

Published monthly
Annual subscription:
fr.s. 115.—
Each monthly issue:
fr.s. 12.—

Copyright

18th year - No. 10
October 1982

Monthly Review of the
World Intellectual Property Organization (WIPO)

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ISSN 0010-8626

World Intellectual Property Organization

Committee of Governmental Experts on the Intellectual Property Aspects of the Protection of Expressions of Folklore

(Geneva, June 28 to July 2, 1982)

Report

submitted by Mrs. S.I. Miller (Jamaica), Rapporteur-General,
and adopted by the Committee

I. Introduction

1. In pursuance of Resolution 5/01 adopted by the General Conference of Unesco at its twenty-first session (Belgrade, September-October 1980) and the decision taken by the Governing Bodies of WIPO at their November 1981 sessions, the Directors General of Unesco and WIPO convened a Committee of Governmental Experts on the Intellectual Property Aspects of the Protection of Expressions of Folklore (hereinafter referred to as "the Committee") which met at WIPO headquarters in Geneva from June 28 to July 2, 1982.

2. The purpose of the meeting was to draw up model provisions for national laws on the protection of expressions of folklore according to principles similar to those of intellectual property law, taking into account the results of the discussions of the Working Group on the Intellectual Property Aspects of Folklore Protection, which met under the joint auspices of Unesco and WIPO at the headquarters of WIPO in Geneva from January 7 to 9, 1980, and at the headquarters of Unesco in Paris from February 9 to 13, 1981. The Committee had to consider also suggestions put forward at the regional level and to study the intellectual property aspects of folklore protection at the international level.

3. Experts from 33 States (Algeria, Australia, Belgium, Bolivia, Chile, Colombia, Congo, Finland, France, German Democratic Republic, Holy See, Honduras, Hungary, India, Indonesia, Italy, Jamaica, Japan, Madagascar, Mexico, Nicaragua, Norway, Philippines, Romania, Rwanda, Senegal, Spain, Sweden, Tunisia, Turkey, Union of Soviet Socialist Republics, United States of America, Venezuela) participated in the meeting. Fifteen international non-governmental organizations, namely, European

Broadcasting Union (EBU), European Society of Culture (SEC), International Association of South-East European Studies (AIESEE), International Commission of Jurists (ICJ), International Confederation of Professional and Intellectual Workers (CITI), International Confederation of Societies of Authors and Composers (CISAC), International Copyright Society (INTERGU), International Federation of Actors (FIA), International Federation of Musicians (FIM), International Federation of Producers of Phonograms and Videograms (IFPI), International Federation of Translators (FIT), International Literary and Artistic Association (ALAI), International Publishers Association (IPA), World Confederation of Labour (WCL), World Crafts Council (WCC) delegated observers. The list of participants appears in Annex II to this report.

II. Opening of the Meeting

4. On behalf of the Directors General of WIPO and Unesco, Mr. C. Masouyé, Director, Public Information and Copyright Department, WIPO, and Miss M.-C. Dock, Director, Copyright Division, Unesco, respectively, welcomed the delegates and observers to the Committee.

III. Election of the Chairman and Other Officers

5. On the proposal of the delegation of Algeria, seconded by the delegation of France, Mr. M. Ficsor, Head of the delegation of Hungary, Mr. D. Ganga-Bidie, Head of the delegation of Congo, Mr. L.O. Honko, Head of the delegation of Finland, Mrs. L. Puri, Head of the delegation of India and Mrs. S. Miller, Head of the delegation of Jamaica, were unanimously elected Chairman, Vice-Chairmen and Rapporteur of the Committee, respectively.

IV. Adoption of the Rules of Procedure

6. The Committee adopted its Rules of Procedure as contained in document UNESCO/WIPO/FOLK/CGE/I/2 Prov. and as completed in its Rule 3, the number of Vice-Chairmen having been established at three before the election referred to in the preceding paragraph.

V. Adoption of the Agenda

7. The provisional agenda of the meeting of the Committee as set out in document UNESCO/WIPO/FOLK/CGE/I/1 Prov. was adopted.

VI. Present Status of the Work in Progress With Regard to the Protection of Folklore at Regional and International Levels

8. The representatives of the two Secretariats informed the Committee of the present status of work in progress in regard to the protection of folklore at regional and international levels, as follows:

(i) The representative of the Director General of WIPO referred to the Committee of Experts on Means of Implementation of Model Provisions for National Laws on Intellectual Property Aspects of the Protection of Expressions of Folklore and Traditional Popular Culture in the Latin American and Caribbean Countries, convened jointly by Unesco and WIPO at Bogotá from October 14 to 16, 1981, which agreed in particular that (a) special emphasis should be laid on the protection of folklore by way of some kind of international instrument, in addition to the adoption of a model national law; (b) the Preamble should be optional, but certain of its terms should be redefined to make them more precise; and that (c) manifestations of folklore did not correspond to the geographical frontiers of nations, and the Secretariats should take that fact into account. He also informed the Committee that a similar regional meeting for the Asian and Pacific countries will be held, at the kind invitation of the Government of India, in New Delhi, from January 31 to February 2, 1983, under the joint auspices of the two Organizations, and that another is scheduled for the African region at a date to be fixed later.

(ii) The representative of the Director-General of Unesco gave a succinct résumé of the various activities carried out by Unesco since the Government of Bolivia submitted a memorandum to the Director-General of Unesco, in April 1973, requesting that the Organization examine the opportunity of drafting an international instrument on the protection of folklore in the form of a protocol to be attached to the Universal Copyright Convention. In the process she referred to the decisions of the Intergovernmental Committee of the Universal Copyright Convention (December 1973), that Committee and the Executive Committee of the Berne Union (December 1975) and

the Committee of Experts on the Legal Protection of Folklore convened by Unesco (Tunis, July 1977). Taking into account the results of these Committees the two Copyright Committees recognized at their 1977 sessions that the problem has many aspects which are interdependent and decided that studies on this subject should be pursued by Unesco Secretariat on an interdisciplinary basis within the framework of an overall approach, but that WIPO should be associated in the examination of any copyright aspects involved. Unesco carried out a study in 1979 and convened the Committee of Governmental Experts on the Safeguarding of Folklore (Paris, February 22 to 26, 1982) which adopted a number of recommendations to the Member States and to Unesco concerning identification of folklore, conservation and analysis of folklore and its preservation, enhancement and reactivation, and further recommended that Unesco and WIPO continue their studies on the intellectual property aspects of folklore. She also informed the Committee that by Resolution 5/03, adopted at its twenty-first session, the General Conference of Unesco considered it desirable that measures designed to safeguard the existence and development of folklore and to protect it against the risk of distortion should be laid down in international regulations, and invited the Director-General to prepare a preliminary study on the technical and legal aspects of this question, in the light of the findings of the Committees of Governmental Experts scheduled for 1981 (i.e. the one held in February 1982) and 1982 (the present Committee), with a view to submitting it to the General Conference at its twenty-second session.

9. The delegation of Chile informed the Committee of the proposal submitted by its Government regarding the use of expressions of folklore at the international level, to (1) differentiate precisely between the functional use of folklore by its habitual users and the utilization of folklore, for various purposes, by those who are not its habitual users; (2) distinguish, therefore, between the actual vehicles of folklore culture such as the performers of any of its expressions who publicly disseminate them with or without profit-making aims, and those who utilize folklore culture for commercial purposes, by means of buying and selling, unlawful appropriation, etc.; (3) take greater account of the problems arising from the statutory protection of certain expressions of folklore, such as beliefs, certain types of narrative and food and drink, whose situation is quite different from that of handicrafts.

VII. Consideration of Model Provisions for National Laws on the Protection of Expressions of Folklore

10. The discussions were based on the Model Provisions for National Laws on the Protection of Ex-

pressions of Folklore, adopted by the Working Group on the Intellectual Property Aspects of Folklore Protection during its second meeting at Paris in February 1981 (document UNESCO/WIPO/FOLK/CGE/I/3); the report of the said meeting of the Working Group (reproduced in annex to the document mentioned before); and the Commentary on the Model Provisions for National Laws on the Protection of Expressions of Folklore, prepared by the Secretariats (document UNESCO/WIPO/FOLK/CGE/I/4).

General Discussion

11. Several experts expressed appreciation for the work done by the preceding Working Group in preparation of the Model Provisions submitted to the Committee and congratulated the Secretariats for the high quality of the detailed commentary thereon, which covers in a comprehensive manner all aspects involved and offers an appropriate basis for achieving final texts on the subject. It was felt that the Model Provisions for national legislations represent a realistic approach also to international protection of expressions of folklore.

12. The experts agreed that

- (i) the Model Provisions should more explicitly reflect the fact that protection of expressions of folklore against prejudicial utilization serves, ultimately, the purpose of further development and better dissemination of such expressions; this should be mentioned also in the Preamble;
- (ii) the Model Provisions should leave enough room to national legislations for adopting a system of protection best corresponding to the conditions prevailing in a given country and, instead of detailed Model Provisions, the various possibilities of regulation, and guidance to draw up relevant national legislation, should be elaborated in the commentary;
- (iii) the role of communities, developing and maintaining the expressions of folklore, in controlling the use thereof, should be dealt with in the Model Provisions in greater detail;
- (iv) the maintenance of an appropriate balance between the protection against abuses of expressions of folklore, on the one hand, and the freedom of legitimate development thereof within the community concerned as well as the creation of works inspired by folklore, on the other, should be recognized as a basic purpose to be served by the Model Provisions;
- (v) the relation of the proposed protection *sui generis* to other kinds of protection of intellectual creativity should be dealt with in the commentary in more detail, with special regard to the protection by means of neighboring rights;
- (vi) the Model Provisions should be in harmony with relevant findings of the Committee of

Governmental Experts on the Safeguarding of Folklore, which met in Paris in February 1982, and the special subject of the Model Provisions should be reflected also in the title thereof, avoiding confusion with other documents which may be established concerning various aspects of the protection of folklore.

Discussion Section by Section

13. The general discussion was followed by elaborate examination, section by section, of the Model Provisions and the relevant commentary, submitted to the Committee. The experts made a number of observations as well as proposals amending the existing text. In conclusion the Committee adopted the Model Provisions for National Laws on the Protection of Expressions of Folklore Against Illicit Exploitation and Other Prejudicial Actions as appended to this Report (Annex I). It should be mentioned that a few delegations stated that not all of the clauses of the Model Provisions met with their entire agreement.

14. As regards the Model Provisions adopted by the Committee, a number of observations and suggestions were made by one or more experts, to be reflected in the completed version of the Commentary on these Model Provisions to be prepared by the Secretariats. These observations and suggestions are summarized as follows.

Section 2: Protected Expressions of Folklore

The new approach, adopted by the Committee, to define the subject matter of the Model Provisions by focussing on the notion of expressions of folklore as productions consisting of characteristic elements of the traditional artistic heritage, without giving a separate definition of folklore as such, should be explained in the Commentary with special regard to (i) the meaning of the adjective "artistic" in the given context; (ii) the possible role of individuals in developing expressions of folklore; (iii) the relation between the notions "cultural heritage of the nation" and "traditional artistic heritage developed and maintained by a community." It should be explained why, among others, folkloric sites are not covered by the notion of expressions of folklore, and how far certain events, such as carnivals, may constitute expressions of folklore.

Section 3: Utilizations Subject to Authorization

More detailed explanation should be given of (i) what is and what is not covered by the definition of the acts subject to authorization, with special regard to the use of expressions of folklore for purposes of archives or research and the case where tangible expressions of folklore are reproduced within the community and sold with a gainful intent; (ii) the differ-

ence between “traditional” and “customary” context of utilization; (iii) the meaning of “publication” for the purposes of the Model Provisions; and (iv) the meaning of “reproduction” which also covers recording of sounds, images or both. The Commentary should provide information on why it was felt necessary to mention, besides the competent authority, alternatively also the community concerned, as an entity entitled to authorize uses subject to authorization. The differences between the legal nature of the decision of a competent authority and the authorization given by the community, which developed or maintained the expression of folklore, should be explained. It should be also explained how a community’s secret expressions of folklore may be protected by the requirement of authorization of its use. Differences between a system of previous authorization of certain utilizations and that of a mere posterior control should be made clear.

Section 4: Exceptions

Detailed interpretation of the provision allowing free use of expressions of folklore for the creation of an author’s original work should be provided. Mention should be made of the possibility of providing for the applicability also of other limitations adopted under the copyright law of the country in so far as they are consistent with the special system of protecting expressions of folklore.

Section 5: Acknowledgement of Source

Explanations should be given concerning (i) cases where an individual developed the expressions of folklore used, with special regard to the conditions under which he may enjoy copyright, (ii) indication of source in cases of expressions originating from a community other than the community which adopted it and from which it was derived by the user.

Section 6: Offenses

It should be explained in detail what kinds of acts are covered by each of the offenses defined in general terms. It should be explained e. g. that the offense of using an expression without authorization also covers uses going beyond the limits or being contrary to the conditions of an authorization obtained. The Commentary should also enumerate possible punishments and their application, stressing, however, that the sanctions should be provided for in accordance with the penal law of each country concerned. Since the Committee decided not to provide for any rule of prescription, the Commentary should explain that in this context the general provisions of the penal law of each country concerned apply.

Section 7: Seizure or Other Actions

In order to avoid misunderstandings, it should be made clear that the mention of “any receipts of the

person violating” the law covers receipts resulting from any kind of offenses, i. e. also from unlawful performances. Since the Model Provisions do not provide for seizure of implements used for perpetrating any violation of the law, the Commentary should explain, in which cases, under which conditions and what kind of such implements may be subject to seizure, considering also relevant copyright law provisions and practice.

Section 9: Authorities

It should be explained that “authority” is to be understood as any person or body entitled to authorize intended uses or to deny such an authorization in conformity with the relevant provisions of the law. Representative body of the community concerned, ministry of culture or art, any public institution for matters related to folklore, authors’ society or similar institution should be explicitly mentioned as possible authorities. It should be made clear that the term “the competent authority” does not preclude the possibility of designating more than one authority, corresponding to the types of expressions of folklore or kinds of their use concerned. Explanation should be given as regards the difference between the cases where a representative body of the community is designated competent authority, and where the community as such authorizes uses of its expressions of folklore.

Section 10: Authorization

The Secretariats should elaborate in the Commentary possible conditions and modalities of granting authorization. The possibility of granting both individual and blanket authorizations should be considered. The question, whether non-voluntary licensing systems can be introduced, should also be dealt with, with special regard to certain kinds of uses by broadcasting organizations and cable television.

Section 12: Relation to Other Forms of Protection

Besides informing on cases where copyright protection also may apply to the protection of expressions of folklore, the field of indirect protection by means of protecting performers and other beneficiaries of neighboring rights using expressions of folklore should be reviewed. Attention should be drawn to the importance of considering expressions of folklore on an equal footing with authors’ works of literature and art when protecting the rights of performers, producers of phonograms and broadcasting organizations.

Section 14: Protection of Expressions of Folklore of Foreign Countries

It should be made clear that international protection of expressions of folklore primarily serves the purpose of protecting expressions of folklore against illicit use by foreigners also in cases where the illicit

use takes place abroad. Mention should be made also of the possibility of developing existing cultural or other appropriate agreements so as to cover also reciprocal protection of expressions of folklore. It should be stressed that international measures are indispensable means of extending the protection of expressions of folklore beyond the borders of a country.

Transitional Provisions

15. The Committee noted that each country which adopts these Model Provisions would need to enact transitional provisions, in particular concerning the applicability of the law to acts restricted by it but lawfully commenced before its entry into force.

VIII. International Regulation

16. The Committee discussed the advisability of the establishment of an international regulation concerning the protection of expressions of folklore. Most of the delegations were of the opinion that the

Model Provisions should be conceived so as to serve as a basis for the elaboration of any international regulation on the protection of expressions of folklore and should be considered in pursuing the joint efforts of Unesco and WIPO aiming at the establishment of regional and national protection in the field concerned. There was also the opinion expressed by the delegations of some States on the question of international regulation that, while they were in favor of considering the possibility of adoption of international regulation, priority should be given to national and regional levels. However, the delegation of Japan preferred to confine the protection to the national level and was not in favor of any international measures.

IX. Adoption of the Report and Closing of the Meeting

17. The Committee unanimously adopted this Report. After the usual thanks the Chairman declared the meeting closed.

ANNEX I

Model Provisions for National Laws on the Protection of Expressions of Folklore Against Illicit Exploitation and Other Prejudicial Actions

[Considering that folklore represents an important part of the living cultural heritage of the nation, developed and maintained by the communities within the nation, or by individuals reflecting the expectations of those communities;

Considering that the dissemination of various expressions of folklore may lead to improper exploitation of the cultural heritage of the nation;

Considering that any abuse of commercial or other nature or any distortion of expressions of folklore is prejudicial to the cultural and economic interests of the nation;

Considering that expressions of folklore constituting manifestations of intellectual productions;

Considering that such a protection of expressions of folklore has become indispensable as a means of promoting further development, maintenance and dissemination of those expressions, both within and outside the country, without prejudice to related legitimate interests;

The following provisions shall be given effect:]

Section 1

Principle of Protection

Expressions of folklore developed and maintained in [insert the name of the country] shall be protected

by this [law] against illicit exploitation and other prejudicial actions as defined in this [law].

Section 2

Protected Expressions of Folklore

For the purposes of this [law], "expressions of folklore" means productions consisting of characteristic elements of the traditional artistic heritage developed and maintained by a community of [name of the country] or by individuals reflecting the expectations of such a community, in particular:

- (i) verbal expressions, such as folk tales, folk poetry and riddles;
 - (ii) musical expressions, such as folk songs and instrumental music;
 - (iii) expressions by action, such as folk dances, plays and artistic forms or rituals;
- whether or not reduced to a material form; and
- (iv) tangible expressions, such as:

- (a) productions of folk art, in particular, drawings, paintings, carvings, sculptures, pottery, terracotta, mosaic, woodwork, metalware, jewellery, basket weaving, needlework, textiles, carpets, costumes;
- (b) musical instruments;
- [(c) architectural forms].

Section 3

Utilizations Subject to Authorization

Subject to the provisions of Section 4, the following utilizations of the expressions of folklore are subject to authorization by the [competent authority mentioned in Section 9, paragraph 1,] [community concerned] when they are made both with gainful intent and outside their traditional or customary context:

- (i) any publication, reproduction and any distribution of copies of expressions of folklore;
- (ii) any public recitation or performance, any transmission by wireless means or by wire, and any other form of communication to the public, of expressions of folklore.

Section 4

Exceptions

1. Section 3 shall not apply in the following cases:

- (i) utilization for purposes of education;
- (ii) utilization by way of illustration in the original work of an author or authors, provided that the extent of such utilization is compatible with fair practice;
- (iii) borrowing of expressions of folklore for creating an original work of an author or authors;

2. Section 3 shall not apply also where the utilization of the expressions of folklore is incidental. Incidental utilization includes, in particular:

- (i) utilization of any expression of folklore that can be seen or heard in the course of a current event for the purposes of reporting on that current event by means of photography, broadcasting, or sound or visual recording, provided that the extent of such utilization is justified by the informatory purpose;
- (ii) utilization of objects containing the expressions of folklore which are permanently located in a place where they can be viewed by the public, if the utilization consists in including their image in a photograph, in a film or in a television broadcast.

Section 5

Acknowledgement of Source

1. In all printed publications, and in connection with any communications to the public, of any identifiable expression of folklore, its source shall be indicated in an appropriate manner, by mentioning the community and/or geographic place from where the expression utilized has been derived.

2. The requirement set forth in paragraph 1 shall not apply to utilizations referred to in Section 4, paragraphs 1(iii) and 2.

Section 6

Offenses

1. Any person who willfully [or negligently] does not comply with the requirement provided for in Section 5 shall be liable to . . .

2. Any person who, without the authorization of the [competent authority referred to in Section 9, paragraph 1,] [community concerned] willfully [or negligently] utilizes an expression of folklore in violation of the provisions of Section 3, shall be liable to . . .

3. Any person willfully deceiving others in respect of the source of artifacts or subject matters of performances or recitations made available to the public by him in any direct or indirect manner, presenting such artifacts or subject matters as expressions of folklore of a certain community, from where, in fact, they have not been derived, shall be punishable by . . .

4. Any person who publicly uses, in any direct or indirect manner, expressions of folklore willfully distorting the same in a way prejudicial to the cultural interests of the community concerned shall be punishable by . . .

Section 7

Seizure or Other Actions

Any object which was made in violation of this [law], and any receipts of the person violating it and corresponding to such violations, shall be subject to [seizure] [applicable actions and remedies].

Section 8

Civil Remedies

The sanctions provided for in [Section 6] [Sections 6 and 7] shall be applied without prejudice to damages or other civil remedies as the case may be.

Section 9

Authorities

[1.] For the purpose of this [law], the expressions "competent authority" means . . .

[2. For the purpose of this [law], the expression "supervisory authority means . . .]

Section 10

Authorization

1. Applications for individual or blanket authorization of any utilization of expressions of folklore subject to authorization under this [law] shall be made [in writing] to the [competent authority] [community concerned].

2. Where the [competent authority] [community concerned] grants authorization it may fix the amount of and collect fees [corresponding to a tariff [established] [approved] by the supervisory authority]. The fees col-

lected shall be used for the purpose of promoting or safeguarding national [culture] [folklore].

[3. Appeals against the decisions of the competent authority may be made by the person applying for the authorization and/or the representative of the interested community.]

Section 11

Jurisdiction

[1. Appeals against the decisions of the [competent authority] [supervisory authority] are admissible to the Court of . . .]

[2.] In case of any offense under Section 6, the Court of . . . has jurisdiction.

Section 12

Relation to Other Forms of Protection

This [law] shall in no way limit or prejudice any protection applicable to expressions of folklore under the

copyright law, the law protecting performers, producers of phonograms and broadcasting organizations, the laws protecting industrial property, or any other law or international agreement to which the country is party; nor shall it in any way prejudice other forms of protection provided for the safeguard and preservation of folklore.

Section 13

Interpretation

The protection granted under this [law] shall in no way be interpreted in a manner which could hinder the normal use and development of expressions of folklore.

Section 14

Protection of Expressions of Folklore of Foreign Countries

Expressions of folklore developed and maintained in a foreign country are protected under this [law]

- (i) subject to reciprocity, or
- (ii) on the basis of international treaties or agreements.

ANNEX II

List of Participants

I. States

Algeria: S. Abada; A.M.B. Berkouk. **Australia:** R.A.I. Bell. **Belgium:** J.-D. Rycx d'Huisnacht; A. Doppagne. **Bolivia:** A. Arguedas del Carpio; T. Conde. **Chile:** P. Barros. **Colombia:** R. Morales Ballesteros; A. Becerra de Laverde; C. Velasquez Turbay; G. Zea. **Congo:** E. Kouloufoua; D. Ganga-Bidie; G. Kaya; S. Bayalama. **Finland:** L.O. Honko. **France:** A. Françon; S. Berlin; A. Nemo; C. Fay. **German Democratic Republic:** K. Götz. **Holy See:** E. Rovida; O.J. Rouillet. **Honduras:** I. Romero; J.M. Ritter. **Hungary:** M. Ficsor; P. Gyertyánfy. **India:** L. Puri; M.L. Chopra. **Indonesia:** N. Wisnoemoerti; H. Haryono; R. Tanzil. **Italy:** N. Faiel Dattilo; M. Pavenello. **Jamaica:** S.I. Miller; O. Lewin. **Japan:** K. Sakamoto. **Madagascar:** S. Rabearivelo. **Mexico:** A. Pierdant. **Nicaragua:** C. Vega; I. Garay. **Norway:** S. Gramstad. **Philippines:** T.V. Prado. **Roumania:** T. Melescanu. **Rwanda:** A. Sebudanga. **Senegal:** N. Ndiaye. **Soviet Union:** A. Pro-tassenya; V. Chatrov. **Spain:** M.J. Hernández Sampelayo; J.M. Segovia; E. de la Puente. **Sweden:** A.H. Olsson. **Tunisia:** F. Zghonda. **Turkey:** A. Yalgin. **United States of America:** G. Dempsey. **Venezuela:** I. Aretz de Ramon Rivera y Rivera.

II. International Non-Governmental Organizations

European Broadcasting Union (EBU): W. Rumphorst; R. Laurent. **European Society of Culture (SEC):** C.-S. Mueller. **International Association of South-East European Studies (AIESEE):** V. Rapeanu. **International Commission of**

Jurists (ICJ): D.J. Ravindran. **International Confederation of Professional and Intellectual Workers (CITI):** A.-L. Dupont-Willemin. **International Confederation of Societies of Authors and Composers (CISAC):** J.-A. Ziegler. **International Copyright Society (INTERGU):** G. Halla; J. Kuckertz. **International Federation of Actors (FIA):** R. Leuzinger. **International Federation of Musicians (FIM):** R. Leuzinger. **International Federation of Producers of Phonograms and Videograms (IFPI):** E. Thompson; G. Zea Fernandez. **International Federation of Translators (FIT):** R. Haeseryn. **International Literary and Artistic Association (ALAI):** J.-A. Ziegler. **International Publishers Association (IPA):** A. Spillmann. **World Confederation of Labour (WCL):** B.H. Robel. **World Crafts Council (WCC):** L. Schmidt.

III. Secrétariat

World Intellectual Property Organization (WIPO)

C. Masouyé (*Director, Public Information and Copyright Department*); S. Alikhan (*Director, Developing Countries Division (Copyright)*); G. Boytha (*Head, Copyright Law Division*).

United Nations Educational, Scientific and Cultural Organization (UNESCO)

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

Conventions Administered by WIPO

Nairobi Treaty on the Protection of the Olympic Symbol

Accession by Equatorial Guinea

Entry into Force

The Director General of the World Intellectual Property Organization (WIPO) notified, on August 30, 1982, the Governments of the States which, according to Article 5, may become party to the Nairobi Treaty on the Protection of the Olympic Symbol that the Government of the Republic of Equatorial Guinea deposited, on August 25, 1982, its instrument of accession to the said Treaty.

On August 30, 1982, also, the Director General of WIPO notified the Governments of the said States that the Nairobi Treaty will enter into force on *September 25, 1982*, that is, one month after the day on which the third instrument of ratification, acceptance, approval or accession has been deposited.

In this connection, it was recalled that an instrument of ratification of the Nairobi Treaty was deposited:

— on November 18, 1981, by the Republic of Kenya and that instruments of accession to the said Treaty were deposited:

— on February 17, 1982, by the Socialist Ethiopia,

— on August 25, 1982, by the Republic of Equatorial Guinea.

Consequently, in accordance with the provisions of Article 6(1) of the Nairobi Treaty, the said Treaty has entered into force on September 25, 1982, with respect to the three States referred to above.

Nairobi Notifications Nos. 5 and 6, of August 30, 1982.

Accession by Egypt

The Director General of the World Intellectual Property Organization (WIPO) has notified the Governments of the States which, according to Article 5, may become party to the Nairobi Treaty on the Protection of the Olympic Symbol that the Government of the Arab Republic of Egypt deposited, on

September 1, 1982, its instrument of accession to the said Treaty.

The Nairobi Treaty will enter into force, with respect to Egypt, one month after the date of deposit of the instrument of accession, that is, on October 1, 1982.

Nairobi Notification No. 7, of September 7, 1982.

National Legislation

COLOMBIA

Law on Copyright

(No. 23, of January 28, 1982) *

(Articles 1 to 71)

CHAPTER I

General Provisions

Article 1. The authors of literary, scientific and artistic works shall enjoy protection for their works as laid down by this Law and, in so far as they are compatible with it, by ordinary legal provisions. This Law shall also protect performers, producers of phonograms and broadcasting organizations with respect to their rights neighboring on copyright.

Article 2. Copyright shall subsist in scientific, literary and artistic works, which shall be understood as being all creations of the mind in the scientific, literary and artistic domain, whatever may be their mode or form of expression and purpose, such as: books, pamphlets and other writings; lectures, addresses, sermons and other works of the same nature; dramatic or dramatico-musical works; choreographic works and mime; musical compositions with or without words; cinematographic works to which are assimilated works expressed by a process analogous to cinematography, including videograms; works of drawing, painting, architecture, sculpture, engraving and lithography; photographic works to which are assimilated works expressed by a process analogous to photography; works of applied art; illustrations, maps, plans, sketches and three-dimensional works relative to geography, topography, architecture or science and, finally, any production in the scientific, literary or artistic field that can be reproduced or executed by any form of printing or reproduction, or by phonographic, radiophonic or any other known or future means.

Article 3. Copyright shall comprise the exclusive right for its owner:

- (a) to dispose of his work free of charge or for a consideration, subject to such lawful conditions as he may freely determine at his discretion;
- (b) to exploit the work with or without gainful intent, by means of printing, engraving, copying, molding, phonograms, photography, cinematograph film, videograms, and by performance, recitation, translation, adaptation, showing, transmission or any other known or future means of reproduction, multiplication or dissemination;
- (c) to exercise the prerogatives guaranteed by this Law in defense of his moral rights as specified in Chapter II, Section 2, Article 30 of this Law.

Article 4. The following shall be the owners of the rights recognized by this Law:

- (a) the author, in his work;
- (b) the performer, in his performance;
- (c) the phonogram producer, in his phonogram;
- (d) the broadcasting organization, in its broadcast;
- (e) the successors in title, either specific or universal, of the aforementioned owners;
- (f) the natural person or legal entity who by contract obtains the right, for his own account and at his own risk, to produce a scientific, literary or artistic work made by one or more authors under the conditions specified in Article 20 of this Law.

Article 5. The following shall be protected as independent works, without prejudice to the copyright in the original works and in so far as they represent original creations:

* Published in *Diario Oficial* of February 19, 1982. — WIPO translation.

- (a) translations, adaptations, arrangements of music and other transformations made to a work in the private domain with the express authorization of the owner of the original work; in that case the person who makes the adaptation, translation, transposition, etc., shall be considered the owner of the rights therein, unless otherwise agreed;
- (b) collective works such as periodical publications, anthologies, dictionaries and the like, in so far as the method or system for the selection or arrangement of the various parts or works incorporated in them constitutes an original creation; the natural person or persons or legal entity or entities that coordinate, disclose or publish the works referred to in this item under their names shall be considered the owners thereof.

The authors of the works thus used shall retain their rights in them and may reproduce them separately.

Paragraph. The publication of the works referred to in this Article shall mention the name or pseudonym of the author or authors and the titles of the original works used.

Article 6. Inventions or scientific discoveries susceptible of practical application and exploitation in industry, and the writings describing them, shall be the subject of temporary rights only, pursuant to Article 120, paragraph 18, of the Constitution.

The ideas or conceptual content of literary, artistic and scientific works may not be the subject of appropriation. This Law shall protect exclusively the literary or three-dimensional form in which or the sound by which the author's ideas are described, explained, illustrated or incorporated in the literary, scientific and artistic works.

Works of art applied in industry shall be protected only in so far as their artistic value may be dissociated from the industrial character of the object or objects to which they may be applied.

Article 7. The names of periodicals, magazines, radio and television programs and other communication media shall not give rise to copyright. Reservation of rights in such names shall be effected with the Ministry of the Government (*Ministerio de Gobierno*), and the names shall be protected for one year following the last issue or broadcast, except in the case of an annual publication or program, in which case the period shall be extended to three years. The interested party shall renew his request for reservation of rights in the course of the month preceding the expiry of the above periods of one and three years, respectively.

The protection provided for in the foregoing paragraph shall not prevent the application of Articles 209 and 210 of this Law.

Article 8. For the purposes of this Law:

- (a) "artistic, scientific and literary works" means, among other things, books, musical works, pictures in oils, water color or pastel, drawings, woodcuts, calligraphic and chrysographic works, works produced by cutting, engraving, damascening, etc., in metal, stone, wood or other materials, statues, reliefs, sculptures, artistic photographs, mimed or other choreographic works;
- (b) "individual work" means a work produced by one single natural person;
- (c) "work of joint authorship" means a work produced jointly by two or more natural persons whose contributions cannot be separated;
- (d) "collective work" means a work produced by a group of authors on the initiative and under the guidance of a person, natural or legal, who coordinates, discloses and publishes it under his name;
- (e) "anonymous work" means a work in which the author's name is not mentioned, either according to his wishes or because it is unknown;
- (f) "pseudonymous work" means a work in which the author conceals his identity under a pseudonym that does not identify him;
- (g) "unpublished work" means a work that has not been disclosed to the public;
- (h) "posthumous work" means a work that is not made public until after the death of its author;
- (i) "original work" means the work originally created;
- (j) "derivative work" means a work resulting from adaptation, translation or other transformation of an original work, in so far as it constitutes an independent creation;
- (k) "performer" means the actor, speaker, narrator, declaimer, singer, dancer, musician or any other person who performs a literary or artistic work;
- (l) "phonogram producer" means the person, natural or legal, who first fixes the sounds of a performance or other sounds;
- (m) "phonogram" means the fixation in a physical medium of the sounds of a performance or other sounds;
- (n) "broadcasting organization" means the radio or television enterprise that transmits programs to the public;
- (ñ) "broadcasting" or "transmission" means the dissemination by means of radioelectric waves of sounds or sounds synchronized with images;

- (o) "rebroadcasting" means the simultaneous broadcasting of one broadcasting organization's transmission by another;
- (p) "publication" means communication to the public by any method or system;
- (q) "publisher" means the person, natural or legal, who is economically and legally responsible for the publication of a work and who, on his own account or under a contract concluded with the author or authors of the said work, undertakes to reproduce it by printing or any other means of reproduction and to distribute it;
- (r) "cinematographic producer" means the person, natural or legal, who takes the initiative and assumes the coordination of and responsibility for the production of the cinematographic work;
- (s) "cinematographic work, videotape, videogram" means the fixation in a physical medium of sounds synchronized with images or of images without sound;
- (t) "fixation" means the embodiment of images and/or sounds in a material form sufficiently permanent or stable to permit them to be perceived, reproduced or communicated.

Article 9. The protection granted to the author by this Law originates in the fact of intellectual creation, without any registration being necessary. The formalities specified herein are for the greater legal security of the owners of the rights protected.

Article 10. In the absence of proof to the contrary, the author of a work shall be deemed to be the person whose name, pseudonym or initials, or any other conventional mark or signs known to correspond to his name, appear in print on the work or on reproductions of it, or are announced in the declamation, performance or any other form of public dissemination of the said work.

Article 11. Pursuant to Article 35 of the National Constitution, "literary and artistic property shall be protected as transferable property during the lifetime of the author and for 80 years thereafter, through the formalities prescribed by law.

The same guaranty shall be extended to the owners of works published in countries where the Spanish language is spoken, provided that the principle of reciprocity is recognized by law in those countries, without any need for entering into international agreements to this end."

This Law shall protect the works and productions of Colombian citizens and foreigners resident in the country, and also the works of foreigners published for the first time in the country. Foreigners having their residence abroad shall enjoy the protection of

this Law to the extent that international conventions to which Colombia is party, or the national laws of the country concerned, assure Colombian nationals of effective reciprocity.

CHAPTER II

Content of Copyright

Section 1: Economic Rights and their Duration

Article 12. The author of a protected work shall have the exclusive right to do or authorize any one of the following acts:

- (a) reproduction of the work;
- (b) translation, adaptation, arrangement or any other transformation of the work; and
- (c) communication of the work to the public by performance or broadcasting or in any other way.

Article 13. The translator of a protected scientific, literary or artistic work, having been duly authorized by the author or his successors in title, shall acquire copyright in his translation. However, when disclosing it to the public, he shall mention the author and the title of the original work.

Article 14. The translator of a work in the public domain shall be the author of his own version, but he may not object to the making of different translations of the same work, the copyright in each of which shall vest in the person who makes it.

Article 15. Any person who, with the express permission of the author or his successors in title, adapts, transposes, modifies, takes extracts from, abridges or parodies a work in the private domain shall be owner of the copyright in his adaptation, transposition, modification, extract, abridgment or parody provided that, unless otherwise agreed, he may not disclose it to the public without mentioning the title of the original work and its author.

Article 16. Any person who takes a work in the public domain and adapts, transposes, modifies, abridges or parodies it, or in any way takes extracts from its substance, shall be the exclusive owner of his own work; he may not however object to the same work being adapted, transposed, modified or abridged in so far as such work is original and different from his own.

Article 17. The compiler of collections of poems and popular songs shall be the owner of the rights therein in so far as they are the result of direct research made by himself or his agents and conform to a special literary plan.

Article 18. For there to be joint authorship, it is not sufficient that the work be produced by two or more co-authors; it is necessary in addition that the ownership of the copyright cannot be divided without altering the nature of the work.

None of the co-authors may dispose freely of the part constituting his contribution when this has been expressly stipulated on commencement of the joint work.

Article 19. The editor of a compilation is the owner of the copyright in it, and he has no obligations towards his collaborators other than those agreed upon in the contract concerned, in which conditions may be freely specified.

The collaborator who has not, by express stipulation, reserved any copyright for himself may only claim the agreed price, and the editor of the compilation to which he gives his name shall be considered the author before the law. The collaborator shall nevertheless continue to enjoy the full benefit of his moral rights.

Article 20. When one or more authors make a work under a service contract according to a plan specified by a natural person or legal entity, on behalf and at the risk of the latter, they shall only collect, for the implementation of the plan, such fees as have been agreed in the contract concerned. By that instrument alone, the author or authors shall be deemed to have assigned the rights in the work, but to have retained the prerogatives provided for in Article 30 of this Law, under (a) and (b).

Article 21. Copyright shall last for the author's lifetime, and after his death it shall pass to those who have lawfully acquired it for a term of 80 years. In the case of duly established joint authorship, the term of 80 years shall be calculated as from the death of the last surviving co-author.

Article 22. With regard to works consisting of two or more volumes that are not published together, as with those published in the form of fascicles or periodical installments, the period of protection shall start for each volume, fascicle or installment on its date of publication.

Article 23. Where there are no heirs or successors in title, the work shall fall into the public domain on the death of the author. Where the copyright has been transferred by a transaction *inter vivos*, it shall accrue to the transferees during the author's lifetime and for 25 years following his death, and to his heirs for the time remaining thereafter up to completion of the 80 years, without prejudice to whatever the author of the work and the said transferees may have expressly stipulated.

Article 24. The protection of compilations, dictionaries, encyclopedias and other collective works shall last for 80 years calculated from the date of publication, and it shall accrue to the editors.

Article 25. Anonymous works shall be protected for a term of 80 years from the date of publication, in favor of the publisher; should the author reveal his identity, the term of protection shall accrue to him.

Article 26. Cinematographic works shall be protected for 80 years calculated as from the completion of the production, which shall be understood as being the date of its first communication to the public. If the owner of the work is a legal entity, the term of protection shall be determined by the following Article.

Article 27. In all cases where a literary, scientific or artistic work has as its owner a legal entity or an official body or any institution under public law, the term of protection shall be deemed to be 30 years as from the date of publication.

Article 28. In all cases where the applicable term of protection starts on the date of publication, the said term shall be understood to end on December 31 of the relevant year.

Article 29. The protection established by this Law in favor of performers, phonogram producers and broadcasting organizations shall be 80 years from the death of the owner of the rights, where such owner is a natural person; where the owner is a legal entity, the term shall be 30 years from the date on which the performance, or the first fixation of the phonogram, or the transmission of the broadcast took place.

Section 2: Moral Rights

Article 30. The author shall have the perpetual, inalienable and imprescriptible right:

- (a) to claim authorship of his work at any time and, in particular, to demand that his name or pseudonym be mentioned when any of the acts referred to in Article 12 of this Law is performed;
- (b) to object to, and to seek relief in connection with, any distortion, mutilation or other modification of the work, where such action would be or is prejudicial to his honor or reputation or where the work is discredited thereby;
- (c) to keep his work unpublished or anonymous until his death, or after it where he has so ordered by testamentary provision;
- (d) to alter it either before or after its publication;
- (e) to withdraw it from circulation or suspend any form of use even where such use has been previously authorized.

Paragraph 1. The above rights may not be either renounced or assigned. On transferring or authorizing the exercise of their economic rights, the authors grant none other than those of benefit and disposal as referred to in the contract concerned, and retain the rights provided for in this Article.

Paragraph 2. On the death of the author, the exercise of the rights specified in (a) and (b) of this Article shall fall to his spouse and consanguineous heirs. In the absence of the author, his spouse and his consanguineous heirs, the exercise of copyright shall accrue to any person, natural or legal, who provides proof of his title to the work concerned.

Paragraph 3. The protection of the authorship, integrity and authenticity of works that have fallen into the public domain shall be the responsibility of the Colombian Institute of Culture when the works do not have owners or successors in title who can defend or represent those moral rights.

Paragraph 4. The rights mentioned in (d) and (e) may only be exercised against prior indemnification of third parties for any prejudice that such exercise might cause.

CHAPTER III

Limitations on and Exceptions to Copyright

Article 31. It shall be permissible to quote an author by transcribing the necessary passages in so far as they are not of such length and continuity that they might reasonably be considered a simulated, substantial reproduction constituting a prejudice for the author of the work from which they were taken. Every quotation shall mention the name of the author of the work quoted and the title of that work.

Where the inclusion of the works of others constitutes the main part of the new work, the courts shall, at the request of any interested party, make an equitable assessment in an oral proceeding, awarding a proportional amount to each of the owners of the works included.

Article 32. It shall be permissible to make use, to the extent justified by the purpose, of literary or artistic works, or parts thereof, by way of illustration in works intended for teaching, by means of publications, broadcasts or sound or visual recordings, or to communicate, without gainful intent and for teaching purposes works broadcast for use in schools, education, universities and professional training, subject to the obligation to mention the name of the author and the title of the works thus used.

Article 33. Any title, photograph, illustration and commentary on a current event, published by the press or broadcast by radio or television, may be reproduced in so far as this has not been expressly prohibited.

Article 34. It shall be lawful to reproduce, distribute and communicate to the public news or other information on facts or events that have been publicly disseminated by the press or by broadcasting.

Article 35. Speeches delivered or read at deliberative assemblies, in the course of legal proceedings or proceedings brought before other public authorities, or any lecture, speech, sermon or other similar work delivered in public, may be published in the periodical press, or broadcast by radio or television in the form of news reports, and without any authorization, provided that the ownership of the works concerned has not been expressly reserved. It is understood that an author's works of this kind may not be published in separate collections without his permission.

Article 36. Publication of a person's portrait shall be free in so far as it is related to scientific, educational or cultural purposes in general or to facts or events of public interest or that may have occurred in public.

Article 37. It shall be lawful to reproduce, by any means, a literary or scientific work, such reproduction having been arranged or effected by the party concerned in one copy for his private use and without gainful intent.

Article 38. Public libraries may produce, for the exclusive use of their readers and where such reproduction is necessary for conservation or for exchange services with other libraries, likewise public, one copy of protected works deposited in their collections or archives and which are out of print on the local market. Such copies may also be produced singly by the library that receives them, should that be necessary for conservation, and solely for the use of readers.

Article 39. It shall be permissible to reproduce, by painting, drawing, photography or cinematography, works that are permanently located on public highways, streets or squares, and to distribute such reproductions or works and communicate them to the public. With regard to works of architecture, this provision shall be applicable solely to outward views.

Article 40. Lectures or talks given at establishments of higher, secondary or primary education may be freely noted and collected by the students to whom they are addressed, but their full or partial publi-

cation or reproduction shall be prohibited without the written authorization of the person who gave them.

Article 41. Any person shall be allowed to reproduce the Constitution, laws, decrees, ordinances, orders, regulations and other administrative texts and judicial decisions, subject to the obligation to abide strictly by the official edition, and provided that such reproduction is not prohibited.

Article 42. The reproduction of protected works or of fragments of such works shall be permitted, in so far as it is considered necessary by the competent authority, for use in the course of judicial proceedings or by the legislative or administrative bodies of the State.

Article 43. The creator of an architectural design may not prevent the owner from making alterations to it, but he shall have the right to prohibit his name from being associated with the altered work.

Article 44. The use of scientific, literary and artistic works in a private residence without gainful intent shall be free.

CHAPTER IV

Foreign Works

Section 1: Limitations on the Right of Translation

Article 45. The translation of a work into Spanish and the publication of that translation on the territory of Colombia, by virtue of a license granted by the competent authority, shall be lawful even without the authorization of the author, in accordance with the provisions contained in the following Articles.

Article 46. Any natural person or legal entity of the country, on expiration of seven years from the date of first publication of a work, may apply to the competent authority for a license to make a translation of the work into Spanish and to publish the translation in printed or analogous forms of reproduction, in so far as its translation into Spanish has not been published by the owner of the right of translation or with his authorization during that period.

Article 47. Before granting a license under the preceding Article, the competent authority shall determine that:

- (a) no translation of the work into Spanish has been published in printed or analogous forms of reproduction, by or with the authorization of

the owner of the right of translation, or that all previous editions in that language are out of print;

- (b) the applicant for the license has established that he either has requested, and has been denied, authorization from the owner of the right of translation or, after due diligence on his part, he was unable to find such owner;
- (c) at the same time as addressing the request referred to in (b) above to the owner, the applicant for the license has informed any national or international information center designated for this purpose by the government of the country in which the publisher of the work to be translated is believed to have his domicile;
- (d) if he could not find the owner of the right of translation, the applicant has sent, by registered airmail, a copy of his application to the publisher whose name appears on the work and another such copy to any national or international information center, or, in the absence of such a center, to the Unesco International Copyright Information Centre.

Article 48. No license shall be granted unless the owner of the right of translation, where known or located, has been given an opportunity to be heard.

Article 49. No license shall be granted until the expiration of a further period of six months following the date on which the seven-year period referred to in Article 46 ended. Such further period shall be computed from the date on which the applicant complies with the requirements mentioned in Article 47 in (b) and (c) or, where the identity or the address of the owner of the right of translation is unknown, from the date on which the applicant also complies with the requirement mentioned in (d) of the same Article.

Article 50. For works composed mainly of illustrations, a license shall be granted only if the conditions of Articles 58 *et seq.* are fulfilled.

Article 51. No license shall be granted when the author has withdrawn all copies of the work from circulation.

Article 52. Any license under the foregoing Articles:

- (a) shall be only for the purpose of teaching, scholarship or research of the work to which the license relates;
- (b) shall only allow publication in a printed or analogous form of reproduction and only on the national territory;
- (c) shall not extend to the export of copies published under the license;

- (d) shall be non-exclusive;
- (e) shall not be transferable.

Article 53. The license referred to in the foregoing Articles shall provide for just compensation in favor of the owner of the right of translation that is consistent with standards of royalties normally operating in the case of licenses freely negotiated between persons in the country and owners of translation rights in the latter's countries.

Article 54. The competent authority shall order the cancellation of the license if the translation is not correct and if the following particulars are not included in all copies published:

- (a) the original title and name of the author of the work;
- (b) a notice in Spanish stating that the copy is available for sale or distribution only within the national territory;
- (c) if the original work was published with a copyright notice, a reprint of that notice.

Article 55. The license shall terminate if a translation of the work in Spanish, with the same content as the translation published under the license, is published in printed or analogous forms of reproduction by the owner of the right of translation, or by another entity or person with his authorization, and where copies of that translation are offered within the country at a price reasonably related to that charged for comparable works. Any copies already made before the license terminates may continue to be distributed until their stock is exhausted.

Article 56. A license under the foregoing Articles may also be granted to a domestic broadcasting organization, provided that all the following conditions are met:

- (a) the translation is made from a copy made and acquired legally;
- (b) the translation is only for use in broadcasts intended exclusively for teaching or for the dissemination of the results of specialized technical or scientific research to experts in a particular profession;
- (c) the translation is used exclusively for the purposes specified in (b) above, through broadcasts that are lawfully made and that are intended for recipients in the country, including broadcasts made through the medium of sound or visual recordings that have been made lawfully and for the sole purpose of such broadcasts;
- (d) sound or visual recordings of the translation may not be used by broadcasting organizations other than those having their headquarters in the country;

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

Article 57. A license may also be granted to a domestic broadcasting organization, under all of the conditions provided in the foregoing Article, to translate any text incorporated in an audiovisual fixation that was itself prepared and published for the sole purpose of being used in connection with systematic instructional activities.

Section 2: Limitations on the Right of Reproduction

Article 58. Any natural person or legal entity may, after the expiration of the periods specified in this Article, apply to the competent authority for a license to reproduce and publish a particular edition of the work in printed or analogous forms of reproduction.

No license shall be granted until the expiration of one of the following periods, commencing on the date of first publication of the work for which the license is requested:

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

Article 59. Before granting a license, the competent authority shall determine that:

- (a) no distribution, by or with the authorization of the owner of the right of reproduction, of copies in printed or analogous forms of reproduction of that particular edition has taken place in the country, to the general public or in connection with systematic instructional activities, at a price reasonably related to that normally charged in the country for comparable works, or that, under the same conditions, such copies have not been on sale in the country for a continuous period of at least six months;
- (b) the applicant for the license has established that he either has requested, and has been denied, authorization from the owner of the right of reproduction, or that, after due diligence on his part, he was unable to find such owner;
- (c) at the same time as addressing the request referred to in (b) above to the owner, the applicant for the license has informed any national or international information center designated for the purpose by the government of the country in which the publisher of the work to be reproduced is believed to have his domicile;

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

Article 60. No license shall be granted unless the owner of the right of reproduction, where known or located, has been given an opportunity to be heard.

Article 61. Where the three-year period referred to in (a) of the second paragraph of Article 58 applies, no license shall be granted until the expiration of six months computed from the date on which the applicant complies with the requirements mentioned in (a), (b) and (c) of Article 59 or, where the identity or the address of the owner of the right of reproduction is unknown, from the date on which the applicant also complies with the requirement mentioned in (d) of Article 59.

Article 62. Where the seven-year or five-year periods referred to in (b) and (c) of Article 58 apply and where the identity or the address of the owner of the right of reproduction is unknown, no license shall be granted until the expiration of three months computed from the date on which the copies referred to in (d) of Article 59 have been mailed.

Article 63. If, during the period of six or three months referred to in Articles 61 and 62, a distribution or placing on sale as described in (a) of Article 59 has taken place, no license shall be granted.

Article 64. No license shall be granted when the author has withdrawn from circulation all copies of the edition which is the subject of the application.

Article 65. Where the edition which is the subject of an application for license under the foregoing Articles is a translation, the license shall only be granted if the translation is in Spanish and was published by or with the authorization of the owner of the right of translation.

Article 66. Any license under Articles 58 *et seq.*:

- (a) shall be only for use in connection with systematic instructional activities;
- (b) shall, subject to the provisions of Article 70, only allow publication in a printed or analogous form of reproduction at a price reasonably related to that normally charged in the country for a comparable work;

- (c) shall only allow publication on the territory of the country and shall not extend to the export of copies made under the license;
- (d) shall be non-exclusive;
- (e) shall not be transferable.

Article 67. The license shall provide for just compensation in favor of the owner of the right of reproduction that is consistent with standards of royalties normally operating in the case of licenses freely negotiated between persons in the country and owners of reproduction rights in the country of the owner of the right of reproduction.

Article 68. As a condition of maintaining the validity of the license, the reproduction of that particular edition must be accurate and all published copies must include the following:

- (a) the title and name of the author of the work;
- (b) a notice in Spanish stating that the copy is available for distribution only in the country;
- (c) if the edition which is reproduced bears a copyright notice, a reprint of that notice.

Article 69. The license shall terminate if copies of an edition of the work in printed or analogous forms of reproduction are placed on sale in the country, by or with the authorization of the owner of the right of reproduction, to the general public or in connection with systematic instructional activities, at a price reasonably related to that normally charged in the country for comparable works, if such edition is in the same language and is substantially the same in content as the edition which was published under the license. Any copies already made before the license terminates may continue to be distributed until their stock is exhausted.

Article 70. Under the conditions provided in Articles 58 *et seq.*, a license may also be granted:

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

Article 71. The Articles of this Chapter shall apply to works whose country of origin is any one of the countries bound by the Universal Copyright Convention as revised in 1971.

(To be continued)

General Studies

On the Interpretation of Article 11^{bis}(1) and (2) of the Berne Convention

Robert DITTRICH *

Cable Television and Copyright in Belgium

A Study of the Belgian Law in Relation to the Berne Convention and the Treaty of Rome

Frank GOTZEN *

Correspondence

Letter from Denmark

Mogens KOKTVEDGAARD *

International Activities

International Literary and Artistic Association (ALAI)

Study Session and Executive Committee

(Amsterdam, May 16 to 20, 1982)

At the invitation of its Dutch Group, the International Literary and Artistic Association (ALAI) held a study session in Amsterdam from May 16 to 20, 1982, basically devoted to the legal problems posed by cable television.

This event was attended by some 200 participants from Austria, Belgium, Canada, Denmark, Finland, France, Germany (Federal Republic of), Greece, Iceland, Italy, Japan, the Netherlands, Norway, Sweden,

Switzerland, the United Kingdom and the United States of America.

The study session was the occasion for a broad exchange of views between the participants who were informed, *inter alia*, of recent case law developments in a number of countries. The ALAI Executive Committee subsequently adopted the resolution reproduced below, which takes into account the opinions that emerged during the discussion of the problems on the agenda of the study session.

Following the study sessions which were held in Amsterdam from May 16 to 20, 1982, on cable television, The Executive Committee of ALAI,

Having recorded that a common view on a certain number of points had emerged from the work of this meeting between the majority of the members of the Association present;

Being mindful of the necessity of establishing practical solutions immediately in view of the imminent evolution of legislation in a certain number of countries and of the work being conducted at the present time within the various international and supranational authorities;

Recalls that transmission by cable of intellectual works is subject to the exclusive right of their authors;

Notes that, in the event of a broadcast work being communicated to the public by cable, the implementation of this right is governed satisfactorily by the provisions of Article 11^{bis} (1)(i) and (ii) of the Berne Convention, as a certain number of recent judicial decisions in various countries of the Union have affirmed;

that such communication is thus subject to the prior authorization of the author when it is carried out by an organization other than the original one;

that no exception to this principle is inscribed in the text of the Convention, nor could such exception result from arguments of any kind (the absence of a new public, retransmission by cable in a direct reception or service area, the constraints of public law obliging cable distributors to retransmit the programs of broadcasting bodies, etc.) since such arguments cannot undermine the necessity for cable distributors to respect the principles of private law;

that the author's so-called double remuneration is in reality an additional collection for a new communication service;

Is nevertheless conscious that certain cable operations of very minor importance might exceptionally justify exemption;

Recognizes moreover the absolute impossibility for authors and for cable distributors to establish individual relations;

Recommends and supports the conclusion, for operations of cable retransmission, of multilateral contractual agreements at both national and international level between representative groupings of authors and of other copyright owners, on the one hand, and representative groupings of cable distributors, on the other hand;

Advocates the extension of similar agreements to all individual situations by every legal means, and particularly by the institution of centralized administration of the rights of authors and of other copyright owners, respecting their individual rights and carried out through the obligatory intermediary of representative groupings;

Emphasizes the futility within this system of national legislations establishing regimes of statutory or compulsory licenses, noting moreover that solutions of this kind do not

appear to have given satisfaction to a certain number of countries which have adopted them.

Furthermore, the ALAI Executive Committee adopted the following resolution:

The Executive Committee of the International Literary and Artistic Association meeting at Amsterdam on May 16, 1982,

In view of the provisions of the Treaty of Rome establishing the European Economic Community and the apparent danger of erosion of copyright due to its integration into the Community economic order;

Having examined the relevant case law of the Court of Justice of the Communities in respect of copyright and, in so doing, having noted the number and importance of the decisions already taken as regards enjoyment and exercise of the prerogatives afforded to creators of works of the mind by the national and international laws in force;

Feels obliged to make the following three observations of principle which should be taken into account by the Community institutions if the preeminent interests of intellectual creation are to be safeguarded:

The specific nature of the status of copyright by comparison with the arrangements for industrial and commercial property is such that it cannot be ignored and therefore the simple extension to copyright of solutions that have emerged in respect of industrial and commercial property would lead to an essential loss not only as regards the moral rights afforded to authors, but also concerning their economic interests whose implementation indeed always remains susceptible to influence by concerns other than purely economic ones.

If it is necessary to reconcile copyright and economic legislation, such reconciliation should not simply consist in subjecting without reservation the interests of intellectual and artistic creation to the needs of economic exploitation or of competition but, on the contrary, should represent a harmonization of law at the highest level in order to affirm both a strengthening of the protection to which creators of works of the mind may legitimately aspire from the point of view of the rights of personality and the promotion of the processes for disseminating such works, whilst strictly respecting the material interests of those that have created them.

In view of such harmonization, two matters would appear to need priority decision: firstly, that of the term of *p.m.a.* protection of works, in respect of which account should be taken of the longest current term recognized in a member country of the European Economic Community (the Federal Republic of Germany) and, secondly, the fact that in two of these member countries (the United Kingdom and Ireland) a statutory license exists for the reproduction of musical works, whose suppression should be decided as rapidly as possible.

Book Reviews

Direito de autor na obra publicitaria, by *Carlos Alberto Bittar*. One volume of 216 pages. Editora Revista dos Tribunais Ltda, São Paulo, 1981.

Advertising involves both art and technology, using various communication media, such as the press, radio, television, cinema and the like, and is justly considered by the author of this work to be a manifestation of intellectual creation. That is why it poses a number of questions of a legal nature, particularly in the field of copyright, whose current interest derives from the part played by this powerful factor in the economic life of a large number of countries.

The aim of the study is therefore to define the legal situation of an advertising work within the framework of copyright. In order to do so, the study examines both legal writings and positive law.

The work is divided into two major parts. One deals with works protected by copyright while the other is devoted to advertising works themselves. After analysing in detail these two aspects of the matter, the author concludes that an advertising work is fully capable of protection under copyright. To this end, he proposes that this category of works be included in the list of examples of protected works both at domestic Brazilian level and at international level. As regards the ownership of the right, this depends on the legal nature of the commission from which the creation of the advertising work originates.

A long bibliography is annexed to the work. M.S.

Codice della proprietà industriale e del diritto d'autore, by *Mario Fabiani*. One volume of 1,093 pages. Dott. A. Guiffre Editore, Milan, 1982.

This new publication prepared by Professor Mario Fabiani now comes to supplement the existing documentation on intellectual property in Italy. It is an updated version of a collection of texts of legislation and conventions, made necessary by the numerous innovations introduced in this field over the last decade, particularly at international level.

The book is divided into two parts. The first part contains the laws and regulations that are of application in the fields of copyright and industrial property. The second is devoted to conventions and agreements concluded within a European framework, more particularly that of the European Communities. In its third part, the reader will find the texts of other multilateral international conventions.

The texts of the international conventions, including the Convention Establishing WIPO and the conventions administered by WIPO, are for the most part reproduced in French.

An alphabetical index makes for easy consultation of the collection. M.S.

Calendar

WIPO Meetings

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

1982

November 8 to 12 (Geneva) — Working Group on Model Contracts Concerning Co-Publishing and Commissioned Works (convened jointly with Unesco)

November 15 to 17 (Berne) — Permanent Committee on Patent Information (PCPI) — Working Group on Search Information — Subgroup on IPC Classes F 01, F 02, H 01, H 03 and H 04

November 22 to 26 (Geneva) — Governing Bodies (WIPO Coordination Committee; Executive Committees of the Paris and Berne Unions)

November 29 to December 3 (Geneva) — Permanent Committee on Patent Information (PCPI) and PCT Committee for Technical Cooperation (PCT/CTC)

December 6 to 10 (Geneva) — International Patent Classification (IPC) — Committee of Experts

December 6 to 10 (Paris) — Berne Union and Universal Copyright Convention — Working Group on the Formulation of Guiding Principles Covering the Problems Posed by the Practical Implementation of the Licensing Procedures for Translation and Reproduction under the Copyright Conventions (convened jointly with Unesco)

December 13 to 17 (Paris) — Berne Union, Universal Convention and Rome Convention — Subcommittees of the Executive Committee of the Berne Union, of the Intergovernmental Copyright Committee and of the Intergovernmental Committee of the Rome Convention, respectively, on Copyright and Neighboring Rights Problems in the Field of Cable Television (convened jointly with ILO and Unesco)

1983

January 25 to 29 (New Delhi) — Permanent Committee for Development Cooperation Related to Copyright and Neighboring Rights

January 31 to February 2 (New Delhi) — Regional Committee of Experts on the modalities of implementation in Asia of the model provisions for national laws on intellectual property aspects of the protection of expressions of folklore (convened jointly with Unesco)

UPOV Meetings

1982

November 15 (Geneva) — Information Meeting with International Non-Governmental Organizations

November 16 and 17 (Geneva) — Administrative and Legal Committee

November 18 and 19 (Geneva) — Technical Committee

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

Intergovernmental Organizations

1982

Council of Europe

Committee of Legal Experts in the Media Field — November 29 to December 3 (Strasbourg)

Non-Governmental Organizations

1983

Council of the Professional Photographers of Europe (EUROPHOT)

Congress — October 6 to 13 (Munich)

International Confederation of Societies of Authors and Composers (CISAC)

Legal and Legislation Committee — May 1 to 4 (Washington)

International Federation of Musicians (FIM)

Executive Committee — June 27 to 30 (Amsterdam)

Congress — September 19 to 23 (Budapest)

International Literary and Artistic Association (ALAI)

Congress — April 13 to 20 (Athens)

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

General Assembly — January 23 to 25 (Algiers)