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Berne Union

The Berne Union and International Copyright and Neighboring Rights in 1980

Promotion of the Acceptance of Copyright and Neighboring Rights Treaties

Objective

The objective is to ensure that more countries become party to the treaties dealing with the international protection of copyright and neighboring rights.

Activities

Berne Convention for the Protection of Literary and Artistic Works. In August 1980, Guinea acceded to the Paris Act (1971) of the Berne Convention, bringing the membership of the Berne Union to 72 States. Instruments of ratification or accession in respect of the Paris Act were deposited by Czechoslovakia in January, by the Philippines (administrative clauses only) in April, by Argentina (administrative clauses only) in July and by Thailand (administrative clauses only) in September 1980; the said countries were already members of the Berne Union.

Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations. See below.

Geneva Convention for the Protection of Producers of Phonograms Against Unauthorized Duplication of Their Phonograms. In February 1980, WIPO and Unesco jointly transmitted to governments circulars encouraging acceptance of the said Convention.

Vienna Agreement for the Protection of Type Faces and their International Deposit. The Records of the Diplomatic Conference of 1973 were published in August 1980 in English and French.

Brussels Convention Relating to the Distribution of Programme-Carrying Signals Transmitted by Satellite. In February 1980, WIPO and Unesco jointly transmitted to governments the draft model provisions formulated by a committee of governmental experts for the implementation of the said Convention, with a request for comments.

Madrid Multilateral Convention for the Avoidance of Double Taxation of Copyright Royalties. The text of the Convention was published in English and French in July and August 1980.

Promotion of the Practical Application of Laws and Treaties in the Fields of Copyright and Neighboring Rights

Objective

The objectives include:

- (i) to draw a clear picture, region by region, of the present situation of copyright and neighboring rights law and institutions in the various countries, such survey covering the state of legislation, the involvement of the government in the administration of such legislation, the role of authors' societies and other organized interest groups, statistics on works and their use, etc.,
- (ii) to establish and disseminate a model statute for authors' societies,
- (iii) to study the relationship between copyright and computers,
- (iv) to expose, and study the practical remedies against, various forms of piracy of intellectual property, and
- (v) to study the best means of protecting works of folklore against abusive exploitation.

Activities

Survey. A questionnaire concerning the practical administration and application of copyright laws was sent to the governments of African countries in August 1980.

Model Statutes, Folklore. Meetings on these subjects are described in the article on the main activities of WIPO as such (published in the February issue of this review) under the heading "Development Cooperation Activities," in view of their particular interest for developing countries.

Cable Television. A Group of Independent Experts on the Impact of Cable Television in the Sphere of Copyright was convened by WIPO and Unesco in March 1980 in Geneva. Seven independent experts, from Austria, Belgium, Germany (Federal Republic of), Italy, the Soviet Union, the United Kingdom and the United States of America, composed the Group.

The first part of the meeting was devoted to hearing declarations by the representatives of ten international non-governmental organizations, after which the discussions in the Group took place in the absence of the said representatives.

The Group of Experts adopted, with certain comments, a detailed statement, based on the fact that the distribution by cable of broadcast (radio or television) programs is effected for a public different from (although possibly partially overlapping with) the public which the broadcast can reach or can reach only with diminished quality or at a higher cost. Therefore such distribution is a communication to the public requiring the authorization of the copyright owner. The statement dealt also with the neighboring rights of performers, producers of phonograms and broadcasting organizations in relation to distribution by cable. The Group recommended that the competent Secretariats should prepare draft provisions implementing the principles enunciated in the statement, for the consideration of the Intergovernmental Committees of the Berne, Universal and Rome Conventions.

Copyright and Computers. A Committee of Governmental Experts on Copyright Problems Arising from the Use of Computers for Access to or the Creation of Works met in Paris in December 1980. The Committee was convened jointly by WIPO and Unesco in accordance with decisions of their governing bodies, and with the wishes expressed by the Intergovernmental Committee of the Universal Copyright Convention and the Executive Committee of the Berne Union in October 1979. Thirty-four States (Algeria, Australia, Austria, Belgium, Canada, Colombia, Cuba, Denmark, Egypt, Finland, France, German Democratic Republic, Germany (Federal Republic of), Holy See, Hungary, Iraq, Italy, Japan, Jordan, Liberia, Mexico, Nigeria, Oman, Pakistan, Portugal, Soviet Union, Spain, Sweden, Switzerland, Trinidad and Tobago, Tunisia, United Kingdom, United States of America, Zaire) participated in the meeting; one State (Indonesia) and 13 international non-governmental organizations were represented by observers.

The Committee based its discussions on the report of the Working Group on Copyright Problems Arising from the Use of Computers which had met in Geneva in May 1979; most participants approved in principle the results recorded in that report (conclu-

sions, in respect of the use of computers for the storage and retrieval of protected works, that input of a work into a computer memory should be considered as amounting to reproduction, and that the introduction of compulsory licenses in this field would be premature; in respect of the use of computers for the creation of works, certain clarifications as to who should be regarded as the authors of such works). The Committee agreed that there was a need for further in-depth study of questions concerning the output of works from a computer memory, with particular emphasis on generally-recognized copyright exceptions (private use, "fair use," use for educational and research purposes) as well as the needs of developing countries, taking into account the 1971 revisions of the copyright Conventions. The Committee agreed with the conclusion of the Working Group that the owner of copyright works produced by computers can only be a person or persons who produce the creative element, the computer itself being a mere tool, and that in order to be eligible for copyright protection such works must result from a degree of originality and creative effort. As regards the ownership of copyright in such works, there was a diversity of opinion, and it was agreed that, in the present stage of technological development, it would be unwise to adopt a rigid stance.

The Committee decided to entrust to the Secretariats the task of preparing a draft text of preliminary detailed recommendations intended for national legislators on the basis of the conclusions of the Working Group of 1979 and of the Committee's Report, in consultation with the Officers of the Committee. This draft will be sent for comments to the Member States and international organizations concerned; a revised text will be submitted to a second Committee of Governmental Experts in 1982.*

Piracy. The Group of Independent Experts on the Impact of Cable Television in the Sphere of Copyright, referred to above, also gave advice on the planning and preparation of a worldwide forum on combatting the piracy of phonograms, motion pictures and other audiovisual recordings, provided for in the WIPO program for 1981. It was generally agreed that the worldwide forum on piracy should deal with piracy on a commercial scale and should not deal with the question of reproductions made by individuals for personal use, although it was noted that the copies so reproduced may, and in many cases do, constitute the basis of commercial exploitation of unauthorized copies at a later stage. Furthermore, it was agreed that the forum should look for solutions not only in copyright and neighboring rights laws but also in the fields of trademarks, unfair competition, other

* The complete text of the report of the Committee is reproduced in this issue.

branches of industrial property law, and criminal law, and should also deal with the procedural and other practical aspects of the problems. The Director General informed the Group of Experts that he would invite the international non-governmental organizations most directly concerned to meet as a "Program Committee" and to assist WIPO to prepare for the worldwide forum.

The Program Committee met in Paris in June 1980 with the participation of six international non-governmental organizations. At the conclusion of the discussions, it was noted that the worldwide forum could be held in Geneva early in 1981; it would deal with commercial piracy only (but a separate meeting could also be held on the subject of reproductions made for personal use if the interested circles were ready to propose legal and practical solutions); after the presentation of an introductory paper by WIPO, the organizations concerned would have an opportunity to express their views. It was also noted that the organizations concerned would advise WIPO on the subjects to be presented and the participants to be invited, particularly from developing countries.

Maintenance of Information Services in the Fields of Copyright and Neighboring Rights

Objective

The objectives are: to inform promptly, by means of collections and data bases constantly kept up to date, all those interested in copyright and neighboring rights; to inform, by means of monthly periodicals, governments and interested private circles about the developments in the fields of copyright and neighboring rights both on the national and on the international levels; to facilitate, by means of the existing Guide to the Berne Convention, the Copyright Glossary, the Guide to the Rome and Geneva Conventions, and various brochures, the understanding and the application of copyright laws and laws on neighboring rights.

Activities

WIPO continued to keep up to date its *collection of the laws, regulations and treaties dealing with copyright and neighboring rights*.

The *WIPO Guide to the Berne Convention* was published in Portuguese in May 1980.

A *Copyright Law Survey*, containing summaries of national copyright laws, was published in French in February and in English in March 1980.

The periodical *Copyright* continued to be published each month.

The *WIPO Glossary of terms of law on copyright and neighboring rights* was published in three languages (English, French, Spanish) in March 1980. The Glossary contains 265 terms with their equivalents in the other languages together with explanations.

Cooperation With States and Various Institutions in Matters Concerning Copyright and Neighboring Rights

Objective

The objective is to ensure that, through regular contacts between the International Bureau on the one hand and the governments and other international organizations on the other hand, there should be full awareness of what is being done and planned on either side, in order to inspire mutually more and more useful activities, to combine forces wherever possible and to avoid all unnecessary duplication.

Activities

WIPO continued and strengthened its cooperation with Unesco in the fields of copyright and neighboring rights and with the ILO in the field of neighboring rights. Intersecretariat meetings and discussions were held, throughout the period covered by this report, on the joint implementation of those items of the program which, in approving the program, the Governing Bodies had decided should be jointly implemented to the extent that Unesco (and the ILO as appropriate) were authorized to do so. Such items include in particular certain seminars, access to protected works, promotion of the acceptance of the Rome, Geneva and Brussels Conventions, preparations for the entry into force of the Madrid Convention (double taxation), authors' societies, electronic computers, piracy, and the publication "Copyright Laws and Treaties of the World."

WIPO was represented at meetings convened by Unesco of special committees of governmental experts on the status of the artist in February and March 1980, and on the preservation of moving images in March 1980.

WIPO was represented at the General Conference of Unesco held in Belgrade in September and October 1980.

WIPO was represented at a meeting of the Legal Subcommittee of the United Nations Committee on the Peaceful Uses of Outer Space in Geneva in March 1980, and contributed, in April 1980, material for a report by the Secretary-General of the United Nations being prepared for the Second UN Conference on the Exploration and Peaceful Uses of Outer Space, to be held in 1982.

WIPO was also represented at a meeting of a Committee of Experts on Legal Protection in the Media Field, convened by the Council of Europe in Strasbourg in May 1980.

WIPO was represented at the following meetings of international non-governmental organizations having an interest in copyright and related matters: the Executive Committee and the General Assembly of the International Literary and Artistic Association in Paris in January 1980; the Executive Committee, in Vienna in February 1980, and the Congress, in

Geneva in May 1980, of the International Federation of Musicians; the Legal and Legislation Committee of the International Confederation of Societies of Authors and Composers in Budapest in March 1980.

In November 1980 a meeting of international non-governmental organizations concerned with questions of copyright and neighboring rights was convened by the Director General in Geneva; current activities were reviewed, and suggestions were invited and offered for the future programs and medium-term plans of WIPO.

Committee of Governmental Experts on Copyright Problems Arising from the Use of Computers for Access to or the Creation of Works

(Paris, December 15 to 19, 1980)

Report

adopted by the Committee

I. Introduction

A. Participation

1. The Committee of Governmental Experts on Copyright Problems Arising from the Use of Computers for Access to or the Creation of Works met at Unesco Headquarters, Paris, from December 15 to 19, 1980.

2. The said Committee (hereinafter referred to as "the Committee") was convened jointly by the Directors-General of Unesco and WIPO in pursuance of resolution 5/9.2/1/I adopted by the General Conference of Unesco at its twentieth session, the decisions taken by the governing bodies of WIPO at their September 1979, sessions, respectively, and also of the wishes expressed by the Intergovernmental Committee of the Universal Copyright Convention and the Executive Committee of the Berne Union sitting together at their October 1979 sessions.

3. The purpose of the meeting was to analyse further, on the basis of the report of the Working Group on Copyright Problems Arising from the Use of Computers which had met in Geneva in May 1979, the impact of computer storage and retrieval of works protected by copyright and the possible need for express recognition of copyright protection of works created with the help of computers, and to formulate tentative recommendations applicable at national and international levels.

4. Thirty-four States (Algeria, Australia, Austria, Belgium, Canada, Colombia, Cuba, Denmark, Egypt, Finland, France, German Democratic Republic, Germany (Federal Republic of), Holy See, Hungary, Iraq, Italy, Japan, Jordan, Liberia, Mexico, Nigeria, Oman, Pakistan, Portugal, Soviet Union, Spain, Sweden, Switzerland, Trinidad and Tobago, Tunisia, United Kingdom, United States of America, Zaire) participated in the meeting and one State (Indonesia) attended it as observer.

5. Thirteen international non-governmental organizations (European Broadcasting Union, International Association of Sound Archives, International Confederation of Societies of Authors and Composers, International Council of Scientific Unions, International Federation for Documentation, International Federation of Film Producers Associations, International Federation of Photographic Art, International Federation of Translators, International Group of Scientific, Technical and Medical Publishers, International Literary and Artistic Association, International Publishers Association, International Writers Guild, Internationale Gesellschaft für Urheberrecht) attended the meeting as observers.

6. The list of participants is annexed to this Report.

B. Opening of the Meeting

7. On behalf of the Directors-General of Unesco and WIPO, Miss M.-C. Dock, Director, Copyright

Division, Unesco, and Mr. C. Masouyé, Director, Public Information and Copyright Department, WIPO, respectively, welcomed the delegates and observers to the Committee.

C. Election of the Chairman

8. On the proposal of the Delegation of France, seconded by the Delegations of Algeria, Austria, Italy, Japan and Spain, Mr. Henry Olsson, Head of the Delegation of Sweden, was unanimously elected Chairman of the Committee.

D. Adoption of the Rules of Procedure and Election of other Officers

9. The Committee adopted its Rules of Procedure contained in document UNESCO/WIPO/CEGO/I/2 prov. and decided to elect two Vice-Chairmen. Accordingly, on the proposal of the Delegation of Hungary and supported by the Delegations of Italy and Liberia, Dr. E. P. Gavrilov (Soviet Union) and Mr. M. Keplinger (United States of America) were elected Vice-Chairmen. Mr. John A. Dosunmu (Nigeria) was elected Rapporteur.

E. Adoption of the Agenda and Introduction of Documents

10. The provisional agenda of the meeting of the Committee of Governmental Experts as set out in document UNESCO/WIPO/CEGO/I/1 prov. was adopted.

11. The following documents submitted for consideration of the Committee were introduced by the Secretariat:

- (i) UNESCO/WIPO/CEGO/I/3 containing the Report of the Working Group on Copyright Problems Arising from the Use of Computers which met at Geneva in May 1979;
- (ii) UNESCO/WIPO/CEGO/I/4, 4 Add. 1 and 4 Add. 2 which contained the observations received from the Governments of 18 States on the above Report;
- (iii) UNESCO/WIPO/CEGO/I/5 containing observations from intergovernmental and international non-governmental organizations on the Report cited above; and
- (iv) UNESCO/WIPO/CEGO/I/6 which is an analysis of the observations received from States and international organizations on the said Report of the Working Group.

II. General Debate

12. Before proceeding with the discussion of the substance of the Report of the Working Group of 1979 (document UNESCO/WIPO/CEGO/I/3), the Chairman invited the participants to make general

comments on the said Report of the Working Group and any other preliminary statements they might wish to make relating to the subject to be considered by the Committee.

13. The Committee recognized and appreciated the valuable contributions made by Professor Eugen Ulmer and Mr. Jean-Claude Risset on the two questions under consideration by the Committee, respectively, "Problems arising from the use of electronic computers and related facilities for storage and retrieval of copyright works" and "Problems arising from the use of electronic computers for the creation of works."

14. All the participants who spoke on the subject expressed appreciation for the work done by the Working Group in 1979 and in principle approved the conclusions contained in the Report of the Group.

15. Some delegations expressed the opinion that use of computers for storage, retrieval or creation of works does not create a new situation with regard to copyright protection and that existing principles in international Conventions and national legislations may be applied to the problems raised by this new technique. In this connection, they stated that the problem was how to apply those existing principles.

16. Some delegations expressed doubts as to whether international Copyright Conventions and domestic laws adequately cover all situations arising from use or creation of protected works by computer technology.

17. It was pointed out by some delegations that while discussing those problems, both the copyright owners and users of the protected works should be taken into consideration.

18. A number of delegations emphasized the complexity of the problems to be discussed, in particular: terminology; different concepts, for example regarding "compilation" and "collection"; the relationship between abstracts and original works; whether the computerized data bases, independently of the text that can be obtained, are protected by copyright or by other legal means of protection; the relation between protection of the computerized data base thesauri structured for their use and software. In this connection the prevailing idea during the general debate was that computer software is distinct from compilation of stored information and should be dealt with separately. However, four delegations expressed the opinion that there were some links between the protection of software and storage of data and that these questions should be studied together in order to avoid divergent conclusions. Some delegations could not accept the Working Group's view contained in paragraph 19(a) of the

Report that the programme itself may not be considered as a subject matter of copyright. On the contrary, they felt that computer programmes used both for the storage of data and creation of work may also be the proper subject matter of copyright protection and that such protection would be an appropriate measure to encourage creativity in this field. The representative of the Director General of WIPO informed the Committee on the present state of the work undertaken within the framework of the Paris Union for the Protection of Industrial Property as regards the protection of computer software, and in particular on the drafting and publication of model provisions concerning this protection. As far as coordination of the studies is concerned, he felt that it was up to the competent authorities in every country to consider this question on a national level in the light of their own legislation or concepts in that field. The Committee was of the opinion that coordination of the studies on an international level should also take place when problems involving copyright in computer software arise.

19. During the discussion, the attention of the Committee was drawn to the fact that access to original documents is often effected by means of reprography and that, in cases where documents are stored in the computer and output is by means of computer printer, the same technique of reprography can be used to multiply information furnished by the computer.

20. One delegation drew the attention of the Committee to the fact that an effort should be made to equip developing countries to use this new technology by supplying them with adequate technological resources, first and foremost by training specialized staff and technicians. Having noted the information given by the representative of the Director-General of Unesco on the activities in this field implemented by the relevant sectors of that Organization, the Committee underlined the desirability of formulating the rules within its terms of reference, taking into account the specific needs of developing countries.

21. Throughout the general debate the Committee recalled that the essential function of copyright is to stimulate creativity and that consequently this must be adequately recognized with reference to both the use or creation of works by computers.

III. Copyright Problems Arising from the Use of Computers for the Storage and Retrieval of Protected Works

22. The Committee, basing its deliberations on the Report of the Working Group of 1979, decided to examine the different aspects of the problem in the following order:

- (i) what is protected?
- (ii) acts subject to protection,
- (iii) administration of rights.

(i) *What is protected?*

23. As far as the subject matter of protection is concerned the Committee was unanimous in its approval of the conclusions reached by the Working Group that the storage in a computer of the usual particulars of the work (name of author, title, publisher, year of publication, etc. — the index method) as such does not give rise to copyright. One delegation held that this did not apply where the works concerned are included in a collective work, this question being presently before the courts in its country.

24. As regards full text of works, it was agreed that the storage and retrieval should require prior authorization of the author or other copyright owner, in so far as the works concerned are protected under national legislation on copyright.

25. Addressing the question of abstracts the Committee felt that determining the precise criteria for their protection presented considerable difficulty. The Committee was, however, of the opinion that originality and creativity constitute the basic elements justifying copyright protection of abstracts.

26. Accordingly, the Committee discussed three main categories of abstracts, concluding that:

- (a) an abstract which is an adaptation of the original work should be protected;
- (b) an abstract of a pre-existing work (not constituting an adaptation as mentioned in the preceding sub-paragraph) which is original in character and results from the creative efforts of its author should also be protected;
- (c) an abstract which is limited to a mere enumeration of ideas and facts expressed in the original work does not seem to form a proper subject matter for copyright protection.

27. It was recalled that the writing of substantial abstracts requires the authorization of the author of the full text to the extent that these abstracts are characteristic of the work (adaptation or other derivation of the pre-existing work) and are not limited to a mere enumeration of the ideas and facts contained in it.

28. Considering the eligibility for copyright protection of compilations of information stored in an automated data base the general opinion was that such compilations should be considered as protected if they are original and result from creative efforts (collection and structuring of the data) and subject to general rules governing the protection of the relevant category of works provided for in national laws. It

was generally agreed that the protection under copyright should be interpreted within the meaning of national legislations in this field (including exemption of certain kinds of works, such as laws, decrees, court decisions, etc., from copyright protection).

(ii) *Acts subject to protection*

29. It was agreed at the beginning of the discussion that a fundamental concept of copyright is control of utilization of works. In this respect it was recalled that the right of reproduction and the right to distribute usually implies the right to control the destination of the reproductions.

30. Several delegations expressed the opinion that the conversion of a pre-existing work into a form which may be usable directly in a computer did not amount to translation. One delegation was of the opposite opinion. The Committee suggested that this issue should be the object of a further study.

31. Although some delegations expressed doubt on the point, the consensus of the Committee was that input of protected material constitutes reproduction within the meaning given to that term by international Conventions and national legislation (Article 9(1) of the Berne Convention and Article IV^{bis}.1 of the Universal Copyright Convention). Some delegations also stated that a momentary fixation in the internal memory of a computer is not considered reproduction under their domestic laws but, again, it was the consensus of the Committee that the fixation of protected materials in the internal memory of the computer should be considered as amounting to reproduction.

32. In regard to output in general the Committee agreed that, when the output takes place in the form of hard copy printout, it should be considered as reproduction subject to the usual categories of works exempted from copyright protection under national legislation. In this context the question of the application of the notion of publication as provided for by Article VI of the Universal Copyright Convention and Article 3(3) of the Berne Convention was raised. Some delegations were of the opinion that the notion of publication concerns the question of determination of the country of origin of a work and therefore has no application to the question under discussion, except for the countries where the protection is subject to certain formalities. Consequently, the Committee was of the opinion that the question of publication in connection with output should be considered further by the Committee at future meetings.

33. Also in relation to output, the question of projection of stored material in the form of visual images on a screen or cathode ray tube was discussed and diverse views were expressed. Some experts were of

the opinion that such projections might not be considered as a public performance within the meaning of Articles 11 and 14 of the Berne Convention taking into account the wording of these articles and Article IV^{bis} of the Universal Copyright Convention. Some delegates compared such display to the reading of a book in a library and argued that such display did not involve copyright infringement; others argued that such projection constituted an infringement if undertaken without authorization either as a reproduction or by reason of the fact that it falls within the right to control the destination of a work. One delegation stated that the display on a screen would be covered by the right of reproduction (whether or not it constitutes a public performance). In this regard it was also stated that questions relating to output can be settled by agreements concluded between the copyright owners and users prior to input. One delegation pointed out that there could be reasons for considering the output of protected works as one concept, irrespective of all the technical means for output. The Committee generally agreed in conclusion that projection on screen or tube can constitute one form of use of protected works normally requiring the authorization of the copyright owner, subject to the exceptions mentioned in the next paragraph, though some delegations expressed their doubts if such projection would invariably constitute a use of a work.

34. At the end of the discussion on this item the Committee agreed that there was a need for further in-depth study of the questions surrounding output with particular emphasis on generally-recognized copyright exceptions (private use, "fair use," use for educational and research purposes) as well as the needs of developing countries, taking into account in this respect the Paris Act of the Berne Convention and the Universal Copyright Convention as revised in 1971.

35. The moral rights of authors were also taken into consideration by the Committee which expressed its concern about the multiplication of uses made possible by computers with the attendant dangers of such infringements as omission of the author's name, distortion or mutilation of works due to technical faults. Moral rights of authors were also considered as an argument in favour of authorization at the input stage. It was recalled that moral rights were provided for in Article 6^{bis} of the Berne Convention but in any event they were considered as essentially a matter for national legislation.

(iii) *Administration of rights*

36. A large majority of the delegations were of the opinion that authorization for use of protected works for storage in and retrieval from computers should be

based upon contractual agreements or other negotiated licences and that the introduction of compulsory or legal licences in this field would be premature at this stage. Granting of such freely negotiated licences may be arranged either on an individual basis or through such mechanisms as collective administration of rights and clearing houses. Concern was expressed that introduction of compulsory licences would seriously prejudice the right of the authors to control the use of their work. It was also pointed out that the international Conventions envisage compulsory licences in special circumstances only and not in general.

37. On the other hand, some delegations were strongly in favour of a system of compulsory licences or even legal licences in this field. In their opinion the easy dissemination of works by computer systems, specially by mini computers, in which both the author and the society at large are mutually interested, cannot be achieved unless the system of compulsory licences is introduced because of the difficulty for users of computers to obtain negotiated licences either on an individual or collective basis. Establishment of compulsory or legal licences was seen by some as a means to both ensure remuneration to the copyright owner and stimulate creative activities of the authors.

38. One delegation thought that it was premature to take a decision at this stage on the question of administration of rights and stressed the necessity to take a long-term view of the evolution of this technology.

39. One delegation stated, and their view was accepted by the Committee, that, within the context of a rapidly developing technology and increasing use of computers worldwide, it was highly desirable that recommendations be made as soon as possible. They underlined the danger that, pending formulation of recommendations, there would be widespread unauthorized computer use of protected works. Taking this situation into account, it was therefore suggested by the Committee that concerned international non-governmental organizations should take the matter under consideration and strengthen their efforts to safeguard authors' rights.

IV. Use of Computers for Creation of Works

40. The Committee was in full agreement with the conclusion of the Working Group that in case of works produced by computers the owner of copyright in such works can only be a person or persons who produce the creative element, the computer itself being a mere tool for achieving the results desired by the human brain (like a camera or typewriter).

41. It was generally agreed that in order to be eligible for copyright protection the work produced with the help of computers must satisfy the requirements of copyrightability (a degree of originality and creative effort). But the more complex question which arises concerns the ownership of copyright in such works. On this question diversity of opinion prevailed in the Committee.

42. Some delegations fully agreed to the conclusions reached by the Working Group as reflected in its Report. It was underlined that the conclusions in respect of musical compositions, as reproduced below, would also apply, *mutatis mutandis*, to other categories of works created with the help of computers (literary compositions, works of applied arts, etc.) and determination of authorship or co-authorship in each particular case would depend on whether or not a corresponding contribution was an original and creative one.

Automatic musical compositions

- (a) If the programme is capable of producing one work only, then the composer who has given instructions or the composer and the programmer whose contribution is a creative one should be considered the author or co-authors of the resulting work as the case may be.
- (b) If the programme is capable of producing different results and the composer has himself made a choice, he should be regarded as the author; if he has asked a programmer or another person to choose the final version, then this programmer or such other person and the composer himself should be normally regarded as co-authors as soon as they make a creative contribution.
- (c) If the programme is capable of producing different results but the final choice is made by a third party, the question of authorship remains doubtful. Opinion was expressed that in this case the choice by itself cannot be regarded as a creative contribution.

Computer-assisted musical composition

In this case the composer asks the machine to explore all the possible consequences of a rule or all ramifications of a variable pattern; that did not seem to bring into play any substantially new element, as the score is not worked out automatically without action by the composer.

43. According to one delegation the question of ownership of copyright is complex because of the many possibilities for creating works by means of computer. Who selects the data? Who makes the programme? Who gives instructions to create the new works? These are among the questions that must be asked.

44. A number of delegations were not in favour of recognizing the programmer as a co-author automatically in view of the fact that he provides only technical assistance in utilizing the computer.

45. Some delegations were inclined to attribute copyright ownership to the employer of the persons who are employed to use the computer for creation of works. One delegation felt that, when works are produced with the help of computers by persons under employment contract, copyright should belong to those persons but the employer may use the results unless otherwise stipulated in the employment contract. It was agreed that the matter of attribution of copyright ownership in this particular case should be left to national legislation in view of the fact that creation of works with the help of computers did not change the status of persons under employment contract and that this question arises in a broader context than the mere computer field.

46. The Committee was of the opinion that, in the midst of great technological development, it would be unwise to adopt a rigid stance in examining the overall situations.

V. Conclusion

47. At the end of the deliberations the Committee came to the conclusion that at the present stage it was not possible for it to formulate preliminary detailed recommendations intended for national legislators. In view of this the Committee decided to entrust the task of preparing a draft text to the Secretariat of Unesco and the International Bureau of WIPO on the basis of the conclusions of the Working Group of 1979 and of this Report and in consultation with the Chairman, the two Vice-Chairmen and the Rapporteur of the Committee. This draft will be sent for comments to the Member States and international organizations concerned. On the basis of the comments received, the Secretariats will revise their preliminary text and submit it for the consideration of the Second Committee of Governmental Experts foreseen in 1982 in order to draw up recommendations.

48. It was also noted that the outcome of the work of this Committee will be brought to the attention of the Intergovernmental Copyright Committee and the Executive Committee of the Berne Union sitting together at their sessions to be held at New Delhi from November 30 to December 7, 1981.

VI. Adoption of the Report

49. The Committee unanimously adopted this Report under the chairmanship of its Chairman and then of Mr. M. Keplinger, one of the Vice-Chairmen, as the Chairman had to leave shortly before the end of the meeting.

50. After the usual thanks the Chairman of the meeting declared the closure of the Committee.

List of Participants

I. Member States

Algeria: S. Abada. **Australia:** R. Bell. **Austria:** R. Dittrich. **Belgium:** F. van Isacker; J.-D. Rycx d'Huisnacht. **Canada:** J. Keon. **Colombia:** P. Alejo Gomez Vila. **Cuba:** N. Valdes Duarte. **Denmark:** J. Nørup-Nielsen. **Egypt:** A. Gamal-El-Dine; El-Cherbini Marei. **Finland:** J. Lienes. **France:** A. Kerever; A. Bourdalé-Dufau; J. David; A. Gendron; F. Briquet; A.-F. Pouligo; L. Trebucq. **German Democratic Republic:** B. Haid. **Germany (Federal Republic of):** M. Möller. **Holy See:** L. Rousseau. **Hungary:** G. Pálos. **Iraq:** K. A. Al-Ogaidi. **Italy:** G. Aversa; M. Fabiani. **Japan:** Y. Oyama. **Jordan:** I. Karrain. **Liberia:** R. Roberts; J. G. Mentoe. **Mexico:** J. Diez de Urduvia Fernández; V. Blanco Labra. **Nigeria:** J. Adeunji Dosunmu. **Oman:** S. Hilal. **Pakistan:** A. Husain. **Portugal:** A. M. Pereira. **Soviet Union:** E. P. Gavrilov. **Spain:** Milagros del Corral Beltrán. **Sweden:** A. H. Olsson; E. Tersmeden. **Switzerland:** J.-L. Marro; R. Grossenbacher. **Trinidad and Tobago:** V. Lasse. **Tunisia:** R. Dekhili. **United Kingdom:** P. Ferdinando. **United States of America:** M. Keplinger. **Zaire:** M. Boguo; M. M'Bokolo.

II. Observers

(a) State

Indonesia: A. M. Zaini.

(b) International Non-Governmental Organizations

European Broadcasting Union (EBU): M. Cazé. **International Association of Sound Archives (IASA):** M.-F. Calas. **International Confederation of Societies of Authors and Composers (CISAC):** J.-A. Ziegler; M. Astruc; P. Pactet; M. Pickering. **International Council of Scientific Unions (ICSU):** M. Orfus. **International Federation for Documentation (FID):** H. Arntz. **International Federation of Film Producers Associations (FIAPF):** A. Brisson. **International Federation of Photographic Art (FIAP):** R. Bourigeaud. **International Federation of Translators (FIT):** J. Goetschalckx. **International Group of Scientific, Technical and Medical Publishers (STM):** P. Nijhoff Asser. **International Literary and Artistic Association (ALAI):** R. Castelain. **International Publishers Association (IPA):** P. Nijhoff Asser. **International Writers Guild (IWG):** E. Le Bris. **Internationale Gesellschaft für Urheberrecht (INTERGU):** G. Halla.

III. Secretariat of the Committee

United Nations Educational, Scientific and Cultural Organization (UNESCO)

M.-C. Dock (*Director, Copyright Division*); A. M. N. Alam (*Lawyer, Copyright Division*); S. Wagner (*Program Specialist,*

Copyright Division); E. Guerassimov (*Lawyer, Copyright Division*).

World Intellectual Property Organization (WIPO)

C. Masouyé (*Director, Public Information and Copyright Department*).

National Legislation

UNITED KINGDOM

I

The Copyright (Hong Kong) (Amendment) Order 1979

(No. 910, of July 26, 1979)

1.—(1) This Order may be cited as the Copyright (Hong Kong) (Amendment) Order 1979, and shall be construed as one with the Copyright (Hong Kong) Order 1972¹ (hereinafter referred to as “the principal Order”).

(2) The principal Order and this Order may be cited together as the Copyright (Hong Kong) Orders 1972 and 1979.

(3) This Order shall come into operation on 24th August 1979.

2. Schedule 1 to the principal Order is amended:

(a) in Part I by the deletion of all the words following “All the provisions of the Act” and the substitution of the words “, as amended by the Dramatic and Musical Performers’ Protection Act 1958, the Films Act 1960, the Design Copyright Act 1968 and the Copyright (Amendment) Act 1971, except sections 28, 32, 34, 35, 42 and 55 and Schedule 5.”;

(b) in paragraph 3 of Part II (which paragraph specifies modifications in the extension of certain sections to Hong Kong): —

(i) in the entry in the table thereto relating to section 47, in the second column (Modification), by the deletion of the

words “in subsection (4), “or rules” shall be omitted”;

(ii) in the entry in the said table relating to Schedule 7, by the deletion of all the words in the second column and the substitution of the following—

“Paragraphs 26, 40 and 41 shall be omitted.”;

(iii) by the insertion in the said table in the appropriate place (having regard to numerical order) of the entries in the following table: —

Provisions	Modification
<i>Section 23</i>	<p>For subsection (2) there shall be substituted the following:—</p> <p>“(2) The tribunal shall consist of a chairman who shall be a person qualified for appointment as a District Judge under section 5 of the District Court Ordinance (Chapter 336), and of not less than 2 nor more than 4 other members, all of whom shall be appointed from time to time by the Governor.”;</p> <p>for subsections (5) and (6) there shall be substituted the following:—</p> <p>“(5) There shall be a clerk to the tribunal who shall be appointed by the Governor.</p>

¹ See *Copyright*, 1973, p. 91.

(6) The remuneration of the chairman and other members of the tribunal and of the clerk to the tribunal shall be determined by the Governor and shall be payable out of the general revenue of the Colony.”;

subsection (7) shall be omitted.

Section 24 For subsection (3)(c) there shall be substituted the following:—

“(c) in relation to such licences as are mentioned in paragraph (c) of the last preceding subsection, means a licensee under the Television Ordinance (Chapter 52):”.

Section 30 For subsection (6) there shall be substituted the following:—

“(6) In this section “the court” means the Court of Appeal of Hong Kong.”.

Schedule 4 In paragraph 1(2), for “Board of Trade, or, in the case of the chairman of the tribunal, to the Lord Chancellor,” there shall be substituted “Governor”;

in paragraph 1(3), for “Board of Trade, or, in the case of the chairman of the tribunal, the Lord Chancellor,” there shall be substituted “Governor”;

in paragraph 2, for “Board of Trade, or, in the case of the chairman of the tribunal, the Lord Chancellor,” there shall be substituted “Governor”;

in paragraph 6(1) for “Lord Chancellor” there shall be substituted “Chief Justice”, and “, subject to the approval of the Treasury,” shall be omitted;

for paragraph 6(2) there shall be substituted the following:—

“(2) Any such rules may apply in relation to the tribunal any of the provisions of the Arbitration Ordinance (Chapter 341).”.

EXPLANATORY NOTE

(This Note is not part of the Order)

This Order amends the Copyright (Hong Kong) Order 1972 (by which, with certain modifications and exceptions, the provisions of the Copyright Act 1956 were extended to Hong Kong) so as to extend to Hong Kong, again with certain modifications and exceptions, those provisions of the Act relating to the establishment and jurisdiction of the Performing Right Tribunal.

The effect of the amendments is to establish a Performing Right Tribunal in and for Hong Kong, with a jurisdiction broadly similar to that of the United Kingdom tribunal. Members of the Hong Kong tribunal will be appointed by the Governor.

II

The Copyright (International Conventions) (Amendment) Order 1980

(No. 1723, of November 11, 1980)

1. This Order may be cited as the Copyright (International Conventions) (Amendment) Order 1980, and shall come into operation on 10th December 1980.

2. The Copyright (International Conventions) Order 1979¹ shall be amended by the inclusion in Schedule 1 (which names the countries of the Berne Copyright Union) of a reference to the Republic of Guinea.

3. This Order shall extend to all the countries mentioned in the Schedule hereto.

SCHEDULE

Countries to which this Order extends

Belize	Gibraltar
Bermuda	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 1979. It takes account of the accession of the Republic of Guinea to the Berne Copyright Convention.

The Order extends to dependent countries of the Commonwealth to which the 1979 Order extends.

¹ See *Copyright*, 1979, p. 313.

Correspondence

Letter from Austria

Robert DITTRICH *

International Activities

International Literary and Artistic Association (ALAI)

Executive Committee

(Paris, January 23, 1981)

The meeting of the Executive Committee of ALAI, held in Paris on January 23, 1981, assumed a special importance in the history of this international non-governmental organization since one of the items on the agenda was the appointment of the officers under the new statutes adopted by the General Assembly.*

All the members of the Executive Committee, constituted at its meeting on October 24, 1980, were present or represented. At the close of the discussions, the following officers were unanimously elected for a five-year term:

President: Georges Koumantos (Greece)

Vice-Presidents: Herman Cohen Jehoram (Netherlands), Michael Freegard (United Kingdom), Seve Ljungman (Sweden), Dietrich Reimer (Federal Republic of Germany)

Treasurer: Denise Gaudel (France)

Perpetual Secretary: André Françon (France).

In addition, the outgoing President, Professor Henri Desbois, who had not stood for a further term of office, was elected by acclamation President of Honor of ALAI.

The Executive Committee further discussed various matters of an internal nature, including the 1981 draft budget, and the drawing up of a five-year activity program.

Finally, it noted that a study session was to be held, at the invitation of the Netherlands group, in Amsterdam in 1982 on the subject of cable distribution of television broadcasts.

WIPO was represented at the meeting of the Executive Committee of ALAI by Mr. Claude Masouyé, Director, Public Information and Copyright Department.

* See *Copyright*, 1980, p. 175.

Book Reviews

Problemy sovetskogo avtorskogo prava [Problems of Soviet copyright]. One volume of 209 pages. VAAP, Moscow, 1979.

This publication contains the reports presented at the Conference on the Problems of Soviet Copyright, which was organized at Zvenigorod in June 1978 by the Institute of State and Law of the USSR Academy of Sciences and the Copyright Agency of the USSR (VAAP).

The importance of such a meeting became apparent after the accession of the Soviet Union to the Universal Copyright Convention and the conclusion of a number of bilateral agreements on copyright with Bulgaria, Czechoslo-

vakia, the German Democratic Republic, Hungary and Poland. According to the Chairman of the Board of VAAP, who wrote the preface to this work, the Conference was designed and was in fact held to signify the importance of combining theory and practice.

The volume consists of some thirty contributions written by Soviet copyright specialists. It includes articles by M.M. Boguslavsky, V.A. Dozortsev, E.P. Gavrilov, Y.G. Matveev and Y.S. Rudakov, who deal with general trends in the development of Soviet copyright law and with certain aspects of the Soviet Union's international copyright relations.

M.S.

Calendar

WIPO Meetings

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

1981

- April 6 to 10 (Geneva) — Permanent Committee for Patent Information (PCPI) — Working Group on General Information**
- May 25 to 29 (Geneva) — Berne Union and Universal Copyright Convention — Group of Independent Experts on the Impact of Cable Television in the Sphere of Copyright** (convened jointly with Unesco)
- June 15 to 26 (Geneva) — Permanent Committee for Patent Information (PCPI) — Working Group on Search Information**
- June 29 to July 3 (Geneva) — International Patent Cooperation (PCT) Union — Assembly (Extraordinary Session)**
- September 7 to 10 (Geneva) — Permanent Committee for Patent Information (PCPI) — Working Group on Patent Information for Developing Countries**
- September 10 to 18 (Geneva) — Permanent Committee for Patent Information (PCPI) — Working Group on Planning**
- September 24 and 25 (Nairobi) — Treaty on the Protection of the Olympic Symbol — Diplomatic Conference**
- September 28 to October 24 (Nairobi) — Revision of the Paris Convention — Diplomatic Conference**
- November 9 to 13 (Geneva) — Permanent Committee for Patent Information (PCPI) and PCT Committee for Technical Cooperation**
- November 11 to 13 (Geneva) — Rome Convention — Intergovernmental Committee** (convened jointly with ILO and Unesco)
- November 16 to 24 (Geneva) — Governing Bodies (WIPO General Assembly, Conference and Coordination Committee, Assemblies of the Paris, Madrid, Hague, Nice, Lisbon, Locarno, IPC, PCT, Budapest, TRT 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)**
- November 30 to December 7 (New Delhi) — Berne Union — Executive Committee — Extraordinary Session** (sitting together, for the discussion of certain items, with the Intergovernmental Committee of the Universal Copyright Convention)
- December 7 to 11 (Geneva) — International Patent Classification (IPC) — Committee of Experts**

UPOV Meetings

1981

May 6 (Geneva) — Consultative Committee

May 6 to 8 (Geneva) — Administrative and Legal Committee

June 2 to 4 (Wädenswil) — Technical Working Party for Vegetables

June 23 to 25 (Edinburgh) — Technical Working Party for Agricultural Crops

September 22 to 25 (Wageningen) — Technical Working Party for Fruit Crops

October 6 to 8 (Antibes) — Technical Working Party for Ornamental Plants

October 13 (Geneva) — Consultative Committee

October 14 to 16 (Geneva) — Council

November 9 to 11 (Geneva) — Technical Committee

November 11 to 13 (Geneva) — Administrative and Legal Committee

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

Non-Governmental Organizations

1981

Interamerican Copyright Institute (IIDA)

Second Continental Conference on Copyright — April 6 to 10 (Buenos Aires)

International Confederation of Societies of Authors and Composers (CISAC)

Legal and Legislation Committee — April 27 to 30 (Sydney)

International Federation of Translators (FIT)

Congress — May 6 to 13 (Warsaw)

International Federation of Producers of Phonograms and Videograms (IFPI)

Council — June 2 and 3 (Copenhagen)

Internationale Gesellschaft für Urheberrecht (INTERGU)

Congress — September 21 to 25 (Toronto)

International Federation of Actors (FIA)

Executive Committee — September 23 to 25 (Copenhagen)

1982

International Literary and Artistic Association (ALAI)

Study Session — April 26 to 30 (Amsterdam)