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World Intellectual Property Organization

HAITI

Accession to the WIPO Convention

The Government of the Republic of Haiti deposited, on August 2, 1983, its instrument of accession to the Convention Establishing the World Intellectual Property Organization (WIPO).

The Convention Establishing the World Intellectual Property Organization will enter into force, with

respect to the Republic of Haiti, three months after the date of deposit of its instrument of accession, that is, on November 2, 1983.

WIPO Notification No. 123, of August 3, 1983.

Committee of Experts on the Legal Protection of Computer Software

Second Session

(Geneva, June 13 to 17, 1983)

Report

adopted by the Committee of Experts

I. Introduction

1. Convened by the Director General of the World Intellectual Property Organization (WIPO) in accordance with the WIPO Program and Budget for 1982-1983 adopted by the Assembly of the International Union for the Protection of Industrial Property (Paris Union) at its session in November 1981, the Committee of Experts on the Legal Protection of Computer Software (hereinafter "the Committee of Experts") held its second session in Geneva from June 13 to 17, 1983.

2. The following States, members of WIPO, of the Paris Union and/or of the International (Berne) Union for the Protection of Literary and Artistic Works, participated in the meeting: Australia, Austria, Belgium, Benin, Brazil, Canada, China, Congo, Denmark, Egypt, Finland, France, Germany (Federal Republic of), Hungary, India, Italy, Japan, Mexico, Morocco, Netherlands, Norway, Republic of Korea, Spain, Sweden, Switzerland, Trinidad and

Tobago, Tunisia, Turkey, United Kingdom, United States of America (30). One State, namely Singapore, participated in the meeting as observer.

3. The following five intergovernmental organizations participated in the meeting as observers: Commission of the European Communities (CEC), European Patent Organisation (EPO), Intergovernmental Bureau for Informatics (IBI), United Nations Educational, Scientific and Cultural Organization (UNESCO), World Health Organization (WHO).

4. The following 16 international non-governmental organizations participated in the meeting as observers: Chartered Institute of Patent Agents (CIPA), Committee of National Institutes of Patent Agents (CNIPA), European Computer Manufacturers Association (ECMA), European Computing Services Association (ECSA), European Federation of Agents of Industry in Industrial Property (FEMIP), International Association for the Protection of Industrial Property (IAPIP), International Confederation of

Societies of Authors and Composers (CISAC), International Federation of Industrial Property Attorneys (FICPI), International Federation of Information Processing (IFIP), International Federation of Phonogram and Videogram Producers (IFPI), International League Against Unfair Competition (LICCD), International Literary and Artistic Association (ALAI), International Publishers Association (IPA), Licensing Executives Society International (LES), Union of European Practitioners in Industrial Property (UEPIP), Union of Industries of the European Community (UNICE).

5. The following four associations participated in the meeting as observers: Association of Data Processing Service Organizations (ADAPSO), Computer and Business Equipment Manufacturers Association, Computer Law Association, Information Industry Association.

6. The list of participants appears in Annex II to this Report.

7. Dr. A. Bogsch, Director General of WIPO, opened the meeting and welcomed the participants. He drew attention to the importance of the questions to be discussed in connection with the current and future program of WIPO.

8. The Committee of Experts unanimously elected Mr. H. Olsson (Sweden) Chairman and Mr. G. Pálos (Hungary) and Mr. M. Najim (Morocco) Vice-Chairmen. Mr. F. Balleys (WIPO) acted as Secretary of the Committee of Experts.

9. This Report summarizes the discussions and does not reflect all the observations made. Each intervention, however, has been recorded on tape and noted by the Secretariat.

II. Draft Treaty for the Protection of Computer Software

10. The discussions were based on the analysis of the results of the survey concerning the desirability and feasibility of a treaty for the protection of computer software (document LPCS/II/2) and the draft Treaty for the Protection of Computer Software, prepared by the International Bureau (document LPCS/II/3).

11. The Director General, introducing the draft Treaty for the Protection of Computer Software, indicated that the existing international copyright conventions were silent on the question of whether computer software was a "work" and that therefore the question arose whether sufficient international protection was granted under those conventions. As regards the Paris Convention, it was clear that there

was no obligation under that Convention to grant patents for computer software, and all depended on the interpretation given, under the existing laws, as to whether a particular software was a patentable invention. The proposed Treaty would avoid the uncertainty existing at present in respect of the international protection of computer software.

12. The Delegation of the Federal Republic of Germany stated that, in its opinion, copyright protection was available to computer software, since such software could be considered as a work protected under the copyright law of the Federal Republic of Germany. This view had been recently confirmed by court decisions. Therefore, international protection could be secured under the existing conventions, and an additional treaty was not needed.

13. The Delegation of the United States of America pointed out that new technological developments had led to an expanded area of the application of computers. In particular, the marketing of small personal computers as consumer goods had brought about new kinds of software. In a simplified manner, one could distinguish between the idea underlying a computer program and the form in which the program was finally expressed. The United States Supreme Court had recognized patent protection in respect of processes which were incorporated in computer programs. The program as such, however, was not considered to be patentable, but could only be protected under the copyright law. A recent amendment of the United States Copyright Act had removed any possibly remaining doubt in that respect. United States software producers had secured protection for their products in other countries, also on the basis of copyright law. A *sui generis* treaty would only be required if the present reliance on copyright and patent protection were to be found inadequate.

14. The Delegation of Japan informed the Committee of Experts about recent developments in its country: the Government had set up two Committees, in order to study the protection of computer software. One of the Committees, set up under the auspices of the Ministry of International Trade and Industry, studied the question with a view to promoting effective development and utilization of computer software and to enhancing the disclosure of software, taking into account the fact that software was the result of industrial activities. The other, set up under the auspices of the Agency for Cultural Affairs, studied the question of whether copyright law was generally applicable to software. Those Committees had not yet come up with their conclusions. Therefore it was not yet possible to state Japan's uniform position with respect to the protection of computer soft-

ware. The Delegation also indicated that two court decisions were rendered concerning the protection of software under copyright law.

15. The Delegation of the Netherlands stressed that one should rely as much as possible on existing conventions in order to secure protection for computer software. In connection with the WIPO questionnaire, producers of software in the Netherlands and, with a view to the answers given to the questionnaire, also the producers of software in other countries did not show interest in a special treaty. In the light of recent court decisions, copyright law appeared to be the most appropriate basis for protection of computer software: in addition, a *sui generis* approach could only be considered if copyright was not sufficient. For the time being, however, one could rely on the Berne Convention and the Universal Copyright Convention. Without saying that a protection against unauthorized use of the software was no longer as important as it was about 10 years ago, the appearance of new products such as personal computers and video games led to a use of computer software in the private sphere; here the real issue was the risk that competitors copied software offered for use with such products.

16. The Delegation of Denmark stated that the copyright law of its country was in general applicable in order to secure protection of computer software, but that some clarification might be required. Foreign computer programs enjoyed national treatment in Denmark. As regards the conclusion of a new treaty, further study was required, taking into account the existing treaties.

17. The Delegation of France referred to the position taken by the employers' association and the Minister of Justice of its country, in accordance with which computer software enjoyed copyright protection. In this connection, one had to examine the question of whether computer software was a work protected by copyright, and of whether all the acts against which protection was desired were covered by the copyright law. A special treaty was required only if the existing treaties were not sufficient. In this respect the Berne Convention and the Universal Copyright Convention presented similar features. However, the scope of those Conventions had to be further examined.

18. The Delegation of Hungary stated that the fact that two government agencies of its country had given two divergent replies to the WIPO questionnaire resulted from the uncertainty existing when the replies were given. However, in the meantime, it had become clear that copyright applied to computer software, and this had been confirmed in a recent court decision. A Decree had been prepared and

would probably be published in a few weeks, in particular to clarify that the Berne Convention would be applicable. If an additional treaty was desired, then this should be concluded as a special agreement under Article 20 of the Berne Convention. The use of the program in controlling a computer entailed a reproduction of the program. The long duration of copyright did not cause a problem since there was no economic interest in making freely available obsolete programs.

19. The Delegation of Morocco stated that, in its country, interest had been expressed in favor of a treaty. However, the position of its country had not yet been fixed, mainly because so far there were practically only users (but no producers) of software. In any case, it was necessary to keep the special conditions of developing countries in mind when examining questions of international protection.

20. The Delegation of Austria stated that the copyright approach had first prevailed in its country, but that in the meantime the proponents of a special treaty had gained ground. Thus at present the position of its country was open.

21. The Delegation of Italy pointed out that the existing conventions did not clearly cover the protection of computer software. At the national level, there was a tendency to seek protection under copyright law. Thus it might be appropriate to conclude an additional protocol to the Berne Convention if additional treaty provisions were required.

22. The Delegation of the United Kingdom drew attention to the divergent opinions existing in various countries. In the United Kingdom a special study had suggested a clarification to the effect that copyright law should apply to the protection of computer software. A new treaty would present the danger that it might distract from the possibilities offered by copyright law. In general it could be said that there was a trend towards the application of copyright laws.

23. The Delegation of Australia referred to the fact that in its country an important sector of industry was engaged in producing computer software and in exporting some of it. Taking into account the fundamental purpose of existing laws and treaties, it had to be admitted that computer software was different from what is normally protected. A computer program resulted from an inventive idea and from the transformation of that idea into the actual program. About 25 % of the work involved related to the idea, and 75 % went into the actual writing of the program, its debugging and finalizing. Copyright laws could protect only the final program, but not the underlying idea. Moreover, since copyright protected only against reproduction, a problem existed with respect

to the use of the program in controlling the operation of the computer. One special advantage of copyright, however, was its ability to confer protection on original compilations of non-original sub-programs. There was the question of whether any such use involved a reproduction of the program. Moreover, the duration provided under the copyright law was certainly too long; 10 to 20 years would be sufficient. In addition, copyright did not promote disclosure of works, but only provided for an encouragement and reward for the creator, while one of the primary purposes of patent protection was the promotion of disclosure of new technology. This, and the fact that patent laws cover the use of technology and not only its reproduction and provide for a duration which takes into account the need of the public for using new technology, were arguments in favor of a patent law approach.

24. The Delegation of Finland felt that questions in connection with copyright, in particular the question of whether the use of the computer program in the control of the computer could be considered as a reproduction, needed to be clarified. In a recent meeting of the interested circles in Finland, it was recognized that protection should be offered by express provisions. There was a trend in favor of a *sui generis* approach. As regards the question of whether a new treaty was desirable, the Delegation at present would take a neutral position. In any case, it was important that a new treaty did not affect the existing possibilities of protection.

25. The Delegation of India stated that its Government was presently studying the most appropriate means to afford protection to computer software and noted the flexible approach adopted in this respect by the draft Treaty. The question of securing protection for computer software was of great importance for its country, since India was not only a producer but also an exporter of software.

26. The representative of Unesco expressed the view that a program description and a user instruction doubtlessly were protected by copyright. However, the question of whether the program itself enjoyed copyright protection required further study. Therefore, Unesco had proposed to examine this matter in a Committee of Governmental Experts to be convened jointly with WIPO. There was a clear need for protection in order to encourage the creativity of software producers.

27. The representative of CISAC expressed his Confederation's concern about the suitability of seeking protection for computer software under copyright law. The inclusion of computer software may not be without danger for the copyright system. Certain features of copyright protection, for example the

duration, the moral rights and personal ownership in the creation were certainly not suitable for computer software. This might lead to some pressure to adapt the copyright system, for example by reducing the term of protection.

28. The representative of UePIP stated that a new treaty would be useful only if it were signed by a large number of countries, including developing countries. While the substance of software was rather of a technical nature, and therefore suitable for patent protection, its form was an object of copyright protection. It could be considered to add an additional article to the Paris Convention, stating that computer software must be protected by all member States of the Paris Union, and to clarify the Berne Convention in order to ensure that computer software is a protected work, possibly with the proviso of a shorter duration.

29. The representative of UNICE stated that the major software producers and users did not need a new treaty. The preparation of a new treaty could be understood as a consequence of an existing uncertainty, and therefore could distract from the presently available copyright protection. Certain features of copyright, such as the moral rights and the long duration, did not justify changes in copyright law. Copyright protection had in particular the advantage that anybody who independently created a computer program was not hampered in doing so by exclusive rights in computer software, since copyright only prohibited copying, but not independent creation.

30. The representative of IAPIP said that his Association was in favor of an exclusive right for computer programs, since such an exclusive right would promote the disclosure and working of programs. It appeared to be appropriate to study whether both the Paris Convention and the Berne Convention needed to be amended, in order to cover protection of computer software. It was also necessary to clarify the definition of software and the protected acts. IAPIP was in favor of the draft Treaty and of a study on the deposit or registration of computer software, in order to ensure proof of the creation and of the origin of the computer software.

31. The representative of CIPA stated that industry was largely in favor of copyright protection for computer software. It should be studied whether recommendations could be adopted in that respect.

32. The representative of FICPI underlined the need for a protection of the computer program, not only in its final expression, but also of the underlying concepts and the algorithm. Therefore, the existing copyright conventions were not sufficient to secure international protection of computer software.

33. The representative of the Computer Law Association expressed the view that, for the time being, copyright appeared to be sufficient in order to ensure protection of computer software. The adoption of a new treaty might inhibit certain desirable developments in national law. For example, account should be taken of the fact that, to an increasing extent, programs were being created which would be compatible with different computers, and could be expressed in different programming languages.

34. The representative of ADAPSO stated that, for the time being, copyright offered the best form of protection, and that a new treaty might cast doubt concerning the applicability of copyright.

III. Basic Principles of International Protection for Computer Software

35. Although the prevailing view in the Committee of Experts was that it was not appropriate, at this stage, to have a detailed examination of the draft of the special treaty as such, it was considered to be useful to examine the substantive questions arising relating to the basic principles of international protection of computer software. The Committee of Experts referred in its discussions to document LPCS/II/3, containing a draft Treaty for the Protection of Computer Software (hereinafter referred to as "the draft Treaty") prepared by the International Bureau, and took into account the WIPO Model Provisions on the Protection of Computer Software (hereinafter referred to as "the Model Provisions").

36. The Committee of Experts decided to examine the following basic principles of international protection for computer software: (a) definitions; (b) desirable minimum rights; (c) duration of protection; (d) use of computer software on land vehicles, vessels, aircraft and spacecraft; (e) national treatment.

Definitions

37. It was stated that it was not necessary to give the three-level definition (computer program, program description and supporting material) but only to give a definition of "computer program." Moreover, the necessity of a definition was questioned, since there was no intention of excluding anything related to software from any kind of protection, as long as the conditions of each kind of protection were fulfilled. Even if the definition was only of a descriptive nature (i.e. not excluding anything from protection), it could soon become obsolete because of technical developments.

38. Concerning computer programs, it was pointed out that the relevant definition in Article 1(i) of the draft Treaty was too limited. It was suggested that this definition should cover "source programs," "object programs," other types of programs and the different stages of development of programs.

39. Reference was made to the terminology adopted by the International Organization for Standardization (ISO) concerning computer software. In this respect, it was pointed out that the ISO terminology did not refer, for example, to the term "machine-readable medium."

40. The view was expressed that the technical information as such contained in a "set of instructions" was not a work in the copyright sense, but rather a matter relevant in connection with industrial property. It was suggested to use, instead, the words "an expression, in any form, of a set of instructions."

41. In respect of the definitions of "program description" and "supporting material," the opinion was expressed that, if a copyright approach was retained, copyright laws were broad and flexible enough to cover the said items. It appeared, therefore, inappropriate and even dangerous to provide detailed definitions, in view of the rapid technological developments in this field. If program description and supporting material were to be mentioned, then they should only be so as examples of objects of protection.

42. The question was raised of whether the words "verbal form," as referred to in the definition of program description in Article 1(ii) of the draft Treaty, should be understood as presentation in words rather than in symbols.

43. The questions were raised of why the concept of originality was not included in the definitions presented in the draft Treaty and why the draft Treaty did not contain the provisions of Section 4 of the Model Provisions, excluding the protection of concepts. It was replied that this was an intentional omission, in order to allow national laws of Contracting States to be based on either a copyright or an industrial property approach.

44. It was suggested that questions concerning the definition of computer software and related technical issues be examined in more detail in a special Working Group.

45. It was noted that, if a copyright approach was adopted, the definition of "proprietor" should be substituted by that of "author." In any case, it was also necessary to take into account legal entities as owners of rights.

Desirable Minimum Rights

46. Concerning the question of disclosing computer software or facilitating its disclosure (Article 4(1)(i) of the draft Treaty), in particular the following observations were made.

(a) In addition to relying on protection against unlawful acts, the creator of software had the possibility of fixing by contract the conditions for the disclosure and use of the software.

(b) Software could constitute a trade secret, and parties of a contract concerning software could fix the period of time during which the secret should be kept.

(c) The act of unauthorized disclosure of software was not always covered by copyright law. In order to comply with a treaty obligation in this respect, one would have to rely on provisions of the national law which were outside the area of copyright.

47. Concerning the question of allowing or facilitating access to any object storing or reproducing the software (Article 4(1)(ii) of the draft Treaty), in particular the following observations were made.

(a) Access to an object storing or reproducing software was a matter not covered by copyright.

(b) It would have to be examined whether the provisions of Article 4(1)(ii) of the draft Treaty were not too extensive, since there was no reason to prohibit access as such; protection should be granted only where the access led to an unauthorized disclosure or use of the software.

48. Concerning the question of copying by any means or in any form of the software (Article 4(1)(iii) of the draft Treaty), in particular the following observations were made.

(a) Under certain national legislations, "copying" in the copyright sense did apply when the work was "substantially" reproduced.

(b) It would be necessary to clarify the notion of "copying" computer software by including the act of storage, which had to be considered as a form of reproduction. Reference was also made, in particular, to the recommendations adopted in June 1982 by the second WIPO/Unesco Committee of Governmental Experts on Copyright Problems Arising from the Use of Computers for Access to or the Creation of Works.

(c) It was suggested that the exceptions provided for in Article 9(2) of the Berne Convention, according to which it should be a matter for national legislations to permit the reproduction in certain special cases, should be taken into account. The question of whether a reproduction was lawful depended on factual situations, and national courts should decide, case by case.

49. Concerning the using of computer programs and of program descriptions (Article 4(1)(iv), (v) and (vi) of the draft Treaty), in particular the following observations were made.

(a) It was pointed out that Article 4(1)(iv) and (v) of the draft Treaty could be construed as to include the protection of concepts, which would be contrary to a copyright approach.

(b) The question of the protection of concepts was raised in general. In this connection, it was pointed out that countries which protect computer software only under copyright law might not wish to protect concepts, as the protection of concepts ideas or systems did not comply with basic copyright principles. On the other hand, it was suggested that concepts, if they were to be protected, should be covered under the patent law if there was no possibility of protecting them under copyright law.

50. Concerning the offering or stocking of the computer software for commercial purposes, or the doing of any of those acts (Article 4(1)(vii) and (viii) of the draft Treaty), it was stated that these acts were not controlled in the national legislation of several countries. It was suggested that the distribution of copies of the software under an implied authorization, possibly in accordance with the principles governing the exhaustion of rights, should be further studied. For example, if the creator of a program had transmitted the computer software to another party, the user of the computer software could be considered as authorized to transmit the computer software to third parties. If, in such a case, the contract did not contain any limitations, the transfer of the software to third parties could be considered as a lawful act.

Duration

51. It was pointed out that the duration of protection should be made dependent on the type of protection afforded to computer software, whether under copyright law, trade secret law or patent law.

52. With respect to copyright protection, reference was made to Article 7(1) of the Berne Convention and to Article IV(2) of the Universal Copyright Convention.

53. On the other hand, it was stressed that the duration of protection should not exceed a period of 10 or 15 years, because, amongst other reasons, a longer period would create difficulties for the users of the software in view of the need to further develop the software. The view was also expressed that the longer term would not necessarily create difficulties in practice, in view of the short economic lifetime of much of the software.

54. The appropriate starting points for the protection and for the calculation of the term of protection should be further studied.

Use of Computer Software on Land Vehicles, Vessels, Aircraft and Spacecraft

55. It was stated that, if computer software was protected under copyright, the provisions of Article 6 of the draft Treaty would not be in conformity with the existing copyright laws and conventions. It would therefore have to be studied whether the proposed exception to the protection should be made mandatory by international treaty provisions and, if so, in which form.

56. It was suggested that consideration should be given to the increasing international transmission of software by telecommunication means.

57. Attention was drawn to the possibility of national laws allowing, under certain conditions, the use of software in the public interest; in this connection, the interests of the creators should be taken into account.

58. It was suggested that Article 6 of the draft Treaty should not cover situations in which the software was used in an aircraft or spacecraft other than for navigation purposes.

59. It was stated that the Chicago Convention on International Civil Aviation of 1944 excluded the invoking of patent protection under certain circumstances.

National Treatment

60. It was generally agreed that the principle of national treatment should apply to the protection of computer software.

61. It was indicated that the term "ressortissants" was not usual in international law and that, instead, the term "nationaux" should be used. It was further pointed out that the term "residents of other States" should be clarified in the sense that national treatment was, in addition to nationals of other Contracting States regardless of their residence, also given to nationals of third States being residents of a Contracting State.

IV. Integrated Circuits

General

62. Discussions were based on document LPCS/II/4, the contents of which were discussed in detail. The increasing economic importance of integrated circuits and the need for protection against unauthorized manufacture were generally recognized, and it was unanimously agreed that further study of the prob-

lems connected with protection in this field was urgently required.

63. The Delegation of Sweden suggested the following definition of an integrated circuit: "a circuit in which a number of circuit elements are inseparably associated and electrically interconnected such that, for the purpose of specification, testing, commerce and maintenance, it is considered indivisible." It was added that, for the purposes of this definition, a circuit element did not have an own envelope or own external connection and was not specified or sold as a separate item.

64. The Delegation of the United States of America referred to the recent developments in its copyright law concerning the protection of integrated circuits, also called "chips," which could be summarized as follows. The copyright law presently provided protection for computer programs independently from their medium of fixation. It protected a program stored in a chip. Copyright protection was presently also available for the technical drawings that were prepared at various stages in the manufacture of a chip. Protection apparently did not extend to the chip form in which those works might ultimately be embodied. A draft Semiconductor Chip Protection Act of 1983 had been tabled in Congress, providing for amendments to the copyright law, in order to protect integrated circuits. This Act would create a new subject matter category of copyrightable work known as "mask works." This new category was specially defined in a way that appeared intended to encompass the skills and creativity, if any, employed in the intermediate stages of producing semiconductor chips. The ultimate objective was to protect the finished chip against unauthorized duplication. Other major features of the draft Act included the following:

limited term of protection (10 years);

new or modified exclusive rights, such as to embody the work in a mask, to distribute the work; to use a mask embodying the work to manufacture chips, to reproduce the work on material intended to be part of a chip product and to distribute or use a chip product;

compulsory licenses (the purchaser of an infringing chip product, having no notice of infringement, is entitled to a compulsory license);

"innocent infringer" provisions (a "bona fide" purchaser of an infringing chip product is not liable as an infringer before the purchaser has notice of the infringement).

65. The view was expressed that copyright protection was not appropriate to integrated circuits because of their technical nature.

Specific Questions

66. In particular, the following aspects were considered.

(a) It was pointed out that confusion should be avoided between integrated circuits as such, with their particular characteristics, and "masks" which are tools to produce integrated circuits. Integrated circuits embodied technological functions and, therefore, could be protected under patent law and thus were covered by the Paris Convention.

(b) As regards masks, it was mentioned that the protection under unfair competition law could apply in some countries, whereas it would not apply in other countries.

V. Desirability of Setting up a System of International Deposit of Computer Software

67. The discussion was based on document LPCS/II/2, paragraphs 20 to 24.

68. It was generally stated that, if a copyright approach for the protection of software was adopted, an international system of deposit or registration of computer software should not be provided for, in view of the fact that most copyright laws granted an automatic protection to works without formalities.

A system of deposit was also questioned on the ground that it would involve classification problems and publication costs and would be without practical value.

69. It was mentioned that, while, for the time being, there was no need for an international deposit or registration, studies might be conducted at the national level in respect of the desirability of national deposit or registration systems.

70. The Delegation of Australia mentioned that a deposit system might be desirable if any international system for protection of ideas, etc., in software were adopted.

VI. Conclusions

71. At the close of its discussions, the Committee of Experts adopted the conclusions in Annex I.

72. When the conclusions were adopted, the Delegation of the Netherlands pointed out that paragraph 3 of the conclusions concerned countries with important computer software business.

73. This Report was unanimously adopted by the Committee of Experts in its meeting on June 17, 1983.

ANNEX I

Conclusions of the Second Session of the Committee of Experts on the Legal Protection of Computer Software

adopted on June 17, 1983

I. Protection of Computer Software

1. The WIPO Committee of Experts on the Legal Protection of Computer Software, meeting in Geneva from June 13 to 17, 1983, noted with great appreciation the work undertaken by WIPO in many ways during the last decade in order to secure efficient protection of computer software. The Committee also noted with great appreciation the elaboration by the International Bureau of a draft Treaty for the Protection of Computer Software. It had, on the basis of that draft and other working documents, including the WIPO Model Provisions on the Protection of Computer Software (1978), a detailed discussion on the substance matter of the protection desirable in respect of computer software. As regards the form for such protection, various suggestions were made for solutions other than the proposed draft Treaty, such as a recommendation to States on the principles for the international protection in this field.

2. The Committee expresses the unanimous view that, whatever the form would be, there should be effective international protection of computer software.

3. The Committee took note of the information given at the meeting on the increasing trend at the national level in a certain number of countries of granting protection under copyright law to computer software. It noted that this situa-

tion could have — thanks to the principle of national treatment — the consequence that the need for international protection may, between such countries, be satisfied to a considerable extent by means of the international copyright conventions. The Committee also noted that WIPO, jointly with Unesco, suggests undertaking a study and convening a committee of governmental experts on the protection available for computer software under existing copyright laws and treaties.

4. In view of the foregoing considerations and of the complexity of the problem, the Committee considers it premature to take, for the time being, a stand on the question of the best form for the international protection of computer software and recommends that the consideration of the conclusion of a special treaty as presented to it should not be pursued for the time being.

5. Furthermore, the Committee recommends that the results of its present session, together with supplementary observations to be invited from governments and interested international organizations (for example, as to whether any mechanism for the protection of ideas or concepts on which software is based, such as methods, processes, or systems of operation, would be desirable), as well as a compilation of relevant court decisions, be brought to the attention of the governments, interested organizations and the said joint WIPO/Unesco Committee of Governmental Experts.

6. The Committee also recommends that it should, at a later stage, be convened to consider once more the issue of the best form of international protection in connection with or in the light of the work conducted within the framework of the joint WIPO/Unesco study.

7. Finally, the Committee recommends convening a working group for examining certain technical issues, in particular the definition of computer software.

II. Protection of Integrated Circuits

8. The WIPO Committee of Experts on the Legal Protection of Computer Software discussed the increasingly important question of the protection of integrated circuits.

9. The Committee recommends that WIPO should prepare as a matter of priority, with the help of consultants, a

working paper on the protection of integrated circuits. It expresses the wish that this working paper be submitted to the governments and interested organizations in sufficient time before such paper is taken up for examination in the forum to be designated for that purpose in the framework of the Paris Union.

III. International Deposit of Computer Software

10. The WIPO Committee of Experts on the Legal Protection of Computer Software discussed the question of an international deposit of computer software.

11. The Committee is of the opinion that the study of establishing such a deposit, at least at an international level, should not be pursued at this time.

ANNEX II

List of Participants

I. States

Australia: F. J. Smith; R. A. I. Bell. **Austria:** R. Dittrich; O. Rafeiner. **Belgium:** G. P. V. Vandenberghe. **Benin:** O. M. Winsalas Dare. **Brazil:** R. N. Botelho de Noronha. **Canada:** A. D. Bryce. **China:** Kung Hsi. **Congo:** D. Ganga-Bidié. **Denmark:** J. Nørup-Nielsen; M. Koktvedgaard. **Egypt:** M. Daghash. **Finland:** J. Liedes; S. Lahtinen. **France:** A. Kerever; A. Bourdalé-Dufau; J. Myard; R. Richter; B. Vidaud; A. Grissonnanche. **Germany (Federal Republic of):** M. Möller. **Hungary:** G. Pálos; L. Mohácsy. **India:** L. Puri; N. Seth. **Italy:** G. L. Milesi Ferretti; R. Boros; M. Fabiani; C. Casuccio. **Japan:** S. Ono; K. Sakamoto; Y. Oyama; Y. Tsunoda; F. Kato; S. Ozawa. **Mexico:** V. C. Garcia-Moreno; M. Arce. **Morocco:** M. Najim; M. Er-Rahhaly. **Netherlands:** R. Furstner; J. E. M. Galama; E. C. Nooteboom; J. Meijer van der AA. **Norway:** J. Bing. **Republic of Korea:** J.-V. Chae. **Singapore:** R. Magnus; P.-Y. Thong. **Spain:** F. J. Alegria Martinez de Pinillos; M. Heredero. **Sweden:** H. Olsson; J.-E. Bodin. **Switzerland:** K. Govoni; C. Hilti. **Trinidad and Tobago:** H. Robertson. **Tunisia:** R. Tlili; R. Attia. **Turkey:** E. Apakan. **United Kingdom:** P. Ferdinando. **United States of America:** M. S. Keplinger; H. D. Hoinkes.

II. Intergovernmental Organizations

Commission of the European Communities (CEC): B. Posner; E. Peeters; H. Bank; J. Girerd. **European Patent Organisation (EPO):** G. Korsakoff; P. K. J. van den Berg; G. D. Kolle. **Intergovernmental Bureau for Informatics (IBI):** T. Ennison. **United Nations Educational, Scientific and Cultural Organization (UNESCO):** E. Guerassimov. **World Health Organization (WHO):** R. Gallagher.

III. International Non-Governmental Organizations

Chartered Institute of Patent Agents (CIPA): J. U. Neukom. **Committee of National Institutes of Patent Agents (CNIPA):** J. Betten. **European Computer Manufacturers Association (ECMA):** M. Colombe. **European Computing Services Association (ECSA):** D. R. C. Robertson. **European**

Federation of Agents of Industry in Industrial Property (FEMIP): G. P. Hommery; B. Villinger. **International Association for the Protection of Industrial Property (IAPIP):** T. Mollet-Vieville; T. Doi. **International Confederation of Societies of Authors and Composers (CISAC):** D. de Freitas. **International Federation of Industrial Property Attorneys (FICPI):** H. Bardehle; T. D. Jennings. **International Federation of Information Processing (IFIP):** R. J. Hart. **International Federation of Phonogram and Videogram Producers (IFPI):** G. Davies; E. Thompson; B. von Silva Tarouca; T. Ambrosini. **International League Against Unfair Competition (LICCD):** J. Evrard; M. Muhlstein. **International Literary and Artistic Association (ALAI):** D. de Freitas. **International Publishers Association (IPA):** J. A. Koutchoumow. **Licensing Executives Society (International) (LES):** C. G. Wickham. **Union of European Practitioners in Industrial Property (UEPIP):** J. Lecca. **Union of Industries of the European Community (UNICE):** M. Kindermann.

IV. Other Organizations

Association of Data Processing Service Organizations (ADAPSO): R. J. Palenski. **Computer and Business Equipment Manufacturers Association:** H. M. Brownrout; O. R. Smoot. **Computer Law Association:** S. H. Nycum Bosworth. **Information Industry Association:** R. S. Willard.

V. International Bureau of WIPO

A. Bogisch (*Director General*); K. Pfanner (*Deputy Director General*); L. Baeumer (*Director, Industrial Property Division*); F. Balles (Head, Industrial Property Law Section, Industrial Property Division); A. Ilardi (*Senior Legal Officer, Industrial Property Law Section, Industrial Property Division*).

VI. Officers

Chairman: H. Olsson (Sweden). *Vice-Chairmen:* G. Pálos (Hungary); M. Najim (Morocco). *Secretary:* F. Balles (WIPO).

Joint Unesco-WIPO Consultative Committee on the Access by Developing Countries to Works Protected by Copyright

Second Ordinary Session

(Geneva, July 4 to 7, 1983)

Report

prepared by the Secretariat, presented by the Rapporteur
and adopted by the Committee

Introduction

1. In accordance with paragraph (2) of Article V of the Statutes of the Joint Consultative Committee (hereinafter referred to as "the Committee") on the preparation and implementation of the activities of the Joint International Unesco-WIPO Service for Access by Developing Countries to Works Protected by Copyright, the second session of the Committee was held at WIPO headquarters in Geneva from July 4 to 7, 1983.

2. Ten of the 12 members of the Committee were present. Their names and titles are shown in the list of participants.

3. The following States members of Unesco and WIPO were represented by observers: Angola, Australia, Bangladesh, Bolivia, Chile, China, Ecuador, Egypt, Gabon, Holy See, Honduras, Hungary, India, Italy, Japan, Madagascar, Malawi, Poland, Portugal, Republic of Korea, Sri Lanka, Turkey, United Kingdom (23).

4. The following organizations were represented by observers:

(i) Intergovernmental organizations: Arab Educational, Cultural and Scientific Organization (ALECSO); League of Arab States (2).

(ii) International non-governmental organizations: International Association for the Advancement of Teaching and Research in Intellectual Property (ATRIP); International Association of Conference Interpreters (AIIC); International Bureau of Societies Administering the Rights of Mechanical Recording and Reproduction (BIEM); International Catholic Organization for Cinema and Audiovisual (OCIC); International Confederation of Societies of Authors and Composers (CISAC); International Copyright Society (INTERGU); International Federation of Phonogram and Videogram Producers (IFPI); International Literary and Artistic Association (ALAI); International Publishers Association (IPA) (9).

5. The list of participants is annexed to this report.

Opening of the Session

6. The session was opened by the outgoing Chairman, Mr. D. N. Malhotra, Managing Director, Hind Pocket Books Private Limited (India) who hoped that the work of the Joint International Unesco-WIPO Service will proceed apace on the basis of international goodwill and cooperation, in order to enable developing countries the necessary access to works protected by copyright that may be needed by them. Mr. Claude Masouyé, Director, Public Information and Copyright Department, on behalf of the Director General of WIPO, welcomed the members of the Committee and the observers; Miss Marie-Claude Dock, Director, Copyright Division, Unesco, also welcomed the participants on behalf of the Director-General of Unesco and thanked WIPO for hosting the session of the Committee.

Election of Officers

7. The Committee unanimously elected the following officers: Mr. Jean-Jacques Nathan (France), Chairman; Mrs. Natalia I. Razina (Soviet Union), Vice-Chairman; Mr. Modupe Oduyoye (Nigeria), Rapporteur.

8. The Committee discussed various items as mentioned in its Agenda (document UNESCO/WIPO/CCC/II/1). All the members of the Committee expressed their deep appreciation of the quality and usefulness of the documentation prepared for the meeting by the Secretariats.

Report on the Activities of the Joint International Unesco-WIPO Service for Access by Developing Countries to Works Protected by Copyright since the First Session of the Committee

9. Collection and dissemination of data

9.1. *Inventory of the needs of certain developing countries for printed works and audiovisual materials*

9.1.1. Discussions were based on document UNESCO/WIPO/CCC/II/2.

9.1.2. The Committee noted that the inventory already covers 68 developing countries and proves the usefulness of this activity which should be encouraged.

9.1.3. Certain members and observers pointed to the desirability for a more global approach in the assessment of needs; to the inclusion of Asian and Arab countries in such an assessment, since the document indicated that the current survey had covered only African, Latin American and Caribbean States. There was a suggestion in this context that the list of needs should be countrywise.

9.1.4. The Secretariat of Unesco mentioned that an earlier survey had, in 1977-78, covered all regions and hence the present document had not specifically referred to it. However the next assessment will be undertaken in respect of Asian and Arab States.

9.1.5. Some members recommended continuation to the extent possible of the use of consultants to complement the sending of questionnaires in such surveys of various countries' needs; that the consultants include, where appropriate, specialists in the field of publishing, education or other related matters; that the consultants visits for such purpose should be carefully planned in advance for optimizing results and for ensuring the widest possible range of contacts necessary in such cases.

9.1.6. Members reiterated the desirability of encouraging promulgation of copyright legislation in developing countries which did not have these and/or updating these where necessary; also cooperating with such countries in implementing them, as well as promoting acceptance of multilateral copyright conventions.

9.1.7. The Secretariats indicated the assistance that Unesco and WIPO had respectively extended to their member States in connection with national legislative and administrative infrastructures.

9.1.8. Some members noted that the document under consideration had the merit of covering quite exhaustively the problems involved, and stressed the necessity of considering possible solutions. The document indicated that copyright was only one of the problems facing developing countries as regards the access to books, audiovisual and other similar materials for satisfying their needs in this connection.

9.1.9. Certain members emphasized the crucial role and problem of finance and the currency situation in some countries in the context of assistance in access to works protected.

9.1.10. In this connection one of the members gave details of a development cooperation project service for helping to set up publishing structures in developing countries; the training programs initiated in this connection and the consultancies provided;

the National Copyright Clearing House operated by the Publishers' Association of the United Kingdom was referred to in this connection; the member concerned mentioned that it was not being optimally utilized as the number of enquiries had been very few; he also referred to mention being made in the document only to requirements of reprint rights and stated that co-production was also to be considered; in fact such a survey of needs should also identify the whole range of techniques to use that could be found most economical in a given situation.

9.1.11. Some members offered assistance to consultants sent for the purpose of such need assessment; they also specified some countries which should receive priority in such assessment; in the context of the Latin American survey, they stressed the need to establish contacts also with the economic and financial authorities in order that copyright royalty payments, which form a small part as compared with the larger industrial royalty outgo, could, in respect of access to protected works of foreign origin, be given the necessary priority.

9.1.12. Certain members, as also the observer from the IPA, emphasized the desirability of continuing and enlarging cooperation with regional organizations such as ALECSO, CERNAL, etc.

9.1.13. The observer from ALECSO indicated the steps taken by his Organization in the areas under discussion; he referred to the Arab Copyright Convention adopted in 1981; to the major program to unify school curricula; to the cooperation agreement already existing with Unesco and his Organization's desire to conclude one with WIPO.

9.1.14. The observer from IPA referred to the whole range of problems that should be covered in such surveys; difficulties in respect of customs, finance, etc. He referred to the limited use of certain books for reasons of financial constraints which latter also came in the way of publishers sometimes being unable to follow through in respect of rights acquired.

9.1.15. The observer from CISAC, emphasizing the diverse needs of different developing countries and regions, suggested that such studies should be undertaken on a sectoral basis, taking into account, for example, linguistic, cultural or social traditions.

9.1.16. The Committee noted with satisfaction the contents of document UNESCO/WIPO/CCC/II/2 as well as information given and statements made at the meeting.

9.2. Access to sources of information permitting the choice of printed works and audiovisual material able to satisfy the needs of developing countries

9.2.1. Discussions were based on document UNESCO/WIPO/CCC/II/3.

9.2.2. In general the Committee considered that the bibliographic list was a useful instrument in dissemination of sources of information from where the titles of the required books could be found. It expressed the wish that the said list should be made better known to a larger circle of interested users.

9.2.3. It was noted that the biggest source of information and the most important bibliography in respect of books produced in the United Kingdom viz. "British Books in Print" as well as other sources in other countries should also be included in the list annexed to the document. It was suggested that enquiries should not be confined to government sources, but also be made with other concerned circles.

9.2.4. The observer from Portugal suggested publishing the bibliographic information contained in the lists annexed to the document, in the periodical "Newsletter" published by WIPO also in the Portuguese language.

9.2.5. The observer from ALECSO wondered whether the Unesco courier which had a wide distribution could not be used for dissemination of the bibliographic list.

9.2.6. The observer from CISAC sought information as to the persons or entities that could make a request for assistance in respect of transfer of rights, to the Joint International Unesco-WIPO Service in connection with transfer of rights.

9.2.7. The observer from ATRIP stated that the lists appended with the document might include the titles of the bibliographies in the original language as well as in their translation to ensure better use of the information contained therein.

9.2.8. The Secretariats stated that the feasibility of including the titles in the original language as well as their translation, will be considered. As regards using the Unesco courier, it was mentioned that this matter requires consultation within the Unesco Secretariat but that another possibility could be by way of Unesco's "Copyright Bulletin." As for publishing the bibliographic data in the WIPO "Newsletter," it was mentioned that the said "Newsletter" dealt with general matters and could not be used for the purpose suggested. In respect of the query of the observer from CISAC, it was clarified that the public authorities as well as private enterprises could approach the Joint International Service with their requests.

9.2.8. The Committee noted the information contained in the document as well as the suggestions made, and also the statement of the Secretariats.

9.3. *List of foreign protected works for which the foreign copyright owners are willing to grant*

clearances — special conditions to nationals of developing countries

9.3.1. Discussions were based on document UNESCO/WIPO/CCC/II/4.

9.3.2. A large number of members felt that this activity of the Joint International Unesco-WIPO Service for Access by Developing Countries to Works Protected by Copyright was particularly important for developing countries. They congratulated the States and publishers which made these offers and expressed the hope that by the time of the next session of the Committee such positive responses will further increase.

9.3.3. It was pointed out that the assignment of rights constitutes one of the means of promoting indigenous publishing industries.

9.3.4. One of the members pointed out that offering certain works on special conditions would have the effect of devaluing them; it should be considered whether conceptually this was the best method of having the necessary information particularly as production of book lists was a highly professional task and needed to be much more carefully considered; it might also not be correct to suggest that developing countries could rely only on such a list, taking account of the great variety of needs of different developing countries. It was not always easy to exactly evaluate as to what corresponded to special conditions in certain specific cases.

9.3.5. The Secretariats indicated the list contained only titles where preferential conditions had been offered but that the choice for a much wider selection remained always open.

9.3.6. Other members felt that this should be treated as an illustrative list which might also encourage other publishers to concede such rights; that it had a symbolic value; was an affirmation of interest indicated by certain publishers which should be encouraged.

9.3.7. One of the members indicated that a letter had been received from the Mexican General Society of Writers; also from the Mexican Publishers Chambers offering a list of protected works under special conditions for developing countries. This will be forwarded shortly to the Secretariats.

9.3.8. The observer from India pointed out that of the 147 titles offered in the annex list, 72 came from India; the rest were divided between five other countries. This indicated the importance that her country gave to cooperation among (ECDC) developing countries.

9.3.9. The observer from IPA suggested that in order to obtain a larger number of such offers, a program for a specified period of time and for certain specialized subjects could be envisaged.

9.3.10. The Committee noted with satisfaction the information contained in document UNESCO/WIPO/CCC/II/4, specially in respect of assistance also offered by developing countries, and noted the statements made by the various members and observers.

10. Establishment of recommended standards for obtaining the required clearances from foreign copyright owners

10.1. Discussions were based on document UNESCO/WIPO/CCC/II/5, along with the Annexes to it containing the Report adopted by the Working Group on model contracts concerning co-publishing and commissioned works, convened at Geneva in November 1982 (Annex I), the preliminary drafts of respective model contracts concerning relations between author and publisher as regards commissioned works (Annex II) and commissioned translations (Annex III), as well as co-production of copies of a work by a publisher holding rights in the work and a publisher in a developing country (Annex IV).

10.2. It was felt by some members and observers that the preparation of model contracts concerning the relations between author and publisher as regards commissioned works has been, at the international level, a pioneer undertaking. The preliminary drafts offered a "check list" of the numerous aspects of such relationships to be governed by contract. The development of the proposed model contracts should be expedited, with special regard to the need for guidance in relevant relations between authors and publishers in developing countries. The model contracts should ensure the protection of authors' interests while taking account of the recognition of the special role of the publisher initiating the creation of a new work, and the respect of the necessary balance of interests of the parties involved.

10.3. In particular, a number of suggestions were made as regards how to further develop the existing preliminary drafts. The Committee approved, in general, the findings of the Working Group referred to in paragraph 10.1. Various proposals were put before it, aiming among others at the following: (i) specification of limitations of the transfer of rights, (ii) delimitation of the scope of using the work against a lump sum, if so agreed, (iii) specification of cases where advance payments to the author may become refundable and where they cannot be requested back, (iv) provisions concerning cases where the commissioned work should be completed by another person, (v) detailed rules concerning the authors' and publishers' obligations and responsibility as regards illustrations, (vi) more specific provisions concerning justified amendments in the accepted work, (vii) limitations of the publishers' right

of first refusal as regards future works of the author, with proper guarantees of the possibility to renegotiate the conditions of any subsequent contract, (viii) precisely developed alternative clauses concerning the choice of the applicable law, and jurisdiction of courts or arbitration, (ix) considering the risk of monetary devaluation by means of stipulating either short periods of accounting, or proper monetary correction clauses, (x) explicitly mandating the publisher to proceed on its own against piracy, etc.

10.4. Attention was drawn to the need for better harmonization of the model contracts for commissioned works and translations, respectively.

10.5. It was noted that the guidelines and model contracts prepared earlier on other subjects by the International Copyright Information Centre remain applicable in the fields governed by them.

10.6. It was stressed that the development of model contracts does not make it unnecessary to prepare a *vade mecum* on different steps to be taken in order to secure authorized use of protected foreign works.

10.7. The Secretariats noted the advices given by the Committee, and would consider them when providing new drafts of model contracts for the publication of a commissioned work or translation, and co-production of copies of a work, respectively. It was suggested that before finalizing the text of the model contracts to be submitted to the Committee during its next session, the Secretariats should provide for further appropriate consultations.

11. Arrangements and machinery to achieve realistic economic conditions

11.1. Discussions were based on document UNESCO/WIPO/CCC/II/6 on the progress made in the factfinding study, proposed to supply "information concerning the fees payable in developed countries so as to facilitate assessment of whether favorable terms are granted to developing countries in practice" and "factors likely to influence the determination of copyright fees," as requested by the Committee during its first session.

11.2. The Committee agreed to the method applied in collecting relevant information, and made several suggestions as regards further development of the study.

11.3. It was proposed to consider, in the survey, among the factors likely to influence the determination of copyright fees, also aspects of taxation in the country where the fee originates. It should be examined as to what kind of bilateral agreements have been concluded, or which other measures were taken, by developing countries in order to avoid double taxation of copyright royalties.

11.4. It was also suggested that in the survey to be prepared on prevailing copyright fees and modalities of their calculation as well as payment, certain principles should be emphasized, such as the requirement that (i) while taking into account the continuing need for the importation of books, the economic conditions of access to foreign protected works should apply so as to promote the interests of publishers in developing countries in their competition with book importers; (ii) the copyright fees be calculated on the basis of figures (prices, print runs) reflecting economic realities of the country where the work is being used without prejudice to lawful interest of the owner of copyright concerned; (iii) the fees accruing from the use of the work should reach the owner of copyright therein, etc.; (iv) where foreign exchange control exists, high priority should be given to transfer of copyright royalties.

11.5. The Committee observed that the study under consideration covers but one aspect of the complex issue of arrangements and machinery to achieve realistic economic conditions of access to foreign protected works and that also further objectives provided for in the Statutes of the Committee should be pursued parallel to the present study. It was noted, however, that certain related arrangements, as for example, the development of the publishing infrastructure by means of sending competent consultants to developing countries or studying possibilities of various joint ventures, do not come within the scope of the terms of reference of the Committee, which have been confined to all kinds of assistance serving the purpose of "access by developing countries to works protected by copyright."

11.6. The Secretariats noted the observations made and advice given by the Committee and would consider them in their relevant work. The factfinding study under consideration will be completed and submitted to the Committee in 1985, during its next session.

12. Study on recommended procedures for settling disputes between users of works in developing countries and foreign copyright owners

12.1. Discussions were based on document UNESCO/WIPO/CCC/II/7, containing information on a relevant factfinding study and, in its respective annexes, the Rules of the International Chamber of Commerce Court of Arbitration, the 1976 UNCITRAL Arbitration Rules for ad hoc arbitration, and the IPA Regulation of International Arbitration, designed in 1914 for specialized arbitration on disputes between publishers.

12.2. The Committee stressed the informative value of the document covering various possibilities of which the contracting parties may avail themselves

in solving their disputes. It appreciated, in particular, the applicability of the rather recent UNCITRAL arbitration rules to disputes between publishers and owners of copyright. It was stressed, however, that the contracting parties should be free in stipulating the proper solution as preferred by them.

12.3. Attention was drawn to the importance of always trying to solve disputes arising in connection with publishing contracts by means of negotiation between the contracting parties, before having recourse to arbitration or ordinary courts.

12.4. The necessity of clear stipulations as regards both the applicable law and jurisdiction or arbitration was emphasized in particular. Concerning the choice of law in case of arbitration, attention was drawn to the possibility of stipulating in the contract that the applicable law (or laws, as the case may be) should be determined by the arbitrators.

12.5. The Secretariats noted the observations and suggestions made by the Committee and would consider them in their future work, in particular when preparing various model contracts or other materials concerning the conduct of contracting parties co-operating in using foreign protected works in developing countries.

13. Intellectual, technical and financial assistance to developing countries

13.1. Assistance to developing countries in obtaining the necessary authorizations

13.1.1. Discussions were based on document UNESCO/WIPO/CCC/II/8.

13.1.2. Members of the Committee felt that if the procedure was to work well, requests sent through the Joint International Unesco-WIPO Service for Access by Developing Countries to Works Protected by Copyright should be complete and should indicate the name of the work, the name of the author, the name of the publisher to whom the approach had been made in the developed country concerned, the rights applied for, the date when such an approach was made and the response received thereto, etc.

13.1.3. One member felt the annexes to the document indicated the interest shown in the said Service as also its efforts. He proposed, however, that for optimizing this usefulness in assisting developing countries for obtaining necessary authorizations, certain norms should be set up and observed. As far as possible, requests from individual publishers in developing countries, where publishers associations existed, should be encouraged to go through such associations so that the necessary checks could be exercised as to the completeness of the information contained in the request.

13.1.4. Another member suggested that the Joint International Unesco-WIPO Service for Access by Developing Countries to Works Protected by Copyright should explore reasons for the reluctance in granting of necessary authorizations.

13.1.5. The observer from Australia gave the Committee detailed information on the establishment and activities of the Australian National Copyright Information Centre and offered assistance to countries in its region in connection with access to works protected by copyright.

13.1.6. The observer from IPA requested that both Secretariats keep the IPA informed in respect of such requests received. This had already been done in such cases but he suggested that it be extended to all cases for better coordination.

13.1.7. The Committee noted with considerable satisfaction the information contained in the document as well as the statements made.

13.2. Machinery for financing royalties to be paid by users in developing countries to owners in foreign countries

13.2.1. Discussions were based on document UNESCO/WIPO/CCC/II/9, which gives an account of the activities carried on within the framework of the Committee for International Copyright Funds (COFIDA).

13.2.2. One member of the Committee pointed out that COFIDA had been created with a view to facilitating development aid and international cooperation. As it had been set up during a period of international financial difficulties, some time was still necessary before it could attain its cruising speed, and so any discussion on that Agenda item should be postponed to the next session of the Committee.

13.2.3. Another member of the Committee, having noted that only one country had responded to the appeal made by the Director-General of Unesco in February 1982 for member States to contribute to the financing of COFIDA, suggested that another appeal should be made to the international community.

13.2.4. On the subject of the operating procedures of COFIDA, one member of the Committee wondered whether the loans that would be granted to finance payment of royalties for the use of a work could be repaid in national currency.

13.2.5. The Secretariat of Unesco said that the question of repayment of loans in non-convertible currency was at present under consideration, and that a decision on the subject would be taken by COFIDA at its next meeting.

14. General outlook for 1984-85 for setting up and carrying out the activities of the Joint International Unesco-WIPO Service for Access by Developing Countries to Works Protected by Copyright

14.1. It was agreed that this matter has been broadly considered while dealing with and discussing each of the Agenda items referred to above.

14.2. During the course of adoption of this Report, it was mentioned that the outlook for the activities of the Joint International Service should be based on the following considerations:

14.2.1. Information

(a) proceed with surveys with the help of consultants, where necessary, to ascertain the needs of developing countries;

(b) provide for wide dissemination of documentation on national libraries;

(c) draw up lists by geographical and cultural areas of publishers specialized in works intended for higher education;

(d) continue to collect from publishers in industrialized countries lists of works in which they are willing to assign reproduction and translation rights on preferential terms and distribute such lists to developing countries members of Unesco and WIPO.

14.2.2. Technical Assistance

(a) assist developing countries that have no copyright legislation in the drafting of their national laws;

(b) assist, through the grant of fellowships, in the training of the staff required for the appropriate organization of copyright administrations in developing countries;

(c) promote the training of publishers, where required, in developing countries in association with the International Publishers Association and publishing houses in industrialized countries.

14.2.3. Financial questions

(a) renew representations to member States in order to secure their contribution to COFIDA;

(b) make COFIDA known to developing countries and bring its facilities into operation for the benefit of countries with problems of convertible-currency payment;

(c) alert the financial administrations of developing countries to the need for prompt settlement of copyright royalties, which are often insignificant in relation to the trade balance as a whole, but which play an important part in encouraging the circulation of works in the international repertoire and thereby the dissemination of knowledge throughout the world.

Adoption of the Report and Closing of the Session

15. The Committee unanimously adopted this Report under the chairmanship of Mrs. Natalia I. Razina, Vice-Chairman, in the absence of the Chairman who had to leave before the end of the session. After the usual thanks, the session was declared closed.

List of Participants

I. Members of the Committee

- M. Salah Abada
Directeur général
Office national du droit d'auteur, Algeria
- Sr. Hesiquio Aguilar de la Parra
Director General del Derecho de Autor, Mexico
- Mr. Leo Albert
Chairman
Prentice-Hall International, United States of America
Absent
- Mr. Clive Bradley
Chief Executive
The Publishers' Association, United Kingdom
- S.E. le Dr Chams El-Dine El-Wakil
Ambassadeur
Délégué permanent de la République arabe d'Egypte
auprès de l'Unesco
- M. Miguel Angel Emery
Secrétaire général
Institut interaméricain du droit d'auteur, Argentina
- Mr. D.N. Malhotra
Managing Director
Hind Pocket Books Private Ltd, India
- M. Jean-Jacques Nathan
Président Directeur général
Editions Fernand Nathan, France
- Mr. Modupe Oduyoye
Managing Director
Daystar Press (Publishers), Nigeria
- Mrs. Natalia I. Razina
Chief of Legislation Division, Legal Department
The Copyright Agency of the USSR (VAAP),
Soviet Union
- M. Mamadou Seck
Président Directeur général
Nouvelles éditions africaines, Senegal
- Mr. Heng Wang
Adviser, Copyright Study Group
The Publishers' Association of China, China
Absent

II. Observers

(a) States

Angola: A.A. Dos Santos. **Australia:** W. Weemaes; R. Moore. **Bangladesh:** A. Rahman. **Bolivia:** E. Rivera Claussen. **Chili:** J. Berguno; P. Barros. **China:** R. Shen. **Ecuador:** M. Samaniego. **Egypt:** M. Daghash. **Gabon:** P.M. Dong; N.F. Ovono-Okoue. **Holy See:** O.J. Roulet. **Honduras:** I. Romero; J.M. Ritter; A. Ariza; N.W. Atala; R. Castro. **Hungary:** M. Ficsor. **India:** L. Puri. **Italy:** M. Turcio. **Japan:** K. Sakamoto. **Madagascar:** S. Rabearivelo. **Malawi:** H.R. Chirwa. **Poland:** H. Walkus-Gieralt. **Portugal:** A.M. Pereira. **Republic of Korea:** Y.M. Kim. **Sri Lanka:** H.M.G.S. Paliakkara. **Turkey:** E. Apakan. **United Kingdom:** D.F. Carter.

(b) Intergovernmental Organizations

Arah Educational, Cultural and Scientific Organization (ALECSO): A. Derradji. **League of Arab States:** O. El Hajje.

(c) International Non-Governmental Organizations

International Association for the Advancement of Teaching and Research in Intellectual Property (ATRIP): A. Dietz. **International Association of Conference Interpreters (AIIC):** A.M. Perrot. **International Bureau of Societies Administering the Rights of Mechanical Recording and Reproduction (BIEM):** J.-A. Ziegler; N. N'Diaye. **International Catholic Organization for Cinema and Audiovisual (OCIC):** P. Gosseries. **International Confederation of Societies of Authors and Composers (CISAC):** J.-A. Ziegler; N. N'Diaye. **International Copyright Society (INTERGU):** G. Halla. **International Federation of Phonogram and Videogram Producers (IFPI):** E. Thompson. **International Literary and Artistic Association (ALAI):** J.-A. Ziegler; N. N'Diaye. **International Publishers Association (IPA):** J.A. Koutchoumow.

III. Secretariat

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*).

Conventions Administered by WIPO

International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations

FINLAND

Ratification of the Convention

The Secretary-General of the United Nations, in a letter dated August 4, 1983, informed the Director General of the World Intellectual Property Organization that the Government of the Republic of Finland deposited, on July 21, 1983, its instrument of ratification of the International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations, done at Rome on October 26, 1961.

The instrument of ratification contains the following reservations:

1. With regard to Article 6, paragraph 2: protection will be granted to broadcasting organizations only if their headquarters is situated in another Contracting State and if their broadcasts are transmitted from a transmitter situated in the same Contracting State.

2. With regard to Article 16, paragraph 1(a)(i): the provisions of Article 12 will not be applied with respect to phonograms acquired by a broadcasting organization before 1 September 1961.

3. With regard to Article 16, paragraph 1(a)(ii): the provisions of Article 12 will be applied solely with respect to use for broadcasting.

4. With regard to Article 16, paragraph 1(a)(iv): as regards phonograms first fixed in another Contracting State, the protection provided for in Article 12 will be limited to the extent to which, and to the term for which, the latter State grants protection to phonograms first fixed in Finland.

5. With regard to Article 16, paragraph 1(b): the provisions of Article 13 (d) will be applied only to the communication to the public of television broadcasts in a cinema or other similar place.

6. With regard to Article 17: Finland will apply, for the purposes of Article 5, the criterion of fixation alone and, for the purposes of Article 16, paragraph 1(a)(iv), the criterion of fixation instead of the criterion of nationality.
(Original: English)

The Convention will enter into force, for Finland, three months after the date of deposit of the instrument of ratification, that is, on October 21, 1983.

National Legislation

COSTA RICA

Law on Copyright and Related Rights

(No. 6683, of September 24, 1981) *

(Articles 1 to 76)

TITLE I

Rights of Authors

CHAPTER I

Works Protected and Definitions

Article 1. Products of the intellect shall confer on their authors the rights referred to in this Law. The authors shall own economic and moral rights in their literary and artistic works.

"Literary and artistic works" shall be taken to mean all productions in the literary and artistic domain, whatever may be the mode or form of their expression, such as books, pamphlets, letters and other writings; lectures, addresses, sermons and other works of similar nature; dramatic or dramatico-musical works; choreographic works and pantomimes; musical compositions with or without words; cinematographic works, to which are assimilated works expressed by a process analogous to cinematography; 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 relating to geography, topography, architecture or science; derived works, such as adaptations, translations and other alterations of original works, subject to the authorization of the authors of the said works if they are not in the public domain.

Article 2. This Law shall protect the works of Costa Rican authors, whether or not they reside on the national territory, and those of foreign authors resident in the country.

Article 3. The works of foreign authors resident outside the country shall enjoy in Costa Rica the protection afforded them by international conventions

to which the country is party. For these purposes stateless persons shall be assimilated to nationals of the country of residence.

Article 4. For the purposes of this Law:

- (a) "individual work" means the work produced by a single author;
- (b) "work of joint authorship" means a work produced jointly by two or more authors, in which the contribution of each such author cannot be dissociated from the other contributions, so that the work constitutes an indivisible whole;
- (c) "anonymous work" means a work whose author is not named, according to his decision;
- (ch) "pseudonymous work" means a work disclosed by its author under a pseudonym that does not identify him;
- (d) "unpublished work" means a work that has not been communicated to the public in any form, including the oral form;
- (e) "posthumous work" means a work that has not been published during the lifetime of the author;
- (f) "original work" means the creation as originally conceived;
- (g) "derivative work" means the work resulting from adaptation of an original work, in so far as the result is a different creation possessing original character;
- (h) "collective work" means a work created by a number of co-authors in such a way that it is not possible to attribute a definite contribution to any one of them, such work being produced on the initiative of a natural or legal person who publishes it under his own name;
- (i) "publisher" means the natural or legal person who acquires the exclusive right of graphic reproduction of the work;
- (j) "fraudulent reproduction" means reproduction that has not been authorized;

* Published in *La Gaceta, diario oficial*, No. 212, of November 4, 1982. — WIPO translation.

- (k) "cinematographic producer" means the enterprise or person who takes the initiative in, ensures the coordination of, and assumes the responsibility for, the making of cinematographic work;
- (l) "reproduction" means the copying of a literary or artistic work, or of a visual or sound fixation of it;
- (ll) "publication" means the fact of making available to the public copies of a work or of a visual or sound fixation or a work;
- (m) "Registry" means the National Registry of Copyrights and Related Rights.

Article 5. In the case of an anonymous or pseudonymous work, the publisher shall exercise all rights and shall be subject to all the obligations of the author. When the author decides to reveal his identity, he shall automatically recover the exercise of his rights. Acts lawfully done by the publisher shall continue to be valid and to have effect after the author's identity has been revealed; the publisher shall also be liable for any unlawful acts that he may have committed.

Article 6. The owner of the copyright in collective works, such as dictionaries or encyclopedias, shall be the natural or legal person who compiles them.

Article 7. Any person may freely use intellectual works in the public domain, in any form and by any process; if however they are of a known author, his name may not be removed from publications or reproductions, neither may interpolations be made in them without an appropriate distinction being made between the original text and the editorial alterations or additions.

Article 8. Any person who adapts, translates, alters, recasts, abridges, parodies or abstracts — in any way — the substance of a work in the public domain shall own exclusive rights in his own work, but may not object to other people doing the same with the original work.

Article 9. The copyright in a collection of poems and popular songs shall belong to the collector where the collection is the product and result of his research and conforms to a special literary plan.

Article 10. Letters shall be the property of the addressee, who may not disclose them. That right shall belong solely to the author of the correspondence or, after his death, to his spouse or consanguineous heirs, for the entire period of protection. The addressee may nevertheless use them, without the author's authorization, as evidence in judicial or administrative proceedings.

Article 11. Literary or artistic works published in reviews or periodicals may not be reproduced without the author's authorization.

Article 12. The protection of the work shall include its title if such title is original and not liable to be confused with that of another work of the same kind, published earlier by another author. Generic titles and proper names shall not be protected.

CHAPTER II

Moral Rights

Article 13. Independently of his economic rights, even after their assignment, the author shall retain entirely personal, inalienable, unrenounceable and perpetual rights in the work, called moral rights.

Article 14. Moral rights shall include the rights:

- (a) to keep the work unpublished, with the possibility of postponing its publication and reproduction by testamentary provision during a period of up to fifty years following his death;
- (b) to demand that he be mentioned by his name or pseudonym as the author of the work in relation to all reproductions and uses thereof;
- (c) to prevent any reproduction or communication to the public of his work if it has been distorted, mutilated or altered in any way;
- (ch) to make subsequent alterations to his work;
- (d) to uphold his honor and reputation as author of his productions;
- (e) to withdraw the work from circulation and prevent its sale to the public, subject to prior indemnification of those prejudiced by such action.

Article 15. On the death of the author, in the absence of specific testamentary provision, the exercise of moral rights shall pass successively to his spouse, to his descendants and to his ascendants, in that order, for the entire period of protection of the work, with the exception of the cases referred to in subparagraphs (d) and (e) of the preceding Article. The defense of those rights shall accrue to the Ministry of Culture, Youth and Sport when the work falls into the public domain for want of heirs.

CHAPTER III

Economic Rights

Article 16. The author of a literary or artistic work shall have the exclusive right to use that work. Copyright contracts shall always be interpreted restrictively, the assignee not being granted rights more extensive than those expressly mentioned, except where they are the necessary consequence of the nature of the terms of the contract; the author shall therefore be entitled to authorize:

- (a) graphic publication;
- (b) translation into any language or dialect;
- (c) adaptation and inclusion in phonograms, videograms, cinematograph films and other audiovisual works;
- (ch) direct or indirect communication to the public by any process, and in particular:
 - (i) by performance or delivery;
 - (ii) by sound or audiovisual broadcasting;
 - (iii) by speaking devices, telephone or similar electronic apparatus;
- (d) any other form of use, process or system, whether known or future.

Article 17. The owner of the economic rights in the work shall have the exclusive right to specify the economic remuneration payable by users for its use. In the case of works in the public domain or versions thereof, including works of national folklore, prior authorization to reproduce them shall be obtained from the Ministry of Culture, Youth and Sport; *Editorial Costa Rica* shall receive forty percent of the total revenue produced.

Article 18. The economic rights of the co-author of a work of joint authorship who dies without heir shall accrue to the remaining co-authors.

Article 19. The various forms of use shall be independent of each other inasmuch as authorization to fix the work or production shall not entail authorization to perform it or broadcast it, and vice versa.

Article 20. All acts which the author, performer, producer of phonograms or broadcasting organization is entitled to accomplish may also be accomplished by their agents with specific powers, their assignees or successors in title or the collecting society that lawfully represents them (subject to prior registration of the documents specifying the powers and rights vested in them in the National Registry of Copyrights).

CHAPTER IV

Publishing Contracts

Article 21. Under a publishing contract a person called the publisher is granted, by the author of literary or artistic work or his legal successors, the right, on specified conditions, to reproduce, disseminate and sell the work. The publisher shall publish the work for his own account and at his own risk, and shall pay the author the remuneration previously agreed upon by the two parties.

Article 22. The publishing contract may be concluded for a specified period or for a specific number of editions. In the latter case, if an edition is out of print and the publisher does not print a new edition

within eighteen months, the author may seek to rescind the contract. If the contract does not specify either a period or a number of editions, it shall be understood to cover a single edition.

Article 23. An edition shall be considered out of print when the publisher cannot meet requests made him for the supply of copies for the market, or when the number of copies in his possession does not exceed one hundred.

Article 24. In the case of a contract concluded for a specific period, the rights of the publisher shall expire when the last edition produced within the period is out of print, or, if it is for a specific number of editions, when the last such edition is out of print.

Article 25. The author shall guarantee the publisher undisturbed and, unless otherwise agreed, exclusive exercise of the right granted. Both the author and the publisher shall be obliged to ensure the respect and defense of the right, either separately or jointly.

Article 26. The publisher may not assign the publishing contract to third parties, either free or for a consideration or as a corporate participation, independently of his business, without having obtained the author's prior consent. Such consent shall not be necessary if the assignment is made by liquidation or division, in the case of joint ownership, in favor of one of the associates or joint owners.

Article 27. The author shall, within the period specified in the contract, deliver the work to be published to the publisher in a form that permits it to be reproduced normally. The publisher may not make alterations or additions to the work or abbreviations in it without the author's written consent. The author shall have the right to make such corrections, amendments or improvements to the work as he considers appropriate before the work goes to press; however, when the corrections or improvements make printing more costly, he shall be obliged to indemnify the publisher for the corresponding costs.

Article 28. The publisher shall include the author's name or pseudonym or other identification in each of the copies, and shall publish the work within the period specified in the contract. Where no such period is specified, it shall be understood to be two years.

Article 29. The publisher shall decide on the number of copies in each edition, and also its typographical characteristics in so far as they do not prejudice the moral rights of the author.

Article 30. The publisher shall determine the selling price of each copy according to commercial customs and practice.

Article 31. On expiry of five years following the date stated on the colophon, the publisher may sell the remaining copies of the edition at a reduced price and pay the author proportionate royalties according to the new price.

Article 32. The author may at any time purchase copies of his work from the publisher, at the public selling price less the customary discount that the publisher grants to booksellers.

Article 33. The publisher shall be obliged to market the work permanently and continuously, and to distribute it according to customs and practice.

Article 34. Except where special procedures are specified in the contract, the publisher shall make the author half-yearly settlements of his royalties, with a statement of the date of publication, the number of copies published, the number of copies sold and the corresponding amount of royalties.

Article 35. Bankruptcy or insolvency on the part of the publisher shall not cause the publishing contract to be terminated. If the receiver, duly authorized by the court as provided in the Commercial Code, continues to implement the publishing contract, he shall assume all the obligations of the publisher. However, when effecting the sale of copies, he shall give the author a preferential right to acquire them according to the provisions of Article 10. In any event, the royalties shall be regarded for payment purposes as being claims of the workers.

Article 36. During the currency of the publishing contract, the publisher may demand withdrawal from circulation and destruction of any subsequent publication of the same work effected by another publisher, regardless of whether such publication has been effected with or without the author's consent.

Article 37. The author shall have the right to make whatever corrections or alterations he wishes in successive editions of his work, subject to indemnification of the publisher for the expenses he incurs thereby.

Article 38. In the case of total or partial loss or destruction of an unpublished work, the person responsible shall provide for the following indemnification:

- (a) if it occurs when the work is in the author's possession, the author shall pay the publisher any sum that he may have received as advance payment, plus any necessary costs that the publisher may have incurred;
- (b) if the loss or destruction is attributable to the publisher, the publisher shall indemnify the

author for all the moral and economic prejudice caused.

Article 39. The author shall retain all the economic rights in the work, with the exception of those expressly assigned in the publishing contract.

Article 40. Where one or more authors undertake to make a work according to a plan submitted to them by the publisher, they may not claim more than the agreed fees. The commissioning party shall be the owner of the economic rights in the work but the parties commissioned shall retain their moral rights in the work.

CHAPTER V

Stage Performing Contracts

Article 41. By virtue of a stage performing contract, the author of a theatrical work, such as a drama, tragedy, comedy, opera or other work of the same kind, entrusts the public performance of the work, with or without exclusive rights, to a theater impresario for a certain number of performances in a specific theater or hall, in return for the remuneration specified in the contract.

The contract may contain other provisions, including such as specify the actors who are to play the principal roles, with wardrobe details, and the description of the scenery.

Article 42. The author shall submit the work to the theater impresario, in order that the latter may study it and state, within forty-five days, whether or not he accepts it for public performance. In the case of an unpublished work, the theater impresario shall be responsible for the total or partial destruction of the original and for any prejudice suffered by the author if through him the work is performed or reproduced by a third party without the author's consent.

Article 43. Once the work has been accepted, it shall be performed within the following year, such year being counted from the date on which the work was submitted to the theater impresario; in the opposite case, the theater impresario shall pay the author, by way of indemnification, an amount considered by the court to be proportionate to the proceeds that would have been realized by him if the work had been performed.

Article 44. When the theatrical work has been accepted for performance, it shall be performed in the agreed manner, and no alterations may be made to it without the consent of the author. If the work is unpublished, only such copies as are necessary for the performance shall be produced, and it shall be prohibited to sell them or disclose them in any way without the author's permission.

Article 45. The author of the theatrical work may not have it performed by a third party as long as the theater impresario who accepted it first has not completed the agreed number of performances, except where the contract with him did not provide for exclusive rights.

Article 46. Any impresario of a theater, concert or festival hall or radio or television broadcasting station in which theatrical works are performed shall be obliged to obtain the prior authorization of the authors, to pay them whatever royalties are specified and to provide the agreed remuneration.

Article 47. The provisions on stage performance shall apply as appropriate to the public performance of musical works.

CHAPTER VI

Public Performance and Broadcasting

Article 48. No musical composition, with or without words, may be transmitted by radio, television, loudspeakers or other similar electronic means, or performed to audiences or at public shows without the consent of the author. The user has also to pay the remuneration specified by the author or his representative for the use of his work.

Article 49. For the purposes of the preceding Article, "audience" or "public shows" means any performance given in theaters, cinemas, concert halls, dance halls, night clubs, bars, restaurants, social, recreational or sporting clubs, shops and other commercial and industrial establishments, hotels, means of transport, sports grounds, gymnasia, open-air theaters and any other place in which literary or artistic works are performed or transmitted for direct or indirect profit-making purposes, either with the participation of paid performers or by phonomechanical, audiovisual or electronic processes.

Article 50. The authority shall not allow audiences or public shows to take place unless the user displays the program, with an indication of the works to be performed, the names of their authors and the receipt attesting payment of the remuneration to the copyright owners. Where the performance involves the use of phonograms, the program shall also contain the names of the performers, and the user shall in addition display the receipt in respect of the neighboring rights.

Article 51. When the authors and performers have consented to the ephemeral fixation of their works and performances, broadcasting organizations may use them in their broadcasts for the number of times that has been stipulated, and shall be obliged to destroy the fixation immediately after the last authorized transmission.

CHAPTER VII

Cinematographic Works

Article 52. The authors of a cinematographic work are:

- (a) the author of the script,
- (b) the composer of the music composed specially for the film,
- (c) the director,
- (ch) the producer.

Article 53. Unless otherwise agreed, the author of the script of a cinematographic film shall have the right to publish it separately or extract from it a literary or artistic work of another kind, and the composer may publish or perform the music separately. The composer shall also have the right to receive royalties for the public performance of his music each time that the film is shown.

Article 54. The producer of the film, on showing it in public, shall mention his own name, that of the author of the script, that of the author of the original work, that of the composer if appropriate, that of the director and those of the main performers.

Article 55. The cinematographic producer shall be invested with the full and exclusive exercise of the economic rights in the cinematographic work, and shall be entitled to perform all such acts as are conducive to its wide circulation and exploitation, unless expressly provided otherwise in the contracts with the co-authors.

Audiovisual programs produced by processes analogous to cinematography, such as videograms, shall be protected as cinematographic works.

Article 56. The moral rights in the cinematographic work shall belong to its director, who may only oppose the distribution and showing of the film by virtue of a final judicial ruling.

Article 57. Any contributor who for any reason does not complete his contribution may not object to the producer engaging a third party to complete the work. The replaced contributor shall retain his rights in the part contributed by him.

CHAPTER VIII

Periods of Protection

Article 58. Copyright shall be permanent throughout the lifetime of the author. After his death it shall be enjoyed for a period of fifty years by those who have lawfully acquired it.

Article 59. In the case of works of duly established joint ownership, the period of fifty years shall be counted from the death of the last surviving co-author.

Article 60. Dictionaries, encyclopedias and other collective works referred to in Article 6 shall be protected for fifty years from their publication; however, in the case of works consisting of two or more volumes that are not published in the same year, and in the case of serialized works or works produced in periodical installments, the period shall start for each volume, episode or installment on the date of its publication.

Article 61. The cinematographic work shall enjoy protection for fifty years counted from its first public showing.

Article 62. The protection of anonymous or pseudonymous works referred to in Article 5 shall be fifty years from the date of their publication.

Article 63. The State, the municipal councils and the official corporations shall enjoy the protection of this Law, but, as far as economic rights are concerned, only for twenty-five years from the date of publication of the work, except in the case of public bodies whose purpose is the exercise of such rights as their normal activity, in which case protection shall be for fifty years.

Article 64. For the purposes of this Law, the date of publication of literary or musical works shall be that of the day on which the copies of the first edition are placed on sale.

Article 65. The protection periods provided for in this Chapter shall be counted from December 31 of the year in which the event that caused them to start occurred.

Article 66. In cases of escheated inheritance, there shall be no legal succession in favor of any State body; ownership of the copyright shall fall immediately into the public domain.

CHAPTER IX

Exceptions to Protection

Article 67. News having the character of mere items of press information shall not be protected by this Law.

Article 68. Articles on current affairs published in magazines or periodicals may be reproduced unless expressly prohibited, but in all cases the source shall be mentioned.

Article 69. Speeches delivered at deliberating assemblies or public meetings, and likewise addresses by counsel to the courts of justice, may be published in the periodical press or periodically broadcast on radio and on television, without any authorization being necessary; they may not however be published as individual editions or in a collection without the consent of the author.

Article 70. It shall be permissible to quote an author, transcribing the relevant passages, provided that the passages are not consecutive and such that they might be considered a simulated, substantial reproduction that redounds to the prejudice of the author of the original work.

Article 71. It shall be lawful to make reproductions by photographic or by other pictorial processes of statutes, monuments and other works of art acquired by the authorities that are displayed in streets, parks and museums.

Article 72. The playing of phonograms and the receiving of radio or television broadcasts shall be free in commercial establishments that sell household electrical receiving apparatus or phonograms, for demonstration to customers.

Article 73. Theatrical and musical performances shall be free where they take place in the home for the sole benefit of the family circle. They shall also be free when they take place solely for educational purposes, in so far as there is neither gainful intent nor any form of economic compensation.

Article 74. The reproduction of an educational or scientific work, in a single handwritten or typewritten copy made personally and exclusively by the person concerned, for his own use and without any direct or indirect gainful intent, shall also be free.

Article 75. Any person shall be allowed freely to reproduce constitutions, laws, decrees, municipal decisions, regulations and other public instruments, subject to the obligation to conform strictly to the official edition. Private persons may also publish legal codes and collections of laws, with notes and comments, and each author shall be master of his own work.

Article 76. The publication of portraits shall be free where it is related to scientific, educational or general cultural purposes, or to matters or events of public interest or arising or occurring in public.

(To be continued)

General Studies

The Effect on Austrian Copyright Law of the Free Trade Agreement Between the EEC and Austria

Robert DITTRICH *

Legal Problems of Authorship of Cinematographic Works in the Socialist Countries

Maria NIEDZIELSKA *

Calendar

WIPO Meetings

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

1983

September 26 to October 4 (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)

October 17 to 21 (Geneva) — Committee of Governmental Experts on Model Statutes for Institutions Administering Authors' Rights in Developing Countries (convened jointly with Unesco)

October 24 to 28 (Geneva) — Nice Union — Preparatory Working Group

November 21 to 27 (Manila) — Workshop on Industrial Property Licenses and Technology Transfer Arrangements (in conjunction with the third "Technology for the People" International Trade Fair)

November 28 to December 2 (Geneva) — Permanent Committee on Patent Information (PCPI) — Working Group on Special Questions and Working Group on Planning

December 5 to 7 (Geneva) — Berne Union, Universal Copyright 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, on Cable Television (convened jointly with ILO and Unesco)

December 8 and 9 (Geneva, ILO Headquarters) — Rome Convention — Intergovernmental Committee (convened jointly with ILO and Unesco)

December 12 to 16 (Geneva) — Berne Union — Executive Committee — Extraordinary Session (sitting together, for the discussion of certain items, with the Intergovernmental Committee of the Universal Copyright Convention)

1984

February 27 to March 24 (Geneva) — Revision of the Paris Convention — Diplomatic Conference

UPOV Meetings

1983

October 3 and 4 (Geneva) — Technical Committee

October 11 (Geneva) — Consultative Committee

October 12 to 14 (Geneva) — Council

November 7 and 8 (Geneva) — Administrative and Legal Committee

November 9 and 10 (Geneva) — Hearing of International Non-Governmental Organizations

1984

March 15 to 17 (La Minière) — Technical Working Party on Automation and Computer Programs

June 11 to 15 (Bet Dagan) — Technical Working Party for Vegetables and Subgroups

June 26 to 29 (Lund) — Technical Working Party for Agricultural Crops and Subgroups

August 21 to 23 (Hanover) — Technical Working Party for Ornamental Plants and Forest Trees

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

Non-Governmental Organizations

1983

International Copyright Society (INTERGU)

Congress — October 31 to November 4 (Santiago de Chile)

International Literary and Artistic Association (ALAI)

Executive Committee — October 1 (Paris)

1984

Council of the Professional Photographers of Europe (EUROPHOT)

Congress — March 17 to 21 (Darmstadt)

International Confederation of Societies of Authors and Composers (CISAC)

Congress — November 12 to 17 (Tokyo)

International Council on Archives (ICA)

Congress — September 17 to 21 (Bonn)

International Publishers Association (IPA)

Congress — March 11 to 16 (Mexico)