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Works of Architecture

Preparatory Document for and Report of the WIPO/Unesco Committee of Governmental Experts

(Geneva, October 20 to 22, 1986)

Editor's Note. What is published in the following on this Committee of Experts consists of the text of the preparatory document (hereinafter referred to as "the memorandum of the Secretariats") that the International Bureau of WIPO and the Secretariat of Unesco have prepared for the Committee of Experts *and* the report on the discussions and conclusions of the Committee of Experts.

The memorandum of the Secretariats is printed in Roman characters (the "Principles" in bold type), whereas the report of the Committee of Experts is printed in italics.

The memorandum of the Secretariats was published on July 28, 1986, under the title "Questions Concerning the Protection of Works of Architecture and Works Relative to Architecture"; it has the document number UNESCO/WIPO/CGE/WA/3.

The report of the Committee of Experts was adopted by the Committee of Experts on October 22, 1986; it has the document number UNESCO/WIPO/CGE/WA/4.

The paragraphs in both documents have numbers. Each paragraph number of the report of the Committee of Experts is, in the following, preceded by the word "Report," so as to make the distinction between the two sets of paragraphs easier.

Contents

Introduction

1. The Committee of Governmental Experts for which the present document has been prepared is being convened by virtue of decisions made by the Governing Bodies of Unesco and WIPO responsible for establishing the programs of the two Organizations (see in particular, as far as Unesco is concerned, Approved Program and Budget for 1986–1987 (23 C/5 Approved), paragraph 15115, and, as far as WIPO is concerned, document AB/XVI/2, Annex A, item PRG.04(5) and document AB/XVI/23, paragraph 109).

2. Works of architecture is a category of works to which, so far, less atteotioo was paid than to most other categories of works. In most laws, there are oo or only very summary provisions on works of architecture. Court decisions and legal essays are rare. A possible explanatioo of this situation is that the spectrum of copyright questions itself is narrower in regard to works of architecture than in the case of mnst other categories of works since wnrks of architecture are oot susceptible of copying and distribution in huge quantities of copies, and the technological developmeots which have giveo rise to oew, massive secondary uses of other kinds of protected works have little relevance to works of architecture.

3. However, works of architecture are, from ao aesthetic, cultural and ecooomic viewpoint of at least the same importance as other creatioos protected by copyright, and the reasoo for which Uoesco and WIPO have decided to devote a separate meeting, dealing exclusively with the copyright protectioo to be accorded to architectural works, should be considered as proof of the recognition of the said importance of architectural works.

4. The intentioo of this document is to coocentrate on what appear to be the questions that are in particular need of clarification.

5. This document identifies and analyzes the said questioos for the purpose of arriving at "principles" which, together with the commeots, could serve as guidance for governmeots and legislators. It should be stressed that the "principles"—oeither as proposed oor as they might emerge as the result of the deliberatioos of the Committee of Experts—have or will have any binding force oo anyone. They are merely intended to indicate directions that seem to be reasooable in the search for solutions which, by safeguarding the rights of the authors and other holders of rights in works of architecture, give them fair treatmeot and promote creative activity eminently necessary for safeguarding the cultural ideotity of every natioo.

Report 1. In pursuance of the decisions adopted by the General Conference of the United Nations Educational, Scientific and Cultural Organization (UNESCO) at its twenty-third session and by the Governing Bodies of the World Intellectual Property Organization (WIPO) at their fifteenth series of meetings in October 1985, the Directors General of Unesco and WIPO jointly convened a Committee of Governmental Experts on Works of Architecture at the headquarters of WIPO in Geneva from October 20 to 22, 1986.

Report 2. The purpose of the meeting was to discuss the various copyright issues arising in relation to works of architecture with a view to devising certain "principles" which, together with comments, could afford guidance to governments when they had to deal with those issues. There seems to be a particular need for such "principles" at the present time as the interests of the persons engaged in intellectual activity in this field are often neglected in connection with the uses of their creations.

Report 3. The "principles" have no binding force and their purpose is merely to indicate directions that seem reasonable in the search for solutions which, by safeguarding the rights of authors and other owners of rights in works of architecture, give them fair treatment and promote the creative activity that is so eminently necessary for safeguarding the cultural identity of every nation.

Report 4. Experts from the following 20 States attended the meeting: Algeria, Austria, Cameroon, Denmark, Finland, German Democratic Republic, Hungary, India, Italy, Japan, Lebanon, Madagascar, Netherlands, Peru, Spain, Sweden, Switzerland, United Kingdom, United Republic of Tanzania, United States of America.

Report 5. One State, Brazil, was represented by an observer.

Report 6. The Palestine Liberation Organization (PLO) attended the meeting as an observer.

Report 7. Observers from one intergovernmental organization, namely the International Labour Organisation (ILO), and from four international non-governmental organizations, namely the International Association for the Advancement of Teaching and Research in Intellectual Property (ATRIP), the International Publishers Association (IPA), the Max-Planck Institute for Foreign and International Patent, Copyright and Competition Law and the World Crafts Council (WCC) participated in the meeting.

Report 8. The list of participants follows this report.

Report 9. Dr. Arpad Bogsch, Director General of WIPO, opened the meeting and welcomed the participants on behalf of WIPO and Unesco.

Report 10. Mr. Robert Dittrich (Austria) was unanimously elected Chairman of the meeting.

Report 11. The Committee adopted the Rules of Procedure contained in document UNESCO/WIPO/CGE/WA/2. It was decided that the Committee should elect two Vice-Chairmen and that the tasks of the Rapporteur should be fulfilled by the Secretariat. It was also agreed that, in accordance with the usual practice in meetings such as the present one, the report would be available only in English and French.

Report 12. Mr. Péter Gyertyánfy (Hungary) and Mr. Jean Nkono (Cameroon) were unanimously elected Vice-Chairmen of the meeting.

Report 13. The provisional agenda of the meeting of the Committee, as appearing in document UNESCO/WIPO/CGE/WA/1 Prov., was adopted.

Report 14. Discussions were based on the Memorandum on Questions Concerning the Protection of Works of Architecture and Works Relative to Architecture prepared by the Secretariat (document UNESCO/WIPO/CGE/WA/3).

Report 15. After congratulating the Secretariat on the high quality of the document, a number of delegations emphasized the usefulness of devising principles which could be proposed as a guide to national legislation in the establishment of rules providing adequate protection for the owners of the rights associated with works of architecture and works relative to architecture.

Report 16. Several delegations stated that, in general, the principles and the statements contained in the Memorandum were acceptable to their governments and that they would have comments to make only concerning details or particular parts of the document under discussion.

Report 17. Several delegations underlined the importance of studying copyright problems in relation to works of architecture, especially because their national copyright laws were under revision. The cultural and economic impact of works of architecture on everyday life was also mentioned, as well as the problems involved in, for instance, drawing the line between the design elements and the utilitarian aspects of this category of works. Hence there was a need to examine the copyright problems in this context.

Works in the Field of Architecture

6. Both the international copyright conveotions and the natiooal laws protect artistic works—together with literary and scientific works—and wheo they give a list of the particular genres of works to be protected, that list, in general, is not exhaustive. If one coosiders architecture, as ooe should, as one of the hranches of art, works of architecture may be considered as works that are or should be eligible for copyright protection. Therefore, even if works of architecture are oot meotiooed, in certain texts, in the non-exhaustive lists of works, one may say, if one considers them artistic works, that they are entitled to copyright protection because they are artistic works. Fortunately, however, the Berne Convention and the great majority of national laws do not leave the questioo of the protectioo of architectural works to the interpretation of the term "artistic work" hut mention them *expressis verbis*.

7. The original (1886) text of the Berne Convention did not include "works of architecture" hut only "plans, sketches and plastic works relative to ... architecture." That phrase appeared in all the Acts of the Conveotioo, and the Stockholm (1967) and Paris (1971) Acts have hrought only one minor amendment to it; they chaoged the phrase "plastic works ... relative to ... architecture" to "three-dimensional works relative to ... architecture." The first meotioo of "works of architecture" in the Berne Convention was made in 1908. The Berlin Act (1908) mentions them *expressis verbis* in the (non-exhaustive) list of works to he protected under the Convention (see Article 2(1)).

8. The Universal Copyright Coovention does not mentioo works of architecture in its Article I where it gives a short, non-exhaustive list of "literary, scientific aod artistic works." Although the list is not exhaustive, it is uncertain whether there is an ohligation uoder the Uoiversal Copyright Convention to grant protectioo to architectural works. Naturally, where the natiooal law of a country grants protection to architectural works, such country must, hy virtue of the principle of national treatment (Article II of the Universal Copyright Convention), grant protection to the architectural works of forcigners protected under that Cooveotion. But what is uncertaio, as already stated, under the Universal Copyright Convention, is whether aoy country is *obliged* to consider architectural works as covered hy the notion of artistic works.

9. Most oatiooal copyright laws dealing with works of architecture expressly provide for the protection of works of architecture in all phases of the creation of such works. They protect both the drawings, plans, sketches and three-dimensional works (models, etc.) relating to architecture, and the coostructioos (buildings and other structures) themselves.

10. The creative activity of ao architect is partly similar to that of a sculptor. Sculptors, io general, prepare sketches and models before creating sculptures. Their ideas already find coocrete forms in the early stages of creative process; therefore, such sketches and models should be and are also protected by copyright. At the same time, the way of creating works of architecture differs in at least three aspects from that of creating sculptures. Firstly, architectural plans and models are, in general, more precise and detailed than sketches and models of sculptures; they practically determine all significant details of a huilding or other structure to be constructed, except, perhaps the colors and shades of certain surfaces. Secondly, while the sculptor, in general, makes the sculpture himself oo the hasis of his own sketches and models, that is not true—with some exceptions—of works of architecture: the architect may supervise the coostruction, but geoerally does not participate in the physical work of huilding or constructing. Thirdly, even if a sculptor also sometimes has to make certain technical calculations—particularly in the case of bigger and more complex structures—for example, from the viewpoint of the statics of the sculpture, the technical side of

preparing and executing architectural plans is always of the greatest importance.

11. As any other productioo of any genre of literature and art, architectural works have to be original to qualify as works. Works of architecture may be original as to their appearance nr as to the technical solutioos. What couots, for the purposes of copyright, is origioality as to appearance nr fnrm. Oo the other hand, origioality in technical aspects (statics, resistance of materials, etc.) are irrelevant and even their noted ahsence does not exclude copyright protectioo. New materials, oew methods of coostruction and other technological novelties are not protected by copyright (hut they may be protected by industrial property rights). It is another matter that such oew technological solutions may enable the architect tn create oew forms, new artistic elements, aod those forms and elements—if original—enjoy cnpyright protection. Tn be protected, it is not necessary that all the elemeots of an architectural work be original. If nnt all the elemeots are nriginal, only those that are original will be protected.

12. Another hasic principle of copyright protectioo is that such protection does nnt depend on the purpose that literary and artistic works may serve. Works may be produced fnr no utilitarian purpose (*l'art pour l'art*) or they may serve such purpose. Whether there is a utilitarian purpose or nnt, and if there is nne, what that purpose is makes no differeoce as to the protection they eojoy. That principle is particularly important in the case of works of architecture which are created, in general, for definite utilitarian purposes.

13. The coostruction of architectural works is preceded by the creation of drawings, sketches and other two-dimensional plans, as well as hy the creatioo of three-dimentional models (maquettes). These are works, protected by copyright. Nevertheless, the preseot document deals specially with them mainly in order to make it clear that such drawings and models should be protected oot only against cnpying in the strict sense but also against their unauthorized conversion into (full-size) works of architecture.

14. On the hasis of the coosideratioos above, the following principles should be applied in regard to works io the field of architecture:

Principle WA.1 (1) "Work of architecture" means any building and similar construction, provided it contains original elements as to its form, design or ornaments, irrespective of the purpose of the building or similar construction.

(2) "Work relative to architecture" means any drawing and three-dimensional model on the basis of which a work of architecture can be constructed.

Principle WA.2. Works of architecture, as well as works relative to architecture, should be protected by copyright.

15. Principles 1 and 2 merely reflect what seems to be an obligation under the Berne Cooventioo and what is recommendable to countries not party to the Berne Cooventioo wishing to have an appropriate level of copyright protection.

16. It goes without saying that the protectioo of wnrks of architecture should be eojoyed by its creator, that is, by the architect. The reason for this fundamental principle being mentinned at all is that, geoerally, architects are being assisted by experts from numerous other fields (geologists, seismnlogists, psychnlngists, ecooomists, physicians and even hy jurists). The contributioos of those experts may create the false belief that they may qualify as coauthors. That is generally oot the case. All they do is to prnvide technical (or legal) infnrmatioo which may influeoce the decisions of the architect. But furnishing such informatioo does not mean that they become coauthors. Authors or coauthors are only those who create the work of architecture, that is, the creatnrs of the form and the design of that work.

Report 18. A number of comments were made regarding the notion of architectural works. One delegation suggested that in the third sentence of paragraph 12 of the Memorandum, dealing with the unimportance of utilitarian aspects in that context, one should insert the words "in principle." It was stressed by other participants, however, that the protection depended on the original elements regardless of the purpose of the building or similar construction.

Report 19. Some delegations expressed the view that the element of creativity should also be referred to and that Principle WA.1 should be amended accordingly. This was agreed to by the Committee.

Report 20. Certain delegations mentioned that the internal aspect of the building or similar construction should also be taken into consideration when this category of works was discussed.

Report 21. One delegation said that the creative arrangement of the space should be a decisive aspect in relation to the protection of this category of works, and that both the internal and the external forms would be of importance in that connection, in addition to the element of originality.

Report 22. One observer representing two non-governmental organizations mentioned that the question of protection depended not on technical elements but on the copyright concept of originality. That concept could differ from one copyright system to another, but it always contained an element of creative activity.

Report 23. Some delegations drew attention to the words "new materials" mentioned in paragraph 11 of the Memorandum and to the question whether the

protection of the work of architecture applied to the work in its entirety or also to parts of it. The question of the position of employed authors was also mentioned.

Report 24. One delegation expressed the view that in Principle WA.1, reference should be made to the artistic element and not only, as proposed, to the original element. It was considered however that such an approach might introduce an element that was too subjective to constitute a criterion in the field concerned.

Report 25. Some delegations stressed that what was said in paragraph 16 of the Memorandum did not necessarily correspond completely to the definitions of this category of works under national laws. It was agreed that it was not necessary to make Principles WA.1 and WA.2 more detailed in that respect.

The Protection of Economic Rights in Works of Architecture and Works Relative to Architecture

17. There are two basic rights of authors that are particularly relevant for works of architecture and works relative to architecture: the right of reproduction and the right of alteration.

18. *Right of Reproduction.* According to Article 9(1) of the Berne Coovention, "Authors of literary and artistic works protected by this Convention shall bave the exclusive right of autborizing the reproductioo of tbese works, in any manner or form." Article IV*bis* of the Universal Copyright Convention also meotions "...the exclusive right to authorize reproduction by any means" as one of "tbe basic rights ensuring the author's economic interests."

19. On tbe basis of the above-mentioned provisions of the internatiooal copyright cooventions—and those of national copyright laws whicb are io keeping with them—it is obvious that both works of architecture and works relative to architecture sbould be protected against unauthorized reproductioo.

20. The question that may emerge is this: what does "reproduction" mean in the case of works of architecture aod works relative to architecture?* Four different activities may be distinguisbed: (i) making a copy of a drawing or model, (ii) making a copy of a building, (iii) making a building on the basis of a drawing or model, (iv) making a drawing or model on tbe basis of a building. (i) It is fairly clear that the copyiog of plaos, sketcbes or other drawings and of three-dimensional models amounts to tbeir reproduction. (ii) It is equally clear that the construction of a building on the basis of copying the elements of another building is also reproduction. (iii) However, it may be a matter of discussion bow one should qualify the construction of a building on the basis of works (drawings and models) relative to architecture. Is it an execution or a reproduction? It is believed that the right view is to consider it as a reproduction. Where arcbitectural plans, etc., are "cxecuted" (or "carried out") the result is oot a performance (as it is in the case where musical works are executed) but it is a special copy, namely, the *reproduction* of tbe plans, etc., in another manner and form and by other means than just directly copying (for example, photocopying) them. If tbe act of constructing a building is, as it sbould be, considered reproductioo of the drawings or models, the act requires the author's authorizatioo on tbe basis of the above-quoted provisions of the two international copyright cooventions. Tbe ioterpretation of tbe right of reproduction under national laws should be tbe same. There are certain laws which clearly support this conclusion by special interpretative provisions. For example, according to the French Copyright Law "the repeated execution of a plan ... shall also constitute reproduction," and the Swiss Copyright Law provides that "the exclusive right to reproduce plaos of architecture ... shall include also the right to carry out sucb plans." (iv) Lastly, if one considers tbe construction of a building on the basis of a drawing or model as reproductioo, it is only logical to consider the reverse process—namely, tbe making of drawings or models oo the basis of a building—also as reproduction.

21. On the basis of the foregoing, the following principle is offered for consideration:

Principle WA.3. (1) The author of a work of architecture, as well as the author of a work relative to architecture, should enjoy the exclusive right of authorizing the reproduction, by any means and in any manner or form, of his work of architecture or work relative to architecture, respectively.

(2) The reproduction of a work of architecture includes the construction of another work of architecture that is, in respect of some or all of the original elements, similar to the former work of architecture; it also includes the preparation, on the hasis of a work of architecture, of works relative to architecture.

(3) The reproduction of a work relative to architecture includes construction, on the hasis of that work, of a work of architecture; it also includes the making of copies, in any manner or form, of the work relative to architecture.

22. The exclusive right of reproduction of the authors of works of arcbitecture and of the drawings or models relative to architecture meaos that the authorization of the author is needed for every kind of reproduction. If tbe arcbitect hands over a plan (drawing) to a third party, such act does not necessarily imply his authorization for the construction of the building. (The handing over may take place in the framework of a competition or it can be

* A special case of "reproduction," that of the external image, is treated separately in paragraphs 38 to 41, below.

part of an offer to a building contractor or may serve the purpose of obtaining some administrative permissions). On the other hand, where the plans (drawings) are handed over with the authorization to construct the work of architecture, such authorization carries with it the (tacit) authorization of the reproduction of the plans (drawings) in as many copies as is needed for the construction or its reconstruction (if later damaged). The same applies to three-dimensional models.

Report 26. The question of the term of protection for works of architecture was raised. It was agreed that the commentary on the Principles should recall that under Article 7(1) of the Berne Convention the duration of protection of copyright was the life of the author and 50 years after his death, and that under Article IV(2)(a) of the Universal Copyright Convention it should not be less than the life of the author and 25 years after his death.

Report 27. One delegation expressed the opinion that paragraph 17 of the Memorandum should also mention the right of publication, because that right was provided for in the legislation of its country. It was felt however that, in practice, the right to authorize or prohibit publication was essentially covered by the moral rights and by the right of reproduction, since publication usually presupposed reproduction of the work. It was also felt that the question of communication to the public of images of works of architecture was essentially covered by Principle WA.7.

Report 28. After the above discussion, it was agreed that the two basic rights of authors that were particularly relevant to works of architecture and works relative to architecture were the right of reproduction and the right of alteration.

Report 29. As far as the right of reproduction was concerned, the delegations expressed their agreement on the contents of the Memorandum and on the proposed Principle WA.3.

23. *Right of Alteration.* According to Article 12 of the Berne Convention, "Authors of literary or artistic works shall enjoy the exclusive right of authorizing adaptations, arrangements and other alterations of their works." The existence of these rights can be deduced also from the text of the Universal Copyright Convention. Under the second sentence of Article IV*bis*(1) of that Convention, "The provisions of this Article [on the basic economic rights of authors] shall extend to works protected under this Convention either in their original form *or in any form recognizably derived from the original*" (emphasis added).

24. "Adaptation" is generally understood as the modification of a pre-existing work from one genre of work to another, such as cinematographic adaptations of novels or musical works. Adaptation may also consist in altering the work within the same genre to make it suitable for different conditions of exploitation, such as rewriting a novel for a juvenile edition. A work of architecture or a work relative to architecture is generally not suitable for such kinds of adaptations. "Arrangement"—which is also mentioned in the text of Article 12 of the Berne Convention—means certain alterations of musical works. Therefore, in the case of works of architecture and works relative to architecture, only the right of authorizing "other alterations" seems to be relevant.

25. The right of alteration of the authors of architectural works is expressly recognized in many national copyright laws. However, the enjoyment and exercise of that right suffers certain restrictions in those laws.

26. The fullest possible enjoyment of the right of alteration is of a fairly important interest to architects. The exercise of this right enables them either to participate in the preparation and execution of the plans relative to the alterations of the building or to authorize alterations planned by other persons against payment.

27. However, it has to be taken into account that buildings (or other similar constructions) serve, in general, certain economic, social or other utilitarian purposes. With the evolution of circumstances and conditions, it may become necessary that the building undergo some alterations. The exercise of the right of alteration should not come into unnecessary conflict with the justified interests of the owner of the building in such cases.

28. The copyright laws of certain countries try to avoid possible conflicts by the restriction of the right of alteration of authors of architectural works. Under the Copyright Laws of Denmark and Norway, for example, buildings may be altered by their owner without the consent of the author for technical reasons or with a view to their practical utilization. The Copyright Laws of Colombia and Rwanda contain similar provisions. According to them, the author of a work of architecture may not prevent the owner from making modifications to it. (At the same time, the Law of Colombia adds that in such a case the author shall have the right to prohibit his name from being associated with the altered work. The Copyright Law of Rwanda also provides that the author of the original work of architecture may oppose the use of his name as the author of the modification.)

29. Such severe restrictions, amounting to the practical abolition of the right of alteration of the authors of works of architecture, should, it is believed, be avoided. It would seem to be sufficient to provide that the author should not be able to refuse the authorization to make alterations when the alterations do not affect his moral rights and when refusing the authorization would prejudice important interests of the owner of the building. It is that kind of solution which has been adopted, for example, by the Copyright Law of the Federal Republic of Germany. According to that Law, for the alteration of a work of architecture, the author's consent is required; however, any alteration in the work which the author cannot in good faith refuse is permissible.

30. On the basis of tbe above considerations, the following principle is suggested in regard to the right of authorizing alterations:

Principle WA.4. The author of a work of architecture should enjoy the exclusive right of authorizing alterations of that work, except where the alteration is of a kind that is of great importance to the owner of the building or other similar construction and that does not amount to a distortion, mutilation or other modification which would be prejudicial to the honor or reputation of tbe author of the work of architecture.

31. As a practical matter, the possible need for future alterations sbould be anticipated and provided for by means of precise and detailed stipulations in the contract concluded between the author of the work of architecture and the owner of the building.

32. Naturally, where an alteration is ordered by a public authority for reasons of safety or otber public interest, the author of the work of architecture could not refuse the authorization.

Report 30. Different points of view were expressed in the discussion of the author's exclusive right to authorize alterations to his work of architecture.

Report 31. Some delegations declared that in general the provisions under Principle WA.4 were acceptable to them. One of the delegations said moreover that in its opinion a change in the practical use of a building should not be regarded as amounting to an alteration within the meaning of the Principle.

Report 32. Certain delegations suggested that the provision embodied in the Principle should be improved in such a way as would strengthen the author's right to authorize alterations. One of those delegations stated that restrictions on that right would be permitted only on condition that the author's moral rights were respected. It also underlined that only contractual solutions concerning the possibility of alteration in the future would not be sufficient to preserve the right.

Report 33. It was suggested that the first sentence of paragraph 29, starting with the expression "such severe restrictions" should be modified, as the wording was considered too strong, especially in view of the fact that such restrictions existed in certain countries.

Report 34. Some delegations were of the opinion that the author's right provided for in Principle WA.4 was too extensive. In their view, there should be a better balance between the author's right and the possibilities of the proprietor of the building to make alterations which were required according to his practical or technical needs. One delegation suggested that restrictions on the proprietor's possibilities in that respect should be admissible if the author's moral rights were not sufficiently safeguarded by provisions inspired by Principles WA.5 and WA.6.

Report 35. One delegation said that, under its national law, buildings could be altered without the consent of the author for technical reasons or if so required for their practical utilization. A proposal had however been forwarded concerning alterations to buildings that were public property. In the case of alterations that entailed a significant restructuring of such a building with far-reaching effects on its architectural conception, the author should be notified and given a reasonable time to submit his observations on the matter.

Report 36. Some delegations asked for an explanation of what the words "of great importance" meant in the present context and suggested making it clear in the Principle that the importance in question referred to "practical and technical factors."

Report 37. It was agreed that the amendment suggested should be inserted in the Principle and that the rest of the Principle, which referred mainly to the moral rights, should be deleted as superfluous.

The Protection of Moral Rights in Works of Architecture and Works Relative to Architecture

33. According to Article 6bis(1) of the Berne Convention, "Independently of the author's economic rights, and even after the transfer of the said rights, the author shall have the right to claim authorship of the work and to object to any distortion, mutilation or other modification of, or other derogatory action in relation to, the said work, whicb would be prejudicial to his bonor or reputation." The Universal Copyright Convention does not provide for such, so-called moral rights; bowever, it is highly desirable that tbose rights be expressly protected also in countries not party to the Berne Convention.

34. The nature of works of architecture necessarily influences the way of exercising moral rights in this field. The right to claim authorship means the right of the author to be named as sucb on and in connection with his work. As far as works of architecture are concerned, tbe right to be named means in particular tbat the author's name be indicated on the building (or other construction) itself. Naturally, that right should be exercised in good faith and in a realistic way. The inscription containing the name of the author sbould be of a size, and should be placed on the building in a way, whicb is necessary for the appropriate identification of the author, but which is not in conflict with the purpose and reasonable utilization of

the building. The author also has the right to remain anooymous or use a pseudonym.

35. As far as the "right of respect"—that is, the right of the author to object to modificatioos of the work, which would be prejudicial to his hooor or reputation— is concerned, there is no ground to restrict this right in regard to works of architecture and works relative to architecture.

36. If alterations are made to the building or other coostruction on the basis of Principle WA.4 without the express consent of the author, he should be eotitled, in additioo to the usual sanctioos (damages, if oot *in integrum restitutio*) to prohibit his name from being associated with the modified work.

37. Taking into account the above coosideratioos, the following principles should be applied to the protectioo of moral rights io works of architecture aod works relative to architecture:

Principle WA.5. The author of a work of architecture or a work relative to architecture should have the right to be named on his work as the author of that work. This right should be exercised in good faith. Requiring that his name be indicated on the work of architecture in an unusual size or in an unusual manner would be considered not to be in good faith.

Principle WA.6. (1) The author of a work of architecture or of a work relative to architecture should have the right to prohibit any distortion, mutilation or other modification of, or other derogatory action in relation to, the said work, which would be prejudicial to his honor or reputation.

(2) If any modification or other derogatory action of the kind referred to in paragraph (1) takes place without the author's knowledge or against his prohibition, the perpetrator of such modification or action should be obliged to have the former state reinstated, or to pay damages, according to the circumstances of the case.

(3) Where his work has been altered without his consent, the author of a work of architecture should have the right to prohibit the association of his name with his work.

Report 38. Some delegations drew attention to Principle WA.5 and the corresponding commentary in paragraph 34 of the Memorandum, and asked for clarification of the meaning of the statement that the right to be named on the work should be exercised "in good faith." It was suggested that, in the first sentence of the Principle, the expression "in the customary way" should be inserted before the words "on his work," and that the second and third sentences should be deleted. The suggestion was accepted by the Committee. One delegation stressed that the change was an appropriate one owing to the fact that, at least in certain countries, buildings were often commissioned by public authorities, and that the architects were prohibited in such cases from having their names mentioned on the buildings concerned.

Report 39. In reply to a question raised by one delegation, it was stated that liability for infringements of moral rights should normally lie with the proprietor of the work of architecture and not, for instance, with the architect who proposed the alterations or the builder who made them.

Report 40. With regard to Principle WA.6(2) it was stated that, at least in some countries, the courts would be free to choose between the various means of redress. It was moreover clarified that the word "damages" in the text of the Principle was wide enough to cover compensation for mental suffering, for instance.

Report 41. One delegation stated that under the national law of its country there was a special provision concerning unfinished works. In its opinion architects could not refuse their contribution to the completion of such a work.

The Protection of the External Image of Works of Architecture

38. By "external image," this documeot refers to what cao be seen, whether from the ground or from the air, of a work of architecture by one who looks at it from the outside. The reproduction of the external image of a work of architecture by means of photography, cinematography, painting, sculpture, drawing or similar way is a special case of reproductioo which is dealt with and regulated by a number of natiooal laws in a special way.

39. Several national laws permit such reproduction, although with some differeoces as to detail. Such reproductioo, without the architect's authorizatioo, for private purposes is geoerally permitted. Several laws permit such reproduction also for commercial purposes (for example, for the making of picture postcards or as illustrations in books or magazines) if the building is in a public place. Such exceptioos seem to be permissible under both copyright conveotions. Accordiog to Article 9(2) of the Berne Convention, the reproductioo of literary and artistic works may be permitted in certain special cases, provided that such reproductioo does oot conflict with the oormal exploitatioo of the work and does not unreasonably prejudice the legitimate interests of the author. The photography, etc., of the external image of a work of architecture, even if done for commercial purposes, has nothing to do with the normal exploitation of the architectural work and does not prejudice the legitimate interests of its author. Such an exceptioo seems to be allowed also on the basis of

Article IV*bis*(2) of the Universal Copyright Convention since it does not conflict with the spirit and provisions of the Convention and with the obligation of a reasonable degree of effective protection for the right (the right of reproduction) to which exception is made.

40. On the other hand, where the building is not in a place accessible to the public—for example, it is a villa in a garden surrounded by a wall—there seems to be no justification to make the reproduction free.

41. On the basis of the foregoing, the following principle is offered for consideration:

Principle WA.7. The reproduction of the external image of a work of architecture by means of photography, cinematography, painting, sculpture, drawing or similar methods should not require the authorization of the author if it is done for private purposes or, even if it is done for commercial purposes, where the work of architecture stands in a public street, road, square or other place normally accessible to the public.

Report 42. In the course of the discussions some delegations referred to the contents of their national law and questioned why Principle WA.7 covered only the external image of a work of architecture and not the internal image as well.

Report 43. One delegation said that according to its national law and also the national laws of other countries within the same region, it was always permissible to reproduce the external image of a building without the restrictions mentioned in the proposed Principle. Another delegation said that also under its national law it was not an infringement to make pictures of the external image of a building, and that consequently Principle WA.7 should be without any limitation as to the purpose for which the pictures were made.

Report 44. One delegation mentioned that, with regard to the reproduction of the external image, it might be necessary to take the ownership of the work of architecture into account as, according to some legislation, the State could be the owner of the work.

Report 45. One observer representing two non-governmental organizations referred to paragraph 38 of the Memorandum and supported the view that Principle WA.7 should deal only with the external image. In his opinion that could be justified by the assumption that the architect had in a way dedicated the outer aspects of his work to the public. With regard to paragraph 39, the observer stated that the selling of postcards of buildings, for instance, could amount to an infringement of the normal exploitation of the work of architecture in question. He pointed out that national laws generally accepted reproduction for private purposes, which for that reason did not need to be expressly mentioned. The Principle would then only indicate that no authorization by the architect was needed in cases such as when the work stood in a public place, even if the pictures were made for commercial purposes. The proposal was not supported, however. One delegation expressed the view that a consequence of the proposal would have been that the owner of a building situated in a private area would not have been allowed to take pictures of it.

Report 46. One delegation stated that in its opinion the distinction made in Principle WA.7 between reproduction of the exterior of a building for private purposes and for commercial purposes was inappropriate. In any case there was no provision for such a distinction in the national law of its country. It considered that an identical regulation should be provided for in both cases. In that respect, therefore, Principle WA.7 was drafted in too-broad terms. The right of reproduction should be restricted, i.e. reproduction should be allowed when the building was situated in a public place.

Report 47. One delegation said that in its opinion the Principle should allow only such reproduction as involved the taking of panoramic views of buildings.

Conclusion

Report 48. The Committee noted that the Secretariat would report on the results of the meeting to the next sessions of the Executive Committee of the Berne Union and the Intergovernmental Committee established by the Universal Copyright Convention.

Adoption of the Report and Closing of the Meeting

Report 49. The Committee unanimously adopted this report and, after the usual thanks, the Chairman declared the meeting closed.

List of Participants

I. States

Algeria: A. Belaïd. **Austria:** R. Dittrich. **Cameroon:** J. Nkono. **Denmark:** J. Nørup-Nielsen. **Finland:** M.-L. Mansala. **German Democratic Republic:** M. Muschter. **Hungary:** P. Gyertyánfy. **India:** S.R. Tayal. **Italy:** M.G. Fortini; G. Catalini. **Japan:** S. Kamogawa. **Lebanon:** B. Bissat. - **Madagascar:** H.R. Andrianolijao Rakotomavo. **Netherlands:** J. Zandvliet. **Peru:** R. Saif. **Spain:** E. de la Puente; A. Muñoz. **Sweden:** W. Von Greyerz; B. Rosén. **Switzerland:** K. Govoni. **United Kingdom:** D. Irving. **United Republic of Tanzania:** K. Sekwao. **United States of America:** L. Flacks.

II. Observer State

Brazil: A. Simoes.

III. Observers

Palestine Liberation Organization (PLO): M. Al Daher.

Intergovernmental Organizations

International Labour Organisation (ILO): C. Paoli-Pelvey.

V. International Non-Governmental Organizations

International Association for the Advancement of Teaching and Research in Intellectual Property (ATRIP): A. Dietz. **International Publishers Association (IPA):** J.-A. Koutchoumow. **Max-Planck Institute for Foreign and International Patent, Copyright and Competition Law:** A. Dietz. **World Crafts Council (WCC):** V. Huber.

VI. Secretariat

United Nations Educational, Scientific and Cultural Organization (UNESCO)

E. Guerassimov *(Legal Officer, Copyright Division).*

World Intellectual Property Organization (WIPO)

A. Bogsch *(Director General)*; H. Olsson *(Director, Copyright and Public Information Department)*; P. Masouyé *(Legal Officer, Copyright Law Division).*

Notifications

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

PORTUGAL

Declaration Under Article 14bis(2)(c) of the Paris Act (1971)

The Government of the Portuguese Republic deposited a declaration, received on November 5, 1986, made pursuant to the provisions of paragraph (2)*(c)* of Article 14bis of the Berne Convention for the Protection of Literary and Artistic Works of September 9, 1886, as revised at Paris on July 24, 1971, to the effect that the undertaking by authors to bring contributions to the making of a cinematographic work must be in a written agreement.

Berne Notification No. 116, of November 21, 1986.

Bilateral Treaties

SWEDEN – USSR

Agreement Between the Government of the Kingdom of Sweden and the Government of the Union of Soviet Socialist Republics on the Reciprocal Protection of Copyright

(of April 15, 1986)*

The Govemment of the Kingdom of Sweden and the Government of the Union of Soviet Socialist Republics,

Confirming their desire to develop and strengthen their cooperation in the cultural field, in conformity with the Final Act of the Conference on Security and Cooperation in Europe, signed in Helsinki on August 1, 1975,

Moved by the wish to promote the exchange of literary, scientific and artistic works, and of photographic pictures, between the Contracting States, and to complement, in the relations between them, the Universal Copyright Convention of September 6, 1952,

Have concluded the following agreement:

Article 1

Each Contracting State sball, insofar as this is possible with regard to the national situation prevailing on its territory,

(a) encourage the publication and other use of literary, scientific and artistic works and of pbotographic pictures, created by nationals of the other Contracting State;

(b) encourage the inclusion in the repertoires of theaters, music ensembles and soloists of dramatic, dramatico–musical and choreographic works, created by nationals of the other Contracting State.

Article 2

Each Contracting State shall extend its application of the Universal Copyright Convention of September 6, 1952, to literary, scientific and artistic works, and photographic pictures, and rights in such material, created by nationals of the other Contracting State. This applies irrespective of the date of their creation or publication.

Article 3

The Contracting States agree that the protection granted under the Universal Copyright Convention of September 6, 1952, or under this Agreement, shall extend also to the moral rights of authors and other right owners.

Article 4

The protection which according to Article 2 of this Agreement is granted in respect of use of works or photographic pictures after the entry into force of this Agreement, shall be applicable insofar as the relevant term of protection at the time of the use has not yet expired.

Article 5

All payments and other pecuniary settlements arising out of the application of the Universal Copyright Convention of September 6, 1952, or out of the application of Article 2 of this Agreement, sball be effected in freely convertible currency, and will be transferred to the country of origin of the author or other right owner, unless he indicates otherwise.

Article 6

Each Contracting State shall be entitled, without prejudice to the permissibility of concluding or denouncing individual contracts with authors and other right owners,

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* English translation received from the Swedish Ministry of Justice.

(a) to decide upon the organizations which in the relevant cases are to act as intermediaries in the conclusion of contracts for the assignment or acquisition of rights in works or pictures protected under the Universal Copyright Convention of September 6, 1952, or under Article 2 of this Agreement,
(b) to entrust these organizations with the collection of royalties for the use of such works or pictures, and
(c) entrust the organizations with reciprocal settlement of royalty transactions.

Insofar as these organizations are obliged, by virtue of the legislation of the Contracting State or a specific obligation undertaken by them, to protect the moral rights of autbors or other right owners, they shall in doing so exercise particular care, *inter alia* where the legislation of tbe Contracting State permits the use of such works without payment of remuneration.

Article 7

The competent organizations or public authorities of the Contracting States undertake to inform each other about legislation and other normative acts in the respective State, and, as far as possible, provide each other with other information, all insofar as may be required for the practical application of the Universal Copyright Convention of September 6, 1952, or of this Agreement.

Article 8

The coming into being, content and lapse of copyright in a work or a picture shall be determined by the law of the Contracting State on the territory of which the use of the right or an infringement of tbe right occurs.

Article 9

Representatives of competent organizations or public authorities of the Contracting States shall meet when so is considered necessary, for the purpose of discussing the practical application of this Agreement.

Article 10

This Agreement shall be without prejudice to rights and obligations of Contracting States arising out of the Universal Copyright Convention of September 6, 1952, and other international treaties to which the Contracting States are parties.

Article 11

For the application of this Agreement the term "nationals" of a Contracting State shall be interpreted as including natural persons having their domicile there.

Article 12

This Agreement sball enter into force on the first day of the month after the month when this Agreement was signed by duly appointed representatives of both Contracting States.

Article 13

This Agreement may be terminated at any time by either Contracting State, in writing and through diplomatic channels. Termination shall come into effect six months after the receipt of a notification coming from the other Contracting State.

In witness whereof, the undersigned have signed this Agreement.

Done in Moscow, on April 15, 1986, in two copies, one in Swedish and one in Russian, both texts being equally authentic.

For the Government of the Kingdom of Sweden	For the Government of the Union of Soviet Socialist Republics
PIERRE SCHORI	VIKTOR F. MALTSEV

National Legislation

SWEDEN

I

Act Amending the Act on Copyright in Literary and Artistic Works

(No. 367, of June 5, 1986)*

Pursuant to the decision of the Parliament, it is prescribed, in respect of the Act of 1960 (No. 729)** on Copyright in Literary and Artistic Works, that

— Articles 22, 45–49, 58 and 61 shall read as follows, and
— a new Article, numbered 22d, shall be incorporated in the Act and worded as follows.

Article 22. If a radio or television organization has acquired the right to broadcast a work, the organization may also, on conditions to be laid down by the Government, for use in its own broadcasts, record the work on material supports from which it can be reproduced. The right to make the work available to the public by means of such recordings shall be subject to the general provisions of the Act.

A Swedish radio or television organization, as defined by the Government, which has an agreement with an organization representing a substantial number of Swedish authors in the field granting a right to broadcast literary and musical works, may also broadcast published such works of authors who are not represented by the organization; such authors shall be entitled to remuneration for the use of the work in the broadcast. These provisions shall not apply to dramatic works, nor to works for which the author has prohibited broadcasting or where there is a particular reason to assume that the author will oppose the broadcast. The provisions in this section do not apply to such retransmissions which are provided for in Article 22d.

Article 22d. Anyone who, on the basis of an agreement with an organization representing a substantial number of Swedish authors in the particular field, has acquired the right to distribute to the public, simultaneously and in an unchanged form, by wireless means or by cable (retransmission), works forming part of a sound radio or television broadcast, has the right to retransmit, in the same way, also works of authors who are not represented by the organization. Such retransmission may take place only as regards the same kind of works as those which are covered by the agreement. The terms of the agreement apply also in other respects to the retransmission.

Any author whose work is retransmitted on the basis of the preceding section shall, as regards remuneration resulting from the agreement and as regards benefits from the organization which are principally paid for from the remuneration, be placed on an equal footing with authors represented by the organization. The author has, however, regardless of what has been said now, always a right to claim remuneration for the retransmission, if such a claim is made within three years from the end of the year in which the retransmission took place. Claims relating to such remuneration may be directed only towards the organization.

Only organizations mentioned in the first section of this Article are entitled to put forward claims for remuneration towards persons who rediffuse works on the basis of this Article. All such claims must be forwarded at the same time.

Article 45. A performing artist's performance of a literary or artistic work may not without his authorization be recorded on phonographic records, films, or other material supports from which it can be reproduced, nor may it without such authorization be broadcast over sound radio or television or made available to the public by direct communication.

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* English translation received from the Swedish Ministry of Justice.

** See *Le Droit d'Auteur (Copyright)*, 1962, pp. 76 to 82.

When a performance has been recorded on a material support as mentioned in the previous section, such recording may not be re–recorded on another such support without the authorization of the performer until fifty years have elapsed from the year in which the first recording took place.

The provisions of Articles 3, 6–9, 11, first section, 14, first section, 17, 20, 21, 22, first section, 22a–22d, 24, 24a, 26, 27, 28, 41 and 42 shall apply to the recording, broadcasting, communication, and re–recording mentioned in this Article.

Article 46. A phonographic record, a film or other material support on which sounds or cinematographic works have been recorded may not be reproduced without the authorization of the producer until fifty years have elapsed from the year in which the recording was made. Re–recording on another material support shall be regarded as reproduction.

The provisions of Articles 6–9, 11, first section, 14, first section, 17, 21, 22, first section, 22a–22c, 24 and 24a as well as 26, second section, shall apply to any act which under this Article requires the authorization of the producer.

Article 47. If a sound recording or other material support on which sounds have been recorded is used in a sound radio or television broadcast or in other public performance for commercial purposes, and the broadcast or the performance takes place within fifty years from the year in which the recording was made, a remuneration shall be paid to both the producer of the recording and to the performers whose performances are recorded. If two or more performers have participated in a performance, their right may only be claimed jointly. As against the person who has used the recording the performers' and the producers' claims shall be made at the same time.

The provisions on sound radio or television broadcasts in the first section of this Article apply also when a wireless such broadcast is distributed to the public, simultaneously and without changes, by wireless means or by cable (retransmission). As against the person who carries out the retransmission the claim for remuneration may be made only through organizations representing a substantial number of Swedish performing artists or producers. The organizations shall make their claims at the same time as the claims referred to in Article 22d.

The provisions of Articles 8, 9, 14, first section, 20, 21 and 24 as well as 26, second section, shall apply accordingly in cases mentioned in this Article. As regards the rights of performing artists also the provisions of Articles 27, 28, 41 and 42 shall apply accordingly.

The provisions of this Article do not apply to sound films.

Article 48. A sound radio or television broadcast may not without the authorization of the radio or television organization be re–broadcast or recorded on material supports from which it can be reproduced, nor may a television broadcast without such authorization be made available to the public in a motion picture theater or similar place.

If a broadcast has been recorded on a material support as mentioned in the first section, it may not without the authorization of the radio or television organization be re–recorded on another such material support until fifty years have elapsed from the year in which the broadcast took place.

The provisions of Articles 6–9, 11, first section, 14, first section, 17, 20 and 21, 22, first section, 22a–22c, 24 and 24a as well as 26, second section, shall apply accordingly in cases referred to in this Article.

If a radio or television organization has a claim for remuneration in respect of retransmissions mentioned in Article 22d, first section, which have taken place with the authorization of the organization, the claim of the organization shall be made at the same time as the claims of the organizations mentioned there.

Article 49. Catalogues, tables and similar productions in which a large number of information items have been compiled may not be reproduced without the authorization of the producer until ten years have elapsed from the year in which the production was published.

The provisions of Articles 6–9, 11, first section, 12, 14, 15a, 16, 18, 22, first section, 22a–22c, 24, 24a and 26, second section, shall apply accordingly to the productions mentioned in this section. If a production of this kind or a part thereof is subject to copyright, also copyright protection may be claimed.

Article 58. The City Court of Stockholm shall have jurisdiction in cases involving sound radio or television broadcasts in violation of this Act. The same shall apply in cases involving claims for remuneration under Articles 9, second section, 14, second section, 16, 22, second section, 22d or 47.

Article 61. The provisions of Articles 45, 47 and 48 shall apply to performances, sound recordings and sound radio and television broadcasts, which take place in Sweden. In addition, the provisions of Article 45 apply to performances of persons who are Swedish citizens or who have their habitual residence in Sweden, the provisions of Article 47 to sound recordings the producer of which is a Swedish citizen or a Swedish legal entity or a person having his habitual residence in Sweden, and the provisions of Article 48 to broadcasts of sound radio or televi-

sion organizations having their headquarters in this country. The provisions of Article 46 apply to all sound recordings and to such recordings of cinematographic works where the producer is a Swedish citizen or a Swedish legal entity or has his habitual residence in Sweden as well as to such recordings of cinematographic works which take place in Sweden.

The provisions of Article 49 apply to productions of Swedish citizens or Swedish legal entities, or persons having their habitual residence in Sweden, and to productions first published in Sweden.

* * *

1. This Act enters into force on July 1, 1986.

2. The provisions of Articles 22d, 45, third section insofar as it refers to Article 22d, and 47, second section, apply also to works and recordings which have been created or produced before the entry into force.

3. The provisions of Article 45, third section insofar as it refers to Articles 6–8 and 26, and the provisions of Articles 46, second section, 47, third section, 48, third section, 49, second section, and 61, first section, third sentence, apply also to works which have been created before the entry into force, to radio and television broadcasts, recordings and performances which have taken place before the entry into force, and to productions which have been prepared before the entry into force.

4. The provisions of Article 47, first section, apply also to recordings which have been made before the entry into force, provided that the period within which a broadcast has given a right to remuneration according to previous provisions has not yet expired at that time.

5. The provisions on the period of protection in Articles 45, second section, 46, first section, and 48, second section, apply also to performances, sound recordings and sound radio and television broadcasts which have taken place before the entry into force of the Act, provided that the period of protection under previous provisions had not yet expired at that time.

II

Act Amending the Act on Rights in Photographic Pictures

(No. 368, of June 5, 1986)*

Pursuant to the decision of the Parliament, it is prescribed that Article 9 of the Act of 1960 (No. 730)** on Rights in Photographic Pictures shall be reworded as follows.

Article 9. A Swedish television organization as defined by the Government is allowed to show, in return for a remuneration, photographic pictures which are considered as disseminated to the public, unless the photographer has issued a prohibition against the showing or there are particular reasons to assume that he would oppose it. This provision does not apply to films.

Article 22d of the Act of 1960 (No. 729) on Copyright in Literary and Artistic Works applies to photographic pictures shown in wireless television broadcasts which are retransmitted, simultaneously and without changes, to the public by wireless means or by cable by an organization other than the one mentioned in the first section of this Article.

This Act enters into force on July 1, 1986. It applies also to photographic pictures which have been taken before the entry into force.

* English translation received from the Swedish Ministry of Justice.

** See *Le Droit d'Auteur (Copyright)*, 1962, pp. 82–83.

III

Regulation Amending the Regulation on the Application of the Act on Copyright in Literary and Artistic Works and the Act on Rights in Photographic Pictures to Other Countries and Territories, etc.

(No. 369, of June 5, 1986)*

The Government prescribes, as regards the Regulation of 1973 (No. 529)** on the Application of the Act of 1960 (No. 729) on Copyright in Literary and Artistic Works and the Act of 1960 (No. 730) on Rights in Photographic Pictures to Other Countries and Territories, etc., that

— Article 6 shall no longer apply;
— Section 5 of Article 1, section 4 of Article 2, sections 1, 2 and 4 of Article 4, and Articles 5 and 8 shall be reworded as follows.

Article 1

Section 5. To the Berne Union belong presently the following foreign countries and territories: 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, Lebanon, Libya, Liechenstein, Luxembourg, Madagascar, Mali, Malta, Mauritania, Mexico, Monaco, Morocco, Netherlands, New Zealand, Niger, Norway, Pakistan, Philippines, Poland, Portugal, Romania, Rwanda, Senegal, South Africa, Spain, Sri Lanka, Suriname, Switzerland, Thailand, Togo, Tunisia, Turkey, United Kingdom, Uruguay, Venezuela, Yugoslavia, Zaire and Zimbabwe.

Article 2

Section 4. The following foreign countries and territories are presently party to

1. the Universal Copyright Convention in its original version: Algeria, Andorra, Argentina, Australia, Austria, Bahamas, Bangladesh, Barbados, Belgium, Belize, Brazil, Bulgaria, Cameroon, Canada, Chile, Colombia, Costa Rica, Cuba, Czechoslovakia, Democratic Kampuchea, Denmark, Dominican Republic, Ecuador, El Salvador, Fiji, Finland, France, German Democratic Republic, Germany (Federal Republic of), Ghana, Greece, Guatemala, Guinea, Haiti, Holy See, Hungary, Iceland, India, Ireland, Israel, Italy, Japan, Kenya, Laos, Lebanon, Liberia, Liechtenstein, Luxembourg, Malawi, Malta, Mauritius, Mexico, Monaco, Morocco, Netherlands, New Zealand, Nicaragua, Nigeria, Norway, Pakistan, Panama, Paraguay, Peru, Philippines, Poland, Portugal, Senegal, Soviet Union, Switzerland, Tunisia, United Kingdom, United States of America, Venezuela, Yugoslavia and Zambia;
2. the Universal Copyright Convention as revised at Paris on July 24, 1971: Algeria, Australia, Austria, Bahamas, Bangladesh, Barbados, Belize, Brazil, Bulgaria, Cameroon, Colombia, Costa Rica, Czechoslovakia, Denmark, Dominican Republic, El Salvador, France, German Democratic Republic, Germany (Federal Republic of), Guinea, Holy See, Hungary, Italy, Japan, Kenya, Mexico, Monaco, Morocco, Netherlands, Norway, Panama, Peru, Poland, Portugal, Senegal, Spain, Sri Lanka, Tunisia, United Kingdom, United States of America and Yugoslavia;
3. Protocol 1 to the Universal Copyright Convention in its original version: Andorra, Argentina, Australia, Austria, Bangladesh, Belgium, Brazil, Costa Rica, Cuba, Democratic Kampuchea, Denmark, Ecuador, Finland, France, Germany (Federal Republic of), Ghana, Greece, Guatemala, Haiti, Holy See, Iceland, India, Ireland, Israel, Italy, Japan, Kenya, Laos, Lebanon, Liberia, Liechtenstein, Luxembourg, Mauritius, Monaco, Morocco, Netherlands, Nicaragua, Norway, Pakistan, Panama, Paraguay, Poland, Portugal, Senegal, Spain, Switzerland, Tunisia, United Kingdom, United States of America, Venezuela, Yugoslavia and Zambia;
4. Protocol 1 to the Universal Copyright Convention as revised at Paris on July 24, 1971: Australia, Austria, Bangladesh, Brazil, Denmark, El Salvador, France, Germany (Federal Republic

* English translation received from the Swedish Ministry of Justice.

** See *Copyright*, 1974, pp. 44 to 47.

of), Guinea, Holy See, Italy, Japan, Kenya, Monaco, Morocco, Norway, Poland, Portugal, Senegal, Spain, Tunisia, United Kingdom and United States of America.

Article 4

Section 1. The provisions of Article 48 of the Act of 1960 (No. 729) on Copyright in Literary and Artistic Works and other provisions in the Act related to that Article shall, subject to tbe provisions of sections 2 and 3, apply also to television broadcasts transmitted in a foreign country party to the European Agreement on the Protection of Television Broadcasts, of June 22, 1960, and its Protocol of January 22, 1965, or whicb is transmitted by a television organization having its headquarters in such a country.

Section 2. Protection under Swedish law sball not apply when the period of protection has expired in the country where the broadcast took place or where the television organization has its headquarters.

Section 4. The following foreign countries are presently party to the Agreement and its Protocol, mentioned in section 1: Belgium, Cyprus, Denmark, Germany (Federal Republic of), France, Norway, Spain, Turkey and the United Kingdom.

Article 5

Section 1. The provisions of Articles 45, 47 and 48 of the Act of 1960 (No. 729) on Copyright in Literary and Artistic Works and other provisions of the Act related to that Article shall, subject to the provisions of sections 2 and 3, apply also to performances, sound recordings and sound radio and television broadcasts which take place in a foreign country party to the International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations. The provisions of Article 48 apply, in addition, to broadcasts by sound radio or television organizations having their beadquarters in such a country.

Section 2. Protection based on application of section 1 shall not apply wben the period of protection in the country where the performance, sound recording or sound radio or television broadcast took place, has already expired. As far as such sound radio or television broadcasts are concerned which enjoy protection under Article 48 on the basis of the provision in section 1, last sentence, protection shall not apply if the period of protection in the country where the broadcasting organization has its headquarters, has already expired.

Section 3. The provisions of Article 47 of the Act of 1960 (No. 729) on Copyright in Literary and Artistic Works shall not apply in relation to sound recordings which have taken place in Congo, Fiji, Luxembourg, Monaco or Niger.

Section 4. The following foreign countries are currently party to the Convention mentioned in section 1: Austria, Barbados, Brazil, Chili, Colombia, Congo, Costa Rica, Czecboslovakia, Denmark, Ecuador, El Salvador, Fiji, Finland, Germany (Federal Republic of), Guatemala, Ireland, Italy, Luxembourg, Mexico, Monaco, Niger, Norway, Panama, Paraguay, Peru, Philippines, United Kingdom and Uruguay.

Article 8

The provisions of Articles 1 and 2 shall apply also to works created before the date on which the foreign State in question became a member of the Berne Union or party to the Universal Copyright Convention, other than in the cases specified in the second and third paragraphs of this Article.

Copies of a work produced prior to the date referred to in the first paragraph may be freely distributed and exhibited. However, the provision of Article 23 of the Act of 1960 (No. 729) on Copyright in Literary and Artistic Works concerning the lease of sheet music apply to sucb copies.

Composed type, plates, forms and other devices produced before the date referred to in the first paragraph for the reproduction of a particular work may be used for the purpose for which they were made for a period of two and a half years from the date mentioned above. The provisions of tbe first paragraph shall apply to copies so produced.

The provisions of the first, second and third paragraphs shall apply accordingly to the rights mentioned in Articles 4–5 and to photograpbic pictures referred to in Article 7.

This Regulation enters into force on July 1, 1986.

General Studies

Reproduction: Legal and Illegal

Herman COHEN JEHORAM*

Activities of Other Organizations

Meetings of Intergovernmental Organizations

Council of Europe

Committee of Legal Experts in the Media Field

(Strasbourg, October 28 to 31, 1986)

The Committee of Legal Experts in the Media Field of the Council of Europe, hereinafter referred to as "the Committee," met in Strasbourg from October 28 to 31, 1986.

Experts designated by the Governments of 17 States, members of the Council of Europe, participated. WIPO was represented in an observer capacity by Mr. Henry Olsson, Director, Copyright and Public Information Department.

The Committee

(i) agreed on a draft recommendation on private copying of sound and audiovisual recordings, which will be submitted to the Steering Committee on the Mass Media of the Council of Europe for approval before it is submitted to the Committee of Ministers of the Council of Europe;

(ii) agreed on a draft recommendation on measures to combat piracy in the field of copyright and neighboring rights, which will be sent for review to the European Committee on Crime Problems and the European Committee on Legal Cooperation;

(iii) noted that the Committee of Ministers of the Council of Europe had, on February 14, 1986, adopted a recommendation, addressed to the member States of the Council of Europe, under the title "Principles Relating to Copyright Law Questions in the Field of Television by Satellite and Cable," whose operative part reads as follows:

Recommends that the Governments of the member States should, under the present state of international telecommunications law, be guided by the following principles when considering questions concerning copyright and neighboring rights in relation to television by satellite and cable:

Principles

1. States shall, as regards transmission via satellite of protected works and other contributions, distinguish between programme-carrying signals transmitted by direct broadcasting satellites and such signals transmitted by satellites in a fixed-satellite service.

2. States shall, as regards distribution by cable of protected works and other contributions, distinguish between cable-originated programs and distribution by cable of broadcasts.

3. The transmission of protected works and other contributions by means of a direct broadcasting satellite shall be governed by the provisions relating to the broadcasting or communication to the public of such contributions.

4. States shall, as regards transmissions by means of fixed-satellite services, take into account the following aspects when determining copyright liability:

(a) the need not to hamper unnecessarily the possibilities for broadcasting organizations to transmit programs between themselves by means of fixed-satellite services;

(b) the need to ensure that right owners can exercise an efficient control over the use made of their works and contributions, in particular in the case of large-scale reception of signals from fixed-satellite services.

5. Distribution by cable of protected works and other contributions transmitted by means of a direct broadcasting satellite shall be treated:

(a) as distribution by cable of a broadcast, if it is simultaneous, complete and unchanged;

(b) as cable-originated program, if any of these criteria are not met.

6. Distribution by cable of protected works and other contributions transmitted by means of a fixed-satellite service shall in principle be treated:

(a) as cable-originated program, where the national law considers the transmission via satellite as merely a transport, without copyright liability;

(b) as distribution by cable of a broadcast, in other cases, provided that the distribution is simultaneous, complete and unchanged.

7. States shall take appropriate steps to promote, in relation to satellite transmissions, the most uniform possible interpretation at European level of relevant concepts in international instruments on copyright and neighboring rights.

8. States shall give special consideration to the adverse economic consequences which the new media technology could have on the market for protected works and contributions, on the situation of producers of cinematographic works and of phonograms and that of broadcasting organizations, and on employment possibilities for authors and performers.

In particular, as regards the protection of the producers mentioned above, broadcasting organizations and performers, States shall consider the possibility of granting protection over and above that accorded by the relevant international instruments.

9. States shall, as regards the acquisition of relevant rights for the cable distribution of satellite signals, introduce non-voluntary license schemes, insofar as such schemes are permissible under international copyright conventions, only when satisfactory contractual solutions cannot be achieved and the public interest requires such licenses.

Meetings of International Non–Governmental Organizations

International Confederation of Societies of Authors and Composers (CISAC)

XXXVth Congress

(Madrid, October 6 to 11, 1986)

At the invitation of the General Society of Authors of Spain (*Sociedad General de Autores de España*, SGAE), the International Confederation of Societies of Authors and Composers (CISAC) held its XXXVth Congress in Madrid from October 6 to 11, 1986. Organized by the President of SGAE, Mr. Juan José Alonso Millán and his collaborators, the Congress was supported by the Government of Spain through the Ministry of Culture.

The opening meeting took place in the presence of His Majesty King Juan Carlos of Spain.

The Congress, which was presided over by Mr. Léopold Sédar Senghor, poet and ex–President of Senegal, outgoing President of CISAC, was particularly well attended. It included delegations from CISAC–affiliated societies of authors from 45 countries.

WIPO had been invited as an observer and was represented by Mr. Mihály Ficsor, Director, Copyright Law Division. He gave a speech during the opening meeting.

The agenda of the Congress included debates on the following subjects: "The Berne Convention and the Situation of Copyright in 1986," "The Development of Legislative Provisions on Authors' Contracts," "The Authors' Societies as Guarantors of Authors' Independence," "Administration and Control of Rights in Audiovisual Works," "The Author's Remuneration and the Reproduction of Works."

The reports gave rise to large discussions at the end of which the Congress approved a declaration on the occasion of the centenary of the Berne Convention and a certain number of resolutions. The declaration is reproduced below. There were two resolutions of general nature. One of them dealt with the administration and control of the rights in audiovisual works, and the other with the reproduction of works by means of home taping. In the latter, the Congress resolved "*to urge* all Governments to take immediate steps to introduce schemes whereby authors may be remunerated for the home taping use of their works by means of royalties related to the sale of recording equipment and blank tape [and] *to advocate* that all such schemes should be established within the copyright system and in accordance with the principles of that system, and in particular that all royalties collected under such schemes should be distributed to individual authors, and that foreign authors should be entitled to participate in such schemes in accordance with Convention principles." The other resolutions concerned current legislative and other developments at regional (Latin America, European Economic Community) and at national (Denmark, Israel, Turkey, United States of America) levels.

The Congress renewed the Administrative Council of CISAC (composed of representatives of 24 societies of authors), while the new Administrative Council elected the Executive Bureau (composed of 12 members) and the Legal and Legislation Committee (composed of 30 members), for the period until the 1988 Congress.

Declaration on the Occasion of the Centenary of the Berne Convention

The International Confederation of Societies of Authors and Composers (CISAC), meeting in general assembly in Madrid from October 6 to 11, 1986, on the occasion of its XXXVth Congress,

Wishing to associate itself with the celebration of the centenary of the Convention for the Protection of Literary and Artistic Works signed in Berne on September 9, 1886,

Has adopted the following declaration on the unanimous vote of its member Societies:

(1) The successive stages through which the techniques of communication and reproduction of works have passed since 1886 have confirmed the fundamental role which the Beme Convention has played throughout this period by requiring, within a continually growing institutional framework, recognition of the authors' moral right and their legitimate participation in the economic and social benefits arising from the progress of these techniques. It is appropriate therefore to pay tribute to the pioneers of this Convention who, with wisdom and perspicacity, laid the foundations of a true international awareness of the protection due to authors as well as to salute all those who have been the architects, at the successive revision conferences, of the improvements brought into the Convention text for the purpose of extending and strengthening the protection of authors. Tribute should also be paid to BIRPI and its successor WIPO for their faithful administration of the successive texts of the Convention.

(2) The social function of the system of authors' rights is to create the moral and material conditions that will enable gifted men and women to devote themselves to the creation of cultural riches for the benefit of the general public. A country's determination to ensure an optimum protection of these rights is both proof of a high standard of cultural development and a major factor in opening up new sectors of activity in the spheres of knowledge and entertainment.

(3) The constant improvement and diversification of the means and processes by which works reach the public today, resulting from man's genius, all constitute new challenges to the existence of an effective protection for authors; the answers provided by the system of authors' rights, on the condition, however, that it does not sacrifice its underlying principles and essential character, show that it continues to be a formula which is perfectly able to reconcile the interests of the three parties involved, namely: the author, by ensuring him independence and security; the cultural industries, by guaranteeing them the undisturbed exercise of their activities; and the public, by opening up to it the widest possible access to works in their integral authenticity.

(4) The use of modern techniques of communication, without proper consideration being given at the same time to the rights of authors, dangerously threatens the very existence of these rights and is in conflict with the fundamental principles and the faithful interpretation of the Berne Convention.

(5) The establishment of an equitable balance between the interests of authors and of the users of their works depends upon the existence of societies of authors. The activities of such societies are essential, at one and the same time, to the interests of the creators of intellectual works, of those who disseminate those works and of those who use them.

(6) Experience throughout the life of the Berne Union has demonstrated that the dissemination of intellectual works by means of voluntary licenses has best served the needs of both authors and users by providing a flexible system adaptable to every situation, by contrast with the inflexibility of non-voluntary licenses.

(7) In order to ensure the proper application and to safeguard both the present and future importance of the Berne Convention, the protection of authors' rights, particularly in relation to new means of dissemination, should be treated exclusively within the framework of legislation on authors' rights, provided however that this does not prejudice the concept of those rights, and not within laws which are primarily regulatory or fiscal and are not directed to the protection of all authors, both national and international.

CISAC, therefore,

(a) Invites all those who are concerned with cultural expansion or who are involved in activities of an industrial or commercial nature affecting the dissemination of works to join in a common and permanent effort to sustain and promote all measures capable of ensuring the durability of the forces of intellectual creation;

(b) Calls upon the member States of the Berne Union and its administrative organs to revive the "pioneering spirit of 1886" so that the principles that guided the original founders of the Union be upheld and further developed;

(c) Invites the States which have not yet joined the Berne Union to do so and thus to unite with its existing membership in its endeavors;

(d) Invites the member States of the Union which have not already done so to ratify the changes to the Convention, designed to improve the protection of authors, which were adopted in the course of the revision conferences, notably that of Paris in 1971.

International Federation of Musicians (FIM)

12th Ordinary Congress

(Vienna, October 20 to 23, 1986)

The International Federation of Musicians (FIM) held its 12th Ordinary Congress in Vienna from October 20 to 23, 1986.

Representatives of member organizations from 25 countries participated in the Congress.

WIPO was represented in an observer capacity by Mr. Mihály Ficsor, Director, Copyright Law Division.

A report on the activities of FIM since the last Congress (Budapest, 1983) was submitted to the delegates of member organizations. The agenda included a number of items on problems raised by new technological and social developments in the field of copyright and neighboring rights and also on several questions of importance for the professional organizations of musicians and their contractual policy.

A number of motions were submitted, either by member organizations or by the Executive Committee of FIM on the basis of which several resolutions were adopted. There were two resolutions which concerned more closely the application of the Rome Convention: the first of those asked the Executive Committee of FIM to promote the revision of Article 12 of the Rome Convention and the corresponding provisions in national laws to the effect that performing artists should have an independent right to remuneration (that is, they should have such a right irrespective of whether phonogram producers also have a parallel right or not) and their remuneration should be at least equal to that of phonogram producers. The second resolution reflected a change in the policy of FIM. The last FIM Congress still urged studies on the possibility of a general revision of the Rome Convention. Now, this resolution noted that there was not sufficient support from governments for an early revision of the Convention and called for discussions about the possibility of the revision of the 1974 ILO/Unesco/WIPO Model Law Concerning the Protection of Performers, Producers of Phonograms and Broadcasting Organizations.

Book Reviews

Introduction to Intellectual Property Law, by *Jeremy Phillips*. One volume of 310 pages. Butterworths, London, 1986.

True to its title, this works aims at presenting the vast panorama of intellectual property, covering both industrial property and copyright. The protection of performers is also dealt with briefly. The author explains in his preface that the book is above all designed to whet the appetite of the reader who wishes to know more of the many aspects covered by intellectual property.

The book is divided up into six major parts. The first is an introduction that sets out what is meant by intellectual property. The second deals with rights in inventions, patents and obtaining them and with acts that constitute infringements. The references made are to the British Patents Act of 1977.

The subsequent parts concern successively copyright (3), pseudo-copyright (the author's term) (4), rights in information and reputation (5) and various topics of current interest (6).

The author, who is a lecturer at the Centre for Commercial Law Studies of Queen Mary College, University of London, analyzes copyright by the traditional approach of examining the concept of copyright, the notion of works in general, that of derivative works, infringements and remedies for infringement.

The final three parts, on the other hand, are dealt with from an angle that differs from the approach normally found in such works of a general nature. Under the heading "pseudo-copyright," the author covers public lending rights, resale royalty rights, performers' protection and moral rights.

In Part 5, comprising four chapters, the author places emphasis on fair and unfair competition, breach of confidence, the problems of passing off, registered trademarks, franchising, sponsorship and character merchandising such as, for example, garments with the printed likeness of a Walt Disney character.

Finally, in Part 6, he deals in particular with the problems caused by new technology (such as computers and cable programs), the registration of designs, the protection of plant varieties, secondary copyright infringements, authors' rights and the European Economic Community and, to close, a short chapter on intellectual property on the international stage.

Despite the detailed plan and list of contents provided, the book in fact tends on occasion to be rather too condensed and to leave out certain important topics.

However, sight must not be lost of the purpose announced by the author which was to depart from a purely legal approach to the problems of copyright in order to give the reader the broadest possible panorama which, indeed, constitutes an interesting introduction to intellectual property law.

P.C.M.

Copyright Law in the United Kingdom and the Rights of Performers, Authors and Composers in Europe, by *J.A.L. Sterling* and *M.C.L. Carpenter*. One volume of 749 pages. Legal Books Pty Ltd, Sydney, London, 1986.

This important work comprises two major sections devoted, respectively, to copyright law in the United Kingdom and to the rights of performers, authors and composers in Europe.

In their preface, these two well-known London barristers set out the aims pursued by their book. Thus, they first describe the Copyright Act 1956, analyzing with precision the provisions it contains and supporting their comments with numerous references to case law. They also deal with the Treaty of Rome establishing the European Economic Community, thereby emphasizing the provisions on the free movement of goods and those likely to affect the exercise of copyright. They are concerned for developments in the field of new technology and direct their attention to current problems, such as those of data processing—storage of data, integrated circuits—and those involved in reprographic reproduction, cable diffusion and distribution of programs by means of direct broadcasting satellites. Finally, as regards the exercise of

performers', authors' and composers' rights, they highlight the major areas where it may be possible to achieve some harmonization of laws. Although the tone adopted is largely that of British law, the foreign reader may also find some interesting elements.

The first part, devoted to United Kingdom law, comprises ten chapters dealing with the definition of copyright (1), subsistence of copyright (2), duration of copyright (3), the ownership and exercise of copyright (4), acts constituting infringement and those not constituting infringement of copyright (5, 6), remedies and penalties (7), regulation of copyright agreements (8), industrial designs (9) and the international conventions (10).

Although the final chapter represents a rapid overview of the various international treaties and does not go into detail, such is not at all the case of the preceding nine chapters in which the statutory provisions of the Copyright Act 1956 are set out in a detailed and thorough manner. There is no lack of references to recent case law and to publications. In addition, an index of the contents makes for easy consultation of this work.

The second part is less voluminous than the first, comprising four chapters: European laws: general features (11), Community law (12), the major challenges to copyright (13) and harmonization of laws concerning the rights of creative individuals (14). With today's lead times for publishing a work of this scope, it is difficult to remain completely up to date in respect of domestic laws since the development of technology causes the legislator to act and amend much more frequently than in the past. However, one may assume that the authors of this valuable work will publish updates of certain domestic texts as for example the information sheet on the proposed legislation described in the White Paper of April 1986, which accompanies the book.

The final part of the work contains a number of annexes that reproduce the Copyright Act 1956 and the relevant articles of a number of other laws and conventions. Although the bibliography is relatively selective, on the other hand, the table of cases is very rich. One can recognize the hand of the practitioner. All this, together with the vast range of topics treated, contributes extensively to make this book an excellent working tool that is easy to consult.

P.C.M.

Internationales Urheberrechts–Symposium (International Copyright Symposium), Schriften zum gewerblichen Rechtsschutz, Urheber–und Medienrecht (SGRUM). One volume of 240 pages, Band 15, J. Schweitzer Verlag, München, 1986.

The volume contains the speeches and papers delivered at the International Copyright Symposium organized by the International Publishers Association (IPA) and by the Association of the German Book Trade (*Börsenverein des Deutschen Buchhandels*) on the occasion of the centenary of the Berne Convention in Heidelberg on April 24 and 25, 1986.

At the beginning of the book, a message by Richard von Weizsäcker, President of the Federal Republic of Germany to the participants in the centenary celebration in Heidelberg is published. Otherwise, the book is composed of two parts like the program in Heidelberg.

The first part contains the speeches given in the framework of the celebration of the centenary of the Berne Convention; among them two substantive lectures, namely one by Eugen Ulmer, former Director of the Max–Planck Institute, Professor em. at the Ludwig Maximilian University, Munich, entitled: "The Berne Convention: the First Hundred Years" and the other by Arpad Bogsch, Director General of WIPO, entitled: "The Berne Convention: Towards the Future."

The second part of the volume contains the papers delivered during the Symposium.

In the framework of the opening session—after the introduction by J. Alexis Koutchoumow, Secretary General of IPA—some general questions of copyright were discussed. Roman Herzog's (Vice–President of the Bundesverfassungsgericht, Karlsruhe) paper dealt with "The Significance of Intellectual Property for Society." He pointed out that sometimes the growing creative, reproducing as well as only receptive occupation with arts was seen as a consequence of increasing standardization and loss of individuality in our life. However, in reality, it demonstrates an initiative of people to solve one of the largest problems of present–day society, i.e. anonymity and alienation. Creative achievements directly serve society, which has to respect, protect and remunerate such achievements if it claims to be a truly liberal and free society. Henry Ölsson, at that time Director at the Ministry of Justice, Sweden, spoke about "The Economic Impact of Copyright Law." He analyzed the results of the studies which had been undertaken in Sweden, the United States of America and the United Kingdom. The studies had used basically the same methods, i.e. assessing the share of the Gross National Product (GNP) relating to copyright protected material. Even if they differed in certain respects they all showed the economic importance of copyright related activities.

The subject of the first working session was "The Legal Rights of Publishers." David Ladd, former Register of Copyrights, lawyer, Washington, D.C., in his paper entitled "The Utility of a Publisher's Right," emphasized that copyright should protect publishers as well as authors. To secure that protection, it is necessary that legislators and the public understand what publishers do and what they add to the author's contribution. Publishers must be in the forefront of efforts to sustain both authors' and their own rights. To do so, they must seek to participate in all debates and proceedings to define the scope of copyright and to set compensation for use. Electronic libraries will be a principal field where publishers make their voices heard. Laurens van Krevelen's (Managing Director, Meulenhoff Nederland bv., Amsterdam) paper was entitled "The Information Society and the Right of the Publisher." According to him, the "miracle of Berne" is not only that the international copyright system has survived the new technological developments and the constant attacks of users but also that book publishers have found ways to live in a legal structure that does not accord them direct protection. He was of the opinion that the modern functions of book publishers required a better legal division between the rights of the author and those of the publisher, and the rights of the publisher should be nothing less than the exploitation right itself.

The title of the second working session was the following: "Reproduction: Legal and Illegal." Two papers were delivered under that title by Herman Cohen Jehoram, Professor at the University of Amsterdam, and by Allan Wittman, Senior Vice–President, Macmillan Publishing Company, New York. Professor Cohen Jehoram analyzed the existing legal solutions to the problem of reprography, first of all the Dutch system based on collective administration by a collecting society. He pointed out that the greatest difficulty remained the distribution of royalties. Mr. Wittman emphasized that the publishers' concern about the current abuse of copyrighted works by reprographic reproduction was, in the final analysis, an economic concern. Each year, thousands of journals cease to exist because commercial companies, libraries and schools reduce their number of subscriptions and make frequent copies instead. He urged a more vigilant and offensive attitude on behalf of publishers and spoke about two lawsuits of the Copyright Clearance Center against New York University and the big petroleum company Texaco, Inc.

The third working session dealt with the subject "Reprographic Rights and Collecting Societies." Wilhelm Nordemann, lawyer, Professor at the Free University, West Berlin, in his paper entitled "Licensing, Collecting and Clearing of Proceeds for Reprographic Rights," emphasized that a legal position reserving the author's exclusive right even in the non-public reproduction field was in full accord with the Berne Convention. He added that it was no argument that such a position was unrealistic. The problems of control, collecting and clearing of proceeds for the performances of musical works have been no smaller than such problems are in the photocopying field, and they have been solved. If it is necessary, national legislation can provide that the exclusive right of reproduction in the non-public area be administered by collecting societies. John-Willy Rudolph's (Executive Director, Kopinor, Oslo) paper had a similar title: "Licensing, Collecting and Clearing for Reprographic Rights." He was of the opinion that the main obstacle to solving the problems posed by reprographic reproduction was not the copying machine or technology, nor the legislator or the user in quest of knowledge, but the passivity of authors and publishers who—based on copyright—must choose collective administration techniques to enforce their rights. It is their duty to exert pressure on legislators so that the necessary changes of the laws be made.

In the framework of the fourth working session, under the title "New Technology—New Copyright?" three papers were delivered. Karen A. Hunter, Liaison Officer, Elsevier Science Publishers, New York, spoke about "Software, Electronic Databases and Copyright: an American Perspective." She mentioned that even if applications software is covered by the Copyright Law of the United States of America, copyright infringements through illegal copying were common. Copyright protection must be supplemented by other defensive approaches, including technical means, contractual agreements, commercial improvements and educational efforts. She emphasized that electronic databases posed more complex copyright problems. Ownership questions revolve around the copyright in the material included in database and the value added through the compilation of the database itself. She analyzed the copyright problems of "downloading," payment per use and the creation of databases from copyrighted works. Milagros del Corral Beltrán, Secretary General of the Association of Publishers of Madrid, spoke about the same subjects in her paper entitled "New Technology—New Copyright? The Latin Legal Approach." She referred to the fact that initial uncertainty in the international legal development seemed to be resolved concerning the question whether computer software should be protected under patent law, copyright law or a *sui generis* system. Now there is a clear tendency towards copyright protection. More detailed analysis was given in the paper about the new French legislation and the Spanish Draft Copyright Law. Mrs. Corral Beltrán emphasized the growing importance of databases. She expressed the view that databases were protected as compilations under the international copyright conventions. However with regard to the specific problems of databases and the intensive international flow of information, detailed provisions are needed in this field. At the end of her report an overview was also given concerning works created with the aid of computers and on the question of authorship of such works. Finally, Gerhard Schricker, Director of the Max-Planck Institute spoke on the same subjects also under the title "New Technology—New Copyright?" He analyzed the legal provisions and the decision of the Federal Supreme Court of the Federal Republic of Germany on the protection of computer programs. It was pointed out that in the opinion of the Federal Supreme Court, copyright protection presupposed that the creative originality of the programs was considerably above the capability of the average programmer, and thereby a patent law criterion was introduced which restricted copyright protection too exclusively. As far as databases were concerned, he expressed the view that the storage of works in computers constituted reproduction from the viewpoint of copyright, while the assembly, selection, arrangement and processing of stored works might give rise to separate copyrights to protect the database from the plundering of its stock of information.

In the final session before the closing address by Heinz Götze, co-owner of the Springer-Verlag, Heidelberg, Charles Clark, Consultant of the Publishers Association, London, and of the American Association of Publishers, Washington, D.C., gave a "Summary of the Symposium" which summed up in a brilliant way the results of the discussions.

The book—in addition to the texts of the papers in the original languages (English, German and Spanish, respectively)—contains summaries of all of them in four languages: English, French, German and Spanish.

M.F.

Calendar of Meetings

WIPO Meetings

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

1987

January 12 (Geneva) — Information Meeting for Non-Governmental Organizations on Intellectual Property

January 26 to 31 and February 3 (Geneva) — Consultative Meeting on the Revision of the Paris Convention (Second Session)

February 23 to 27 (Geneva) — Nice Union: Preparatory Working Group

March 9 to 13 (Geneva) — Permanent Committee for Development Cooperation Related to Copyright and Neighboring Rights

March 23 to 27 (Geneva) — Committee of Experts on the Harmonization of Certain Provisions in Laws for the Protection of Inventions (Third Session)

March 31 to April 4 (Geneva) — Permanent Committee on Patent Information (PCPI): Working Group on General Information

April 6 and 7 (Geneva) — Permanent Committee on Patent Information (PCPI)

April 27 to 30 (Geneva) — Committee of Experts on Intellectual Property in Respect of Integrated Circuits (Third Session)

May 4 to 19 (Geneva) — Permanent Committee on Patent Information (PCPI): Working Group on Search Information

May 5 to 8 (Geneva) — Permanent Committee for Development Cooperation Related to Industrial Property

May 11 to 13 (Geneva) — Vienna Union: Working Group on the International Classification of the Figurative Elements of Marks

May 11 to 15 (Paris) — Committee of Governmental Experts on Dramatic, Choreographic and Musical Works (convened jointly with Unesco)

May 18 to 23 and 26 (Geneva) — Consultative Meeting on the Revision of the Paris Convention (Third Session)

May 25 to 29 (Geneva) — Committee of Experts on the Protection Against Counterfeiting (Second Session)

June 1 to 4 (Geneva) — Madrid Union: Working Group on Links Between the Madrid Agreement and the Proposed (European) Community Trade Mark

June 11 to 19 (Washington) — Permanent Committee on Patent Information (PCPI): Working Groups on Special Questions and on Planning

June 22 to 30 (Geneva) — Berne Union: Executive Committee (Extraordinary Session) (sitting together, for the discussion of certain items, with the Intergovernmental Committee of the Universal Copyright Convention)

June 29 to July 3 (Geneva) — Committee of Experts on Biotechnological Inventions and Industrial Property (Third Session)

July 1 to 3 (Geneva) — Rome Convention: Intergovernmental Committee (Ordinary Session) (convened jointly with ILO and Unesco)

July 6 to 8 (Geneva) — Budapest Union: Assembly (Extraordinary Session)

September 7 to 11 (Geneva) — Permanent Committee on Patent Information (PCPI): Working Group on Patent Information for Developing Countries

September 14 to 19 and 23 (Geneva) (to be confirmed) — Consultative Meeting on the Revision of the Paris Convention (Fourth Session)

September 21 to 30 (Geneva) — Governing Bodies (WIPO General Assembly, Conference and Coordination Committee; Assemblies of the Paris, Madrid, Hague, Nice, Lisbon, Locarno, IPC, PCT, Budapest, TRT, Vienna and Berne Unions; Conferences of Representatives of the Paris, Hague, Nice and Berne Unions; Executive Committees of the Paris and Berne Unions; Committee of Directors of the Madrid Union; Council of the Lisbon Union): Ordinary Sessions

October 5 to 9 (Geneva) — Committee of Governmental Experts on Works of Applied Art (convened jointly with Unesco)

November 2 to 6 (Geneva) — Committee of Experts on the Harmonization of Certain Provisions in Laws for the Protection of Inventions (Fourth Session)

December 1 to 4 (Geneva) — Committee of Governmental Experts on the Printed Word (convened jointly with Unesco)

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

Non-Governmental Organizations

1987

January 26 and 27 (Cannes) — International Association of Entertainment Lawyers: MIDEM International Lawyers Meeting

June 1 and 2 (Sorrento, Italy) — International Literary and Artistic Association (ALAI): Study Session

July 20 to 22 (Cambridge) — International Association for the Advancement of Teaching and Research in Intellectual Property (ATRIP): Annual Meeting

1988

June 12 to 17 (London) — International Publishers Association (IPA): Congress