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World Intellectual Property Organization

Training Course in Copyright and Neighboring Rights

(Montevideo, May 8 to 18, 1984)

A training course in copyright and neighboring rights for officials from the countries of Latin America was organized by WIPO with the cooperation of the Swiss Society for Authors' Rights in Musical Works (SUISA). With the cooperation and kind hospitality of the Government of Uruguay, through the Ministry of Education and Culture, this course was held in Montevideo from May 8 to 18, 1984. It followed on from a course of the same type held in Quito from May 31 to June 10, 1983, at the invitation of the Government of Ecuador.*

The participants came from the following 10 countries: Argentina, Brazil, Chile, Costa Rica, El Salvador, Honduras, Mexico, Panama, Peru, Uruguay. The list of participants is given at the end of this note.

The sessions were held at the headquarters of the Latin American Integration Association (ALADI) and were reported on a number of occasions by press, radio and television.

The course was opened by Dr. Juan Bautista Schroeder, Minister for Education and Culture of Uruguay, in the presence of Ambassador Juan José Real, Secretary General of ALADI, the Ambassadors accredited in Montevideo of the Latin American countries from which the participants came, representatives of the Minister for Industry and Energy and the Minister for External Relations, Mr. Daniel Scheck, Chairman of the Copyright Council of Uruguay, and numerous other Uruguayan personalities. The representative of the Director General of WIPO and Mr. Ulrich Uchtenhagen, Director of SUISA, also made speeches at the opening of the course.

The program of the course comprised a number of lectures, presented

(i) by WIPO, on the following topics: the legislation of the Latin American countries of Roman legal tradition and the Berne Convention; the individual and collective exercise of authors' rights; the term of protection of copyright; the various exceptions to copyright protection; neighboring rights at international level and participation of the Latin American countries in that system;

(ii) by SUISA, on the following topics: the function and structure of a society of authors; relations with users and with the performers of musical works; the principles of collection and distribution of royalties; documentation relating to works; publishers' relations with societies of authors; the social and cultural functions of societies of authors; the possibilities for technical cooperation between societies of authors.

In addition, lecturers had been invited to deal with the following subjects: the varying modes of copyright administration, by Professor Homero Zamorano (Chile); the influence of case law in Latin America on copyright protection, by Dr. Carlos Alberto Villalba (Argentina); the situation of piracy of intellectual works in Latin America, by Dr. Henry Jessen (Brazil). At a national level, communications were presented on the role and activities of the Copyright Council of Uruguay by its Chairman, Dr. Daniel Scheck; on the legislative situation of copyright in Uruguay by Professor Daniel Artecona, Professor at the Faculty of Law and Social Sciences, Montevideo; and on Uruguayan experience in the practical application of copyright by Dr. Martin J. Marizcurrena, Manager of the General Association of Authors of Uruguay (AGADU), this latter communication being followed by a visit to the premises of AGADU.

The program also provided for country reports by the participants giving the status of copyright and neighboring rights law and their application, and also on the elements of infrastructure available in their respective countries.

Each of the lectures and the communications was followed by a wide-ranging exchange of views, which proved most useful in the context of the adoption, in certain countries, of new relevant legislation and of improving the practical management and application of authors' rights.

The closing session was held in the presence of Mr. Luis A. Gonzalez Beade, Secretary General of the Ministry of Education and Culture, who in his final address announced his Government's decision to modernize the 1937 Uruguayan law on literary and artistic property.

* See Copyright, 1984, p. 43.
List of Participants

I. Specialists Invited

Argentina
Sr. Carlos Alberto Marengo, Jefe, Departamento Usuarios Especiales, Sociedad de Autores y Compositores de Música (SADAIC), Buenos Aires
Sr. Américo Roberto Nasi, Gerente, Recaudacion Nacional, Sociedad Argentina de Autores y Compositores de Música (SADAIC), Buenos Aires

Brazil
Sr. Hildebrando Pontes Neto, Abogado, Miembro del Consejo Nacional de Derecho de Autor, Belo Horizonte
Sra. Dad Abi Chahine Squarisi, Asesora del Presidente del Consejo Nacional de Derecho de Autor, Brasilia

Chile
Sra. Tatiana Urrutia Yanez, Ingeniero Comercial, Jefe de la Unidad de Operaciones, Departamento del Pequeno Derecho de Autor (DAIC), Universidad de Chile, Santiago

Costa Rica
Sr. Efrain G. Picado Azofeifa, Director General de Bibliotecas y Biblioteca Nacional, Encargado del Registro Nacional de Derechos de Autor, Direccion General de Bibliotecas, San José

El Salvador
Sra. Argelia Polanco de Fremuth, Abogado y Notario Colaborador Juridico de la Dirección General de Registros, Ministerio de Justicia, San Salvador

Honduras
Sr. Manuel Salinas Paguada, Doctor en Letras, Director General de Cultura, Ministerio de Cultura y Turismo, Tegucigalpa

Mexico
Sr. Aldo Casasa Araujo, Jefe del Departamento de Dominio Publico, Dirección General del Derecho de Autor, Mexico
Sra. Maria Esther Sandoval Salgado, Auxiliar de la Sub-dirección Jurídica y de Fomento, Dirección General del Derecho de Autor, Mexico

Panama
Sr. Ricardo Franco Aguilar, Director de Asesoría Legal, Instituto Nacional de Cultura, Panama

Peru
Sra. Maria Elvira Heredia Lamutti, Oficinista III, Centro Bibliográfico Nacional y Registro Nacional de Derechos de Autor, Biblioteca Nacional, Lima

Uruguay
Sr. Luis F. Etcheverry R., Jefe, Departamento Internacional y Derechos Musicales, Asociacion General de Autores del Uruguay (AGADU), Montevideo
Sr. Victor Reyes Lopez, Jefe, Departamento Gran Derecho, Asociacion General de Autores del Uruguay (AGADU), Montevideo

II. Delegation of Host Country

Dr. Daniel Scheck, Presidente del Consejo del Derecho de Autor
Dr. Estanislao Valdes Otero, Miembro del Consejo del Derecho de Autor
Dr. Daniel Artecona, Director del Departamento de Derecho Civil, Catedratico de Derecho Civil, Facultad de Derecho y Ciencias Sociales
Dra. Elda Frede Strapollini, Catedrática de Derecho Constitucional, Doctora en Derecho y Ciencias Sociales, Abogado, Ministerio de Educación y Cultura
Dr. Alejandro Javiero Osimani Cuevas, Abogado, Asesor del Ministerio de Educación y Cultura, Asesor del Consejo del Derecho de Autor
Sr. Hector C. Helgar, Contador, Interventor de AGADU
Sr. José Díaz Soria, Interventor de AGADU
Sr. Martin J. Marizcurrena, Gerente, Asociacion General de Autores del Uruguay (AGADU)
Dr. Washington Perez Couce, Abogado, Asociacion General de Autores del Uruguay (AGADU), Miembro de la Comisión Jurídica del Consejo Panamericano de la CISAC

Esc. Gustavo Vignoli, Escribano, Asesor Jurídico de AGADU
Dr. Eduardo de Freitas, Abogado, Asesor Jurídico de AGADU
Dr. Carlos Varela Rodriguez, Abogado, Asesor Jurídico de la Sociedad Uruguay de Intérpretes (SUDEI)
Dra. Jacqueline Berreiro, Asesora Jurídica, Camara Uruguaya del Libro
Dr. Plinio Borgio di Giacomo, Abogado, Secretario Ejecutivo Camara Uruguay del Disco

III. Guest Lecturers

Dr. Carlos A. Villalba, Presidente, Centro Argentino del Instituto Interamericano de Derecho de Autor, Buenos Aires
Dr. Homero Zamorano Cubillos, Abogado, Magister en Administracion, Santiago de Chile
Dr. Henri Jessen, Abogado, Rio de Janeiro

IV. Sponsoring Organizations

World Intellectual Property Organization (WIPO)
Mr. Claude Masouyé, Director, Public Information and Copyright Department
Mr. Guy Eckstein, Deputy Head, Development Cooperation Support Unit

Swiss Society for Authors’ Rights in Musical Works (SUISA)
Mr. Ulrich Uchtenhagen, Director General
Mr. Roger Torriani, Head, Publishers Division
Group of Experts on Unauthorized Private Copying of Recordings, Broadcasts and Printed Matter

(Geneva, June 4 to 8, 1984)

Report

I. Introduction

1. Pursuant to the decisions taken by the General Conference of the United Nations Educational, Scientific and Cultural Organization (UNESCO) at its twenty-second session and by the Governing Bodies of the World Intellectual Property Organization (WIPO) at their fourteenth series of meetings in October 1983, the Secretariat of Unesco and the International Bureau of WIPO (hereinafter referred to as "the Secretariats") convened a Group of Experts on Unauthorized Private Copying of Recordings, Broadcasts and Printed Matter. The Group of Experts met at the Headquarters of WIPO in Geneva from June 4 to 8, 1984.

2. The experts, who had been invited in their personal capacity by the Directors General of Unesco and WIPO, were nationals of the following seven States: Argentina, Austria, India, Rwanda, Soviet Union, Tunisia, United States of America.

3. The States party to the Berne Convention for the Protection of Literary and Artistic Works or to the Universal Copyright Convention had also been invited to follow the discussions of the Group of Experts. The following States were represented by delegations: Argentina, Australia, Austria, Brazil, Canada, Congo, Czechoslovakia, El Salvador, France, Germany (Federal Republic of), Ghana, Holy See, Hungary, Israel, Japan, Kenya, Libya, Luxembourg, Madagascar, Mexico, Netherlands, Niger, Norway, Panama, Philippines, Poland, Spain, Sweden, Switzerland, Turkey, United Kingdom, United States of America (32).

4. Observers from one intergovernmental organization and 14 international non-governmental organizations also attended the meeting. The list of participants is appended to this report.

II. Opening of the Meeting

5. The meeting of the Group of Experts was opened by Dr. Arpad Bogsch, Director General of WIPO, and, on behalf of the Director-General of Unesco, by Mr. Abderrahmane Amri, who welcomed the participants.

III. Election of the Chairman and Vice-Chairman

6. On a proposal by Miss Kala Thairani (India), seconded by Mr. Maniragaba Balibutsa (Rwanda), the Group of Experts elected Mr. Walter Dillenz (Austria) and Mrs. Nebila Mezghani (Tunisia) Chairman and Vice-Chairman, respectively.

IV. Documentation

7. The Group of Experts had before it a document drawn up by the Secretariats on the unauthorized reproduction for private purposes of sound and audiovisual recordings, broadcasts and the printed word (document UNESCO/WIPO/GE/COP.1/2).

V. General Discussion

8. Before inviting participants to present considerations of a general nature on the subject, the Chairman asked Mr. A.H. Olsson (Sweden) to introduce document UNESCO/WIPO/GE/COP.1/2, which had been drawn up by the Secretariats with his assistance.

9. Following that presentation, the participants unanimously acknowledged the high quality of the work accomplished and congratulated the Secretariats and Mr. A.H. Olsson for having drawn up the document, which would facilitate the work of the Group of Experts in its search for solutions to the problem raised by unauthorized reproduction for private purposes.

10. In the course of the discussions, the participants noted that according to the Berne Convention for the Protection of Literary and Artistic Works and the Universal Copyright Convention the author has an exclusive right of authorizing the reproduction of his work. The Berne Convention expressly states that this right relates also to any sound or visual recording of the work. The right of reproduction is not limited to reproduction for public or profit-making use of the work and also covers protection as regards various forms of reproduction for private purposes.
11. It was recalled that, according to the 1971 Paris Act of the Berne Convention, national legislation may provide for limitations of the right of reproduction only in certain special cases, provided that such reproduction does not conflict with a normal exploitation of the work and does not unreasonably prejudice the legitimate interests of the authors (Article 9(2)). Under the Universal Copyright Convention, the Contracting States have to provide for the adequate and effective protection of the rights of authors (Article I) and the States may make only such exceptions to those rights that do not conflict with the spirit and provisions of that Convention. Any State whose legislation so provides, shall nevertheless accord a reasonable degree of effective protection to the right to which exception has been made (Article IVbis(2) of the Convention, as revised in Paris in 1971). The cumulative effect of reproduction for private purposes of sound and audiovisual recordings and broadcasts as well as reprographic reproduction for private use of printed works is prejudicial to the author’s legitimate interests (in particular, to his claim to derive material benefit from the use of his work by others) and such kinds of reproduction may also conflict with a normal exploitation of the work reproduced; it also conflicts with the requirement of guaranteeing a reasonable degree of effective protection of the right of reproduction. Consequently, national legislations should not exempt such reproductions for private purposes from copyright liability. This also follows from the requirement of adequate and effective protection of authors’ rights (see, however, paragraph 15, below).

12. The participants also considered Article 15 of the Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations, according to which any Contracting State may provide for the exceptions to the protection guaranteed by that Convention as regards private use. They underlined, however, that according to Article 1 of the Rome Convention, no provision thereof may be interpreted as prejudicing the protection of copyright in literary and artistic works. Since Articles 24(2) and 28(4) of the said Convention provide that only such States may be party to it which are at the same time party to either the Berne Convention or the Universal Copyright Convention, limitation of any right of reproduction of holders of neighboring rights for private purposes under the Rome Convention would be, for practical reasons, permissible only under the same conditions as those applying to the reproduction of protected works.

13. The participants agreed that the use of modern technology for reproduction of works for private purposes should not be hindered and its adverse effects on the interests of authors and beneficiaries of neighboring rights should be mitigated by appropriate means of protection. Appropriate systems for protection with regard to reproduction for private purposes may be collective administration of the exclusive right of reproduction or various forms of non–voluntary licensing, such licensing implying the obligation to pay proper remuneration.

14. Several participants underlined the importance to adapt the legislative regulation to peculiar features of distinct forms of reproducing works for private purposes. In particular, attention was drawn to the fact that whereas reproduction by means of the so–called home taping is always uncontrollable, reprographic reproduction for private purposes is often made by using publicly accessible devices against payment. It was found that owing to technological development during the past decade the decision of the Executive Committee of the Berne Union and the Intergovernmental Committee of the Universal Copyright Convention, taken during their 1975 meeting on Reprographic Reproduction of Works Protected by Copyright, according to which the issue was considered exhausted, should be reconsidered and the problem further explored at the international level.

VI. Discussion of Possible Measures of Copyright Protection Relating to Reproduction for Private Purposes

15. The participants noted that the subject of the discussions is reproduction of works by means of reproducing equipment and traditional forms of copying for personal use (for example, copying by hand) remain outside the scope of their study. The same is true, to the extent applicable and mutatis mutandis, when neighboring rights are involved.

16. Several participants stressed that the basic approach should be the recognition of the exclusive exercise of the right of reproduction and the reproduction of certain subject matters which are particularly sensitive from the point of view of copyright (e.g. works of architecture, sheet music, works of visual art of limited edition) should always be subject to authorization by the owner of the copyright therein.

17. A number of participants underlined that the exercise of the exclusive right of reproduction for private purposes should be effected by means of collective agreements between representative organizations of right owners and users. Legislation should provide that relevant claims of the owners of rights
concerned may only be asserted by their respective organizations and such organizations should be in a position to guarantee the users against claims from right owners outside the authorizing organization. Where the system of collective agreements cannot be introduced, the States may introduce proper non-voluntary license schemes for certain kinds of reproduction for private purposes, subject to the payment of proper remuneration.

18. Several participants stressed that the fees to be collected by the competent organization for the reproduction of protected works are royalties and should be paid, as regards reproduction equipment and/or blank material support of recorded productions, ultimately by the users of the devices enabling reproduction for private purposes. Such fees should be distributed to the owners of copyright in works presumed to be copied for private purposes in proportions corresponding to relevant data concerning the frequency of various forms of their public use (broadcasting, sales of records, performances etc.). The fees can be collected as an outright payment from the manufacturer or importer of the devices, who sells them to the persons reproducing protected works by means of them and paying the royalty as a part of the selling price. The modalities of calculating the fees and the fixation thereof should be a matter of negotiation, as far as possible, between the interested representative organizations, even in case of non-voluntary licensing schemes and legislation or competent authorities should fix them only in the absence of such an agreement. Beneficiaries of the neighboring rights involved should enjoy a similar solution, to be negotiated, as far as possible, by their respective organizations and fixed by a competent authority (which may also be a court or arbitration body) only in the absence of agreement between them.

19. Any fees fixed by legislation or competent authority should correspond, as far as possible, to amounts that might have been agreed upon by the interested parties by way of negotiation.

20. It was held that the rights of reproduction for private purposes and the collection and distribution of fees for such uses should be administered collectively by all categories of beneficiaries of rights concerned.

21. A great number of participants emphasized that the introduction of a fiscal tax (instead of copyright fees) on blank tapes and cassettes and/or equipment for reproduction of works for private purposes is contrary to the basic principle under the law of copyright, according to which fees paid for the use of protected productions are due to the respective owners of the rights in such productions. Other participants felt that this was a question of implementation which could make a tax-type system compatible with principles of copyright provided the proceeds of the tax are used to remunerate the right owners concerned.

22. Several participants referred to the necessity of providing for a system of exempting from being subject to payment of copyright fee devices which are not intended or cannot be used for private reproduction of protected works or which are exported.

23. In the course of the discussions special attention was paid to related interests prevailing in developing countries. The participants noted that the solution of the problem of reproduction for private purposes may be viewed differently in various developing countries. It was stressed, however, that the protection of copyright and neighboring rights, as regards reproduction of works by means of modern technology for private purposes also means supporting the development of national cultural industry which, again, is an important factor of furthering national creativity.

VII. Conclusion

24. In conclusion, the participants suggested that the Secretariat of Unesco and the International Bureau of WIPO continue to study the impact on copyright and the neighboring rights of recording and reprographic reproduction for private purposes of protected works and productions protected by neighboring rights, and that they prepare, on an urgent basis, annotated principles for the related protection of copyright and neighboring rights.

VIII. Adoption of the Report

25. This report was unanimously adopted.

IX. Closing of the Meeting

26. After the usual words of thanks, the Chairman declared the meeting closed.
List of Participants

I. Experts

M. Maniragaba Balibutsa
Directeur général de la culture et des arts, Ministère de l'enseignement supérieur et de la recherche scientifique, Kigali

Mr. Stanley M. Besen
Senior Economist, Rand Corporation, Washington, D.C.

M. Hector Delia Costa
Professeur, Université de Buenos Aires, Buenos Aires

Mr. Walter Dillenz
Director, Staatlich Genehmigte Gesellschaft der Autoren, Kompositen und Musikverleger (AKM), Vienna

Mme Nebila Mezghani
Professeur, Faculté de droit de Tunis, Tunis

Miss Kala Thairani
Deputy Educational Adviser, Ministry of Education and Culture, New Delhi

Mr. Arkadi V. Türkin
Head, Contractual Division, Legal Department, All-Union Copyright Agency (VAAP), Moscow

II. States Party to the Multilateral Copyright Conventions Invited to Follow the Discussions

Argentina
Sr. Jorge Pereira
Primer Secretario, Mision Permanente de Argentina, Geneva

Sr. Miguel A. Emery
Asesor, Profesor de Derecho Comercial, Universidad de Buenos Aires, Buenos Aires

Australia
Mr. Ian Harvey
Principal Legal Officer, Intellectual Property Section, Attorney-General’s Department, Canberra

Austria
Mr. Robert Dittrich
Director, Federal Ministry of Justice, Vienna

Brazil
Mr. Henry Jessen
Lawyer, Rio de Janeiro

Canada
Mr. James Keon
Senior Policy Adviser, Department of Consumer and Corporate Affairs, Ottawa

Congo
M. Jean-Prosper Miamona
 Fonctionnaire, Ministère de la coopération, Brazzaville

Czechoslovakia
Mr. Miroslav Jelinek
Legal Adviser, Legal Department, Ministry of Culture, Prague

El Salvador
Excmo. Sr. Adalberto Gonzalez
Embajador, Representante Permanente Adjunto, Mision Permanente de El Salvador, Geneva

France
M. André Françon
Professeur, Université de droit, d’économie et de sciences sociales, Paris

M. André Bourdalé-Dufau
Sous-directeur des affaires juridiques et de la propriété intellectuelle, Ministère de la culture, Paris

Germany (Federal Republic of)
Mrs. Margret Möller
Ministerialrätin, Federal Ministry of Justice, Bonn

Ghana
Mr. Edmund B. Odoi-Anim
Copyright Administrator, Ministry of Information, Accra

Holy See
Mr. André Marelle
Expert, Permanent Mission of the Holy See, Geneva

Hungary
Mr. Mihaly Ficsor
Director General, Hungarian Bureau for the Protection of Authors’ Rights (ARTISJUS), Budapest

Israel
Mr. Mayer Gabay
Director General, Ministry of Justice, Jerusalem

Japan
Mr. Yukifusa Oyama
Copyright Adviser, Cultural Affairs Department, Agency for Cultural Affairs, Tokyo

Mr. Koichi Sakamoto
First Secretary, Permanent Mission of Japan, Geneva

Kenya
Mr. Joseph N. King’Ami
Registrar-General, Office of the Attorney-General, Nairobi

Libya
Mr. Abdulla El Megri
First Secretary, Permanent Mission of the Libyan Arab Jamahiriya, Geneva

Luxembourg
M. Fernand Schlesser
Inspecteur principal, Service de la propriété intellectuelle, Ministère de l’économie et des classes moyennes, Luxembourg

Madagascar
M. Solofo Rabearivelo
Ministre plénipotentiaire, Mission permanente de Madagascar, Geneva
Mexico
Sr. Carlos Septien Sepulveda
Asesor, Dirección General del Derecho de Autor, Secretaría de Educación Pública, Mexico

Netherlands
Mrs. J.M. Meijer van der Aa
Legal Adviser, Ministry of Justice, The Hague
Mrs. Leonie M.A. Verschuur de Sonnaville
Legal Adviser, Ministry of Justice, The Hague

Niger
M. Rabo Mato
Chef, Service du droit d’auteur, Direction de la culture, Ministère de la jeunesse, des sports et de la culture, Niamey

Norway
Mr. Arne Ringnes
Senior Executive Officer, Department of Legislation, Ministry of Justice, Oslo
Ms. Anne K. Braekke
Senior Executive Officer, Ministry of Cultural Affairs, Oslo

Panama
Sr. Vicente Garibaldi
Asesor Externo, Instituto Nacional de Cultura, Panama

Philippines
Mr. Luis V. Ople
Attaché, Permanent Mission of the Philippines, Geneva

Poland
Mme Hanna Walkus-Gieralt
Conseiller juridique, Ministère de la culture et des arts, Warsaw

Spain
Sr. Fernando Castano
Jefe, Gabinete de la Secretaría General, Radiotelevision Espanola, Madrid
Sr. Rafael Martinez del Peral
Jefe, Secretaria Técnica, Dirección de Relaciones Internacionales, Radiotelevision Espanola, Madrid

Sweden
Mr. Henry Olsson
Head of Division, Ministry of Justice, Stockholm

Switzerland
M. Karl Govoni
Chef, Service du droit d’auteur, Office fédéral de la propriété intellectuelle, Berne

Turkey
Mr. Ertugrul Apakan
Counselor, Permanent Mission of Turkey, Geneva

United Kingdom
Mr. John P. Britton
Principal Examiner, Industrial Property and Copyright Department, The Patent Office, London

United States of America
Mr. David Ladd
Register of Copyrights, Copyright Office, Washington, D.C.
Mr. Harvey J. Winter
Director, Office of Business Practices, Department of State, Washington, D.C.

III. Observers
(a) Intergovernmental Organization
International Labour Organisation (ILO): R. Cuvillier; V. Klotz.

(b) International Non-Governmental Organizations

IV. Secretariat
United Nations Educational, Scientific and Cultural Organization (UNESCO)
A. Amri (Lawyer, Copyright Division).

World Intellectual Property Organization (WIPO)
A. Bogsch (Director General); C. Masouyé (Director, Public Information and Copyright Department); G. Boytha (Director, Copyright Law Division).
Notifications

Berne Convention for the Protection of Literary and Artistic Works
(Paris Act, 1971)

INDIA

Notification concerning Articles II and III of the Appendix to the Paris Act (1971)

The Government of the Republic of India deposited, on June 7, 1984, a notification by which it renews the declaration, made on February 1, 1984,* according to which it avails itself of the faculty provided for in Article II and the faculty provided for in Article III of the Appendix to the Berne Convention for the Protection of Literary and Artistic Works of September 9, 1886, as revised at Paris on July 24, 1971.

In accordance with Article I(2)(a) of the said Appendix, the renewal of the said declaration made by the Republic of India is effective for a period of ten years from October 10, 1984, that is, until October 10, 1994.

Berne Notification No. 110, of June 20, 1984.

*See Copyright, 1984, p. 111.

National Legislation

JAPAN

Law to Take an Interim Measure for the Protection of the Rights of Authors, etc. with Respect to the Lending of Commercial Phonograms to the Public

(No. 76, of December 2, 1983)*

Purpose

Article 1. The purpose of this Law is, with respect to the act of lending commercial phonograms to the public against payment of fees, to provide, as an interim measure, for the rights of authors, performers and producers of phonograms in commercial phonograms, and thereby to contribute to the protection of their right of reproduction or of making sound recordings.

Definitions

Article 2. In this Law, “works,” “performances,” “phonograms,” “commercial phonograms,” “sound
recordings” or “the public” means works, performances, phonograms, commercial phonograms, sound recordings or the public, respectively, as defined in Article 2 of the Copyright Law (Law No. 48, of 1970).

Rights of authors, etc. in commercial phonograms

Article 3. Those who have the right as provided for in Article 21, Article 91, paragraph (1) or Article 96 of the Copyright Law with respect to the making of sound recordings of works; performances or phonograms (other than those mentioned in Article 8, item (ii) of that Law) incorporated in commercial phonograms shall enjoy the right to grant the authorization mentioned in paragraph (1) of the next Article.

Authorization to lend commercial phonograms to the public

Article 4. (1) A person who intends to lend commercial phonograms to the public against payment of fees shall, until the end of a period as prescribed by a cabinet order from the date of the first sale of such commercial phonograms within this country, obtain authorization from those mentioned in the preceding Article with respect to such lending.

(2) The act of lending mentioned in the preceding paragraph shall include any kind of acts of similar commercial nature, whatever may be their purpose or means.

Application of the Copyright Law

Article 5. The act of lending commercial phonograms to the public against payment of fees without obtaining authorization from those mentioned in Article 3 and in violation of the provision of paragraph (1) of the preceding Article shall be considered to constitute an infringement on the right as provided for in Article 21, Article 91, paragraph (1) or Article 96, paragraph (1) of the Copyright Law, and the provisions of Articles 112, 114, 117 to 119, 123 and 124 of that Law shall apply to such act.

Supplementary Provisions

Date of enforcement

1. This Law shall come into force six months after the date of its promulgation.

Transitory measures

2. The provisions of Articles 4 and 5 shall not apply to such commercial phonograms as sold within this country before the enforcement of this Law.

Cabinet Order to Prescribe a Period During which the Authors, etc. Shall Have the Right to Grant Authorization with Respect to the Lending of Commercial Phonograms to the Public

(No. 106, of April 17, 1984)**

In accordance with the provision of Article 4, paragraph (1) of the Law to Take an Interim Measure for the Protection of the Rights of Authors, etc. with Respect to the Lending of Commercial Phonograms to the Public (Law No. 76, of 1983), this Cabinet Order shall be established as follows:

A period as prescribed by a cabinet order, as mentioned in Article 4, paragraph (1) of the Law to Take an Interim Measure for the Protection of the Rights of Authors, etc. with Respect to the Lending of Commercial Phonograms to the Public (hereinafter referred to as “the Law”), shall be one year.

Supplementary Provision

This Cabinet Order shall come into force on the date of enforcement of the Law (on June 2, 1984).

** This Cabinet Order was promulgated on April 17, 1984, and came into force on June 2, 1984.— English translation communicated to WIPO by courtesy of the Cultural Affairs Department, Copyright Division, of Japan.
UNITED KINGDOM

I

The Copyright (International Conventions) (Amendment) Order 1983
(No. 1708, of November 18, 1983)

1. This Order may be cited as the Copyright (International Conventions) (Amendment) Order 1983 and shall come into operation on 19th December 1983.

2. The Copyright (International Conventions) Order 1979* shall be amended as follows: —

(a) in Schedule 1 (which names the countries of the Berne Copyright Union) there shall be included references to Barbados, Venezuela and Zimbabwe.

(b) in the said Schedule Venezuela shall be indicated with an asterisk denoting that it is also party to the Universal Copyright Convention.

(c) in Schedule 2 (which names the countries party to the Universal Copyright Convention but not members of the Berne Union) the name of Venezuela, and the date indicated in relation to that country, shall be omitted.

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

SCHEDULE

Countries to which this Order extends
Bermuda  Hong Kong
British Virgin Islands  Isle of Man
Cayman Islands  Montserrat
Falkland Islands and its Dependencies  St. Helena and its Dependencies
Gibraltar

EXPLANATORY NOTE
(This Note is not part of the Order)

This Order amends the Copyright (International Conventions) Order 1979. It takes account of the accessions of Barbados, Venezuela and Zimbabwe to the Berne Copyright Convention.

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

II

The Copyright (International Conventions) (Amendment) Order 1984
(No. 549, of April 11, 1984)

1. This Order may be cited as the Copyright (International Conventions) (Amendment) Order 1984 and shall come into operation on 10th May 1984.

2. The Copyright (International Conventions) Order 1979* shall be amended as follows:

(a) in Schedule 1 (which names the countries of the Berne Copyright Union) —

(i) there shall be included a reference to Rwanda, and

(ii) the references to Barbados, Guinea and Sri Lanka shall be indicated with asterisks to

* The Copyright (International Conventions) Order 1979 (No. 1715) has been amended by Order No. 1723 of 1980 (see Copyright, 1980, pp. 212 to 216 and 1981, p. 80, respectively).
denote that each is also party to the Universal Copyright Convention;

(b) in Schedule 2 (which names the countries party to the Universal Copyright Convention but not members of the Berne Copyright Union) there shall be included references to Belize and the Dominican Republic with related references to 1st December 1982 and 8th May 1983 respectively;

(c) in Schedule 3 (which names countries in whose case copyright in sound recordings includes exclusive right to perform in public and to broadcast) there shall be included references to Barbados, Finland and Panama;

(d) in Schedules 4 and 5 (which name countries whose broadcasting organisations have copyright protection in relation to sound broadcasts and television broadcasts respectively) there shall be included references to Barbados, Finland and Panama with related references in each Schedule to 18th September 1983, 21st October 1983 and 2nd September 1983 respectively; and

(e) in Schedule 6 (which names the countries to which Parts I and II of the Order extend)—

(i) the reference to Belize and the date indicated in relation to that country shall be omitted, and

(ii) there shall be included a reference to the British Indian Ocean Territory with a related reference to 21st November 1964.

3. (1) This Order, except for paragraph (d) of Article 2, shall extend to all the countries mentioned in the Schedule hereto.

(2) Paragraph (d) of Article 2 shall extend to Bermuda and Gibraltar.

SCHEDULE

Countries to which this Order (except Article 2 (d)) extends

<table>
<thead>
<tr>
<th>Country</th>
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<tr>
<td>Bermuda</td>
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<td>British Indian Ocean Territory</td>
<td>Hong Kong</td>
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<td>British Virgin Islands</td>
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<td>Falkland Islands Dependencies</td>
<td>St Helena Dependencies</td>
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<td>(Ascension, Tristan da Cunha)</td>
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EXPLANATORY NOTE
(This Note is not part of the Order)

This Order further amends the Copyright (International Conventions) Order 1979. It takes account of:

(i) the accession of Rwanda to the Berne Copyright Convention,

(ii) the accession of Barbados, Belize, the Dominican Republic, Guinea and Sri Lanka to the Universal Copyright Convention, and

(iii) the accession of Barbados, Finland and Panama to the International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations.

It also omits Belize from and includes the British Indian Ocean Territory among the dependent countries of the Commonwealth to which the 1979 Order extends.

The Order itself extends, so far as is appropriate, to those countries.
Performers' Rights: A New, Independent Institution of Intellectual Property Law

Antonio MILLÉ
Correspondence

Letter from Switzerland

Mario M. PEDRAZZINI†
International Literary and Artistic Association (ALAI)

Study Session and Executive Committee

(Paris, April 5 to 7, 1984)

At the invitation of its French Group, the International Literary and Artistic Association (ALAI) held a study session in Paris on April 5 and 6, 1984, devoted to industrial designs. This event, which took place in the Debussy-Ravel Hall at the headquarters of SACEM, was attended by some 80 participants from various countries, including Belgium, Canada, Denmark, Finland, France, Germany (Federal Republic of), Greece, Italy, the Netherlands, Sweden, Switzerland and the United Kingdom. WIPO was represented by Mr. Claude Masouyé, Director of the Public Information and Copyright Department, and Mr. François Baileys, Head of the Industrial Property Law Section.

The program of this study session, chaired by Professor Georges Koumantos, ALAI President, included a stocktaking of relevant legislation, study of the requirements for protection of industrial designs under copyright law and under the industrial property system, and of the duration and scope of such protection, together with an examination of the question at international level.

The study session provided an opportunity for a broad exchange of views between the participants, based on a document presented by Mr. Wladimir Duchemin, the General Rapporteur, and individual reports submitted on the protection of industrial designs by several national groups of ALAI, and enabled a number of general approaches to be identified.

The ALAI Executive Committee met on the day following the study session, April 7, 1984, to decide on the position to be taken by ALAI in adopting the resolution set out below:

As a result of the study session on industrial designs held in Paris on April 5 and 6, 1984, as a follow-up to the work carried out on the same topic during the Aegean Sea Congress from April 13 to 20, 1983, the ALAI Executive Committee,

Reiterates its attachment to the principle that any original creation of a form should enjoy copyright, irrespective of any consideration of purpose or merit, insofar as it possesses those features normally required for such protection,

Considers that this principle is in no way incompatible with protection afforded to industrial designs under special legislation applying those methods that are specific to industrial property. This latter system of law could be applied either to objects that, despite their utilitarian nature, are already covered by copyright or to objects that are not entitled to copyright protection. In the first case, protection deriving from the specific law would be afforded parallel to that based on copyright. In the second case, it may be provided that such articles would only be entitled to benefit from an exclusive right if they were registered,

Decides to continue its concertation with other bodies concerned with industrial designs statute.
Interamerican Copyright Institute (IIDA)

Seminar on University Teaching and Copyright

(Sao Paulo, May 7 to 9, 1984)

As part of the celebration of the 50th anniversary of the foundation of Sao Paulo University, the Interamerican Copyright Institute (IIDA), in cooperation with the Brazilian Intellectual Property Institute and the University's Law Faculty, organized a Seminar in Sao Paulo from May 7 to 9, 1984, on the subject of "University Teaching and Copyright."

This Seminar, which was placed under the patronage of the Minister of Education and Culture of Brazil, Professor Esther de Figueiredo Ferraz, was opened by the President of the IIDA, Professor Antonio Chaves, in the presence of Professor Alexandre Correia, Vice-Dean of the Law Faculty and Professor Antiguo Serador, Attorney-General of the State of Sao Paulo. WIPO was represented by Mr. Claude Masouyé, Director of the Public Information and Copyright Department. Among the international non-governmental organizations present there was the International Association for the Advancement of Teaching and Research in Intellectual Property (ATRIP), represented by its President, Professor Ernesto Aracama Zorraquin.

The program of the Seminar, in which essentially members of the National Copyright Council and university teaching staff or students of Brazilian nationality participated, included a certain number of reports on the following subjects:

— Legislative trends in copyright during the last 20 years, by Mr. Claude Masouyé (WIPO);
— The contribution of Unesco in the dissemination of copyright principles throughout the world, by Mr. Arcadio Plazas (Colombia);
— The National Copyright Council of Brazil, by Mr. Joaquim Justino Ribeiro, President of the Council;
— The creation, role and activities of ATRIP, by Professor Ernesto Aracama Zorraquin (Argentina);
— Copyright and patents for professors and students in universities, by Professor Antonio Chaves (Brazil);
— The influence of doctrine in the solution of administrative and judicial problems in the field of copyright, by Professor Carlos Alberto Villalba (Argentina);
— The improvement of the collection of authors' royalties on the Latin American continent, by Mr. Henri Jessen (Brazil).

Other reports were also presented by a number of professors of Sao Paulo University on the university teaching of various aspects of copyright and neighboring rights on the one hand, thus assuring compliance with the Resolution adopted by the IVth Continental Conference of the IIDA, held in Santiago de Chile from October 31 to November 4, 1983,* and industrial property law on the other.

* See Copyright, 1984, p. 89, paragraph ad 6 of the Resolution.
Bibliography

List of Books and Articles

From January 1 to June 30, 1984, the WIPO Library has entered in its catalogue a number of works or other publications on copyright and neighboring rights, among which the following are mentioned that are most important or most relevant to recent developments.

**Books**


BRUNET (Claude). Le Gouvernement du Québec et les droits d'auteur de la couronne. Québec, Ministère des Affaires culturelles, 1983. – (pag. mult.)


**Articles**


CORNISH (W.R.) and PHILLIPS (J.J.). Copyright in the United Kingdom. In "RIDA 1984, No. 119, pp. 59–121 [in English with parallel French and Spanish translations].

2 Ibid., p. 126.
BIBLIOGRAPHY


Calendar of Meetings

WIPO Meetings

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

1984

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)

September 24 to 28 (Geneva) — Ordinary Sessions of the Coordination Committee of WIPO and the Executive Committees of the Paris and Berne Unions; Paris Union Assembly (Extraordinary Session); PCT Union Assembly (Extraordinary Session)

October 8 to 10 (Doha) — Regional Group of Experts on Means of Implementation in Arab States of Model Provisions on Intellectual Property Aspects of Protection of Expressions of Folklore (convened jointly with Unesco)

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

October 22 to 26 (Geneva) — Group 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)

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 30 (Paris) — Group of Experts on Copyright Problems Related to the Rental of Phonograms and Videograms (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 Group on General Information

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

1985

February 4 to 8 (Geneva) — Permanent Committee for Development Cooperation Related to Copyright and Neighboring Rights

February 25 to March 1 (Geneva) — Group of Experts on Copyright Protection of Computer Software (convened jointly with Unesco)

March 18 to 22 (Paris) — Group of Experts on Copyright Problems in the Field of Direct Broadcasting Satellites (convened jointly with Unesco)

April 22 to 26 (Paris) — Joint Unesco-WIPO Consultative Committee on the Access by Developing Countries to Works Protected by Copyright (convened jointly with Unesco)

June 17 to 25 (Paris) — Berne Union — Executive Committee — Extraordinary Session (sitting together, for the discussion of certain items, with the Intergovernmental Committee of the Universal Copyright Convention)

June 26 to 28 (Paris) — Rome Convention — Intergovernmental Committee (convened jointly with ILO and Unesco)

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

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

European Broadcasting Union (EBU)
Legal Committee — October 3 to 6 (Cyprus)

International Confederation of Societies of Authors and Composers (CISAC)
Congress — November 12 to 17 (Tokyo)

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

International Federation of Translators (FIT)
Congress — August 17 to 23 (Vienna)

1985

International Copyright Society (INTERGU)
Congress — June 7 to 12 (Munich)

International Union of Architects (IUA)
Congress — January 20 to 26 (Cairo)