneva) — Permanent Committee on Patent Information (PCPI) — Working Group on Planning**
- 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)**
- October 15 to 26 (Geneva) — Nice Union — Committee of Experts**
- October 18 and 19 (Geneva) — ICIREPAT — Plenary Committee**
- October 22 to 26 (Geneva) — Permanent Committee on Patent Information (PCPI), and PCT Committee for Technical Cooperation (PCT/CTC)**
- October 22, 23 and 30 (Paris) — Rome Convention — Intergovernmental Committee (convened jointly with ILO and Unesco)**
- October 24 to 26 and 31 (Paris) — Berne Union — Executive Committee (sitting together, for the discussion of certain items, with the Intergovernmental Committee of the Universal Copyright Convention)**
- November 5 to 9 (?) (Buenos Aires) — Development Cooperation (Copyright) — Latin American Seminar on Copyright (convened jointly with Unesco)**
- November 26 to December 13 (Madrid) — Diplomatic Conference on Double Taxation of Copyright Royalties (convened jointly with Unesco)**
- November 27 to 30 (Geneva) — Paris Union — Group of Experts on Computer Software**
- December 3 to 6 (Geneva) — Working Group on Industrial Property Aspects of Consumer Protection**
- December 10 to 14 (Geneva) — International Patent Classification (IPC) — Committee of Experts**

1980

- February 4 to March 4 (Geneva) — Revision of the Paris Convention — Diplomatic Conference**

UPOV Meetings

1979

- July 17 to 19 (Hanover) — Technical Working Party for Ornamental Plants
- September 18 and 19 (Geneva) — Administrative and Legal Committee
- September 25 to 27 (Wageningen) — Technical Working Party for Forest Trees
- October 16 and 19 (Geneva) — Consultative Committee
- October 17 to 19 (Geneva) — Council
- November 12 to 14 (Geneva) — Technical Committee
- November 15 and 16 (Geneva) — Administrative and Legal Committee

Other Meetings in the Field of Copyright and/or Neighboring Rights

Non-Governmental Organizations

1979

- European Broadcasting Union (EBU)**
 - Legal Committee — September 25 to 28 (Bergen)
- International Federation of Actors (FIA)**
 - Congress — September 25 to 29 (Budapest)
- International Federation of Library Associations (IFLA)**
 - Congress — August 27 to September 1 (Copenhagen)
- International Organization for Standardization (ISO)**
 - General Assembly — September 17 to 21 (Geneva)

1980

- International Confederation of Societies of Authors and Composers (CISAC)**
 - Congress — November 3 to 7 (Dakar)
- International Publishers Association (IPA)**
 - Congress — May 18 to 22 (Stockholm)

