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Centenary of the Berne Convention

The First Hundred Years of the Berne Convention for the Protection of Literary and Artistic Works

by

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Director General of the World Intellectual
Property Organization

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Centenary of the Berne Convention

The First Hundred Years of the Berne Convention for the Protection of Literary and Artistic Works

ARPAD BOGSCH

Director General of the World Intellectual Property Organization

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INTRODUCTION

Scope and Organization of the Present Article

The present article is intended to commemorate the hundredth anniversary of the Berne Convention for the Protection of Literary and Artistic Works, adopted and signed on September 9, 1886.

The present article was written during the first months of 1986.

It tells the story of the Berne Convention and the Berne Union from their beginnings until 1986, the year of the centenary of the Berne Convention. It does not, however, deal with the evolution of the substantive law provision of the Berne Convention. That evolution is recounted in what is really the only authentic way in the official reports of the various diplomatic conferences that prepared the original (1886) text of the Convention and adopted the various, so-called "revised," texts of the Convention.

The present article narrates the history of those diplomatic conferences and of the evolution of the membership of the Berne Union. They are Parts I and II, respectively, of the present article.

Part III of the present article gives, briefly, the history of the administrative clauses of the Berne Convention, that is, the clauses that deal with the concept of a "Union" as it concerns the Berne Union, with the organs of the Berne Union, namely, the Assembly, the Conference of Representatives, the Executive Committee (and its predecessor, the Permanent Committee) and with the finances of the Berne Union. The same part (Part III) also contains information on the past and the present staff of the International Bureau, and about the persons who headed that Bureau. Finally, it outlines the relations of the Berne Union with the World Intellectual Property Organization (whose "International Bureau" is (also) the secretariat of the Berne Union) and with the United Nations.

The last part, Part IV, of the present article chronicles the past and present efforts of the Berne Union exercised with the aim to bring about a better copyright protection in the world, "better" meaning a protection that extends to the authors of all kinds of works and to all the various (old or new) kinds of uses of their works, consisting, wherever reasonable, of an exclusive right of authorization, efficiently enforced, when infringed, by courts and other law-enforcing instances. Such efforts may be grouped in four groups of activities:

first, the establishment of new treaties; *second*, the advising of governments on copyright law subjects of topical interest, particularly those resulting from the use of new technologies of recording, copying and disseminating works or their performances; *third*, the assistance given to developing countries to help them in the achievement of their cultural and economic goals; and *fourth*, the consultations with non-governmental organizations and intergovernmental organizations.

PART I

THE HISTORY OF THE ADOPTION AND THE REVISIONS OF THE BERNE CONVENTION

The Adoption of the Berne Convention

The Three Diplomatic Conferences of 1884, 1885 and 1886 (Berne). The *Association littéraire internationale*, a non-governmental organization, founded in 1878 in Paris, was the original proponent of what then was called *une convention universelle* (a universal convention) for the protection of literary and artistic property and the foundation of a *Union de propriété littéraire* (Literary Property Union). In its Congress held in Rome in 1882, the Association decided to meet in Berne in 1883. The Swiss Government accepted to host the 1883 Congress of the Association and delegated to it one of its ministers (*conseiller*), Numa Droz. The said Congress, presided over by Droz, took place in Berne in September 1883. It lasted four days (September 10 to 13) and concluded with the adoption of the draft of a multilateral treaty with the title *Convention pour constituer une Union générale pour la protection des droits des auteurs sur leurs œuvres littéraires et artistiques* (Convention Establishing a General Union for the Protection of the Rights of Authors in their Literary and Artistic Works). That draft consisted of ten articles.

The Federal Council (roughly equivalent of a council of ministers) of the Swiss Confederation sent the said draft, on December 3, 1883, to the governments of "all the civilized countries" (*tous les pays civilisés*) and informed them of the plans of a diplomatic conference in 1884 to adopt a

treaty. The treaty should, according to the circular sent to the said countries, lead "on the one hand, to the universal recognition of the rights of authors without regard to their nationality and, on the other hand, to the desirable uniformity of the principles governing such protection."

The initiative was greeted with enthusiasm by the governments of several countries. The Government of the United States of America was one of those which were less enthusiastic. It said, in its reply to the Swiss Government, that in the protection of printed works, customs duties would complicate any attempt at international protection since not only the author but also the manufacturer of the paper, the caster of the printing type, the printer, the book binder and many other persons engaged in commerce were interested. But the number of favorable replies was sufficient for the Swiss Government to decide the convocation of the first diplomatic conference. Its dates were fixed from September 8 to 19, 1884, and the venue fixed was the room of the *Conseil des Etats*, the upper house of the Swiss Parliament, in Berne.

The Conference took place as foreseen. The countries represented were Austria-Hungary, Belgium, Costa Rica, France, Germany, Great Britain, Haiti, Italy, the Netherlands, Paraguay, El Salvador, Sweden-Norway and Switzerland. It was presided over by Droz from Switzerland. The Conference agreed on a new draft which the delegates took home as a basis for preparing themselves for the second diplomatic conference.

That Conference took place a year later, again in Berne, from September 7 to 18, 1885. Droz continued as president. The draft texts agreed upon were now three in number: the Convention, an "Additional Article" and a "Final Protocol." But they were still only drafts and served as a basis for the third diplomatic conference.

The third, and last, diplomatic conference in Berne took place from September 6 to 9, 1886. With some amendments, it adopted the said three texts. They were signed on behalf of ten countries: Belgium, France, Germany, Great Britain, Haiti, Italy, Liberia, Spain, Switzerland, Tunisia.

The Revisions of the Berne Convention

The Diplomatic Conference of 1896 (Paris). In the original (1886) text of the Berne Convention, it was stated that the first conference of revision would take place "in Paris, within four to six years from the entry into force of the Convention. The French Government shall fix its dates within those limits after having consulted the International Bureau" (Final Protocol of 1886, point 6). The Conference was actually convened only in 1896,

that is, nine years after the entry into force of the Convention.

The Conference was prepared by the International Bureau under the leadership of Henri Morel, its Director, and by the French Government. It was presided over by Charles de Saulce de Freycinet, member of the French Academy and Senator. It adopted two texts: the Additional Act of Paris (which amended Articles 2, 3, 5, 7, 12 and 20 of the original (1886) text of the Convention and points 1 and 4 of the Final Protocol of 1886) and the Declaration interpreting certain provisions of the Additional Act.

Those texts were signed on behalf of Belgium, France, Germany, Italy, Luxembourg, Monaco, Montenegro, Spain, Switzerland, Tunisia and the United Kingdom of Great Britain and Ireland.

The Diplomatic Conference of 1908 (Berlin). The 1896 (Paris) conference of revision decided that the next conference of revision would take place within six to ten years in Berlin. Once more, the conference of revision was actually convened with a delay, in 1908.

It was prepared by the German Government in cooperation with the International Bureau, then directed by Henri Morel, Director. It was presided over by Dr. von Studt, Prussian Minister of State. Louis Renault, *membre de l'Institut* and law professor in Paris, was the *rapporteur*. The Conference lasted a full month and adopted a text in which the previous texts were not only amended but also merged into one text, the 1908 (Berlin) Act.

The revised Convention was signed by the representatives of Belgium, Denmark, France, Germany, Great Britain, Italy, Japan, Liberia, Luxembourg, Monaco, Norway, Spain, Sweden, Switzerland and Tunisia.

Additional Protocol of 1914 (Berne). This Protocol was signed in Berne without a conference of revision. It was proposed by the United Kingdom in order to allow the non-protection of works of United States citizens, even if first published on the territory of a member country of the Berne Union, as a retorsion against the "manufacturing clause" of the United States Copyright Law, a clause which caused great prejudice to English writers.

The Diplomatic Conference of 1928 (Rome). The 1908 (Berlin) conference of revision decided that the following conference of revision would take place within ten years in Rome. Mainly because of what was then called the "Great War" of 1914-1918, the Conference actually took place 20 years later, in 1928.

The Conference lasted from May 7 to June 2. It was prepared by the International Bureau under the leadership of Fritz Ostertag, Director, and the Italian Government. It was presided over by Vittorio Scialoja, Minister of State, Senator and Law Professor (Italy). Professor Edoardo Piola Caselli (Italy) was the *rapporteur général*.

The Conference adopted a revised text ("the Rome Act") which was signed by representatives of Australia, Austria, Belgium, Brazil, Canada, Czechoslovakia, Danzig, Denmark, Finland, France, Germany, Great Britain and Northern Ireland, Greece, India, Italy, Japan, Monaco, Morocco, New Zealand, Norway, Poland, Portugal, Romania, Spain, Sweden, Switzerland, Syria and Great Lebanon, Tunisia.

The Diplomatic Conference of 1948 (Brussels). The 1928 (Rome) Conference decided that the next conference of revision would take place in Brussels in 1935. In 1935, the Belgian Government convened the conference of revision for 1936 but postponed it, *sine die*, a few months later. The history of this postponement prefigures the drama—a great setback for the Berne Union from which it has not so far recovered—which was culminated in 1952 in the adoption of the Universal Copyright Convention. It started with a well-intentioned resolution (*vœu*) of the 1928 (Rome) conference of revision. That resolution (No. VI) reads as follows: "The Conference [of revision of 1928 of the Berne Convention]: *considering* the identity of the general principles which prevail in, and the objectives towards which are directed, the Berne Convention, revised in Berlin and then in Rome, and the Convention signed by the American States in Buenos Aires in 1910, since then revised in Havana in February 1928, *noting* the concordance of most of the provisions of the two Conventions, *expresses* the wish (*vœu*), in conformity with a suggestion made by the Delegation of Brazil and the French Delegation that, on the one hand, the American republics signatories of a convention to which non-American states may not adhere, accede, as did Brazil, to the Berne Convention revised in Rome and that, on the other hand, all interested governments get together (*se concertent*) to prepare a general agreement (*entente générale*) based on the similar provisions of the two Conventions and aiming at (*ayant pour objet*) the worldwide unification (*unification mondiale*) of the laws (*lois*) protecting the creations of the mind (*créations de l'esprit*)" (*Actes de la Conférence de Rome*, page 350). Although the work on the implementation of this recommendation was interrupted by World War II, the idea was revived, on the initiative of the United States of America, in 1947 at the General Conference of the new (created in

1945) United Nations Educational, Scientific and Cultural Organization (UNESCO). More is said about this in the next part.

The Diplomatic Conference of Brussels took place from June 5 to 26, 1948. It was prepared by the Government of Belgium in cooperation with the International Bureau, then directed by Bénigne Mentha, Director. The Conference was presided over by Julien Kuypers, Secretary General of the Public Education Ministry (*Ministère de l'Instruction publique*) of Belgium. Marcel Plaisant, *membre de l'Institut*, Senator and lawyer in Paris was the *rapporteur général*. Among the delegates were two future Directors General of WIPO: G.H.C. Bodenhause (Netherlands) and Arpad Bogsch (Hungary).

The Conference adopted a revised Convention which was signed on behalf of Australia, Austria, Belgium, Brazil, Canada, Czechoslovakia, Denmark, Finland, France, Greece, Holy See, Hungary, Iceland, India, Ireland, Italy, Lebanon, Liechtenstein, Luxembourg, Monaco, Morocco, the Netherlands, New Zealand, Norway, Pakistan, Portugal, the South African Union, Spain, Sweden, Switzerland, Syria, Tunisia and the United Kingdom.

The Diplomatic Conference of 1967 (Stockholm). During the 1948 (Brussels) conference of revision, the Delegation of Sweden proposed that the next diplomatic conference of revision be held in Stockholm. This proposal was accepted.

The 1948 (Brussels) conference of revision set up a 12-man committee, called the *Comité permanent de l'Union littéraire et artistique* (Permanent Committee of the Literary and Artistic Union), primarily for the preparation of the conference of revision of Stockholm. Although the Permanent Committee of the Berne Union (the more familiar name of the said Committee) assumed other tasks as well, its main concerns, until the adoption of the Universal Copyright Convention by a diplomatic conference convened in Geneva by Unesco in 1952, was to prepare the "safeguard clause" for the Berne Convention. That clause provided, in essence, that the Universal Copyright Convention would not apply among States party to the Berne Convention. The preparation of the Stockholm Conference occupied the Permanent Committee mainly between 1960 and 1967.

Another intergovernmental committee, called the Working Party on an Administrative Agreement, dealt with the preparation of the administrative reform to be effected at the Stockholm Conference. It was set up by the Permanent Committee (of the Berne Union) and the Permanent Bureau of the Paris Union. It met three times, each time

in Geneva, that is, in 1964, 1965 and 1966 (see BIRPI documents of the AA/I, AA/II and AA/III series).

The Stockholm Conference dealt not only with the revision of the Berne Convention but also with the revision of six other treaties administered by BIRPI and the establishment of the World Intellectual Property Organization. It is for this reason that its official title was "Intellectual Property Conference of Stockholm."

That Conference took place from June 11 to July 14, 1967, in Stockholm. Three of the five main committees of the Stockholm Conference dealt, wholly or in part, with matters concerning the revision of the Berne Convention: Main Committee I with the revision of Articles 1 to 20 (chairman: Eugen Ulmer (Federal Republic of Germany), *rapporteur*: Svante Bergström (Sweden)); Main Committee II with the establishment of the Protocol Regarding Developing Countries (chairman: Sher Singh (India), *rapporteur*: Vojtech Strnad (Czechoslovakia)); and Main Committee IV with the administrative provisions and the final clauses (chairman: François Savignon (France), *rapporteur*: Valerio De Sanctis (Italy)). G.H.C. Bodenhausen, Director of BIRPI, participated very actively in the work of Main Committees I and II. (Main Committee III did not deal with matters concerning the Berne Convention.)

The Stockholm Conference, among other things, revised the Berne Convention. The revised text was signed by representatives of Austria, Belgium, Bulgaria, Cameroon, the Democratic Republic of the Congo, Denmark, Finland, France, Gabon, Germany (Federal Republic of), Greece, the Holy See, Hungary, Iceland, India, Ireland, Israel, Italy, Ivory Coast, Japan, Liechtenstein, Luxembourg, Madagascar, Mexico, Monaco, Morocco, Niger, Norway, the Philippines, Poland, Portugal, Romania, Senegal, South Africa, Spain, Sweden, Switzerland, Tunisia and Yugoslavia.

The Diplomatic Conference of 1971 (Paris). Soon after the closing of the Stockholm Conference, it became clear that the Protocol Regarding Developing Countries, an integral part of the Stockholm Act (1967) of the Berne Convention, would prevent many States from ratifying that Act because the exceptions made in that Protocol to the general rules of the Convention seemed, in the opinion of those States, to go too far.

This opinion was noted by the Permanent Committee of the Berne Union as soon as December 1967. That Committee then started preparing the next—and so far last—conference of revision, the Diplomatic Conference held in Paris from July 5 to 24, 1971, at the same time as and in the same place in which the Universal Copyright Conven-

tion was revised, too. This was the first revision conference that was convened not by the government of a State member of the Berne Union but by the International Bureau of WIPO, in letters signed by the Director of the International Bureau, G.H.C. Bodenhausen. Pierre Charpentier (France) was the chairman, and Ousmane Goundiam (Senegal) the *rapporteur général* of the Conference.

The texts adopted by the Conference were identical with those adopted in Stockholm in 1967, except for those concerning developing countries. The new texts were signed on behalf of Austria, Belgium, Brazil, Cameroon, Ceylon, Cyprus, Denmark, Finland, France, Germany (Federal Republic of), the Holy See, Hungary, India, Israel, Italy, Ivory Coast, Japan, Lebanon, Liechtenstein, Luxembourg, Mexico, Monaco, Morocco, the Netherlands, Norway, the People's Republic of the Congo, Romania, Senegal, Spain, Sweden, Switzerland, Tunisia, the United Kingdom, Uruguay and Yugoslavia.

Unfinished Attempts to Enlarge the Membership of the Berne Union. The absence of the United States of America from the Berne Union has, from the very beginning, been considered as regrettable. The gap probably could have been filled had the 1948 (Brussels) conference of revision, instead of passively noting the emergence of the Universal Copyright Convention within the framework of Unesco, offered to the United States of America, and other States outside the Berne Union, to explore, together with the members of the Berne Union, an accommodation within the framework of that Union. With the hindsight one has today, it is evident that the concessions that the United States of America wanted—particularly, a shorter minimum duration of protection and a less rigid prohibition of formalities—and which were opposed by the leading countries of the Berne Union, were, by the very same countries, fully conceded within the framework of Unesco's Universal Copyright Convention.

As soon as the duality of the Conventions was consummated, that is, with the advent of the Universal Copyright Convention, two multilateral treaties, open to all countries and each with the ambition to be accepted by the maximum number, some people started to dream of an eventual merging of the two Conventions or, at least, of the entry of the United States of America in the Berne Convention.

The United States of America fundamentally revised its copyright legislation in 1976 in a way which considerably reduced its incompatibility with the Berne Convention. WIPO took the initiative then to propose the establishment, by a diplomatic conference of the Berne Union, of a protocol

to the Berne Convention that would have allowed the United States of America to continue to apply, for a limited period of time, the same provisions on formalities that it is already allowed to apply under the Universal Copyright Convention. (The incompatibility as to the term of protection has disappeared thanks to the new Copyright Law of the United States of America.) The matter was discussed in a Group of Consultants convened by WIPO in 1978 (1979 *Copyright* 95). Although the Group endorsed the idea, the idea was, a couple of years later, abandoned, at least provisionally, in the light of declarations by the United States of America that there were real chances to modify further its copyright legislation to make it wholly compatible with the Berne Convention. This is why the diplomatic conference that should have adopted the said protocol has not been convened.

Eight years later, that is, in 1986, the year of the centenary of the Berne Convention, the United States of America was still not a party to the Berne Convention, but there were signs that the situation might change. Both the executive and the legislative branches of the United States of America, as well as the interested private circles, were actively engaged in studying what amendments would be necessary in the national legislation of that country to make it fully compatible with the Berne Convention. Those studies were clearly inspired by the desire to become a member of the Berne Union.

For the continued strength and further development of the Berne Union, United States membership would be of great significance, let alone the increased international protection which United States nationals would enjoy abroad. One has, therefore, to formulate the wish, on the occasion of the centenary, that accession by the United States of America to the Berne Convention become a reality early in the second century of that Convention. The wish holds, naturally, not only for the United States of America but also for all other countries, and among them particularly China and the Soviet Union, that, at the end of the first hundred years of its existence, were not members of the Berne Union.

PART II

THE HISTORY OF THE EVOLUTION OF THE MEMBERSHIP OF THE BERNE UNION

Ratifications and Accessions

Ratifications of and Accessions to the Original (1886) Text. The following countries ratified or

acceded to the original (1886) text of the Berne Convention: Belgium, Denmark, France, Germany, Great Britain, Haiti, Italy, Japan, Liberia, Luxembourg, Monaco, Montenegro, Norway, Spain, Sweden, Switzerland, Tunisia (17). The ratification by Great Britain extended also to Australia, Canada, India, New Zealand and South Africa.

Ratifications of and Accessions to the Later Texts. The following countries ratified or acceded to the texts (Acts or Protocols of the Berne Convention) adopted between 1886 and 1971:

Additional Paris Act (1896): Belgium, Denmark, France, Germany, Great Britain, Haiti, Italy, Japan, Liberia, Luxembourg, Monaco, Montenegro, Norway, Spain, Sweden, Switzerland, Tunisia (17). The ratification by Great Britain extended also to Australia, Canada, India, New Zealand and South Africa.

Berlin Act (1908): Australia, Austria, Belgium, Brazil, Bulgaria, Canada, Czechoslovakia, Danzig (Free City of), Denmark, Estonia, Finland, France, Germany, Greece, Haiti, Hungary, India, Ireland, Italy, Japan, Lebanon, Liberia, Liechtenstein, Luxembourg, Monaco, Morocco, Netherlands, New Zealand, Norway, Poland, Portugal, Romania, South African Union, Spain, Sweden, Switzerland, Syria, Thailand, Tunisia, Turkey, United Kingdom, Yugoslavia (42).

Additional Berne Protocol (1914): Australia, Austria, Belgium, Brazil, Bulgaria, Canada, Czechoslovakia, Danzig (Free City of), Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Italy, Japan, Lebanon, Liberia, Luxembourg, Monaco, Morocco, Netherlands, New Zealand, Norway, Poland, Romania, South African Union, Spain, Sweden, Switzerland, Syria, Thailand, Tunisia, Turkey, United Kingdom, Yugoslavia (37).

Rome Act (1928): Australia, Austria, Belgium, Brazil, Bulgaria, Canada, Czechoslovakia, Danzig (Free City of), Denmark, Finland, France, Germany, Greece, Holy See, Hungary, Iceland, India, Ireland, Israel, Italy, Japan, Latvia, Liechtenstein, Luxembourg, Monaco, Morocco, Netherlands, New Zealand, Norway, Poland, Portugal, Romania, South African Union, Spain, Sweden, Switzerland, Syria, Tunisia, United Kingdom, Yugoslavia (40).

Brussels Act (1948): Argentina, Australia, Austria, Bahamas,* Belgium, Benin,* Brazil, Cameroon,* Chad,* Chile, Congo,* Denmark, Fiji,* Finland, France, Gabon,* Germany (Federal Republic of), Greece, Holy See, India, Ireland,

* By declaration of continued adherence.

Israel, Italy, Ivory Coast,* Japan, Liechtenstein, Luxembourg, Madagascar,* Mali,* Mauritania,* Mexico, Monaco, Morocco, Netherlands, Niger,* Norway, Philippines, Portugal, Senegal,* South Africa, Spain, Sweden, Switzerland, Tunisia, Turkey, United Kingdom, Upper Volta,* Uruguay, Yugoslavia, Zaire* (50);

Stockholm Act (1967) (all Articles): Chad, German Democratic Republic, Mauritania, Pakistan, Romania, Senegal (6)**;

Stockholm Act (1967), Articles 22 to 38: Australia, Austria, Belgium, Canada, Chad, Denmark, Fiji, Finland, German Democratic Republic, Germany (Federal Republic of), Ireland, Israel, Liechtenstein, Mauritania, Morocco, Pakistan, Romania, Senegal, Spain, Sweden, Switzerland, United Kingdom (22);

Paris Act (1971) (all Articles): Australia, Austria, Barbados, Benin, Brazil, Bulgaria, Cameroon, Central African Republic, Chile, Congo, Costa Rica, Cyprus, Czechoslovakia, Denmark, Egypt, France, Gabon, German Democratic Republic, Germany (Federal Republic of), Greece, Guinea, Holy See, Hungary, India, Italy, Ivory Coast, Japan, Libya, Luxembourg, Mali, Mauritania, Mexico, Monaco, Netherlands, Niger, Portugal, Rwanda, Senegal, Spain, Suriname, Sweden, Togo, Tunisia, Upper Volta, Uruguay, Venezuela, Yugoslavia, Zaire (48);

Paris Act (1971), Articles 22 to 38: Argentina, Bahamas, Iceland, Malta, Norway, Philippines, South Africa, Sri Lanka, Thailand, Zimbabwe (10);

Denunciations

During the hundred years of its existence, the Berne Convention has been denounced by five countries: Haiti (1887-1943), Montenegro (1893-1900), Liberia (1908-1930), Indonesia (1913-1960) and Syria (1924-1962). Burkina Faso (previously Upper Volta, name of the country before 1984), which had acceded to the Berne Convention (Brussels Act) in 1963, denounced the Convention with effect from 1970, but acceded once more to the Berne Convention (Paris Act) with effect from January 24, 1976. Estonia was a member from 1927 to 1940, and Latvia was a member from 1937 to 1940, when they became republics of the Soviet Union.

** Articles 1 to 21 and the Protocol Regarding Developing Countries of the Stockholm Act have not entered into force. The condition laid down in Article 28(2)(a) of that Act (a minimum of five ratifications or accessions by members of the Union) has not been met since two (Chad, Mauritania) of the six countries were not members of the Union at the time (1974). As of October 10, 1974, when Articles 1 to 21 of the Paris Act (1971) and its Annex entered into force, no further country may ratify or accede to the Stockholm Act.

Membership of the Berne Union

In the hundred years that have elapsed since the signature of the original (1886) text of the Berne Convention, the following countries, in the year indicated opposite their name, have become members of the Berne Union. Those countries that were members but have since left the Berne Union are not listed here, but are indicated under the heading "Denunciations," above.

1887:	Belgium, France, Germany (now German Democratic Republic and Germany (Federal Republic of)), Italy, Spain, Switzerland, Tunisia, United Kingdom
1888:	Luxembourg
1889:	Monaco
1890 to 1895:	—
1896:	Norway
1897 and 1898:	—
1899:	Japan
1900 to 1902:	—
1903:	Denmark
1904:	Sweden
1905 to 1910:	—
1911:	Portugal
1912:	Netherlands
1913 to 1916:	—
1917:	Morocco
1918 and 1919:	—
1920:	Austria, Greece, Poland
1921:	Bulgaria, Czechoslovakia
1922:	Brazil, Hungary
1923 to 1926:	—
1927:	Ireland, Romania
1928:	Australia, Canada, Finland, India, New Zealand, South Africa
1929:	—
1930:	Yugoslavia
1931:	Liechtenstein, Siam (now Thailand)
1932 to 1934:	—
1935:	Holy See
1936 to 1946:	—
1947:	Iceland, Lebanon
1948:	Pakistan
1949:	—
1950:	Israel
1951:	Philippines
1952:	Turkey
1953 to 1958:	—
1959:	Ceylon (now Sri Lanka)
1960:	—
1961:	Dahomey (now Benin)
1962:	Congo, Gabon, Ivory Coast (now Côte d'Ivoire), Mali, Niger, Senegal
1963:	Zaire
1964:	Cameroon, Cyprus, Malta
1965:	—
1966:	Madagascar
1967:	Argentina, Mexico, Uruguay
1968 and 1969:	—
1970:	Chile
1971:	Chad, Fiji
1972:	—
1973:	Bahamas, Mauritania
1974:	—
1975:	Togo
1976:	Libya, Upper Volta (now Burkina Faso)
1977:	Central African Republic, Egypt, Suriname
1978:	Costa Rica
1979:	—
1980:	Guinea, Zimbabwe
1981:	—
1982:	Venezuela
1983:	Barbados
1984:	Rwanda
1985:	—

PART III

THE HISTORY OF THE ADMINISTRATIVE CLAUSES OF THE BERNE CONVENTION AND OF THE INTERNATIONAL BUREAU OF THE BERNE UNION

The Concept of a Union and the Organs of the Union

First Occurrence in the Berne Convention. The expression "Union" was first used in the original (1886) text of the Berne Convention. Article 1 of that text provided that "The contracting countries constitute a Union (*sont constitués à l'état d'Union*) for the protection of the rights of authors in their literary and artistic works."

Later Developments. At the conference of revision of 1928 (Rome), the words "contracting countries" were replaced by the words "the countries to which this Convention applies." That wording has not been changed since, so that in the 1971 (Paris) Act also it reads as follows: "The countries to which this Convention applies constitute a Union for the protection of the rights of authors in their literary and artistic works" (Article 1).

Meaning of "Union." The constitution of a "Union" means that a permanent link among countries is being created. The original (1886) text of the Berne Convention expressly indicated that it is the contracting countries that have created the Union.

In the following parts of this article, the expressions "Union" and "Berne Union" will both be used.

Organs of the Union. The first organ of the Berne Union mentioned in the Berne Convention was the "Bureau of the International Union for the Protection of Literary and Artistic Works" (*Bureau de l'Union internationale pour la protection des œuvres littéraires et artistiques*). It is mentioned in Article 16, first paragraph, of the original (1886) text of the Berne Convention. The same Article provides for three important features of the said Bureau, namely, that its attributions shall be fixed by common agreement by the countries of the Union, that it is placed under the "high authority of the highest government authority (*Administration supérieure*) of the Swiss Confederation," and that the cost (*frais*) of the Bureau shall be supported by the governments (*Administrations*) of all the member countries of the Union.

Conferences for revising the Berne Convention were also mentioned in the Berne Convention

from the very beginning. The original (1886) text of the Berne Convention says that such conferences are conferences "between the delegates of the said [the contracting] States" (Article 17, first paragraph) and the task of such conferences is "to introduce in it [in the Convention] improvements to perfect the system of the Union" (Article 17, second paragraph). Those conferences, commonly called "conferences of revision," are sometimes considered as an organ of the Berne Union although they lack the permanence that characterizes a typical organ.

The same is true in respect of the "Conferences of Representatives" instituted, in 1970, by the countries members of the Berne Union but not members of the Assembly of the said Union. Those conferences had—and in respect of five member countries (see below) still have—the task of dealing with certain questions, mainly the fixing of the maximum yearly amount of the expenses of the International Bureau of the Berne Union.

On the other hand, there is no doubt that the Assembly of the Berne Union and the Executive Committee of the Berne Union are organs of that Union. They were established by the 1967 (Stockholm) Act (see Articles 22 and 23).

The same Act replaced the International Bureau of the Berne Union by the International Bureau of the World Intellectual Property Organization (WIPO)—officially called the "International Bureau of Intellectual Property" (WIPO Convention, Article 2(ii))—and declared the latter to be the continuation of the united Bureaus of the Paris and Berne Unions (see Article 24(1)(a)). The Paris Union, it is recalled, is the Union founded in 1883 by the Paris Convention for the Protection of Industrial Property.

The International Bureau of the Berne Union was headed by a director (*directeur*). The expression was used already in the original (1886) text of the Berne Convention (in the fifth paragraph of point 5 of the Final Protocol). Although there was no provision in the Berne Convention concerning the appointment of the Director, he was appointed, in fact, by the Swiss Government, namely the Federal Council (*Conseil fédéral*, the supreme authority of the executive branch), the power for doing so being regarded as inherent in the supervisory authority functions of the Swiss Government. Since the entry into force, in 1970, of the 1967 (Stockholm) Act, the International Bureau of WIPO has been headed by an official called in that Act "the Director General," appointed (elected) by the General Assembly of WIPO. Such election requires a two-thirds majority also in the Assemblies of the Paris and Berne Unions (WIPO Convention, Article 6(3)(g)).

The Assembly

First Occurrence in the Berne Convention and Present Membership. As already stated, the Assembly was created by the 1967 (Stockholm) Act of the Berne Convention and is first mentioned in that Act. References to articles are references to articles in the said Act and in the 1971 (Paris) Act.

The Assembly consists of those countries of the Berne Union which are bound by the administrative clauses (Articles 22 to 27), and, naturally, also the final clauses (Articles 28 to 38), of the said Act or the 1971 (Paris) Act. The administrative clauses are the same in the 1967 (Stockholm) and 1971 (Paris) Acts. Out of the 76 members of the Union, there were 71 such countries on January 1, 1986, that is, at the beginning of the year of the centenary of the Berne Convention. They were the following: Argentina, Australia, Austria, Bahamas, Barbados, Belgium, Benin, Brazil, Bulgaria, Burkina Faso, Cameroon, Canada, Central African Republic, Chad, Chile, Congo, Costa Rica, Côte d'Ivoire, Cyprus, Czechoslovakia, Denmark, Egypt, Fiji, Finland, France, Gabon, German Democratic Republic, Germany (Federal Republic of), Greece, Guinea, Holy See, Hungary, Iceland, India, Ireland, Israel, Italy, Japan, Libya, Liechtenstein, Luxembourg, Mali, Malta, Mauritania, Mexico, Monaco, Morocco, Netherlands, Niger, Norway, Pakistan, Philippines, Portugal, Romania, Rwanda, Senegal, South Africa, Spain, Sri Lanka, Suriname, Sweden, Switzerland, Thailand, Togo, Tunisia, United Kingdom, Uruguay, Venezuela, Yugoslavia, Zaire, Zimbabwe (71).

The other five countries of the Union were not members of the Assembly on the said date (January 1, 1986). They are, however, members of the Conference of Representatives. Those five countries are Lebanon, Madagascar, New Zealand, Poland and Turkey.

Representation and Voting. For each member country, what is represented is that country's "Government" (Article 22(1)(b)), and each country is represented by one "delegate" (Article 22(1)(b)). Each delegate may be assisted by one or more "alternate delegates," "advisors" and "experts." The designation given to such possible assistants of the delegates, and the number of such assistants, are decided by each government as far as its own delegation is concerned.

With respect to matters which are of interest also to other Unions administered by WIPO, the Assembly must, before making a decision, hear the advice of the WIPO Coordination Committee (Article 22(2)(b)).

One half of the countries members of the Assembly constitute a quorum (Article 22(3)). With

two exceptions, all decisions of the Assembly require two thirds of the votes cast (Article 22(3)). One of the exceptions concerns Articles 23, 24 and 25, and paragraphs (1) and (3) of Article 26: those provisions can be amended only with a majority of three fourths of the votes cast (Article 22(2)); the other exception concerns Article 22 and paragraph (2) of Article 26: those provisions can be amended only with a majority of four fifths of the votes cast (Article 26(2)).

Tasks. Article 22(2)(a) of the 1967 (Stockholm) and 1971 (Paris) Acts lists, in 13 points, the tasks of the Assembly. They are quoted hereafter, with a few comments in each case:

"The Assembly shall:

"(i) deal with all matters concerning the maintenance (maintien) and development of the Union and the implementation of this Convention." These are very broad terms, and almost everything that is specified in the subsequent twelve items may be regarded as falling also under this item. "Maintenance" includes, in any case, assuring that the organs of the Union exist and function. "Development" includes the entry of countries in the Union which are not yet members, and the Assembly consistently provides activities in the program of the Union for promoting knowledge of, and accessions to, the Convention. "Implementation" of the Convention certainly means the acts required from the member countries and the acts required from the various organs of the Union. Does dealing with matters concerning the implementation of the Convention mean that the Assembly may interpret the Convention? It is believed that it certainly means just that whenever the administrative and final provisions are concerned. It probably also means that the Assembly may deal with matters concerning the implementation of the Convention by any member country, for example, expressing an opinion on the question whether "the measures necessary to ensure the application" (Article 36(1)) of the Convention by a given member country have been adopted by that country. So far, however, the Assembly was not asked to express an opinion in respect of a question of such a nature; consequently, it is not known whether the Assembly would, in fact, follow such an interpretation of the Convention. Non-governmental organizations specialized in the field of copyright suggest, from time to time, that the conformity of the national laws of member countries with the requirements of the Convention be examined and opinions thereupon be expressed by the Director General or the Assembly. There is nothing in the Convention that would enable the Director General to do so short of a direct and precise order by the Assembly under item (iii)

("give him all necessary instructions concerning matters within the competence of the Union" (see below)), but the Assembly itself could, it would seem, express such opinions. However, as already stated, so far the matter has not been tested in the Assembly of the Berne Union. On the other hand, in the Assembly of the Paris Union (governed by provisions on the Assembly of the Paris Union which are the same as the provisions governing the Assembly of the Berne Union), the matter has been tested in 1985. For the first time in its history, the Assembly of the Paris Union expressed "a view" concerning what "the correct interpretation" of one of the substantive provisions (on the right of priority) of the Paris Convention was (see 1985 *Industrial Property* 349).

"(ii) give directions concerning the preparation for conferences of revision to the International Bureau ..., due account being taken of any comments made by those countries of the Union which are not bound by Articles 22 to 26." This provision found application for the first and, so far, only time, when, in 1970, the Assembly, in its first session, decided the convocation of a diplomatic conference for the revision of certain provisions of the 1967 (Stockholm) Act. The said conference was the conference of revision that took place in Paris in 1971; it adopted the 1971 (Paris) Act.

"(iii) review and approve the reports and activities of the Director General ... concerning the Union, and give him all necessary instructions concerning matters within the competence of the Union." In preparation of each session of the Assembly, the Director General writes reports on his activities undertaken since the preceding session of the Assembly. The same reports deal also with other events of interest to the Union.

"(iv) elect the members of the Executive Committee of the Assembly." More is said about this task of the Assembly in the part devoted to the Executive Committee, below.

"(v) review and approve the reports and activities of its Executive Committee, and give instructions to such Committee." The activities of the Executive Committee are generally covered in the reports of the Director General mentioned in item (iii), above. The tasks of the Executive Committee are mentioned in the part devoted to it, below.

"(vi) determine the program and adopt the biennial budget of the Union, and approve its final accounts." The 1967 (Stockholm) and 1971 (Paris) Acts provided, in this provision, for triennial budgets. The amendment of "triennial" to "biennial" was decided by the Assembly in its session held in 1979. In the same session, the Assembly also decided to apply the amendment immediately, that is, without waiting for its entry into force according to the provisions of Article 26(3). Those

provisions require the notification of written acceptance by three fourths of the countries members of the Assembly at the time the amendment was adopted. That condition was fulfilled only on November 19, 1984, but, as already stated, the amendment was applied ever since its adoption (1979). A draft of the program and the budget of the Berne Union is prepared by the Director General in a document which also deals with the program and the budget of WIPO proper and the other Unions administered by WIPO. The expenses of the Berne Union represented, in the decade starting in 1976, an average of 13 percent of the total expenditure of the International Bureau. As far as the program is concerned, its main chapters deal with the promotion of accessions to the Berne Convention, with cooperation, for the development of developing countries, in the field of copyright and neighboring rights, with the collection and dissemination of information (publication of the monthly periodical *Copyright*, collection and publication of legislative texts), and with matters of topical interest. The budget allocates specific amounts for each of the corresponding activities that take different forms: meetings (usually with participants appointed by governments sitting together with participants appointed by interested non-governmental organizations), courses, seminars, individual training, study missions, surveys, publications, etc. The draft program and budget is first considered by the WIPO Budget Committee (a committee which presently has 14 States as members and whose members are elected by the WIPO Coordination Committee), and later by the Berne Union Executive Committee and the WIPO Coordination Committee, as well as by the Berne Union Assembly, which is sovereign in determining both the program and the budget of the Berne Union. More is said about those questions, particularly the development of the expenses and contributions, under "Finances of the Union," below. The final accounts of the Berne Union are established by the Director General, audited by external auditors and placed by the Director General before the Assembly for approval.

"(vii) adopt the financial regulations of the Union." The financial regulations are not those of the Berne Union alone but are common to all Unions (and WIPO proper) administered by WIPO. From time to time, they are revised to respond to changing circumstances and when they are, the changes are, as far as the Berne Union is concerned, adopted also by the Assembly.

"(viii) establish such committees of experts and working groups as may be necessary for the work of the Union." Most of these are *ad hoc*: they are established by virtue of appropriate provisions

in the program, hold one or several sessions and, once their task is accomplished, go out of existence.

"(ix) *determine which countries not members of the Union and which intergovernmental and international non-governmental organizations shall be admitted to its meetings as observers.*" For the 1985 session of the Assembly, the situation was as follows: five countries members of the Berne Union but not members of the Assembly of that Union (by virtue of Article 22(3)(g)), 39 countries members of WIPO not members of the Berne Union, 12 intergovernmental organizations and 49 international non-governmental organizations were invited to attend the meetings of the Assembly as observers.

"(x) *adapt amendments to Articles 22 to 26.*" This power has been made use of once so far, namely in 1979, when the Assembly decided to amend Article 22(2)(a)(vi) and (4)(a) and Article 23(6)(a)(ii) and (iii), so as to make biennial, instead of triennial, its ordinary sessions and the budget of the Berne Union.

"(xi) *take any other appropriate action designed to further the objectives of the Union.*" The objectives of the Union are not stated in any detail in the Convention but Article 1 says that the Union is one "for the protection of the rights of authors in their literary and artistic works." Examples of such action are given in the parts entitled "Copyright Law Subjects of Topical Interest" and "Development Cooperation in the Field of Copyright," below.

"(xii) *exercise such other functions as are appropriate under this Convention.*" Examples of such functions are the adoption of its own (the Assembly's) rules of procedure (Article 22(5)), the establishment of the details of the rules governing the election of the members of the Executive Committee (Article 23(5)(c)), the determination, in the case where a country is in arrears in the payment of its contributions, whether that country may nevertheless exercise its right to vote on the ground that the delay in payment is due to exceptional and unavoidable circumstances (Article 25(4)(e)), the fixing of the proportion and terms of payment for each country in respect of the working capital fund (Article 25(6)(c)) and the designation of the external auditors (Article 25(8)).

"(xiii) *subject to its [the Assembly's] acceptance, exercise such rights as are given to it in the Convention establishing the [World Intellectual Property] Organization.*" The WIPO Convention gives certain rights to the Assembly of the Berne Union in connection with the appointment of the Director General of WIPO, the assuming by WIPO of the administration of certain international agreements, any transfer of the headquarters of

WIPO outside Geneva, and any amendment of the WIPO Convention (WIPO Convention, Articles 6(3)(g) and 17(2)).

Sessions. By January 1, 1986, that is, by the beginning of the year of the centenary of the Berne Convention, the Assembly has held seven sessions. All sessions were ordinary; they took place in 1970, 1973, 1976, 1979, 1981, 1983 and 1985, and they were all held in Geneva.

The Conference of Representatives

Establishment and Present Membership. When the administrative clauses of the 1967 (Stockholm) Act, and among them the clauses concerning the Assembly of the Berne Union, came into effect in 1970, not all countries members of the Berne Union had accepted those clauses and those which had not accepted them were not members of the Assembly. They, too, however, needed some organ in which they could, until they became members of the Assembly, make collective decisions. This is why, on September 28, 1970, the countries members of the Berne Union which, on that date, were not members of the Assembly of that Union "resolve[d] to establish a Conference of Representatives of the Berne Union." The members of this Conference of Representatives are countries that are members of the Berne Union without being members of the Assembly of that Union. Their number, at the time of the establishment of the Conference of Representatives (and when the Berne Union had 60 members), was 25. (The remaining 35 countries were members of the Assembly: 13 by virtue of their having accepted at least the administrative clauses of the 1967 (Stockholm) Act, and 22 by virtue of the "five-year privilege" provided for under Article 38(1)). Any country member of the Berne Union that accepts the administrative clauses of the 1967 (Stockholm) or 1971 (Paris) Act automatically ceases to be a member of the Conference of Representatives and becomes a member of the Assembly. Thus, the number of the countries members of the Conference of Representatives has gradually decreased. At the beginning of 1986, the year of the centenary of the Berne Convention, this number was five. The five countries, still members of the Conference of Representatives at that date, were Lebanon, Madagascar, New Zealand, Poland and Turkey. Unless the Resolution of 1970 establishing the Conference of Representatives is revoked, the Conference of Representatives will have to be convened also in the future, as long as all of the said countries have not accepted at least the administrative clauses of the 1971 (Paris) Act.

Tasks. Any Conference of Representatives is empowered to "modify, by unanimous decision, the maximum amount of the expenditure of the International Bureau" as far as the countries members of the Conference of Representatives are concerned, provided that it meets as a "Conference of Plenipotentiaries" (Resolution of 1970, point 6). "Modify" means to modify the amount fixed in the Convention itself (120,000 Swiss gold francs per annum according to Article 23(1) of the 1948 (Brussels) Act). Since 1970, such "modification" is made by the Conference of Representatives, meeting as a Conference of Plenipotentiaries, by reference to the amount decided upon by the Assembly of the Union.

Otherwise, each Conference of Representatives has two objectives or tasks: "to draw up for each three-year [beginning with the 1980-1981 biennium, two-year] period to come, a report on the foreseeable expenditure of the International Bureau as far as the Berne Union is concerned, and to consider questions relating to the protection [*sauvegarde*] and the development of the said [i.e., the Berne] Union" (Resolution of 1970, point 5). The first is, in practice, the same as the budget adopted by the Assembly. The second corresponds to what, in respect to the Assembly, is called dealing with "matters concerning the maintenance and development of the Union."

Sessions. By January 1, 1986, that is, by the beginning of the year of the centenary of the Berne Convention, the Conference of Representatives has held seven sessions. All sessions were ordinary, and each session was held jointly with the ordinary sessions of the Assembly. They took place in 1970, 1973, 1976, 1979, 1981, 1983 and 1985.

Representation on the Executive Committee. At each of its ordinary sessions, the Conference of Representatives may elect, among its members, and for each four of such members, one country to serve on the Executive Committee (see below) as an "associate member." At the beginning of 1986, the year of the centenary of the Berne Convention, the number of associate members was one (corresponding to one quarter of the five members of the Conference of Representatives). It was Turkey.

The Executive Committee

First Occurrence in the Berne Convention and Membership. The Executive Committee is first mentioned in the 1967 (Stockholm) Act. References to articles are references to articles in that Act and in the 1971 (Paris) Act.

The Executive Committee is a sub-organ of the Assembly: "The Assembly shall have an Executive

Committee" says Article 23(1). Thus, it is an organ which, like the Assembly, started functioning in 1970.

The Executive Committee consists of countries elected by the Assembly from among countries members of the Assembly and, *ex officio*, of Switzerland (Article 23(2)(a)). The number of countries members of the Executive Committee corresponds to one fourth of the number of countries members of the Assembly (Article 23(3)) plus one fourth of the members of the Conference of Representatives. At the beginning of 1986, the year of the centenary of the Berne Convention, the Executive Committee had 19 members: one (Switzerland) is a member *ex officio*; 17 were elected by the Assembly of the Berne Union (Canada, Chile, Côte d'Ivoire, Czechoslovakia, France, German Democratic Republic, Hungary, India, Mexico, Morocco, Netherlands, Senegal, Sweden, Tunisia, United Kingdom, Venezuela, Zimbabwe); one (Turkey) was elected, as an associate member, by the Conference of Representatives of the Berne Union.

Representation and Voting. As already stated, the members of the Executive Committee are countries. Each country member of the Executive Committee has one vote (Article 23(8)(a)). Each country member of the Executive Committee is represented by one delegate, and each delegate may represent, and vote in the name of, one (namely, its own) country only (Article 23(8)(e)). One half of the members constitute a quorum, and all decisions are made by a simple majority of the votes cast (Article 23(8)(b) and (c)).

With respect to matters which are of interest also to other Unions administered by WIPO, the Executive Committee must, before making a decision, hear the advice of the WIPO Coordination Committee (Article 23(6)(b)).

Mandate and Renewal. Each member of the Executive Committee serves from the close of the session of the Assembly which elected it to the close of the next ordinary session of the Assembly (Article 23(5)(a)).

The Executive Committee is renewed every two years, at the biennial ordinary session of the Assembly. Members may be re-elected but only up to a maximum of two thirds of its members (Article 23(5)(b)).

The Executive Committee meets in ordinary session once a year (Article 23(7)(a)).

The Executive Committee may meet in extraordinary session upon convocation of the Director General, either on his own initiative, or at the request of its chairman or one fourth of its members (Article 23(7)(b)).

During the 16 years of its existence so far (1970 to 1985), the Executive Committee has held 25 sessions: 16 of them were ordinary and nine were extraordinary.

The ordinary sessions—which are yearly—were held at the same time and place as the ordinary sessions of other governing bodies of WIPO and the Unions administered by WIPO. In them, mainly administrative questions are dealt with.

The extraordinary sessions generally take place once every two years. Most of these sessions are held at the same place (alternating between Geneva and Paris) and time as sessions of the Intergovernmental Copyright Committee, a committee established by the Universal Copyright Convention, administered by the United Nations Educational, Scientific and Cultural Organization (UNESCO), with headquarters in Paris. When the two Committees meet at the same time and place, most of their meetings are joint. In those joint meetings, matters of substantive copyright law—mostly matters of topical interest—are dealt with. The preparatory working papers on such matters are usually prepared jointly by the two Secretariats (the International Bureau of WIPO and the Secretariat of Unesco) and are published under a heading which refers to both Organizations (WIPO and Unesco) and both Committees. The joint meetings are jointly serviced by the two Secretariats, and the draft reports on the joint meetings are prepared by the two Secretariats and are considered in a joint meeting of the two Committees. More is said about matters of topical interest, referred to above, in the part entitled “Copyright Law Subjects of Topical Interest,” below.

Tasks. Article 23(6)(a) of the 1967 (Stockholm) and 1971 (Paris) Acts lists, in six points, the tasks of the Executive Committee. They are quoted hereafter, with a few comments in each case:

“The Executive Committee shall:

“(i) prepare the draft agenda of the Assembly.” In fact, what the Executive Committee has done so far is to list items, a year ahead of each ordinary session of the Assembly, that should be included in the draft agenda of that ordinary session. If, however, events between the session of the Executive Committee listing the items and the session of the Assembly make it desirable that certain items so listed not be included, or certain items not so listed be included, in the draft agenda, the Director General presents a draft agenda modified accordingly. The draft agendas of the extraordinary sessions of the Assembly would be prepared by the Director General rather than by the Executive Committee.

“(ii) submit proposals to the Assembly respecting the draft program and [biennial] budget of

the Union prepared by the Director General.” In fact, and so far, this has been treated as a mere formality since the draft program and budget are presented on the same day, at the same time, to the Assembly and the Executive Committee, and the Assembly proceeds, in fact, with the consideration of the draft program and budget without any substantive proposals coming from the Executive Committee.

“(iii)” This provision is no longer in force. Before its deletion, it read as follows “*approve, within the limits of the program and the triennial budget, the specific yearly budgets and programs prepared by the Director General.*” It applied until 1979. In that year, its omission was decided.

“(iv) submit, with appropriate comments, to the Assembly the periodical reports of the Director General and the yearly audit reports on the accounts.” The periodical reports of the Director General are considered separately by the Executive Committee when it meets in an ordinary session in a year in which the Assembly does not meet in an ordinary session. But otherwise, and for the reasons stated in connection with item (ii), above, such reports, in fact, have so far gone direct to the Assembly. The same was true for the yearly audit reports on the accounts until 1979, the year in which biennial budgeting was introduced. Since 1979, a complete audit report is issued for the budgetary biennium only after the biennium is over.

“(v) in accordance with the decisions of the Assembly and having regard to circumstances arising between two ordinary sessions of the Assembly, take all necessary measures to ensure the execution of the program of the Union by the Director General.” So far, no such measures have appeared necessary and no such measures have been taken by the Executive Committee.

“(vi) perform such other functions as are allocated to it under this Convention.” There are two such functions expressly mentioned in the Berne Convention: cooperation in the preparation of conferences of revision of the substantive provisions of the Convention, and the right to initiate amendments to the administrative clauses of the Convention (see Articles 24(7)(a) and 26(1)).

Sessions. The first ordinary session of the Executive Committee was held in 1970. The others, until now, were held in each year between 1970 and 1986. Thus, so far, there have been 16 ordinary sessions. There have been nine extraordinary sessions so far, one in 1971, 1973, 1975 and 1977, two in 1979, and one in 1981, 1983 and 1985.

The Predecessor of the Executive Committee: the Permanent Committee of the Literary and Artistic Union (1948-1970). This body was set up by a decision of the 1948 (Brussels) Conference of Revision and existed until it was replaced in 1970 by the Executive Committee. It had 12 members and dealt with a great variety of questions of interest to international cooperation in the field of copyright and neighboring rights. It held 14 ordinary and five extraordinary sessions and one joint session with the Consultative Committee of the Paris Union. It established a four-member (later, five-member) Subcommittee that met six times between 1951 and 1955. Since there exists no comprehensive study on the activities of this Committee and its Subcommittee, the places in the BIRPI periodicals *Le Droit d'auteur* ("DA") or *Copyright* ("CR") where reports on those activities are to be found are indicated hereafter. *Ordinary Sessions of the Permanent Committee:* I. Neuchâtel 1949 (1949 DA 130); II. Lisbon 1950 (1950 DA 127 and 141); III. Paris 1951 (1951 DA 122); IV. Neuchâtel 1952 (1952 DA 100); V. Lugano 1954 (1954 DA 141); VI. Paris 1956 (1956 DA 69); VII. Geneva 1958 (1959 DA 188); VIII. Munich 1959 (1959 DA 206); IX. London 1960 (1960 DA 324); X. Madrid 1961 (1961 DA 318); XI. New Delhi 1964 (1964 DA 50); XII. Paris 1965 (1966 CR 9); XIII. Geneva 1967 (1968 CR 23); XIV. Paris 1969 (1970 CR 21). *Extraordinary Sessions of the Permanent Committee:* Geneva 1962 (1962 DA 282); Geneva 1967 (1967 CR 66); Paris, February 1969 (1969 CR 48); Geneva, June 1969 (1969 CR 146); Geneva 1970 (1970 CR 209). *Joint Session of the Permanent Committee with the Consultative Committee of the Paris Union:* Geneva 1962 (1962 DA(CR) 186). *Sessions of the Subcommittee of the Permanent Committee:* I. Paris, March 1951 (1951 DA 35); II. Stresa, May 1951 (1951 DA 70); III. Paris, October 1951 (1951 DA 122); IV. Neuchâtel 1952 (1952 DA 100); V. Berne 1953 (1953 DA 81); VI. Berne 1955 (1955 DA 52).

The Permanent Committee dealt, among other things, with the relations between the Berne Convention and the Universal Copyright Convention (which, at the time the Permanent Committee was established in 1948, was a mere plan but which became a reality four years later, that is, in 1952) and between itself and the Intergovernmental Copyright Committee of the Universal Copyright Convention, administered by Unesco (the two Committees adopted the habit of meeting at the same place and time from 1958 onwards), with the preparations of the "Neighboring Rights Convention," eventually adopted in Rome in 1961, and with a certain number of questions of topical interest.

The International Bureau

First Occurrence in the Berne Convention and the Evolution of the Bureau. In the history of the Berne Union, one has to distinguish between three "International Bureaus" (a designation in vogue in the last century for the permanent secretariats of intergovernmental organizations): the International Bureau of the Berne Union, the United International Bureaus and the International Bureau of WIPO.

The Bureau of the International Union for the Protection of Literary and Artistic Works (*Bureau de l'Union internationale pour la protection des œuvres littéraires et artistiques*) is mentioned in the original (1886) text of the Berne Convention. As already stated, that text says that "an international office (*office*) shall be organized" under the said title and that it "shall be placed under the high authority of the highest Government authority (*Administration supérieure*) of the Swiss Confederation" (Article 16). As equally already stated, the same text also provided that the International Bureau "shall function under the supervision [*surveillance*]" of the said highest Government authority of the Swiss Confederation.

When the original (1886) text of the Berne Convention entered into force (1887), there was already in Berne, also under the high authority of the Swiss Confederation another, earlier constituted, International Bureau in the field of intellectual property. It was the International Bureau constituted by the Paris Convention for the Protection of Industrial Property signed three years earlier (1883). At that time, the Swiss Federal Council then appointed Henri Morel, a member of the *Conseil national suisse*, as Secretary General (*secrétaire général*) of the *United Bureaus* (*Bureaux réunis*). Thus, *de facto*, the International Bureau created by the Berne Convention really never had an independent existence as it has, from the very beginning, been united with the International Bureau created by the Paris Union.

This is how the United Bureaus—in the plural—came into existence. Their existence was formalized when the Swiss Federal Council adopted, on November 11, 1892, a decree (*arrêté*) in which the organization of the United Bureaus was fixed. The high supervision was to be exercised by the Swiss Federal Council, whereas for the less important matters the supervision was entrusted to what is today called the Federal Department (Ministry) of External Affairs (*Département fédéral des affaires étrangères*) and what, at that time, was called the *Département politique*. At the same time, Henri Morel was appointed Director—the first one to have that title—of the United Bureaus.

This kind of Bureau, the United Bureaus, was not mentioned in any of the texts or Acts of the Berne Convention, which continued to speak about the International Bureau—in the singular—of the Berne Union. There is, however, an oblique reference to the United Bureaus in the 1967 (Stockholm) Act, where that Act says, in Article 24(1)(a), that the International Bureau of WIPO is a continuation of the International Bureau of the Paris Union “*united with the Bureau*” of the Berne Union (emphasis added).

This International Bureau, the International Bureau of WIPO, started functioning in 1970 when the Convention Establishing the World Intellectual Property Organization and the 1967 (Stockholm) Act of the Berne Convention entered into force. However, the former kinds of International Bureaus did not, at the same time, altogether stop existing. They continue, at least in theory, for the purposes of the countries members of the Berne Union that have not yet become members of WIPO. This idea is expressly stated in the transitional clauses of the said Act in the following terms: “As long as all the countries of the [Berne] Union have not become members of the Organization [WIPO], the International Bureau of the Organization [WIPO] shall also function as the Bureau of the [Berne] Union, and the Director General [of WIPO] as the Director of the said Bureau [of the Berne Union]” (Article 38(3)). In practice, however, the situation is that the Swiss Government no longer exercises, since 1970, its supervisory functions and the Director General of WIPO no longer uses his title of Director of the International Bureau of the Berne Union, although, as already stated, there are still some countries (five on January 1, 1986, that is, at the beginning of the year of the centenary of the Berne Convention) that are members of the Berne Union since a date preceding the creation of WIPO without having yet become members of WIPO. However, the fact that no practical use has been made so far of the quoted transitional provision does not mean that it could not be applied if any of the interested parties wanted it to be applied.

Three more observations concerning the evolution of the Bureaus:

One is that the International Bureau of the Berne Union has frequently been referred to, in common parlance, as the “Secretariat” of the Berne Union and that the International Bureau of WIPO is sometimes referred to as the “Secretariat” of WIPO.

The second is that, up to 1960—when the United Bureaus moved from Berne to Geneva—it was quite common to refer to it (or them) as “the Berne Bureau” or “the Berne Bureaus.” This des-

ignation was merely based on the location of the Bureaus.

The third observation is that, in the nineteen-fifties and nineteen-sixties, the United Bureaus were frequently referred to as the “United International Bureaus for the Protection of Intellectual Property” or, in an abbreviated form, “BIRPI” (corresponding to the initials of the French designation *Bureaux internationaux réunis pour la protection de la propriété intellectuelle*). There was no legal basis for either this designation or its abbreviation. They were probably invented by Jacques Secrétan, Director of the United Bureaus from 1953 to 1963. Until then, the full name of the United Bureaus in usage was “United International Bureaus for the Protection of Industrial, Literary and Artistic Property.” This was obviously too long. Replacing the separate references to industrial property, on the one hand, and literary and artistic property, on the other, by the single adjective “intellectual” was an ingenious innovation, although, in the beginning, it was sometimes misunderstood as some believed that “intellectual property” was coterminous with copyright. In any case, the expression “intellectual property” found its official recognition in the title of the World Intellectual Property Organization, when the Convention establishing WIPO was concluded at Stockholm in 1967.

Tasks. As far as the tasks of the first kind of International Bureau are concerned, the original (1886) text of the Berne Convention mentions four, namely, that the International Bureau:

(i) “shall centralize *information* of all kinds concerning the protection of the rights of authors in their literary and artistic works. It shall coordinate and publish such information” (Final Protocol of 1886, emphasis added);

(ii) “shall make general *studies* of general usefulness of interest to the Union” (*ibid.*; emphasis added);

(iii) “shall on the basis of documents which shall be put at its disposal by the different Governments (*Administrations*) edit (*rédigera*) a periodical (*feuille périodique*), in the French language, covering questions concerning the objects (*l'objet*) of the Union” (*ibid.*; emphasis added);

(iv) “must at all times be at the disposal of the members of the Union, to furnish them, on questions concerning the protection of literary and artistic works, with *specialized information* that they may require” (*ibid.*; emphasis added).

The definitions of those four tasks were slightly changed by some of the conferences of revision. In the latest Acts, those of 1967 (Stockholm) and 1971 (Paris), they are worded as follows:

(i) "The International Bureau shall assemble and publish *information* concerning the protection of copyright" (Article 24(2); emphasis added);

(ii) "The International Bureau shall conduct *studies*, and shall provide *services*, designed to facilitate the protection of copyright" (Article 24(5)); emphasis added);

(iii) "The International Bureau shall publish a monthly *periodical*" (Article 24(3); emphasis added);

(iv) "The International Bureau shall, *on request*, furnish *information* to any country of the Union on matters concerning the protection of copyright" (Article 24(4)); emphasis added).

This enumeration of specific tasks is preceded, in the 1967 (Stockholm) and 1971 (Paris) Acts, by a general statement to the effect that "administrative tasks with respect to the [Berne] Union shall be performed by the International Bureau" and that that Bureau "shall provide the secretariat of the various organs of the [Berne] Union" (Article 24(1)(a) and (b)). The administrative tasks include the convocation and servicing of meetings and the receiving and disbursing of funds. The main organs of the Berne Union are the Assembly and the Executive Committee.

In the following paragraphs, each of the four specific tasks mentioned above will be considered separately and some of the activities of the International Bureau under each of them will be briefly indicated.

General Information. The most important information assembled by the International Bureau relates to legislation in the field of copyright.

From the very beginning, the International Bureau has been collecting the texts of treaties, statutes and other legislative or regulatory texts concerning copyright both in their original version, and, where the original is other than French and where a French translation exists, also the texts of such translations. Since 1955, English translations, where available, have also been collected. The collection is constantly checked in order to make sure that it is complete, that repealed texts are treated as such and that new items are integrated promptly after their entry into force. Although the member States of the Berne Union are supposed to communicate promptly to the International Bureau all new laws and official texts concerning the protection of copyright (see Article 24(2) of the 1967 (Stockholm) and 1971 (Paris) Acts), the International Bureau regularly writes to the competent administrations of those States—and also to the administrations of non-member States—asking for the confirmation of information obtained from other than governmental sources or for a systematic review of the latest state of

the information available in the International Bureau.

In 1986, there were over 10,000 texts, covering some 120 countries, in the collection of the International Bureau.

The most important texts have been published, in French, since 1888, in the monthly periodical *Le Droit d'auteur* and in English, since 1965, in the monthly periodical *Copyright*. Where no French or English translations are available, the International Bureau prepares the translations; where such translations are available from outside sources, the International Bureau generally checks their correctness. The number of legislative texts thus published before 1986 in French is estimated to be around 1,500 and that in English around 300. Some of the texts are the consolidated versions of a basic text amended several times, the consolidation being done by the International Bureau.

In the framework of its information tasks, the International Bureau maintains a library—essentially on legal subjects—in which it collects books dealing with copyright law, periodicals that exclusively or frequently carry articles on copyright law, and separate items (e.g., an article on copyright law extracted from a periodical not subscribed to by the library). They are all catalogued, and a monthly list of new acquisitions and selected articles is widely circulated throughout the world (in 1986, to 500 addresses in 92 countries). The library of the International Bureau is doubtless the oldest specialized library in the field, and its collection is probably among the most complete that there is. On January 1, 1986, that is, at the beginning of the year of the centenary of the Berne Convention, it contained some 39,000 volumes of books and 19,000 volumes of periodicals and it was the recipient of 980 titles of periodicals. This is about ten times more than what it had 27 years earlier (in 1960) when the library, as part of the International Bureau, was moved from Berne to Geneva. The library is also the center of the printed archives of the International Bureau. Approximately 30 percent of the holdings deal with copyright law, whereas the rest deals with industrial property law or general legal subjects. The library has a reading room open to the public, which was visited by 200 readers in 1960 and 2,350 readers in 1985.

As a tool for its information tasks, the International Bureau has prepared multilingual glossaries of terms used in copyright law. In the early nineteen-eighties, it published them in the following versions: English-French-Spanish (1980), English-French-Arabic (1980), English-French-Russian (1981) and English-French-Portuguese (1983).

Studies. The International Bureau has been conducting studies in the field of the law of copyright from the very beginning. The studies have two principal aims: one is to call attention to the desirability of changes at the national level or in international relations because of changing social, economic or technological circumstances; the other is to analyze and explain changes that have been effected in national laws and international treaties. Such studies have become particularly numerous and important since the early nineteen-sixties. They are separately considered in the part entitled "Copyright Law Subjects of Topical Interest," below.

Changing social and economic conditions are making changes necessary also in the legislations of developing countries. The International Bureau has been studying how best to meet those needs, and among the important results of those studies are the preparation and the publication of model laws for developing countries (see below), including in particular the Tunis Model Law on Copyright for Developing Countries, completed in 1976 by an intergovernmental committee of experts in the capital of Tunisia.

More is said about studies in the part entitled "Development Cooperation in the Field of Copyright," below.

The studies are carried out by the staff of the International Bureau, with or without the help of meetings of specialists, governmental or non-governmental. Their results are reflected in publicly available documents, in articles in the periodicals of the International Bureau or in separate publications of that Bureau. During the past 98 years, hundreds of articles commissioned by the International Bureau and written by specialists from scores of different countries have been published in the said periodicals.

As far as the analysis and explanation of the meaning of, or changes in, national laws, including the analysis of court decisions, are concerned, they are primarily the subject of articles published in the periodicals of the International Bureau. Some 700 such articles have been so published so far. They were mostly written by specialists of the countries concerned. From time to time, the International Bureau tries to give a general picture of the state of the national legislations on copyright by preparing synoptic tables which show—in a way to make comparisons easy—the solutions given to the most important questions in the different national laws at a given point in time.

But as far as analysis and explanations are concerned, the International Bureau itself is the author of countless papers which explain proposed or existing treaties in the field of copyright. The preparatory documents of the various conferences

of revision of the Berne Convention and the "Records" (*Actes*) of such conferences are among the most important examples of such published studies. They run into more than a thousand pages.

Among the commentaries on existing treaties, the following three—each a separate book—deserve particular attention: *Guide to the Berne Convention* (1978), *Guide to the Rome and Phonograms Conventions* (1981) and *Guide to the Madrid Convention on Double Taxation* (1985). They are the work of Claude Masouyé who served the International Bureau, with great distinction, during the period from 1961 to 1986 and who, during the last ten years of that period, was the Director of the Public Information and Copyright Department of that Bureau.

Services. Among the services rendered by the International Bureau, the most important are those rendered to developing countries. They are discussed in detail in the chapter entitled "Development Cooperation in the Field of Copyright," below.

Monthly Periodicals. As already stated, *Le Droit d'auteur* started as a monthly periodical with the January 1888 issue and, since then, has been published, without any interruption, even during the two world wars, so that, by the end of 1985, 1,176 issues had been published. The number of printed pages was 128 in 1888, 168 in 1908, 156 in 1928, 152 in 1948, 272 in 1968, 499 in 1978 and 418 in 1985. The total number of printed pages during the 98 years between 1888 and 1985 is 20,863. *Copyright* started as a monthly periodical in 1965 and the total number of printed pages during the 21 years between 1965 and 1985 is 7,000. The number of subscribers, in 1985, to each of those two periodicals was 650 and 780, respectively. During the years 1962, 1963 and 1964, the major part (although not the totality) of the contents of the monthly issues of *Le Droit d'auteur* was also published in English. The title of that English periodical, during those years, was *Le Droit d'auteur (Copyright)*.

Special Information on Request. Since such information is mainly requested by developing countries, reference is made to the part entitled "Development Cooperation in the Field of Copyright," below.

Official Languages. The original (1886) text of the Berne Convention provided that "The official language of the International Bureau shall be the French language" (Final Protocol of 1886, second paragraph of point 5). This provision was main-

tained until the conference of revision of 1967 (Stockholm). The Berne Convention ceases to speak about the official languages of the International Bureau beginning with the 1967 (Stockholm) Act since, by virtue of that Act and by virtue of the WIPO Convention of 1967, the International Bureau of the Berne Union has been replaced by the International Bureau of WIPO. The WIPO Convention itself is silent on the question of official languages, presumably because of the need to allow flexible solutions. And, indeed, there has been a constant evolution since 1963: more and more languages are used in more and more fields by the International Bureau. By 1986, the situation was as follows: English and French are generally used to the same extent by the International Bureau and in practically all its activities (correspondence, publications, working documents, interpretation in meetings, etc.). Spanish is also used in correspondence. Arabic, Russian and Spanish are used in many publications and documents and a substantial part of the meetings. Some publications have been translated and distributed also in Chinese, German, Italian, Japanese and Portuguese. A commentary on the Berne Convention was translated and published in Hindi.

Emblem. The International Bureau has used an emblem since approximately 1960. It was Jacques Secrétan, then Director of the International Bureau, who decided that the International Bureau should use an emblem and what the emblem should consist of. In the middle of the emblem, at that time, was the word "BIRPI." Since 1970, that has been replaced by "WIPO" or its equivalent in French ("OMPI") or other languages. Around that word, which is in the middle of a circle, there is a second, outer circle, and between the two circles are five designs symbolizing fields of activity whose results may be the subject of intellectual property. They are the following: (i) the neck of a violin, symbolizing music; it may be interpreted both as a reference to the copyright of authors (here, composers) and as a reference to the so-called neighboring rights of performing artists (here, musicians); (ii) a human hand holding what may be a pen, a pencil, a painter's brush or a sculptor's chisel; it may be interpreted as symbolizing a writer of literary works or an artist of the plastic arts (who paints paintings, draws drawings, etches etchings or makes sculptures); in any case, it is a reference to copyright law; (iii) a cogwheel; a cogwheel is an element of many (mechanical) inventions; it symbolizes inventors and is a reference to the patent law; (iv) a book; it is a reference to the copyright of authors (writers); (v) the head of wheat; wheat is a plant and the symbol was probably chosen in

anticipation of what, a few years later, became a reality, namely, the links that have been established and still exist between the International Bureau and the International Union for the Protection of New Varieties of Plants (UPOV).

Finances of the Union

First Occurrence in the Berne Convention and the System of Contributions. The original (1886) text of the Berne Convention provides that the expenses (*dépenses*) of the Bureau of the Berne Union "shall be shared (*supportées en commun*) by the contracting countries" (sixth paragraph of point 5 of the Final Protocol). In the Final Protocol of 1886, the so-called "class-and-unit system" of contributions—already in use in the Paris Union founded in 1883—is also defined: there are six "classes" (I, II, III, IV, V and VI); a number of "units" are assigned to each class, namely, 25, 20, 15, 10, 5 and 3, respectively; the number of the countries belonging to each class is multiplied by the appropriate number of units, and the products of the multiplications are added; the amount of the effective expenses in each given year is divided by the total number of units and the resulting quotient is the amount of contribution to be paid per unit. The contributions were in the nature of reimbursement to the Swiss Confederation since the Swiss Confederation advanced the funds necessary for covering the expenses when they arose.

For example, the Management Report (*Rapport de gestion*) of the International Bureau of the Berne Union for 1888 shows that, the following number of countries having belonged in the classes indicated, the contributions of 23,506 Swiss francs were divided as follows:

4 countries in Class I give	4 x 25	=	100 units
1 country in Class II gives	1 x 20	=	20 units
2 countries in Class III give	2 x 15	=	30 units
1 country in Class V gives	1 x 5	=	5 units
2 countries in Class VI give	2 x 3	=	6 units
Total			161 units

The amount of 23,506 francs divided by 161 units gives 146 francs per unit. Consequently, the amount to be paid by each country was as follows:

for a country in Class I,	146 x 25	=	3,650 francs
for a country in Class II,	146 x 20	=	2,920 francs
for a country in Class III,	146 x 15	=	2,190 francs
for a country in Class V,	146 x 5	=	730 francs
for a country in Class VI,	146 x 3	=	438 francs

Choice of Class. The first members of the Berne Union chose the following classes of contribution: Class I: France, Germany, Italy, United Kingdom; Class II: Spain; Class III: Belgium and Switzerland; Class IV: none; Class V: Haiti; Class VI: Luxembourg and Tunisia.

The Final Protocol of 1886 stated the principle of free choice of class. It did so in the following terms: "Each country shall declare, at the time of its accession, in which of the above-mentioned classes it wishes to be placed (*rangé*)" (ninth paragraph of point 5). The 1928 (Rome) Act stated for the first time that a country may change class. It did so in the following terms: "Each country shall declare, at the time of its accession, in which of the above-mentioned classes it wishes to be placed but it may subsequently, at any time (*toujours*), declare that it wishes to be placed in another class" (Article 23(4)). This rule, subject to small changes in wording, was repeated in the 1967 (Stockholm) Act, but the following two sentences were added to it: "If it [a country changing class] chooses a lower class, the country must announce it to the Assembly at one of its ordinary sessions. Any such change shall take effect at the beginning of the calendar year following the session." (Article 25(4)(b)).

The 1967 (Stockholm) Act also created a new class. In that class, contributions are the lowest: it is Class VII, and the number of units corresponding to it is one.

On January 1, 1986, that is, at the beginning of the year of the centenary of the Berne Convention, the countries members of the Berne Union belonged in the following classes for the purposes of computing their contributions:

Class I: France, Germany (Federal Republic of), United Kingdom (3);

Class II: Japan, Spain (2);

Class III: Australia, Belgium, Canada, Italy, Netherlands, Sweden, Switzerland (7);

Class IV: Brazil, Czechoslovakia, Denmark, Finland, India, Ireland, Mexico, Norway, South Africa (9);

Class V: German Democratic Republic, New Zealand, Portugal, Venezuela (4);

Class VI: Argentina, Austria, Bulgaria, Cameroon, Chile, Côte d'Ivoire, Greece, Hungary, Israel, Lebanon, Libya, Madagascar, Morocco, Pakistan, Philippines, Poland, Romania, Senegal, Tunisia, Turkey, Yugoslavia, Zaire, (22);

Class VII: Bahamas, Barbados, Benin, Burkina Faso, Central African Republic, Chad, Congo, Costa Rica, Cyprus, Egypt, Fiji, Gabon, Guinea, Holy See, Iceland, Liechtenstein, Luxembourg, Mali, Malta, Mauritania, Monaco, Niger, Rwanda, Sri Lanka, Suriname, Thailand, Togo, Uruguay, Zimbabwe (29).

Amount of the Contributions. The Final Protocol of 1886 said that "until a new decision [is made], they [the expenses, *les dépenses*] cannot exceed the sum of 60,000 [Swiss] francs a year. This sum may be increased, if necessary, by the simple decision of one of the [Revision] Conferences provided for in Article 17 [of the original (1886) text]" (sixth paragraph of point 5). The 1928 (Rome) Act fixed the total amount of the expenses at a maximum

of 120,000 Swiss francs per year (Article 23(1)). The 1948 (Brussels) Act fixed the maximum amount at 120,000 gold francs (*francs-or*) and added that the amount could be increased, if necessary, not only by a revision conference but also by a unanimous decision of the countries of the Union (Article 23(1)). The latter possibility was used several times thereafter and, as far as the countries not members of the Assembly are concerned, it is still used at the present time (in the Conference of Representatives acting as a Conference of Plenipotentiaries).

It is to be noted that, until the entry into force of the 1967 (Stockholm) Act, the system was the following: the Contracting States did not vote a budget; they left it to the Swiss Government to authorize expenses; they merely fixed a ceiling for the expenses; the expenses actually incurred were paid—advanced—by the Swiss Government; once yearly accounts were established and the actual amount of the expenses for the preceding year was known, the Contracting States reimbursed the Swiss Government according to the class-and-unit system.

Although the 1967 (Stockholm) Act preserved the class-and-unit system for the purposes of calculating contributions, it changed the system in all other respects (see Article 25): the Assembly of the Berne Union has to vote a budget in advance of the financial exercise; the budget shows, as a component of the expected income, the total amount of the contributions; the contributions are payable on the first day of each calendar year. There is no maximum but a fixed amount. The expenses are paid by the International Bureau from its own funds (not from funds advanced by the Swiss Government), and the contributions are owed to the International Bureau (not to the Swiss Government).

Other Financial Provisions. Article 25 of the 1967 (Stockholm) Act also introduced some of the other financial provisions usual for intergovernmental organizations: the need for a budget (paragraph (1)(a)); the enumeration of the possible sources of income (paragraph (3)); the possible loss of the right to vote for a country not having paid its contributions for two full years (paragraph (4)(e)); the constitution of a working capital fund (paragraph (6)); the auditing of the accounts (paragraph (8)).

The 1967 (Stockholm) Act squarely faces the accounting problem flowing—and existing since the International Bureau of the Paris Union was united with the International Bureau of the Berne Union in 1893—from the fact that the International Bureau (of WIPO) is working not for the Berne Union alone but for several (in 1986, eleven dif-

ferent) Unions, each of which has financial autonomy. The said Act provides, in particular, that "Expenses not attributable exclusively to the [Berne] Union but also to one or more other Unions [e.g., the Paris Union] administered by the Organization [WIPO] shall be considered as expenses common to the Unions. The share of the [Berne] Union in such common expenses shall be in proportion to the interest the [Berne] Union has in them." (Article 25(1)(c)).

Evolution of the Contributions and the Expenses.

From the beginning, the amount of the contributions has been established and the contributions have been payable in Swiss francs. The accounts of the International Bureau are also kept in Swiss francs. The yearly amount of the expenses of the International Bureau of the Berne Union, or on account of the Berne Union, was 23,464 Swiss francs in 1888 and doubled (exceeding the following amounts for the first time) in the following years: 50,000 francs in 1919, 100,000 francs in 1929, 200,000 francs in 1957, 400,000 francs in 1963, 800,000 francs in 1968, 1,600,000 francs in 1973 and 3,200,000 francs in 1978.

The yearly amounts, in Swiss francs, of the expenses of the Berne Union and of the contributions to the International Bureau on account of the Berne Union are shown in the following table:

Year	Expenses	Contributions	Year	Expenses	Contributions
1888	23,464	23,506	1922	64,344	100,000
1889	22,889	22,960	1923	73,838	72,405
1890	20,616	20,500	1924	70,949	67,653
1891	23,331	23,452	1925	74,054	71,157
1892	24,270	24,272	1926	82,096	78,555
1893	38,073	38,065	1927	87,606	82,966
1894	34,747	34,736	1928	96,524	92,023
1895	33,851	33,901	1929	101,335	83,073
1896	42,291	42,126	1930	88,294	83,344
1897	34,178	34,338	1931	88,623	84,511
1898	33,946	33,807	1932	86,799	83,492
1899	37,184	37,400	1933	82,094	78,776
1900	38,694	37,587	1934	81,686	78,441
1901	39,069	37,830	1935	85,022	81,460
1902	40,210	38,800	1936	83,699	79,525
1903	44,178	42,785	1937	79,255	75,425
1904	43,228	39,950	1938	80,280	75,218
1905	37,375	36,135	1939	72,544	69,009
1906	38,044	36,135	1940	80,461	78,276
1907	39,434	37,230	1941	82,451	80,087
1908	43,468	41,847	1942	80,249	78,393
1909	39,268	60,000	1943	87,152	85,769
1910	39,599	60,000	1944	92,855	90,245
1911	38,503	60,000	1945	95,292	93,518
1912	41,776	60,000	1946	105,354	100,073
1913	43,775	41,673	1947	124,316	121,177
1914	38,849	36,333	1948	153,934	148,970
1915	40,432	38,848	1949	176,545	165,786
1916	39,858	38,554	1950	171,671	164,561
1917	41,203	39,789	1951	179,505	171,320
1918	48,364	46,977	1952	177,815	171,381
1919	53,900	52,167	1953	177,137	171,378
1920	57,354	56,065	1954	179,663	171,400
1921	61,949	100,000	1955	187,026	171,400

1956	191,445	171,400	1972	1,341,259	1,350,000
1957	248,372	231,400	1973	1,463,132	1,500,000
1958	249,527	231,400	1974	1,875,945	1,683,000
1959	247,311	231,400	1975	1,980,939	1,950,000
1960	248,260	231,400	1976	2,340,590	2,535,000
1961	280,844	231,400	1977	3,002,260	3,001,000
1962	359,303	341,762	1978	3,649,680	3,733,000
1963	417,981	366,663	1979	4,256,592	3,750,000
1964	424,224	378,508	1980	3,915,611	3,846,000
1965	693,836	624,009	1981	4,734,623	3,846,000
1966	685,868	640,066	1982	4,483,756	4,211,000
1967	743,607	644,178	1983	4,483,756	4,211,000
1968	863,542	800,000	1984	5,287,781	5,048,000
1969	1,070,558	900,000	1985	5,287,781	5,048,000
1970	1,138,309	1,000,000	1986	6,016,000	5,761,500
1971	1,235,024	1,250,000			

Because of the gradual diminution of the purchasing power of the Swiss franc (or, for that matter, any other currency) during the last one hundred years, the above figures do not give a true picture of the increase "in real terms" either of the expenses or of the contributions. Taking as an example the fact that a daily issue of a newspaper—the *Journal de Genève*—cost 10 Swiss cents in 1888 and one Swiss franc in 1986, the purchasing power of the amounts concerning the years after 1888 has become gradually lower so as to become in 1986 some ten times less than it would have been in 1888.

Plans for Changing the System of Contributions.

The class-and-unit system is used not only in the Paris Union, the Berne Union and in WIPO but also in a few other intergovernmental organizations, for example, among the United Nations specialized agencies, in the Universal Postal Union and the International Telecommunication Union. On the other hand, the other specialized agencies and the United Nations itself have a contribution system in which countries have no choice but are assessed mainly on the basis of their relative wealth.

The first, and so far only, change in the contribution system of the Berne Union was made by the conference of revision of 1967 (Stockholm), which, as already stated, added one new class (Class VII) to the six classes (I, II, III, IV, V and VI) established in, and in existence since, 1886. That new class (with one unit) raised from 1:8.33 to 1:25 the ratio between the contribution class with the highest and the contribution class with the lowest amount of contributions. Accordingly, in 1986, any of the three countries belonging to Class I paid 5.88%, and any of the 29 countries belonging to Class VII paid 0.24% of the total contributions in the Berne Union.

The difference between the highest and the lowest contributions is less than in most other intergovernmental organizations. For example, in the United Nations, it is 25 to 0.01, or two thousand five hundred-fold. Therefore, the question

was raised, in the Assembly of the Berne Union (and other Governing Bodies), whether some further changes should not be introduced in the system of contributions.

The matter has been under consideration since 1977 but no decisions have been reached by the beginning of 1986, the year of the centenary of the Berne Convention.

Amendment of the Administrative Clauses

As already stated, the provisions on the Assembly of the Berne Union, on the Executive Committee of that Assembly, on the role of the International Bureau of WIPO and the Director General of WIPO in respect of the Berne Union, and on the finances of the Berne Union—that is, Articles 22, 23, 24 and 25 of the 1967 (Stockholm) Act—are generally referred to as “the administrative clauses.” The conference of revision of 1967 (Stockholm), conscious of the fact that revising the text of a multilateral treaty in a conference of revision is a difficult and slow task, decided that there should be a simpler method of revising the said administrative clauses. That simpler method—which should also yield results faster—is provided for in Article 26 of the 1967 (Stockholm) Act and consists of the possibility of amending the said administrative clauses, including Article 26 itself, by the Assembly of the Union. The entry into effect of any such amendment requires that three fourths of the countries members of the Assembly (members, that is, at the date of the adoption of the amendment) notify their acceptance of it to the Director General. It is to be noted that, once the amendment enters into effect, it binds also those countries of the Assembly which were members of the Assembly at the said date and which have not notified their acceptance of the amendment. There is one exception to this rule: any amendment that increases the financial obligations of countries of the Berne Union binds only those countries which have notified their acceptance of the amendment. Any country that becomes a member of the Assembly after any amendment enters into force is automatically bound by it. All this is provided for in the said Article 26, which, by the way, is identical in the 1967 (Stockholm) and 1971 (Paris) Acts.

The possibility of amendment offered by the Article under consideration was made use of for the first—and so far only—time in 1979, when the Assembly decided to replace its triennial ordinary sessions by biennial ordinary sessions, and the triennial budget and annual budgets by a biennial budget. For that purpose, the Assembly adopted

amendments to Article 22(2)(a)(vi) and (7)(a) and Article 23(6)(a)(ii) and (iii). The amendments entered into force on November 19, 1984, but, in fact, the amendments were applied from the moment they were adopted by the Assembly, and they were so applied by virtue of a corresponding unanimous decision of the Assembly. Amendments increasing the financial obligations have not so far been adopted by the Assembly.

The Locations of the International Bureau

The International Bureau has been in Switzerland from the very beginning: first in Berne, later and now (in 1986) in Geneva.

The first office of the United Bureaus, in 1886, was in an apartment of ten rooms at Kanonengasse 14 in Berne. Six rooms were used for office purposes, the other four were the apartment of the janitor and for storage. All those premises were rented.

A big change occurred in 1904 when the United Bureaus moved into the Helvetiastrasse in Berne. They rented most of a four-storey house. The house number was 7.

The Helvetiastrasse house was the home of the United Bureaus for 56 years, that is, until 1960.

In 1958, the construction of the first building belonging to the United Bureaus started, in Geneva, on a piece of land between the Avenue Giuseppe-Motta (*Conseiller fédéral* (Minister) from 1912 to 1940) and the Chemin des Colombettes (“colombette” is an edible mushroom (*lepiota naucina* in Latin, *large spored lepiota* in English, *rosablättriger Schirmling* in German, also called *bisette* in French); it was abundant in the suburban meadows of Geneva, where the street (*chemin* is today)). The address of that building is 32, chemin des Colombettes. It is some hundred meters from the Place des Nations, a large square on one side of which is the main entrance to the Palais des Nations, the headquarters (since 1936) of the League of Nations and, since 1945, of the Geneva Office of the United Nations.

The construction of the said building of the United Bureaus was completed in 1960, and the Bureaus moved from Berne to Geneva in 1960. It is now referred to as “the BIRPI Building.” Operations started there on July 20, 1960.

The BIRPI Building, when constructed, had four floors and an unequipped conference room. The size of the building is the same in 1986 as it was in 1960 but, in 1964, the (only) conference room, with some 60 seats, was furnished with simultaneous interpretation equipment. (In 1982, the conference room was dismantled.) The first

telex equipment was installed in 1965. The first electric typewriters were purchased in 1964. The first word-processors were installed in 1980. Telefax was installed in 1985. The computerization of administrative operations started in 1984. In 1960, the BIRPI Building was too large for the needs of the International Bureaus and one of its floors was rented—from 1959 to 1969—to the European Free Trade Association (EFTA). When the WIPO Building (see below) was completed, two of its floors were, once again, rented out; such rentals ended in 1984 and 1986, respectively. On the ground floor, office space is rented (in 1986) to a bank and to a travel agency.

The volume of the BIRPI Building is 14,720 cubic meters. It has two small elevators.

All the rest is office space. The active collections of the library and the library's reading room are (in 1986) also in the BIRPI Building.

With the growth of the staff (see below) and the increased need for conference rooms for meetings, the BIRPI Building became too small and during the nineteen-seventies part of the staff had to be located in a temporary building constructed next to the BIRPI Building (1971 to 1978) and in several rented premises in various places in Geneva (56 and 58, rue de Moillebeau from 1968 to 1971; 20, rue de Lausanne from 1974 to 1976; 31, avenue de Budé from 1975 to 1978; the headquarters of the World Health Organization (1970, 1973-1974, 1976-1978); the headquarters of the International Labour Office (1978)).

The construction of a new, much larger building, was decided in 1970. The construction was completed in 1978; it was inaugurated, for the staff, on June 16, 1978, and, in a ceremony for the delegates of Governments, on September 24, 1978.

The new building is usually referred to as "the WIPO Building." Its address is 34, chemin des Colombettes. It is next to and connected with the BIRPI Building. On its other side, it is on the edge of the Place des Nations. Its volume is 82,315 cubic meters. It has 19 levels: 14 above ground and five under ground. Four of the underground floors are garages for 220 automobiles. It has (in 1986) three conference rooms: one, with 270 seats, is equipped for simultaneous interpretation in four languages; a second, with 70 seats, is equipped for simultaneous interpretation in three languages; the third, with 50 seats, is without such equipment. There are six elevators. The top floor is a cafeteria open to delegates, the staff and the general public. The view from the top floor is circular: the Alps, including the Mont Blanc (the highest peak in Europe), are visible towards the South; the Lake of Geneva (*Lac Léman*) is visible towards the East; the Jura mountains are visible towards the North; and parts of the city of Geneva, including the

Cathedral and the *jet d'eau*, with the Salève mountain on the horizon, are visible towards the West and the South.

The WIPO Building was planned, including its internal decoration, and its construction was supervised, by Pierre Brillard, a Swiss architect from Geneva, who was also the architect of the BIRPI Building. The WIPO Building is an arc-shaped building, almost completely covered by glass. The glass is blue: its tint changes with the color of the sky between pale blue and dark blue.

The main internal decorative element is the lobby, containing a *mur fontaine* and featuring a cupola. The *mur fontaine* consists of a wall of thousands of small marble blocks (each as big as a matchbox); from invisible openings, in the upper part, water trickles down the wall, changing the marble's illumination and causing gentle sounds of splashing in the basin to which the water eventually finds its way. The top of the cupola consists of a round window through which one can see the "tower," as the building is sometimes called. The cupola carries an inscription in Latin, text of Arpad Bogsch, the Director General of WIPO in 1978, reading as follows: "NASCUNTUR AB HUMANO INGENIO OMNIA ARTIS INVENTORUMQUE OPERA. QUAE OPERA DIGNAM HOMINIBUS VITAM SAEPIUNT. REIPUBLICAE STUDIO PERSPICIENDUM EST ARTES INVENTAQUE TUTARI." The English translation of this text is the following: "Human genius is the source of all works of art and invention. These works are the guarantee of a life worthy of men. It is the duty of the State to ensure with diligence the protection of the arts and inventions."

This was the situation at the beginning of 1986, the year of the centenary of the Berne Convention.

The Staff of the International Bureau

The staff of the International Bureau—and by "International Bureau" is meant, from 1893 to 1970, the United International Bureaus, and, since 1970, the International Bureau of WIPO—grew from one in 1885 to 291 in January 1986, the year of the centenary of the Berne Convention. The number of 10 was reached in 1904, 20 in 1929, 50 in 1960, 110 in 1970, and 200 in 1979. Only part of the staff works for the Berne Union.

The following list shows the number of staff for each of the years from 1886 to January 1986:

1886: 2; 1887: 2; 1888: 4; 1889: 4; 1890: 4; 1891: 4; 1892: 5; 1893: 7; 1894: 7; 1895: 7; 1896: 7; 1897: 7; 1898: 7; 1899: 8; 1900: 9; 1901: 9; 1902: 9; 1903: 9; 1904: 10; 1905: 10; 1906: 10; 1907: 10; 1908: 10; 1909: 10; 1910: 10; 1911: 11; 1912: 12;

1913: 13; 1914: 14; 1915: 14; 1916: 14; 1917: 14; 1918: 14; 1919: 12; 1920: 11; 1921: 12; 1922: 14; 1923: 14; 1924: 17; 1925: 18; 1926: 18; 1927: 18; 1928: 18; 1929: 20; 1930: 21; 1931: 21; 1932: 20; 1933: 20; 1934: 20; 1935: 20; 1936: 19; 1937: 18; 1938: 17; 1939: 17; 1940: 17; 1941: 17; 1942: 17; 1943: 18; 1944: 20; 1945: 20; 1946: 20; 1947: 20; 1948: 22; 1949: 22; 1950: 22; 1951: 22; 1952: 22; 1953: 22; 1954: 27; 1955: 27; 1956: 28; 1957: 28; 1958: 27; 1959: 45; 1960: 50; 1961: 52; 1962: 52; 1963: 61; 1964: 63; 1965: 64; 1966: 68; 1967: 73; 1968: 87; 1969: 97; 1970: 110; 1971: 114; 1972: 131; 1973: 144; 1974: 150; 1975: 158; 1976: 171; 1977: 174; 1978: 188; 1979: 200; 1980: 244; 1981: 264; 1982: 262; 1983: 270; 1984: 280; 1985: 288; January 1986: 291.

Complete data concerning the nationality of the staff are available since 1962, when the staff consisted of 52 persons. In that year, the staff came from five different countries, namely, from Algeria 1, from France 6, from Italy 3, from Switzerland 39, and from the United Kingdom 3. In January 1986, the staff consisted of 291 persons (133 men and 158 women), and came from 51 different countries, namely, Algeria 1, Argentina 4, Australia, 1, Austria 2, Belgium 6, Bolivia 1, Brazil 1, Bulgaria 1, Burma 1, Cameroon 1, Canada 2, Chile 4, China 1, Colombia 2, Czechoslovakia 1, Denmark 1, Egypt 4, France 80, German Democratic Republic 1, Germany (Federal Republic of) 12, Ghana 4, Greece 1, Honduras 1, Hungary 1, India 3, Iran 1, Ireland 1, Italy 11, Japan 6, Lebanon 1, Netherlands 6, Nigeria 1, Pakistan 1, Peru 3, Philippines 4, Portugal 4, Senegal 1, Singapore 1, Somalia 1, Soviet Union 6, Spain 4, Sri Lanka 4, Sudan 1, Sweden 3, Switzerland 58, Thailand 1, Tunisia 1, United Kingdom 24, United States of America 7, Uruguay 1, Viet Nam 1, stateless 1.

In January 1986, the Director General was Arpad Bogsch, and the staff consisted of the following persons (the name of the country indicates the person's nationality, whereas an asterisk indicates that the person is a woman):

Deputy Directors General: Pfanner, Klaus (Federal Republic of Germany); Porzio, Marino (Chile); Kostikov, Lev (Soviet Union);

Director of Department: Masouyé, Claude (France);

Legal Counsel: Ledakis, Gust (United States of America);

Directors of Division: Alikhan, Shahid (India); Baeumer, Ludwig (Federal Republic of Germany); Claus, Paul (Belgium); Curchod, François (Switzerland); Ficsor, Mihály (Hungary); Harben, Roger (United Kingdom); Idris, Kamil (Sudan); Kadigamar, Lakshmanathan (Sri Lanka); Keefer, Thomas (Canada); Pareja, Enrique (Argentina); Thiam, Ibrahima (Senegal);

Professionals of grade P5: Balleys, François (Switzerland); Bartels, Busso (Federal Republic of Germany); Blumstengel, Reiner (German Democratic Republic); Bouchez, Daniel (France); Daghasb, Mohamed (Egypt); Davoudi, Bernard (Iran); Dondenne, Bernard (France); Favatier, Philippe (France); Franklin, Jordan (United States of America); Hansson, Bo (Sweden); Hargreaves, Alan (United Kingdom); Higham, Philip (United Kingdom); Jaccard, Albert (Switzerland); Kindler, Claude (Switzerland); Macbado, Bruno (France); Maugué, Pierre (France); Moussa, Farag (Egypt); Pike-Wanigasekara, Indrani* (Sri Lanka); Quashie-Idun, James (Ghana); Scherrer, Normando (Brazil); Troussov, Vitaly (Soviet Union); von Schleussner, Anna* (Federal Republic of Germany); Werkman, Casper (Netherlands); Woodford, Clive (United Kingdom); Yu, Geoffrey (Singapore);

Professionals of grade P4: Achkar, Maurice (Switzerland); Andary, Raymond (Lebanon); Andrews, Patrick (United Kingdom); Daval, Anne* (France); Davila, Andrés (Colombia); Eckstein, Guy (Belgium); Erstling, Jay (United States of America); Espinosa, Octavio (Peru); Frammery, Gilles (France); Hirai, Tamotsu (Japan); Ilardi, Alfredo (Italy); Kecherid, Aly-Bey (Algeria); Lewenton, Michael (Federal Republic of Germany); Li, Jiahao (China); Lom, Helen* (United States of America); Negouliaev, Guennadi (Soviet Union); Qayoom, Maqbool (Pakistan); Rezounenko, Erven (Soviet Union); Rubio, Ernesto (Uruguay); Sagarminaga, Antonio (Spain); Sihlé, Pierre (France); Sturges, Guy (United Kingdom); Tcbouvaev, Nikolai (Soviet Union); Tran-Thi, Thu-Lang* (Switzerland); Watt, Richard (United Kingdom);

Professionals of grade P3: Allemby, David (Canada); Cbuasai, Jumbhot (Thailand); Derqué, Raymonde* (France); Di Palma, Salvatore (Italy); Gascou, Pierre (France); Gattone, René (France); Geiger, Erika* (Switzerland); Hutchins, Keith (United Kingdom); Imperio, Romano (Italy); Leder, Charles (Federal Republic of Germany); Luther, Robert (United Kingdom); Mizutani, Yoshio (Japan); Nguyen Quang Hao (Viet Nam); Omokolo, Hilaire (Cameroon); Pérez-Fernández Ignacio (Spain); Pilowsky, Jorin (Chile); Royles, Malcolm (United Kingdom); Sevilla, Jaime (Philippines); Swaminathan, Anuradha* (India); Tagnani, Giovanni (Italy); Terbois, Vincent (Switzerland); Valarino, Henry (United Kingdom); Wheeler-Stuckey, Joanne* (Australia); Yoshikuni, Nobio (Japan); Yossifov, Vladimir (Bulgaria);

Professionals of grade P2: Beattie, Martin (United Kingdom); Damond, Andrée* (Switzerland); Fankhauser, Adèle* (Switzerland); Graf, Henri (Switzerland); Graffigna Sperling, Carlotta* (Italy); Grassioulet, Christian (France); Kawai, Akira (Japan); Onyeama, Geoffrey (Nigeria); Tyc, Vladimir (Czechoslovakia); Vegas, Sandra* (Peru);

General Service grade G7: Bartolo, Odile* (Switzerland); Hansson, Patricia* (United Kingdom); Kaufmann, Marc (Switzerland); Lévy, Nicole* (France); Pugin, Henri (Switzerland); Sagiat, Jean* (Switzerland); Schweizer, Jacques (Switzerland); Seinet, Eliane* (Switzerland); Simpson, Marjorie* (United Kingdom); Unterkircher, Rudolf (Austria); Vitte, Claire* (France);

General Service grade G6: Anticevic, Jean* (United States of America); Boulaire, Brigitte* (France); Claa, Carlos (Argentina); Cornish, Sheila* (United Kingdom); Devillard, Marie-José* (France); Gunther, Karin* (Federal Republic of Germany); Ivanovsky, Monique* (France); Julien, Eliane* (Switzerland); Keist, Laura* (Switzerland); Kindler-Garnier, Christiane* (Switzerland); Kiriella, Travice (Sri Lanka); Kraft, Nicole* (Switzerland); Leitao, Jaime (Portugal); Maisonnecuv, Gérard (France); Milner, Claire-Lise* (Switzerland); Moeliker, Geertje* (Netherlands); Montagnier-Milcent, Marie-France* (France); Olesen, Susan* (United Kingdom); Pautasso, Marco (Italy); Pidoux, Chantal* (Switzerland); Porret, Solange* (Switzerland); Potyka, Edith* (Austria); Python, Danielle* (France); Ribes, Rosemary* (United Kingdom); Rouge-Luetto, Piera* (Switzerland); Schneiter, Anne* (Switzerland); Schneuwly, Gabriel (Switzerland); Skowronski, Gilbert (France); Slater, Mary* (Ireland); Stassin, Thérèse* (Belgium); Zeender, Sylla* (Switzerland);

General Service grade G5: Adella, Giuseppe (Italy); Albanesi, Huguette* (Switzerland); Berlioz, Jean-Pierre (France); Bernillon, Andrée* (France); Berthelet, Maryvonne* (Switzerland); Cassiau, Elisabeth* (France); Chapman Nyaho, Mawunu* (Ghana); Coeckelbergs, Yolande* (Belgium); Corvaro, Pietro (Switzerland); Disch, Michèle* (France); Elson, Pauline* (United Kingdom); Fraccaroli, Elfriede* (Federal Republic of Germany); Grare, Paulette* (France); Grebing, Christa* (Federal Republic of Germany); Grguric, Daniele* (France); Guiton, Alain (France); Hänni, Liliane* (France); Heitz, Gisèle* (France); Hudry-Prodont, Marie-Noëlle* (France); Jendrysiak, Irène* (France); Kippelen, Paulette* (France); Labory, Martine* (France); Lagnieu, Michel (France); Mazel, Ginette* (France); Mermet-Burnet, Madeleine* (France); Montasser, Farid (Egypt); Moyne-Picard, Fleurette* (France); Nallet, Anne-Marie* (France); Obez, Nicola* (United Kingdom); Pennacchioli, Luigi (Italy); Polier, Barbara* (Switzerland); Rauser, Boris (Switzerland); Riond, Eliane* (Switzerland);

Rozensztajn, André (Switzerland); Schwab, Anne* (United Kingdom); Schwarz, Linda* (Netherlands); Taylor, Marie-Claude* (France); Utiger, Claude (Switzerland); Valvo, Jeannie* (France); Wetzl, Paul (Federal Republic of Germany);

General Service grade G4: Antonietti, Valerie* (Switzerland); Baigrie, Bernadette* (United Kingdom); Bastard, Christine* (France); Bernard-Pierrard, Isabelle* (France); Briffod, Mireille* (Switzerland); Carrier, Ragnhild* (Denmark); Ciclet, Germaine* (France); Cochard, Patricia* (Switzerland); Davis, Vera* (Belgium); de Sèves Rodrigues, Frederico (Portugal); de Vries, Chantal* (France); Delaune, Denise* (France); Driessens, Pascale* (France); Enz, Irmgard* (Switzerland); Giorgi, Giorgio (Italy); Groppi, Arlette* (Switzerland); Guette, Marie-Thérèse* (France); Guillaume, Janine* (Switzerland); Gumy, Danielle* (Switzerland); Hamano, Yumiko* (Japan); Hanberk, Doris* (Federal Republic of Germany); Holdam, Isabelle* (Switzerland); Humbert, Renée* (Switzerland); Ianna, Rita* (France); Ibarra, Liliana* (Peru); Jacono, Monica* (Italy); Jaczynska, Blanche* (France); Jean-Prost, Agneta* (Sweden); Jones, Arlette* (United States of America); Khadhraoui, Mohamed (Tunisia); Kongmark, Louise* (Sweden); Lausenaz-Gris, Jocelyne* (France); Leignier, Christine* (France); Lindecker, Françoise* (France); Llarina, Imelda* (Philippines); Marion, Andrée* (France); Martinez, Martine* (France); Massetti, Catherine* (France); Meili, Marianne* (Switzerland); Menezes, Victoria* (United Kingdom); Morel, Michel (France); Ortega, Amelia* (Philippines); Perry, Anne* (France); Pillonel, Odette* (Switzerland); Prielaida, Josette* (Switzerland); Robertson, Marion* (United Kingdom); Roessli, Brenda* (Switzerland); Rossi, Pietro (Italy); Saint-Marcel, Béatrice* (France); Santos, Eugénia* (Portugal); Schwab, Caroline* (Switzerland); Sinner, Martine* (Switzerland); Theunissen, Marie-Paule* (Belgium); Tirador, Ramon (Spain); Van der Putten, Anahid* (Netherlands); Vasquez, Rodrigo (Chile); Vorburger, Peter (Switzerland); Woirhay, Dominique* (France); Zahra, Judith* (Federal Republic of Germany); Zarraga, Edita* (Philippines); Zollet, Dominique* (France);

General Service grade G3: Addae, Anita* (Ghana); Ahluwalia, Anil (India); Asseff, Patrick (France); Baron, Jean-Luc (France); Baroni, Monique* (France); Beijer, Gijsbertus (Netherlands); Belaich, Nicole* (France); Bernard-Costilhes, France* (France); Bourdin, Ursula* (Switzerland); Carballeda, Valeria* (Argentina); Compoint, Michèle* (France); Corsetti, Danielle* (France); Costa, Luis (Chile); Crawford, Diane* (United Kingdom); Deif, Nadia* (Egypt); Dondenne, Muriel* (France); Egorova, Svetlana* (Soviet Union); Garrote, Gabriela* (Argentina); Gordillo, Luz Maria* (Colombia); Guillon, Marie-Noëlle* (France); Kalombratsos, Alkiviadis (Greece); Kotalawala, Munidasa (Sri Lanka); Lanier, Lydie* (France); Legge, Sally* (Ghana); Leitao, Julio (Portugal); Meighan de Gibbs, Barbara* (Honduras); Mezière, Audrey* (France); Monllor, Pascal (France); Monnier, Sylvie* (Switzerland); Navas del Monte, Francisca* (Spain); Neusser, Antoni (stateless); Nilsvang, Opbélie* (France); Panchard, Julienne* (Switzerland); Pary, Lazaro (Bolivia); Pierre, Marie-Caroline* (France); Pillet, Annamma* (Switzerland); Repond, Josefina* (Switzerland); Robert, Paul (France); Sacchi, Patricia* (France); Shermarke, Marian* (Somalia); Steunenbergh, Petronella* (Netherlands); Verdun, Rémy (Switzerland); Walenda, Anny* (France);

General Service grade G2: Trescazes, Thierry (France); Win, Pyu Pyu* (Burma); Yamaguchi, Satoe* (Japan).

Directors and Directors General

Until 1893, the International Bureau was headed by persons not yet bearing the title of Director of the International Bureau.

During the subsequent 83 years, there were six who had the title of Director, while the seventh person started with the title of Director only but later (during the last three years of his term) he

also had the title of Director General of WIPO. The eighth incumbent holds the post of Director General of WIPO and is also Director of BIRPI, although the latter title is no longer used in practice.

Before the International Bureau became that of WIPO in 1970, the heads of the International Bureau were appointed by the Federal Council (roughly equivalent to a council of ministers) of the Swiss Confederation. They were all citizens of Switzerland, with the exception of the last one.

Several of them, before becoming Directors, played an important role in the public life of Switzerland: the first (Morel), was a former president of the Swiss federal parliament; the second (Comtesse), was a former president of the Swiss Confederation; the fourth (Ostertag) was a former president of the highest Swiss federal court. Three came from the ranks of the International Bureau itself: the third Director (Röthlisberger) had been with the International Bureau for 34 years, the fifth (Mentha), 24 years, and the eighth (Bogsch), ten years, before they were appointed Directors. The sixth (Secrétan), the seventh (Bodenhausen) and the eighth (Bogsch) were private lawyers in their former professional life, two of them (Secrétan and Bodenhausen) having been also professors of law, one having been also a government lawyer (Bogsch), and two of them (Secrétan and Bogsch) having also worked for other specialized agencies of the United Nations system of organizations (Secrétan for the International Labour Office, and Bogsch for Unesco).

The Directors General of WIPO, as has been already indicated, are not appointed by the Swiss Federal Council but are elected by the Member States in the General Assembly of WIPO.

In the following pages, a few lines will be devoted to each of these eight persons.

Henri Morel was born at Claye (near Paris, France) on June 13, 1838, and he died at Bex (Canton of Vaud, Switzerland) on May 18, 1912. He was a citizen of Switzerland.

Morel was a lawyer by profession, was a judge at the tribunal of La Chaux-de-Fonds (Canton of Neuchâtel) and had an important career as a politician. He was a member of the Swiss federal parliament as deputy to its lower house, and, towards the end of his political activity, he was elected president of the said house of parliament.

He entered the service of the United Bureaus on January 1, 1888, with the title of Secretary General but, since there was no Director and he headed the Bureaus, he was, from that date, *de facto* Director. He received the title of Director on January 1, 1893. He retired on March 31, 1912, six weeks before his death. Thus, he was the chief executive

of the United Bureaus for 24 years, between the ages of 50 and 74.

He was the man who really started the United Bureaus. He played a very important intellectual role in the preparation of, and negotiations in, the conferences of revision of the Paris Convention held in Brussels in 1897 and 1900 and the conferences of revision of the Berne Convention held in Paris in 1896 and in Berlin in 1908.

As there are no longer any people alive who knew Morel personally, one must turn to a necrology, published in 1912 in *La Propriété industrielle* (page 72): "In the diplomatic conferences and in the numerous congresses in which he participated, everybody appreciated the clarity of his mind, his perspicacity, his profound knowledge and his *bon-homie*, his frankness and the confidence one could place in him He suffered [in the last years of his life] less from the illness that slowly destroyed him than from the thought that he would have to give up working. His wish was to die in harness, in the middle of his work, since nothing was more repulsive to him than the thought that he would have to end his life in the idleness of retirement."

Robert Comtesse was born at Valangin (Canton of Neuchâtel, Switzerland) on August 14, 1847, and he died at La Tour-de-Peilz (Canton of Vaud, Switzerland) on November 17, 1922. He was a citizen of Switzerland.

Comtesse studied law at Heidelberg and Paris, practiced law in La Chaux-de-Fonds (Canton of Neuchâtel) and had a brilliant political career, particularly as deputy (*conseiller national*) in the Swiss federal parliament (from 1883 to 1899), and as minister (*conseiller fédéral*) in the Swiss federal government (from 1899 to 1912), serving two terms (1904 and 1910) as president of the Swiss Confederation.

He was Director of the United Bureaus from April 1, 1912, to December 31, 1921, that is, for nine years, from the 65th year to the 74th year of his life.

During his tenure, most of Europe was engaged in the first world war (1914-1918), and thus the period was hardly propitious for developing the Berne Union. But the Berne Union survived the war.

The following passage from his necrology, published in 1922 in *La Propriété industrielle* (page 172), throws some light on the eminent personality of Comtesse: "His main qualities were ... an inexhaustible kindness showing an exceptional goodness, exquisite tact due to the remarkable penetration and versatility of his mind and to the prompt and sure evaluation of the realities and possibilities of a given situation, evaluation which was the fruit of a profound knowledge of men and things."

Ernest Röthlisberger was born at Berthoud (Canton of Berne, Switzerland) in 1858, and he died in Berne on January 29, 1926. He was a citizen of Switzerland.

Röthlisberger studied theology, languages, history and philosophy in Berne, Montauban (France) and Paris. He taught at the University of Colombia in Bogota and in 1897 wrote and published a book on Colombia entitled "*El Dorado*." He was professor extraordinary at the University of Berne.

He entered the service of the International Bureau at about the same time as Henri Morel, that is, in 1888, almost at the very beginning of the existence of that Bureau. He was promoted to Deputy Director in 1917, and was appointed Director on January 1, 1922. He died in active service on January 29, 1926, as already indicated. Thus, he served the United Bureaus for 38 years, for the last four of which he served as Director, between the ages of 64 and 68.

Most of the activity of Röthlisberger, before he became Deputy Director, was devoted to the Berne Union. He was the first editor, and remained the editor for 29 years, of the monthly periodical *Le Droit d'auteur*. He was the main representative of the International Bureau in the conference of revision of the Berne Convention held in Berlin in 1908 in the absence of the then Director (Henri Morel).

His necrology states that Professor Röthlisberger "was an authority in the field of literary property; ... he was a man of broad perspectives, animated by a humanitarian spirit; he was a fierce internationalist; ... he was methodical and went into the minutest details of all questions" (1926 *La Propriété industrielle* 26 and 27). The necrologist—one of his younger colleagues—writes that Röthlisberger "examined every piece of paper with extreme care and did not allow any important paper to leave without controlling it himself. With such methods, one succeeds in making great things but one ruins one's health ..." (*ibid.*).

Fritz Ostertag was born at Basle on May 7, 1868, and he died in Pully (Canton of Vaud, Switzerland) on May 6, 1948. He was a citizen of Switzerland.

Ostertag held a degree of doctor of laws and was a judge. His career with the judiciary was crowned by being the president of the highest Swiss court, the *Tribunal fédéral*.

He was appointed Director of the United Bureaus on April 1, 1926, at the age of 58. He retired, after 12 years of service, on April 30, 1938, at the age of 70.

He was one of the main forces behind the conference of revision of the Paris Convention

held in London in 1934 and the conference of revision of the Berne Convention held in Rome in 1928. He was a prolific legal writer, and the United Bureaus' periodicals of the era contain many excellent articles by him. He also participated in the writing of the two pamphlets which commemorated the first 50 years of the Paris Union (published in 1933) and of the Berne Union (published in 1936).

Ostertag continued to write for the periodicals even after his retirement. Some of his writings gave a real impetus to what much later led to the Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations.

The article on him published on the occasion of his retirement (1938 *La Propriété industrielle* 78) says that he "had a remarkable gift for legal creativity Mr. Ostertag was first of all a practitioner who was interested in the future and who boldly chose new directions, directions which corresponded to the expected needs of modern life to be served by the law. His work was that of a pioneer ...; events never caught him by surprise; on the contrary, he knew how to provoke them."

Bénigne Mentha was born at Cortaillod (Canton of Neuchâtel, Switzerland) on January 2, 1888, and he died in Thoun (Canton of Berne, Switzerland) on May 16, 1974.

Mentha was a *licencié en droit* (holder of a law degree) and entered the service of the United Bureaus at the age of 24, as a translator, in 1912. He retired after 41 years of service, interrupted once for a short period to be private secretary to Gustave Ador, then president of the Swiss Confederation. In 1922, he became secretary and, in 1938, Deputy Director.

He was appointed Director on May 1, 1938, and retired on May 1, 1953. Thus, he was Director for 15 years, between the ages of 50 and 65.

The period was certainly not an easy one: the worldwide recession and the second world war occupied a great part of it.

Mentha was principally a scholar and a specialist in the law of copyright. It was during his tenure that the conference of revision of the Berne Convention of 1948 took place in Brussels. It was also during his tenure that, under the auspices of Unesco, the Universal Copyright Convention was adopted in 1952. The creation of a second global multilateral treaty on copyright did not help the development of the Berne Convention. The responsibility is not only that of Mentha, far from it, since the adjustment of the Berne Convention that would have been necessary to save it from losing its unique position in international copyright relations was refused by the most influential

among the governments which founded the Berne Convention.

He was "modesty itself" says an article, written by his Deputy Director when he retired (1953 *La Propriété industrielle* 103). "He did not like modern working methods which necessitate frequent trips, unfavorable—in his opinion—for mental concentration without which nothing durable can be created. He preferred the contact of ideas to the contact of persons ..." (*ibid.*).

He was an excellent jurist, and the style of his legal writings, whether in French or German, is of an exceptional clarity and elegance. Many articles, mostly unsigned but unmistakably recognizable as his—because of his unique style—prove this in the issues of the periodicals *Le Droit d'auteur* and *La Propriété industrielle* of several decades.

Jacques Secrétan was born on May 13, 1897, in Etoy (Canton of Vaud, Switzerland), and he died in Dardagny (Canton of Geneva) on July 25, 1964, in the year following that in which he retired from his post as Director.

Secrétan held the degree of doctor of laws, was an attorney-at-law and a law professor at the University of Lausanne. He served in various capacities in the International Labour Office in Geneva from 1923 to 1940 (*attaché de cabinet* of the Director-General, member of the legal staff, legal counsel).

He was appointed Director of the United Bureaus—to which he gave the designation "BIRPI"—on May 1, 1953, and retired on January 15, 1963. Thus, he was Director for almost ten years, between the ages of 58 and 67.

He came to his new post with an extremely solid background and ideas of what a modern inter-governmental organization should be. His main interest was the modernization of the Unions and their secretariats. He had very clear ideas of what should be done. In a speech given in 1956, he summarized it in the following way: "Three years of experience in the present Union [of Paris] and 30 years of experience in other associations of States have led me to the following conclusions: (a) Intellectual rights—whether in the field of patents and trademarks or in the field of copyright—must enjoy international protection just as much as any other rights mentioned in the Universal Declaration of Human Rights. For this effect, they must benefit from the support of their own and general intergovernmental organization (b) Such organization must be given its own jurisdiction—that is, intellectual rights—and organs that can represent it, and can represent the said rights, efficiently in international relations. (c) Finally, the said organization should be part of the great

family of the United Nations" (1956 *La Propriété industrielle* 149).

These were prophetic words in 1956, and it took 18 years to accomplish what Secrétan proposed. He did not live long enough to see the accomplishment of all his wishes but he certainly took many practical steps that created an atmosphere propitious for carrying out his plans. He concluded working agreements with Unesco, the World Health Organization, the Council of Europe, the Organization of American States and others, which contributed towards placing BIRPI in a legal position similar to that of those organizations. He created and convened various committees consisting of representatives of governments members of the Paris and Berne Unions, which committees, step by step, and *de facto*, started to play the role vis-à-vis BIRPI that hitherto had been played exclusively by the Government of the Swiss Confederation. He persuaded the Swiss federal authorities to authorize the transfer of the seat of BIRPI from Berne to Geneva, and he persuaded the authorities of Geneva to accept BIRPI on their soil. The transfer took place in 1960. It had obvious practical advantages and had a symbolic value as well: moving into the international city *par excellence* that Geneva is, moving into a city in which the European headquarters (as it was called then) of the United Nations was and in which five other specialized agencies of the United Nations system of organizations already were could not but favor the realization of Secrétan's plans.

His tenure saw several diplomatic conferences and, among them, the conference of Rome (1961) establishing the Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations.

Secrétan was a man of great culture and a man of the world. He liked flamboyance and knew that a great enterprise—in which he was engaged—needed public attention, and that public attention had to be created and cultivated. He travelled much and in style, and was a generous host. The bronze bust of Secrétan, placed in the lobby of the BIRPI Building on March 20, 1983, the date of the centenary of the Paris Convention, bears the following inscription: "*Jacques Secrétan, 1897 — 1964, Directeur des BIRPI de 1953 à 1963, Bâtit-seur du siège des BIRPI à Genève.*"

Georg H.C. Bodenhausen was born in Utrecht (Holland) on July 11, 1905. He is a national of the Netherlands.

Bodenhausen studied law in the Netherlands and practiced there as an independent attorney-at-law, specialized in intellectual property from 1930 to 1962. He was also professor at the University

of Utrecht, teaching intellectual property law. His specialization in the field of intellectual property and his keen interest also in the international aspects resulted in the Netherlands Government's choosing him to be a delegate at the conference of revision of the Berne Convention held in Brussels in 1948, at the conference of revision of the Paris Convention held in Lisbon in 1958, at the 1960 Hague diplomatic conference for the revision of the Hague Agreement, and at the 1957 Nice diplomatic conference adopting the Nice Agreement, and to head the Netherlands delegation at the diplomatic conference, held in Rome in 1961, that adopted the Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations.

He was appointed Director of BIRPI on January 16, 1963, and elected Director General—the first Director General—of WIPO on September 22, 1970. He retired from both positions on November 30, 1973. Thus, he was in the service of BIRPI, or in the service of BIRPI and WIPO, for a total of almost eleven years, between the 58th and 69th years of his life.

Those eleven years saw many important events in the lives of the Berne Union and the United International Bureaus of the Paris and Berne Unions and the new International Bureau of WIPO.

The diplomatic conference of 1967 (Stockholm) not only created WIPO but also revised all the treaties then administered by BIRPI. Among those treaties, the Berne Convention was revised not only in respect of its administrative clauses but also, and profoundly, in respect of its substantive provisions. It was the first revision which introduced special provisions for the benefit of developing countries. Bodenhausen devoted special attention to the part of the Stockholm conference that dealt with the revision of the Berne Convention. The texts agreed upon in Stockholm soon had to be revised again, and the diplomatic conference which accomplished that revision, in Paris in 1971, was also masterminded by Bodenhausen.

Other diplomatic conferences held under his tenure were those of Locarno in 1968, of Washington in 1970, of Strasbourg in 1971, of Geneva in 1971, and of Vienna in 1973, adopting, respectively, the Locarno Agreement Establishing an International Classification for Industrial Designs, the Patent Cooperation Treaty, the Strasbourg Agreement Concerning the International Patent Classification, the Convention for the Protection of Producers of Phonograms Against Unauthorized Duplication of Their Phonograms, and the three Vienna treaties, namely, the Trademark Registration Treaty, the Vienna Agreement Establishing an International Classification of the Fig-

urative Elements of Marks and the Vienna Agreement for the Protection of Type Faces and their International Deposit.

It was during his tenure that BIRPI started to organize fellowships and training courses for developing countries. Bodenhausen opened the first such course ever held by the International Bureau. It was a course on copyright and took place at Brazzaville in the Congo in 1963.

During his tenure, 27 developing countries joined the Paris Union. The Soviet Union joined the Paris Union in 1965, after several official visits by Bodenhausen to Moscow and by Soviet representatives to Geneva.

The staff of BIRPI/WIPO also underwent a great change during the tenure of office of Bodenhausen: it grew from 52 to 149, and from comprising employees from six countries to employees from 32 countries. The English language was raised to a level equal to that of French as a working language. The construction of the WIPO Building started in May 1973.

The period called for the respect of solid legal traditions, erudition in the field of all branches of intellectual property law and diplomatic skill. Bodenhausen had all these, and had them to an exceptionally high degree. The International Bureau was extremely fortunate to have at its head the right man at the right time.

Arpad Bogsch was born in Budapest on February 24, 1919. He was then a national of Hungary; in 1959, he became a citizen of the United States of America.

Bogsch studied law and obtained law degrees in Budapest, Paris and Washington. He was a practicing lawyer in Budapest and a member of the Washington bar. He was a legal adviser in Unesco (Copyright Division) in Paris from 1948 to 1954 and in the United States Copyright Office in Washington from 1954 to 1962. In 1961 and 1962, he also worked in—as it was then called—the United States Patent Office.

He was a member of the delegation of Hungary at the conference of revision of the Berne Convention held in Brussels in 1948; he was a member of the delegation of the United States of America at the conference of revision of the Paris Convention held in Lisbon in 1958, at the diplomatic conference of The Hague in 1960 revising the Hague Agreement Concerning the International Deposit of Industrial Designs and at the diplomatic conference of Rome in 1961 adopting the Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations. He was also a delegate of the United States of America to several BIRPI meetings, and negotiations sponsored by BIRPI, in 1961 and

1962, preparing the reforms that started to be implemented in 1963.

Bogsch joined BIRPI on March 1, 1963. He had the title of special adviser until July 15 of the same year, when he was appointed, by the Federal Council of the Swiss Confederation, Deputy Director of BIRPI. When the WIPO Convention entered into force, he was appointed Deputy Director General of WIPO (on September 22, 1970).

In November 1973, Bogsch was elected Director General of WIPO for a period of six years. In 1979 and 1985, he was re-elected for the first and the second time, each time for a period of six years.

Since this article was written by him, it is left for others and for other occasions to recall his role as an official of BIRPI and WIPO.

Relations with the World Intellectual Property Organization and the United Nations

The first formal relations with the United Nations were relations between that organization and the United International Bureaus for the Protection of Intellectual Property (BIRPI). They were fixed in an exchange of letters effected in September and October 1964 and signed by G.H.C. Bodenhausen, then Director of BIRPI, and Philippe de Seynes, then Under Secretary-General for Economic and Social Affairs of the United Nations. The agreement provided for exchange of information and documentation and mutual representation at meetings (see 1964 *Industrial Property* 211).

Some three years later, the World Intellectual Property Organization (WIPO) was established by a treaty entitled "Convention Establishing the World Intellectual Property Organization" that was adopted and signed in Stockholm on July 14, 1967, and entered into force on April 26, 1970. According to the rules of procedure of the Stockholm Diplomatic Conference, at least four fifths of the members of the Paris Union and at least four fifths of the members of the Berne Union had to vote for the adoption of the WIPO Convention. In fact, they voted unanimously for the adoption of the Convention Establishing WIPO. Thus, in a sense, WIPO is the creation of the Paris and Berne Unions.

The relations between WIPO, on the one hand, and the Paris and Berne Unions, on the other, are regulated in the WIPO Convention, in the 1967 (Stockholm) Acts of the Paris and Berne Conventions and in the 1971 (Paris) Act of the Berne Convention.

As far as the Berne Union is concerned, and on the level of governing bodies, those relations are

characterized by the fact that all States members of the Assembly of the Berne Union which are members of WIPO are members of the General Assembly of WIPO and that all States members of the Executive Committee of the Berne Union which are members of WIPO are members of the WIPO Coordination Committee (see WIPO Convention, Articles 6(1)(a) and 8(1)(a)).

As to matters of common interest to WIPO and the Unions, the WIPO Convention provides that the WIPO Coordination Committee shall "give advice to the organs of the Unions [including the Assembly of the Berne Union and the Executive Committee of that Assembly], the [WIPO] General Assembly, the [WIPO] Conference, and the Director General [of WIPO], on all administrative, financial and other matters of common interest either to two or more of the Unions, or to one or more of the Unions and the Organization [WIPO], and in particular on the budget of expenses common to the Unions" (WIPO Convention, Article 8(3)(i)), whereas the 1967 (Stockholm) and 1971 (Paris) Acts of the Berne Convention provide that "with respect to matters which are of interest also to other Unions [other than the Berne Union] administered by the Organization [WIPO], the Assembly [of the Berne Union] shall make its decisions after having heard the advice of the Coordination Committee of the Organization" (Article 22(2)(b)) and that "with respect to matters which are of interest also to other Unions [other than the Berne Union] administered by the Organization [WIPO], the Executive Committee [of the Assembly of the Berne Union] shall make its decisions after having heard the advice of the Coordination Committee of the Organization" (Article 23(6)(b)). Furthermore, "the Executive Committee [of the Assembly of the Berne Union] shall meet once a year in ordinary session upon convocation by the Director General, preferably during the *same period* and at the *same place* as the Coordination Committee of the Organization [WIPO]" (1967 (Stockholm) and 1971 (Paris) Acts of the Berne Convention, Article 23(7)(a); emphasis added).

On the level of the chief executive and the secretariat, the situation is that "the Director General of the Organization [WIPO] shall be the chief executive of the [Berne] Union and shall represent the [Berne] Union," and that the "administrative tasks with respect to the [Berne] Union shall be performed by the International Bureau [of WIPO]" (1967 (Stockholm) and 1971 (Paris) Acts of the Berne Convention, Article 24(I)(c) and (a), respectively).

There are no direct relations between the United Nations and the Berne Union, except that representatives of the United Nations are invited to

sessions of the Assembly of the Berne Union and of the Executive Committee of that Assembly. But there are indirect relations, through the Director General of WIPO and the International Bureau of WIPO, on the basis of the agreement between the United Nations and WIPO, an agreement that has been in force since December 17, 1974. As a consequence of that agreement, on December 17, 1974, WIPO became a "specialized agency" in the United Nations system of organizations. The agreement "recognizes" WIPO "as a specialized agency and as being responsible for taking appropriate action in accordance with its basic instrument, treaties and agreements administered by it [WIPO], *inter alia*, for promoting creative intellectual activity and for facilitating the transfer of technology related to industrial property in order to accelerate economic, social and cultural development..." (Article 1 of the said Agreement). One of the treaties administered by WIPO to which that Agreement refers is the Berne Convention. Thus, the competence of the Berne Union is also recognized by the United Nations.

PART IV

THE HISTORY OF THE EFFORTS OF THE BERNE UNION FOR BETTER COPYRIGHT PROTECTION IN THE WORLD

The Berne Union, that is, the governments of the countries party to that Union, are aware of the fact that the promotion of a better protection of the rights of authors cannot be solely done by revising, from time to time, the Berne Convention but has to be done also by other actions, mainly through the International Bureau of Intellectual Property, the secretariat of WIPO.

Such other actions are chronicled in the following chapters. They are subdivided into four parts, dealing with the following four subjects: establishment of treaties on subjects related to copyright, copyright law subjects of topical interest, development cooperation in the field of copyright and cooperation with other organizations.

Establishment of Treaties on Subjects Related to Copyright

During the first hundred years of its existence, seven multilateral treaties were concluded under the exclusive or partial initiative and sponsorship

of the member countries and the organs of the Berne Union, treaties which deal with subjects related to copyright. These seven treaties were concluded in the 21-year period between 1960 and 1981 and are dealt with in the following in the chronological order in which they were adopted.

The 1960 [Hague] Act of the Hague Agreement Concerning the International Deposit of Industrial Designs. The original Hague Agreement was concluded in 1925 as a "special agreement," not under the Berne Convention, but under the Paris Convention for the Protection of Industrial Property. And yet, the Permanent Committee of the Berne Union, in its seventh ordinary session held in Geneva in 1958 (1959 DA 188) and its eighth ordinary session held in Munich in 1959 (1959 DA 206) noted and encouraged the preparations for the diplomatic conference that, eventually, led to the revision of the Agreement. The interest of the Berne Union was motivated by the fact that the distinction between industrial designs (a subject usually covered by industrial property laws and dealt with in the Paris Convention) and works of applied art (a subject usually covered by copyright laws and dealt with in the Berne Convention) is not always easy to make, so much so that in several countries the national laws allow the protection of the same objects as industrial designs and works of applied art. The Permanent Committee of the Berne Union was particularly concerned lest formalities required for protection under industrial property laws could spill over to protection by virtue of copyright laws and saw to it that a provision in the 1960 Act of the Hague Agreement (Article 14) expressly prevented any possible extension of formalities in the field of copyright since the Berne Convention provides that the enjoyment and the exercise of copyright "shall not be subject to any formality" (Article 5(2)).

The Hague Agreement provides for the possibility of depositing industrial designs internationally. The international deposit is made with the International Bureau of WIPO either directly or through the intermediary of the national industrial property office of the competent Contracting State. The international deposit has, in each of the Contracting States designated by the applicant, the same effect as if all the formalities required by the domestic law for the grant of protection had been complied with by the applicant and as if all administrative acts required to that end had been accomplished by the office of that State. Each Contracting State may refuse protection within six months from the date of the receipt of the publication of the international deposit. The refusal of protection can only be based on requirements of

the domestic law other than the formalities and administrative acts to be accomplished under the domestic law by the office of the Contracting State which refuses the protection. The effect of the international deposit lasts five years, or, if renewed, a total of ten years.

The system described above was in force on January 1, 1986, that is, at the beginning of the year of the centenary of the Berne Convention, among Belgium, France, Germany (Federal Republic of), Hungary, Liechtenstein, Luxembourg, Monaco, the Netherlands, Senegal, Suriname and Switzerland. During the calendar year 1985, 1,799 deposits, concerning some 12,000 designs were made.

The International [Rome] Convention [1961] for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations. The first formal expression concerning (one of the) neighboring rights dates back to 1928. In the conference of revision of the Berne Convention, held in that year in Rome, a *vœu* (wish or recommendation) was expressed by the member countries of the Berne Union to the effect that the possibility of measures for the safeguarding of the rights of performing artists be envisaged: "*La Conférence émet le vœu que les Gouvernements qui ont participé aux travaux de la Conférence envisagent la possibilité de mesures destinées à sauvegarder les droits des artistes exécutants.*"

The International Bureau of the Berne Union, together with the International Institute of Rome for the Unification of Private Law, convened a meeting of experts in Samedan (Switzerland) in 1939. That meeting drew up the draft of four separate treaties: (i) one on performers and the producers of phonograms, (ii) one on broadcasts, (iii) one on information by the press and (iv) one on *droit de suite*. Those drafts were based on a draft that was drawn up by Fritz Ostertag, then Director of the United International Bureaus of the Paris and Berne Unions. The four drafts were intended to become annexes to the Berne Convention and were intended to be adopted by the revision conference of the Berne Union scheduled to be held in Brussels in 1939.

The conference of revision of 1948 (Brussels) of the Berne Union did not deal with the said draft treaties. In three separate *vœux* (wishes or recommendations), it merely expressed the wish that the protection of the manufacturers of phonograms, of broadcasting organizations and performing artists be actively studied. The question of the conclusion of a treaty was considered by the Permanent Committee of the Berne Union in all its sessions between 1949 and 1960 as well as in the said Committee's subcommittee when it met,

twice, in 1951. In the second of those meetings, Bénigne Mentha, the then Director of the International Bureau, presented a remarkable report which remained a solid basis for further discussions (see 1951 DA 70).

The protection of performing artists was of interest also to the International Labour Organisation, whereas all three subjects (performances, phonograms, broadcasts)—because of their using works protected by copyright—were also of interest to Unesco which, through sponsoring the adoption of the Universal Copyright Convention, had its say in copyright matters. Thus, the possibilities of concluding a multilateral treaty on what was termed “neighboring rights” was pursued, during the ten-year period from 1951 to 1961, jointly, first, between the International Bureau of the Berne Union and the International Labour Office (ILO), and, later, also the Secretariat of Unesco. Some of the milestones of this preparatory work were the committees, study meetings, working groups or committees of experts convened by one, two or all three of the said Organizations: in Rome in 1951 (1951 DA 137), in Paris in 1954 (1954 DA 211), in Berne in 1955 (1955 DA 194), in Monaco in 1957 (1957 DA 72) and in The Hague in 1960 (1960 DA 161).

Those preparatory meetings led to the diplomatic conference, convened by the Government of Italy and the three intergovernmental secretariats (BIRPI, ILO and Unesco) and held in Rome in 1961. The Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations—popularly known as “the Rome Convention” or “the Neighboring Rights Convention”—was adopted by that diplomatic conference.

In order to underline its connections to copyright, the Rome Convention is open only to States party to the Berne Convention or the Universal Copyright Convention and provides, in its *first* article: “Protection granted under this [i.e., the Rome] Convention shall leave intact and shall in no way affect the protection of copyright in literary and artistic works.”

The purpose of the Rome Convention is to provide protection at the international level for the three categories of auxiliaries of literary and artistic creation mentioned in its title.

Performers (actors, singers, musicians, dancers, and other persons who perform literary or artistic works) are protected against certain acts the doing of which they have not consented to. Such acts are: the broadcasting and the communication to the public of their live performance; the fixation of their live performance; the reproduction of such a fixation if the original fixation was made without their consent or if the reproduction is made for

purposes different from those for which they gave their consent.

Producers of phonograms enjoy the right to authorize or prohibit the direct or indirect reproduction of their phonograms. Phonograms are defined in the Convention as meaning any exclusively aural fixation of sounds of a performance or of other sounds. When a phonogram published for commercial purposes gives rise to secondary uses (such as broadcasting or communication to the public in any form), a single equitable remuneration must be paid by the user to the performers, or to the producers of the phonograms, or to both; States are free, however, not to apply this rule or to limit its application.

Broadcasting organizations enjoy the right to authorize or prohibit certain acts, namely: the rebroadcasting of their broadcasts; the fixation of their broadcasts; the reproduction of such fixations; the communication to the public of their television broadcasts if such communication is made in places accessible to the public against payment of an entrance fee.

The Rome Convention created an Intergovernmental Committee “to study questions concerning the application and operation of this Convention ... and to collect proposals and to prepare documentation for possible revision of this Convention” (Article 32). The Secretariat of the Intergovernmental Committee is furnished by the International Bureau of the Berne Union (since 1970, of WIPO), the International Labour Office and the Secretariat of Unesco. The costs of the meetings of the Intergovernmental Committee are borne by WIPO, ILO and Unesco, or, more precisely, as far as WIPO is concerned, by the budget of the Berne Union.

The Intergovernmental Committee has held, so far, ten ordinary (1967, 1969, 1971, 1973, 1975, 1977, 1979, 1981, 1983, 1985) and two (1972, 1974) extraordinary sessions. In each of them, matters concerning the protection of neighboring rights were discussed and means are sought to encourage accession to the Convention by countries not yet party to it.

On January 1, 1986, that is, at the beginning of the year of the centenary of the Berne Convention (and the first quarter centenary of the Rome Convention), the following 29 States were party to the Rome Convention: Austria, Barbados, Brazil, Chile, Colombia, Congo, Costa Rica, Czechoslovakia, Denmark, Ecuador, El Salvador, Fiji, Finland, Germany (Federal Republic of), Guatemala, Ireland, Italy, Luxembourg, Mexico, Monaco, Niger, Norway, Panama, Paraguay, Peru, Philippines, Sweden, United Kingdom, Uruguay.

On the said date, the following 12 States were members of the Intergovernmental Committee: Austria, Brazil, Congo, Czechoslovakia, Finland, Germany (Federal Republic of), Italy, Mexico, Niger, Norway, Sweden, United Kingdom.

In order to facilitate the adoption of national laws on the subjects covered by the Rome Convention, the International Bureau of WIPO, the International Labour Office and the Secretariat of Unesco, with the help of two non-governmental study groups, both held at the headquarters of WIPO—one in 1973 and the other in 1974—prepared and published a model law, entitled “Model Law Concerning the Protection of Performers, Producers of Phonograms and Broadcasting Organizations” (1974 CR 163).

The [Geneva] Convention [1971] for the Protection of Producers of Phonograms Against Unauthorized Duplication of Their Phonograms. This multilateral treaty is generally known under the name “Phonograms Convention.”

During the first nine years of the existence of the Rome Convention on Neighboring Rights, it was realized that the protection given by that Convention to producers of phonograms was not extensive enough to combat piracy efficiently and, in any case, was largely ineffective because of the small number of countries that had ratified it or had acceded to it. There were only eleven such countries in 1971 (when the Phonograms Convention was concluded) and, among them, there were only two (the Federal Republic of Germany and the United Kingdom) that had a significant phonographic industry.

On the urging of the phonographic industry, WIPO and Unesco convened, in March 1971 in Paris, a committee of experts (1971 CR 54) and, in October 1971, in Geneva, a diplomatic conference (1971 CR 240). The first adopted a draft, and the latter adopted the final text, of the Phonograms Convention. As far as WIPO is concerned, the costs were borne by the Berne Union and the manpower was furnished by those members of the staff who were specialists in matters of the Berne Union.

The Phonograms Convention provides for the obligation of each Contracting State to protect a producer of phonograms who is a national of another Contracting State against the making of duplicates without the consent of the producer and against the importation of such duplicates, where the making or importation is for the purposes of distribution to the public. “Phonogram” means an exclusively aural fixation (that is, it does not comprise, for example, sound films or videocassettes), whatever be its form (disc, tape or other). Protection must generally last for at least 20 years from

the first publication of the phonogram. The Convention expressly provides that it “shall in no way be interpreted to limit or prejudice the protection otherwise secured to authors ...” (Article 7).

On January 1, 1986, that is, at the beginning of the year of the centenary of the Berne Convention, the following 39 States were party to the Phonograms Convention: Argentina, Australia, Austria, Barbados, Brazil, Chile, Costa Rica, Czechoslovakia, Denmark, Ecuador, Egypt, El Salvador, Fiji, Finland, France, Germany (Federal Republic of), Guatemala, Holy See, Hungary, India, Israel, Italy, Japan, Kenya, Luxembourg, Mexico, Monaco, New Zealand, Norway, Panama, Paraguay, Peru, Spain, Sweden, United Kingdom, United States of America, Uruguay, Venezuela, Zaire.

Article 8 of the Phonograms Convention provides that “the International Bureau of the World Intellectual Property Organization shall assemble and publish information concerning the protection of phonograms ... [and] ... shall, on request, furnish information to any Contracting State on matters concerning this Convention, and shall conduct studies and provide services designed to facilitate the protection provided therein.” All this, WIPO does with the help of money coming from the budget of the Berne Union. The Phonograms Convention provides also that WIPO shall exercise the said functions “in cooperation, for matters within their respective competence” with Unesco and the International Labour Organization.

As the secretariat under the Phonograms Convention, the International Bureau of WIPO reports to, and receives instructions from, the Assembly and the Executive Committee of the Berne Union. Matters concerning the Phonograms Convention are considered in particular detail in the extraordinary sessions (convened every second year) of the Executive Committee of the Berne Union.

The Vienna Agreement [1973] for the Protection of Type Faces and their International Deposit. This Agreement was adopted by the Diplomatic Conference of Vienna convened by the Government of Austria after preparation by WIPO (1973 CR 122).

On January 1, 1986, that is, at the beginning of the year of the centenary of the Berne Convention, the said Agreement has not yet been ratified or acceded to by the number of countries required for its entry into force.

The [Brussels] Convention [1974] Relating to the Distribution of Programme-Carrying Signals Transmitted by Satellite. This multilateral treaty is usually referred to as “the Satellites Convention.”

The work leading—six years later—to the adoption of the Satellites Convention started in a working group convened by the United International Bureaus of the Berne and Paris Unions (BIRPI) in Geneva in 1968 (1968 CR 230). It was continued in a Meeting of Governmental Experts convened by Unesco in 1969 (1970 CR 57). In 1969, the Permanent Committee of the Berne Union and the Intergovernmental Copyright Committee, serviced by Unesco, decided that, directed by them, WIPO and Unesco should jointly pursue the matter. This was done in three Committees of Governmental Experts: the first was held in Lausanne-Ouchy (Switzerland) in 1971 (1971 CR 102), the second was held in Paris in 1972 (1972 CR 142), and the third in Nairobi in 1973 (1973 CR 147).

The diplomatic conference that adopted the Satellites Convention took place in Brussels in 1974 (1974 CR 143).

The Satellites Convention provides for the obligation of each Contracting State to take adequate measures to prevent the unauthorized distribution on or from its territory of any programme-carrying signal transmitted by a satellite. The distribution is unauthorized if it has not been authorized by the organization—typically a broadcasting organization—which has decided what the programme consists of. The obligation exists in respect of organizations that are “nationals” of a Contracting State. The provisions of the Convention are not applicable, however, where the distribution of signals is made from a direct broadcasting satellite.

On January 1, 1986, that is, at the beginning of the year of the centenary of the Berne Convention, the following eleven States were party to the Satellites Convention: Austria, Germany (Federal Republic of), Italy, Kenya, Mexico, Morocco, Nicaragua, Panama, Peru, United States of America, Yugoslavia.

The Satellites Convention does not establish any intergovernmental organ. Nevertheless, the Assembly and the Executive Committee of the Berne Union follow its development and encourage ratifications and accessions. A Working Group, convened in Geneva in 1978 (1978 CR 151), jointly by WIPO and Unesco “on the Implementation of the Satellites Convention,” prepared model provisions for the implementation of the said Convention. Those provisions were further refined by a Committee of Governmental Experts, equally convened jointly by WIPO and Unesco, meeting in Paris in 1979 (1979 CR 219).

As far as WIPO is concerned, all activities concerning the Satellites Convention are monitored by the Assembly and the Executive Committee of the Berne Union, and the corresponding expenses are covered by the budget of that Union.

Multilateral [Madrid] Convention [1979] for the Avoidance of Double Taxation of Copyright Royalties. This Convention was adopted by a diplomatic conference convened by the Government of Spain after preparation by WIPO and Unesco. It was held in Madrid in 1979 (1980 CR 12). As far as WIPO is concerned, the costs of the preparation of the Convention were borne by the Berne Union and it is the organs—the Assembly and the Executive Committee—of that Union that monitor the fate of the Convention.

On January 1, 1986, that is, at the beginning of the year of the centenary of the Berne Convention, the Madrid Convention has not yet been ratified or acceded to by the number of countries required for its entry into force.

Nairobi Treaty [1981] on the Protection of the Olympic Symbol. All States which are party to this Treaty are under the obligation to protect the Olympic symbol—five interlaced rings—against use for commercial purposes (in advertisements, on goods, as a trademark, etc.) without the authorization of the International Olympic Committee.

The Treaty also provides that, whenever a license fee is paid to the International Olympic Committee for its authorization to use the Olympic symbol for commercial purposes, part of the revenue must go to the interested national Olympic committees.

Thus, the Treaty should create a new and very important source of revenue for the national Olympic committees—particularly for the national Olympic committees in developing countries—for the purposes of establishing new sports facilities such as arenas and swimming pools, and for paying the expenses of athletes of developing countries connected with their travel and participation in the Olympic Games.

The Nairobi Treaty was adopted by a diplomatic conference convened by WIPO in 1981 (1981 CR 305).

On January 1, 1986, that is, at the beginning of the year of the centenary of the Berne Convention, the following 27 States were party to the Nairobi Treaty: Algeria, Bolivia, Brazil, Bulgaria, Chile, Congo, Cuba, Cyprus, Egypt, El Salvador, Equatorial Guinea, Ethiopia, Greece, Guatemala, India, Italy, Jamaica, Kenya, Mexico, Qatar, Senegal, Sri Lanka, Syria, Togo, Tunisia, Uganda, Uruguay.

Copyright Law Subjects of Topical Interest

Introduction. One of the most important activities of the International Bureau of WIPO (former-

ly BIRPI) is the promotion, under the aegis of the Berne Union, of a better protection of copyright. This is particularly true for matters that are in a more or less uncertain legal situation when they emerge as a consequence of changes in the technologies that can be used for the dissemination of works or as a consequence of changes in the socio-economic environment. Such changes have their effect on the domestic and international policies concerning the relations among authors, users of their works and the public.

WIPO and the Berne Union try to keep pace with those changes and seek solutions to the new problems as they emerge. Since the 1971 (Paris) conference of revision of the Berne Convention, such solutions are sought in ways other than a new revision of the Berne Convention. The high number of the countries party to that Convention (76 at the date of the centenary in 1986), the greater differences in wealth among the member countries and the enormous cultural variety among them make it difficult if not unlikely, at least on major issues, to obtain the unanimity that is required for any revision of the Berne Convention (Berne (Paris) Convention, Article 27(3)).

This is why the means whereby the desired updating and improvement of the legal protection consist not in revising the Berne Convention but of advice to the national legislators, or, in other words, in attempts at persuasion, and, in a few (rather rare) cases, in attempts at concluding new special multilateral treaties. Examples of the latter are the, so far unsuccessful, attempts at concluding treaties on the protection of computer software and the protection of expressions of folklore.

On the other hand, many of the attempts at persuasion may be considered as successful, at least to some extent. By "successful," what is meant is that the advice given by WIPO and Berne Union bodies is heeded by governments when they propose the updating of national copyright laws, by legislators when they proceed with such updating and by courts when they interpret and apply the Berne Convention and their national laws.

This chapter deals with those matters roughly in the chronological order in which they emerged in the program of the Berne Union. Three of the 14 individually considered subjects preceded the 1967 (Stockholm) conference of revision, the last conference to deal with substantive copyright law of general applicability. (The 1971 (Paris) conference of revision dealt with substantive copyright law applicable only by developing countries.) The consideration of the remaining eleven questions took place in the last 18 years (1968 to 1986) of the centennial. They are questions concerning reprography, computer use, computer programs, videocassettes, cable television, expressions of

folklore, rental of phonograms, private copying, direct broadcast satellites, employed authors, publishing contracts and piracy.

Those matters were considered in scores of meetings, each convened for the consideration of one of those matters. The participants, averaging some 60 per meeting, were government officials ("delegates"), experts acting in their personal capacity (sometimes called "independent experts") and representatives of interested intergovernmental and non-governmental ("private") organizations (associations). Most of such meetings were jointly organized by the International Bureau of WIPO and the Secretariat of Unesco and were held at the headquarters of WIPO in Geneva or at the headquarters of Unesco in Paris. The working languages were English and French, and, in many meetings, also Arabic, Russian and Spanish. As far as WIPO is concerned, the costs (staff, interpretation, translation and reproduction of documents, etc.) were covered by the budget of the Berne Union.

The question of what matter should be considered, when and by what kind of expert body (working group, committee of experts, expert group, "forum," etc.) was decided by the Assembly of the Berne Union and the decision incorporated in what is called the biennial (before 1980, triennial) program of that Union. The program is proposed by the Director General of WIPO and is adopted, with or without changes, by the Assembly.

The Assembly usually does not deal with all the details. They are dealt with by the Executive Committee of the Berne Union which, for that very purpose, meets in an extraordinary session at least once every second calendar year (since 1971).

The intellectual preparation and servicing of the expert groups in which the in-depth substantive consideration of copyright law matters takes place is furnished mainly by the International Bureau of WIPO, in most cases in consultation with the Secretariat of Unesco. Thousands of pages were written in the said period of 18 years by the Director General and the staff of the International Bureau of WIPO to serve as "preparatory documents" for the expert groups. And hundreds of pages were written by them as "draft reports" on the discussions and conclusions of the meetings of those groups. Most meetings lasted a week (Monday to Friday). The draft report is usually written during the night between the penultimate and the last day of the meetings of the expert group and is adopted, with or without modification, in the closing meeting in which, naturally, all participants may propose changes in the draft.

It is in the nature of this work that it is a work that can never end. The economic, social and

technological situation, the legal systems and their underlying ideologies, as well as the political positions and the policies of the governments of the countries change constantly. With changes, new questions emerge and existing solutions have to be re-examined.

What follows in this chapter is, therefore, to be regarded as the picture merely of a short period in the history of copyright and the Berne Union. The examination of almost all the questions dealt with in this chapter will have to be continued beyond the centennial.

Protection of Cinematographic Works. Questions concerning the protection of cinematographic works, particularly the question in whom should copyright in such works originally vest, were considered by the Permanent Committee of the Berne Union between 1952 and 1963. Various reports were commissioned and prepared and study groups were convened. Their findings served as a basis for the very important amendments that the 1967 (Stockholm) conference of revision made in the provisions of the Berne Convention concerning cinematographic works.

More Effective Protection of Copyright. It was the Delegation of India that, in the 1959 session of the Permanent Committee of the Berne Union, proposed a study on the means whereby the protection of the rights of owners of copyright could be rendered more effective, for example, through increased criminal sanctions (1959 DA 10). The study resulted in a recommendation by the Permanent Committee of the Berne Union and the Intergovernmental Committee of the Universal Copyright Convention, adopted in 1960, to the effect that countries should "facilitate the application of criminal proceedings in case of infringement of copyright" (1960 DA 334) and in a resolution, adopted in 1963, expressing the hope that "countries which have no such provisions or which give to authors an insufficient protection will adopt the necessary measures to do so" (1964 CR 41).

Extension of the Term of Protection. Two committees of experts, convened by BIRPI on the request of the Permanent Committee of the Berne Union, in Geneva in 1961 and in Rome in 1962, respectively, dealt with the question of whether the minimum term of protection provided for in the Berne Convention should not be extended or, at least, whether national legislations should not be encouraged to adopt a term of protection longer than the said minimum (1962 CR 113). The work was monitored by the Permanent Committee of the Berne Union and the results were used in the 1967 (Stockholm) conference of revision.

Reprography. The problem of copying by photography and other similar methods, easily accessible to almost anyone, of works protected by copyright, and of the cases, if any, in which, and the extent to which, such copying should be permissible without the authorization of the owner of the copyright, has been the subject of a number of special meetings sponsored by WIPO and Unesco. Such meetings took place between 1968 and 1975 and were monitored, as far as the Berne Union is concerned, by the Permanent Committee (until 1970) and the Executive Committee (thereafter) of that Union.

Considerations culminated in a resolution adopted by a joint meeting of a subcommittee of the Executive Committee of the Berne Union and a subcommittee of the Intergovernmental Copyright Committee established under the Universal Copyright Convention, held in Washington in 1975. The resolution is far from recommending in any precise manner what national laws could or should provide for. The following passage, however, is definitely of interest: "In those States where the use of processes of reprographic reproduction is widespread, such States could consider, among other measures, encouraging the establishment of collective systems to exercise and administer the right to remuneration" (1975 CR 175). The enormous effort put into the search for solutions was not in vain as several countries have subsequently adopted solutions based on the quoted recommendation.

Storage of Protected Works in, and Retrieval from, Computers; Computer-Created Works. Professor Eugen Ulmer (Federal Republic of Germany) was the author of a report, presented in 1971 to the Executive Committee of the Berne Union and the Intergovernmental Copyright Committee established under the Universal Copyright Convention, which dealt with "problems arising from the use of electronic computers and other technological equipment." According to Ulmer, "the essential question, as far as copyright was concerned, was whether the owners of copyright could exercise control at the point of input into a computer system, or only at the output stage" (1972 CR 15). His reply was that the author's authorization was required, at least under the Berne Convention, already for inputting his protected work into the memory of a computer.

The study later extended to the question of copyright protection for works created with the help of computers.

Among the several meetings, jointly sponsored by WIPO and Unesco, the two sessions of the Committee of Governmental Experts on Copyright Problems Arising from the Use of Computers

for Access to or the Creation of Works, held in 1980 and 1982, were particularly important. Among the recommendations adopted by the Committee of Experts, the most basic seems to be the following: "Storage in and retrieval from computer systems (input and output) of protected works may ... involve at least the following rights of authors ... (a) the right to make or authorize the making of translations, adaptations or other derivative works, (b) the right to reproduce any work involved, (c) the moral rights" (1982 CR 245).

As far as computer-created works are concerned, the Committee of Experts held that "In the case of works produced with the use of computer systems, the copyright owner in such works can basically only be the person or persons who produced the creative element without which the resulting work would not be entitled to copyright protection. Consequently, the programmer (the person who created the programs) could be recognized as co-author only if he or she contributed to the work by such creative effort" (1982 CR 247).

Computer Programs (Software). Substantive work on the question of the legal protection of computer programs in the framework of WIPO started in 1971 in the Advisory Group of Governmental Experts on the Protection of Computer Programs (1971 CR 35). That Group proposed that WIPO carry out a study on the best means of protecting computer programs. The study was carried out by the Advisory Group of Non-Governmental Experts on the Protection of Computer Programs. It was convened by WIPO under the aegis of the Paris Union for the Protection of Industrial Property (rather than the Berne Union!) and met four times: in 1974 (1974 CR 226), 1975 (1975 CR 183), 1976 (1976 CR 163) and 1977 (1977 IP 259). ("IP" stands for the WIPO monthly periodical *Industrial Property*.) Its work resulted in the drafting of model provisions (1977 IP 265) for national legislators on the protection of computer software (that is, not only computer programs). The model provisions were neither in the nature of copyright nor in the nature of other branches of intellectual property law. They provided for a *sui generis* protection. They defined "computer software" as including computer program, program description and supporting material. "Computer program" was defined as "a set of instructions capable, when incorporated in a machine-readable medium, of causing a machine having information-processing capabilities to indicate, perform or achieve a particular function, task or result." The model provisions also provided that, to be protected, computer software

must be "original in the sense that it is the result of its creator's own intellectual effort." Furthermore, under the model provisions, the authorization of the proprietor was required for disclosing, copying, using, selling, etc., the computer software. The model provisions provided for a term of protection of 20 years from the first use, sale, lease or licensing of the software but not beyond 25 years from the creation of the software.

The model provisions, however, were not followed by the legislator of any country. The belief, that characterized international thinking up to 1977, that computer software or, at least, computer programs should be protected by *sui generis* provisions started to give way to the belief that computer software is a literary or artistic work that should be, if it is not already, protected by copyright. The enactment, in 1980, by the United States of America, of an amendment to its Copyright Act, which expressly granted the status of "work" to computer programs, is one often cited example of this—then new—belief.

Thereupon, WIPO constituted the Expert Group (later called "Committee of Experts") on the Legal Protection of Computer Software. That Group or Committee was under the aegis of both the Paris and the Berne Unions. It met twice: once in 1979 (1980 CR 36) and once in 1983 (1983 CR 271). It no longer dealt with model provisions for national legislators but, essentially, with the question whether, in order to assure the *international* protection of computer software, a special multinational treaty should be concluded. Its conclusion was negative. Although it is difficult to document it, the view most successfully pressed by experts was that a treaty was *not* necessary since the Berne Convention and the Universal Copyright Convention already provided everything that was necessary for the protection of computer programs. This view naturally entailed the consideration of the Universal Copyright Convention and the shifting of the jurisdiction—which first belonged to the Paris Union, then jointly to the Paris and Berne Unions—to the Berne Union and Unesco (the latter because it is the secretariat of the Intergovernmental Copyright Committee established under the Universal Copyright Convention).

Thus, in 1985, WIPO and Unesco convened, jointly, the Group of Experts on the Copyright Aspects of the Protection of Computer Software (1985 CR 146). The meeting was not conclusive as is illustrated by the following passages quoted from the report of the Group of Experts: "Several participants expressed the view that the international copyright conventions protected computer programs and required no amendment to that effect. Other delegations expressed their doubts as to the applicability, with their present content, of

those conventions" (1985 CR 147). "A great number of participants stated that computer programs were works protected by copyright.... Delegations from countries where computer programs were protected by copyright said that, in general, copyright provided an effective means of protection.... Several delegations said that in their countries the possibility of adopting *sui generis* protection was under consideration. Some participants raised doubts as regards the applicability of copyright to computer programs.... They also referred to difficulties resulting from the unclear coverage of copyright protection as regards various uses of the program and had doubts about its efficacy. In their view, the recognition of copyright protection of computer programs would erode the system of protecting traditional forms of authors' works" (1985 CR 147 and 148).

In 1986, the year of the centenary of the Berne Convention, the Berne Union was planning no further consideration of the question. This does not mean, however, that one day WIPO will not have to revert to the question since the economic interests involved, particularly in international transactions, in respect of computer software, are enormous, and will very probably further increase in the future, so that complete clarity will be indispensable about the question whether every country party to the Berne Convention is obliged—because of its being party to that Convention—to grant copyright protection (with the norms of that Convention) to computer programs and, if so, is obliged to grant such protection to computer programs created or first (or simultaneously) published in any other country member of the Berne Union.

Cable Television. During the last decade of the first hundred years of the Berne Convention, the questions of copyright and neighboring rights in connection with cable television occupied a prominent position among the preoccupations of the Berne Union. The Executive Committee of the Berne Union dealt with the matter in seven of its extraordinary sessions. They were held in 1975 (1976 CR 47), 1977 (1978 CR 111), 1979 (two sessions: 1979 CR 86 and 298), 1981 (1982 CR 72), 1983 (1984 CR 62) and 1985 (1985 CR 282). On substance, the matter was considered by a WIPO-Unesco working group in 1977 (1977 CR 246), by subcommittees of the Executive Committee of the Berne Union and the Intergovernmental Copyright Committee established under the Universal Copyright Convention in 1978 (1978 CR 203), by a subcommittee of the Intergovernmental Committee established under the Neighboring Rights (Rome) Convention also in 1978 (1978 CR 347), by a working group called the "Group of Indepen-

dent Experts on the Impact of Cable Television in the Sphere of Copyright" in 1980 (1980 CR 154) and 1981 (1981 CR 218) and by a joint meeting of the subcommittees of the Executive Committee of the Berne Union and the Intergovernmental Committees established under the Universal Copyright and the Neighboring Rights (Rome) Conventions in 1982 (1983 CR 80) and in 1983 (1984 CR 184; hereinafter referred to as "the 1983 Meeting").

The essential question examined was the following: what rights have or should have the owners of copyright and neighboring rights when their works or performances are distributed by cable? Such distribution may consist of the distribution of a broadcast of the work or the performance, or it may consist of a distribution that has no connection with broadcasting. The first is called "distribution by cable of a broadcast" and was defined by the 1983 Meeting as "distribution by cable of a broadcast program item simultaneously with the broadcast of that program item and without any change therein." The second is called the distribution (by cable) of a cable-oriented (or cable-originated) program (1984 CR 145). The main issue is whether either kind of distribution requires the authorization of the owner of the copyright or neighboring right or may be done without such authorization, subject, however, to the payment of a certain compensation to the owner. The answer is not the same for all owners and all kinds of distributions and depends on the provisions of the applicable multilateral treaties. The 1983 Meeting put down the proposed answers in 38 points. Each point is called a principle and is drafted in the style of a legislative text. In other words, each point is a model provision for national legislators. The said 38 "principles," with "annotations" (commentaries) for each, were adopted by the 1983 Meeting and were published in 1984 (1984 CR 146).

Works or "Expressions" of Folklore. The Executive Committee of the Berne Union started to deal with the question of the intellectual property in works of folklore in 1975 (1976 CR 50) and continued to deal with it in its extraordinary sessions of 1977 (1978 CR 114), 1979 (1979 CR 77), 1981 (1982 CR 75), 1983 (1984 CR 65) and 1985 (1985 CR 284).

The subject matter is "expressions of folklore" which, according to one of the international meetings (held in 1984; see below), means "productions consisting of characteristic elements of the traditional artistic heritage developed and maintained by a community or by individuals reflecting the traditional artistic expectations of their community" (1985 CR 47). Such expression may be "verbal" (tales, poems, riddles), "musical" (instru-

mental music), "by action" (dances, plays, artistic forms or rituals) or "tangible" (drawings, paintings, carving, sculptures, pottery, terracotta, mosaic, woodwork, metalware, jewelry, basket-weaving, needlework, textiles, carpets, costumes; musical instruments; architectural forms). The main problems are to what extent, if any, should any commercial exploitation of expressions of folklore be licit only with authorization, who should be entitled to give such authorization (the government?), and who should benefit by the money paid for the authorization (the "community?"). Among the numerous other problems are the protection against the distortion of the expressions of folklore (a kind of collective moral right of the community) and the duration (unlimited?) of the protection. The consideration of those problems led to two sets of provisions: the first, model provisions for national legislators; the second, the draft of a multilateral treaty.

The work on model provisions was carried out by a working group of experts, called the "Working Group on the Intellectual Property Aspects of Folklore Protection," meeting twice (in 1980 (1980 CR 110) and in 1981 (1981 CR 111)) and by the Committee of Governmental Experts on the Intellectual Property Aspects of the Protection of Expressions of Folklore, meeting in 1982 (1982 CR 278). That work resulted in a model law of 14 sections entitled "Model Provisions for National Laws on the Protection of Expressions of Folklore Against Illicit Exploitation and Other Prejudicial Actions" (1982 CR 282).

The work on a multilateral treaty has consisted, so far, in a meeting of the "Group of Experts on the International Protection of Expressions of Folklore by Intellectual Property." That Group met in 1984, and its discussions were based on the draft of a multilateral treaty prepared by the secretariat of WIPO and Unesco (1985 CR 40).

All the above-mentioned meetings were jointly convened by WIPO and Unesco and, as far as WIPO is concerned, were monitored by the Executive Committee of the Berne Union.

In 1986, the year of the centenary of the Berne Convention, it is yet too early to say whether the efforts described above would be followed by enactments of national laws and the adoption of a multilateral treaty.

Rental and Lending of Phonograms and Videograms. The rental of phonograms and videograms characteristically amounts to a commercial and public use of the works whose performances are incorporated in the phonograms or videograms. Or, if the work is an audiovisual work (a motion picture), the rental is a rental of the work itself. The same is true in respect of phonograms where

copyright vests, as it does under certain copyright laws, in the producer of the phonogram. Performing artists whose performances are incorporated in phonograms or videograms have claims also where the said devices are rented.

What is or should be the response of intellectual property laws: right of authorization, right to a remuneration, or no right whatsoever?

These are the main questions whose examination was first decided in 1981 (1982 CR 76) and further pursued in 1983 (1984 CR 68) on the basis of a study prepared by the International Federation of Phonogram and Videogram Producers (IFPI), and in 1985 (1985 CR 285) on the basis of the report of the Group of Experts on the Rental of Phonograms and Videograms (1985 CR 16). The said examination was carried out by the Executive Committee of the Berne Union and the Intergovernmental Copyright Committee established under the Universal Copyright Convention. The Group of Experts was jointly convened by WIPO and Unesco.

That Group of Experts expressed, among other things, the view "that authors should enjoy, under copyright law, an exclusive right to authorize the rental or lending of phonograms or videograms embodying or constituting their works" (1985 CR 19). The Group of Experts recognized that "the soliciting and granting of licenses [authorizing the rental or lending] may require legislative measures ... resulting in the collective administration of the rights [of authorization]" (*loc. cit.*), and it recommended further studies "which should deal also with the uses (copying, performances, etc.) to which rented or lent copies may be put" (*loc. cit.*).

In 1986, the year of the centenary of the Berne Convention, the said studies were well under way in the International Bureau of WIPO.

Private Copying. The meeting, in 1984, of the Group of Experts on Unauthorized Private Copying of Recordings, Broadcasts and Printed Matter, jointly convened by WIPO and Unesco (hereinafter referred to as "the 1984 Group of Experts") was the meeting that, at the beginning of 1986, the year of the centenary of the Berne Convention, was the most recent of the international meetings dealing with problems of private ("home") copying.

The 1984 Group of Experts found that "the cumulative effect of reproduction for private purposes of sound and audiovisual recordings and broadcasts ['home taping'] as well as reprographic reproduction for private use of printed works is prejudicial to the author's legitimate interests.... Consequently, national legislations should not exempt such reproductions for private purposes

from copyright liability.... 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" (1984 CR 281).

The consideration of the problem, as far as sound and audiovisual recordings are concerned, started in the Executive Committee of the Berne Union and the Intergovernmental Copyright Committee established under the Universal Copyright Convention in 1977 (1978 CR 109). It was further considered by the said two Committees in 1979 (1979 CR 297) and 1985 (1985 CR 289). It was also considered, but only in respect of audiovisual recordings, in two expert groups in 1977 and 1978, the first being the Working Group on the Legal Problems Arising from the Use of Videocassettes and Audiovisual Disks (1977 CR 87) and the second being the Subcommittees of the Executive Committee of the Berne Union and of the Intergovernmental Committee of the Universal Copyright Convention on Legal Problems Arising from the Use of Videocassettes and Audiovisual Disks (1978 CR 406).

The 1984 Group of Experts suggested that the International Bureau of WIPO and the Secretariat of Unesco prepare "annotated principles" on questions of private copying. It is foreseen that this will be done in the years following the centenary of the Berne Convention.

Direct Broadcasting by Satellites. The question considered is the question what rights authors have when the works protected by copyright are transmitted by broadcasting, and such broadcasting is effected with the help of one or several artificial satellites and the signals transiting such satellites or satellite can be received by the members of the public ("direct broadcasting by satellites").

As far as the Berne Union is concerned, the question was discussed, in depth, for the first time in the "Group of Experts on the Copyright Aspects of Direct Broadcasting by Satellite." The Group of Experts was convened by WIPO and Unesco, and it met in 1985 (1985 CR 180).

There was unanimity in the Group of Experts "that it was always the broadcaster originating the direct broadcasting by satellite (determining its program and giving the order for its distribution) who was responsible vis-à-vis the owners of the copyright concerned" (1985 CR 183). The question on which views differed was the question whether this responsibility of the originating broadcaster had to be determined on the basis of the law of the country where the broadcasting

originated or, if the broadcast was receivable also in other countries, on the basis of the laws of both the country where the broadcasting originated and the countries in which the broadcasting was receivable. The Director General of WIPO was of the view that the requirements of all the said countries had to be respected by the broadcaster. He based his opinion, among other things, on the Berne Convention which considered broadcasting as a communication to the public rather than a mere emission (the latter concept is not even mentioned in the Berne Convention). The answer to the question of the law or laws of which country or countries applies or apply has great practical significance since some countries party to the Berne Convention recognize the right of broadcasting as an exclusive right of authorization, whereas others recognize it as a right merely to an equitable remuneration (compulsory license).

The question has not been resolved at the time (1986) of the centenary of the Berne Convention. It will be doubtless further studied in the years following the centenary, as desired by the Executive Committee of the Berne Union and the Intergovernmental Copyright Committee established under the Universal Copyright Convention, a desire expressed in their sessions of 1985 (1985 CR 289).

Employed Authors. A committee, called the "Committee of Experts on Model Provisions for National Laws on Employed Authors," convened by WIPO and Unesco in January 1986, adopted such model provisions (1986 CR 76). More precisely, they adopted two sets of such provisions. One is based on the principle that copyright originally vests in the author even where he is an employee ("salaried author") and has created his work within the scope of his employment contract. The other set of provisions is based on the principle that where a work is created in the scope of an employment contract, copyright originally vests in his employer. The draft provisions also provide for exceptions from these principles and for rules covering the moral rights of the author. The reason for which the drafting of model legislative provisions seemed to be desirable is that, generally, the employee is in a weaker bargaining position than the employer, and it is justified that this weakness be mitigated by legislative provisions protecting the natural person that every author is.

The matter, however, is not concluded, and its consideration in the Executive Committee of the Berne Union (1985 CR 286) is expected to continue beyond the centenary (1986) of the Berne Convention.

Publishing Contracts. Just as employee authors are generally in a weaker bargaining position vis-à-

vis their employers, so are independent authors vis-à-vis their publishers. Here, too, national laws should help to put authors in a better position, and this is why, in 1984, a working group (1985 CR 289) and, in 1985, a committee of governmental experts (1986 CR 40) on "Model Provisions for National Laws on Publishing Contracts for Literary Works" were convened by WIPO and Unesco.

Both meetings, however, could not agree on draft provisions. Several participants were of the opinion, expressed with insistence, that, in fact, authors were generally not in a weaker bargaining position than their publishers and, consequently, needed no special support by legislation. (As a matter of fact, a similar view was expressed by some delegations also in respect of employed authors, a matter considered in the preceding chapter.)

Thus, by the end (1986) of the centenary of the Berne Convention, the consideration of the matter was not completed, and it was an open question whether it would be further considered in the framework of the Berne Union. (As to the discussion of the matter in the Executive Committee of the Berne Union in 1985, see 1985 CR 289.)

WIPO Forums for Combating Piracy. In order to call public attention and, in particular, the attention of legislators and governments, to the evils of piracy and to the need of combating it, WIPO has organized two "WIPO Worldwide Forums." The first, held in 1981, dealt with the piracy of sound and audiovisual recordings (1981 CR 191). The second, held in 1983, dealt with the piracy of broadcasts and the printed word (1983 CR 159). Each Forum was attended by some 200 participants, heard dozens of lecturers, held discussions with the lecturers and adopted resolutions urging the adoption and application of more effective measures for combating piracy.

Other Special Copyright Matters Considered in the Framework of the Berne Union. Other copyright matters that were considered in the last years of the first centenary of the Berne Union, under the supervision of the Executive Committee of that Union and the Intergovernmental Copyright Committee established under the Universal Copyright Convention, included the following:

- *domaine public payant* (1984 CR 69);
- *droit de suite* (1984 CR 70);
- model statutes for authors' organizations (1984 CR 70);
- copyright problems arising from the access by handicapped persons to protected works (1979 CR 87, 1982 CR 73, 1985 CR 283);
- the advisability of setting up an interna-

tional register of audiovisual works (WIPO documents of the WIPO/FILMREG/I series of 1984).

Development Cooperation in the Field of Copyright

Nothing is more important for the survival and the extension of the principles of international copyright protection enshrined in the Berne Convention than the positive attitude of developing countries. The world had, in 1986, the year of the centenary of the Berne Convention, over 170 countries. Some 125 of them were so-called developing countries. Only 40 of them were members of the Berne Convention. Many of the remaining developing countries not only were not party to the Berne Convention but did not have a copyright law at all or, if they had one, it was inadequate or inadequately applied in practice.

The positive attitude of developing countries means working on the adoption of a copyright law in a country where there is none (in 1986, the most important example was China), working on the improvement of the copyright law when the country has a law which is not fully in harmony with its present economic and social goals, and working on a better administration and enforcement of the rights protected by copyright when the present administration or enforcement of such rights is not entirely what it should be.

The International Bureau, as an organ of WIPO and of the Berne Union, has devoted ever-increasing attention to the development of developing countries by serving them—as far as the Berne Union is concerned—in the field of copyright.

The present chapter is a brief description of the most important activities destined to serve developing countries. It is a history of some 20 years only, since, although the notion of developing countries (then called "underdeveloped countries") is some 40 years old in 1986, the Berne Union became active in the field of special service to developing countries only in the mid-nineteen-sixties.

Foundations and Organs of the Development Cooperation Activities. The Convention Establishing the World Intellectual Property Organization, signed in Stockholm in 1967, provides that "in order to attain the objectives [of WIPO] ... the Organization [that is, WIPO], through its appropriate organs, and subject to the competence of each of the Unions [among which, the one of interest here is the Berne Union] ... (v) shall offer its cooperation to States requesting legal-technical assistance in the field of intellectual property ..." (Article 4). The same Convention provides that the Conference of WIPO—that is, the assembly of all

States members of WIPO—"shall ... establish the biennial program of legal-technical assistance" (Article 7(2)(iii)).

Most of the costs of the technical-legal assistance, or, using the terminology that has become current in the nineteen-seventies and nineteen-eighties, of the development cooperation activities, of WIPO are, as far as they concern matters of copyright, borne by the budget of the Berne Union. Development cooperation activities, in the nineteen-fifties and nineteen-sixties called "technical assistance," are activities designed to assist developing countries. The expression "developing country" has been used since around 1970. There is no official definition of the term or expression, and there is no official list of developing countries. In United Nations circles, in 1986, that is, the year of the centenary of the Berne Convention, the following countries were generally considered as being developing countries: in Africa, all countries except South Africa; in Asia and the Pacific, all countries except Australia, Japan and New Zealand; in the Americas and the Caribbean, all countries, except Canada and the United States of America. In Europe, there are three countries—Malta, Romania and Yugoslavia—that have been considered, for certain purposes, as developing countries.

The program of development cooperation being, as already stated, mainly financed from the budget of the Berne Union, the *Assembly*—functioning since 1970—of that Union has a decisive role in the formulation of the objectives and in determining the means that the International Bureau of WIPO can use for the obtaining of those objectives. Those objectives and means are specified in the program and the budget of WIPO which includes also the program and the budget of the Berne Union.

Another organ of the Berne Union that plays an important role in the monitoring of the development cooperation activities of WIPO in the field of copyright is the *Executive Committee* of the Berne Union. This body has met, since 1970, once a year in ordinary session and, in the period between 1970 and 1986, in nine extraordinary sessions. It is mainly in the extraordinary sessions that development cooperation activities are considered.

There is, since 1976, another body that deals with development cooperation activities. It deals only with those activities. It is called the "*WIPO Permanent Committee for Development Cooperation Related to Copyright and Neighboring Rights*" (hereinafter referred to as the "*WIPO Permanent Committee (Copyright)*"). It is not to be confused with the now defunct body called the Permanent Committee of the Berne Union: that body existed

between 1948 and 1970 and was, in a way, the predecessor of what is, since 1970, the Executive Committee of the Berne Union.

The WIPO Permanent Committee (Copyright) was set up by a decision of the Conference of WIPO in 1976, that is, in the 90th year of the Berne Convention. So far—that is, during the last ten years of the centenary of the Berne Union—the said Committee has met six times: in 1977 (1977 CR 111), 1978 (1978 CR 130), 1979 (1979 CR 131), 1981 (1981 CR 167), 1983 (1983 CR 115) and 1985 (1985 CR 93).

The members of the WIPO Permanent Committee (Copyright) are States. Membership is open to all countries members of WIPO. It is voluntary and free of charge. By the beginning of 1986, the year of the centenary of the Berne Convention, the said Committee had 77 members. They were the following: Algeria, Angola, Australia, Austria, Bangladesh, Barbados, Belgium, Benin, Brazil, Bulgaria, Burkina Faso, Cameroon, Canada, Central African Republic, Chad, Chile, Colombia, Congo, Costa Rica, Côte d'Ivoire, Cyprus, Czechoslovakia, Denmark, Egypt, El Salvador, Fiji, Finland, France, Gambia, German Democratic Republic, Germany (Federal Republic of), Ghana, Guatemala, Guinea, Honduras, Hungary, India, Israel, Italy, Japan, Jordan, Kenya, Malawi, Mali, Mauritius, Mexico, Morocco, Netherlands, New Zealand, Nicaragua, Niger, Norway, Pakistan, Peru, Philippines, Poland, Portugal, Romania, Saudi Arabia, Senegal, Somalia, Soviet Union, Spain, Sri Lanka, Sudan, Suriname, Sweden, Switzerland, Togo, Tunisia, Turkey, United Kingdom, United Republic of Tanzania, United States of America, Uruguay, Yemen, Zambia.

The WIPO Permanent Committee (Copyright) keeps the "Permanent Program (Copyright)" under review. The objectives of the Permanent Program (Copyright) are "to promote, in favor of developing countries, by all means within the competence of the World Intellectual Property Organization (WIPO),

"(i) the encouragement in developing countries of intellectual creation in the literary, scientific and artistic domain,

"(ii) the dissemination, within the competence of WIPO as defined in the WIPO Convention, in developing countries, under fair and reasonable conditions, of intellectual creations in the literary, scientific and artistic domain protected by the rights of authors (copyright) and by the rights of performing artists, producers of phonograms and broadcasting organizations ('neighboring rights'),

"(iii) the development of legislation and institutions in the fields of copyright and neighbor-

ing rights in developing countries" (Organizational Rules, Article 1(1)).

The Organizational Rules further provide that "such means shall in particular include, as appropriate, organizing meetings, providing advice, information, assistance and training, carrying out studies, making recommendations and preparing and publishing model laws and guidelines" (Article 1(2)).

The Joint Unesco/WIPO Consultative Committee on the Access by Developing Countries to Works Protected by Copyright (hereinafter referred to as "the Joint Consultative Committee") was set up under an agreement between WIPO and Unesco in November 1979 (1980 CR 62).

That agreement established a joint—WIPO—Unesco—"service" (hereinafter referred to as "the Joint Service") with the objective of facilitating access by developing countries to works protected by copyright. The twelve members of the Joint Consultative Committee are appointed by the Directors General of WIPO and Unesco.

During the first five years of its existence, the Joint Consultative Committee met twice: the first time in 1981 (1981 CR 281), and the second time in 1983 (1983 CR 280).

As already stated, both the Berne Convention and the Universal Copyright Convention were revised in 1971 (in Paris) and, as a consequence of that revision, contain similar provisions allowing, under certain circumstances, the granting of compulsory licenses, *by developing countries*, for reproduction and translation. Those provisions can be made use of only by such developing countries that make a declaration to that effect.

At the beginning of 1986, the year of the centenary of the Berne Convention, there were only two such countries members of the Berne Union. These were India and Mexico.

One of the purposes, if not the main purpose, of the Joint Service is to facilitate the negotiation and conclusion of publishing and translation *contracts* between publishers in developing countries and copyright owners who are nationals of industrialized countries. Such a facilitation of the "access" to works protected by copyright should reduce the number of cases in which recourse would otherwise have to be made to compulsory licenses provided for in the 1971 texts of the two Copyright Conventions. According to information available to WIPO, no such licenses were granted either in India or in Mexico. During the period 1980-1985, WIPO and Unesco received less than a dozen requests for its Joint Service to intervene in trying to bring about a contractual, rather than a compulsory license, solution.

Development of Human Resources. One of the principal objectives of the development cooperation activities is the development of human resources or, in other words, the conveying of knowledge about matters of copyright that should be useful both to the countries to whose nationals such knowledge is conveyed and to the individuals to whom the knowledge is conveyed.

The knowledge conveyed is, first of all, awareness of what copyright law is and why the protection of the rights of authors is good for the economy and the culture of each country. The knowledge conveyed concerns also the responsibilities that any government has in administering the copyright law of its country and the international copyright relations of that country.

The relevant information is mostly conveyed through courses, workshops, seminars and other essentially teaching meetings and through the on-the-job training of individual trainees.

The first introductory training course organized by the International Bureau was held in 1963 in Brazzaville. Two more courses were held before WIPO started functioning: one in New Delhi in 1967 and one in Geneva in 1968. Thereafter, copyright courses, workshops or seminars for essentially teaching purposes, were held each year, except in 1974. The years and the places in which they took place are the following: in 1971, Bogota; in 1972, Nairobi; in 1973, Tokyo; in 1975, Oaxtepec (Mexico); in 1976, Geneva and Sydney; in 1977, Bangkok, Geneva and Rabat; in 1978, Geneva and New Delhi; in 1979, Buenos Aires, Budapest, Stockholm and Zurich; in 1980, Munich, Bissau, Lomé, Stockholm and Zurich; in 1981, Conakry, Gisenyi, Kingston, London and Zurich; in 1982, Beijing, Budapest, Stockholm and Zurich; in 1983, Buenos Aires, Munich, Paris, Quito and Zurich; in 1984, Colombo, London, Manila, Maseru, Montevideo and Zurich; in 1985, Brasilia, Budapest, Cairo, Colombo, Cotonou, Mexico City, Nanjing (China), Stockholm and Zomba (Malawi); in 1986, San José (Costa Rica), Geneva, Paris and Zurich. For each of those 56 courses, the number of participants was between ten and 200, and the total number of participants is estimated to have been around 3,000. They were nationals of some one hundred different developing countries. Each course lasts one to three weeks. In most courses, the nationals of several or numerous countries participate together. The costs of their travel and living expenses during the course are covered by the budget of the Berne Union. Some of the courses are organized by WIPO in cooperation with governments, semi-governmental or private organizations, in which case some of the costs are borne by the co-organizer. For example, the courses in London were organized in coopera-

tion with the British Copyright Council; those in Paris, with the French Government; those in Munich, with the Carl Duisberg Gesellschaft (CDG); those in Zurich, with the Swiss Society for Authors' Rights in Musical Works (SUISA); those in Budapest, with the Hungarian Bureau for the Protection of Authors' Rights (ARTISJUS); those in Stockholm, with the Government of Sweden and the Swedish International Development Authority (SIDA); those in Colombo, with the Government of Sri Lanka and the Sri Lanka Foundation.

Each year, the International Bureau writes to the governments of all the developing countries and certain intergovernmental bodies asking them to propose candidates, send information on the professional background and language ability of each candidate and identify the copyright field in which each candidate is particularly interested. The International Bureau makes the selection.

A similar procedure is followed in what is called, in WIPO parlance, "individual training." Individual training means on-the-job training of a national of a developing country for a few weeks or months. Such training is given usually in a government office that is responsible for copyright or in an authors' society that administers copyright revenues (e.g., "performing rights' societies"). In the last 20 years of the centenary of the Berne Convention, some 60 such individual trainings were accorded.

Here is the list of those countries whose governments and those organizations which have so far contributed to the development of human resources activities of WIPO in the field of copyright. *Countries:* Algeria, Angola, Argentina, Australia, Austria, Belgium, Benin, Brazil, Canada, Chile, China, Colombia, Congo, Costa Rica, Côte d'Ivoire, Czechoslovakia, Ecuador, Egypt, France, German Democratic Republic, Germany (Federal Republic of), Greece, Guinea, Guinea-Bissau, Hungary, India, Italy, Jamaica, Japan, Kenya, Lesotho, Malawi, Malaysia, Mali, Mexico, Morocco, Netherlands, Nigeria, Philippines, Portugal, Rwanda, Senegal, Soviet Union, Sri Lanka, Swaziland, Sweden, Switzerland, Syria, Thailand, Togo, Trinidad and Tobago, Tunisia, United Kingdom (and Hong Kong), United States of America, Uruguay, Zimbabwe. *Organizations:* Algerian National Copyright Office (ONDA), Argentine Society of Authors and Music Composers (SADAIC), Argentine Center of the Inter-American Copyright Institute, Australasian Performing Right Association (APRA), Australian Record Industry Association (ARIA), Belgian Society of Authors, Composers and Publishers (SABAM), British Broadcasting Corporation (BBC), British Copyright Council (BCC), Bureau

for Copyright in Musical Works (BUMA)(Netherlands), Carl Duisberg Gesellschaft (CDG)(Federal Republic of Germany), Copyright Agency of the USSR (VAAP), European Broadcasting Union (EBU), German Foundation for International Development (DSE)(Federal Republic of Germany), Hungarian Bureau for the Protection of Authors' Rights (ARTISJUS), International Federation of Actors (FIA), International Federation of Musicians (FIM), International Federation of Phonogram and Videogram Producers (IFPI), International Confederation of Societies of Authors and Composers (CISAC), International Publishers Association (IPA), Latin-American Integration Association (LAIA), Max Planck Institute for Foreign and International Patent, Copyright and Competition Law (Federal Republic of Germany), Mechanical Copyright Society Limited (MCPS)(United Kingdom), Musical Performing and Mechanical Reproduction Right Society (GEMA)(Federal Republic of Germany), National Union of Publishers of Phonograms and Videograms (SNEPA)(France), Performing Right Society (PRS)(United Kingdom), The Publishers' Association (United Kingdom), Society for the Administration of Neighboring Rights (GVL)(Federal Republic of Germany), Society of Authors, Composers and Music Publishers (SACEM)(France), Sri Lanka Foundation, Swedish Broadcasting Corporation (Sveriges Radio), Swedish International Development Authority (SIDA), Swedish Performing Right Society (STIM), Swiss Society for Authors' Rights in Musical Works (SUISA), Swiss Society of Performing Artists (SIG), Union of Swedish Musicians (SAMI).

The contribution of the countries or organizations consisted of one or several of the following: furnishing of teachers or lecturers, writing and reproducing of teaching materials, payment of travel costs, furnishing of meals and lodging, furnishing of conference premises and interpretation, furnishing of recreational possibilities and participation in cultural events. Many of the teachers or lecturers were professionals, lawyers in private practice, who received no remuneration for their work which they volunteered *pro bono publico*. In every course, one or more staff of the International Bureau is present to help in the carrying out as well as in the supervising of the program. Several of the lectures are delivered by such staff members in each course.

Advice on Legislation. One of the important development cooperation activities of WIPO in the field of copyright is the furnishing of advice on legislation. What solutions are in the best interests of a given country, taking into account its eco-

conomic situation, the ideology followed by its government, its cultural traditions?

Such advice is given almost exclusively by staff members of the International Bureau. The advice is largely based on the "Tunis Model Law on Copyright for Developing Countries," a model law adopted in 1976 by a committee of experts coming exclusively from developing countries (1976 CR 139 and 165). The solutions recommended by the staff of WIPO are always solutions that are compatible with the Berne Convention since the primordial task of what is also the international secretariat of the Berne Union is to make sure that those countries that are already party to the Berne Convention have copyright laws that are compatible with that Convention and that those countries that are not party to the Berne Convention adopt laws that are, or amend their laws in such a manner that such laws become, compatible with that Convention so that—when the day comes on which they wish to accede to the Berne Convention—they can do so.

Giving such legislative advice, and/or giving advice on the establishment of institutions dealing with copyright, started in the late nineteen-sixties and, by 1986, the year of the centenary of the Berne Convention, was given, always at their express request, to the Governments of the following 56 developing countries: Angola, Antigua and Barbuda, Bangladesh, Barbados, Benin, Bolivia, Burundi, Cameroon, Central African Republic, Chile, China, Colombia, Congo, Costa Rica, Côte d'Ivoire, Dominica, El Salvador, Gambia, Ghana, Grenada, Guinea, Guinea-Bissau, Honduras, Jamaica, Jordan, Lesotho, Madagascar, Malawi, Malaysia, Mali, Mauritius, Morocco, Mozambique, Niger, Philippines, Qatar, Rwanda, Saint Vincent and the Grenadines, Saudi Arabia, Senegal, Solomon Islands, Somalia, Sri Lanka, Sudan, Suriname, Syria, Tanzania, Thailand, Togo, Tonga, Trinidad and Tobago, Tunisia, United Arab Emirates, Yemen, Zaire, Zimbabwe.

Missions to Developing Countries. The first mission on copyright business to a developing country by a staff member of what was then BIRPI took place in 1963. During the 22 years that followed, that is, up to the hundredth anniversary of the Berne Convention (1986), altogether 53 developing countries were visited, on copyright business, by the Director of BIRPI, the Directors General of WIPO or the staff of BIRPI or WIPO. Such missions are not only useful but, since the International Bureau has no offices or resident representatives outside Geneva, indispensable. They allow the creation of an increased awareness in governmental circles of the importance of copyright in general and the Berne Convention in particular.

They allow the discussion, face to face, of the problems that a government has and wishes to solve in the field of copyright, such as the revision of its copyright legislation or the modernization of the administration of the rights protected by copyright. Missions also allow the gathering of personal impressions by WIPO staff members on the needs and wishes of the countries visited as far as copyright matters are concerned.

The list of the developing countries so visited between 1963 and 1986 is the following: Algeria, Angola, Argentina, Bangladesh, Barbados, Benin, Brazil, Burkina Faso, Burundi, Cameroon, Chile, China, Colombia, Congo, Costa Rica, Côte d'Ivoire, Ecuador, Egypt, Ethiopia, Grenada, Guinea, Guinea-Bissau, Honduras, India, Indonesia, Jamaica, Kenya, Lesotho, Malawi, Malaysia, Mauritius, Mexico, Morocco, Pakistan, Peru, Philippines, Qatar, Rwanda, Saudi Arabia, Senegal, Sri Lanka, Sudan, Suriname, Syria, Thailand, Togo, Trinidad and Tobago, Tunisia, United Arab Emirates, Uruguay, Venezuela, Zaire, Zimbabwe.

Cooperation with Other Organizations

Copyright is one of the intellectual property rights. The proprietors of those rights are, in most countries and in the overwhelming majority of cases, individuals (the authors and their heirs) or privately owned enterprises (publishers of books, newspapers, journals, magazines; producers of motion pictures, phonograms, broadcast programs, etc.). It is, therefore, both natural and necessary for the Berne Union and the International Bureau to be in contact with those who represent the interests of the owners of copyright as well as with the representatives of those enterprises which, without being the owners of the copyright in the works, disseminate, perform, broadcast or otherwise use works as licensees of the owners. Such licensees or users are also, in most countries and in most cases, enterprises privately owned. There are, naturally, important exceptions. In some countries, publishing, and, in many countries, broadcasting, too, is owned or controlled by the government. But governments are *ipso facto* represented in meetings organized by WIPO.

Non-Governmental Organizations. Owners of copyright, users of works protected by copyright, and lawyers of both owners and users, have numerous national, regional or worldwide organizations. The present usage is to refer to such organizations—not controlled by the government.

—as “non-governmental,” “private” or, in the case of organizations of lawyers, as “professional.”

Non-governmental organizations play an important role in the activities of the International Bureau. They are invited to send representatives to almost every meeting that WIPO convenes and services in the field of copyright, whether they are meetings of the governing bodies of WIPO or the Berne Union or meetings dealing with a specific question of the law of copyright. The latter are usually called committees of experts or working groups. Even if the meeting is that of a committee of governmental experts, representatives of non-governmental organizations participate in it. Such representatives are called observers but they are allowed to speak in the meetings whenever they want to. The only respect in which their rights of participation are less than those of the representatives of governments is that they have no right to vote. But, then, voting happens very rarely in the meetings of the governing bodies, and there is practically never a vote in the committees of experts or working groups.

In the last ten years of the first centenary of the Berne Convention, it has become customary that once a year the Director General of WIPO invites the non-governmental organizations to an informal meeting in which only the representatives of those organizations and the Director General participate. The principal aim of those meetings is to have an exchange of views on what topics the International Bureau should propose to the governing bodies for inclusion in the program of activities of WIPO and the Berne Union.

The International Bureau automatically, regularly and free of charge, sends, through the mail, to the interested non-governmental organizations the preparatory papers of all WIPO or Berne Union meetings to which such organizations are invited.

In exchange, the non-governmental organizations usually invite the International Bureau to their meetings if such meetings deal not only with the organizations' internal administrative matters but with matters of substantive copyright law.

Most of the non-governmental organizations which are invited by the International Bureau to the meetings organized by the latter have what is called official “observer status.” Such observer status is accorded to them, on the proposal of the Director General of WIPO, by the competent governing bodies of WIPO and the Berne Union. Once such observer status is accorded, it lasts until it is revoked. None has been revoked so far. The Director General of WIPO may invite, to certain meetings, as observers, non-governmental organizations even if they have no official observer

status. He has made use of such faculty from time to time, particularly in respect of non-governmental organizations that are not international or regional but national. It is to be noted that official observer status is accorded by the governing bodies only to non-governmental organizations that are international or, at least, regional.

The international non-governmental organizations which have an official observer status are usually divided into three groups: organizations essentially concerned with industrial property (there were 25 of them in 1986), organizations essentially concerned with copyright and neighboring rights (there were 40 of them in 1986), and organizations concerned with both industrial property and copyright and neighboring rights (there were 12 of them in 1986).

At the beginning of 1986, the year of the centenary of the Berne Convention, the following non-governmental organizations were in the second and third of the said three groups: *Organizations essentially concerned with copyright and neighboring rights:* Asia-Pacific Broadcasting Union (ABU), Council of the Professional Photographers of Europe (EUROPHOT), European Broadcasting Union (EBU), European Tape Industry Council (ETIC), Ibero-American Television Organization (OTI), Independent Film Producers International Association (IFPIA), Inter-American Association of Broadcasters (IAAB), Inter-American Copyright Institute (IIDA), International Alliance for Diffusion by Wire (AID), International Association of Authors of Comics and Cartoons (AIAC), International Association of Conference Interpreters (AIIC), International Bureau of Societies Administering the Rights of Mechanical Recording and Reproduction (BIEM), International Confederation of Societies of Authors and Composers (CISAC), International Copyright Society (INTERGU), International Council for Reprography (ICR), International Council on Archives (ICA), International Federation of Actors (FIA), International Federation of Associations of Film Distributors (FIAD), International Federation of Film Producers Associations (FIAPF), International Federation of Journalists (IFJ), International Federation of Library Associations and Institutions (IFLA), International Federation of Musicians (FIM), International Federation of Newspaper Publishers (FIEJ), International Federation of Phonogram and Videogram Producers (IFPI), International Federation of Translators (FIT), International Group of Scientific, Technical and Medical Publishers (STM), International Hotel Association (IHA), International Institute of Communications (IIC), International Literary and Artistic Association (ALAI),

International P.E.N., International Publishers Association (IPA), International Radio and Television Organization (OIRT), International Secretariat for Arts, Mass Media and Entertainment Trade Unions (ISETU), International Union of Architects (IUA), International Union of Cinemas (UNIC), International Organization of Hotel and Restaurant Associations (HoReCa), International Writers Guild (IWG), Latin American Federation of Performers (LAFP), Union of National Radio and Television Organizations of Africa (URTNA), World Blind Union (WBU). *Organizations concerned with both industrial property and copyright and neighboring rights:* Afro-Asian Organization for Economic Cooperation (AFRASEC), European Computer Manufacturers Association (ECMA), International Association for the Advancement of Teaching and Research in Intellectual Property (ATRIP), International Chamber of Commerce (ICC), International Confederation of Free Trade Unions (ICFTU), International Confederation of Professional and Intellectual Workers (CITI), International Federation for Documentation (FID), International Law Association (ILA), International League for Competition Law (LIDC), International Organization for Standardization (ISO), Law Association for Asia and the Western Pacific (LAWASIA), Max Planck Institute for Foreign and International Patent, Copyright and Competition Law.

Intergovernmental Organizations. WIPO and the Berne Union maintain official and close relations with the United Nations and several of the specialized agencies of the United Nations system of organizations. They also maintain such relations with several regional intergovernmental organizations.

As far as the Berne Union is concerned, the closest relations exist with the United Nations Educational, Scientific and Cultural Organization (UNESCO). Those relations are regulated by a working agreement concluded between WIPO and Unesco. The programs of the two Organizations in the field of copyright and neighboring rights are coordinated in the following respects. Once every two years, the Executive Committee of the Berne Union (whose secretariat is the International Bureau of WIPO) and the Intergovernmental Copyright Committee established under the Universal Copyright Convention (whose secretariat is the Secretariat of Unesco) meet, for a week,

at the same place (either in Geneva or in Paris) at the same time, and all matters that appear on the agendas of both Committees are dealt with in joint meetings of the two Committees.

Furthermore, the drafts of the future programs of WIPO and Unesco, respectively, for each two-year program cycle are discussed between the two secretariats before those drafts are finalized for presentation to the governing bodies of WIPO and the Berne Union, on the one hand, and Unesco, on the other hand. During those discussions, the program items that the two Organizations plan to execute jointly, and those which they plan to execute separately, are identified and agreed upon.

Most of the substantive copyright law items on the program, in particular meetings of working groups or committees of experts dealing with copyright law subjects of topical interest, are items which the two secretariats propose to carry out jointly. (The decision lies, of course, with the governing bodies of each.) Such joint action means that most of the preparatory documents are published under the names of both secretariats even if the intellectual work that went into their drafting was the effort of only one of them. It further means that the meetings are convened by letters signed jointly by the Directors General of both Organizations, that the meetings are serviced by the staff of both secretariats and the draft reports on each meeting are presented under the responsibility of both secretariats.

On the other hand, all other items in the respective programs of the two Organizations are carried out separately by each secretariat. This is particularly true in respect of the development cooperation activities. Thus, for example, the courses organized and the fellowships awarded by WIPO are financed without any participation by Unesco.

The method of cooperation between WIPO and Unesco just described applies also, *mutatis mutandis*, to the International Labour Office in most matters concerning neighboring rights, particularly the neighboring rights of performing artists. As far as the Rome (Neighboring Rights) Convention is concerned, the cooperation is tripartite as the secretariat of the Intergovernmental Committee established under that Convention is to be furnished and is furnished by the secretariats of WIPO (the secretariat of WIPO is officially called the International Bureau of Intellectual Property), Unesco and the International Labour Organisation (called the International Labour Office).

