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World Intellectual Property Organization (WIPO)

Contents

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World Intellectual Property Organization

Governing Bodies of WIPO and the Unions Administered by WIPO

Fourteenth Series of Meetings

(Geneva, September 26 to October 4, 1983)

NOTE *

The Governing Bodies of WIPO and the Unions administered by WIPO held their fourteenth series of meetings in Geneva from September 26 to October 4, 1983. The following 22 Governing Bodies held sessions:

- WIPO General Assembly, seventh session (6th ordinary),
- WIPO Conference, sixth session (6th ordinary),
- WIPO Coordination Committee, seventeenth session (14th ordinary),
- Paris Union Assembly, eighth session (6th ordinary),
- Paris Union Conference of Representatives, tenth session (6th ordinary),
- Paris Union Executive Committee, nineteenth session (19th ordinary),
- Berne Union Assembly, sixth session (6th ordinary),
- Berne Union Conference of Representatives, sixth session (6th ordinary),
- Berne Union Executive Committee, twenty-first session (14th ordinary),
- Madrid Union Assembly, twelfth session (5th ordinary),
- Madrid Union Committee of Directors, twelfth session (5th ordinary),
- Hague Union Assembly, seventh session (4th ordinary),
- Hague Union Conference of Representatives, seventh session (4th ordinary),
- Nice Union Assembly, seventh session (6th ordinary),
- Nice Union Conference of Representatives, sixth session (6th ordinary),
- Lisbon Union Assembly, fifth session (5th ordinary),
- Lisbon Union Council, twelfth session (12th ordinary),
- Locarno Union Assembly, seventh session (5th ordinary),
- IPC [International Patent Classification] Union Assembly, fifth session (4th ordinary),
- PCT [Patent Cooperation Treaty] Union Assembly, tenth session (4th ordinary),
- TRT [Trademark Registration Treaty] Union Assembly, third session (3rd ordinary),
- Budapest Union Assembly, fourth session (2nd ordinary).

Delegations of 90 States participated in the meetings. Sixteen intergovernmental organizations and eight international non-governmental organizations were represented by observers. The list of participants follows this Note.

Accounts and Activities. The Governing Bodies reviewed and approved reports by the Director General on financial matters in 1981, 1982 and 1983 and on the activities of WIPO from November 1981 to September 1983. A number of delegations expressed satisfaction with the accomplishments of the International Bureau since the 1981 sessions of the Governing Bodies, and underlined the constant increase in the activities, particularly in the field of development cooperation for the benefit of developing countries. Several delegations expressed the intention of their countries to continue and, if possible, to increase their contribution to the development cooperation activities of WIPO by concluding agreements for the provision of financial support or continuing such agreements, by providing training of officials from developing countries, by sending experts and furnishing state-of-the-art search reports to such countries and by hosting meetings organized by WIPO for the benefit of such countries. Several delegations expressed concern at the gap between the needs of developing countries and available resources, and

* Prepared by the International Bureau.

urged that both funds and staff for development cooperation activities be increased. Delegations also underlined the great importance of the programs concerning patent information activities, the encouragement of inventiveness and joint inventive activity. It was agreed that the resolutions of the WIPO Worldwide Forums on Piracy, organized in 1981 and 1983, should be circulated to all member States as a recommendation for implementation of appropriate anti-piracy measures at the national level.

Program and Budget. The Governing Bodies approved by a vote (for: 55; against: three; abstentions: six) the program and budget of WIPO and the Unions for the 1984 to 1985 biennium. The budget for the "Program Unions," covered by contributions from member States, is 42,106,000 Swiss francs for the biennium, and that of the "Registration Unions," covered by fees paid by applicants for international registrations and applicants filing international patent applications under the Patent Cooperation Treaty, is 44,163,000 Swiss francs, giving a total of 86,269,000 Swiss francs.

The main activities of the Program Unions approved by the Governing Bodies fall under the following headings. In the field of *industrial property and patent information:* development cooperation with developing countries (training; legislative infrastructure; institution building; inventors, industry and commerce; licensing; development of the profession; access to technological information; etc.); information concerning industrial property (periodicals; collection of laws and treaties; surveys; statistics; etc.); industrial property questions of topical interest (joint inventive activity; computer programs, including integrated circuits; biotechnological inventions; various harmonization questions); cooperation in patent information; improvement of classifications. In the field of *copyright and neighboring rights:* development cooperation with developing countries (training; legislative infrastructure; protection of authors in their own countries and in foreign countries; Joint International Unesco-WIPO Service; etc.); information concerning copyright (periodicals; collection of laws and treaties; surveys); copyright questions of topical interest (cable television; employee-authors; the Rome Convention and new communication techniques; expressions of folklore; publishing contracts; private copying; rental of phonograms and videograms; computer software; direct broadcast satellites; electronic libraries; international register of audiovisual recordings). In the field of *intellectual property* generally: promotion of the worldwide recognition of and respect for intellectual property; promotion of accession to treaties; preparations for commemorating the centenary of the Berne Convention; cooperation with States and international organizations.

The Nice Union Assembly and Conference of Representatives decided on the establishment of a new public service under which the International Bureau would provide, on request and against the payment of a fee, individual reports on classification under the International Classification of Goods and Services for the Purposes of the Registration of Marks.

The main activities of the International Bureau in respect of the Registration Unions will consist in providing the services that the Patent Cooperation Treaty, the Madrid Agreement and the Hague Agreement entrust to it. The Governing Bodies concerned approved revised fees under the PCT, the Madrid Agreement and the Hague Agreement. The Madrid Union Assembly and Conference of Representatives began consideration of proposed amendments of the Regulations under the Madrid Agreement, and decided to meet in extraordinary session before the end of 1983 to complete that task; they also decided that the fixing of the date of a meeting on links between the Madrid Agreement and the proposed (European) Community trade mark would be left to the Director General, with the understanding that the meeting would have to take place during the 1984 to 1985 biennium and that, before fixing such date, the Director General would contact the presidency of the European Community.

Working Agreement. The WIPO Coordination Committee approved a working agreement between WIPO and the Arab Educational, Cultural and Scientific Organization (ALECSO).

Election of the Members of the Executive Committees of the Paris and Berne Unions and of the Ad Hoc Members of the WIPO Coordination Committee. The Assembly and Conference of Representatives of the Paris Union and the Assembly and Conference of Representatives of the Berne Union elected, each as far as it was concerned, the members of the Executive Committees of the Paris and Berne Unions, and the WIPO Conference designated the *ad hoc* members of the WIPO Coordination Committee. The resulting membership of those three Committees is as follows:

Paris Union Executive Committee: Ordinary Members: Algeria, Argentina, Austria, Brazil, Congo, Egypt, German Democratic Republic, Germany (Federal Republic of), Ivory Coast, Japan, Netherlands, Norway, Poland, Portugal, Soviet Union, Switzerland (*ex officio*), United States of America, Uruguay, Viet Nam, Yugoslavia, Zambia (21). *Associate Members:* Lebanon, Tanzania, Trinidad and Tobago (3).

Berne Union Executive Committee: Ordinary Members: Australia, Benin, Bulgaria, Canada, Chile, Costa Rica, Czechoslovakia, France, Hungary, India, Italy, Mexico, Morocco, Senegal, Switzerland (*ex officio*), Tunisia, United Kingdom, Zaire (18). *Associate Member:* Turkey (1).

Ad Hoc *Members of the WIPO Coordination Committee:* China, Colombia, Guatemala,[1] Mongolia, Qatar,[2] Sudan (6).

WIPO Coordination Committee: Algeria, Argentina, Australia, Austria, Benin, Brazil, Bulgaria, Canada, Chile, China, Colombia, Congo, Costa Rica, Czechoslovakia, Egypt, France, German Democratic Republic, Germany (Federal Republic of), Guatemala,[1] Hungary, India, Italy, Ivory Coast, Japan, Lebanon, Mexico, Mongolia, Morocco, Netherlands, Norway, Poland, Portugal, Qatar,[2] Senegal, Soviet Union, Sudan, Switzerland (*ex officio*), Tanzania, Trinidad and Tobago, Tunisia, Turkey, United Kingdom, United States of America, Uruguay, Viet Nam, Yugoslavia, Zaire, Zambia (48).

[1] With effect from the date on which the number of members of WIPO, not members of any of the Unions, becomes 20.

[2] With effect from the date on which the number of members of WIPO, not members of any of the Unions, becomes 24.

LIST OF PARTICIPANTS **

I. States

Algeria 1, 2, 3, 4, 6, 10, 14, 16: B. Ould-Rouis; B. Saci; S. Abada; F. Bouzid.

Argentina 1, 2, 3, 4, 6, 7: F. Jiménez Dávila; J. Pereira; S. Cerda.

Australia 1, 2, 3, 4, 7, 9, 14, 19, 20: F.J. Smith.

Austria 1, 2, 3, 4, 6, 7, 10, 14, 19, 20: O. Leberl; F. Trauttmansdorff.

Bangladesh: H. Rahman.

** A list containing the titles and functions of the participants may be obtained from the International Bureau.

1 WIPO General Assembly.
2 WIPO Conference.
3 WIPO Coordination Committee.
4 Paris Union Assembly.
5 Paris Union Conference of Representatives.
6 Paris Union Executive Committee.
7 Berne Union Assembly.
8 Berne Union Conference of Representatives.
9 Berne Union Executive Committee.
10 Madrid Union Assembly.
11 Madrid Union Committee of Directors.
12 Hague Union Assembly.
13 Hague Union Conference of Representatives.
14 Nice Union Assembly.
15 Nice Union Conference of Representatives.
16 Lisbon Union Assembly.
17 Lisbon Union Council.
18 Locarno Union Assembly.
19 IPC [International Patent Classification] Union Assembly.
20 PCT [Patent Cooperation Treaty] Union Assembly.
21 TRT [Trademark Registration Treaty] Union Assembly.
22 Budapest Union Assembly.

Belgium 1, 2, 3, 4, 7, 9, 10, 12, 14, 19, 20: L. Wuyts; L.V.M.C. d'Aes.

Benin 1, 2, 4, 7, 14: C. Godonou.

Brazil 1, 2, 3, 4, 6, 7, 19, 20: P. Nogueira Batista; A. Gurgel de Alencar; E. Cordeiro.

Bulgaria 1, 2, 3, 4, 7, 9, 16, 22: K. Iliev; O. Delev.

Byelorussian SSR 2: V.V. Grekov; S.N. Chilovitch.

Cameroon 1, 2, 3, 4, 7, 9, 20: W. Eyambe.

Canada 1, 2, 3, 4, 7, 9: R. Gagnon; D.S. McCracken; J. Lynch.

Chile 1, 2, 3, 7, 9: W. Carrasco; J. Bustos Franco; L. Gillet Bebin; P. Barros.

China 2, 3: Huang Kunyi; Tang Zongshun; Liu Fengyun; Du Zhongying.

Colombia 2: H. Charry Samper; B. Alvarez; C. Arévalo Yepes.

Congo 1, 2, 3, 4, 7, 9, 16, 20, 21: E. Kouloufoua; S. Bayalama.

Costa Rica 1, 2, 7: E. Soley Soler; L.C. Delgado Murillo.

Cuba 1, 2, 3, 4, 6, 16: L. Solá Vila; M. Fernández Finalé; A.V. González; N. Minobis Nuñez.

Czechoslovakia 1, 2, 3, 4, 7, 9, 10, 14, 16, 18, 19: M. Belohlavek; J. Prošek; M. Slámová.

Democratic People's Republic of Korea 1, 2, 4, 10, 20: Hwang Yong Hwan; Kim I Sun.

Denmark 1, 2, 4, 7, 14, 18, 19, 20: R. Carlsen; L. Østerborg.

Dominican Republic 5: T. Mejia-Ricart.

Egypt 1, 2, 3, 4, 6, 7, 10, 13, 19: S.A. Omar; A.A. Omar; M. Daghash.

El Salvador 2: J.L. Lovo Castelar; C.A. Barahona Rivas.

Finland 1, 2, 3, 4, 7, 9, 14, 18, 19, 20: E. Wuori; R. Meinander; I. Uusitalo.

France 1, 2, 3, 4, 7, 9, 10, 12, 14, 16, 18, 19, 20, 22: R. de Souza; J.-C. Combaldieu; A. Bourdalé-Dufau; L. Nicodème; M. Hiance; A. Chapard; J.-M. Momal; B. Gibert.

Gabon 1, 2, 4, 7, 16, 20: J. Ping; P.M. Dong; J.P. Mve Nteme; N.F. Ovono-Okoue.

German Democratic Republic 1, 2, 3, 4, 7, 9, 10, 13, 14, 18, 19: J. Hemmerling; K.-D. Peters; D. Schack; M. Förster.

Germany (Federal Republic of) 1, 2, 3, 4, 6, 7, 10, 12, 14, 19, 20, 22: A. Krieger; G. von Boehmer; F. Lambach; A. Schäfers; G. Heil; B. Ziese; B. Bockmair.

Ghana 1, 2, 3, 4, 6: A.J.B. McCarthy.

Greece 1, 2, 4, 7: A. Argyriadis; C. Ivrakis; D. Kodonas.

Guatemala 2: A. Fajardo-Maldonado.

Haiti 5, 17: N. Calixte.

Holy See 1, 2, 4, 7: O.J. Roullet; A.P. Marelle.

Honduras: I. Romero; A. Ariza; J. Kafato; R. Castro.

Hungary 1, 2, 3, 4, 6, 7, 10, 14, 16, 18, 20, 22: G. Pusztai; M. Ficsor; J. Bobrovszky.

India 1, 2, 3, 7, 9: S. Grewal; R.N. Chopra; L. Puri.

Indonesia 1, 2, 4, 13: P. Ramadhan; R. Tanzil.

Iraq 1, 2, 4: A. Jomard.

Ireland 1, 2, 4, 7, 14, 18, 19: B. O'Gorman.

Israel 1, 2, 4, 7, 14, 16, 19: M. Gabay; E.F. Haran.

Italy 1, 2, 3, 4, 6, 7, 10, 14, 16, 18, 19: G.L. Milesi-Ferretti; S. Samperi; G. Aversa; U. Sessi.

Ivory Coast 1, 2, 3, 4, 7, 9: A. Traore; B.T. Aka; K.F. Ekra.

Jamaica 2: C.R. Clayton.

Japan 1, 2, 3, 4, 6, 7, 19, 20, 22: K. Wakasugi; Y. Hashimoto; Y. Oyama; H. Sasaki; H. Sato; S. Ono; K. Sakamoto; T. Moriya; K. Shimizu.

Kenya 1, 2, 3, 4, 6: J.N. King'Arui.

Lebanon [3, 5, 6, 8, 15]: I. Kharma; H. Dimachkié.

Liechtenstein [1, 2, 4, 7, 10, 12, 14, 20, 22]: R. Marxer.

Luxembourg [1, 2, 4, 7, 10, 12, 14, 19, 20]: F. Schlesser.

Madagascar [4, 8, 20]: S. Rabearivelo.

Mexico [1, 2, 3, 4, 7, 9, 17]: J.I. de Villafranca; N. Pizarro Macías; S. Barroso Montero.

Monaco [1, 2, 4, 7, 10, 12, 14, 19, 20]: R. Imperti.

Mongolia [2]: D. Erdembileg; S.-O. Bold.

Morocco [1, 2, 4, 7, 10, 13, 14]: M.S. Abderrazik; M. Halfaoui.

Netherlands [1, 2, 4, 7, 10, 12, 14, 18, 19, 20]: J.J. Bos; E. Van Weel; J. W. Weck.

Nigeria [3, 5, 6]: T.O. Oseni.

Norway [1, 2, 4, 7, 14, 18, 19, 20]: S.H. Røer; N. Brekke.

Pakistan [1, 2, 7]: R. Mahdi; S. Bashir.

Panama [2]: J. Medrano Valderrama; I. Aizpurúa Pérez.

Paraguay: R.A. Bogado Vásquez.

Peru [2]: A. Thornberry.

Philippines: E.A. Manalo.

Poland [1, 2, 3, 4, 6, 8]: J. Szomanski; D. Januszkiewicz; J. Zawalonka; L. Turley.

Portugal [1, 2, 3, 4, 6, 7, 11, 14, 17, 19]: J. Mota Maia; R. Serrão.

Qatar [2, 3]: M.S. Al-Kuwari; M.H. Al-Jabir; M. Khalil.

Republic of Korea [1, 2, 4]: S.-J. Hong; H.-K. Hyun; J.-U. Chae; Y.-M. Kim; T.-C. Choi; C.-H. Ha.

Romania [1, 2, 4, 7, 10, 20]: I. Marinescu; P.-P. Gavrilescu.

Saudi Arabia [2]: M.A. Al-Kurdi.

Senegal [1, 2, 3, 4, 7, 9, 20]: S.C. Konate; M. Ndiaye; B. Ndoye.

Somalia [2]: M.H. Abby.

Soviet Union [1, 2, 3, 4, 6, 10, 14, 18, 19, 20, 21, 22]: I. Nayashkov; V.F. Zubarev; A. Alekseeve; L. Salenko; P.E. Dapkounas; M. Oussov.

Spain [1, 2, 4, 7, 10, 13, 14, 18, 19, 22]: J. Delicado Montero-Ríos; A. Casado Cerviño; J.C. Garcia-Herrera; L. Nagore; G. Porras Olalla; C. Muñoz Caparrós.

Sri Lanka [1, 2, 3, 4, 7, 9, 20]: A.T. Jayakoddy; S. Palihakkara; P. Kariyawasam.

Sudan [2, 3]: Y. El Hadi Ismail.

Sweden [1, 2, 4, 7, 14, 18, 19, 20, 22]: G. Borggård; B. van der Giessen; H. Olsson; I. Schalin.

Switzerland [1, 2, 3, 4, 6, 7, 9, 10, 12, 14, 18, 19, 20, 22]: P. Braendli; J.-L. Marro; R. Grossenbacher; J.-M. Souche.

Syria [5]: M. Sayadi.

Tanzania [3, 5, 6]: E.E.E. Mtango; S. Asman.

Tunisia [1, 2, 3, 4, 7, 9, 11, 13, 15, 16]: A. Ben Gaïd; M. Baati.

Turkey [1, 2, 3, 4, 8, 9]: T. Tarlan; E. Apakan.

Uganda [1, 2, 3, 4, 6]: J. Omara.

Ukrainian Soviet Socialist Republic [2]: V. Batiouk.

United Kingdom [1, 2, 3, 4, 6, 7, 14, 19, 20, 22]: I.J.G. Davis; T.W. Sage; M.J. Tuck; J. Richards.

United States of America [1, 2, 3, 4, 6, 14, 19, 20, 22]: G.J. Mossinghoff; H.J. Winter; M.K. Kirk; G. Dempsey; L.J. Schroeder.

Uruguay [1, 2, 3, 4, 6, 7]: C.A. Fernández Ballesteros; J. Meyer Long.

Venezuela [7]: H. Suarez Mora.

Viet Nam [1, 2, 4, 10, 13]: An Khang; Nguyen Van Vien; Truong Phap.

Yugoslavia [1, 2, 3, 4, 6, 7, 10, 14, 18]: D. Bošković; D. Cémalović; D. Vujičić.

Zaire [1, 2, 4, 7]: Mukumba Kadiata-Nzemba; Lukusa Kayembe Nkaya.

Zambia [1, 2, 4]: A.R. Zikonda.

II. Intergovernmental Organizations

United Nations (UN): T.S. Zoupanos; A. Djermakoye; R. Dhanjee; I. Holmström. **Food and Agriculture Organization of the United Nations (FAO)**: S. Akbil. **United Nations Educational, Scientific and Cultural Organization (UNESCO)**: A. Amri. **General Agreement on Tariffs and Trade (GATT)**: A. Otten. **Benelux Trademarks Office (BBM)**: L. van Bauwel. **Benelux Designs Office (BBDM)**: L. van Bauwel. **Interim Committee for the Community Patent**: K. Mellor. **African Intellectual Property Organization (OAPI)**: D. Ekani. **European Patent Office (EPO)**: J.C.A Staehelin. **European Free Trade Association (EFTA)**: S. Norberg; J. Petersson. **Commission of the European Communities (CEC)**: W.M. Hauschild; C. Dufour. **Economic Community of the Great Lakes (CEPGL)**: A. Higaniro; G. Nsanzumuco. **Council for Mutual Economic Assistance (CMEA)**: I.V. Cherviakov. **League of Arab States (LAS)**: O. El Hajje. **Arab Educational, Cultural and Scientific Organization (ALECSO)**: A. Derradji. **Organization of African Unity (OAU)**: D. Ramasaumy.

III. Non-Governmental Organizations

Benelux Association of Trademark and Design Agents (BMM): F. Gevers. **Inter-American Association of Broadcasters (IAAB)**: L.A. Solé. **International Association for the Advancement of Teaching and Research in Intellectual Property (ATRIP)**: H.P. Kunz-Hallstein. **International Association for the Protection of Industrial Property (AIPPI)**: M.J. Lutz. **Committee of National Institutes of Patent Agents (CNIPA)**: D. Vincent. **International Federation of Industrial Property Attorneys (FICPI)**: H. Bardehle. **International Federation of Phonogram and Videogram Producers (IFPI)**: E. Thompson. **Patent Documentation Group (PDG)**: P. Ochsenbein.

IV. Officers

WIPO General Assembly

Chairman: G. J. Mossinghoff (United States of America). *Vice-Chairmen:* M. Bělohlávek (Czechoslovakia); J.N. King'Arui (Kenya).

WIPO Conference

Chairman: Huang Kunyi (China). *Vice-Chairmen:* R. Gagnon (Canada); A.S. Osman (Somalia).

WIPO Coordination Committee

Chairman: P. Braendli (Switzerland). *Vice-Chairmen:* F. Jiménez Dávila (Argentina); I. Sy (Senegal).

Paris Union Assembly

Chairman: J.-C. Combaldieu (France). *Vice-Chairmen:* I. Nayashkov (Soviet Union); C. Fernández Ballesteros (Uruguay).

Paris Union Conference of Representatives

Chairman: H. Robertson (Trinidad and Tobago). *Vice-Chairmen:* ... (New Zealand); E. Mtango (Tanzania).

Paris Union Executive Committee

Chairman: A. Gurgel de Alencar (Brazil). *Vice-Chairmen:* B. Saci (Algeria); J. Szomanski (Poland).

Berne Union Assembly

Chairman: S. Grewal (India). *Vice-Chairmen:* A. Argyriadis (Greece); G. Pusztai (Hungary).

Berne Union Conference of Representatives

Chairman: J. Szomanski (Poland). *Vice-Chairmen:* S. Rabearivelo (Madagascar); E. Apakan (Turkey).

Berne Union Executive Committee

Chairman: W. Eyambe (Cameroon). *Vice-Chairmen:* K. Iliev (Bulgaria); E. Wuori (Finland).

Madrid Union Assembly

Chairman: O. Leberl (Austria). *Vice-Chairmen:* J.J. Bos (Netherlands); D. Bošković (Yugoslavia).

Madrid Union Committee of Directors

Chairman: J. Mota Maia (Portugal). *Vice-Chairmen:* ... (San Marino); A. Bengaïd (Tunisia).

Hague Union Assembly

Chairman: A. Krieger (Germany, Federal Republic of). *Vice-Chairmen:* L. Wuyts (Belgium); R. Imperti (Monaco).

Hague Union Conference of Representatives

Chairman: A.A. Omar (Egypt). *Vice-Chairmen:* O. J. Roullet (Holy See); I. Darsa (Indonesia).

Nice Union Assembly

Chairman: I. Nayashkov (Soviet Union). *Vice-Chairmen:* F.J. Smith (Australia); R. Carlsen (Denmark).

Nice Union Conference of Representatives

Chairman: A. Bengaid (Tunisia). *Vice-Chairmen:* I. Kharma (Lebanon); ... (...).

Lisbon Union Assembly

Chairman: G.L. Milesi-Ferretti (Italy). *Vice-Chairmen:* M. Fernández Finalé (Cuba); P. Kompaore (Upper Volta).

Lisbon Union Council

Chairman: N. Calixte (Haiti). *Vice-Chairmen:* J. de Villafranca (Mexico); J. Mota Maia (Portugal).

Locarno Union Assembly

Chairman: J. Delicado Montero-Ríos (Spain). *Vice-Chairmen:* J. Hemmerling (German Democratic Republic); A. Gerhardsen (Norway).

IPC Union Assembly

Chairman: K. Wakasugi (Japan). *Vice-Chairmen:* F. Schlesser (Luxembourg); ... (Suriname).

PCT Union Assembly

Chairman: I. Marinescu (Romania). *Vice-Chairmen:* G. Borggård (Sweden); ... (Togo).

TRT Union Assembly

Chairman: E. Kouloufoua (Congo). *Vice-Chairmen:* ... (Gabon); ... (Upper Volta).

Budapest Union Assembly

Chairman: V. Tarnofsky (United Kingdom). *Vice-Chairmen:* R. Marxer (Liechtenstein); H. Brillantes (Philippines).

V. International Bureau of WIPO

A. Bogsch *(Director General)*; K. Pfanner *(Deputy Director General)*; M. Porzio *(Deputy Director General)*; L.E. Kostikov *(Deputy Director General)*; C. Masouyé *(Director, Public Information and Copyright Department)*; S. Alikhan *(Director, Developing Countries Division (Copyright))*; L. Baeumer *(Director, Industrial Property Division)*; G. Boytha *(Director, Copyright Law Division)*; P. Claus *(Director, Classifications and Patent Information Division)*; F. Curchod *(Director, PCT Division)*; R. Harben *(Director, Public Information Division)*; L. Kadirgamar *(Director, Development Cooperation and External Relations Bureau for Asia and the Pacific)*; T.A.J. Keefer *(Director, Administrative Division)*; G. Ledakis *(Legal Counsel)*; E. Pareja *(Director, Development Cooperation and External Relations Bureau for Latin America and the Caribbean)*; I. Thiam *(Director, Development Cooperation and External Relations Bureau for Africa and Western Asia)*; A. Jaccard *(Head, Finance Section)*; M. Lagesse *(Head and Controller, Budget and Systems Section)*; B. Davoudi *(Head, Conferences and Common Services Section)*; B. Machado *(Head a.i., Personnel Section)*; I. Pike-Wanigasekara *(Senior Assistant, Office of the Director General)*; H. Rossier *(Head, Mail and Documents Section)*.

Committee of Governmental Experts on the Drafting of Model Statutes for Institutions Administering Authors' Rights in Developing Countries

(Geneva, October 17 to 21, 1983)

Report

I. Introduction

1. In pursuance of Resolution 5/01 adopted by the General Conference of Unesco at its twenty-first session and the decision taken by the Governing Bodies of WIPO at their November 1981 sessions, the Director-General of Unesco and the Director General of WIPO convened a Committee of Governmental Experts on the Drafting of Model Statutes for Institutions Administering Authors' Rights in Developing Countries (hereinafter referred to as "the Committee"). The Committee met in Geneva, from October 17 to 21, 1983.

2. The experts in the meeting were delegates from the following 21 States: Austria, China, Dominican Republic, Gabon, Honduras, Hungary, India, Indonesia, Italy, Japan, Kuwait, Madagascar, Mexico, Morocco, Philippines, Republic of Korea, Saudi Arabia, Soviet Union, Spain, Tanzania and Upper Volta. Observers from four intergovernmental organizations and six international non-governmental organizations also attended the meeting. The list of the participants is appended in Annex II to this Report.

II. Opening

3. The meeting of the Committee was opened, in the name of the Director General of WIPO, by Mr. Claude Masouyé, Director, Public Information and Copyright Department, and, in the name of the Director-General of Unesco, by Mr. Abderrahmane Amri, Senior Legal Officer, Copyright Division, who welcomed the participants.

III. Election of the Chairman

4. The Committee unanimously elected Mr. Mihály Ficsor, Director-General of the Hungarian Bureau for the Protection of Authors' Rights, as its Chairman.

IV. Adoption of the Rules of Procedure

5. The Committee unanimously adopted the Rules of Procedure as contained in document UNESCO/WIPO/SSA/CGE/2 Prov. It decided to elect two Vice-Chairmen.

V. Election of the Other Officers

6. The Committee unanimously elected as Vice-Chairpersons delegates from India and Spain, Mr. Man Mohan Singh, Joint Secretary, Ministry of Education, New Delhi, and Mrs. Maria Teresa López-Cortón Fernandez, Secretary-General, General Registry for Intellectual Property, Madrid. The work of the General Rapporteur was unanimously entrusted to the Secretariats.

VI. Adoption of the Agenda

7. The Committee unanimously adopted the Agenda as proposed in document UNESCO/WIPO/SSA/CGE/1.

VII. Preparation of Model Statutes for Institutions Administering Authors' Rights

8. The Committee considered the document UNESCO/WIPO/SSA/CGE/3, containing in its Annex two drafts of Model Statutes produced by a Committee of Experts, convened by the Secretariat of Unesco and the International Bureau of WIPO at Paris, in June 1980. Draft I was designed for public institutions administering authors' rights; Draft II for private societies administering such rights.

9. After a general discussion of the reasons for, and purposes of, preparing two separate sets of Model Statutes for institutions administering authors' rights under public law and private law, respectively, the Committee proceeded to examine, article by article, the drafts submitted to it by the Secretariats and drew up the two texts of the Model Statutes as they appear in Annex I to this Report.

VIII. Preparation of a Commentary on the Model Statutes

10. The Committee also entrusted the Secretariat of Unesco and the International Bureau of WIPO with writing, subsequently, a Commentary to accompany the Model Statutes adopted by it. This Commentary should, among other things, take account of several points that emerged in the course of the debates as summarized hereunder.

(a) General Aspects

11. The reasons for having prepared two different sets of Model Statutes should be explained in detail.

12. It should be made clear, in each case, why certain parts of the text were proposed in square brackets as optional provisions.

(b) Model Statute for Public Institutions Administering Authors' Rights

Title

13. It should be noted that national legislation may replace the term "statute" by other appropriate notions such as "regulation" or "by-law."

Article 1

14. It should be explained what the term "professional" means in the given context, as opposed to political, religious or profit-making bodies.

15. The meaning of the requirement of "financial autonomy" should be interpreted with special regard to the public law character of the proposed institution.

Article 2

16. The scope of the category "successors in title" should be clearly defined, with special regard to publishers and other users of works that may acquire rights therein.

17. The term "other legitimate interests" should be interpreted.

Article 4

18. The possibility of establishing also other bodies for the administration of the Office than provided for in the Model Statute should be analyzed with regard to different solutions actually existing in various countries.

Article 5

19. The question as to who else may become member of the Management Board besides authors, and in what part, should be dealt with in detail, in consideration of the requirement that only such governmental authorities be represented in the said body which are directly concerned with its activities. The problem of appointing authors' heirs and publishers or other users of works having rights therein, should also be analyzed.

20. Attention should be drawn to the difference between the right to request an extraordinary session of the Management Board, on the one hand, and the procedure of actually convening it, on the other; the latter being an administrative act that would be usually done by the Director-General. However, national legislation may also provide otherwise, for instance, by entitling the President of the Board to convene its sessions, upon request or when they become otherwise due.

21. The need for, and conditions of, the establishment and employment of a special fund to cover the initial expenses of a newly created office should also be considered.

Article 6

22. Possible membership of the Director-General in the Management Board should be analyzed with regard to categories such as "non-voting" member, "*ex officio*" member, or "member secretary."

Article 7

23. The commentary should give examples for the criteria in consideration of which the authors' fees should be fixed.

Article 8

24. The feasibility of the Office functioning also as a National Copyright Information Center should be explained more in detail.

Article 9

25. It should be explained in detail, why and to what extent, an institution designed for the administration of authors' rights in works could also be used for the administration of authorizations to use expressions of folklore, in so far as such expressions are protected, in a given country, in a manner corresponding to copyright protection. The purpose of Article 9 is to provide, on an optional basis, for special rules needed in this respect.

Article 10

26. It should be made clear that the double purpose of a Social and Cultural Fund should consist in furthering both social security and artistic creativity of national authors.

27. It should be noted that the resources enumerated may be used also for other statutory purposes than those of the Social and Cultural Fund.

(c) Model Statute for Private Societies Administering Authors' Rights

Title

28. It should be mentioned that the term "statute" may be replaced by another appropriate term, depending on the usage in the country concerned.

Article 1

29. Attention should be drawn to cases where a society is established in succession to one or more former institutions. In such a case the continuity of exercising the functions and rights involved should be secured. The succession should be declared in Arti-

cle 1 and the functions to be carried on should be incorporated in the enumeration of the new society's functions in Article 3.

Article 3

30. It should be stressed that the enumeration of functions is not limitative.

Article 4

31. Possibilities of introducing further conditions of membership should be considered. In order to prevent dilution of membership by admittance of incidental authors whose works have not been used to any practically significant extent, a certain minimum of yearly authors' fees actually earned could be fixed as a condition of admission.

Article 5

32. Problems relating to the settlement of disputes between the members and the society and the enforcement of the rights of members under the Statute should be dealt with in consideration of all proper solutions available under national legislation.

Article 7

33. It should be made clear that the Model Statute should not be interpreted so as to prevent the establishment of committees other than enumerated therein, and of bodies other than committees. The difference between the main administrative organs of the society and possible other auxiliary bodies should be explained.

Article 8

34. Attention should be drawn to the necessity of limiting the possibility of voting by proxy. Besides the relevant provisions of the Model Statute, it could also be provided that the number of votes by proxy should not exceed a certain percentage of the total number of votes.

Article 9

35. The suggested quorum for meetings of the Management Board should be at least one-third or one-half of all members.

36. It is conceivable that, if so desired in a given country, instead of the Director-General (as provided for in Article 12(2)) the President of the Management Board be declared legal representative of the Society.

Article 12

37. Paragraph 22, above, also applies to private Societies.

Article 13

38. Paragraph 23, above, also applies to private Societies.

Article 14

39. Although not all authors' societies can be expected to develop agency-type activities in order to promote the use of the works the rights in which they administer, it should be emphasized that, and explained why, such activities are desirable in developing countries irrespective of whether the authors' institution is operating under public law or as a private society.

40. Paragraph 24, above, applies *mutatis mutandis*.

Article 15

41. Some experts were of the opinion that, unlike institutions under public law, private societies should not be entrusted with the administration of authorizations to use expressions of folklore. In certain countries distinct bodies are entrusted with the protection of expressions of folklore; in other countries it is the community owning and administering rights in expressions of folklore created by it; and, as a rule, the protection of expressions of folklore should not be confined to cases where copyright protection is applicable. Other experts, however, explained the importance of using the available administrative structure of a society also for the protection of national folklore. This optional Article is intended to give guidance as regards the administration of the use of expressions of national folklore by private societies, in so far as they are protected under the applicable copyright law, and if so desired in the country concerned.

42. Paragraph 25, above, applies *mutatis mutandis*.

Article 16

43. Paragraph 27, above, also applies to this Article.

Article 19

44. The commentary should stress the importance of requiring a qualified majority of the entire membership as a quorum for voting on the dissolution of the society.

45. It should be explained that, if there is a supervisory authority whose approval may be necessary for the dissolution of the society, this may make the dissolution subject to a certain delay, during which the establishment of a new society could be arranged.

IX. Adoption of the Report and Closing of the Meeting

46. After the adoption of this Report and an exchange of words of thanks, the Chairman declared the meeting closed.

ANNEX I

I

Model Statute for Public Institutions Administering Authors' Rights

Article 1
Constitution - Name

(1) An office, called (name and abbreviated name), is established in accordance with the provisions of the relevant legislation of (name of country).

(2) The office is a public, non-profit-making body of professional character, having legal personality and financial autonomy.

(3) It has its headquarters in (name of city); it may set up branch offices within the national territory.

(4) It is under the supervision of the Ministry (name of the Ministry).

Article 2
Objectives

The objectives of (abbreviated name) shall be:

(i) to ensure the representation and defense of the economic, moral and other legitimate interests of authors of literary and artistic works who are nationals or residents of (name of country) or their successors in title, within the country and abroad;

(ii) to contribute to the promotion of national creativity by all appropriate means that are within its terms of reference.

Article 3
Functions

The functions of (abbreviated name) include:

(i) administering, [on an exclusive basis,] within the country and abroad, where appropriate by means of contracts for mutual representation, all rights relating to the public performance, broadcasting, communication to the public by wire or wireless, graphic or mechanical reproduction, translation, adaptation and any form of use of the protected works of nationals or residents of (name of country), [including the "droit de suite"]; acting to that end as an [exclusive] intermediary for the conclusion of contracts between copyright owners and users of their works;

(ii) administering the aforementioned rights [on an exclusive basis] within the country on behalf of foreign authors by virtue of contracts for mutual representation concluded with the representatives of the latter;

(iii) receiving and recording to that end all statements serving to identify the said works and their authors or successors in title;

(iv) collecting copyright fees from the users of the said works;

(v) distributing the said fees among the authors or successors in title;

(vi) ensuring that the conditions laid down for the grant of compulsory licenses are complied with and respected, through intervention prior to such a grant [where national legislation provides for such licenses];

[(vii) safeguarding and asserting rights relating to the use of the folklore heritage of (name of country) where these rights are protected by copyright;]

(viii) establishing model forms for contracts with the users of protected works or with their representative bodies;

(ix) acting on behalf of authors or their successors in title to secure respect for the conditions governing authorization to use protected works, and, in the event of violation, to assert all rights recognized by national legislation or by bilateral or multilateral international agreements and conventions to which (name of country) is party, either in its own name where the rights concerned are administered by (abbreviated name) in any form whatever, or at the express request of the parties concerned in all other cases;

(x) providing authors or their successors in title with information or advice on all matters relating to copyright;

(xi) providing the competent authorities with information or opinions on all legislative or practical problems relating to copyright;

(xii) establishing and administering a Social and Cultural Fund or any other similar welfare, or mutual aid scheme for authors or their heirs, the modalities of the establishment and administration of such a fund or scheme being determined in separate regulations drawn by the Management Board;

(xiii) fostering such harmony and understanding between authors and the users of their works as are necessary for the protection of the authors' rights;

(xiv) promoting better copyright relations between (name of country) and other countries, and contributing thereby to the broadening of cultural exchanges, notably by the conclusion of contracts for mutual representation with foreign copyright management bodies and by accession to international organizations grouping such bodies;

(xv) exercising activities to promote the dissemination of national works in (name of country) and abroad;

(xvi) performing such other lawful acts (acquisitions, investments, bank transactions, etc.) as are conducive to the attainment of the aforementioned objectives.

Article 4
Administration of the Office

The administration of (abbreviated name) shall be exercised by:

(i) the Management Board, and

(ii) the Director-General.

Article 5

Management Board

(1) The Management Board shall consist mainly of authors. It will be composed of members appointed for ... years by the competent authority with due regard to equitable representation of the various categories of authors. Members of the Management Board may neither be employed by (abbreviated name) nor be made permanently or occasionally responsible in any way for the management or administration of an establishment that uses works the rights in which are managed by (abbreviated name).

(2) The President of the Management Board shall be nominated by an act of the competent authority. He shall be discharged of his functions in the same manner.

(3) The Management Board shall meet at least (once) (twice) (... times) in ordinary session. It shall meet in extraordinary session at the request of the competent authority, or its President or ... of its members, or at the initiative of the Director-General.

(4) The Management Board may not conduct business unless it is represented by at least one-half of its members. Decisions shall be taken by the majority of the members present. In the event of equally divided votes, the President shall have a casting vote.

(5) The Management Board shall hear the reports of the Director-General on the operation of (abbreviated name). The subjects of its deliberations shall include:

(i) the income and expenditure forecasts of (abbreviated name);

(ii) the annual management report and the final accounts;

(iii) employment and social security matters;

(iv) staff regulations and their application;

(v) contracts between (abbreviated name) and other foreign authors' bodies that pursue the same aims;

(vi) the establishment of Committees and the appointment of their members;

(vii) the creation of the branch offices referred to in Article 1(3);

(viii) the acquisition, sale, exchange or rental of premises, which may not take place until the approval of the competent authority has been obtained;

(ix) gifts or bequests made to (abbreviated name) subject to the approval of the competent authority;

(x) the transfer of the headquarters to any place within the country, subject to the approval of the competent authority.

(6) A report shall be drawn up of each session of the Management Board; it shall contain the minutes of the discussions and decisions; a copy of the report shall be addressed to the competent authority within a period of ...

Article 6

Director-General

(1) The Director-General of (abbreviated name) shall be appointed by an act of the competent authority. His appointment may be terminated in the same manner.

(2) The Director-General shall be the legal representative of (abbreviated name) in dealings with third parties, in all civil acts and in all judicial action.

(3) The Director-General shall have the task of managing and administering (abbreviated name) in accordance with the decisions of the Management Board.

(4) The Director-General [may not be a member of the Management Board; however, he] shall attend all meetings of the Management Board, report to it and take part in its deliberations, *ex officio*, in an advisory capacity.

(5) The Director-General shall make and revoke appointments to all posts, under conditions specified by the Staff Regulations.

Article 7

Administration of Rights

(1) (abbreviated name) shall ensure the administration of the rights mentioned in Article 3(i) on the basis of contracts made in writing with the users of works.

(2) Fees shall be fixed according to the type of use, the activities of the user and other relevant criteria as well as corresponding scales, established by (abbreviated name) and approved by the competent authority.

(3) Contracts made with users shall provide for the communication to (abbreviated name), on declaration forms prepared by the latter, of appropriate information on works actually used by virtue of the authorization. (abbreviated name) shall organize the monitoring of such use.

(4) (abbreviated name) shall collect, on the basis of declarations of use or corresponding to its own monitoring, the fees provided for in the contracts.

(5) The authors of (name of country) or their successors in title shall file a declaration with (abbreviated name) on a form drawn up by the latter, on which form all the necessary information shall be given for the identification of the work, its authors and, where applicable, the proportionate contribution of the various authors or successors in title.

(6) Fees collected shall be distributed (once) (twice) (... times) a year, according to the declarations of use of the works and ownership of the rights in those works, in conformity with rules of distribution laid down by the Management Board.

(7) The amount necessary to cover the expenditure that (abbreviated name) incurs in the fulfillment of its functions shall be withheld from the amounts collected or received within limits set by the Management Board. From these amounts an additional amount shall be withheld for the benefit of the Social and Cultural Fund, within limits set by the Management Board, for purposes of social security and the promotion of national creativity.

(8) All other procedures related to the principles stated above shall be laid down in appropriate Rules of Procedure, established by the Management Board.

Article 8

Promotion and Information Activities

(1) In the framework of its functions provided for in Article 3(xv) (abbreviated name) shall provide foreign users with all the necessary information on authors or their successors in title, publishers, the title and content of works in which copyright is owned by a national of (name of country).

(2) National users wishing to make use of foreign works shall approach (abbreviated name) in order to obtain the necessary rights; the applications of foreign users concerning national works shall be addressed to (abbreviated name), which, in both cases, shall provide assistance in the conclusions of contracts.

[(3) (abbreviated name) also assumes the tasks of the National Copyright Information Center.]

Article 9

[Administration of the Use of Works of National Folklore

(1) Without prejudice to the powers conferred by the law on other bodies, (abbreviated name) shall be empowered to receive applications for authorization to use, in any form whatever, works of national folklore that are protected under the copyright law. It shall approach the said bodies in order to discuss with them the possibilities and conditions for the grant of such authorization. The authorization or its refusal, the latter accompanied by a statement of reasons, shall be communicated to the applicant in writing.

(2) (abbreviated name) has the right and obligation to safeguard and assert by all appropriate means the copyright in works of the national folklore of (name of country).

(3) (abbreviated name) shall collect copyright fees for the use of works of the national folklore of (name of country) which shall be calculated according to the rules of collection, without prejudice to other charges that those bodies competent for conservation and preservation of folklore might be authorized to make on other grounds. These fees shall be allocated in conformity with legislative or regulatory provisions being in force in (name of country).]

Article 10

Resources of the Social and Cultural Fund

Resources of the Social and Cultural Fund include in particular:

(i) amounts withheld from sums collected or received within limits set by the Management Board;

(ii) gifts, bequests or other donations;

(iii) amounts whose distribution to individual owners of copyright proves technically impossible;

[(iv) amounts withheld in application of Article 9(3);]

[(v) amounts resulting from the implementation of the system of "domaine public" subject to payment];

(vi) interests on investments of the resources mentioned in the preceding subparagraphs.

Article 11

Rendering and Auditing of Accounts

(1) (abbreviated name) shall draw up at the end of each financial year an annual balance sheet and a management report.

(2) The annual balance sheet and the management report shall be approved according to legislative and regulatory provisions being in force in (name of country).

Article 12

Regulation by Competent Authority

Interpretation of the provisions of this Statute and questions not regulated by it shall be brought under regulation by the competent authority.

[Transitional Provisions

(Abbreviated name) shall in all respects continue the work of any body of authors previously authorized in (name of country) to carry on any action related to the functions specified in Article 3.]

II

Model Statute for Private Societies Administering Authors' Rights

Article 1

Constitution - Name

(1) A society, called (name and abbreviated name), is established in accordance with the provisions of the relevant legislation of (name of country).

(2) The Society is a non-profit-making body having legal personality.

(3) It has its headquarters in (name of city); it may set up branch offices within the national territory.

[(4) It is under the supervision of the Ministry (name of the Ministry).]

Article 2
Objectives

The objectives of the Society are:

(i) to ensure the representation and defense of the economic, moral and other legitimate interests of authors of literary and artistic works, members of the Society or their successors in title, within the country and abroad;

(ii) to contribute to the promotion of national creativity by all appropriate means that are within its terms of reference.

Article 3
Functions

The functions of the Society include:

(i) administering, [on an exclusive basis,] within the country and abroad, where appropriate by means of contracts for mutual representation, all rights relating to the public performance, broadcasting, communication to the public by wire or wireless, graphic or mechanical reproduction, translation, adaptation and any form of use of the protected works of nationals or residents of (name of country), [including the "droit de suite"]; acting to that end as an [exclusive] intermediary for the conclusion of contracts between copyright owners and users of their works;

(ii) administering the aforementioned rights [on an exclusive basis] within the country on behalf of foreign authors by virtue of contracts for mutual representation concluded with the representatives of the latter;

(iii) receiving and recording to that end all statements serving to identify the works and their authors or successors in title;

(iv) collecting copyright fees from the users of the said works;

(v) distributing the said fees among the authors or successors in title concerned;

(vi) ensuring that the conditions laid down for the grant of compulsory licenses are complied with and respected, through intervention prior to such a grant [where national legislation provides for such licenses];

[(vii) safeguarding and asserting rights relating to the use of the folklore heritage of (name of country) where those rights are protected by copyright;]

(viii) establishing model forms for contracts with the users of protected works or with their representative bodies;

(ix) acting on behalf of authors or their successors in title to secure respect for the conditions governing authorization to use protected works, and in the event of violation to assert all rights recognized by national legislation or by bilateral or multilateral international agreements and conventions to which (name of country) is party, either in its own name where the rights concerned are administered by the Society in any form whatever, or at the express request of the parties concerned in all other cases;

(x) providing authors or their successors in title with information or advice on all matters relating to copyright;

(xi) providing the competent authorities with information or opinions on any legislative or practical problems relating to copyright;

(xii) establishing and administering a Social and Cultural Fund or any other similar welfare or mutual aid scheme for authors or their heirs, the modalities of the establishment and administration of such a fund or scheme being determined by separate regulations drawn by the Management Board;

(xiii) fostering such harmony and understanding between authors and the users of their works as are necessary for the protection of the authors' rights;

(xiv) promoting better copyright relations between (name of country) and other countries, and contributing thereby to the broadening of cultural exchanges, notably by the conclusion of contracts for mutual representation with foreign copyright management bodies and by accession to international organizations grouping such bodies;

(xv) exercising activities to promote the dissemination of the works of its members in (name of country) and abroad;

(xvi) performing such other lawful acts (acquisitions, investments, bank transactions, etc.) as are conducive to the attainment of the aforementioned objectives.

Article 4
Membership

(1) The Society shall admit to full membership:

(i) any author who at the time of his application [is a national of, or resident in (name of country) and]

(a) has within the previous ... months had a play, a scenario, one or more musical compositions or a choreographic work, produced or performed publicly on stage, by radio, by television, by cinematography or by any other medium including mechanical reproduction; or

(b) has had a book published within the previous ... years; or

(c) has within the previous ... months had works of fiction or non-fiction published by one or more major magazines or major, wide-circulation newspapers, or communicated to the public by radio or television; or

(d) has within the previous ... months had works of plastic or graphic art exhibited or communicated to the public; or

(e) has, in the opinion of the Management Board, such professional standing in the field of art and literature as entitles him to membership;

(ii) any other author complying with the conditions of admission laid down by the Management Board and approved by the General Assembly;

(iii) any heir of an author entitled to full membership.

(2) The Society shall admit to associate membership [full membership] any publisher who is a national of (name of country) and who is entitled to claim a share in the remuneration deriving from uses as provided in Article 3(i).

Article 5
Rights of Members

(1) Full members shall be entitled:

(i) to apply for benefits from the services and aid offered by the Society;

(ii) to participate fully in the affairs of the Society, including participation in the meetings of the General Assembly;

(iii) to propose the inclusion of matters in the agenda of the General Assembly, according to the procedure specified in the Rules of Procedure.

(2) Associate members shall have the same rights as full members, except that they may not [be elected to the Management Board,] benefit from the Social and Cultural Fund or be represented by the Society in disputes that concern full members.

Article 6
Obligations of Members

(1) All members shall:

(i) pay an annual subscription (and/or a membership) fee the amount of which shall be fixed by the Management Board;

(ii) assign to the Society the exclusive right in respect of all countries and for the duration of . . ., to act as their sole representative and to authorize or forbid all uses of those of their works in respect of which it exercises [exclusive] administration of rights or in respect of which they have requested its intervention;

(iii) provide the Society with all information and documents available to them which it might need in order to carry out the management of the rights entrusted to it;

(iv) to abstain from any conduct that might be detrimental to the interests of the Society.

(2) In the event of a serious violation of professional ethics, the Management Board may refuse admission to membership of the Society or exclude a member from the Society, subject to the approval of the General Assembly.

Article 7
Administration of the Society

The Administration of the Society shall be exercised by:

(i) the General Assembly;

(ii) the Management Board; and

(iii) the Director-General;

who shall be assisted by other bodies, in particular, by the Committees set up under this Statute.

Article 8
General Assembly

(1) The General Assembly is composed of all members of the Society. It shall meet in ordinary session at least once a year. It may hold extraordinary sessions at the request of the Management Board or of no fewer than . . . % of the members of the Society.

(2) Ordinary and extraordinary sessions of the General Assembly shall be convened no fewer than . . . days prior to the date thereof by the President, which shall communicate the agenda by all suitable information means, written or oral. If the General Assembly is asked to decide on amendments to this Statute or to the Rules of Procedure, the text of the proposed amendments shall be transmitted with the agenda.

(3) The General Assembly shall be competent to conduct business provided that at least . . . of its members are present or represented, failing which another session shall be convened within the following 30 days. Decisions shall be made by a majority vote of the members present, provided that the adoption of amendments to this Statute and to the Rules of Procedure shall require a majority of two-thirds of the members. Voting by proxy shall be allowed. However, no proxy may represent more than two members.

(4) The General Assembly shall have the power to adopt or amend this Statute and the Rules of Procedure. It shall approve the accounts of the Society every year and shall adopt the general audit reports. It shall establish the funds intended to serve the purposes of the Society. It shall elect the members of the Management Board and fix the amount of the allowance, if any, granted them to cover expenses incurred in the exercise of their duties; it shall also elect the members of the Finance Committee set up under this Statute. In general it shall consider and decide all questions included in the agenda and submitted to it by the Management Board.

Article 9
Management Board

(1) (i) The Management Board, renewable by thirds every . . . years, shall be composed of . . . members who shall be nationals of (name of country), elected for . . . years by the members constituting the General Assembly, in the manner specified in the Rules of Voting Procedure, allowing for the participation in the voting of as many of them as possible; [furthermore, the Supervisory Authority shall designate one representative;]

(ii) [at least . . . % of the members of the Management Board shall be authors.] Members permanently or even occasionally responsible in any way for the management or administration of an establishment that uses works the rights in which are managed by the Society may not be elected to the Management Board.

(2) The Management Board shall elect, from among its members, a President, a Vice-President, a Secretary-General and a Treasurer, who together shall constitute its Officers. The Officers shall be responsible for preparing meetings of the Management Board and discharging current business in the intervals between such meetings.

(3) The Management Board shall be convened by its President to meet in ordinary session at least once every . . . It shall meet in extraordinary session at the request of its President or . . . of its members.

(4) The Management Board shall not be competent to conduct business unless ... % of the members constituting it are present. Decisions shall be made by a majority vote of the members present. In the event of equally divided votes, the President shall have a casting vote.

(5) The Management Board shall conduct the affairs of the Society and in general perform all administrative acts. It shall adopt the budget, control all the funds of the Society and decide as to their investment and employment. [It may request the assistance of the Committee in charge of the administration of the Social and Cultural Fund, in so far as any welfare or mutual aid fund or scheme is concerned.]

(6) The Management Board may, at the written request of the parties concerned, arbitrate any disputes among authors and publishers; its decisions shall be final.

(7) The Management Board shall report to the General Assembly on its management and on important decisions that it has made in the course of its duties. It shall propose to the General Assembly such decisions as are within the latter's competence.

Article 10
Statutory Committees

(1) The Committees set up under this Statute are:

(i) the Finance Committee, responsible for supervising the income and expenditure of the Society and auditing its accounts; it shall be assisted by an auditor specially appointed for the purpose [by the Supervisory Authority]; it shall report to the General Assembly on its work;

(ii) the Works Identification Committee, responsible for identifying works declared to the Society; it shall report to the Management Board on its work;

[(iii) the Committee for the Administration of the Social and Cultural Fund; it shall report to the Management Board on its work.]

(2) Each of the Committees shall be composed of ... members appointed by the Management Board for ... years, except for the Committee provided for in paragraph (1)(i) hereabove, which shall be elected by the General Assembly; and renewable by thirds.

Article 11
Reports

Every session of the General Assembly, the Management Board and the Committees set up under this Statute shall be the subject of a report which shall contain the minutes of debates and decisions and shall be entered in a special register kept for the purpose.

Article 12
Director-General

(1) The Director-General shall be appointed by the Management Board; his appointment may be terminated in the same manner.

(2) The Director-General shall be the legal representative of (abbreviated name) in dealings with third parties, in all civil acts and in all judicial action.

(3) The Director-General's functions shall consist in managing and administering the Society in accordance with the instructions and decisions of the Management Board.

(4) The Director-General may not be a member of the Society; he shall take part in the deliberations of the organs of the Society, *ex officio*, in an advisory capacity.

(5) The Director-General shall make and revoke appointments to all posts, according to the requirements specified in the Staff Regulations.

Article 13
Administration of Rights

(1) The Society shall ensure the administration of the rights mentioned in Article 3(i) on the basis of contracts made in writing with the users of works.

(2) Fees shall be fixed according to the type of use, the activities of the user and other relevant criteria as well as corresponding scales, drawn up by the Management Board and approved by the General Assembly [and by the Supervisory Authority].

(3) Contracts made with users shall provide for the communication to the Society, on declaration forms prepared by the latter, of appropriate information on works actually used by virtue of the authorization. The Society shall organize the monitoring of such use.

(4) The Society shall collect, on the basis of declarations of use or corresponding to its own monitoring, the fees provided for in the contracts.

(5) Members shall file a declaration with the Society on a form drawn up by the latter, on which form all the necessary information shall be given for the identification of the work, its authors and, where applicable, the proportionate contribution of the various authors or successors in title.

(6) Fees collected shall be distributed (once) (twice) (... times) a year, according to the declarations of the works and ownership of the rights in those works, in conformity with the Rules of Distribution laid down by the Management Board.

(7) The amount necessary to cover the expenditure that the Society incurs in the fulfillment of its functions shall be withheld from the amounts collected or received within limits set by the Management Board. From these amounts an additional amount shall be withheld for the purposes of the Social and Cultural Fund, within limits set by the Management Board, for purposes of social security and the promotion of national creativity.

(8) All other procedures related to the principles stated above shall be laid down in appropriate Rules of Procedure, established by the Management Board.

Article 14
Promotion and Information Activities

(1) In the framework of its functions provided for in Article 3(xv) the Society shall provide foreign users

with all the necessary information on authors or their successors in title, publishers, the title and content of works in which copyright is owned by one of its members.

(2) National users wishing to make use of foreign works shall approach the Society in order to obtain the necessary rights; the applications of foreign users concerning national works shall be addressed to the Society, which, in both cases, shall provide assistance in the conclusion of contracts.

[(3) The Society also assumes the tasks of the National Copyright Information Center.]

Article 15

[Administration of the Use of Works of National Folklore

(1) Without prejudice to the powers conferred by the law on other bodies the Society is empowered to receive applications for authorization to use, in any form whatever, works of national folklore that are protected under the copyright law. It shall approach the said bodies in order to discuss with them the possibilities and conditions for the grant of such authorization. The authorization or its refusal, the latter accompanied by a statement of reasons, shall be communicated to the applicant in writing.

(2) The Society shall collect copyright fees for the use of works of the national folklore of (name of country) which shall be calculated according to the rules of collection without prejudice to other charges that bodies competent for conservation and preservation of folklore might be authorized to make on other grounds. These fees shall be allocated in conformity with legislative or regulatory provisions being in force in (name of country).]

Article 16

Resources of the Social and Cultural Fund

Resources of the Social and Cultural Fund include in particular:

(i) amounts withheld from sums collected or received within limits set by the Management Board;

(ii) gifts, bequests or other donations;

(iii) amounts whose distribution to individual owners of copyright proves technically impossible;

[(iv) amounts withheld in application of Article 15(2);]

[(v) amounts resulting from the implementation of the system of "domaine public" subject to payment;]

(vi) interests on investments of the resources mentioned in the preceding subparagraphs.

Article 17

Presentation and Auditing of Accounts

(1) The Society shall draw up at the end of each financial year an annual balance sheet and a management report. The annual balance sheet and the management report shall be submitted for approval to the yearly General Assembly which will discharge the Management Board of its responsibilities concerning the financial year in question.

(2) Financial operations shall be verified by the Finance Committee assisted by the auditor appointed [by the Supervisory Authority].

Article 18

Duration

(1) The duration of the Society is set at ... years from the date of the meeting of the first constituent General Assembly.

(2) On expiry of the current period this duration shall be extended as of right for an identical period as provided in national legislation.

Article 19

Dissolution

(1) The Society may be dissolved before the expiry of the period of ... years provided for in Article 18(1) of this Statute, [with the approval of the Supervisory Authority.]

(2) Dissolution shall be effected by voting by ... % of the members, in the extraordinary General Assembly convened to deliberate solely on the expediency of the proposed dissolution [or by an act of the Supervisory Authority].

ANNEX II

List of Participants

I. Members of the Committee

Austria: R. Dittrich. **China:** R. Shen. **Dominican Republic:** A. Bonetti. **Gabon:** P.-M. Dong. **Honduras:** M.I. Romero; J. Ritter. **Hungary:** M. Ficsor. **India:** M.M. Singh; L. Puri. **Indonesia:** R. Tanzil. **Italy:** A. Mathis. **Japan:** K. Sakamoto. **Kuwait:** S. Bseiso. **Madagascar:** S. Rabearivelo. **Mexico:** V.C. Garcia-Moreno. **Morocco:** N. El Hoummani. **Philippines:** A.L. Catubig. **Republic of Korea:** Y.-M. Kim. **Saudi Arabia:** M.S. Al Mussfer. **Soviet Union:** G.L. Kolokolov; A. Turkin. **Spain:** M.T. López-Cortón Fernandez. **Tanzania:** E.E.E. Mtango. **Upper Volta:** S.O. Traore.

II. Observers

(a) Intergovernmental Organizations

Arab Educational, Cultural and Scientific Organization (ALECSO): A. Derradji. **Economic Community of the Great Lakes (CEPGL):** G. Nsanzumuco. **Organization of African Unity (OAU):** D. Ramasawmy. **Organization of the Islamic Conference (OIC):** M. Halfaoui.

(b) International Non-Governmental Organizations

International Association of Art Critics (AICA): V. Anker. **International Bureau of Societies Administering the Rights of Mechanical Recording and Reproduction (BIEM):** N. Ndiayé. **International Confederation of Societies of Authors and Composers (CISAC):** N. Ndiayé. **International Copyright Society (INTERGU):** G. Halla. **International Federation of Phonogram and Videogram Producers (IFPI):** E. Thompson. **International Literary and Artistic Association (ALAI):** N. Ndiayé.

III. Secretariat

World Intellectual Property Organization (WIPO)

C. Masouyé *(Director, Public Information and Copyright Department);* G. Boytha *(Director, Copyright Law Division).*

United Nations Educational, Scientific and Cultural Organization (UNESCO)

A. Amri *(Senior Legal Officer, Copyright Division).*

Conventions Administered by WIPO

Nairobi Treaty on the Protection of the Olympic Symbol

CHILE

Ratification

The Government of the Republic of Chile deposited, on November 14, 1983, its instrument of ratification of the Nairobi Treaty on the Protection of the Olympic Symbol, adopted at Nairobi on September 26, 1981.

The said Treaty enters into force, with respect to Chile, on December 14, 1983.

Nairobi Notification No. 17, of November 16, 1983.

TOGO

Ratification

The Government of the Togolese Republic deposited, on November 8, 1983, its instrument of ratification of the Nairobi Treaty on the Protection of the Olympic Symbol, adopted at Nairobi on September 26, 1981.

The said Treaty enters into force, with respect to Togo, on December 8, 1983.

Nairobi Notification No. 16, of November 11, 1983.

National Legislation

CAMEROON

Law No. 82-18 to Regulate Copyright

(of November 26, 1982) *

CHAPTER I

General provisions

Section 1. (1) The authors of literary, artistic and scientific works shall, by the mere fact that they are the producers thereof, enjoy an incorporeal and exclusive ownership right over their works. The right, demurrable to all authors, shall be known as "copyright." The present law lays down provisions to protect such copyright.

(2) The said right shall have intellectual, moral and patrimonial content.

Section 2. Literary and artistic works shall comprise all original works in the literary, artistic and scientific fields regardless of the means and form of their expression. They shall include in particular:

(i) written works (books, brochures, articles and other literary, artistic or scientific writings);
(ii) oral works (tales and legends, lectures, speeches and other works of the same nature);
(iii) dramatic, dramatico-musical, choreographic and pantomimic works produced for the stage or for broadcast and television;
(iv) musical compositions, whether or not they include accompanying words;
(v) cinematographic works, including works produced by processes analogous to cinematography;
(vi) drawings, paintings, lithographic works, etchings or wood engravings and other works of like nature;
(vii) sculptures, bas-reliefs and mosaics of all kinds;
(viii) works of architecture, including drawings, maquettes and buildings themselves;
(ix) works of tapestry and articles produced by persons in the artistic trades and the applied arts and sketches, models and the works themselves;
(x) maps and graphic or three-dimensional drawings and reproductions of a scientific or technical nature;
(xi) artistic or documentary photographic works, including works with like modes of expressions.

Section 3. (1) Literary, artistic and scientific works created abroad by Cameroonians, whether published in Cameroon or not, shall enjoy the same protection as those created in Cameroon.

(2) Works by foreigners which are published for the first time in Cameroon shall, subject to the principle of reciprocity, enjoy the same protection as those produced by Cameroonians.

Section 4. Under the present law, the undermentioned terms and definitions shall apply:

(i) "original work": work whose characteristics and form give its author a particular identity;
(ii) "inspired work": work based on pre-existing components;
(iii) "work jointly produced": work produced jointly by two or more authors working separately or together;
(iv) "composite work": work in which is included a pre-existing work not produced by the author;
(v) "collective work": work produced by a natural person or body corporate who edits, publishes and disseminates it under his name and supervision. In such collective work, the contribution of other participants is blended in such a way that it is impossible to confer to each participant a separate right to the whole work;
(vi) "posthumous work": a work made public after the death of its author;
(vii) "work derived from folklore": work based on facts and ideas borrowed from the traditional cultural heritage of the country;
(viii) "folklore": all the literary, artistic and scientific works produced by various communities and which, passed on from one generation to

* Published in the *Official Gazette* of the United Republic of Cameroon of December 1, 1982.

another, are part of the traditional cultural heritage of the country.

(ix) "works belonging to the public": works used after their period of protection has expired.

CHAPTER II

Protected works and authors

Section 5. (1) Work shall mean the work in its original or derived form.

(2) The author of a work shall be the person who created it.

(3) Authorship shall vest in the person or persons under whose name or pseudonym the work was published.

(4) Regardless of whether or not it has been published, a work shall be deemed to have been produced by the mere fact of the author's idea being expressed, even if incompletely.

Section 6. In addition to the works referred to in Section 2 above, the following works shall be protected as such, without prejudice to any copyright attaching to the original works:

(a) translations, adaptations and arrangements of literary, musical, artistic or scientific works;

(b) collections of literary or artistic works such as encyclopaedias or anthologies, which, by reason of the selection and arrangement of their contents, constitute intellectual creations;

(c) works derived from folklore.

Section 7. Folklore shall be considered to originate in and to belong to the national heritage.

Section 8. (1) The title of a work and the work itself shall enjoy equal protection, in so far as it is of an original nature.

(2) No person may, even if the work is no longer protected, use his title to identify a work of the same genre, if such use is likely to create confusion in the mind of the public.

Section 9. (1) Works jointly produced shall belong in common to co-authors and shall be the subject of a joint authorship agreement. In the event of disagreement, the competent court shall decide the matter.

(2) Where the contribution of each author is of a different genre, each of them may, except otherwise agreed, use his contribution separately, but without prejudice to the use of the work jointly produced.

Section 10. (1) The authors of pseudonymous or anonymous works shall enjoy the rights vested in them under Section 1. Provided that, so long as they have not revealed their civil identity and given proof of their title, they shall be represented by the original editor or publisher of their works.

(2) The provisions of the preceding sub-section shall not apply where the pseudonym casts no doubt as to the civil identity of the author.

Section 11. A composite work shall be the property of the person who produced it, subject to the copyright of the author of the pre-existing work.

Section 12. (1) A work shall, except where otherwise proved, be the property of the natural person or body corporate under whose name it is declared to the national copyright authority. Such person or body corporate shall, with effect from that date, be deemed to own the copyright.

(2) The manner of declaration shall be determined by decree.

Section 13. (1) The existence or conclusion of contract by the author to hire out a work or service of an intellectual origin shall not infringe his copyright, except where otherwise agreed by the parties.

(2) The author of a three-dimensional work or commissioned portrait produced by painting, photography or other method shall not have the right to use the work or portrait without the express authorization of the person who commissioned it. In the event of misuse by the owner, whereby publicity rights are abridged, the competent court may, at the request of the authors or rightful claimants, take such measures as it shall deem appropriate.

Section 14. (1) A cinematographic work shall be a collective work.

(2) Natural persons who produce a cinematographic work shall be deemed to be the authors of such work.

(3) The co-authors of a cinematographic work shall, except where otherwise proved, be the authors of the film script, sound adaptations of the text, musical compositions with or without words, created specifically for the said work, and the producer thereof.

Section 15. The author of a protected pre-existing work from which a cinematographic work has been derived shall be considered as one of the authors of a composite work.

Section 16. (1) A natural person, known as a producer, who takes the initiative and bears the financial responsibility for a cinematographic work, shall be bound to conclude written contracts with all the persons whose creations were used to produce the said cinematographic work.

(2) Except for contracts between the producer and the authors of musical compositions with or without words, contracts between the producer and other co-authors of a cinematographic work shall, except where otherwise provided for, entail the transfer to the producer of exploitation rights, excluding other rights attaching to the said work.

(3) Except where otherwise provided for, the creators of a cinematographic work may freely cede their individual contributions for use in works of a different genre provided such cession is not prejudicial to the use of the work that was collectively created.

(4) The title of producer shall not be exclusive of authorship or co-authorship.

Section 17. Notwithstanding the rights vested in the co-author on account of his contribution to a collective work, the producer of a cinematographic work may finish an incomplete contribution left by a co-author who refused to complete the work or was prevented from doing so by a case of force majeure.

Section 18. The producer of a cinematographic work shall be the natural person who manages the work, assumes artistic responsibility over the photography, prepares the shooting-script and does the final montage.

Section 19. A cinematographic work shall be deemed finished when the first standard print of the film has been jointly prepared by the director, the co-authors if need be, and the producer.

Section 20. The provisions of Sections 14, 15, 16, 17, 18 and 19 referred to above shall apply *mutatis mutandis* to works broadcast on radio and television.

CHAPTER III

Ownership of copyright

Section 21. (1) Ownership of copyright vests the author with the right to:

(a) decide on the disclosure of his work, by determining the procedure and conditions thereof;

(b) claim authorship of his work by requiring that his name be mentioned whenever the work is communicated to the public and to protect its integrity by objecting in particular to its distortion, mutilation and modification.

(2) The rights referred to above shall be vested in the author. They shall be perpetual, inalienable and imprescriptible.

Section 22. (1) The patrimonial rights of copyright give the author exclusive right to use or to authorize the use of his work in any form and to enjoy the royalties therefrom.

(2) The right of exploitation comprises the right of performance, the right of reproduction and *droit de suite.*

(3) Claims to patrimonial rights of copyright shall be preferential. They shall rank immediately after the preferential right of an employee to his wages.

Section 23. The right of performance means direct communication of work to the public by any process whatsoever, in particular:

(a) the recitation, public performance and communication to the public of the work by any means or process;

(b) the communication to the public of the work by means of recitation and performance;

(c) the broadcasting of the work or its communication to the public, by any other means transmitting signs, sounds or pictures through wireless;

(d) the communication to the public of broadcast work using loudspeakers or any other sign, sound or picture transmitting device irrespective of the place of reception of such communication.

Section 24. The right of reproduction means the material fixation of the work by any means permitting the indirect communication to the public of such work, in particular:

(a) the reproduction of the work in some material form including cinematographic film or phonogram, or graphic and photographic processes;

(b) the dissemination of the work, in particular by performance or reproduction through film or phonogram;

(c) the translation, adaption, arrangement or transformation thereof.

Section 25. Droit de suite means, notwithstanding any assignment of the original work, the authors of graphic or three-dimensional works of art, and manuscripts shall have an inalienable right to share in the proceeds of any sale of that work by public auction or through a dealer.

Section 26. (1) Exploitation of the work by any person other than the author thereof shall not be done without the prior formal authorization, in writing, of the latter or of his rightful claimants or assignees.

(2) Any performance or reproduction, whether in full or in part, effected without the authorization provided for in the preceding paragraph, shall be illegal. The same shall apply to translation, adaption,

arrangement, transformation or reproduction by means of an art or any other process.

Section 27. The author of a work may, whether or not against payment, assign all his exploitation rights or part thereof to a natural person or body corporate. Provided that:

(a) such assignment shall be recorded in writing, otherwise it shall be void;

(b) the assignment by the author or one of the rights specified in Section 22(2) shall not imply the assignment of the other rights;

(c) where a contract implies the total assignment of one of the rights specified in Section 22(2) the scope of such assignment shall be restricted to the means of exploitation stipulated in the contract.

Section 28. (1) Notwithstanding the assignment of his exploitation rights, the author, even prior to the publication of his work, shall have the right to withdraw his work from the assignee. He may not, however, exercise this right unless he pays prior compensation to the assignee for the damage caused.

(2) The author shall automatically withdraw his work in the event of bankruptcy or winding up by decision of the court.

Section 29. (1) Copyright shall be transferable in full or in part as an inheritance to heirs.

(2) Such rights may be legated to the National Copyright Corporation or to any legally recognized professional authors' association.

Section 30. Where the work has been legally made available to the public, the author shall not prohibit:

(a) the private performance thereof, exclusively in a family circle, if no proceeds are derived from such performance or if it is done free of charge for educational purposes, or during a religious service within the premises reserved for that purpose;

(b) reproductions, translations and adaptations thereof strictly intended for personal and private use, and not for collective use, sale or hire, or any other lucrative purposes whatsoever;

(c) analyses, press reviews, short quotations justified by the critical, polemic, pedagogic or informatory nature of the work. Such illustrations and quotations shall mention the source and name of the author if the name figures in the source;

(d) the utilization of literary or artistic works by way of illustrations in publications, broadcasts, sound or visual recordings for teaching, to the extent justified by the purpose, provided that such use is generally with fair practice and yields no proceeds.

Section 31. Literary works seen or heard on a current event may, for information purposes, be reproduced and made available to the public in short extracts by means of photography, broadcast or transmission by wire while reporting on the said event by means of photography, broadcasts, or wire transmission to the public.

Section 32. Unless the reproduction right thereof is expressly reserved, articles on political, social, economic or religious events, political speeches, speeches delivered during legal proceedings as well as sermons, conferences, addresses and other works of the same nature may be reproduced by the press or broadcast, in their original or translated version, provided that the source and the name of the author are clearly indicated.

Section 33. Subject to abiding by the legal provisions in force, works of art including works of architecture permanently erected in public places may be reproduced and made available to the public by means of photography, cinematography or television.

Section 34. (1) Where a broadcasting corporation has been granted authorization for sound or visual broadcasting, such authorization shall include all the free sound or visual communications effected by the corporation using its own technical and artistic facilities, and under its responsibility.

(2) The authorization referred to above shall not apply to performances in public places such as pubs, restaurants, hotels, cabarets, church clubs, shops in general, cultural centres and private clubs, for which prior authorization should be requested.

Section 35. (1) For the purpose of their broadcasts, broadcasting and television corporations shall be allowed to make one or more ephemeral recordings of works using their own facilities. They shall be authorized to broadcast such recordings which shall not be sold, hired out, assigned or lent.

Such recordings shall be destroyed within three months unless the owner of the reproduction right expressly agrees that they be preserved for a longer period.

(2) Without prejudice to the author's right to a fair remuneration, where such reproductions have an exceptional documentary character and a copy of the recordings has a high cultural value, they shall be preserved in official archives.

Section 36. (1) The ownership of rights of a work shall be independent of the material ownership of the work.

(2) The buyer of the work shall not, on the grounds of his acquisition, be vested with the rights provided for in this law.

Such rights shall be vested in the author and his rightful claimants who shall not, however, require that the buyer remit the said work to them. Nevertheless, in case of flagrant violation of the buyer obstructing the exercise of the right of disclosure, the civil court may take all appropriate measures.

Section 37. (1) The exploitation contract shall be a mixed contract; it shall be a civil agreement in respect of the author and commercial in respect of the other party if the latter is a dealer.

(2) The contract shall specify the scope of exploitation of the assigned rights, the place and duration of such exploitation and the remuneration of the author or his rightful claimants.

Section 38. (1) The author shall be entitled to a proportional share of proceeds of any kind derived from the sale or exploitation of his work after assignment of such work by himself against payment.

(2) Provided that the author's remuneration may be estimated at a fixed amount if the basis for the calculation of his proportional share of the proceeds from the work cannot be practically determined or if the nature and conditions of the exploitation are too burdensome or render it impossible to apply the rule of proportional share.

Section 39. (1) Authors of graphic or three-dimensional works shall, notwithstanding any assignment of the original work, have an inalienable right to share in the proceeds or any sale of such works by public auction or through a dealer irrespective of the conditions of the latter's transaction.

(2) Upon the death of the author, this right shall be vested in his heirs or legatees. The rate of such right shall be fixed by decree.

Section 40. (1) The author's patrimonial rights shall be protected throughout his lifetime.

(2) Upon his death, the rights shall subsist throughout the calendar year of his death and 50 years thereafter. For works of joint authorship, patrimonial rights shall be protected on behalf of the rightful claimants during the calendar year of the death of the last surviving author and 50 years thereafter.

(3) Patrimonial rights shall be protected for 50 years with effect from the calendar year in which the work was lawfully made available to the public. This shall apply to:

(a) photographic or cinematographic works or applied arts;

(b) works published anonymously or under a pseudonym. Provided that, where, before the expiration of this term, the author's identity is revealed or is no longer in doubt, the duration of exploitation shall be as provided in paragraph (1) above;

(c) works released posthumously, the patrimonial rights of which belong to the author's rightful claimants.

Section 41. Works released posthumously shall be published separately unless they are only a part of a previously published work. They shall not be added to the other previously published works of the same author unless his rightful claimants still have exploitation rights over such works.

CHAPTER IV

Performance and publishing contracts

Section 42. A performance contract shall mean the agreement by which the author of a literary or artistic work or his rightful claimants authorize a promoter to perform, cause or allow to be performed publicly the said work under the conditions specified by them.

Section 43. (1) A performance contract shall be concluded for a limited duration and for a specified number of communications to the public. Except where an exclusive right is expressly stipulated, it shall not grant the organizer any monopoly of operation.

(2) Public performance shall be carried out under suitable technical conditions to guarantee respect for the intellectual and moral rights of the author.

(3) The organization of any entertainment shall be subject to the obtention of a permit and the payment of fees by the organizer under the conditions determined by decree.

(4) An organizer of entertainment may not transfer the benefit of his contract without the formal and written consent of the author of the work.

Section 44. (1) A publishing contract shall mean the agreement by which the author of a work or his rightful claimants grant, under specified conditions and for a specific duration, to a person called publisher the right to manufacture a given number of copies of the work on condition that he undertakes their publication and dissemination.

(2) The publishing contract shall be in writing. It shall specify the mode or form of expression, the terms and conditions of publishing, and the reasons for any subsequent cancellation of the contract.

(3) It shall provide for the author or his rightful claimants a remuneration proportional to the proceeds from the use of the work, except in case of a fixed remuneration.

Section 45. (1) The author shall:

(a) guarantee the publisher the peaceful and, unless otherwise agreed upon, exclusive exercise of the right so granted;

(b) have the said right respected and protect it from any infringement;

(c) enable the publisher to fulfil his obligations and shall, in particular, hand over to him, within the time limit provided for in the contract, the object to be published in such a form as to permit the normal manufacture thereof.

Section 46. The publisher shall:

(a) publish the work or cause it to be published under the conditions and in the modes or forms of expression provided for in the contract;

(b) not make any alterations to the work without the written authorization of the author;

(c) print the author's name, pseudonym or imprint on each copy, unless otherwise agreed upon;

(d) publish the work, subject to special agreement, within the time limit fixed according to practices of the profession;

(e) ensure that the work is permanently and continuously exploited and disseminated for commercial purposes, in accordance with the practices of the profession;

(f) return the object of the publication to the author after completing the manufacture.

Section 47. (1) The publisher shall also provide the author with all proofs necessary to ascertain the correctness of accounts.

(2) The author may, where the contract makes no provision for special terms and conditions, require, at least once a year, that the publisher produce a statement showing the number of copies manufactured during the financial year and specifying the date and the number of editions, as well as the number of copies in stock.

(3) Unless otherwise practised or agreed upon, the statement referred to in the preceding paragraph shall mention the number of copies sold by the publisher, the number of copies unusable or destroyed by unforeseeable circumstances or force majeure, and the amount of royalties due or paid to the author.

Section 48. (1) In the event of bankruptcy, the assignee shall, if he continues to run the business, assume all the obligations of the publisher.

(2) Where the assignee does not continue to run the business and where the said business has not been assigned within a period of one year from the date of adjudication in bankruptcy the publishing contract may, at the request of the author, be cancelled.

(3) In the event of the sale of the business, the purchaser shall assume the obligations of the assignor.

(4) The assignee may not undertake to sell the copies manufactured at a reduced price or liquidate them earlier than at least 15 days after notifying the author of his intention by registered letter with acknowledgement of receipt.

(5) The author shall have pre-emptive right over all or part of the copies. Where there is no agreement, the selling price shall be fixed at a valuation.

Section 49. (1) The publisher may not transfer whether or not against payment, or through contribution to a company, the benefit of a publishing contract to a third party, irrespective of his business, without first of all obtaining the authorization of the author.

(2) In the event of the transfer of the business, the author shall, where such transfer is of a nature to seriously prejudice his material or moral interests, be entitled to obtain separation even through the cancellation of the contract.

(3) Where the publishing business was run as a company or a coparcenary, the assigning of the business to one of the former partners or to one of the coparceners as a result of the winding up or sharing out of the business shall in no case be considered as a transfer.

Section 50. (1) The publishing contract shall end, irrespective of the cases provided for by common law or by the preceding articles, when the publisher undertakes to destroy all the copies of the work.

(2) The cancellation shall be made as of right when, on formal notice from the author allowing him a reasonable time limit, the publisher fails to publish the work or, in the case where the work is out of print, to republish it.

The edition shall be considered to be out of print if two requests for supply of copies sent to the publisher are not met within six months.

(3) In the event of the death of the author, the contract shall, where the work is not completed, be cancelled as regards the part of the work that is not completed, save where there is an agreement between the publisher and the rightful claimants of the author.

Section 51. The author may grant a publisher a preferential right to publish his future works, on

condition that they are of a given genre. Provided that this right shall be limited for each genre to five new works.

Section 52. (1) The following shall not constitute a publishing contract:

(a) a contract known as "contract at the author's expense" were the author, or his rightful claimants, pays the publisher an agreed remuneration on condition that he manufactures, in the form and the modes or forms of expression specified in the contract, a number of copies of the work and that he also publishes and disseminates it. The contract shall be deemed an agreement to hire services;

(b) the contract known as "contract at joint expense" where the author, or his rightful claimants, instructs a publisher to manufacture at his expense, in the form and in the modes or forms of expression specified in the contract, a number of copies of the work, and publish and disseminate it, on condition that they both conclude an agreement to share proportionately the profit and losses of the operation. Such contract shall constitute a joint venture.

(2) The contracts referred to in the preceding paragraph shall be deemed concluded only after they have been approved by the National Copyright Corporation. In the absence of such approval, the parties may only conclude a publishing contract.

CHAPTER V

Enforcement and exercise of copyright

Section 53. (1) The protection and management of authors' rights as defined by this law shall be entrusted to the National Copyright Corporation and authors.

(2) Subject to the personal action of authors, only this Corporation, and no other natural person or body corporate, shall be empowered to act as an intermediary between the author or his heirs or other rightful claimants, on the one hand, and publishers, organizers of entertainment and other users of protected works, on the other hand. In this capacity, the Corporation may institute legal proceedings to defend the interests it is upholding.

Section 54. Subject to the provisions of Section 43(3), relations between the National Copyright Corporation and the promoters or other users of protected works shall be governed by general performance contracts.

Section 55. (1) The National Copyright Corporation shall exploit works of folklore and works in the public domain.

(2) Exploitation by a third party for pecuniary gains of the works referred to in the preceding paragraph shall be subject to the authorization of the National Copyright Corporation. The Corporation shall collect royalties to be fixed by agreement between both parties.

CHAPTER VI

Procedure and sanctions

Section 56. (1) The National Copyright Corporation shall appoint competent agents to establish infringements against the copyright legislation throughout the national territory. The above agents shall take oath before a competent civil court.

(2) The administrative authorities, the police and gendarmerie shall, at the request of these sworn agents, assist and protect them in the course of the normal performance of their duties.

(3) The practical terms and conditions for establishing infringements against the law shall be determined by decree.

Section 57. (1) The publishing, reproduction, performance, dissemination, by whatever means, or importation into the national territory of a protected work, in violation of the author's rights, shall constitute the infringement provided for and punished by Section 327 of the Penal Code.

(2) Provided that the author of the infringement may solicit the proceeds of the transaction under the conditions determined by decree.

Section 58. Infringements against the provisions of Section 25 may entail the payment of damages pronounced by the Court of First Instance to beneficiaries of the *droits de suite*, the purchaser, the seller and the person responsible for the sale by public auction.

Section 59. (1) Any natural person or body corporate who authorizes the unlawful reproduction or communication to the public of works protected within the meaning of this law in his undertaking, jointly with any other person, agent or other who physically committed the infringement, shall be considered guilty of unlawful public performance or communication.

(2) The owner of the undertaking may decline his responsibility only if he proves that he was not aware of the unlawful nature of the reproduction or communication.

(3) However, the Court may order that the implements used in committing the infringement be confiscated.

Section 60. (1) Natural persons or bodies corporate, or their rightful claimants or successors in title who hold the rights referred to in this law may, whether or not through the National Copyright Corporation, when their rights are violated or are threatened to be violated:

— request a commissioner of police, a gendarmerie brigade commander, bailiffs to certify the infringements and, if need be, seize the copies unlawfully reproduced or the implements to be used in an unlawful public performance.

(2) In case of emergency, especially as concerns the public performance of protected works, the above-mentioned officials may temporarily close down the undertaking where the works have been performed.

(3) The President of the Court of First Instance may also, by an order of application, authorize:

(a) the suspension of any on-going manufacture involving the unlawful reproduction of a work;

(b) the seizure, even outside civil time, of the copies of the work that are unlawfully reproduced, or of the receipts produced from such unlawful reproduction;

(c) the seizure of the receipts produced from any reproduction, performance or dissemination, by whatever means, of a work of the mind in violation of the author's rights.

Section 61. (1) Within 30 days of the date of the report of the seizure, the distrainee or the garnishee may request the President of the Court of First Instance to limit its effects, or to authorize the resumption of the manufacture or the resumption of public performance of the work, under the authority of an assignee who shall own the proceeds of such manufacture or operation.

(2) The President of the Court of First Instance, ruling in Chambers, may, if he grants the request made by the distrainee or the garnishee, order at the expense of the plaintiff the deposit of a sum allocated for the payment of damages that the author may claim.

Section 62. In the event of failure by the distraining party to refer the matter to the competent court within 30 days following the seizure, replevin may be ordered at the request of the distrainee or the garnishee by the President of the Court ruling in Chambers.

Section 63. Where proceeds due to an author from the work are the object of an attachment, the President of the Court of First Instance may order the payment to the author, as a maintenance allowance, of a certain sum or a specified portion of the sums seized.

CHAPTER VII

Miscellaneous provisions

Section 64. A decree shall determine, as and when necessary, the terms and conditions of implementation of this law.

Section 65. The other conditions of implementation of this law shall, as and when necessary, be fixed by separate instruments.

Section 66. This law which repeals all previous provisions, especially Law No. 57-298 of 11 March 1957, shall be enacted and published in the *Official Gazette* in English and French.

Reflections on the Future Development of Copyright

Is Copyright an Anachronism?

André KEREVER *

Sadly, the question has to be asked.

Undoubtedly copyright is in a state of crisis today, at least in the strictly etymological sense of the word, denoting change, with no overtones either optimistic or pessimistic. It is to be wondered whether the crisis is one of age or of decadence, in which case the question should be given a positive reply, or whether it is an evolutionary crisis, indicating the transition to a new state.

In an attempt to justify the need to choose between these two alternatives, we shall mention by way of introduction certain manifestations of the copyright crisis. This introduction will be followed by an analysis of the causes of the crisis. A second part will be devoted to some considerations that would justify a negative reply to the question, provided that at least certain conditions are met; in conclusion we shall endeavor to identify the contribution that the lawyer can make towards the advancement of copyright.

This endeavor owes much to brilliant earlier studies made by eminent lawyers whom I shall not name for fear of committing the sin of omission. I shall make one exception however with respect to the essay by our friend Fernay (" Grandeur, misère et contradictions du droit d'auteur ", RIDA 1981, Vol. 109), whose recent passing we mourn.

The Crisis and its Manifestations

Ever since 1886 the drafting of the successive Acts of the Berne Convention has had to allow for the impact of innovations affecting the technical conditions under which intellectual works are disseminated. Up to 1948 the Acts of the Convention have been able to encompass without serious difficulty the introduction of inventions as important as mechanical sound reproduction, cinematography and radio and television broadcasting. However, the ever-increasing rate of technical innovation, which since the 1960s has been revolutionizing the audiovisual field (video recording, cable diffusion and satellites) and then the field of writing (reprography, computer storage and retrieval) has presented copyright with problems that are still imperfectly resolved.

Without laying too much stress on the problem of reprography, which is a technical innovation not necessarily or at any rate principally of concern to protected works, we do know that the meetings of experts convened from 1977 onwards on the initiative of WIPO and Unesco on the subject of video reproduction (on either disc or cassette) for private use and on cable distribution eventually reached the partial, and therefore inadequate, conclusion that the texts of the Berne Convention as emerging from the Brussels and Stockholm-Paris Acts contained suitable enough rules for it to be unnecessary to contemplate revising the Convention, but that those general rules were indeed too general to provide a basis for convention protection and their observance could only be ensured by national legislation. The same assessment was made of the Paris version of the Universal Copyright Convention, the scope of which was considered identical to that of the Berne Convention, in spite of its different wording.

It is pointless to conceal the fact that the experts were unable to work out mutually agreed opinions on the content of the national legislation by which the practical implementation of the principles written into the Conventions was to be brought about. We are also aware that the experts who advocate efficacious rules for the protection of authors do not always succeed in convincing their national legislators. By 1983 only a few States (Austria, Federal Republic of Germany, Congo, Hungary) had introduced appropriate legislation on audiovisual recording for private use.

With regard to the use of protected works by computers, the experts had little difficulty in agreeing on the problems of input (input brings the right of reproduction into play in so far as the input text is itself a protected work). On the other hand there is more hesitancy concerning the retrieval or output of stored subject matter, and those concerned are still somewhat bewildered by the transnational scale on which texts stored and retrieved in this way tend to circulate.

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WIPO and the Copyright Division of Unesco were becoming rightly concerned at the end of the 1960s by the implications of the transmission by space satellite of signals carrying protected works for the rights of the authors of those works. For want of an international consensus, the problem was dodged — that is the word — even though the failure was marked by the signature and indeed some ratifications of the 1974 Brussels Convention. Useful though it is, this new international instrument relates only to certain very marginal aspects of the problems caused by the use of space satellites, and in fact does not resolve any copyright problem at all. Moreover the combination of satellites and cable distribution is going to give rise to new situations of formidable complexity, the legal solution of which — from the copyright point of view — is bound to be fraught with uncertainty.

Precisely on the subject of cable distribution, the two international Organizations concerned with copyright, and also the Council of Europe, were quick in drawing the attention of States to the problems that this new technology raised for copyright. WIPO in particular devoted considerable effort to the investigation of the problems arising notably from the cable distribution of televised programs. The convening of a group of independent experts and the contribution made by the Council of Europe on the implications of cable for the application of the (Strasbourg) European Agreement on the Protection of Television Broadcasts bear witness to the high standard and consistency of that effort. Yet the round of expert meetings that began a number of years ago has little to show in 1983 that affords any encouragement. The drafting of common rules on cable distribution, albeit confined to States that are very close not only geographically but also in terms of their culture and their political, economic and social systems, bears a strange resemblance to the construction of the Tower of Babel. The governmental experts concerned, that is, the lawyers, magistrates or civil servants representing the States party to the Brussels Act of the Berne Convention, or that accept its basic principles in this area — those experts who, independently of their official functions, are known for their personal commitment to the general principles of copyright — quite simply do not speak the same language on the subject of cable distribution. It is somewhat perplexing to hear concepts being invoked in these discussions such as "direct reception zone" or "service zone," which are not only inherently imprecise, but also alien and irrelevant to the Article 11bis of the Berne Convention that emerged from the 1948 Act.

We are bound to conclude from these uncertainties and even from these divergences that classical copyright, based on the monopoly of the author's exclusive right in relation to the various forms of exploitation of his work, is having difficulty in assimilating all the recent technological innovations, and, for want of legislative clarification provided by the States party to the Conventions, gives only tentative or uncertain replies to two fundamental questions: (1) Is the use of the new technology a form of exploitation? (2) If so, how is copyright to be exercised?

The uncertainty of the replies to these questions is symptomatic of the copyright crisis. Yet what are the causes of the crisis? Some will reply without hesitation that copyright came into being with the "Gutenberg galaxy," and that it is weakening with the eclipse of the same galaxy, with the fading of the printed word in favor of image and sound as the normal vehicle of the cultural message.

It is the accuracy of precisely this diagnosis that has to be ascertained.

I. The Causes of the Crisis

1. In order to understand the causes of the crisis, a historical reminder of the emergence of classical copyright is called for.

Although in fact the specific character of this right, and in particular the juxtaposition of economic and moral elements, may be traced in an embryonic form in ancient Greek and Latin times, it will be agreed that its actual coming into being was later, and should be placed in the 18th century, with the introduction of the Act of Queen Anne in Britain (April 10, 1710) and the French Decrees of October 13-19, 1791 (right of performance), and July 19-24, 1793 (right of reproduction). At this time both countries underwent, albeit with some years between them, a revolution in production relations, a developmental change in ideas and a transformation of society as a whole. Conditions of social inequality and economic corporatism as practised under the former feudal system were succeeded by conditions of legal equality and economic inequality, to the advantage of the capitalist entrepreneur, both States being associated with economic liberalism. The development of ideas made it possible for their expression to be freed from the rigid frame imposed by religion and tradition.

The evolution of society had in it the germ of what nowadays is called a consumer society — although a large section of the population was still excluded from it — within which a social usefulness was attributed to intellectual and artistic creation.

Thus it was that legal relations came into being between the creator and his public, through the forced intermediacy of the entrepreneur who organized dissemination or distribution.

By virtue of the exclusive right conferred on the creator in relation to his creation, the author is the legal equal of the entrepreneur, to whom he may freely transfer, by contract, the rights vested in him by the law. Finally there is a fourth partner involved,

namely society itself, whose interests are served by the limitation in time of the author's exclusive rights.

The official consecration of copyright brought about a real revolution in the economic process of literary and artistic creation that had prevailed up to the time of the Renaissance. Then creation did not take place for the benefit of the public, but rather for the pleasure of the patron prince.

In the field of the written word, where the invention of printing had made it possible to multiply the number of copies of one and the same work, and consequently to disseminate them publicly, creation was not regarded as an end in itself, as the printer-publishers were mainly concerned with the reproduction of sacred works or those of the great writers of ancient Greece and Rome. The royal privileges of exclusivity granted to printer-publishers have sometimes been looked on as the embryo of the author's exclusive right. In fact the parallel is only partly accurate. The privilege granted at the discretion of the prince to a printer-publisher who intended to publish the works of Plutarch or Aristotle — of which there was far more likelihood in the 16th or even the 17th century than there was of the publication of contemporary works — was essentially an insurance which the investor took out against his competitors.

This reminder of well-known facts shows the importance of the technical aspects of dissemination on the maturing of copyright. The "author-impresario-public" triangle had existed, if not since Sophocles (as at that time performance was a sacred thing), at least since Plautus, and it lasted without any major legal changes until Beaumarchais, passing via Shakespeare and Molière. And above all the existence of this triangle did not culminate, indeed could not have culminated, in the exclusive right of performance without the decisive influence that the printing process had on the dissemination of written texts. The same is all the more true of the protection of three-dimensional and pictorial works, where the distinction between ownership of the physical object — the artistic work itself — and the incorporeal ownership of the shapes and colors is more difficult to work out.

Indeed the activity of the printer-publisher, which called for the purchase of materials — in other words investment — gave rise to protection by way of a privilege of exclusiveness, the nature of which, originally, was purely industrial. The privilege of the printer-publisher won its patent of nobility, so to speak, and became refined through finding its origin and its legal cause in the grant of the exclusive right of the author, that grant having been negotiated "freely" between legally equal parties.

Thus the beginnings of classical copyright in England and France reflect the importance of dissemination techniques in its make-up. It was the invention of the printing press, albeit concerning only written works, that ultimately determined the structure of the law applicable to intellectual works as a whole, a structure based on a monopoly that was conferred on the creator and assigned by contract to the entrepreneur responsible for dissemination and distribution, and which ensured the profitability of the activity of such enterprises.

2. The economic process of creation and dissemination of intellectual works has obviously evolved towards greater complexity since the 18th century.

While production relations in industrialized Western countries are generally still based on private appropriation of the means of production and on the market, it would be banal to recall the profound changes that those relations have undergone (inclusion of employment aspects of the economy, state intervention, creation of powerful workers' organizations). Emphasis should however be placed on the broadening and diversifying trend in the economic process of creation and dissemination of intellectual works.

Contemporary society — in developed countries at any rate — is a consumer society in which practically every stratum of the population participates. Cultural consumption is one of the components of global consumption precisely in so far as the material needs of society are capable of satisfaction.

Products for "cultural consumption" reach their recipients only by way of more and more sophisticated technical media. Printing, mechanical sound recording, cinema and broadcasting have now been joined by magnetic reproduction and by the distribution of programs (or works) by electronic vectors transmitted by satellite and cable. The implementation of this new technology has given birth to "cultural industries," closely associated with the creation itself (cinema, show business).

The industrialists in this case are investors in quest of profitability in a market that is growing into a world market, who, in order to organize dissemination, have to negotiate with authors' societies. The author-impresario dialogue, which as history has shown is at the heart of copyright, takes place now under conditions very different from those of the 19th century. The printer-publisher has been joined, or rather succeeded, by the multinational enterprise that manufactures the "vectors" of culture. The individual author is succeeded by the authors' society holding the rights in a set of works constituting its repertoire.

Let us look more closely at the impact of these new technical and economic conditions in which the creation and circulation of cultural goods take place.

(a) The first thing that should be mentioned is that the very size of the culture market and of the investments made in it breeds an activity consisting in the "pirating" of cultural goods. This involves the

manufacture and distribution of counterfeit media which unscrupulous industrialists use to save themselves the investment made by others and on top of that to evade all the incorporeal rights attaching to the works or performances pirated.

The initiative taken by WIPO in organizing in 1981 a Forum on this practice gives an indication of its scale.

A distinction does have to be made between piracy, which clearly violates all legality and therefore does not present copyright with any legal problem, and home copying, which has given rise to a very precise legal controversy regarding the exact scope of the exception for private use. However, the worldwide prevalence of piracy affords an indirect measure of the very fragility of what is called literary and artistic property. This property is abstract, dependent on the borderline drawn by legislation between operations subject to copyright and those exempt from it. Respect for the legal demarcation line is therefore dependent in turn on the sharpness and speed of intervention of the magistrate who guards this abstract frontier between the lawful and the unlawful, and the policemen that he sends in. Yet modern society engenders a range of different kinds of delinquency that all call for judicial and police intervention. The attention, time and means available for the repression of the pirating of intellectual works therefore depends specifically on the degree of disapproval manifested by society in relation to this reprehensible activity. And we are bound to admit that our society tends to be somewhat lenient towards the pirates, inasmuch as they are in a position, for obvious reasons, to offer prices that are more competitive than those practised in the lawful trade.

(b) While no one disputes the illegality of piracy, the fact is that the new technology makes it more and more difficult to establish a legal distinction between lawful and unlawful operations in terms of copyright: it is becoming possible to "miniaturize" reproduction processes, and every individual, with the lightweight apparatus available to him, can make his own sound and visual reproductions on blank carriers.

At the other extreme of the dissemination chain, space satellites, associated with cable networks, make it possible for a program of works to be disseminated instantaneously anywhere, in continental if not in planetary terms.

In both cases the concept of the "public" which is so essential to the legal construction of copyright either vanishes or fades.

For one thing, the classical exception to the right of reproduction in the case of private use takes on such importance that it breaches, to use the terminology of the Court of Justice of the European Communities, the classical protection accorded to authors.

The 1967 Diplomatic Conference of Stockholm fully acknowledged the importance of the breach and endeavored to stop it up, although at the time the context was reprography more than private audiovisual reproduction, the consequences of which are far more ominous. The Conference reacted with the adoption of the second paragraph of Article 9 of the Stockholm-Paris Act of the Berne Convention. As a defensive move it was far from perfect, however, and the drafting of the paragraph adopted reflects the embarrassment of the Diplomatic Conference: (i) it fails to provide a general rule precise enough to be self-enforcing, and leaves enforcement to national legislation: (ii) it also fails to specify the exceptions authorized by their nature otherwise than with a vague indication that such exceptions may only be allowed in "special cases"; (iii) finally it endeavors to mitigate these shortcomings by defining the permitted exceptions by their consequences for the economic rights of authors, which amounts to saying that an operation may be inherently lawful by nature and yet become unlawful through the frequency of its use.

We shall not dwell on the discouragingly well-known fact that few national legislators have drawn the proper conclusions from the realization that magnetic copying for private use has become one of the normal means of exploiting audiovisual works, and that it is therefore manifestly outside the area of the "special cases" authorized by paragraph (2) of Article 9 of the Convention.

There has been such growth at the other end of the concept of the "public," — as the coupling of satellite and cable systems makes for instantaneous dissemination on a continental scale — that no distributor agrees to consider himself responsible to authors for such a horde of "consumers" of works. The concept of the public is thus becoming frayed at both ends. At one end it is extending to a multitude of individual "consumers"; at the other end it is expanding so enormously that it is no longer really a public but a population.

(c) Historically, copyright was substituted for princely patronage in order to provide an adequate economic basis for literary and artistic creation.

However, in the last decade or two, the link between creation and copyright has disappeared from sight in the social and political conscience. Two recent instances of this weakening tendency seem very significant.

In 1982, as we know, the World Conference on Cultural Policies, sometimes known by its acronym "Mondiacult," was convened in Mexico City. Obviously this conference devoted itself to the study of the material conditions liable to promote creation. While advocating the growth of "cultural industries," the conference recommended a campaign to train

creators, and the improvement of their material circumstances. To that end it suggested action including the grant of fellowships, the organization of training courses and stays abroad, and an increase in the number of exchanges and tours to promote the intercommunication of cultures. All that advice was very welcome and perfectly reasonable. It was very surprising, however, to note that no national delegation or any resolution or document issuing from the conference itself mentioned copyright as being an element capable of influencing the material circumstances of creators, or for that matter neighboring rights as a means of promoting "cultural industries," the development of which had nevertheless impressed the conference as being desirable. Recommendations advocating a strengthening of copyright protection or stricter application — or indeed just effective application — of existing laws would have been of some value. Can one really mention improvements in the circumstances of workers without mentioning salary levels?

Another manifestation of the loss of contact between copyright and creation is to be found in a French official declaration on the subject of projects to link several million homes to a cable network. The politician who made the statement, after having noted the scale of technological progress made with infrastructures (fiber optics and telecommunications combined with computer technology), very rightly noted that, while the development of the "container" or "pipe" was technically complete, there should be concern for the "contents," in other words the "messages," the programs that would be conveyed to the public through those so well-developed, high-performance "pipes." It is significant however that this concern, judicious though it is, is presented as a desire to see "programming industries" develop. It is true of course that programming activities do have an industrial aspect: the cinematographic industry testifies to this. But to mention only this industrial aspect is tantamount to overlooking or ignoring that programs are made out of works that have to be intellectually created. It is rather as if one were describing literature as the publishing industry.

Why is it that the historical justification of copyright, as the means whereby creators earn their livelihood, while not actually denied, is at the very least lost to sight? A number of explanations could be suggested.

First there is the effect of this new technology, which is to multiply the ways in which one and the same work may be used. The cinematograph film projected in a public cinema will be incorporated in a televised program and then distributed by cable. It will be published in the form of a video disc or video cassette. Those who cater for the secondary uses will be naturally inclined to draw on the existing supply of primary uses. For them, the making of programs on carriers seems to depend more on the circulation of existing works than on the creation of new works.

Secondly, we have to realize that the circumstances of creation have changed considerably since the time when Le Chapelier, the rapporteur of the French Decrees of 1791-1793, was able to describe the creator's rights in his creation as being "property of the most sacred and most personal kind." This description would commit the sin of somewhat comic overemphasis if one applied it to "X" films or to the atmosphere of debatable musicality dispensed by sound systems in public places. Having thus become a consumer article, and often a very commonplace object, the "intellectual work" has in some respects lost much of the aura of distinction that it once had. It is becoming ordinary, and creation is beginning to look like just any "product." Moreover the public, the eventual recipient of the work, is hard put to identify its creator. More often than not it is the performer, and not the composer or the lyric writer, who is credited with the authorship of a popular song.

Thirdly, it will be noted that copyright is no longer looked on by society as being the salary of the creator; on the contrary, it is considered more and more to be a stock in trade, an advantage of which the trader or industrialist to whom the rights are assigned avails himself.

We have seen that when copyright was in its infancy the machinery for the assignment of rights had made it possible to reconstitute, on a more legitimate and more honorable basis, the publisher's privilege of exclusivity. Since then copyright has continually come up against the problem of deciding whether to be considered a specific advantage of the creative natural person, or whether to be susceptible of appropriation by an industrial or commercial enterprise which distributes the works created by its salaried employees. The replies vary according to national legislation, but they do take economic realities into account, even where the legislator remains attached to the personal character of copyright, tied to the creative natural person. In the latter countries, there are people who are beginning to look on copyright with a degree of distrust, in that it seems to them to be a hypocritical legal device whereby a monopoly of exploitation is conferred on traders, the only doctrinal justification for which lies in the personal bond linking the creator to his creation. Such an adverse sentiment can only be strengthened by practices such as joint publishing.

There were echoes of the same adverse assessment in the Piracy Forum organized by WIPO. Of course no voice was raised either to justify or even to excuse piracy. But it was nevertheless maintained that the industrialists whose rights were harmed by piracy (those rights being either assigned author's rights, or neighboring rights, or authorizations granted by virtue of the author's exclusive right)

should bear in mind that they themselves had extensively used, not to say plundered, the folklore of the Third World, and that they had contributed to the formation of a uniform, cosmopolitan culture which had subsequently elbowed local cultures out of its way. Piracy was supposedly no more than the consequence of the too-successful dissemination of that culture, the effect of which was that the same hit song was to be heard in Brighton, New York, Hong Kong, etc. — the list being of course interminable. In a word, copyright had allegedly become no more than a commercial element of show business.

(d) The weakening of the historical justification for copyright could well result in an actual indictment. Copyright, like the privilege by virtue of which the nobleman obliged his serfs to use the baronial furnace or mill, like the monopolies of the Guilds, which excluded any professional activity beyond their own boundaries, would become an obstacle to the free circulation of knowledge, information and other cultural messages.

The prosecution's argument is as follows: "New communication techniques make it possible for programs to be distributed instantaneously anywhere, and for recorded programs to be appropriated by individuals. The public has the right to benefit fully from these new techniques, especially since they are used for the dissemination of information and culture. The legitimate demands of the public — in other words the general interest — are not done justice if each of the many possible uses of one and the same work is subject to the authorization of a holder of rights. What makes the obstacle all the more formidable is that the right asserted is exclusive, monopolistic and discretionary, and that each program is made up of several protected works to which a complex web of intertwined rights is applicable. Moreover, from the economic standpoint, copyright royalties, whether or not they derive from a voluntary license, further increase the financial burden ultimately borne by consumers, which thus makes them a further obstacle hampering general access to culture."

Of course this argument has never been put forward in so many words. Yet those who attend international copyright meetings will readily recognize in these notional remarks the substance of the case put forward by certain users who are opposed to copyright.

The effect of this reasoning is complemented by the attitude of a section of the policy-making class which more or less openly sees the future of literary and artistic creation as involving a return to a sort of "neo-patronage," no longer bestowed by princes but rather by public or private communities. This sentiment, which is still somewhat uncoordinated, is implicit in the philosophy that inspired the viewpoints expressed during the 1982 "Mondiacult" conference on creation. The creator, having duly received his vocational training like any other worker protected by adequate employment regulations, and assured of his livelihood, is commissioned by the collective patron. Once the commissioned work has been paid for, the rights of the author-creator have been realized and the work belongs to the community that provides for the creator's maintenance, thereafter circulating "freely" for the benefit of society as a whole.

So, having thus been weakened by circumstances and disputed by some people, has copyright become an anachronism?

In our opinion this question is bound to be answered in the negative, for a number of reasons of which we feel some should be enlarged upon.

II. Modernity and Universality of Copyright

1. The crisis that copyright is undergoing is to a large extent due to the confusion created in people's minds by the transfer of the enjoyment of copyright from the creator to commercial enterprises. The interests of the enterprises may be entirely respectable, but they do not have the gentility inherent in the protection of creation.

The confusion is compounded by the fact that, in the author(creator)-enterprise-public triangle, the enterprise component splits into two antagonistic groups.

On the one hand there are the enterprises that are more or less closely associated with the creation-publishing-programming and production process (whether for cinema or for television), which are copyright assignees or licensees, or even original copyright owners.

On the other hand, in the audiovisual field, there are the infrastructural or support industries. Those industries manufacture the "pipes," or "containers," which have to be filled with programs composed for the most part of protected works.

These two groups of industries obviously have divergent interests with regard to copyright. The modernization of copyright necessitated by the emergence of new audiovisual techniques too often appears to be merely a conflict between two categories of industries. The infrastructural industries are of course bound to invoke the rights of consumers as a means of bypassing copyright, and such arguments do strike a chord with some sections of the policy-making class, in that it is then merely a question of arbitrating between conflicting business interests.

This approach is a false one, or at least an incomplete one, as it fails to recognize the true nature of copyright which the lawyer has to refer to.

The nature of copyright is twofold. It includes not only economic aspects — which are precisely the ones that cause the conflict between the two groups of industries that we mentioned — but also moral

aspects. Although the specific copyright texts inspired by British traditions do not, unlike French law, contain any explicit reference to moral rights, it should be borne in mind that the equivalent to moral rights is to be found in common law, for copyright is fundamentally one of the branches of the right of the person, with economic attachments.

Quite simply, copyright is the right of a person in his intellectual creation, in the sense of the materialization of a projection of the creator's personality. This was very neatly and concisely put by a French court of appeal on March 26, 1849: "The purpose of copyright protection is to establish man's rights in his thought." A magnificently concise definition, with the one proviso that it should refer not to the thought itself but to the *expression* of that thought.

The economic aspects derive quite naturally from the rights of the person in the expression of his thought. It is a question not merely of rewarding an inventive activity, but also of highlighting the intimate bond existing between the creator and the words, music, images and forms that issue from him. Every use of the work is in a sense an act of placing the creator at the disposal of the listener, viewer or reader. The result is a clear, straightforward principle: any use of the literary or artistic expression of a person is subject to that person's control, regardless of the status or technical characteristics of the use.

Now the rights of the person — and in particular the rights of the person in his creation — far from being anachronistic, are in fact very up-to-date. Their recognition was a social achievement in the same way as the rights progressively granted to salaried workers throughout the 19th and 20th centuries. Rights of this type cannot be subjected to limitations other than those imposed by the higher interest of society.

And yet it will be said that this analysis is only a theoretical one as, in actual reality, these rights of the person are invoked by business enterprises whose ultimate aim is profit.

On this aspect of the slide of moral rights towards economic rights, we have to be realistic.

One can contest — and indeed one does not hesitate to contest — the principles and machinery of the market economy. It would be irrational, however, to accept them as a whole either at a doctrinal level or as a fact of life, and to contest them solely at the level of the management of economic rights. The economic system of a market economy entails the assignment of the economic rights of the creator to the assignee enterprises, which in turn may invoke them against third parties. It should moreover be pointed out that the terms of assignments are more balanced now in so far as authors are grouped together in societies.

Admittedly those societies, together with the assignee enterprises to which the rights have been assigned, are sometimes implicated in the criticism according to which copyright has degenerated into an ordinary business transaction.

There is no questioning the fact that the conditions under which the author's exclusive rights are exercised are profoundly altered if they are tied up with the management of a set of rights relating to a whole repertoire of works. That alteration does not change the real nature of the exclusive right itself, however. The intervention of societies is not only essential to ensure that the terms on which rights are assigned are more balanced in favor of authors; it is also useful to the common interest. The control of the rights in a repertoire of works facilitates the circulation of those works, and the unquestionably economic character of the activity of authors' societies makes them subject to the overall scheme for the regulation of the economy, which has indeed been introduced in the public interest.

To sum up, the grouping of authors in societies and the assignment of rights to enterprises are quite natural consequences of the operation of the market economy, and do not alter the true nature of copyright, which is an aspect of the rights of the person and indeed a social achievement that must be improved upon and not allowed to regress. The temple of creation may indeed have been invaded by the merchants, but they do have a valid right to be there, and to remove them the temple itself would have to be destroyed.

2. The social usefulness of copyright consists in providing an economic basis for creation. This usefulness is still there at the end of the 20th century, because the "neo-patrons" are unable to take over. "Neo-patronage" plays a useful part, or at any rate a subsidiary part in areas of avant-garde creation, where the creation merges with research.

3. Finally, it is interesting to note that the threats looming over copyright have not prevented it from attaining worldwide significance.

Classical copyright came into being under very precise conditions of time and place. Such circumstances of birth did not necessarily predispose it to universality and, up to the second world war, the international copyright personified by the Berne Convention, an instrument administered by the "International Bureaux," was an essentially Western European institution which was applicable to the continents of Africa and Asia only through colonialism.

This situation has changed completely. First, the general principles of copyright, which originally were heeded only in market economy countries, are now recognized by the community of socialist States, even though the rights concerned relate to a form of ownership.

The Soviet Union in particular has joined the international copyright community, and the representatives of the Soviet State as well as those of its

specialized agency take an active part in international copyright meetings.

The ideological justifications for the accession of the socialist system have been analyzed in the study by Aurel Benard and György Boytha ("Socialist Copyright Law: A Theoretical Approach," RIDA, July 1976). According to that study, copyright is all the more acceptable to the socialist system because the action of the author-enterprise-public triangle is for the common good and not for profit. So copyright is thereby refined to produce a harmonious blend of the rights of the creative person in his creation and the rights of society regarding the dissemination of culture.

The assessment of the relative merits or demerits of market economy — or capitalist — and socialist systems is obviously a matter of opinion. It is significant however that copyright is accepted by both systems because it rests on universal values that are not the exclusive preserve of either.

The second transformation to occur after 1945 was the extension of copyright principles to developing countries, especially the newly independent ones.

Copyright has now acquired a world audience as a result of the conclusion of the Universal Copyright Convention, which made it possible for the United States of America and the Soviet Union to be part of the international copyright community, and the development of the Berne Convention under the guidance of WIPO.

The conversion of the "United International Bureaux" into the "World Intellectual Property Organization," and the latter's induction shortly afterwards into the family of specialized agencies of the United Nations, mark a stage of the utmost political importance in the uncloistering of copyright.

With the accession of former colonies to independence, the risk of the Berne Convention withdrawing into its Western European "nucleus" was not just theoretical. Such a development indeed seemed desirable to some, and not without some semblance of reason, as it was to be feared that the general principles of copyright might be sacrificed to the more or less correctly understood development needs of the Third World.

In retrospect we can see that the path followed by WIPO towards worldwide status was the right one. While there have indeed been dark clouds on the horizon of copyright since 1960, it would seem that this crisis is due much more to internal factors peculiar to the developed, market economy countries referred to above than to the concessions made to developing countries in the 1971 Paris Acts of the two international conventions.

Whereas the "world" trend is revealing globally beneficial attributes, it would be pointless to deny that the problem of adapting copyright to developing countries has sometimes been wrongly analyzed.

The content of copyright, namely the works protected, has often been assimilated to information or to scientific and technological knowledge, with the result that departures from the general rules of copyright have been justified by the desire to allow developing countries to enjoy the benefits of the transfers of technology and know-how necessary for their development. This in fact is a contradiction in terms, as copyright does not protect the substance of ideas or knowledge at all, but rather their expression. At the risk of oversimplifying, it can fairly be said that copyright subjects only form to exclusive rights, whereas substance is left to discretion. The fact remains however that the public in developing countries have to be given access, under conditions that allow for the specific characteristics of those countries, to protected works and in particular to cultural works in which the rights are held by nationals of developed countries. The 1971 Acts are based on a reasonable compromise as far as developing countries are concerned. The developing countries realize that any denial or excessive limitation of the rights of authors would dry up their own sources of creation and while not hampering their cultural development — as developing countries are not culturally underdeveloped at all — would prevent their full expansion in that field.

While we may note with satisfaction the accession to the copyright conventions — freely decided upon by them — of a large number of developing countries that have recently won independence, it would of course be naive to think that their accession, *ipso facto*, will bring about the effective application of the rules of copyright on their territories. What their accession does reflect is a favorable position of principle, which is an essential but not sufficient preliminary to application. The actual implementation of convention rules calls for further effort.

In this respect we are bound to commend WIPO for the strictness and consistency of the action undertaken or promoted by it with a view to achieving that implementation. WIPO efficiently coordinated the efforts of the States party to the Berne Convention towards providing developing countries with assistance at three levels. First, the drafting of appropriate national laws, that is, laws in conformity with the provisions of the Convention and at the same time suited to the particular circumstances of each State, with special emphasis on its development demands. A mention should be made in this connection of the value of the texts known as "Model Laws," drafted with the assistance of experts from developing countries. Secondly, the training of copyright specialists, both lawyers and administrators, facilitated by the organization of training courses. Finally, the establishment of an appropriate administrative infra-

structure, that is, assistance in the creation of national authors' societies under either public or private law, the intervention of which is necessary for the effective monitoring of the use of works and for the distribution of royalties collected. Those efforts were all the more successful for having been harmonized with those of Unesco in the framework of its administration of the Universal Copyright Convention; Unesco had taken the welcome initiative in that connection of introducing "National Centers," through which users in developing countries find facilities for the identification of copyright owners with a view to embarking on negotiations with them.

What should we think, while on this subject, of the double-headed character of the international Organizations competent in the copyright field? One's initial reaction might be to regret that international copyright were not gathered under a single umbrella held by one body. On more considered reflection, however, one realizes that there are more advantages than drawbacks to the present dual system. The Universal Copyright Convention makes it possible for the two most important States of the planet, the United States of America and the Soviet Union, to form part of the international copyright community. Those two States could not accede to the Berne Convention otherwise than by amending their domestic legislation, of which, while it is not necessarily ruled out, there is no immediate prospect.

More important than the bridging role played by the Universal Copyright Convention is the fact that the involvement of the two Organizations typifies the specific nature of copyright, with its intermingling of moral and economic aspects. The Berne Convention, administered as it is by WIPO, highlights especially the economic aspects of copyright, symbolized by the term (intellectual) "property." The Universal Copyright Convention, administered by Unesco, illustrates the fact that copyright is a right of the human being considered in relation to his creative activity, namely a fundamental right which cannot be limited otherwise than by the general interest of the human community. These two insights are mutually complementary, and tend to denote cooperation more than duplication or competition.

A realistic, dispassionate analysis of recent developments in fact makes it possible to present a globally favorable account of an evolution consisting in the expansion to world proportions of the scope of the two Conventions, with all the reservations that sober judgment dictates regarding the imperfections that still remain and the scale of the task that has yet to be accomplished.

A mention should be made in the same connection of the new 1976 Copyright Law of the United States of America. This Law was drafted in a climate of confrontation between the general principles of copyright and the effect of new technology, especially in the audiovisual field.

Unquestionably, the 1976 Law, overall, represents genuine progress towards respect for copyright when compared with the previous 1909 legislation. Even though the 1976 Law is in fact a compromise text, there is no denying that the principle of the author's exclusive right is definitely predominant in the new Law, and that non-voluntary licenses, like legal exceptions, have only a restricted purchase on it.

If the foremost industrial power among market economy countries has considered itself capable of modernizing its copyright law without weakening it, but rather strengthening it by dint of compromises that are reasonable in view of their context, there is reason to hope that, should such an *aggiornamento* be undertaken in Western Europe, it could save copyright from being dismembered as a result of the new uses of works made possible by technological innovation in the audiovisual field. We should bear in mind however that the evolutionary process that resulted in the 1976 Law was not a spontaneous one. We have to pay tribute to the work of Barbara Ringer, her predecessors and successors at the head of the Copyright Office and also her collaborators who, under very difficult circumstances, managed to bring a new law into being which, from the copyright point of view, represented progress.

So, with the evolution of the two international Conventions and the introduction of the 1976 American Law, copyright, far from showing signs of decadence or of being an anachronism, has shown on the contrary that its general principles are a factor for civilization recognized by the international community. There is therefore a set of reasons that entitle us to consider, without misinterpreting realities, that the present copyright crisis, the seriousness of which should not however be underestimated, is a crisis of change and adaptation rather than a crisis of decadence.

Conclusion

This favorable evolution is not complete, however. It presupposes that society should continue to refer to humanism as its guiding principle and to grant intellectual creation, and the creator, the protection postulated by that reference.

To the precise extent that such protection depends on legislation, emphasis should be placed on the contribution that lawyers can make in directing legislative bodies along the path of copyright development. In this the lawyer should pay particular attention to the following two aspects:

1. The philosophical and social justification for copyright, based on the protection of intellectual

creation, will be all the stronger if the subject matter of that protection is not wantonly extended. We have already mentioned some such wanton extensions, for instance joint publication. It is also possible that a certain laxness may creep in with the practice of adaptation and arrangement, and also in connection with the protection of designs and models. In the same line of thinking, while the protection of performers is justified, it is also important that there should be no ambiguity regarding the legal difference separating the rights of performers and the rights of authors. The benefit of copyright protection must be reserved for activities that satisfy two criteria: creation and originality of creation. Any abusive extension of that protection would have a result corresponding to what happens in economics when too much money is printed: inflation appears and weakens the value of the money.

In this connection the question of software protection presents a difficult problem. Recent legislation in the United States of America has brought software within the purview of copyright. This important legislative step seems likely to trigger two contradictory reactions.

For one thing, the choice made by a very powerful industrialized country like the United States of America to use copyright to protect software, in other words a product of the most advanced technological progress, bears witness to the modernity and vitality of the legal workings of copyright. The legislation of the United States of America would seem to show that, far from being tied to the "Gutenberg galaxy," copyright is on the contrary associated with activities that are in the forefront of progress and have the most promising future.

Conversely, however, there is no denying that the protection by copyright of a product that is certainly an intellectual creation, but one designed to achieve a specific result, inclines one to wonder about the risks inherent in the application of copyright to purely industrial activities. It is true that eminent specialists such as Eugen Ulmer have shown that the dependence of software on the result to be achieved does not rule out originality in the design of the instructions given to the machine for that result to be attained. Yet are we still in the field of literary or artistic property? Admittedly, classical copyright has always acknowledged its applicability to utilitarian products such as designs, models, maps and works of architecture. Yet such extensions have been justified by the "unity of art" theory. After all, the line followed by a road on a map is still a drawing, at the same time as it is a scale model of a road. It is obvious, however, that the unity of art theory does not apply in the field of software. There is therefore reason to fear that copyright may be somewhat adulterated if it becomes so openly the reward of industrial investment rather than the recognition of the rights of the person concerned in relation to his creative activity. If only with regard to the term of protection and the calculation of time limits, the protection of the industrialist is not determined by the same justifications or by the same standards as those on which the protection of the creative natural person is based. The same may be said of the formalities to which protection may be made subject.

The lawyer will therefore have to consider carefully the relative weight of these contradictory considerations.

2. Secondly, the lawyer will also have to avoid adopting too pragmatic an approach to the problems raised by the new technology. When it is isolated from its principles and philosophy, copyright, considered from the angle of positive law, is liable to take the form of a patchwork of operations, some of them free, others subject to the control of holders of rights, with an arbitrary dividing line drawn between them.

The question of non-voluntary licenses illustrates the dangers of too pragmatic an approach — on the part of the lawyer, of course, as the situation is obviously different for the administrator. Considered from an angle that is sometimes justified by the pretext of realism, the very existence of non-voluntary licenses could result in a "two-speed" conception of copyright: the "high speed" being the exclusive right, and the "low speed" being the mere right to claim remuneration, where the selection of one of the two "speeds" would be made according to a demarcation as arbitrary as that between operations subject to copyright and free operations.

This "pragmatic" conception of the non-voluntary license is wrong and even dangerous. Copyright must always be tied to its humanistic justification. Being an attribute of the human being, of whom creation is an extension, any use of the work created is lawful only with the consent of the author, and the whole of copyright rests on that simple, clear principle, even if the procedures for its application are sometimes complex. Recourse to non-voluntary licenses can only ever be one of the procedures for the implementation of the principle, in exceptional cases where the superior interest of society dictates that consent should be given, in the same way as duly proven interest justifies the expropriation of real property for the benefit of the public community. The result of this is that the legal basis of a non-voluntary license royalty is not merely a right to claim remuneration, but remains the price, the money equivalent of an authorization that the author is deemed to have given as a result of express intervention on the part of the legislator.

If we do not lose sight of the fact that the consent of the author is necessary to legalize the use of an

intellectual work, we will see that the emergence of new audiovisual technology does not call for any "extension" of copyright to cover the new uses permitted by that technology, but rather the implementation, in relation to the new circumstances thus created, of an existing principle of law. Only within that framework, and within those limits, is it permissible to consider any adaptation of copyright to the post-Gutenberg era.

(WIPO translation)

Correspondence

Letter from Canada

Andrew A. KEYES *

International Activities

International Federation of Musicians (FIM)

11th Ordinary Congress

(Budapest, September 19 to 23, 1983)

The International Federation of Musicians (FIM), which celebrates this year the 35th anniversary of its foundation, held its 11th Ordinary Congress from September 19 to 23, 1983, at the headquarters of the Hungarian Trade Unions Confederation in Budapest.

Delegates and observers representing musicians' organizations from 27 countries participated in the work of the Congress. Observers from several international organizations, governmental and non-governmental, also attended.

The Congress adopted a great number of resolutions dealing, *inter alia*, with the rights of performers and the Rome Convention. Some of them are reproduced below.

The Congress also reelected Mr. J. Morton (United Kingdom) as President; Mr. Y. Åkerberg (Sweden), Mr. V. Fuentealba (United States of America) and Mr. T. Simo (Hungary) were elected Vice-Presidents.

Resolutions

Revision of the Rome Convention

The Congress affirms

that the time has now come for revision of the Rome Convention to be commenced. Such a revision should remove the unfair discrimination represented among others by Article 19, provide performers with a positive right to authorize or prohibit uses of their performances analogous to the rights given to the other beneficiaries, give performers a specific right to remuneration arising under Article 12 and extend the protection of the Convention to cable and satellite uses of performances, phonograms and broadcasts.

Application of the Rome Convention
Bilateral Agreements in the Field of Performers' Rights

The Congress

— endeavors to promote the Rome Convention,

— recognizes that countries with but a modest phonogram production hesitate to adhere to the Rome Convention for fear that a considerable amount of the remunerations paid due to Article 12 would be transferred abroad,

— affirming the principle that remuneration paid for the public performance and broadcasting of gramophone records stay in the country where the records were used,

— encourages all member unions to endeavor to get international agreements concluded between the collecting societies administering the application of performers' rights and/or to make agreements between the trade unions according to the related guidelines circulated by the FIM Secretariat.

The Congress further takes the view

— that FIM should intensify its efforts to facilitate and increase adherence to the Rome Convention,

— that every possible effort should be made to avoid ratification with any reservations which prejudice performers' economic interests.

The Congress requests the Executive Committee to formulate and circulate to all member unions guidelines and suitable model contracts and/or agreements for the administration of performers' rights and to advise members on the practical application of these rights.

Performers' Protection Legislation

The Congress notes and approves the support given by FIM to member unions in their endeavors to have performers' protection legislation enacted in various countries.

The Congress commissions the Executive Committee and the Secretariat to make positive contributions when requested by member unions who are pursuing the establishment of performers' rights legislation in their area.

Implementation of Laws for Performers' Rights and Cassette Piracy

The 11th Congress declares to give full support to the Panhellenic Musicians Union (PMU) in its efforts to achieve Presidential Decree and implementation of Laws No. 1075/80 about performers' rights and No. 1064/80 about cassette piracy.

Unauthorized Use of Sound Recordings

The Congress resolves:

The Executive Committee is charged to appeal to all countries or at least to those where there is a FIM member union, to the international organizations concerned (the Council of Europe and similar councils), in order to achieve appropriate regulations to put an end to unauthorized uses of sound recordings the producers and origin of which are unable to be identified.

Policy Relating to Satellite Transmissions

The 11th Congress

— considering the different satellites planned for the transmission of radio and television programs, especially regarding the project of the European Parliament, and

— being aware of the fact that secondary uses of performances by satellite transmissions deprive performers of employment opportunities,

declares that it is now necessary to formulate clearer and more specific policies relating to satellite and cable transmissions of performances. The Congress directs the Executive Committee to this task.

The policies should extend to guidelines for member unions in their negotiations with satellite companies, broadcasters, cable operators, and all other interested parties in these developments. The policies should also recognize the distinctions between "point-to-point" and "direct-broadcast" satellites and between basic and pay-cable systems.

Attention should be given to the importance of placing responsibility for program content on the satellite transmission operators and for the observance of performers rights (including contractual rights) on the organizations involved in these modes of dissemination.

The Executive Committee is charged, possibly in cooperation with other international non-governmental organizations (e.g. FIA, FISTAV) to constitute a study group which should, *inter alia*,

(a) trace the developments in the field of satellite transmissions,

(b) communicate with the intergovernmental organizations and request them if necessary to act to protect performers' interests.

Book Reviews

Challenges to Copyright and Related Rights in the European Community, by *Gillian Davies* and *Hans Hugo von Rauscher auf Weeg.* One volume of 271 pages. ESC Publishing Limited, Oxford, 1983.

Das Recht der Hersteller von Tonträgern — Zum Urheber- und Leistungsschutzrecht in der Europäischen Gemeinschaft, by the same authors. One volume of 256 pages. C.H. Beck'sche Verlagsbuchhandlung, Munich, 1983.

These books contain the English and the German versions of a study prepared in 1980, with a postscript reviewing legislative developments and case law between then and August 1982. The study was prepared for submission to the Commission of the European Communities as a contribution to the discussion on the possible harmonization of copyright law, expressing the viewpoint of producers of phonograms in that context.

As is shown by the different titles, the two versions are not identical — one is not a literal translation of the other. They were written simultaneously and, according to the authors, both texts are equally authentic.

The study is divided into five parts. The first part contains general observations on the well-known study prepared by Dr. Adolf Dietz for the Commission of the European Communities, published in 1976 under the title "Copyright Law in the European Community." The authors criticize Dr. Dietz's study in several respects, particularly for not covering the rights of producers of phonograms and for approximating authors' rights with labor law and social security law, "an approach which pushes the concept of 'intellectual property' into the background."

The second part of the study analyzes the relationship between the international conventions on copyright and neighboring rights and European Community law; the third part describes the legal protection of producers of phonograms and of performers at the national level in the EEC countries; the fourth part discusses special problems affecting phonogram producers. Conclusions and proposals for action are contained in the fifth part. The work is completed by appendices containing texts and tables referred to in the study, a bibliography and an index.

The authors' main conclusion is that harmonization of copyright law in the European Community is desirable, and that such harmonization should, among other things, respect existing legislation and conventional obligations, take account of all rights (including those of phonogram producers) dealt with by present laws of copyright and

neighboring rights, and provide solutions to the pressing problems arising from technological developments.

The last aspect, the need to take into account present and foreseeable means of mass dissemination of intellectual works, is dealt with vigorously in the study, and gives it an interest and a value wider than the questions of European Community harmonization and of the rights of producers of phonograms. As a result, the study is a contribution to the current, necessary discussions of the future development of copyright.

There are some gaps in the index, some references are lacking or hard to find, and some printing errors remain. But such blemishes, regrettably so common today that they have become almost accepted, do not detract from the value of a solid, scholarly work, which deserves to be widely read.

R.H.

Whale on Copyright, by *R.F. Whale* and *Jeremy J. Phillips.* One volume of XV-291 pages. ESC Publishing Limited, Oxford, 1983.

The first edition of this book, the author of which was Mr. Whale alone, was published in 1971. * Although the United Kingdom Copyright Act 1956 has not been substantially revised since then, it was felt that a new edition was justified by developments in the copyright field, both nationally and internationally, which have raised a number of new problems.

The book is intended for "the expanding sector of the general public involved in the manifold activities based ultimately on the use or communication of the literary, musical and artistic works protected by copyright." It therefore deals with the subject matter in a brief and concise way, without however omitting to discuss, in a chapter entitled "Copyright and Modern Technology," such topical questions as are photocopying, piracy, private copying, the problems raised by the use of computers, cable television, and satellite broadcasting. It also mentions the activities within the European Economic Community concerning both the exploitation of works protected by copyright and the efforts aimed at harmonizing the domestic copyright laws of its member States.

The chapter devoted to copyright and international law now includes the conventions or agreements which have been signed after the first and second (1972) editions.

Lastly, it is worth noting that another chapter, entitled "Protection of Authors' and Performers' Interests Outside the Copyright Framework," deals briefly, in addition to dramatic and musical performances, with traditional airs and folklore, plant seeds and varieties, moral rights, resale royalty right (*droit de suite*), public lending right and rights in names, titles and characterizations.

M.S.

* See *Copyright*, 1972, p. 105.

Calendar

WIPO Meetings

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

1984

January 16 to 27 (Geneva) — Permanent Committee on Patent Information (PCPI) — Working Gronp on Search Information

January 17 (Geneva) — Informal Meetings with International Non-Governmental Organizations Concerned with Industrial Property or Copyright and Neighboring Rights

January 30 to February 3 (Geneva) — International Patent Cooperation (PCT) Union — Assembly (Extraordinary Session)

February 27 to March 24 (Geneva) — Revision of the Paris Convention for the Protection of Industrial Property — Diplomatic Conference (Fourth Session)

March 5 to 9 (Geneva) — Joint International Unesco-WIPO Service for Facilitating the Access hy Developing Countries to Works Protected hy Copyright — Working Group on Model Contracts Concerning Co-Pnblishing and Commissioned Works (convened jointly with Unesco)

April 2 to 6 (Paris) — Committee of Experts on the Question of Copyright Ownership and its Consequences for the Relations between Employers and Employed or Salaried Authors (convened jointly with Unesco)

April 9 to 13 (Geneva) — Permanent Committee on Patent Information (PCPI) — Working Gronp on General Information

May 7 to 11 (Geneva) — Permanent Committee on Patent Information (PCPI) — Working Groups on Planning and on Special Questions

May 7 to 11 (Geneva) — Committee of Experts on the Harmonization of Certain Aspects of Patent Law

May 14 to 25 (Geneva) — Permanent Committee on Patent Information (PCPI) — Working Gronp on Search Information

May 21 to 24 (Geneva) — Conference on Inventors (convened jointly with the International Federation of Inventors' Associations)

June 4 to 8 (Geneva) — Committee of Experts on Private Copying of Works Protected hy Copyright (convened jointly with Unesco)

June 18 to 22 (Geneva) — Group of Consultants on Legislative Provisions for Pnhlishing Contracts (convened jointly with Unesco)

September 17 and 19 (Geneva) — Permanent Committee on Patent Information (PCPI) — Working Group on Developing Countries

September 18 to 21 (Geneva) — Permanent Committee for Development Cooperation Related to Industrial Property

September 18 to 21 (Geneva) — Permanent Committee on Patent Information (PCPI) and PCT Committee for Technical Cooperation (PCT/CTC)

September 24 to 27 (Geneva) — Ordinary Sessions of the Coordination Committee of WIPO and the Executive Committees of the Paris and Berne Unions; PCT Union Assembly (Extraordinary Session)

October 15 to 19 (Geneva) — Nice Union — Preparatory Working Group

October 22 to 26 (Geneva) — Suh-Committee of the Intergovernmental Committee of the Rome Convention on the Application of the Said Convention in the Light of New Communication Techniqnes (convened jointly with ILO and Unesco)

November 5 to 9 (Geneva) — Committee of Experts on Biotechnological Inventions

November 19 to 23 (Geneva) — Permanent Committee on Patent Information (PCPI) — Working Groups on Special Questions and on Planning

November 26 to 29 (Paris) — Committee of Experts on Copyright Prohlems Related to the Rental of Material Snpports of Works (convened jointly with Unesco)

November 26 to 30 (Geneva) — International Patent Classification (IPC) Union — Committee of Experts

December 3 to 7 (?) (Geneva) — Permanent Committee on Patent Information (PCPI) — Working Gronp on General Information

December 10 to 14 (Paris) — Committee of Experts on the Intellectual Property Aspects of the Protection of Folklore at the International Level (convened jointly with Unesco)

1985

September 23 to October 1 (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)

UPOV Meetings

1984

April 4 and 5 (Geneva) — Administrative and Legal Committee

April 6 (Geneva) — Consultative Committee

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

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

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

August 6 to 10 (Hanover) — Technical Working Party for Ornamental Plants and Forest Trees, and Subgroups

September 25 to 28 [or October 8 to 11] (Valencia) — Technical Working Party for Fruit Crops, and Subgroups

October 16 (Geneva) — Consultative Committee

October 17 to 19 (Geneva) — Council

November 6 and 7 (Geneva) — Technical Committee

November 8 and 9 (Geneva) — Administrative and Legal Committee

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

Non-Governmental Organizations

1984

Council of the Professional Photographers of Europe (EUROPHOT)
Congress — March 17 to 21 (Darmstadt)

International Confederation of Societies of Authors and Composers (CISAC)
Legal and Legislation Committee — May 8 to 12 (Corfu)
Congress — November 12 to 17 (Tokyo)

International Council on Archives (ICA)
Congress — September 17 to 21 (Bonn)

International Literary and Artistic Association (ALAI)
Executive Committee — January 28 (Paris)
Study Session on Designs — April 5 and 6 (Paris)

International Publishers Association (IPA)
Congress — March 11 to 16 (Mexico)

Union of National Radio and Television Organizations of Africa (URTNA)
General Assembly — January 30 to February 1 (Dakar)