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Contents

CENTENARY OF THE BERNE CONVENTION	
Celebration of the Hundredth Anniversary of the Berne Convention: Part II	43
WIPO MEETINGS	
Works of Visual Art. Preparatory Document for and Report of the WIPO/Unesco Committee of Governmental Experts (Paris, December 16 to 19, 1986)	70
BOOKS AND ARTICLES	
La genèse de la Convention de Berne pour la protection des oeuvres littéraires et artistiques du 9 septembre 1886, by <i>Jean Cavalli</i>	83
100 Jahre Berner Union. Gedanken, Dokumente, Erinnerungen, by <i>Heinz Püschel</i>	83
Die Berner Uebereinkunft und die Schweiz	83
CALENDAR OF MEETINGS	85

COPYRIGHT AND NEIGHBORING RIGHTS LAWS AND TREATIES (INSERT)

Editor's Note

AUSTRIA

Federal Law Amending the Copyright Amendment Law 1980 (No. 375, of July 2, 1986) Text 1-01

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*Celebration of the hundredth anniversary
of the Berne Convention
in the meeting room of the Federal Council in the Bundeshaus in Berne,
on September 11, 1986*

Centenary of the Berne Convention

Celebration of the Hundredth Anniversary of the Berne Convention

PART II

Celebrations in Various Member States of the Union

The Berne Convention for the Protection of Literary and Artistic Works was signed on September 9, 1886.

The centenary was recalled during 1986 on various occasions in various places and in various ways.

Those events are described in two parts in this periodical.

The first part—which was published in the November 1986 issue—dealt with the most important—the official—of those celebrations, the one organized by the Government of Switzerland.

This second part deals with other celebrations—14 of them, in chronological order—in which the World Intellectual Property Organization (WIPO) also participated or at least about which it has received official information. They were the following: International Conference in London (April 17 and 18, 1986), International Symposium in Heidelberg (April 24 and 25, 1986), General Assembly of SUISA in Berne (June 21, 1986), Postgraduate Seminar in Budapest (June 27 and 28, 1986), ALAI Congress in Berne (September 8 to 12, 1986), Regional Seminar in Mexico City (September 25 and 26, 1986), CISAC Congress in Madrid (October 6 to 11, 1986), Commemoration in Madrid (October 10, 1986), Commemoration in Prague (October 15, 1986), Conference in Brioni (November 13 and 14, 1986), International Symposium in Cracow (November 18 to 21, 1986), International Conference in The Hague (November 20 and 21, 1986), WIPO Workshop in New Delhi (November 24 to 28, 1986), Commemoration in Paris (December 3, 1986).

University of London and British
Literary and Artistic Copyright Association
London, April 17 and 18, 1986

The Conference was organized by the Queen Mary College (University of London), Intellectual Property Law Unit, jointly with the British Literary and Artistic Copyright Association (BLACA), the British group of the International Literary and Ar-

tistic Association (ALAI). It took place in the Stationers' Hall and was attended by some 100 outstanding copyright experts from the United Kingdom and from other countries, among them several university professors.

The conference was opened by the speech of Dr. Arpad Bogsch, Director General of WIPO, who—after congratulating the organizers and naming the speakers of the two-day gathering—said the following about the venue itself:

“It is fitting that such a conference to celebrate the 100th anniversary of the first and, I dare say, the foremost, multilateral treaty in the field of copyright, should have been organized in London at such a hallowed, historic place as the Stationers' Hall. It is the very place in which the Registry of published books was established more than 400 years ago. It is interesting to recall that ‘in order to ascertain what books shall be from time to time published’ and to enter these in the register book then maintained, two shillings had to be paid, and one shilling for inspecting the register or for obtaining a certificate of that entry. Equally interestingly, the then penalty for piracy was forfeiture of books and a fine of six shillings and eight pence for each copy, half to go to the King and half to the owner of what was not, at that time, called copyright but what, in essence, was copyright.

“Since then, much has happened both in respect of the British Copyright Law as well as the international copyright situation. But the historical value remains, and it is appropriate to rekindle the memory of the beginning of copyright on occasions such as this.”

After the speakers and the venue, he spoke about the significance of the meeting:

“I consider this meeting of particular significance because it is organized by people who are *par excellence* the thinkers in the field of copyright law. They are attached to a prestigious university or to an association that was created for the very purpose of thinking about what is best for the world of copyright. They—that is, you—look into the past, into the century-long history of the Berne Convention, and, on the basis of the knowledge and experience of that century-long history, and, of course, using their imagination, *your* imagination, contribute to charting what international copyright protection should be in the following 100 years or at least in the early stages of that second century.

"The governments that are responsible for the good administration of copyright laws and, in most countries, for taking the initiative to update those laws, need the advice of scholars and thinkers. The governments need their advice also in formulating their policy in international copyright relations."

The Director General then referred to the history of the Berne Convention and the present program of WIPO for the promotion of its correct application. He mentioned the series of meetings of committees of governmental experts on different categories of works to take place in the 1986–1987 program period and he finished his speech as follows:

"What do we want to achieve in these meetings? We will strive that each meeting adopt a set of principles outlining the protection that, ideally, should be given to each category of work under the law of copyright. Those principles should influence the governments, the legislators and the courts. They will be mostly in a form that could be used as provisions in domestic laws. They should contribute to resisting the erosion of copyright protection, to the solution of unclear, because new, situations, mostly resulting from the new technologies used in the reproduction and dissemination of works protected by copyright. The underlying philosophy of the International Bureau of WIPO and the Berne Union will be pro-author. In case of doubt, and to the extent that seems to be reasonable, we shall press for the higher degree of protection and for the more efficient enforcement measures.

"I would invite you—eminent thinkers in our field—to assure an active role in this, intellectually challenging, and economically very important, reassessment of the basic principles of copyright law, as we step from the first into the second centenary of the Berne Convention. I do not need to make such an invitation since you are already doing it. This Conference does just that.

"So, all I can say in conclusion is that I wish a great success for this Conference and I ask you all to persevere in the task also after the closing of this Conference."

The Director General's speech was followed by addresses by Mr. Sam Ricketson's, Senior Research Fellow, Queen Mary College, paper on "The Birth of the Berne Union" and by Mr. Ivor Davis', former Comptroller-General of Patents, United Kingdom, Director of the Common Law Intellectual Property Institute, contribution entitled "The Berne Convention and the Development of Copyright Law in the United Kingdom" (which latter was based on the author's article published in the May 1986 issue of this review).

In the program of the Conference, it was particularly interesting that the Berne Convention was examined from the viewpoint of each of the three groups of countries that in today's international negotiations stand together.

Mr. Denis de Freitas, Chairman, British Copyright Council, emphasized three features of the copyright system of market economy countries that he said to be characteristics: the primacy of the individual, the property concept and the freedom of

speech. He expressed his belief that those fundamental characteristics are in perfect accord with the spirit of the Berne Convention and spoke about the Convention itself as the strongest guarantee of an appropriate protection of copyright:

"I regard the Berne Convention as expressing the principles of the copyright system in its highest developed form in which it exists today. I do not, of course, ignore the Universal Copyright Convention (UCC), but I hope my Unesco friends will not disown me if I say that I regard the UCC as a worthy United Nations initiative designed in the middle of the 20th century to enable developing countries (and the United States of America) to enter into multilateral copyright relations with those countries which had been developing the copyright system internationally from the middle of the last century to the sophisticated code now embodied in the Berne Convention."

Dr. György Boytha, Director General, Bureau for the Protection of Authors' Rights (ARTISJUS), Hungary, dealt with some distinctive characteristics of socialist laws on authors' rights with special regard to the implementation of the Berne Convention. He said that one of the most important features of such laws is that "they generally vest copyright in the individual author, that is to say the natural person who created the work, irrespective of whether the person was a free-lance author or was creating the work under employment or a commission" and emphasized that that concept "fully corresponds to the nature of the protection of authors' rights as provided for in the Berne Convention. The Berne Union was established 'for the protection of the rights of authors in their literary and artistic works' (Article 1) and 'this protection shall operate for the benefit of the author and his successors in title' (Article 2(6))." He added that socialist laws on copyright went even further; they vest copyright in the person of the author not only at the initial stage: the principle of the inalienability of authors' rights is consistently applied in those laws. Finally, he identified the strong emphasis on the protection of authors' rights in the course of their exercise and detailed legislation on authors' contracts as further fundamental features of socialist copyright laws and expressed the view that legislation on authors' contracts should be considered also at the international level.

Mr. Ndéné Ndiaye, Adviser for African Affairs, CISAC, analyzed the attempts made during the last two revision conferences—in Stockholm in 1967 and in Paris in 1971—to meet the demands of developing countries. He summarized his opinion as follows:

"Admittedly the results obtained are not negligible; in some respects they are even important. But, in all truthfulness, it cannot be asserted that they came up to the developing countries' expectations, nor, more simply, that they achieved the objective sought..."

"It seems to us that the wrong course was taken. The solution was to be found elsewhere. The developing countries have understood this—perhaps a little late—but also, and in this we ought to pay tribute to them, WIPO and Unesco understood it too in setting up the International Copyright Information Centre and the joint Unesco/WIPO Consultative Committee precisely to facilitate the application of these provisions for developing countries.

"But how did it come to this?

"Firstly, ... the developing States ... had just acceded to international sovereignty and had practically no experience in copyright...

"Secondly, the fact that, in the sphere of culture—in the sphere of the intelligence I should say—what was being sought was to class some as 'developed' and others as 'developing,' distorted the realities of the problem from the outset. Just as, in this sphere, the quality of the work is not judged, so any discrimination between the authors of these works must be banished. In actual fact, in the cultural sphere, we are all 'developing'."

It was also interesting to hear the contributions of the speakers of two big countries which are not yet party to the Berne Convention, namely the United States of America and China.

"The Berne Convention and the Universal Copyright Convention: the American Experience" was the title of the paper delivered by Mr. Hamish Sandison, Attorney, Washington, D.C. In the conclusion of his detailed and thorough study, he summed up his opinion about the development of copyright in the United States of America as follows:

"A decisive shift has indeed occurred in the last 100 years, from complete isolation to partial involvement and now, on its 100th anniversary, to the very brink of full membership in the Berne Union.

"In making this shift possible, the role of the UCC cannot possibly be underestimated. If ... the development of international copyright resembles a rising staircase, from the bottom step where foreign works go unprotected, to the top step where Berne's 'standard *par excellence*' prevails, then the UCC has supplied the essential intervening steps. Without the UCC, no ascent would have been possible.

"The question now, therefore, is whether the United States will take the final step up to Berne..."

"The prospects for U.S. adherence to Berne have never looked better: the areas of compatibility between U.S. law and the Berne minima are now much greater than the areas of incompatibility; U.S. withdrawal from Unesco has reduced the benefits of UCC membership and correspondingly increased the attractions of Berne membership; and, last but not least, the growing awareness within the United States of the importance of protecting intellectual property in international trade has made abstention from Berne seem more of an anachronism than ever before."

Professor Guo Shoukang, People's University of China, Beijing, was unable to attend the conference, but his paper entitled "China and the Berne Convention" was read by Mr. Ricketson and followed

with great interest. The paper analyzes several questions that—according to him—should be studied in the framework of the drafting of the new Chinese Copyright Law and refers to the relevant Articles of the Berne Convention. He finishes his analyses with the following statements:

"On the eve of the centenary of the Berne Convention, we must affirm the role of the Convention in international collaboration for copyright protection. The Berne Convention has made its historical contribution to the international copyright system and had an important impact on national legislation. One of the reasons for its vitality is that the Convention has not stagnated, but changed from time to time in conformity with development of political, economic and technological advancement—as demonstrated especially by the Paris Act of 1971.

"It is also necessary to point out that there are serious challenges to the Berne Convention. In recent years new technologies have arisen. Developing countries have raised many reasonable demands to further reform the international copyright system. If the Berne Convention can be more flexible and meet the reasonable needs of developing countries as well as the challenges from new technology, I believe the Convention will make an even greater contribution in the next 100 years. I do hope that the Berne Convention can keep pace with the development of human history. I also hope that China will be a member of the Berne Union in the not-too-distant future."

During the second day of the Conference, certain current problems facing the Berne Convention were discussed. The following papers were presented: "The Berne Convention and the Public Interest" by Dr. Jeremy Phillips, Lecturer in Intellectual Property Law, Queen Mary College; "The Berne Convention, Compulsory Licensing and Collecting Societies" by Mr. Michael Freegard, Chief Executive, Performing Right Society, London; "*Droit de suite* and *Droit moral* Under the Berne Convention" by Professor Robert Plaisant, Professor, Law Faculty of Le Mans; "Computers, Software and International Protection: Problems Solved and Problems Raised" by Mr. David Llewelyn, Solicitor, London; "Cables and Satellites" by Mr. Antony Jennings, Legal Adviser, British Broadcasting Corporation; "Reprography" by Mr. John Adams, Senior Lecturer in Law, University of Kent at Canterbury.

In the closing session, Professor Georges Koumantos, University of Athens, President of ALAI, presented a lecture entitled "The Future of the Berne Convention." He was of the opinion that no revision of the Berne Convention would be necessary in the foreseeable future and it would not serve the interests of an appropriate protection of copyright. He said:

"I believe—and this is not mere wishful thinking—that ... the Berne Convention ... will remain unchanged. No adaptation, which would mean nothing less than a capitulation, needs to take place. The principles have to remain the same, as they have been established for a century in

the Convention and for more than two centuries in the doctrine of copyright. The rules of the Convention have first to be interpreted in their true spirit, and this spirit is the protection of the authors by the recognition of their exclusive rights in their works. Having done this, the rules of the Convention can then be adapted to new situations with the will of authors, through contractual agreements."

The Conference was closed by a summary by Dr. Stephen Stewart, Chairman, Common Law Institute of Intellectual Property.

**International Publishers Association and
Association of the German Book Trade
Heidelberg, April 24 and 25, 1986**

The Symposium was organized by the International Publishers Association (IPA) and the *Börsenverein des Deutschen Buchhandels* (Association of the German Book Trade) and attended by some 400 participants from the Federal Republic of Germany and from several other countries (mainly Government officials, publishers, but also other copyright specialists and university professors).

The opening ceremony took place in the *Alte Aula* of the Ruprecht Karl University (which celebrated in 1986 the 600th anniversary of its foundation) and the Symposium itself was held in the Castle of Heidelberg.

Mr. Richard von Weizsäcker, President of the Federal Republic of Germany, sent a message to the participants in the Symposium. Its text is as follows:

"A hundred years ago, the first multilateral convention for the protection of copyright was created in the Berne Union, and the number of States that have acceded to this Convention has since risen to over 70. It has been augmented in recent decades by collateral agreements with similar objectives and by supplementary institutions. The concept embodied in the Berne Union has constantly gained importance over the last 100 years.

"I extend a cordial welcome to everyone who has come to Heidelberg to celebrate this anniversary and pay tribute to the great value of intellectual property.

"The initiative for the creation of the Berne Union came from France and Germany. This was a forward-looking, far-reaching act which demonstrates how people succeeded in moving closer together through practical work even though at the political level nations were still kept apart by reservations and barriers of distrust. At a time when epoch-making achievements in the arts and sciences followed each other in rapid succession, when compulsory education was starting to create the conditions for a wide reading public and when trade and communication between countries were increasing at an unprecedented rate, a generally valid arrangement for intellectual property also had to be found.

"Today the conditions are essentially the same:

"— Developments in science and technology as well as the spread of new ways of living from one continent to

another determine the rhythm of change in our outlooks and life styles.

"— The traditional book has been joined by new information media, which have greatly broadened the opportunities for global communication, yet books will remain an irreplaceable basis for universal competition between creative minds.

"— Owing to modern methods of production and the challenges of high technology, as well as the ever closer interlinkage of our nations through communication and cultural interchange, we are inescapably being led into a state of universal interdependence where the traditional frontiers between nations are becoming less and less important.

"Placing this cosmopolitan traffic in ideas on a globally valid legal basis is today just as necessary as ever. The Berne Union set a widely recognized example, and ideas have prevailed.

"The wealth of ideas and the spirit of ingenuity on which we now depend more than ever are the most important assets of our society. We Germans are particularly aware of this. The performance of countries without appreciable raw materials of their own rests primarily on the intellectual gifts of their populations. These intellectual capabilities, if they are to develop fully and survive in free global competition, are particularly dependent on effective protection of intellectual property.

"The perception that intellectual property is an asset worthy of protection has in recent years become more widespread. Countries which for a long time stood aloof are now opening up and creating their own national protective arrangements. As a result, the concept of international protection of copyright enshrined in the Berne Union has been strengthened. At the same time, the free exchange of ideas across all frontiers is promoted. This is conducive to international understanding and constitutes a tangible and effective contribution to peace.

"With this in mind, I wish the anniversary celebrations in Heidelberg every success."

After the welcoming addresses by Mr. Günther Christiansen, President of the *Börsenverein des Deutschen Buchhandels*, Mr. Johan Somerwil, President of IPA, Mr. Hans A. Engelhard, Minister of Justice of the Federal Republic of Germany and Mr. Gisbert Freiherr zu Putlitz, Rector of the Ruprecht Karl University, two keynote speeches were made, one by Professor Eugen Ulmer, former Director of the Max Planck Institute, Professor em. at the Ludwig Maximilian University, Munich, and one by Dr. Arpad Bogsch, Director General of WIPO.

The following is the text of the speech of Professor Ulmer entitled "The Berne Convention: the First 100 Years":

"The Berne Convention, born of the European genius, but with a worldwide destiny, established a Union for the Protection of Literary and Artistic Works which has succeeded in maintaining and developing its system of law throughout all the crises, and even the wars, of the last 100 years. Historically, the international protection of copyright was in a pitiful state right into the 19th century. The protection that existed at national level, on the basis of

privileges, prohibition of copying and laws, came to an end at frontiers and mostly remained limited to nationals. These limitations were particularly problematic in the case of Germany as a result of its territorial divisions. Unauthorized copying continued to flourish in the 18th century. Goethe's early writings were some of the most frequently copied works of their time.

"Things began to change in the 19th century with the call for effective protection of works, including works of foreign origin. To begin with, bilateral treaties were concluded. In the 20's, Prussia concluded 31 such treaties with other German States. These were followed by treaties with foreign States. France, for instance, signed copyright agreements with 23 States during the 50's and 60's of the 19th century.

"However, this multiplicity of bilateral treaties, with wide differences between them, was not a durable solution. Congresses of authors and artists called for the setting up of a union of States in order to protect copyright. These congresses reached their culmination on the occasion of the 1878 World Exhibition in Paris at which the leading personalities in literature, science and the arts came together. With Victor Hugo as their honorary president, they founded the *Association littéraire internationale*, which was to become today's International Literary and Artistic Association (ALAI).

"In Germany, the focus of demands for protection of authors' rights, particularly of copyright, lay with the book trade. The *Börsenverein des Deutschen Buchhandels*, founded in 1825, was in the front line of the fight for the protection of intellectual property. Although it acted in consultation with the authors and their associations, in practice it took the lead in the pursuit of their joint interests.

"These activities did not go unnoticed in France. The ALAI invited the *Börsenverein* to its Conference in Rome in 1882. The invitation was accepted and the General Secretary of the *Börsenverein*, Dr. Paul Schmidt, was sent to Rome. Following consultations with the Permanent Secretary of the Association, he moved that the Conference should not discuss details, but that practical measures should already be taken to found a 'literary union' by convening a conference. This motion was accepted and Berne was proposed as the venue for the conference. The Swiss Government was approached and willingly accepted. Following a preliminary private meeting, the Swiss Government convened three diplomatic conferences, at the last of which the 1886 Convention was signed and then, in the following year, entered into force on exchange of the instruments of ratification. Nine States ratified the Convention: Belgium, France, Germany, Haiti, Italy, Spain, Switzerland, Tunisia and the United Kingdom.

"1. If we review the content and development of the Convention, it becomes clear that the initial version already laid down those bases on which the further evolution could be logically founded.

"The first question that arose was whether a common copyright law for all member States should apply within the Union? Or should the principle be maintained of individual national laws which would, however, apply to all works belonging to the Union, together with special rules that would additionally apply in important matters? In view of the diversity of the laws and principles that were

applicable, a realistic assessment showed that alone the second approach was feasible.

"The starting point was the concept, formulated *inter alia* at the 1878 Congress of the Paris *Société des Gens de lettres*, that 'every literary, scientific or artistic work should be treated in the countries outside the country of origin in accordance with the same laws as works of national origin,' that is to say, in other words, the principle of national treatment that was laid down in Article 2 of the initial Act. As an example, works of British origin are protected in France according to the rules of French copyright law and works of French origin are protected in the United Kingdom in accordance with the rules of British copyright law. National treatment has remained the prime guiding principle of the Berne Convention. One of its advantages is that the courts in a State in which copyright has been infringed can take their decisions in accordance with their own system of law with which they are familiar.

"The principle of national treatment is supplemented by a number of special rules that apply to all member countries of the Union, particularly the minimum rights that must be afforded to authors. These rules ensure a certain level of copyright protection in the member States and contribute to the harmonization of copyright law. The initial Act was still somewhat modest in the establishment of such rules. It contained, amongst others, the right of translation of the author of the original work that is so important at international level, but limited it to ten years after first publication. The performing rights in dramatical, dramatico-musical and musical works were also regulated, but with the restriction that published musical works would only remain protected if the author explicitly reserved his right of public performance on the title page or at the head of the work. A cautious draft was chosen in order to facilitate accession for the largest possible number of States. It was, however, clear that the rules would need developing. It was therefore provided that the Convention could be the subject of revisions in order to introduce improvements.

"The first revision took place through the Additional Act of Paris of 1896 that, *inter alia*, reinforced the right of translation. There was, however, general agreement that a comprehensive revision had become necessary. This was proposed and Berlin chosen as the venue at the suggestion of the French Delegation.

"The Berlin Conference, at which Joseph Kohler delivered a personal address, met in 1908. Expectations were not to be disappointed. The comprehensive program of the Conference was drawn up by the German Government in cooperation with the International Bureau of the Berne Union.

"The essential results of the discussions were, briefly, as follows:

"Copyright protection was to be free of any formal requirements. Compliance with formalities may only be required with effect for the country of origin. In all other countries of the Union, works are afforded protection without formality. The new ruling on the right of translation was also significant: it may be asserted for the entire duration of copyright protection. As far as the right of performance was concerned, the previous stipulation that the rights in published musical works only remained in force where explicitly reserved by the authors was deleted. We

can well imagine the significance of this provision for the establishment and the revenue of the collecting societies and their payments to the copyright owners. The term of protection was laid down, as a rule, as the lifetime of the author plus 50 years after his death. However, the member States were given the possibility of adopting differing provisions. A number of States, including Germany, maintained the 30-year term that had initially been introduced by the Prussian Copyright Law of 1837. It was not until the Law of 1934 that the term of protection in Germany, following the example of Austria, was extended to 50 years *post mortem auctoris*. Internationally, the Brussels Conference (1948) introduced the 50-year p.m.a. term as a compulsory minimum. It remains possible to further extend protection. Traditionally, Spain has a term of protection of 80 years and in Germany the term was extended, to the surprise of the copyright experts, to 70 years p.m.a. in the new 1965 Copyright Law as a result of parliamentary debates. Austria then followed by adopting this ruling and likewise in Israel the term of protection is now of 70 years.

"In Berlin, the member States were also permitted to enter reservations in respect of one item or the other. One could, however, reasonably expect that a uniform approach would be adopted in time. The possibility of maintaining earlier reservations in the event of accession to a more recent act or of entering reservations on initial accession to the Union continued to be significant only in the case of the right of translation. This was important for Japan, for instance, but as a highly developed country it withdrew its reservation in 1980.

"So much for Berlin. Twenty years later the Union met in Rome. The Rome Conference has become famous on account of the recognition of moral rights adopted in Article 6^{bis} of the Convention. Independently of the author's economic rights—according to the current, slightly extended version—and even after the transfer of those 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 work, which would be prejudicial to his honor or reputation. This provision started life as an Italian proposal for which Piola Caselli must take a considerable part of the credit. The Records of the Conference note that the proposal was adopted enthusiastically by most of the delegations. It is also in harmony with legal developments in Germany.

"The recognition of moral rights constitutes a page of glory in the history of the Berne Union. The actual form of the rights may differ in individual cases. There exists a difference, in particular, between those countries that maintain the general term of protection for moral rights as well and those that afford an eternal moral right. The important principle is, however, that the author is afforded protection for his intellectual interests and that copyright also contains by definition an element of personality right.

"Following the Second World War, a further revision conference was held in Brussels in 1948. Progress was once more achieved. The right of performance was supplemented by the exclusive right of public recitation of literary works. As already mentioned, 50 years p.m.a. was stipulated as the minimum term of protection. But, above all,

the right of broadcasting was dealt with in much more detail and the retransmission of broadcasts by wire or cable was already dealt with. This constitutes a typical example of problems emerging from technical developments first being regulated in the Convention and then subsequently transferred to the domestic laws of the member States.

"The most recent conferences of revision have been those of Stockholm (1967) and Paris (1971).

"The Stockholm Conference was originally planned as a simple copyright revision conference. However, it was enlarged to a comprehensive conference on intellectual property. In particular, the Paris Convention was revised and WIPO, the World Intellectual Property Organization, was set up. The copyright aspect of the Stockholm Conference is noteworthy above all for the provisions contained in the Protocol on Developing Countries. Resistance on the part of the authors and publishers led to a crisis in international copyright that was resolved only four years later at the Paris Conference.

"Apart from that, the Stockholm Conference achieved progress in the area of traditional copyright. Of particular importance is the fact that Stockholm enabled the most important right of exploitation of the author to be regulated, that is to say the right of reproduction. The problem that had existed until then was that any regulation of the right of reproduction would also have to contain provisions on the exceptions that the member States were allowed to make. It proved possible in Stockholm to find a formulation under which the member States retained the right to permit reproduction in certain special cases on condition that it did not unreasonably prejudice the legitimate interests of the author.

"This ruling is also of importance for regulating the reprographic reproduction of protected works or for photocopies and xerox copies. It cautions us to be prudent in the limitation of copyright in view of the millions in which reprographic reproductions are counted nowadays. Reprography is no longer just a special case, but a new exploitation mode that affects the interests of authors and publishers to a very high degree. In practice, however, photocopies are frequently still made without the consent of the author and without payment of remuneration. Nevertheless, up-to-date legislative rulings have become more common in recent time. In some cases these are laws that concern only special situations, such as library photocopying, photocopying for teaching and scientific purposes, but in others they also contain more comprehensive provisions, such as those now existing in Australia, Finland, the Netherlands and the Federal Republic of Germany. The objective should be, and that is my conviction, that where exceptions are made to the prohibition of reproduction in certain cases, the authors should in any event receive remuneration. In addition to claiming remuneration from the operator of the equipment, one possibility would be the introduction of an appliance levy to be paid by the manufacturer as lump sum remuneration for authors. The German provisions link these two possibilities, comprising both an appliance levy on manufacturers, which serves in particular to cover the minor cases of reproduction that are difficult to determine, and a right to remuneration from what are known as the large-scale copiers, such as libraries, universities, scientific institutes and the like.

"2. Altogether, the development of the Berne Convention through the revision conferences has secured a high level of copyright protection in the member States. At the same time, new accessions have continually increased the number of Union countries. The original nine members have now become 76 States in all continents that are party to the Berne Union. It is significant that both Eastern States under Soviet influence and countries that were previously under colonial administration have for the most part remained members of the Berne Union. Nevertheless, gaps do still exist. Not only the Soviet Union and China are missing as contracting States, together with a number of the smaller African, American and Asian States, but, above all, the United States of America is absent. Although there had been no lack of attempts, even before the First World War, to build a bridge to the Berne Union, they all failed due to the differences in the legal systems.

"In order to close this gap, the Universal Copyright Convention (UCC) was concluded in 1952 at the initiative of Unesco. This Convention nevertheless acknowledged the precedence of the Berne Convention and, *inter alia*, the necessary security against desertion to the UCC was included. The level of protection under the UCC remains well below that of the Berne Convention; for instance, the minimum term of protection goes no further than 25 years. This made it possible for the Soviet Union to accede to the UCC in 1973.

"After lengthy preparatory work in the United States, the new Copyright Act was passed in 1976. In so doing, a considerable step was achieved towards the Berne Convention system. In particular, the 50-year p.m.a. term of protection was adopted. Likewise, for our part, we have taken into consideration American law when adopting the ruling in Stockholm. The question whether American accession to the Berne Union was possible, as would seem to be the will of the American Government, was therefore examined once more. However, the principles of protection without formality and the recognition of moral rights constituted particular obstacles. In the case of moral rights, the Americans can indeed claim that case law has brought about developments in actions for tort and that the result is very close to moral rights. In the matter of formalities, however, it will not be possible to find a solution without concessions being made.

"3. Today, therefore, we have coexistence of the Berne Convention and the Universal Copyright Convention. Most of the Berne Union countries are at the same time contracting States to the UCC in order to ensure protection for their authors in those States that belong only to the UCC.

"The important point in practice is that close cooperation has developed between the organs of the two Conventions. The initiative was taken by the former Register of Copyrights, Arthur Fisher. The Committees provided for in the Conventions and whose members are elected from among the contracting States—for the Berne Convention, the former Permanent Committee and present Executive Committee of the Berne Union; for the UCC, the Committee of Government Representatives—regularly hold joint meetings in which important questions of copyright protection are examined and discussed. Particular attention is paid to matters that arise from today's high level of technology and which are not sufficiently specified in the

Convention. In the case of computers, for instance, discussions have taken place on the storage and retrieval of protected works, and there is indeed no longer any doubt that storage already constitutes an infringement of copyright, and also the use of computers in the creation of works. The most important question is that of protecting the valuable computer programs. Should this be copyright protection or a special form of protection? Opinions are divided and it will be necessary to examine in depth the relationship between copyright protection and technology. Discussions also concern broadcasts that are transmitted by means of cable or over satellites. The essential interest of the authors, irrespective of individual solutions, is that remuneration be secured that is in proportion to the broadcasts that can be received.

"An additional factor is the joint organization of conferences at which new conventions are established. A significant example is constituted by the Rome Agreement for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations of 1962. The preparatory work was undertaken jointly by the International Bureau of the Berne Union, Unesco and the International Labour Organisation. Two special agreements, the 1971 Convention for the Protection of Producers of Phonograms Against Unauthorized Duplication of Their Phonograms and the 1974 Brussels Convention Relating to the Distribution of Programme-Carrying Signals Transmitted by Satellite, were jointly prepared by WIPO and Unesco as part of the fight against piracy.

"4. A significant chapter is that dealing with the situation of the developing countries within the framework of the Conventions. The Stockholm Protocol on the Developing Countries made comprehensive allowance for the promotion of the developing countries by permitting them to apply certain restrictions to copyright in view of their social and cultural situation. In view of the resistance shown by the authors and publishers in the developed countries, the 1971 Paris Conference established new provisions simultaneously with a corresponding revision of the UCC. Although the developing countries still have the possibility, for certain privileged purposes, particularly in the field of teaching, to restrict the right of reproduction and the right of translation by means of a non-exclusive license, the license is no longer, as in the Stockholm Protocol, a statutory license that gives untrammelled access to the protected works, but a compulsory license which requires that certain time limits be complied with following first publication and that the owner of the rights has been asked without success for his consent to a contractual license. The decisive point is that the owner of the rights must be approached, thus suggesting that an amiable solution be found. The threat of a compulsory license therefore simply constitutes an incentive to the owner to conclude a contract.

"Subsequent developments have since given the central role in the promotion of the developing countries to other actions. These are information centers that indicate to the developing countries those works that are appropriate and act as a go-between in the conclusion of licensing contracts. WIPO has also undertaken further comprehensive actions in favor of the developing countries, particularly the organization of copyright seminars and the preparation of model laws for the developing countries.

"5. Permit me a final word on the relationship between the Berne Union and WIPO, without wishing to impinge on the paper to be given by the Director General of WIPO. The International Bureaux of the Berne and Paris Unions were the predecessors of WIPO. They were supervised by the Swiss Federal Council and were combined to form the United International Bureaux (BIRPI). However, their administrative structure was no longer in line with the times. It was therefore decided to create an organization that basically adopted the model of the United Nations specialized agencies. The Stockholm Conference for the Establishment of the World Intellectual Property Organization entrusted to WIPO tasks of general promotion of intellectual property that extended well beyond the functions that were those of BIRPI. Great credit goes to Dr. Bogsch for having conducted this transformation so energetically. For the Berne Convention, it remained essential that the Union should preserve its independence. The supreme organ of the Berne Union is the Assembly of the member States which, between two revision conferences, deals with all matters concerning the maintenance and development of the Berne Union and the implementation of the Convention. It is of importance, however, that the Bureaux of the Unions and WIPO were combined to form a joint International Bureau with the Director General at its head. This is also an advantage for the Berne Union since a large efficient Bureau is now available to execute its decisions and tasks. The Union as such remains in place and it is this Union that we are today celebrating. I would like to conclude with the hope that it will also in the future remain true to its tradition, in a world in which technology plays the dominant part and States belong to various groups depending on their social and political structures, by constituting the factor of unity in protecting literary and artistic works."

The following is the text of the speech of the Director General of WIPO entitled "The Berne Convention: Towards the Future."

"The Berne Convention was created 100 years ago by the will of the States which founded it. It was formed and developed through a series of revisions by the will of the States party to it. And now its future depends on the determination of those States and the recognition by them of the role of copyright in contemporary society.

"There is a great need for this determination and recognition now, at the beginning of the second 100 years of the Berne Convention.

"Fortunately, governments are not alone in shaping the future. Publishers are among those who will help, so that the future be bright. They did so in the past and they do so at the present time. This, the Heidelberg Symposium organized by the International Publishers Association, is an example—and let me thank you here for having invited the World Intellectual Property Organization, guardian of the Berne Convention, to participate. It is an honor and pleasure for WIPO and for me.

"Another example of the publishers' support for copyright is the campaign 'Respect Copyright — Encourage Creativity.' That campaign, under the leadership of the President of the Association, Mr. Johan Somerwil, and its Secretary General, Mr. J.-A. Koutchoumow, shows very convincingly that authors and all those who are interested

in an appropriate protection of literary and artistic works can continue to count on publishers in promoting the cause of copyright throughout the world.

"In copyright literature, one can find—more and more frequently—such questions as these: 'Is there not a crisis in copyright?' 'Is copyright not an anachronism?' 'Will copyright not be swept away by technological developments?'

"If one speaks about a crisis in the sense that copyright is in the stage of decadence and is getting obsolete, my answer is that there is no such crisis. If one uses this word to mean that copyright is in a difficult period of transition, I am ready to agree that there is a crisis.

"The most conspicuous—but not the only—reason for this difficult period is the impact of galloping technological developments in copyright.

"Dilemmas raised by technological progress are not new phenomena in the history of the Berne Convention.

"National copyright laws were created at the end of the 18th and during the 19th centuries with regard to certain traditional ways of using literary and artistic works. Novels were published in books, dramatic works were staged in theaters, musical pieces were performed at concerts or in restaurants or bars. Nothing was more self-evident than that. However, just by the time when the Berne Convention was created, new types of changes had begun to occur, leading us, slowly at first, but later at a rapidly accelerating pace, to the present qualitatively new situation.

"One can see the obvious proof of that as early as in the Final Protocol of the 1886 Diplomatic Conference which adopted the Berne Convention. In the Protocol, the question of a completely new way of using musical works was raised. It was declared that there was no need for the authorization of the authors regarding mechanical reproduction of musical works. Later on, in the framework of the 1908 Berlin revision of the Convention, that notorious point was struck out of the Protocol, and the exclusive right of authors was extended to that new use. But that 'welcome' to phonograms was already a typical demonstration of the possible conflicts resulting from technological progress in copyright.

"Similar transitional troubles were caused later by the appearance of radio, cinema and television. Solutions were found here, too, by the different revision conferences, even if they were not exempt from compromises, that is, from certain restrictions imposed on the newly identified rights. However, all those developments represented only the first and less stormy stage of scientific and technological progress, when some quantitative changes were accumulating, but the outlines of the present, new situation had not yet become distinct.

"It is needless to explain what sorts of developments have taken place recently. Just a short list: reprography, private recording of videograms and phonograms, cable television, satellite broadcasting, computer storage of protected works, not to mention the new big clients of copyright protection: computer programs.

"We cannot fully imagine in advance where the frontiers, if any, of these developments may be, and how much truth there is in certain predictions according to which traditional typography and present-day reprography will lose some ground. It is highly probable, however, that fairly soon millions of literary works will be fed into computer memories, with easy and direct access to them through

satellites, cables and telephone lines, making it very easy to reproduce them in private homes and offices with the aid of sophisticated terminals.

"There are two major groups of problems raised by these new technological developments for international copyright. They are of extremely great importance also for the future of the Berne Convention.

"The first group of problems concerns piracy, that is, the illegal reproduction and distribution of protected works and other flagrant infringements of copyright. Piracy has become much easier to perpetrate, and it has become more widespread with the new means of reproduction.

"The losses caused by piracy to publishers, producers of audiovisual works and phonograms and, consequently and inevitably, to authors are getting bigger and bigger. This development is particularly detrimental to the cultural life of developing countries. National production of books, audiovisual works and phonograms can be suffocated at birth, and without such production there is no outlet for the development of national creativity. This development could lead to a far-reaching cultural dependence and to the fading away of national cultural identity.

"Not very long ago, WIPO convened two Worldwide Forums on piracy. Both were held in Geneva. The first on the piracy of sound and audiovisual recordings, in 1981, and the second on the piracy of broadcasts and the printed word, in 1983. On the basis of the discussions in those Forums, the most important principles and means of fighting piracy were outlined.

"In recent years—at least partly as a result of the two Forums—several countries have legislated against piracy. Penalties to be applied in such cases have been increased, new offenses have been identified and stricter control has been introduced over importation and national markets. Those measures have brought about some promising results in a number of countries, but, unfortunately, it cannot yet be said that piracy has been driven back to any significant extent.

"That was why the Conference of WIPO at its last session in Geneva in September–October 1985, unanimously adopted a recommendation concerning piracy. The Conference 'desiring to encourage further progress on the basis of full and up-to-date information' recommended 'that the Government of each member State provide information through the International Bureau to the next ordinary session (1987) of the Conference concerning (a) the extent, within its jurisdiction, of commercial piracy of works protected, (b) measures adopted to combat piracy and (c) the effect of the said measures.'

"It is highly desirable that the recommendations be followed as fully as possible and that States make joint efforts to eliminate commercial piracy. The future of copyright depends to a very great extent on these efforts and on their success.

"The other major group of problems concerns the questions of interpretation of the provisions of the Berne Convention and the adaptation of national laws in the case of new ways of using protected works.

"In the last decade, a series of meetings has been held on these problems. In some cases, for example in the case of cable television, we were able to find a fairly definite

answer. In other cases—such as in the case of private reproduction of videograms and phonograms—at least the outlines of the possible solutions can be seen. Still in other cases—such as the case of electronic libraries—a lot more of further studies is needed.

"However, it seems to be fairly clear that on the basis of the 1971 Act of the Berne Convention, appropriate answers can be given to those questions and, at least for the time being, one should not contemplate the convocation of a revision conference.

"The objective of WIPO is to assist governments in suggesting legislation in cases where, because of the new technological possibilities of copying or otherwise using works protected by copyright, present legislation is inadequate, or even simply non-existent. The said new technological possibilities cause, and will continue to cause, changes in the social and economic environment. They require a new balancing of the interests of authors (and other copyright owners) and the interests of the consumers, namely, the public that wishes easier and cheaper access to works, whether such works or their performances are fixed in writing, on phonograms or on videograms, or are broadcast or made available in any other form. Because of the ease with which copies and broadcasts cross national frontiers, effective protection and appropriate balancing of interests require that the legal solutions adopted in each country be uniform, or at least as similar as possible. WIPO is the forum in which, after adequate preparation (in the form of studies prepared by the International Bureau and embodied in working documents prepared by it), experts of governments and non-governmental organizations discuss, and will continue to discuss, the problems and possible solutions to them.

"Whereas the discussions in the meetings of the world organizations in the last decade concentrated mainly on new uses (reprography, cable television, private copying, direct broadcast satellites, etc.) affecting the owners or other beneficiaries of copyright in protected works of various types, in the program of WIPO for the biennium 1986–1987, the same questions will be discussed separately for each of the main categories of works. Eight such categories have been established. They are the following: printed word, audiovisual works, phonograms, works of visual art, works of architecture, works of applied art, dramatic and choreographic works, and musical works. Under each category, naturally, the various new uses of works of that category and the interests of all the various owners and beneficiaries of copyright and neighboring rights will receive special attention. In other words, during the biennium, a *global* review of the current situation in the fields of copyright and neighboring rights will be carried out.

"The World Intellectual Property Organization hopes very much that this new approach to the problems of the impact of technological progress on copyright will speed up the elaboration and adoption of appropriate and generally acceptable solutions.

"I believe that the meetings will demonstrate that, in general, the problem is not the lack of clear enough provisions in the Berne Convention, but the failure of some countries to apply certain minimum rules in new situations.

"There is a peculiar process which repeats itself with an almost eerie repetitiveness: the new way of using works is

regarded as a 'non-typical' and, therefore, negligible phenomenon. There are no legal provisions or court cases which would identify the new use with an already existing and regulated one. Users try everything possible to interpret the alleged 'silence' of the law to mean that the author's exclusive right does not extend to this 'new' field and therefore, their bands are completely free. By the time the discussion is brought before the legislative bodies or the courts, the users can claim that their free use of works is to be regarded as lawful, that they have acquired the right to freely use the works, since their practice has not been sufficiently questioned or challenged. They speak against what they call an 'extension' of authors' rights although what is involved here is the need for terminating a practice infringing the authors' intellectual rights, a practice that is in conflict with some general provisions of the Berne Convention and national laws. Unfortunately, it does happen fairly often that a 'compromise' solution is chosen whereby the enforcement of copyright is made possible, but with some unjustified restrictions.

"It would be absolutely wrong and unacceptable to try and identify copyright as an institution protecting works only in the case of some traditional uses and to claim that the enforcement of authors' rights in relation to the uses of works emerging with technological developments would go beyond the legitimate boundaries of those rights. Indeed, the very opposite of all that is true. Copyright can conform to its important social functions and remain the same—as far as its essence is concerned—only if its provisions are interpreted and applied in a flexible but consistent manner in the case of new technological and social developments.

"There are some dangerous ideas not only on quantitative restrictions of copyright but also on its qualitative deterioration. Those who want to move along that line argue that the proliferation of secondary utilizations of works makes the exclusive rights of the authors impracticable, and advocate, at best, the replacement of the authors' exclusive rights by a simple right to reasonable remuneration.

"Such a tendency is unacceptable under the Berne Convention, since that Convention allows the application of compulsory licenses only in a very few, and strictly defined cases. Such a tendency is also unacceptable on the basis of the most fundamental principles of copyright. It is unacceptable because experience shows unambiguously that the existence of exclusive rights is the most appropriate guarantee for the enforcement of authors' rights and interests, and that it hampers in no way culture, education or entertainment.

"It is undeniable that the new mass secondary uses of works tend to make the traditional enforcement of certain exclusive rights difficult to organize. However, it would be an insult to the basic rules of logic to say that if a right cannot be enforced in traditional ways, it should be abolished or heavily restricted.

"There is an option which can be widely applicable in the case of mass secondary uses, namely the collective administration of rights. With collective administration the value of authors' rights may change in certain respects, but they still preserve their exclusive nature and—even if through some sorts of collective channels—they can be exercised in the most efficient manner under existing circumstances.

"Now that collective administration is widely applied, it is even more important than before that it be a really correct administration of rights rather than a disguised form of compulsory licensing or a sort of collectivization of rights. All this will be made very clear in the International Forum on Collective Administration of Copyrights and Neighboring Rights that the World Intellectual Property Organization has convened in Geneva from May 12 to 14, 1986. The purpose of the Forum is to draw attention to the importance of this way of exercising rights and to identify the principles and methods which are indispensable for its appropriate functioning.

"The questions of new technological uses and collective administration of authors' rights seem to be the most important in international copyright in the coming years. If we can solve them—and we should—the present difficult situation may soon be over, and there will be a real renaissance of copyright, a renaissance that will respect the old principles and the existing provisions of the Berne Convention. We believe in the possibility of such a renaissance and should do everything to bring it about.

"I said at the beginning of my address that the future of the Berne Convention depended on the will and determination of the States party to it. Now I should like to add that the solving of the new problems of international copyright would definitely become easier if those States which have not so far done so would accede to the Berne Convention.

"The Berne Convention needs them, and, I firmly believe, they also need the Berne Convention because the Berne Convention provides the only solid international basis to answer the questions raised by the new technologies.

"The World Intellectual Property Organization provides, as a part of its development cooperation program, advice and assistance to developing countries in establishing and modernizing copyright legislation and the administrative structure in this field. We hope this program will help more and more developing countries to recognize that it is in their interest to join this 100-year-old and still very dynamic Convention.

"And of course, everyone who believes in copyright would be very glad to welcome among the members of the Berne Union the United States of America, the Soviet Union and China. We hope that the discussions, in those three countries, of the possibility of joining the Berne Union—discussions that are in quite different stages in each of them—will, sooner or later, lead to positive results.

"The fate of the Berne Convention during the second century of its existence depends on how countries will solve, in their national legislations, the questions that new technological developments make necessary to resolve.

"The fate of the Berne Convention during the second century of its existence depends also on whether it will be accepted by many more countries, including those whose authors create, or will in the future create, and whose publishers and other disseminators of works furnish to the public the material, a substantial part of the spiritual material of which culture consists.

"I am confident that the Berne Convention will exist and flourish even in 2086. I believe in it because it is simply impossible not to believe in the future and progress of human culture."

The Symposium itself discussed topical questions of international copyright; mainly questions which are particularly important from the viewpoint of publishers. The following papers were presented: "The Significance of Intellectual Property for Society" by Mr. Roman Herzog, Vice-President of the *Bundesverfassungsgericht*, Karlsruhe; "The Economic Impact of Copyright Law" by Mr. Henry Olsson, Ministry of Justice of Sweden; "The Utility of a Publisher's Right" by Mr. David Ladd, former Register of Copyrights, Lawyer, Washington, D.C.; "The Information Society and the Right of Publishers" by Mr. Laurens van Krevelen, Managing Director, Meulenhoff Nederland bv, Amsterdam; "Reproduction: Legal and Illegal" by Professor Herman Cohen Jehoram, University of Amsterdam and (a separate paper with the same title) by Mr. Allan Wittman, Senior Vice-President, Macmillan Publishing Company, New York; "Licensing, Collecting and Clearing of Proceeds for Reprographic Rights" by Mr. Wilhelm Nordemann, Lawyer, Honorary Professor at the Free University, West Berlin; "Licensing, Collecting and Clearing for Reprographic Rights" by Mr. John-Willy Rudolph, Executive Director, Kopinor, Oslo; "Software, Electronic Databases and Copyright: an American Perspective" by Ms. Karen A. Hunter, Liaison Officer, Elsevier Science Publishers, New York; "New Technology—New Copyright?" by Mrs. Milagros del Corral and (a separate paper with the same title) by Professor Gerhard Schrickler, Director of the Max Planck Institute, Professor at the Ludwig Maximilian University, Munich.

The Symposium was closed by a summary by Mr. Charles Clark, Consultant of the British Publishers Association and of the American Association of Publishers, and by a closing address by Mr. Heinz Götze, co-owner of the Springer-Verlag, Heidelberg.

**Swiss Society for Authors' Rights
in Musical Works
Berne, June 21, 1986**

The yearly meeting of the General Assembly of the Swiss Society for Authors' Rights in Musical Works (SUISA) was held in the *Kursaal* in Berne on June 21, 1986. The administrative part of the meeting was followed by a commemoration of the centenary of the Berne Convention in the framework of which Dr. Arpad Bogsch, Director General of WIPO, made a speech.

He started his speech by addressing himself to the officials and members of the Society:

"I am very happy to be here with you today, partly because SUISA, the Swiss Society for Authors' Rights in Musical Works, is a model organization for the adminis-

tration of authors' rights, and also because it gives me the opportunity to point out the importance that the World Intellectual Property Organization attaches to creating links with the private organizations that represent the interests of the creators."

He described briefly the history of the Berne Convention and the activities of WIPO, then spoke about the present tasks in the field of copyright:

"WIPO's most important task at present in the field of copyright is, appropriately, to propose solutions for safeguarding the interests of the authors confronted with the new techniques for exploiting their works. More exactly, WIPO's task is to ensure that governments become aware of the need to adapt their domestic laws before bad habits, prejudicial to the interests of the authors, can develop.

"This is a work of persuasion that is carried out in the framework of the meetings convened by WIPO. There are some four or five meetings each year. Those participating are in part representatives of the governments and for the rest representatives of non-governmental organizations from private circles concerned by matters of copyright. For example, the International Confederation of Societies of Authors and Composers, of which SUISA is a member. The meetings are prepared by the Secretariat of WIPO. Preparation consists in drawing up a document in which we endeavor to analyze a current problem of copyright which would need resolving in the national legislations. The document also proposes solutions. It is discussed at the meeting, which generally lasts for four to five days. The conclusions are not always unanimous and they are not always in line with the proposals made by the Secretariat. However, each meeting has the very great merit of allowing a full exchange of views on the problem under consideration. After such a meeting, no one can claim that they were not aware of the dangers of solutions running counter to the interests of authors and composers."

The Director General mentioned three topical questions—rental and public lending of phonograms and videograms, direct broadcasting by satellites and home taping—in a more detailed manner. Finally, he spoke about the development cooperation program of WIPO and the role SUISA played in it:

"Copyright—and this will be my final observation—must be justified not only before the general public but also before governments, particularly in the developing countries.

"WIPO is highly active in this field. It organizes courses, meetings of experts and periods of training enjoyed, each year, by more than 100 participants from the developing countries, from Africa, Asia and Latin America. A number of societies of authors, including SUISA, assist us in this task by receiving trainees and by making lecturers and instructors available to us.

"Your Director General, Dr. Ulrich Uchtenhagen, has earned great merit in this field. He is one of those—and I also count myself amongst them—who are convinced that the future of copyright, the future of respect for copyright, will depend to a great extent on the attitude to be adopted by the developing countries in relation to the international respect for copyright. Consequently, any investment in

propagating the usefulness of respect is a highly desirable investment."

After the Director General's speech, Mr. Herman Haller, President of SUISA, handed over a present to WIPO on behalf of the Society. The present is a music box from 1886, the year of the creation of the Berne Convention, with the following inscription: "*Offert à l'Organisation Mondiale de la Propriété Intellectuelle à l'occasion du centenaire de la Convention de Berne et à titre de profonde gratitude des auteurs et éditeurs de musique suisse pour son effort gigantesque consacré à leur protection à travers le monde*" [Presented to the World Intellectual Property Organization on the occasion of the centenary of the Berne Convention as a mark of the deep gratitude of the Swiss music composers and publishers for its immense efforts devoted to their protection throughout the world].

**University of Budapest, University of Zurich,
Hungarian and Swiss Authors' Societies
Budapest, June 27 and 28, 1986**

The Hungaro-Swiss Postgraduate Copyright Seminar held on the occasion of the centenary of the Berne Convention was organized by the Hungarian Bureau for the Protection of Authors' Rights (ARTISJUS), the Law Faculty of the Eötvös Loránd University (ELTE), Budapest, the Swiss Society for Authors' Rights in Musical Works (SUISA) and the Seminary for Legal Sciences of the University of Zurich and attended by some 50 participants from Hungary, Switzerland and the Federal Republic of Germany. The sessions were presided over by Professor Dr. Manfred Reh binder, University of Zurich, Dr. Ulrich Uchtenhagen, Director General of SUISA and Lecturer at the University of Zurich, Professor Dr. Lajos Vékás, ELTE, and Associate Professor Dr. György Boytha, Director General, ARTISJUS, respectively.

Six doctorands of the University of Zurich presented their theses as follows: Mr. François Bauer on the protection of Swiss computer programs in the Federal Republic of Germany under the German Copyright Amendment Act of 1985; Mr. Giancarlo Santi on the question whether the rights of the authors of one of the Berne Union countries are protected in other contracting States if those rights do not belong to the very author in the country of origin of the work but are originally vested there in another person; Miss Christina Staub on the topic of the consistence of the compulsory license to produce photocopies with Article 9, paragraph (2) of the Berne Convention; Mr. Lutz Kaiser on the public lending right in the light of the Berne Convention; Miss Susanne Zacherl and Mr. Jochen

Leuschner on the notion of the right of broadcasting according to the Berne Convention in the age of satellite broadcasting.

Assistant Professor Gábor Faludi presented his paper entitled "The Author's Exclusive Right as a Building Stone of the Berne Convention."

All presentations were followed by lively discussions.

**International Literary and Artistic Association
Berne, September 8 to 12, 1986**

The 56th Congress of the International Literary and Artistic Association (ALAI) was held in Berne during the week when the official celebration of the centenary of the Berne Convention took place in Berne on September 11, 1986 (which was recalled in the first part of the description of events of celebrations published in the November 1986 issue of this review).

All the participants to the Congress attended the above-mentioned celebration in the building of the *Palais fédéral*. In addition to that celebration, the Congress commemorated the centenary of the Berne Convention also in the framework of its opening ceremony and—at the end of the Congress—by adopting a resolution on the occasion of the centenary.

The opening ceremony of the Congress was held in the Municipal Theater. After the welcoming address by Dr. Paul Brüger, President of the Congress Committee, four speeches were made, namely by Professor Alois Troller, Honorary Member of ALAI, by Professor Georges Koumantos, President of ALAI, by Mr. Jean-Louis Comte, Director of the Swiss Federal Office for Intellectual Property and by Mr. Mihály Ficsor, Director, Copyright Law Division, WIPO. All the speakers spoke on the important role ALAI played in the creation of the Berne Convention. Mr. Mihály Ficsor, who represented the Director General of WIPO at the Congress, paid tribute to ALAI as follows:

"It would really be difficult to speak about the centenary of the Berne Convention without mentioning the decisive role ALAI played in the establishment of the Convention.

"ALAI celebrated the centenary of its foundation more than six years ago. It was in June 1878 that an 'International Literary Congress' was convened in Paris on the initiative of the *Société des Gens de lettres de France*. Many basic principles of copyright protection were outlined at this Congress. In order to reaffirm and supplement them, the Congress deemed it appropriate to set up an international body. That was how ALAI came into being.

"And ALAI fulfilled its tasks very efficiently. The subsequent yearly congresses in London, Lisbon, Vienna and Rome were of decisive importance in the process of the development of copyright principles and the preparation

of an international convention for the protection of literary and artistic works.

"It was the legal experts of ALAI who drew up a preliminary draft for a convention. Among them two barristers of the Paris Court—Eugène Pouillet and Edouard Clunet—played a fundamental role.

"The Congress of ALAI which discussed the draft convention took place here in Berne just 103 years ago in September 1883. The Swiss Government took up the matter; in December 1883, it communicated the draft convention drawn up by ALAI and invited governments to send delegates to a diplomatic conference for the purpose of establishing an International Union for the protection of authors' rights.

"In fact, three diplomatic conferences (all three held, here, in Berne in 1884, 1885 and 1886) were needed to carry out this task which resulted in the signature of the Berne Convention on September 9, 1886.

"All these facts are well known, but in these days of celebration we should pay tribute to ALAI for this achievement. ALAI had taken a fruitful initiative in convening under its auspices the authors, publishers and legal experts concerned to express their aspirations in launching the idea of the Berne Convention; in cooperating closely in its propagation, it had won the cause of international copyright, and could justifiably be proud of the result.

"Despite having been among the instigators of the work that led up to the signature, at Berne in 1886, of the convention that carried great hopes for all authors, ALAI lost no time, after that instrument entered into force, in pointing out its shortcomings and seeking possible improvements. At its annual congresses, criticisms were made and solutions proposed in the form of resolutions, recommendations or *vœux*, addressed both to public opinion in order to inform it of the problems, and to the public authorities to urge them to improve the system of international copyright protection. The role of ALAI in revisions of the Berne Convention was also significant.

"Copyright is in a difficult stage of development in these decades. We are faced with challenging new developments. For the time being, a new revision of the Berne Convention would not seem to be advisable and therefore the solutions to the new problems need even more competence and imagination.

"WIPO—as well as its predecessor, BIRPI—has always maintained very close relations with ALAI. ALAI was—and is—invited to all the meetings convened by our Organization in the fields of copyright and neighboring rights and, similarly, representatives of WIPO participate regularly in the congresses and the meetings of the Executive Committee and study sessions of ALAI. This cooperation also derives from the fact that many of the delegates to meetings convened by WIPO are members of ALAI, allowing the latter to be still more closely associated in the deliberations, whether at the level of experts or of government delegations."

The Congress which discussed two reports—one by Professor Kaspar Spöndlin, Basel, entitled "The International Protection of Copyright" and one by Professor André Françon, President of ALAI, entitled "The Future of Copyright"—adopted the following resolution:

"Assembled in Berne from September 8 to 12, 1986, on the occasion of its 56th Congress, held in commemoration of the centenary of the Berne Convention,

"ALAI

"Pays tribute to the leading role that has been played for 100 years by the Berne Convention in the promotion of copyright, which is an essential prerequisite of human creativeness;

"Considers that, in view of the new setting within which the creation and dissemination of literary and artistic works takes place, it is possible to look confidently to the future of copyright, subject to the dual condition of avoiding on the one hand anything other than very exceptional recourse to non-voluntary licensing, and on the other hand any extension of copyright to fields that are alien to it;

"Considers further that, under these new conditions governing the creation and dissemination of works, the solution consisting in collective administration of copyright may, where individual exercise proves impossible, permit the effective preservation of the author's exclusive rights;

"Advocates the making by all the competent bodies of an examination in depth of the possibilities that should be given to authors of controlling the use made of their works by third parties, notably in the form of lending and hiring to the public;

"Expresses the wish that, under the aegis of the World Intellectual Property Organization, the Berne Convention may win still more accessions, and that it may thus attain worldwide application subject to strict conformity with the idea of its founders, which was that it should afford efficacious protection to creators."

Government of Mexico, WIPO and
Mexican Institute of Copyright
Mexico City, September 25 and 26, 1986

The Seminar was organized jointly by the Government of Mexico, WIPO and the Mexican Institute of Copyright, on the occasion of the centenary of the Berne Convention. It took place at Coyoacán, in the *Foro Coyoacansense, Casa de la Cultura*, and was attended by some 100 copyright experts from Mexico and from the Latin American and Caribbean region.

The Seminar was opened by Lic. Miguel González Avelar, Secretary (meaning, Minister) of the Public Education Ministry. During the opening session—which was attended, among other personalities, also by Gabriel García Márquez, a Nobel Prize Laureate for Literature—speeches were made by Dr. Arpad Bogsch, Director General of WIPO, Lic. Gabriel Larrea Richerand, President of the Mexican Institute of Copyright, Lic. Adolfo Loredó Hill, Director General of Copyright, Secretariat of Public Education and Lic. Fructuoso López Cárdenas, Delegado Político, from Coyoacán.

In the framework of the Seminar, the following papers were presented: "Latin America and the

Berne Convention" by Dr. Arpad Bogsch; "The Berne Convention and the Mexican Legislation on Copyright" by Lic. Adolfo Loredo Hill; "The International System of Copyright Protection and the Berne Convention" by Lic. Gabriel Larrea Richerand; "Historical Development of the Berne Convention During its First Century of Existence" by Dr. Ulrich Uchtenhagen, Director General of SUISA, Zurich; "The Berne Convention and the Authors" by Professor Erich Schulze, President and Director General of the German Society for Musical Performing and Mechanical Reproduction Rights (GEMA), Munich; "The System of the Protection of the Berne Convention in the Legislation and in the Realities of the Latin American Countries. The Problem of Piracy" by Dr. Ricardo Antequera Parrilli, Vice-President of the Ibero-American Institute of Copyright; and "One Hundred Years of Light" by Mr. Jacques Boncompain, Director of Foreign Affairs, Société des auteurs et compositeurs dramatiques (SACD), Paris.

Here is the text of the speech of the Director General of WIPO on the relationship between Latin America and the Berne Convention:

"1. The establishment of 'a universal convention' (*une convention universelle*), 'a General Union for the Protection of the Rights of Authors' (*une Union générale pour la protection des droits des auteurs*). That was the main ambition and goal of the *Association littéraire internationale*, a non-governmental organization, founded in 1878 in Paris (which later became the International Literary and Artistic Association (ALAI)). It was the 1883 Congress of the Association in Berne which adopted a draft of a Convention to establish such a General Union.

"When the Federal Council (roughly equivalent to a council of ministers) of the Swiss Federation sent the draft on December 3, 1883, to the governments of 'all civilized countries' (*tous les pays civilisés*) and informed them of the plans of a diplomatic conference in 1884 to adopt a treaty, it also emphasized that the treaty should lead 'on the one hand, to the universal recognition of the rights of authors without regard to their nationality and, on the other hand, to the desirable uniformity of the principles governing such protection.'

"The three diplomatic conferences in 1884, 1885 and 1886 and then the adoption of the Convention in Berne on September 9, 1886, seemed to come up to the expectations of all those who dreamt of such universal recognition of authors' rights.

"The Convention was established at the very beginning not as an exclusive club of European countries. Among the ten signatory States—besides Belgium, France, Germany, Great Britain, Italy, Spain and Switzerland—there were Haiti from Latin America, and Liberia and Tunisia from Africa.

"With the adherence of more and more States, the universal nature of the Berne Convention has gradually come nearer to its goal, still not obtained, to be a universal convention. So far, a total of 76 States have ratified or acceded to the Berne Convention, and more than half of them are developing countries. Among the States party to the Con-

vention, there are 31 from Europe, 23 from Africa, 11 from Asia and the Pacific, 10 from Latin America and the Caribbean and one from North America. Several countries are now considering the possibility of adherence to the Berne Convention and we are confident that we shall receive further instruments of accession in the coming years.

"2. As I have said, from Latin America and the Caribbean there are ten States party to the Berne Convention. These ten States are the following: Argentina, Bahamas, Barbados, Brazil, Chile, Costa Rica, Mexico, Suriname, Uruguay and Venezuela. (Haiti, one of the founding States of the Convention was among the very few States which denounced the Convention; that denunciation took place in 1943.)

"Ten States is not a very high figure if we take into account the number of Latin American and Caribbean countries that there are. Still, we can say that the membership in the Berne Convention of ten States from this region is the result of one of the most promising developments towards universality of the Berne Convention which has taken place recently.

"Until 1967, there was only one Latin American country among the members of the Union: Brazil. The other nine countries in the region have adhered to the Convention in the last two decades.

"The Berne Union has always needed and would have welcomed the membership of the Latin American and Caribbean countries. Behind the fact that several of them recognized only recently that they also needed the Berne Convention, there lay fairly complex historical reasons as well as certain considerations of a legal, economic and cultural nature.

"3. It was as early as in the first half of the 19th century that the first copyright laws were adopted in Latin America: the Chilean Copyright Law was promulgated in 1834, the Peruvian Copyright Law in 1849. They were followed by other national legislations, both in Latin America and in the Caribbean, either in the form of separate chapters in the Civil Code, like in Argentina (1869) and Mexico (1871) or by means of promulgating independent laws as in Bolivia and Guatemala (1879) or in Haiti (1885).

"The countries of the Latin American and Caribbean region can be proud not only because they were among the first States to legislate in this field, but also because they made very early attempts to extend copyright protection to foreign works. The first steps were taken—as in Europe—by means of bilateral agreements. In 1886, when the Berne Convention was established, El Salvador already had bilateral agreements with France and Spain, and Colombia with Spain.

"The three diplomatic conferences in Berne in 1884, 1885 and 1886, which led to the adoption of the Berne Convention, were attended by delegations from several Latin American and Caribbean countries. Besides Haiti, which became one of the ten signatory States in 1886, Argentina, Costa Rica, El Salvador, Honduras and Paraguay were also represented at one or more conferences.

"However, the delegations of the Latin American countries did not play an active role in the conferences. They participated more or less as mere observers. It seemed that the majority of the countries of the region

looked at the preparatory work of the Berne Convention, and then the Convention itself, as something which concerned mainly or exclusively the European countries and perhaps some few countries of other continents which had closer relationships with one or more European countries. At that time, there were not yet close enough contacts between this region and the rest of the world, and that fact—along with the cohesive force of the common language—contributed to a kind of copyright isolationism.

"4. Shortly after the adoption of the Berne Convention, efforts began on the American continent to provide, by a separate convention, for the international protection of authors' rights.

"Two and a half years later, on January 11, 1889, in Montevideo, the delegates of seven South American republics—Argentina, Bolivia, Brazil, Chile, Paraguay, Peru and Uruguay—signed a treaty for the protection of literary and artistic property.

"The Montevideo Convention was modeled on its predecessor, the Berne Convention, although it departed from the model on several important points.

"From the viewpoint of the development of the copyright relationship of Latin America with the rest of the world, there was a significant difference between the two conventions: while the Berne Convention threw the door open for every country, the Montevideo Convention seemed to be less hospitable. The newcomers were submitted to thorough control and it was not sure at all that they could receive permission to become party to the new Convention. Article 6 of the Additional Protocol signed on February 13, 1889, required signatory States to declare, at the time of ratification of the Montevideo Convention, 'whether they accept the accession of countries which have not been invited to take part in the Congress in the same form as the accession of nations which have adhered to the idea of the Congress but have not participated in its deliberations.'

"Seven European countries adhered to the Montevideo Convention; in chronological order: France, Spain, Italy, Belgium, Austria, Germany and Hungary. However, only two Latin American countries—Argentina and Paraguay—accepted the accession of all of them; and one more—Bolivia—accepted the accession of certain of them (Austria, Germany and Hungary). The other two Latin American countries which ratified the Convention—Peru and Uruguay—did not accept the accession of the European countries on the basis of the Additional Protocol.

"Not only did the Montevideo Convention not settle the copyright relations between Latin America and the rest of the world, but it did not receive a wide enough acceptance in Latin America either.

"Several new attempts were then made in the first half of the 20th century to establish not only a Latin American but a Pan-American Convention which could become a solid basis for the copyright cooperation of all or at least the great majority of the countries of the Americas.

"I should not like to go into a detailed history of the 1902 Mexico City Convention, the 1906 Rio de Janeiro Convention, the 1911 Caracas Convention, the 1928 Havana Convention, the 1946 Washington Convention and the other attempts. From the viewpoint of our theme, it is enough to mention that none of them was able to become an instrument with general acceptance. And, because they were closed conventions—i.e., open only to American

countries—they did not offer possibilities for initiating contacts between their member countries and the countries party to the Berne Convention.

"In the meantime, economic and cultural relations developed rapidly, not only between the Latin American countries, but also between them and the rest of the world. Therefore, the vital interest of those countries in the participation of a real worldwide copyright system became ever more evident.

"5. In the relationship between the Latin American and Caribbean countries and the Berne Convention, 1922 was a decisive year. Brazil adhered to the Convention. An important bridgehead was established in the Latin American continent which became instrumental in trying to build further and stronger contacts with that continent and the Berne Convention.

"It was six years later, in 1928, at the Rome revision conference of the Berne Convention, that the Brazilian and French delegations made a joint proposal which was adopted unanimously in the following terms—I quote the full text because this proposal and the wish (*voeu*) based on it triggered a series of events which finally ended up in the fundamental restructuring of international copyright relations, and led finally to the adoption of the Universal Copyright Convention—:

'The Conference,

'In view of the identity of the general guiding principles of, and the ends aimed at by, the Convention of Berne, as revised in Berlin and later in Rome, and the Convention signed by the American States in Buenos Aires in 1910, and later revised in Havana, in February of 1928;

'And in view of the manifest agreement between the majority of provisions of the two Conventions;

'Expresses the wish (*voeu*), in conformity with the suggestions made by the Delegation from Brazil and the French Delegation, that, on the one hand, the American Republics which are signatories of a Convention to which non-American States cannot adhere, shall accede, in accordance with the example set by Brazil, to the Convention of Berne as revised in Rome; and on the other hand, all the interested Governments shall cooperate with a view to preparing a general agreement which shall have as its basis the similar rules of the two Conventions and as its object the worldwide unification of the laws protecting the creations of the spirit.'

"This *voeu* of the Rome revision conference was supported by a resolution of the ninth Assembly of the League of Nations in the same year. Subsequently, the International Institute of Intellectual Cooperation (roughly, the predecessor of Unesco) and the International Institute for the Unification of Private Law were charged with the task of examining the expediency of concluding a 'general' copyright convention and with trying to identify what principles were common to both the Berne Convention and the Pan-American Conventions which would guarantee the widest possible measure of protection of literary and artistic works.

"From the outset, two possible solutions were outlined. The first idea was to work out and adopt a new global convention which would have replaced both the Berne

Convention and the Pan-American Conventions. According to the opposite view, there was no need to abolish the existing conventions; it was better to establish a third instrument—a sort of bridge-convention—which would guarantee the mutual protection of the works protected under the existing conventions but would leave intact the application of those conventions between the States party to them. There was a discussion as to whether countries which had not previously been party to any copyright convention should be allowed to adhere to the new 'pluralateral' instrument.

"At the beginning, the different committees and experts studied the possibility of establishing a real universal convention to replace the existing conventions. That stage of the work was very useful because it made possible the identification of the main differences between the conventions involved. The draft which was called the 'Brazilian draft' was based on that approach. It was prepared by a committee in October 1935 in which, besides outstanding Brazilian experts and the representatives of the International Institute of Intellectual Cooperation and the International Institute for the Unification of Private Law, Mr. Fritz Osterag, the Director of the United International Bureaux of the Paris and Berne Conventions (the predecessor of BIRPI and WIPO) also participated.

"The so-called 'Brazilian draft' was based on those provisions of the Berne and the Pan-American Conventions which guaranteed the highest level of protection; there was only one major point on which it differed from the Berne Convention: it allowed the application of certain formalities. However, that point became decisive. Many countries party to the Berne Convention made it clear very quickly that they intended to stick to the principle of automatic protection and would oppose any formality as a condition of protection.

"When it became clear that the fusion of the existing conventions was not a realistic goal, attention turned to another draft, the so-called 'Paris draft,' which was prepared by a committee of experts in April 1936 convened also by the International Institute of Intellectual Cooperation and the International Institute for the Unification of Private Law and in which—besides other excellent experts, like Piola Caselli, the Rapporteur General of the Rome revision conference and Mr. Marcel Boutet, the Secretary General of ALAI—Mr. Fritz Osterag, the Director of the Unified International Bureaux also participated.

"This draft was based on the bridge-convention approach and outlined many ideas and elements which are now contained in the Universal Copyright Convention.

"It was planned that the 'Paris draft' would be discussed by a diplomatic conference just before the Brussels revision conference of the Berne Convention which was to be held in the second half of 1939. But, in September 1939, World War II began.

"The Brussels revision conference of the Berne Convention was finally held in 1948 but the draft of the new convention was not discussed at that time. The preparatory work was continued under the aegis of the newly established Unesco and, as you know, the Universal Copyright Convention was finally adopted in Geneva in 1952.

"With the new Convention, the bridge was ready between the Berne Convention and the Pan-American Conventions, both of which remained applicable between the

countries party to them. The bridge was ready in the sense that through the membership in the new Convention the mutual protection of the works protected by the Berne and the Pan-American Conventions became possible.

"It was fairly certain that sooner or later the Latin American and Caribbean countries would make use of the new bridge for another purpose as well: they would cross the bridge to join the Berne Union.

"6. There seem to be three further developments which have facilitated the adherence of several Latin American countries to the Berne Convention in the last two decades and which may lead to the continuation of this positive trend.

"(a) The first important development was that the main—perhaps the exclusive—obstacle to the adherence to the Berne Convention—namely the existence of formalities as conditions of protection—was eliminated from the copyright legislation of the majority of Latin American and Caribbean countries. Formalities are now considered, in general, an unnecessary administrative hurdle. Experience has shown that copyright protection can function safely and efficiently without any formalities whatsoever. It is, therefore, highly probable that even the very few countries of the region whose copyright laws are fairly old will also dispose of formalities very soon and the way to adherence to the Berne Convention will be open to them.

"(b) The second development was that it became easier to cross the bridge which is now much wider and shorter. I mean that after the 1967 and 1971 revisions of the Berne Convention and the 1971 parallel revision of the Universal Copyright Convention—especially by means of the insertion into the latter Convention of Article IVbis about certain minimum rights and about the restrictions for making exceptions—the levels of protection prescribed by the two Conventions came closer or we could even say that—with some exceptions like those which prevail in the field of formalities and the term of protection—the levels of protection became roughly equal. The only important difference is that the provisions of the Berne Convention are much more detailed and give more precise and better balanced answers to the questions raised by the new technologies and the needs of modern society.

"(c) The third major development which has facilitated and, we hope, will continue to facilitate the adherence of more Latin American countries to the Berne Convention is the fact that some traditional misgivings and fears concerning certain disadvantages which allegedly might be created by adherence to the Berne Convention have weakened or totally disappeared.

"There are several reasons behind this development.

"The first and most positive reason is that the position of a series of Latin American countries has spectacularly improved in international cultural relations. Those countries with their wonderful music, with their world-famed writers and poets, with their talented and successful sculptors, painters and other creators, are now very far from the situation of merely importer countries. They are interested in a high level and well-balanced protection of literary and artistic works and that is guaranteed by the Berne Convention.

"The example of those countries has also made the advantages of such a protection clear to other countries of the region. It is, first of all, a matter of justice that creators

should enjoy wide enough economic and moral rights in literary and artistic works by which they have enriched the culture of their nations and that of the world. But it is equally clear that an appropriate copyright protection is an indispensable condition of the promotion of national creativity and cultural infrastructure. If national publishers and other disseminators of works cannot operate in well-ordered conditions, they are unable to survive, they cannot stand the competition with those who produce, import and distribute pirate copies.

"Finally, the revision of the Berne Convention in parallel with the Universal Copyright Convention, in Paris in 1971, has also contributed to the dissipation of certain fears of developing countries which are still in the position of net-importers. The system of compulsory translation and reproduction licenses, where necessary, guarantees the supply of works which are necessary for developing countries in the fields of education, research and the sciences.

"Experience shows that there is even no need for the practical application of such licenses; the mere possibility of their existence persuades copyright owners in general to apply reasonable conditions towards developing countries.

"The World Intellectual Property Organization provides, as part of its development cooperation program, advice and assistance to developing countries in establishing and modernizing copyright legislation and the administrative structure in this field. We hope, this program will help more and more developing countries to recognize that it is in their interest to join the 100-year-old and still very dynamic Berne Convention, and we particularly hope that several Latin American countries will adhere to it in the near future.

"The Berne Convention needs them, and I firmly believe they also need the Berne Convention because this Convention provides the only solid basis to answer the questions raised by the new technologies and new social developments.

"The door is open. We are waiting for them. And we are confident that they will come. The sooner the better; for all of us."

On the second day of the Seminar, a round table discussion was held with the title "The Authors and the Berne Convention" and was attended by various distinguished participants including Mr. Robert Cantoral Garcia, President of the Mexican Society of Authors and Composers (SACM), who also acted as moderator in the discussion, and Mr. José María Fernández Unsain, President of the General Society of Writers of Mexico (SOGEM).

The Seminar ended with the adoption of the following recommendation:

"The meeting held in the district of Coyoacán of Mexico City on September 25 and 26, 1986, organized by the Government of Mexico, the World Intellectual Property Organization and the Mexican Institute of Copyright, on the occasion of the tribute paid by Latin America to the Berne Convention in honor of its centenary,

"Declares that the rights recognized by the Berne Convention in favor of authors for their creative activity are the most advanced at the international level,

"Takes into account that authors' rights are regarded as rights of mankind which are required for the promotion and protection of intellectual creativity,

"Recognizes that the creative activity of authors is essential for the development of national cultures,

"Notes that not all countries of Latin America have acceded to the Berne Convention, and are thus depriving their authors of the benefits that the Convention grants them, and preventing the regional protection of their rights on an equal footing, which is made possible by the effective application of the principles of mutual protection,

"Recommends that the World Intellectual Property Organization address itself to the governments of the countries of Latin America that have not acceded to the Berne Convention and encourages them to do so for the benefit of their authors and of the development of their national cultures,

"Likewise proposes that WIPO offer those countries such advice and assistance as will facilitate their accession to the Berne Convention, including the necessary advice, where appropriate, on the enactment of the corresponding laws in conformity with the principles laid down by the Berne Convention, and on the establishment and organization of societies of authors and departments concerned with the subject at university level."

International Confederation of Societies of Authors and Composers Madrid, October 6 to 11, 1986

The XXXVth Congress of the International Confederation of Societies of Authors and Composers (CISAC) commemorated the centenary of the Berne Convention by discussing a paper by Mr. L.D. Rodríguez Miglio, Director, Composers of Music (SADAIC), entitled "The Berne Convention and the Copyright Situation in 1986." Apart from a historical description of the Berne Convention, Mr. Miglio dealt mainly with the copyright situation in Latin American countries. In the discussion, several contributions were made on the copyright situation in other regions. At the closing of the Congress, the following declaration was adopted:

"(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 Berne 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 origi-

nal 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.”

Government of Spain Madrid, October 10, 1986

The commemoration of the centenary of the Berne Convention—which took place in the Palace of the Senate—was organized by the Government of Spain and opened by H.M. Juan Carlos, King of Spain. It was attended by several government officials, the representatives of Spanish copyright organizations as well as all the participants in the XXXVth Congress of CISAC (see above). Altogether some 400 persons participated.

Speeches were made by Mr. José Federico de Carvajal, President of the Senate, Professor Diego Espín, President of the Spanish Copyright Association, Mr. Mihály Ficsor, Director, Copyright Law Division on behalf of the Director General of WIPO, Mr. Javier Solana, Minister of Culture and finally by H.M. Juan Carlos, King of Spain.

The following is the text of the speech of H.M. the King of Spain:

“The Solemn Declaration recently made public by the Assembly of the Berne Union on the occasion of the centenary of the 1886 Convention pays homage to the ‘enthusiasm, imagination, wisdom and foresight of those Governments and those individuals whose efforts brought the Berne Convention into existence.’ These are qualities that we are now also honoring by means of this commemoration, not only as an act of homage but also to reaffirm the ideals of justice promoted by those pioneers of the defense and protection of works of the mind.

“As with all great historical achievements, the Berne Convention was the result of a long process starting with the set of demands put forward by an active and idealistic minority of authors claiming, simply, recognition and respect for their creative work. The historical circumstances of the latter decades of the 19th century and the example of other conventions of that time moved the members of the International Literary and Artistic Association to formulate a demand of which the philosophy was condensed in this simple statement: ‘We believe that we have a right, as other men, to the fruit of our work.’

“Since then, the defense and protection of authors’ rights set out in the provisions of the Berne Convention have come to enjoy explicit recognition in constitutional declarations at national level. At the same time, a gradual process of universalization of those rights has taken place which doubtlessly also acts in favor of cultural communication between the nations. The Universal Declaration of

Human Rights does likewise when it states that everyone has the right to the protection of the moral and material interests resulting from any scientific, literary and artistic production of which he is the author.

"Spain, which together with nine other countries laid down the basis, one century ago, of protection for works of the mind, remains true to the principles that inspired the Convention, as proved by the recognition in its Constitution of the rights in literary, artistic, scientific and technical production and creation.

"We believe that the principles established by the Berne Convention remain valid today and we are convinced of the need to apply them for the cultural development of mankind and for the achievement of our aspiration to peace since, as has already been said in that Solemn Declaration, the respect for the law of copyright 'opens paths across frontiers for works of the mind, thus contributing to a better international understanding and to the cause of peace.'

"Today in particular, in this International Year of Peace, we must reaffirm the desire for coexistence and respect. We all have a duty to be watchful that the seeds of concord and hope sown a century ago by the signatories of the Berne Convention remain the source of a fruitful and glorious reality."

**Czechoslovak Authors' Societies, Society for
International Law and Karel University
Prague, October 15, 1986**

A solemn session was organized to celebrate the centenary of the Berne Convention in the historical building *Carolinum* of the Karel University in Prague on October 15, 1986. It was sponsored by Mr. Milan Klusák, Czech Minister of Culture and Mr. Miroslav Válek, Slovak Minister of Culture, and organized by the Czech and Slovak authors' societies (OSA, SOZA, DILIA and LITA), by the Czechoslovak Society for International Law of the Czechoslovak Academy of Sciences and by the Karel University. About 250 persons were present, among them the leading officials of the Czech and Slovak Ministries of Culture, authors' societies, unions of artists, radio, television, film, producers of phonograms and publishing houses.

The main speaker was Professor Judr. Otto Kunz, dr.Sc., President of the Czechoslovak Society for International Law of the Czechoslovak Academy of Sciences and Director of the Institute for Copyright Law and Industrial Rights of the Faculty of Law, Karel University. In his speech, he emphasized the importance of the Berne Convention throughout the world and also the 65th anniversary of the ratification of the Berne Convention by Czechoslovakia.

In the cultural program, the Kocian Quartet performed the First String Quartet by Leos Janáček. At the end of the ceremony, the two Ministers invited the guests to a reception.

**Association of Yugoslav Publishers and
Yugoslav Authors' Agency
Brioni, November 13 and 14, 1986**

The Conference was organized by the Association of Yugoslav Publishers and by the Yugoslav Authors' Agency and attended by some 150 representatives of Yugoslav publishers, authors' societies and university professors.

During the first day of the Conference, after the opening addresses by Mr. Ivica Percan, President of the Council of Pula County (to which the Brioni islands belong) and by Mr. Josip Hrvatin, Member of the Presidency of the Federal Conference of the Socialist Union, three papers were presented that more closely dealt with the Berne Convention.

Mr. Ivan Henneberg, Lawyer, Zagreb, gave a summary on the creation and the development of the Berne Convention in his paper entitled "One Hundred Years of the Berne Convention for the Protection of Literary and Artistic Works."

Mr. Mihály Ficsor, Director, Copyright Law Division, WIPO, spoke about the problems raised by the new technological possibilities of using protected works and about the future of the Berne Convention. Here is an excerpt from his paper entitled "The New Technologies and the Berne Convention":

"It seems to be fairly clear that on the basis of the 1971 Act of the Berne Convention, appropriate answers can be given to those questions and, at least for the time being, one should not contemplate the convocation of a revision conference.

"Let us take some examples.

"*Reprography, home taping*: Article 9(2) of the Berne Convention gives to member States the power to restrict the exclusive right of reproduction and permits works to be reproduced in certain 'special cases.' However, there are two conditions on any restriction even in such cases: the reproduction must not conflict with a normal exploitation of the work, and it must not unreasonably prejudice the legitimate interests of the author.

"The cumulative effect of reproduction for private purposes of sound and audiovisual recordings and broadcasts as well as reprographic reproduction for private use of printed works is prejudicial to the author's legitimate interests (in particular, to his claim to derive material benefit from the use of his work by others) and such kinds of reproduction may also conflict with a normal exploitation of the work reproduced. Consequently, it would not be compatible with the Berne Convention to exempt from copyright liability such reproductions even if made for private purposes.

"In the case of reprography, collective licensing is the most appropriate solution; and the example of some countries shows that it is really workable. As far as home taping is concerned, there seems to be another way to avoid conflict with Article 9 of the Berne Convention: the imposition of a charge on blank material support and/or on recording equipment.

Cable distribution: Under Article 11^{bis}(1)(ii) of the Berne Convention, authors of literary and artistic works enjoy the exclusive right of authorizing 'any communication to the public by wire ... of the broadcast of the work, when this communication is made by an organization other than the original one.' This provision covers any simultaneous and unchanged retransmission of broadcasts of works. Under the quoted provision, there is *only one case* where the recognition of a special right to authorize distribution by cable of works broadcast is *not* required: namely, where the distribution is made *by the broadcasting organization itself*. Otherwise, neither the wording of the provision nor the relevant conference documents offer any ground whatsoever for the restriction of the scope of this right on the basis of any particular criteria, such as geographical or technological considerations ('direct reception zone,' 'service zone,' etc.) or 'must carry' obligations under public laws.

Satellite broadcasting: It is clear under Article 11^{bis}(1) of the Berne Convention that broadcasting is a way of communicating works to the public by wireless diffusion of signs and images. It is obvious that direct broadcasting by satellite is covered by this provision of the Convention. It is less obvious, but on the basis of a more thorough analysis we can say—under certain conditions—the same about transmission through fixed-service satellites. There is still a discussion about the law to be applied in the case of direct broadcasting satellites. According to a basic principle of copyright, which has never been questioned, the law of the country should be applied where the use of the work takes place. Therefore, the question of applicable law is answered if we answer another question; namely: where does broadcasting—that is communication to the public by wireless means—take place in such a case? It can hardly be denied that direct broadcasting by satellites is a complex process. It is not finished at the moment when and the point where the injection towards the satellite starts. It includes both the 'upleg' and the 'downleg' stages. Therefore the communication to the public may start in the country of injection but it certainly takes place in the countries of the 'footprint' of the satellite to whose public the program is communicated.

"We could continue enumerating examples of how the questions raised by new technologies can be answered on the basis of the Berne Convention (for example the problems of the storage of and retrieval from computer memories of protected works can be solved on the basis of the right of reproduction and even the questions of rental and public lending can be answered if we choose a generous enough interpretation of the Convention as is mentioned in the *WIPO Guide to the Berne Convention*).

"There are several countries where those questions have been answered by legislation or court decisions in keeping with the appropriate interpretation of the Berne Convention. But the adaptations of national laws to new uses are not yet quick enough.

"We are faced with at least two dangers in this field: the first is that divergent solutions are applied in different countries which may lead to conflicts and may endanger the adoption of uniform enough interpretation of the provisions concerned of the Berne Convention; and the second danger—which is not a simple abstract danger, but a fairly unpleasant reality—is that countries which are more

generous towards authors in identifying old rights in new situations try to avoid unilateral obligations by means of putting the application of such newly identified elements of those rights outside copyright (for example declaring them parts of administrative law or fiscal law) and thus denying—in a completely groundless way—the application of the principle of national treatment.

"WIPO has recognized that urgent steps are necessary to prevent and force back such diverging trends and to identify obligations under the Berne Convention in the new circumstances. New technological possibilities of using protected works were analyzed in detail at several WIPO meetings in the last decade. Now, in the present and the forthcoming program periods we try to give a solid synthesis in all important fields in the form of guiding principles with appropriate comments on them. We hope very much that this new approach to the problems of the impact of technological progress on copyright will speed up the elaboration and adoption of appropriate and generally acceptable solutions."

Mr. Predrag Atanacković, Legal Officer, Association of Yugoslav Publishers, spoke about "The Influence of the Berne Convention on Yugoslav Legislation."

Another paper dealt with Yugoslav Copyright Law: "Yugoslav Copyright Law and the Court Practice" by Mr. Dimitri Milić, Judge, Belgrade District Court.

Dr. Milan Bulajić, President of the Yugoslav Association for the Protection of Intellectual Property, did not restrict himself to copyright questions but also discussed the topical problems of industrial property in his paper entitled "The International Problems of Creativity Today." He emphasized the special interests of developing countries in this field.

During the second day of the Conference, the following papers were presented: "The Protection of the Small Rights in the Yugoslav Copyright System" by Mr. Zvonimir Puskarić, Director, the Croatia Section of ZAMPI (musical small rights collecting organization); "The Field of Application of the Berne Convention" by Miss Mira Jovčić, Head of the Foreign Rights Department, Yugoslav Authors' Agency; "Copyright and Libraries" by Mr. A.M.N. Alam, Legal Officer, Copyright Division, Unesco; "The Reservation Concerning the Right of Translation Under the Berne Convention" by Mr. Mihailo Stojanović, retired staff member of WIPO and "The Protection of Computer Programs" by Professor Vesna Besarović, Faculty of Law, University of Belgrade.

**Jagellonian University and
Polish Society of Authors
Cracow, November 18 to 21, 1986**

The Symposium was organized by the Jagellonian University, Cracow and the Polish Society of

Authors (ZAIKS) and was attended by about 100 participants from Poland and from other countries (mainly university professors and representatives of authors' societies).

The opening session was held in the main hall of the Jagellonian University (*Collegium Novum*). In the framework of that session, after the welcoming address by Professor Andrzej Kopff, Deputy Rector of the Jagellonian University, the following three papers were delivered: "The Technological Development and the Berne Convention" by Mr. Mihály Ficsor, Director, Copyright Law Division, WIPO; "Tradition and Perspectives of the Harmonization of National Copyright Laws in the Light of the International Conventions" by Professor André Françon, University of Paris II, President of ALAI; "The Berne Convention and the Socialist Copyright Law" by Professor Heinz Püschel, Humboldt University, Berlin. The opening session was chaired by Professor Erich Schulze, President-Director General of the German Society for Musical Performing and Mechanical Reproduction Rights (GEMA), President of the International Copyright Society (INTERGU), who—after the three papers—spoke about the importance of the Berne Convention in answering the questions raised by the new technological and social developments.

We quote here a part of Professor Françon's paper which deals with the important harmonizing effect of the Berne Convention on national laws:

"The harmonization of national laws under the pressure of the international conventions, particularly the Berne Convention, constitutes a reality whose importance must now be measured.

"In an interesting article he wrote in 1984,¹ the late Claude Masouyé took stock of the effect which the Paris Act of the Berne Convention had had on national laws. He noted that, since the 1967 Stockholm Conference, of which the substantive conclusions had been taken up in Paris in 1971, 40 countries had adopted a general copyright statute. Analyzing the various texts, this eminent specialist had the following to say: "The influence of the Stockholm text has been above all to produce a kind of alignment of national concepts on the law of the Convention in respect of the following provisions: general criteria of protection (absence of formalities, intangible property right deriving from the simple fact of creation of the work, distinction between attributes of a moral nature and economic rights); points of reference (maximum extension of the criterion of nationality, subsidiary criteria for certain works); term of protection (with exceptions, there is a tendency to go beyond the minimum 50 years *post mortem auctoris*); term of the moral rights (in the civil law countries); limitations of copyright (rules on quotations and borrowings, status of official texts and oral works); arrangements for compulsory licenses (compatible to the fullest

possible extent with the Convention); assimilation of audiovisual works to cinematographic works."²

"Claude Masouyé further noted that since 1967 a number of countries had adopted the Union system as regards cinematographic and assimilated works. Finally, he emphasized the importance of paragraph (2) of Article 9 of the Berne Convention that set a limit to the exceptions that national laws could make to the right of reproduction. This observation is judicious and even premonitory since, ever more frequently, national laws incorporate provisions to compensate authors for the prejudice they suffer due to the proliferation of private copying of their works.

"The trend towards harmonization is therefore a real one. It is interesting to note the role that may be played by the relevant model laws. These are not necessarily linked to the conventions. Indeed, it is not unusual for them to deal with matters that are not mentioned in the conventions. For example, there are model laws on societies of authors and on publishing contracts or again on the rights of salaried authors. Nevertheless, it is equally true that these model laws can sometimes serve to promote the expansion of the conventions...

"More recently, a further practice has grown up, in addition to that of drawing up model laws. At a number of recent meetings organized by WIPO and Unesco, an endeavor has been made to identify 'Principles' for solutions to various problems of copyright. These are set out in the reports on the meetings, together with commentaries intended to explain their aims. These arrangements are even more flexible than in the case of model laws, but they also contribute to the approximation of legislation. The machinery was described in the following way at the first meeting at which it would seem the system was used (see *Copyright*, 1984, p. 137, paragraph 3): 'It is not a uniform set of model provisions that is being suggested. The Principles provide guidance to solutions of basic questions in a manner that is supposed to allow for appropriate application by national legislation or other means of implementation of the Principles enunciated, including by collective agreement or as otherwise agreed by the parties concerned, by arbitration awards or in any other manner approved by the competent authority after consultation with the parties concerned in each country. In some countries, the Principles contained hereunder may simply amount to clarifications. In other countries, they may induce the legislator to extend, complete or amend existing legal rules. The Principles can be transformed in various formulations of legal provisions compatible with applicable international conventions and the existing rules of a given national law on copyright and so-called neighboring rights'."

The questions of harmonization of national copyright laws were discussed in a more detailed manner during the four-day Symposium in the framework of several papers with special attention to the problems raised by the new technologies. Under the chairmanship of Dr. György Boytha, Director General of the Hungarian Bureau for the Protection of Authors' Rights (ARTISJUS), Professor Karel Knap, Karel University of Prague and

¹ "La Convention de Berne depuis Stockholm," in RIDA, January 1984, No. 119, pp. 3 *et seq.*

² *Loc. cit.*, p. 39.

Mr. Mihály Ficsor, respectively, the following papers were presented: "The Copyright Protection in Socialist Countries—The Main Questions and Perspectives" by Professor Karel Knap; "Nordic Attempts at the Harmonization of Copyright Laws" by Professor Gunnar Karnell, Law Faculty, Stockholm School of Economics; "The New Modifications of the European Copyright Laws and the Berne Convention" by Dr. Adolf Dietz, Max Planck Institute, Munich; "The Basic Principles of Copyright Remuneration and the New Ways of Reproduction and Distribution of Works" by Professor Andrzej Kopff, Jagellonian University; "Topical Questions of Collecting Societies in the European Communities" by Professor Wilhelm Nordemann, Free University, West Berlin; "The Functions of the Copyright Society in Poland" by Mr. Witold Kolodziejski, Director General of the Polish Authors' Society (ZAIKS); "The Conception of Copyright in Poland—Traditions and Perspectives of Development" by Dr. Jan Bleszynski, Head of the Legal Department, ZAIKS; "The Main Trends in Polish Copyright Case Law" by Professor Jerzy Serda, Jagellonian University and "The Protection of Authors' Personality Rights—Traditions and Perspectives" by Dr. Ryszard Markiewicz and Dr. Janusz Barta, Jagellonian University.

The last four papers dealt with the questions of Polish copyright law because the Symposium was also devoted to the celebration of the 60th anniversary of the first Polish copyright law.

The Symposium was closed by a summary by Mr. Mihály Ficsor.

Government of the Netherlands The Hague, November 20 and 21, 1986

The Conference called "Copyright Policy in the Information Society" was organized by the Government and the interested circles of the Netherlands in the *Ridderzaal* in Binnenhof, The Hague, and attended by about 250 participants.

In his welcome address, Professor Herman Cohen Jehoram, University of Amsterdam, recalled briefly the history of the Berne Convention and the development of the copyright law in the Netherlands. The Minister of Justice, Mr. F. Korthals Altes, in his opening speech, paid tribute to WIPO and pointed out the economic and social importance of copyright. He stressed in a very positive way the role of the Berne Convention and the necessity of international protection. The Minister also made reference to some of the crucial problems in copyright law today, such as reprography, cable transmission, piracy, the protection of computer programs and integrated circuits.

Thereafter, the Minister presented an award, the "1986 Authors' Rights Award" to Mr. Paul Nijhoff Asser, Secretary, International Group of Scientific, Technical and Medical Publishers (STM), Amsterdam.

On behalf of the Director General of WIPO, Mr. Henry Olsson, Director, Copyright and Public Information Department, gave a speech in which he recalled the Solemn Declaration by the member States of the Berne Union, made at the celebration in the *Palais fédéral* in Berne (see above, the ALAI Congress in Berne). Speaking about the main principles of the international protection of authors' rights, Mr. Olsson indicated that

"...they have become even more important today when we witness the advent of various new sophisticated means for dissemination of information, entertainment and culture. All these new technical devices operate to a large extent independently of national frontiers. They all utilize material where copyright applies. We all know that the new technologies attract much political attention and are very interesting for the public and the consumers, who of course want the easiest and quickest possible access to what these new technologies can provide. The other side of the coin is that while authors and other beneficiaries generally want the widest possible dissemination of their works they also have an interest in being able to control the use made of their works and in reaping some benefits from this new situation. In this context, the Berne Convention with its international system for protection and its guaranteed standards plays a fundamental role and is in fact one of the cornerstones for the utilization of the new media technology. Without a proper copyright protection there will be very little to disseminate by means of this new technology."

Mr. Olsson's speech was followed by a statement made by Mr. W. de Boer, Director General, Ministry of Economic Affairs, who spoke about the economic role of the copyright legislation and about his Ministry's interest in this field of law. He mentioned the difficulties of the implementation of copyright and the need to find appropriate means of copyright administration and to take efficient measures against piracy.

Dr. E. van Spiegel, Director General, Ministry of Education and Science, expressed his positive view on the role of copyright law.

Mr. Jan Corbet, Director General, *Société belge des auteurs, compositeurs et éditeurs* (SABAM), underlined the fundamental role of collecting societies in the administration and implementation of copyright. Mr. M. Bruggink, Chairman, Copyright Commission, Dutch Publishers' Association, spoke about the publishers' view on copyright.

The Minister of Culture, Mr. L.C. Brinkman, who was the last speaker of the day, mentioned the remarkable development of the information industry since the 1960's and referred to the relations

between copyright law, on the one hand, and cultural and economic policy, on the other.

On the second day of the meeting, several other statements were made by Mr. H. Drison, former Vice President of the High Court, by Mr. H.F. van den Haask, President of the Tribunal of Haarlem District, Mr. R.W.M. Craemer, Member of the Public Prosecutor's Department, Mr. A. Kosto, Member of the Second Chamber of the General States, Mr. R. Coleman, Commission of the European Communities, Dr. S.M. Stewart, Chairman of the Common Law Institute for Intellectual Property, London, and Mrs. M. Möller, *Ministerialrätin*, Federal Ministry of Justice, Bonn. The speeches covered various matters referring, among others, to the European initiatives regarding copyright and to the changes in the copyright laws of France, Germany (Federal Republic of), Netherlands and the United Kingdom.

Government of India and WIPO New Delhi, November 24 to 28, 1986

At the invitation of the Government of India, a Sub-regional Workshop on Copyright and Neighboring Rights was held in the *Vigyan Bhavan* Conference Centre in New Delhi. WIPO was represented by Mr. Henry Olsson, Director, Copyright and Public Information Department and Mr. Shahid Alikhan, Director, Developing Countries Division (Copyright). In the presence of about 150 persons, including officials from the Government of India, Mr. Anand Sarup, Education Secretary, opened the ceremony and welcomed the participants. Mrs. Krishna Sahi, Minister of State for Education and Culture, in her inaugural address, expressed her thanks to the Director General of WIPO for agreeing to hold this Workshop in New Delhi as part of the centenary celebrations of the Berne Convention. She recalled the importance of the oldest multilateral copyright convention and the fact that:

"...the Convention provides a platform for constructive international cooperation in the field of copyright.

"The Convention has contributed substantially towards the protection of rights of authors in several ways. Provision of protection to authors is not a simple and easy task and we should pay our tribute to all the States which are party to this Convention. The Berne Convention has undergone many revisions and the Convention has tried to keep pace with the changing circumstances. Each revision has significantly increased the obligation of the member States regarding the protection of the rights of authors."

Mrs. Krishna Sahi also pointed out that

"... WIPO's annual training program is very important because the need of the developing countries is to develop suitable infrastructure in their country for administering their copyright law."

She then referred to the increase of piracy and hoped that the Berne Union member countries would search for solutions within the framework of the Convention to the challenges posed by new technological developments:

"WIPO has undertaken several studies relating to computer programs, cable television, etc. The explosion in knowledge and new communication technology has reduced distances and removed barriers in transfer of works, thereby creating tremendous problems both for copyright owners and users. Technical developments have given the public the means to take advantage of works unopposed by their authors and without payment of royalty. New methods of reproducing and diffusing intellectual works are being used by middle men who are not concerned about the rights of authors."

On behalf of the Director General of WIPO, Mr. Henry Olsson, Director, Copyright and Public Information Department, conveyed his greetings and best wishes for the success of the Workshop. After having stressed the important role played by the Government of India in several meetings such as the latest revision of the Berne Convention in 1971 (which led to the incorporation of preferential provisions for developing countries written into the Appendix to the 1971 Act of that Convention), Mr. Olsson explained the purpose of the Workshop. He also dealt with WIPO's activities and its role in the promotion of the protection of intellectual property.

Apart from papers by WIPO officials, a number of papers were presented by guest speakers invited by WIPO: "Problems of Effective Copyright Implementation in the Developing Countries of Asia" by Mr. John Sturman, General Manager, Australasian Performing Right Association Limited (APRA), Sydney (on behalf of the International Confederation of Societies of Authors and Composers (CISAC)); "Development in Copyright Law and Practice in India" by Mr. S. Ramaiah, Secretary, Legislative Department, Ministry of Law and Justice, New Delhi; "Collective Administration of Copyright: Structure and Activities of Authors' Societies; Cooperation Amongst Authors Societies/Organizations" by Dr. Ulrich Uchtenhagen, Director General, Swiss Society for Authors' Rights in Musical Works (SUISA), Zurich; "Impact of New Technologies (Reprography, Computer Use, Software Protection) on Copyright" by Mr. Denis de Freitas, Chairman, British Copyright Council (BCC), London; "Challenges of New Technologies and the Role of Copyright" by Mr. Goh Phai Cheng, Deputy Parliamentary Counsel, Attorney General's Chambers, Singapore; "Economic Impact of the Protection of Copyright and Neighboring Rights" by Mr. Ralph Oman, Register of Copyrights and Assistant Librarian of Congress for Copyright Services, Library of Congress, Washington, D.C.; "The

Economics of Educational Book Publishing; Copyright Problems of Book Publishing in Developing Countries; the Role of the Book Publisher in the International Copyright System; Piracy of Literary Works” by Mr. J.-A. Koutchoumow, Secretary General, International Publishers Association (IPA), Geneva, and by Mr. D.N. Malhotra, Managing Director, Hind Pocket Books Private Ltd., New Delhi; “Scope and Functions of the Copyright Board: the Indian Experience” by Justice R.A. Misra, Chairman, Copyright Board, New Delhi; “Piracy of Cassettes, Phonograms and Videograms” by Mr. Nicolas Garnett, Regional Director for Asia and the Pacific, International Federation of Phonogram and Videogram Producers (IFPI), London; “Broadcasting and Copyright” by Mr. Fumio Harada, Senior Officer, Copyright Division, Japan Broadcasting Corporation (NHK), Tokyo; “Teaching and Research in Intellectual Property Laws” by Professor Prasit Kovilaikool, Dean, Faculty of Law, Chulalongkorn University, Bangkok.

At the end of the deliberations of the Workshop, the following conclusions emerged:

“Arising from the views and information exchanged and proposals put forward, the participating specialists:

“(i) noting that this Workshop has, *inter alia*, been organized in commemoration of the centenary of the Berne Convention for the Protection of Literary and Artistic Works, declared the unanimous view that an appropriate, updated and efficiently implemented legislation on copyright and neighboring rights would encourage intellectual creativity in the countries of the Sub-region and thereby help in their cultural, social and economic development;

“(ii) recognizing that the creative activity of authors and other copyright owners is essential for development of national culture and for the promotion of intellectual creativity, suggested that WIPO should address itself to the Governments of the countries in the Sub-region that have not acceded to the Berne Convention, and disseminate appropriate information to them to facilitate their accession to the Berne Convention and enable them to unite with existing member States in their endeavors for the benefit of their authors and other copyright owners;

“(iii) suggested that member States which have not already done so should take steps to enable them to adhere to the latest Paris Act of the Berne Convention;

“(iv) emphasized that copyright and neighboring rights laws cannot be implemented effectively, particularly in the face of contemporary technology, without appropriate infrastructures, based on collective administration, and stressed the importance of programs of assistance by WIPO for establishing or strengthening authors’ organizations or societies in the countries of the Sub-region as well as the need for government support for the establishment of such organizations or societies;

“(v) expressed the wish that WIPO should further increase its development cooperation activities by providing, upon request, advice on the preparation of laws on copyright and neighboring rights; cooperation in the establishment of an efficiently working infrastructure for

implementation of the laws; as well as by increasing further training for concerned nationals of the Sub-regional countries, including both studies outside the Sub-region and training within the Sub-region, such training fellowships to extend to officials also from authors and publishers organizations as also from the university faculty, the latter to help promote teaching of copyright law in institutions of higher learning;

“(vi) likewise proposed that WIPO assist with provision of relevant information, upon request, to the concerned faculties dealing with copyright law at university level;

“(vii) stressed the need for increasing the number and the range of programs at the national level, for explaining to the public as well as to the policy-makers and the law enforcement agencies, through all branches of the media and other means including organization of information meetings, the value to society as such and the importance of the system of copyright and neighboring rights in the context of economic, social and cultural development;

“(viii) suggested also that WIPO address itself to the Governments of the countries in the Sub-region that had not acceded to the Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations so as to provide such information as will facilitate their accession thereto, as well as to the other international conventions on neighboring rights, viz. the Convention for the Protection of Producers of Phonograms Against Unauthorized Duplication of Their Phonograms and the Convention Relating to the Distribution of Programme-Carrying Signals Transmitted by Satellite; and

“(ix) finally emphasized that in view of the prevalence of commercial piracy that stifles efforts to safeguard and promote national cultures and constitutes a grave prejudice to the economy and to employment in the countries affected by it, it was necessary to take effective measures to combat such piracy, that is the unauthorized reproduction on a commercial scale of, in particular, literary, musical and cinematographic works, of phonograms and videograms, and of broadcasts.”

Société des auteurs et compositeurs dramatiques Paris, December 3, 1986

The *Société des auteurs et compositeurs dramatiques* (SACD) celebrated the centenary of the Berne Convention by organizing at its headquarters a ceremony during which the Beaumarchais Medal was awarded to the Director General of WIPO, Dr. Arpad Bogsch.

Over 250 people belonging to the world of politics and to that of the arts were present. The reception was held at the premises of the Society in which various archive documents were on show as part of an exhibition held for the occasion. Following the opening speech by the President of SACD, Mr. Claude Santelli, who warmly welcomed all those public figures and high dignitaries, ministers and ambassadors, numerous authors and composers

of dramatic works that were present, Mr. Jean Matthysens, Delegate General of SACD, took the floor and paid a tribute to the evangelists of the Berne Convention:

"Lamartine, in 1841 already, proclaimed that everyone was demanding an international right.

"Alphonse Daudet, Alexandre Dumas fils ... were both delegates to the Paris Congress prepared by the *Société des Gens de lettres* during the 1878 World Exhibition.

"Victor Hugo, father of the Berne Convention, and first Honorary President of the International Literary and Artistic Association, that Association which held congresses in London, Lisbon, Vienna, Rome, all capitals in which ALAI took the opportunity of demanding an international copyright charter. I may mention this statement by Victor Hugo, frequently quoted by Jacques Boncompain: 'Literature is a universal phenomenon. It is the government of mankind by the human mind.'

"Jules Claretie, who represented our Society at the 1879 Congress, complained that 'La Dame aux camélias' had become 'la Traviata' and that 'Le Roi s'amuse' had been transformed into 'Rigoletto'."

After having also mentioned the revisionists, Mr. Matthysens cast a look at the future of the Berne Convention, thereby emphasizing the work carried out by WIPO. He concluded by giving the final word to Victor Hugo who had said

"...with the voice of a prophet, full of lyricism, to the 1878 Literary Property Congress: 'Let the writers march ahead; the nations will follow.'"

The Director General of WIPO, Dr. Arpad Bogsch, replied to these warm words with the following speech:

"Permit me to thank you, Mr. President Claude Santelli, for having honored me with the Beaumarchais Medal, a symbol of the prestigious achievements of French authors and composers of dramatic works and a symbol of the aims of your Society.

"The award of this Medal is a great honor for me personally and—more importantly—it is the expression of the interest that your Society devotes to the international protection of copyright and to the guarantees of such protection secured by the Berne Convention for the Protection of Literary and Artistic Works, of which the administration is entrusted to the international organization that I represent.

"Permit me likewise to thank Mr. Jean Matthysens, the Delegate General, for his warm address full of wit—together in the style of the man of the theater who both instructs and entertains us.

"You have spoken of the past. You mentioned the evangelists. It is rare that I personally meet with evangelists. Happily, in your person, we have a living evangelist, an evangelist of our generation. The Berne Convention is 100 years old, but you, Sir, have actively participated for something like half of those 100 years of existence in shaping its history. I am pleased to be able to pay a tribute to you and, through your President and yourself, also to the *Société des auteurs et compositeurs dramatiques*.

"The fact that authors' rights have enjoyed for more than two centuries and still today enjoy effective protection is in great part due to your Society. It has not only propagated the justification for such protection but was also the first, as far as I am aware, to find a formula—collective administration—enabling the sources of revenue to flow together in one stream from which each author can draw the share to which he is entitled.

"This was the formula that was lacking. You were the ones that devised it. Since then, this administration formula has been extensively imitated throughout the world. Both today and for the future, collective administration constitutes the sole practical solution for certain uses of dramatic, musical, literary or artistic works.

"Of course, collective administration must be carried out in an honest, fair and effective manner. Here again, your Society has set the example and continues to do so. The World Intellectual Property Organization is an advocate of this form of administration of authors' rights and endeavors to convince of its usefulness those countries that do not yet know it or that use it only in an imperfect fashion.

"This is one of the aims pursued by the World Intellectual Property Organization—one of the 16 specialized agencies within the United Nations system.

"WIPO's activities are directed towards two major sectors: copyright and industrial property.

"What are we trying to accomplish in the field of copyright?

"At least two things: the propagation of the faith and the purity of the faith, that is to say faith in the protection of copyright.

"This propagation of the faith is aimed at those countries that have not yet acceded to the Berne Convention. Currently, one half of the countries is to be found in this category since the Berne Convention has as yet but 76 member States. Our efforts in this centenary year have been directed in particular to the United States of America. There is hope, since in recent years the United States has become aware of the problems of piracy and wishes to enjoy the most effective multilateral protection in the world, that is to say that secured by the Berne Convention. There are also other countries, in Latin America, in Africa and in Asia, whose accession to the Berne Convention would be highly desirable. Even in Europe, there is one such country, and not the least at that, the Soviet Union.

"Propagation of the faith of intellectual property is even more necessary in those countries that have no legislation on the protection of authors' rights. Among these, China is the most important. But there again, there is hope. WIPO maintains close relations with that country. We have organized seminars in various Chinese cities to create an awareness of copyright and also study trips, to France and to other Western countries, for Chinese officials and experts responsible for the preparation of a preliminary draft copyright law. At the invitation of the Chinese authorities, I shall be travelling again next week to Beijing to be consulted on this very draft.

"In the developing countries, we are assisting in the setting up of societies of authors in order to translate into reality those existing laws that are sometimes difficult to apply in practice. WIPO receives an important contribution from France for its activities carried out in the devel-

oping countries. The national authorities, but also the private associations, provide precious assistance in the training of those responsible in their own countries for implementing the laws or improving those already in force and for ensuring that they are applied in practice.

"I beg the Minister for Culture and Communication, Mr. François Léotard, to permit me to pay tribute here to the French authorities for all the interest that they show in these activities and for their support. I would also like to thank Mr. Edgar Faure, as President of the International Confederation of Societies of Authors and Composers, for the advice and assistance that WIPO receives from the French and foreign societies of authors in their missionary activities.

"To leave the field of propagation of the faith in intellectual property and to turn towards that of maintaining its purity, I wish to say to you quite clearly, here in this sumptuous house of the authors and composers of dramatic works, that WIPO is fully aware of the copyright problems created by the new technical means of dissemination and that it is its aim, at the international level, to identify, analyze and resolve them. For some ten years now, the Secretariat of WIPO has been attempting to draw the attention of lawmakers and of courts to the potential impact on copyright of videocassette copying, cable television, satellite broadcasting and other new technical possibilities. The pirating of audiovisual works—that is to say the works *par excellence* of dramatic authors and composers—is one of our main concerns. We inform both governments and the public and make them aware of these matters. We propose solutions, one of which is the system of collective administration.

"It is by these means that WIPO endeavors to maintain and develop the benefits of our centenary treaty, the Berne Convention.

"The fact that the *Société des auteurs et compositeurs dramatiques* felt the need to commemorate this centenary and that it has been able to obtain the participation at this ceremony of such eminent and distinguished figures fills me with joy and optimism. With your help, with that of France, the chances of maintaining and strengthening authors' rights are guaranteed for a long time to come."

Mr. François Léotard, Minister for Culture and Communication, then addressed the assembly in these words:

"At the founding, in 1878 in Paris, of the International Literary and Artistic Association, Victor Hugo, who was then President of the *Société des auteurs et compositeurs dramatiques*, declared in his still famous appeal to the men of letters: 'It is not for personal or restricted interests that you meet here; it is for the universal interest.'

"This deep-seated confidence in the justification of his undertaking, this premonitory assurance in the righteousness of his struggle, this keen awareness of the legitimacy of his action, were drawn by Victor Hugo in fact from a century of unceasing combat for the recognition of a right, that is to say copyright.

"We are all fully aware, today just as much as yesterday, that the fight for human rights, and copyright is indeed an integral part of those rights, is a daily fight.

"That is why, Mr. President, Ladies and Gentlemen, I am particularly glad to be among you today to commemo-

rate, in the presence of the Director General of the World Intellectual Property Organization, this 100th anniversary of the Berne Convention. This Convention indeed constituted a decisive stage in the turbulent and unending history of copyright and for that reason warrants today our legitimate and solemn tribute.

"1. This tribute is all the more justified by the fact that through it we are paying homage to all the authors and all the creators of our country over the past two centuries.

"In a most interesting article, Jacques Boncompain recently traced out with great erudition the background to the Berne Convention.

"In that article, he describes the long march undertaken by authors before that which today appears self-evident to us was to become reality.

"We know of the part played by Beaumarchais, the founder of your Society, Mr. President, in what is known as the 'authors' revolution,' which led to the restitution to authors of all their rights by the Convention of September 3, 1793.

"Less is known, on the other hand, of the difficulties that had to be overcome before the universally valid doctrine and principles set out in the revolutionary decrees could spread across Europe: the vicissitudes of the Napoleonic wars, the subtlety and, particularly, the multiplicity of diplomatic agreements, it is obvious that nothing would have happened if, there again, the authors had not acted with courage, tenacity and generosity to win the day for their just cause. And what authors they were: Lamartine, Alphonse Daudet, Alexandre Dumas fils and, of course, Victor Hugo who, in 1878, urged the French Government to instigate a diplomatic conference which was to draw up a multilateral convention on literary and artistic property.

"Eight years later, on September 9, 1886, ten States adopted the renowned Berne Convention that brings us here today. Thus were recognized, at an international level, the specific and essential rights of authors: the right of translation and of performance, etc. We know how it went on from there.

"It is indeed to the authors of our country that we must pay tribute for this considerable achievement, to those authors who are an unfailing instrument in the vitality and image of the French language.

"2. Beyond the protection of authors, it is indeed the defense of our language that is at stake, the safeguard of our common heritage, the influence that can be exerted by our country through its most precious possession, that is to say its creative genius.

"You will understand why the Minister for Culture and Communication attaches particular importance to defending this cause at a time at which our country all too frequently loses a share of the market in the field of its own language. That is also why the funds devoted to creation by the Ministry of Culture represent an essential share of its budget since they amount to over 40%.

"I would like to emphasize here, Mr. President, the part played by your Society which, with its 24,000 members, undertakes an exemplary activity not only to defend authors but also to discover new authors. This is indeed a noble and essential mission for the vitality of creation in our country, and a mission in which my Ministry will always support you.

"Nothing is more important than language and writing: are our civilizations not above all civilizations of the written word?"

"The defense of our language, both at national and at international levels, has become a must for all of us and probably one of the greatest challenges facing our national community. By giving authors the possibility of maintaining their control over the production and exploitation of their works, SACD has become an irreplaceable instrument of that policy.

"However, we should not, for all that, forget the activities undertaken by the international organizations in this field, and in particular, by the World Intellectual Property Organization whose Director General I greet amongst us this afternoon.

"In its tower of blue glass in Geneva, this Organization, as you all know, enables progress to be achieved every day throughout the world in the defense of the rights of authors: an immense and unending task, even if decisive stages have already been achieved.

"Indeed, today new prospects are opening of large States, including the United States of America, envisaging their accession to the Berne Convention.

"Likewise, technological developments, particularly those in the audiovisual field, open up new prospects in the sphere of authors' rights. The problem of private copying, which has led to the adoption of the Law of July 3, 1985, by the French Parliament, may serve as an illustration.

"However, at present let us commemorate this happy anniversary of an exemplary text which today discovers and reveals its own youth and which symbolizes, within the human spirit, our capacity for respect and our capacity for progress.

"It is this twofold approach, that of respect for the individual and that of progress of creation, that is today offered to us.

"The centenary of the Berne Convention provides us with a live and just opportunity.

"May we together seize this opportunity and prolong its effects."

These speeches were followed by a highly successful reception that was reported by press and television.

This was the last ceremony to commemorate the centenary of the Berne Convention in 1986.

WIPO Meetings

Works of Visual Art

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

(Paris, December 16 to 19, 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 October 15, 1986, under the title "Ques-

tions Concerning the Protection of Works of Visual Art"; it has the document number UNESCO/WIPO/CGE/VAR/3.

The report of the Committee of Experts was adopted by the Committee of Experts on December 19, 1986; it has the document number UNESCO/WIPO/CGE/VAR/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

<i>Memorandum of the Secretariats</i>			<i>Report of the Committee of Experts</i>
«Principles»	Paragraphs		Paragraphs
	1-7	Introduction	1-25
VA 1	8-9	The Field of Works of Visual Art	26-29
VA 2-3	10-12	The Use of Computer Systems for the Creation of Works of Visual Art	30-32
	13-18	The Distinction Between Copyright in the Work and the Right of Ownership of the Physical Object Constituting the Work	33-42
VA 4	19-23	Moral Rights in Works of Visual Art	43-46
VA 5-6	24-46	Economic Rights in Works of Visual Art	47-59
VA 7	47-55	<i>Droit de Suite</i>	60-63
	—	Conclusion	64
	—	Adoption of the Report and Closing of the Meeting	65
		List of Participants	

Introduction

1. The Committee of Governmental Experts for which the present document has been prepared is convened in accordance with the decisions taken by the Governing Bodies of Unesco and WIPO responsible for drawing up the programs of the two Organizations (see in particular, in regard to Unesco, the Approved Programme 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(4) and document AB/XVI/23, paragraph 109).

2. Until the advent of modern means of disseminating images, in particular the audiovisual media (cinema and television), works of visual art were known primarily to the public either through their being exhibited directly in "salons," museums, art galleries or through their reproduction in printed form (art reviews, art books, prints, postcards, etc.).

3. The use of works of visual art was thus fairly easy to monitor, particularly since such means of use concerned essentially the national market, and since the publishers, who were few in number, were known to all.

4. The general spread and ever-increasing range of techniques of disseminating images has completely disrupted this situation. The use of works of visual art has become far more extensive and, in some cases, with no possibility of monitoring their exploitation in certain media, unless substantial and frequently costly resources are committed to secure a result that does not measure up to the objective sought.

5. The purpose of this document is to examine the particular questions that call for detailed analysis.

6. It identifies and analyzes these questions, and proceeds to define certain "principles" which, together with the comments accompanying them, may provide useful guidelines for governments and legislators. It is important to emphasize that these "principles"—as they are here formulated, or as they might emerge from the work of the Committee of Experts—have and will have no binding force on anyone. Their sole purpose is to suggest guidelines that might reasonably be adopted in the search for solutions designed to safeguard the rights of authors and other copyright holders in respect of works of visual art and thereby to ensure that they receive fair treatment, promoting creative activity that is eminently necessary for the preservation of the cultural identity of every nation.

7. A specific question is what rights should belong to a person whose portrait is depicted in a work of visual art. This question has been solved in various ways in different national laws. In some countries, this question is dealt with in the framework of copyright law but, in most countries, this regulation lies outside this law (civil law, penal law, etc.). Therefore, this question is not dealt with in this document.

Report 1. In pursuance of the decisions adopted by the General Conference of the United Nations Edu-

cational, 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 Visual Art at the headquarters of Unesco in Paris from December 16 to 19, 1986.

Report 2. The purpose of the meeting was to discuss the various copyright issues arising in relation to works of visual art with a view to devising certain "principles" which, together with comments, could afford guidance to governments when they had to deal with those issues.

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 visual art, 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 47 States attended the meeting: Algeria, Bangladesh, Belgium, Brazil, Cameroon, Canada, Costa Rica, Côte d'Ivoire, Democratic Kampuchea, Denmark, Egypt, Finland, France, Germany (Federal Republic of), Ghana, Guinea, Holy See, Hungary, India, Iran (Islamic Republic of), Italy, Jordan, Kuwait, Mali, Mexico, Morocco, Nepal, Nicaragua, Nigeria, Norway, Panama, Paraguay, Peru, Philippines, Saudi Arabia, Soviet Union, Spain, Sri Lanka, Sweden, Switzerland, Syria, Thailand, Tunisia, Turkey, United Kingdom, United States of America, Venezuela.

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

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

Report 7. Also participating in the meeting were observers from four intergovernmental organizations: African Intellectual Property Organization (OAPI), Agency for Cultural and Technical Cooperation (AGECOOP), Arab League Educational, Cultural and Scientific Organization (ALECSO) and Commission of the European Communities (CEC) and from 17 international non-governmental organizations: Inter-African Union of Lawyers (UIAA), International Association of Art (IAA), International Catholic Organization for the Cinema and Audiovisuals (OCIC), International Commission of Jurists

(ICJ), International Confederation of Free Trade Unions (ICFTU), International Confederation of Professional and Intellectual Workers (CITI), International Confederation of Societies of Authors and Composers (CISAC), International Copyright Society (INTERGU), International Council on Archives (ICA), International Federation of Translators (FIT), International Literary and Artistic Association (ALAI), International Publishers Association (IPA), International Secretariat for Arts, Mass Media and Entertainment Trade Unions (ISETU), International Union of Architects (IUA), Law Association for Asia and the Western Pacific (LAWASIA), Max-Planck Institute, World Crafts Council (WCC).

Report 8. The list of participants follows the present report.

Report 9. Mr. Thomas Keller, Assistant Director-General a.i. of the General Programmes and Programme Support Sector, opened the meeting and welcomed the participants on behalf of Unesco. Dr. Arpad Bogsch, Director General of WIPO, welcomed the participants on behalf of WIPO.

Report 10. Mrs. Margret Möller (Federal Republic of Germany) was unanimously elected Chairman of the meeting.

Report 11. The Committee adopted the Rules of Procedure contained in document UNESCO/WIPO/CGE/VAR/2 Prov. It was decided that the Committee should elect two Vice-Chairmen and that the tasks of the Rapporteur should be fulfilled by the Secretariat.

Report 12. Mr. Haider Mahmoud (Jordan) and Mr. György Pálos (Hungary) 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/VAR/1 Prov., was adopted.

Report 14. Discussions were based on the Memorandum on Questions Concerning the Protection of Works of Visual Art prepared by the Secretariats (document UNESCO/WIPO/CGE/VAR/3).

Report 15. After congratulating the Secretariat on the high quality of the document, and commending also the fact that an effort had been made, in the document, to accommodate various approaches, a number of delegations emphasized the usefulness of devising principles which would 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 visual art, in particular, as this category of works generally tended to be given little attention.

Report 16. Some delegations stated that, in general, the principles and the comments contained in the memorandum were broadly acceptable to their government and that they would make comments only concerning details or particular points of the document under discussion.

Report 17. Several participants expressed their reservations concerning certain principles and comments contained in the document.

Report 18. These reservations concerned first of all the question of whether the transfer of ownership of the physical object constituting the work should be deemed to involve also the transfer of the copyright in the work. Those reservations are dealt with in the corresponding part of the report (paragraphs 33 to 42).

Report 19. Several participants, furthermore, expressed their regret that the right of access to the original copy of the work was not dealt with in the document. They proposed that, in future considerations in this field, principles should be worked out also in this respect. This right should guarantee the access by the author to such copies of the work in cases where it was reasonable from the viewpoint of exercising his moral and economic rights and in a manner that did not conflict with the justified interests of the owner of the physical object constituting the work. It was stated that such rights of access could involve, e.g. a right to see the copy of the work, a right to make reproductions of it or a right to borrow a copy for the purpose of exhibition. Different views were expressed on the question of whether the right of access belonged to the field of moral rights or was an element of the exercise of the economic rights. It was also said that the question of access to copies of a work could be solved by means of contract. Some participants referred to national laws where the right of access was recognized. Two delegations expressed the view that since the right of access was not mentioned in the working document prepared by the Secretariats, discussion relating to the development of a principle for a right of access was premature in this meeting.

Report 20. Some delegations drew attention to the fact that the principles contained in the document concentrated mainly on the basic rights of authors and did not deal in a similarly detailed manner with the limitations on these rights. Those delegations were of the opinion that limitations were almost as important as the basic rights and that certain princi-

ples should have been worked out also concerning them.

Report 21. Some delegations, while accepting that the present meeting did not cover the questions of the protection of photographs, proposed that that category of works should also be dealt with in future activities of Unesco and WIPO.

Report 22. An observer, representing a liberation organization, stated that certain countries which had been previously colonized did not have access to works of visual art—and documents concerning such works—which belong to their cultural heritage, because those works and documents were to be found in other countries. The right of such countries to access to the works and documents concerned should be recognized. That statement was supported by an observer from one intergovernmental organization.

Report 23. An observer representing a non-governmental organization drew attention to the role of publishers in making works of visual art available to the public. He stressed that not only high quality publications should be considered, but also simpler reproductions of works used for educational or informational purposes; in the latter cases special implications concerning moral rights should also be analyzed.

Report 24. Several delegations informed the Committee about recently adopted new legislation or draft legislation in their countries and emphasized that it was one more reason why this meeting was particularly timely and useful.

Report 25. One delegation said that more attention should have been given in the document to the justified interests of consumers.

The Field of Works of Visual Art

8. This document does not deal with all works which may be covered by definitions of "artistic works" or "works of art" in national laws. The expression "works of visual art" as is used in this document includes works which belong to the fine arts in the narrow sense of that expression; that is: paintings, drawings, etchings, engravings and sculptures. Consequently, this category does not include works of architecture and works of applied art; it does not include photographs either, the copyright status of which differs in many aspects under both the international copyright conventions and national laws.

9. On the basis of the above-mentioned considerations, the following principle is offered for consideration:

Principle VA1. (1) "Works of visual art" include, in particular, paintings, drawings, etchings, engravings and sculptures.

(2) Works of visual art should be protected by copyright according to the general provisions on the protection of literary and artistic works, except where the following principles otherwise provide.

Report 26. Several participants made comments on the expression "works of visual art." Some delegations were of the opinion that that expression was not clear because it might suggest that it covered all works that were expressed visually and made perceptible to the public in that way (such as, for example, audiovisual works). The following expressions were suggested: "artistic works," "works of fine arts," "graphic and plastic works." The first one was opposed as being too wide, and some doubts were also raised concerning the last two. Finally it was agreed that for the purposes of the present document, the expression "works of visual art" was acceptable because its meaning was described in paragraph 8 of the commentary and in paragraph (1) of Principle VA1.

Report 27. It was agreed that in paragraph (1) of Principle VA1, the word "include" should be replaced by the word "are" and that the following words should be added at the end of the paragraph: "and works of similar kind" to express that the enumeration was not exhaustive and at the same time not to make it unnecessarily open-ended.

Report 28. One delegation proposed that in paragraph (1) of Principle VA1 the words "etchings, engravings" should be replaced by the expression "works of graphic art." Other participants opposed this proposal because the expression "works of graphic art" covered not only etchings and engravings but also drawings, which would create overlaps; they were of the opinion that the solution mentioned in the preceding point of the report better expressed the non-exhaustive nature of the list of works in paragraph (1) of Principle VA1.

Report 29. Several participants drew the attention to what they considered as a contradiction in paragraph (2) of Principle VA1. It was understood that the intention behind that principle was to express that, as a point of departure, the general protection under copyright law applied also in the case of works of visual art, but that the other principles would imply certain modalities specific for this kind of works. It was found that the wording of the paragraph was not fortunate because the last part of the sentence might suggest that certain general provi-

sions in copyright laws did not apply in the case of works of visual art. Therefore, it was agreed that the phrase "except where the following principles otherwise provide" should be deleted and the fact that the principles did not regulate all questions should be explained in the commentary.

The Use of Computer Systems for the Creation of Works of Visual Art

10. In the field of visual art, computers are increasingly used as a creative tool. It does not seem necessary to provide for a particular regulation in this regard, in view of the fact that traditional copyright regulations apply to visual art. The question of the ownership of copyright may nevertheless arise. In this connection it is useful to recall the work of the Committees of Governmental Experts that met to consider the copyright problems arising from the use of computers for access to or the creation of works (Paris, December 15 to 19, 1980, and June 7 to 11, 1982), and in particular the recommendations adopted by the second Committee of Experts.

11. As regards the use of computer systems for the creation of works, the relevant recommendations are the following (paragraphs 13 to 17) (Report, Annex I):

"13. These recommendations do not deal with or affect the protection of computer software or programs as such which may enjoy protection under national laws (e.g. copyright, patent, unfair competition or trade secrets).

14. Where computer systems are used for the creation of works, States should basically consider them as a technical means used in the process of creation for achieving the results desired by human beings.

15. In order to be eligible for copyright protection the work produced with the help of computer systems must satisfy the general requirements for such protection established by the international conventions and national laws on copyright.

16. In the case of works produced with the use of computer systems, the copyright owner in such works can basically only be the person or persons who produced the creative element without which the resulting work would not be entitled to copyright protection. Consequently, the programmer (the person who created the programs) could be recognized as coauthor only if he or she contributed to the work by such a creative effort.

17. When a computer system is used in the case of commissioned works or in the case of works by a person or persons under an employment contract the matter of attribution of copyright ownership should be left to national legislation."

12. It seems to be useful to reproduce here two of the recommendations quoted above in a form adapted to works of visual art:

Principle VA2. When computer systems are used for the creation of works of visual art, such sys-

tems should be considered as technical means in the process of creation for achieving the results desired by human beings.

Principle VA3. In the case of works produced with the use of computer systems, the copyright owners in such works are the persons who produced the creative elements without which the resulting works would not be entitled to copyright protection. Consequently, programmers (persons who created the programs for such systems) can be recognized as coauthors (or single authors as the case may be) only if they contributed to the work by such a creative effort.

Report 30. All participants who intervened on this subject agreed with Principles VA2 and VA3 and the commentary accompanying them. Some participants stressed, however, that the question of use of computers for creative purposes was not specific for this type of works.

Report 31. One delegation said that it preferred an interpretation of Principle VA3 according to which programmers were not in general recognized as authors. An observer representing an international non-governmental organization expressed the opposite view; he stated that when programmers worked together with authors of works of visual art, creative collaboration should be presumed and it should be considered that only the degree of the creative contribution by the programmers could differ.

Report 32. Some participants, while accepting Principles VA2 and VA3, drew the attention to the existence and development of expert systems in the case of which it was hard or impossible to identify certain persons as creators; the system might act as a sort of artificial intelligence. Therefore, they suggested that the copyright implications of expert systems should be studied in the future activities of Unesco and WIPO.

The Distinction Between Copyright in the Work and the Right of Ownership of the Physical Object Constituting the Work

13. Several national legislations make a fundamental distinction between ownership of the material object constituting the work—the physical medium of the protected work—and the copyright deriving from the existence of that work.

14. This principle is essential in the case of works of visual art. The author may transfer the ownership of the physical object constituting the work (painting, engraving, sculpture, etc.) without thereby ceding the rights to exploit the work (for example, the right of reproduction). He may

also transfer the rights of exploitation, wholly or in part, even if he is no longer the owner of the material object constituting the work.

15. The starting point for the regulation of the legal relationship between the ownership of the original copy of a work of visual art and the ownership of copyright in the same work should be that the proprietary right, on the one hand, and copyright, on the other, are independent from each other. The alienation of the copy does not necessarily involve the alienation of copyright, and vice versa.

16. Moral rights, unless otherwise provided in a contract, should be fully enjoyed by the author even after the alienation of the original copy.

17. The alienation of the original copy, however, could have some implications also for the ownership of certain economic rights. In that respect one can differentiate between two cases. The first is the case where a work of visual art exists in a single copy. The second is the case where the work exists in several copies. These two cases will be discussed separately later in this document.

18. However, an exception to the general principle recalled above must be allowed in the case of the transfer of the means used to reproduce a work of visual art. In such case, it is no longer the original work or copies thereof that are being transmitted to a third party, but the technical means required to reproduce the work: for example, the mold needed to cast a metal sculpture, the copperplate or stone used to print an engraving or lithography. The person buying the reproduction means does so in reality only in order to reproduce copies of the work and, in any case, he will be technically able to do so since he owns the sole necessary and sufficient means of producing copies thereof.

Report 33. A great number of participants stressed that the fundamental difference between, on the one hand, the copyright in a work and, on the other hand, the right of ownership of the physical object constituting the work should be made clear. According to these participants, it should be stated that the alienation of the ownership of the physical object did not involve the alienation of copyright in it and that there should be no presumption in this respect. Some of those participants suggested that a separate principle on this matter should be included after Principle VA3 and before the principles dealing with moral and economic rights. The new principle, on which there was an agreement in the meeting should read as follows: "(1) The proprietary right in the physical object constituting the work and the copyright in the work are independent from each other. (2) The transfer of the proprietary right does not involve the transfer of copyright unless expressly stipulated in the contract." It was, however, mentioned that the transfer of the proprietary rights might have consequences also for certain aspects of copyright (such as exercise of the right of exhibition and the exhaustion of the "distribution right" on the basis of "first sale doctrine").

Report 34. In that connection, several participants expressed their opposition to paragraph 17 of the commentary and the corresponding parts of the document. They stated that the fact that the work existed in a single copy or in several copies should not be decisive in regulating the question of whether copyright might be deemed transferred in connection with the transfer of the ownership of the physical object.

Report 35. A number of delegations referred to the national laws of their countries according to which moral rights were inalienable and proposed that the phrase "unless otherwise provided in contract" should be deleted from paragraph 16 of the commentary. It was, however, emphasized that that phrase did not refer to the possibility of alienation of moral rights but to that of waiving such rights in certain cases. Some delegations said that under their national laws it was possible to waive moral rights and they insisted that it should be expressed in the commentary. Finally, it was agreed that the phrase mentioned above should be deleted but it should be explained in the same paragraph of the commentary that there were national laws under which waiving of moral rights was possible.

Report 36. The question of the right of the author to access to single or more copies of his work was discussed in more detailed manner in connection with this title of the document, because this question emerges in cases where the author is not in possession of the copy.

Report 37. A number of participants emphasized that in such cases the exercise of authors' rights should be guaranteed. They added that in certain situations it could only be guaranteed if the author had access to the single or few copies of his work owned by others. In providing for such a "right of access" the legitimate interests of the owner of the copy should also be duly taken into account.

Report 38. It was said that the notion of the right of access should be precisely defined, namely whether it was restricted to access to the place where the owner of the copy found it appropriate or whether it also extended to the possibility of taking the copy away temporarily. The rights for whose exercise the author had the right of access to the copy should also be precisely defined.

Report 39. Several participants expressed the view that the right of access should be recognized at least for making the exercise of the right of reproduction and the right of exhibition possible. In both cases that right should be exercised with the fullest possible respect for the justified interests of the owner of the copy. In the case of the right of reproduction, the

owner of the copy should have the right to determine the place where, and the time when, the right of access could be exercised, while in the case of the right of exhibition, the right of access should be restricted to certain particular cases, first of all to the case of using the copy in the framework of a comprehensive exhibition of the works of the same author. Some delegations referred to solutions existing in the legislation or draft legislation in their countries.

Report 40. Some delegations informed the Committee that the right of access was not recognized in their national laws and that they did not find justified the introduction of such a right. They expressed the view that the question of access to single or more copies could and should be settled by contract.

Report 41. There was, in this context, a further discussion about the legal nature of the right of access. One delegation was of the view that the right was an economic right because it served the possibility of exercising certain other economic rights. Some other delegations were of the opinion that the right of access was essentially a moral right even if it made the exercise of certain economic rights possible. They drew attention to the fact that other moral rights might also have some economic implications.

Report 42. An observer representing a liberation organization said that the discussion was on the right of access under normal conditions. However, there were certain abnormal situations which should also be studied; for example, there were certain authors who did not have access to their works because their countries where they lived or from where they had had to go into exile were under foreign occupation.

Moral Rights in Works of Visual Art

19. In the field of visual art, moral rights represent for most creators "natural" rights which they are concerned to see respected. They are anxious about the image that is given of their work and that it should be reproduced or represented as faithfully as possible in its lines and colors, its proportions and particular features, and that due mention is made of the title and of the name of the author. This frequently raises delicate problems of a technical or administrative nature. Time may be too short, the technique used too imprecise or the costs involved too high for it to be possible in each case to submit a final proof for the author to "okay for press." This may lead to great misunderstandings between the author, reluctant to understand the everyday realities of publishing and the audiovisual media, and the user of the work, who considers himself to be already making a major contribution by reproducing the work.

20. The new techniques of disseminating works, in particular in the field of audiovisual media, deprive authors

of all possibility of keeping effective check on the use made of their works insofar as the quality of reproduction or representation is concerned.

21. Moral rights are the expression of the close and intimate link which exists between the work, regardless of the way in which it is exploited, and its author.

22. Article 6^{bis}(1) of the Berne Convention provides that "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, which would be prejudicial to his honor or reputation." It is desirable that such rights be guaranteed in all countries.

23. In the light of the foregoing, the principle governing moral rights in works of visual art might be the following:

Principle VA4. Independently of the author's economic rights, and even after the transfer of the said rights and/or after the alienation of the copy of the work of visual art, the author should have the right to

(i) claim authorship and have his name indicated on the copy of his work;

(ii) object to 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.

Report 43. A great number of participants expressed their agreement with Principle VA4 and the commentary accompanying it. It was agreed however that at the end of point (i) of the principle, the following phrase should be added: "or in other appropriate way associated with the work."

Report 44. Some of the participants emphasized at the same time that Principle VA4 contained only the minimum rights and the recognition of further moral rights that might be important in the case of works of visual art should be considered. The right to be protected against the destruction of a single original copy and the right to oppose the utilization of the work for certain products, services, political or other causes or institutions were mentioned particularly as such possible further rights. In the case of the latter right, it was explained that it was only important when the author had transferred the right of reproduction.

Report 45. Some participants were of the opinion that the wording of point (ii) of Principle VA4 should be less restrictive, namely the prejudice to the honor or reputation of the author (the existence of which was very hard to prove sometimes) should not be a condition of the exercise of that moral right.

Report 46. One delegation drew the attention to the fact that in the text of Principle VA4 only the author was mentioned as the person who was entitled to moral rights. It should be explained, at least in the commentary, that after the author's death the same right could be exercised—at least until the expiry of the economic rights—by the heir of the author or by other persons or institutions authorized by the legislation of the country where protection was claimed. Some participants were of the opinion that moral rights should be unrestricted in time.

Economic Rights in Works of Visual Art

(General considerations on the economic rights in works of visual art)

24. The economic rights granted to the authors of literary and artistic works should also be enjoyed—*mutatis mutandis*—by the authors of works of visual art. The adaptation of those rights to works of visual art will be made in the following parts of the document under the titles "Economic rights where the work exists in a single copy" and "Economic rights where the work exists in several copies." The *droit de suite*, a special right which is applicable only in the case of works of visual art is dealt with separately in paragraphs 47 to 55.

25. In recent years, several meetings convened by Unesco and WIPO dealt with the questions raised by the new technologies. The meeting of the Committee of Governmental Experts which will discuss this document is one in a series of meetings which are to cover eight categories of works (besides the works of visual art: the printed word, audiovisual works, phonograms, works of architecture, works of applied art, dramatic and choreographic works, musical works). During these meetings, new uses and other new technological developments are discussed in detail in the framework of categories of works where such new uses and other developments are really typical. The documents which are prepared for categories of works where the same questions may emerge but are not so typical may simply refer to the documents and results of those other meetings.

26. As far as works of visual art are concerned, they may be—more or less—concerned by piracy, home taping, rental and public lending, cable distribution and satellite broadcasting. All those questions were discussed in detail at the meeting of the Committee of Governmental Experts on Audiovisual Works and Phonograms in Paris, in June 1986. The principles and comments contained in the preparatory document of the meeting and the views expressed in the discussions as reflected in the report (see documents UNESCO/WIPO/CGE/AWP/3 and 4) are relevant *mutatis mutandis* also in the case of works of visual art.

27. With the spectacular development of reprographic reproduction, works of visual art become more and more concerned by the copyright questions of this new means of reproduction. However, it is the category of the printed

word (books, periodicals, etc.) where those questions really typically emerge. Therefore, they will be discussed in detail at the meeting of the Committee of Governmental Experts on the Printed Word. The principles concerning reprography which will be worked out at that meeting will be applicable, *mutatis mutandis*, to works of visual art.

(Economic rights where the work exists in a single copy)

28. As has been indicated above in the case of works of visual art, particular problems arise with respect to the relationship between the author as owner of the copyright in the work and the proprietor of the physical object embodying the work. Problems also arise because the situation from the point of view of the enjoyment and the exercise of copyright may be different depending on whether the work exists in a single copy or in several copies.

29. The ownership of a single copy means that the owner, whether he is the artist himself or another person, from a practical point of view is in an exclusive position to make the copy of the work available for any utilization. When the author transfers the ownership of such a single copy he does so in realizing that in practice this other person will find himself in such an exclusive position. At the outset it should be stressed that the manner of enjoyment and exercise of copyright in the work, in the case of the transfer of the only existing copy, is a question of contract. Consequently, the underlying main principle is that all the economic rights can be transferred from the author to the owner of the copy and vice versa. If, however, the contract does not include any particular stipulations this silence can be interpreted in two ways.

30. One such way is that in this case the economic rights in the work remain with the author. Consequently, the owner of the copy has to obtain an authorization from the author (or his heir) for any further utilization of the work. This approach is based on the traditional view in respect of copyright, according to which rights which are not considered as transferred remain with the author.

31. The other way is to interpret the silence as meaning that the author has accepted that it is the owner of the copy who is authorized to exercise certain rights. This interpretation of such a silence corresponds to what seems to be the general practice followed in such cases.

32. On the basis of the preceding considerations, the following principle is offered for consideration. Paragraph (1) in the proposed principle deals with the situation when the author is the proprietor of the only existing copy. Paragraph (2) deals with the situation when the owner of the only physical object is a person other than the author and contains, in accordance with what is stated above, two alternatives.

Principle VA5. (1) Where a work of visual art exists in a single original copy and the author himself (or his heir) is the owner of the only

physical object that constitutes the work of art, at least the following acts should require his authorization:

(i) the making of reproductions of the work, that is, copies that in every respect (material, color, dimensions) are identical with the original,

(ii) the making of copies of sculptures by molding and casting, and of etchings and engravings by contact printing of the etched or engraved surface,

(iii) the making of adaptations (derivative works) of the work,

(iv) the making of pictures of the work by photography, cinematography or processes similar to photography or cinematography,

(v) the showing of the work, or copies, adaptations or pictures thereof, to the public in public exhibitions or any other public place, in motion pictures or television, provided that where the work has been made accessible to the public in public exhibitions or any other public place with the authorization of the author, any person may make pictures thereof and use such pictures for the purposes of reporting current events, or of criticism, without the authorization of the author.

(2) Where a work of visual art exists in a single copy and the owner of the only physical object that constitutes the work of art is a person other than the author (or the author's heir),

Alternative A: the author should be considered to retain the right to authorize the acts referred to in paragraph (1), unless a contract between the owner of the copy and the author (or his heir) provides otherwise.

Alternative B: it should be deemed—unless a contract between the owner of the copy and the author (or his heir) provides otherwise—that the author (or his heir) transferred the right to authorize the acts referred to in paragraph (1) to such person, except that the act of making adaptations (paragraph (1)(iii)) should also require the authorization of the author (or his heir).

33. Principle VA5 differentiates between the following notions: single copy, reproduction, copy, adaptations, pictures. The meaning of "single copy" does not seem to require any specific explanations. The other expressions have special meanings in this context which are emphasized in the following paragraphs.

34. The result of "reproduction" is the same as the original in all possible respects (material, dimensions, color, etc.). Such reproduction can be made, for example, in the case of a sculpture by means of laser measurement or by direct contact.

35. "Copy"—as used in paragraph (1)(ii)—is an expression reserved for certain sculptures, etchings and engravings prepared on the basis of the only physical object that—even in its "negative" version—constitutes the work of visual art.

36. "Adaptations" means any derivative work which involves changing the material, the color, dimensions, etc., of the work or transforming picture into sculpture or vice versa. The use of the work of visual art in an industrial object (wallpaper, textile, porcelain plates, etc.) comes here. But "pictures" as defined in the following paragraph are *not* adaptations in the terminology of Principle VA5; they are pictures.

37. "Pictures" include all copies of the work (in the wider sense of the word "copy" and not according to its meaning as described in paragraph 35 above) which are produced by automatic processes (photography, cinematography, reprography, typography, etc.). For example, artistic drawings used in advertisements are pictures of the original copy. It should be noted that a painting made of the original copy of the painting is either a reproduction or an adaptation but not a picture.

38. Paragraph (1)(v) of Principle VA5 recognizes the right of public exhibition. This right which is also recognized by many national laws is completely justified, taking into account the fact that public exhibition is one of the most fundamental utilizations of works of visual art.

39. In the heading of paragraph (1) of Principle VA5, the words "at least" are inserted to show that it is not intended to give a completely exhaustive list of rights. The principle only refers to the rights which are the most typical and the most important in the case of works of visual art. (Further rights which may be considered in national legislation are, for example, the right of rental and public lending or the right to include such works in computerized databases.)

40. In the case of works of visual art, the provisions of the international copyright conventions and national copyright laws on exceptions to copyright should be applied *mutatis mutandis* and adapted to the special features of works of visual art (for example, the free use of such works in the form of "quotations"—that is by means of using certain details of the work—should be acceptable only in very few cases, more specifically in the case of scientific or critical analysis). Paragraph (1)(v) only refers to those exceptions which are typically applicable to works of visual art (making pictures of works which have been made accessible to the public in public exhibitions or any other public place with the authorization of the author and by using such pictures for the purpose of reporting current events, or for criticism). It should be noted that for reporting and criticism, only pictures may be used.

41. Paragraph (2) of Principle VA5 refers to the situation when the owner of the only physical object that constitutes the work is a person other than the author or his heir. As indicated above, this paragraph contains two alternatives, on an equal footing, as regards the entitle-

ment of the owner of the physical object to exercise certain economic rights in the work in case there is no contract between the author and the owner or the contract is silent on the issue. According to Alternative A the presumption is that in such a case the author retains his rights. According to Alternative B certain rights are in this situation deemed to be transferred to the owner of the physical object, viz. the rights mentioned in paragraph (1) with the exception of the making of adaptations. As far as adaptations are concerned, Alternative B contains a special provision according to which the making of adaptations should require the authorization also of the author (or his heir). That exception is necessary, taking into account the particularities of the right of adaptation. All the other rights involve the use of the copy in its original form. The right of adaptation, on the other hand, is not so closely and exclusively connected to the ownership of the original copy and at the same time may have implications concerning the moral rights of the author, hence the need for double authorization.

(Economic rights where the work exists in several copies)

42. If the work of visual art exists in several copies, the owner of the physical copy of the work is not in such an exclusive practical position as described in the case of only one existing copy. Also in this case two approaches to the possible transfer of rights from the author to the owner of a physical copy are possible. One approach corresponds to Alternative A mentioned in Principle VA5, paragraph (2) above, and would mean that also in this situation the author retains his economic rights unless otherwise stipulated in the contract. The other approach implies that a transfer of certain rights should be considered as taking place also in this case, if not otherwise stipulated in the contract. The transfer should, however, not apply to the same extent as when only one single copy exists. Such a transfer should cover those rights which are closely connected with the ownership of the copy. The underlying rationale for such an approach would be that the exercise of certain rights by the author (or his heir) would be in conflict with the basic content of proprietary rights.

43. The above-mentioned considerations are reflected in the following principle, which like Principle VA5, paragraph (2) contains two alternatives:

Principle VA6. Where a work of visual art exists in several copies, each of which having been made with the authorization required under Principle VA5, paragraphs (1) or (2), as the case may be,

Alternative A: the author should be considered to retain the right of authorization of the acts referred to in Principle VA5, paragraph (1), unless a contract between the owner of the copy and the author (or his heir) provides otherwise.

Alternative B: (a) the right of authorization of the following acts should, unless a contract between the owner of the copy and the author (or his heir) provides otherwise, be deemed transfer-

red to the owner of the copy, even if that owner is not the author (or his heir):

(i) the making of pictures of the copy by photography, cinematography, or processes similar to photography or cinematography,

(ii) the showing of the copy, or copies, adaptations or pictures thereof, to the public in public exhibitions, in any other public place, in motion pictures or television, provided that where the copy has been made accessible to the public, with the authorization of the owner of the copy, in a public exhibition or in other public places, any person may make pictures thereof and use such pictures for the purpose of reporting current events, or of criticism, without the authorization of the owner of the copy,

(b) the acts referred to in Principle VA5, paragraph (1)(i), (ii) and (iii) should require the authorization of the author, unless a contract between the author (or his heir) and the owner of the copy provides otherwise.

44. As regards Alternative A, the underlying rationales are essentially the same as are invoked in respect of Principle VA5, paragraph (2) (see paragraph 30 above).

45. As regards Alternative B, it should be stressed that, also in this case, the underlying principle is that all the economic rights can be shifted by contract from the author to the owner of the copy or vice versa.

46. This Alternative provides that if there is *no* contract, then the owner of the copy should be deemed to have the right to authorize the making of pictures and the right to authorize public showings but the author (or his heir) alone has the right to authorize the making of reproductions, copies and adaptations, even if he (the author or his heir) is in possession of no copy whatsoever.

Report 47. At the proposal of the Chairman, the three chapters of the document ("General considerations on the economic rights in works of visual art," "Economic rights where the work exists in a single copy" and "Economic rights where the work exists in several copies") dealing with economic rights were discussed together.

Report 48. All the participants who took the floor in the discussion were of the opinion that the fact whether one or several copies existed was irrelevant from the viewpoint of the enjoyment and exercise of rights mentioned in paragraph (1) of Principle VA5. The same approach should be applied in both cases.

Report 49. Several participants expressed their agreement with the list of economic rights mentioned in paragraph (1) of Principle VA5. One delegation mentioned that the legislation of its country did not provide for an exhibition right of the author. Some

delegations said that instead of points (i), (ii) and (iii), the principle could simply mention the right of reproduction in general, but they did not oppose the solution applied in the principle.

Report 50. In connection with point (v) of Principle VA5, one delegation said that it should be further studied whether the right of exhibition could be recognized on the basis of existing rights (such as the right of performance) or it should be introduced as a sui generis right. Some other delegations referred to national laws where the right of exhibition was recognized as sui generis right.

Report 51. Another delegation said that point (v) in this principle should be worded in a more general manner; it should simply say that the author should have the right to authorize the showing of the work to the public directly or by means of its inclusion in audiovisual works or by any other technical means.

Report 52. Some delegations suggested that the inclusion of further rights into the list of economic rights should be considered. The right of distribution, the general right to make the work available to the public and the right of rental and public lending were mentioned as such possible further rights.

Report 53. One delegation said that the list of economic rights was only necessary in national laws which contained an exhaustive list of rights. It referred to the copyright law of its country according to which any use of the work should be authorized by the author unless the law provided for exceptions.

Report 54. One delegation expressed the view that the rights involved could be dealt with in three different groups, to make it clear what sorts of obligations were involved and which rights were generally adopted by national laws. In the first group those rights should be mentioned that must be protected as minimum rights under the international copyright conventions, in the second group those rights should be enumerated that are generally recognized in national laws and in the third group those rights should be listed where, even if they are not generally adopted, their introduction into national laws should be considered.

Report 55. Several participants referred to the fact that it was a general principle of copyright that any right of the author might only be transferred by express—and, according to these participants, written—contractual stipulations. Consequently, the mere transfer of the proprietary right of a copy should not be interpreted to involve the transfer of any copyright whatsoever. All participants who took the floor on this subject said that they were in favor of

Alternative A of Principle VA5, and they opposed Alternative B. However, it was said that after having decided on the insertion into the document of a new principle about the absolute separation of proprietary right and copyright as it is mentioned above in paragraph 33, neither alternative was necessary. After the new principle, simply the economic rights and their limitations should be mentioned in a separate principle.

Report 56. Some delegations said that even if Alternative B should be rejected, the special interests of the owners of copies and the practice prevailing at least in certain countries could and should be taken care of in other manner, namely by establishing certain limitations to the author's rights and establishing special rights in favor of the owners of the copies. It was mentioned, as an example, that the owner of the copy should be granted the right to exhibit the copy without the authorization of the author.

Report 57. One delegation suggested that that right of the owner of the copy should be included in a new paragraph (2) of Principle VA5 and the limitations of the right defined in point (v) of paragraph (1) should also be transferred from that point into the new paragraph.

Report 58. Several delegations emphasized the need of further studying the scope of possible limitations which should also be mentioned in connection with economic rights. The following examples were mentioned: copying of works situated in a public place, the incidental inclusion of works of visual art into audiovisual works, quotation, compulsory license in the case of using works of visual art for industrial products. In connection with the latter limitation, it was made clear that it was incompatible, at least, with the Berne Convention.

Report 59. Some delegations referred to the fact that the document only analyzed the relation between the owner of the copy and the author and they drew the attention to the question of works created by employee authors and those of commissioned works. Under several national laws, the original copyright ownership was vested in such cases with the employer and—at least in the case of commissioned portraits—with the commissioner. These delegations maintained that those questions should be dealt with in the document even if not necessarily in the form of further principles.

Droit de suite

47. The sale of the physical object constituting the work represents the primary and essential source of income of its author.

48. In contrast to other categories of authors such as composers, playwrights and other writers, visual artists do not live only by their royalties but also, in the case of the traditional use of works of visual art, by the proceeds from the sale of the original works or the fees received for producing them in the case of commissioned works. Successive resales of works should give rise to the exercise of a *droit de suite* calculated from the value of the work sold. Once the physical object constituting the work has been ceded by the author, the successive owners should pay a fee in respect of such a right at the time of purchase.

49. The characteristics of the material object (a single copy or several copies), its authenticity and its originality, and its financial value then acquire great importance not only for the art market but also for the application of this right that is specific to the visual art. The *droit de suite* takes into account that in this case the exploitation concerns the physical object constituting the original work and not only its copy or picture. This right is vested in the artist, a physical person, and cannot be vested in a body corporate. It should moreover be inalienable, in order that the artist should not inconsiderately relinquish a potential source of future income.

50. The material object constituting the work is thus of particular importance for the artist, who is directly concerned by the sale and successive resales thereof, in particular by the phenomenon of successive increases in value, or of speculation, over which the artist has no control and which have little relation to the traditional methods of exploiting intellectual works.

51. The Berne Convention recognizes the *droit de suite*. Article 14^{ter}, paragraph (1), provides: "The author, or after his death the persons or institutions authorized by national legislation, shall, with respect to original works of art and original manuscripts of writers and composers, enjoy the inalienable right to an interest in any sale of the work subsequent to the first transfer by the author of the work." This right is subject to the principle of material reciprocity, and will be applied "only if legislation in the country to which the author belongs so permits, and to the extent permitted by the country where this protection is claimed" (paragraph (2)). Paragraph (3), finally, provides that "The procedure for collection and the amounts shall be matters for determination by national legislation."

52. In the study on guiding principles concerning the operation of *droit de suite* submitted to the Executive Committee of the Berne Union and to the Intergovernmental Committee of the Universal Copyright Convention at their meetings in June 1985, a number of rules were formulated which, together with the analyses and observations accompanying them, should serve as useful guidelines for legislators wishing to establish a real, practical right for visual artists or to find solutions to the difficulties encountered in certain countries in effectively ensuring the exercise of the *droit de suite* when that right has been instituted in law but has to date not been applied.

53. The aim is of course to suggest guidelines that seem reasonable, safeguarding, on the one hand, the rights of

authors of works of visual art by ensuring the simple, practical application of the *droit de suite*, while at the same time facilitating, on the other hand, transactions involving protected original works, in the interest of both the art market and of the artists. The latter could in fact only stand to lose should the sales of modern works of art become less numerous, or be organized through networks that escaped regular control.

54. On the basis of the preceding considerations, the following principle seems to be applicable:

Principle VA7. The author should, with respect to original copies of his work of visual art, enjoy the inalienable right to an interest (a certain percentage) in any sale of such copies subsequent to the first transfer by the author of the work (*droit de suite*).

55. Principle VA7 only contains a basic provision on the *droit de suite*. Experience shows that there are certain conditions for an equitable and workable application of the *droit de suite* which may differ from country to country according to cultural and economic circumstances (the definition of the circle of sales which can be realistically controlled, for example, the restriction of the application of this right to cases where the sale of the copy is made through art merchants, the definition of works of applied art in the case of which this right is really justified, the determination of an appropriate percentage, etc.). There is, however, a general condition which should be taken into account in all countries concerned. The *droit de suite* can be administered efficiently only by means of collective administration (in the form of collecting societies).

Report 60. A great number of delegations which intervened on this subject of the discussion stated that they were in favor of the establishment of the droit de suite under national legislation on copyright as one of the basic rights of authors. They generally agreed to the text of Principle VA7 and the comments to it. Many of these delegations informed the participants about relative provisions established under their national laws on copyright or stated that the droit de suite was contemplated in the process of revision of those laws. One of these delegations suggested that all States should consider the question of recognition of the droit de suite to avoid numerous infringements of this right and regretted the lack of sensitivity towards this right at the international level. Another of these delegations stressed that the droit de suite should apply both to public sales (auctions) and to direct sales to individuals at least in the case where art dealers were involved.

Report 61. Some delegations informed that in their respective countries no position with regard to the droit de suite had yet been taken. One delegation stated that it was not in favor of recognition of this right since consultations in its country did not justify the need for its introduction.

Report 62. Some delegations said that the problems of implementation of the droit de suite and the possible detrimental effects of this right on the art market should be studied. Other delegations informed the Committee that in their countries the droit de suite was applied without any problems of that kind.

Report 63. The question of control of the subsequent resales of copies was discussed in detail. Several participants emphasized that by means of collective administration appropriate and inexpensive control could be exercised.

Conclusion

Report 64. The Committee noted that the Secretariat will 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 65. The Committee unanimously adopted the report and, after the usual thanks, the Chairman declared the meeting closed.

List of Participants

I. States

Algeria: N. Gaouaou. Bangladesh: A.K.M. Jalaluddin. Belgium: F. Van Isacker. Brazil: J.C. De Souza-Gomes; J. De Souza-Rodrigues. Cameroon: H. Fouda. Canada: J. Daniel. Costa Rica: F. Ramirez Barrantes; Y. Bourillon de Rickebusch. Côte d'Ivoire: A. Baby; E.E. Miezan. Democratic Kampuchea: M. Ngo Pin. Denmark: B. von Linstow. Egypt: L.A. Labib. Finland: J. Liedes; S. Lahtinen; T. Koskinen; U. Shackleton. France: A. Kerever; M. Bouleau; M.-C. Rault. Germany (Federal Republic of): M. Möller. Ghana: E.B. Odoi Anim. Guinea: K. Condé. Holy See: L. Frana; R.V. Blaustein. Hungary: G. Pálos; J. Batta. India: P. Singh. Iran (Islamic Republic of): S.R. Feiz; A.-A. Asghari. Italy: G. Aversa; M. Fabiani. Jordan: H. Mahmoud. Kuwait: M.M.M. Mansour. Mali: K. Boundy. Mexico: J.M. Gonzales Bustos. Morocco: A. Kandil; L. Kerdouss. Nepal: D.R. Uprety. Nicaragua: E. Gutiérrez Gutiérrez. Nigeria: Z. Sunday Ali. Norway: H.M. Soenneland. Panama: J. Patino. Paraguay: J.H. Dacak. Peru: G. Léon y León Durán. Philippines: D.M. Macalintal. Saudi Arabia: M.S. Al Misfer. Soviet Union: A.V. Tourkine. Spain: E. de la Puente Garcia. Sri Lanka: H.S.P. De Silva. Sweden: B. Rosén; A. Mörner. Switzerland: K. Govoni. Syria: E. Choueri. Thailand: S. Povatong; A. Sales. Tunisia: N. Attia;

S. Ladgham; S. Zaouche. Turkey: A. Izat; O. Sezgin; G. Kahraman. United Kingdom: D. Irving. United States of America: W.H. Skok. Venezuela: R. Antequera Parilli; M. Von Braun de Karttunen.

II. Observers

(a) States

Djibouti: A. Ali Arré.

(b) Palestine Liberation Organization (PLO)

S. Ramahi.

(c) Intergovernmental Organizations

African Intellectual Property Organization (OAPI): I. Salia. Agency for Cultural and Technical Cooperation (ACCT): L. Aoueiss. Arab League Educational, Cultural and Scientific Organization (ALECSO): F. Ammar. Commission of the European Communities (CEC): G. Papapavlou.

(d) International Non-Governmental Organizations

Inter-African Union of Lawyers (UIAA): M. Seck. International Association of Art (IAA): C. Bleyne. International Catholic Organization for the Cinema and Audiovisuals (OCIC): D. Van Espen. International Commission of Jurists (ICJ): D. Bécourt. International Confederation of Free Trade Unions (ICFTU): M. Lesage. International Confederation of Professional and Intellectual Workers (CITI): M. Boury. International Confederation of Societies of Authors and Composers (CISAC): J.-A. Ziegler; W. Duchemin. International Copyright Society (INTERGU): R. Talon. International Council on Archives (ICA): M. Quélin. International Federation of Translators (FIT): M. Voituriez; M. Tran. International Literary and Artistic Association (ALAI): A. Françon; D. Gaudel. International Publishers Association (IPA): J.-A. Koutchoumow; C. Clark. International Secretariat for Arts, Mass Media and Entertainment Trade Unions (ISETU): M. Lesage. International Union of Architects (IUA): G. Benoit. Law Association for Asia and the Western Pacific (LAWASIA): T. Doi. Max Planck Institute for Foreign and International Patent, Copyright and Competition Law: T.K. Dreier. World Crafts Council (WCC): J. Vedel-Rieper.

III. Secretariat

United Nations Educational, Scientific and Cultural Organization (UNESCO)

T. Keller (*Assistant Director-General a.i., General Programmes and Programme Support Sector*); A. Amri (*Director a.i., Copyright Division*); E. Guerassimov (*Legal Officer, Copyright Division*).

World Intellectual Property Organization (WIPO)

A. Bogsch (*Director General*); H. Olsson (*Director, Copyright and Public Information Department*); M. Ficsor (*Director, Copyright Law Division*).

Books and Articles

La genèse de la Convention de Berne pour la protection des oeuvres littéraires et artistiques dn 9 septembre 1886, by *Jean Cavalli*. One volume of 232 pages. Imprimeries réunies, Lausanne, 1986.

This book, as its title indicates, is an analysis of the Berne Convention from its first beginnings up to its signature on September 9, 1886. It is an important contribution to the wealth of literature celebrating the centenary of the Berne Convention.

The book is divided into three parts: the emergence and development of positive law (1), the international literary and artistic congresses (2) and the conferences and the Berne Convention itself (3).

In the first part the author directs his attention to the emergence and development of copyright before its international consecration. After a study of the first manifestations of copyright in Greek and Roman antiquity, in the Middle Ages and at the time of the Renaissance, he dwells at some length on the national copyright legislation adopted prior to the signature of the Berne Convention. His analysis is confined to the signatory countries, namely Belgium, France, Germany, Great Britain, Haiti, Italy, Liberia, Spain, Switzerland and Tunisia, and to the two major non-signatory countries, Russia and the United States of America. He then considers the bilateral treaties which established the first international bonds that were to open the way to the Berne Convention.

In the second part the author gives an account of the international literary and artistic congresses that convened from 1858 onwards, which made it possible to place the question of copyright in an international and multilateral setting at a time when conventions were proliferating between States. He mentions one by one the Congresses of Brussels (1858), Antwerp (1861 and 1877) and Paris (June and September 1878), and also those of the International Literary and Artistic Association (ALAI): London (1879), Lisbon (1880), Vienna (1881) and Rome (1882). For each of them the author highlights the aims, the issues dealt with, the beneficial results achieved and the resolutions passed.

In the third part the author enlarges on the three diplomatic conferences from 1883 to 1886 and the "maturing" of the substance of the Convention during the Berne conferences.

Both the conciseness of the chronological account of events and the preciseness of the legal explanations of the principles of law underlying the oldest international treaty in the history of literary and artistic property are an indication of the competence of the author of this work of reference both as a lawyer and as a historian.

P.C.M.

100 Jahre Berner Union. Gedanken, Dokumente, Erinnerungen, by *Heinz Püschel*. One volume of 175 pages. VEB Fachbuchverlag, Leipzig, 1986.

Although the title of the book is "The 100 Years of the Berne Union," its first two Parts do not concentrate directly on the Berne Convention itself.

The title of the first Part is "At the Threshhold of International Copyright with Special Attention to the Activities of the Börsenverein der Deutschen Buchhändler in Leipzig." It de-

scribes the foundation of the Börsenverein der Deutschen Buchhändler (the Association of German Book Publishers and Traders) and analyzes the role publishers and their organizations played in the establishment of national copyright legislation and the international system of copyright protection. It is in that context that the creation of the Berne Convention is discussed.

The second Part of the book deals with "The Further Development and Deepening of the Concept of Bourgeois Copyright in Germany Through the Studies of Josef Kohler on Copyright Works as Immaterial Goods and on Copyright as a Part of the Law of Immaterial Goods." This part is, largely, a biography of Josef Kohler, the great German copyright theoretician. One of the sub-chapters in this part speaks about the important role Kohler played during the 1908 Berlin revision conference of the Berne Convention. That seems to be the reason why this separate study has been included in this volume.

The third Part deals exclusively with the Berne Convention. It describes the development of the Convention analyzing in detail the modifications adopted at the various revision conferences. It pays special attention to the role of German participants in the conferences and the effect of the subsequent Acts of the Convention on German legislation.

After the three numbered parts of the book, the author—in a sort of epilogue—discusses certain topical questions. First, he gives a negative reply to two questions: "Is the Berne Union in crisis?" and "Is copyright in crisis?" He expresses the view that, on the basis of the 1971 Paris Act of the Berne Convention, the problems raised by the new technologies can be settled in an appropriate way. Then, in answering the question "Whose right is copyright?" he draws attention to the importance of the humanistic values of copyright which demand that the ownership of copyright be vested in the creators themselves and that the authors should remain in the position of real enjoyment and exercise of their economic and moral rights. Finally, he deals with four more particular questions: the protection of computer programs, the possibility of double protection of designs, the copyright status of works created by employed authors and the changes of the scope of free uses under the circumstances of the new technologies.

In the annex of the book, several documents are published such as the 1846 bilateral copyright agreement between Prussia and Great Britain and the texts of the various Acts of the Berne Convention.

M.F.

Die Berner Uebereinkunft und die Schweiz. One volume of VIII-385 pages. Verlag Stämpfli & Cie AG, Bern, 1986.

In honor of the 100th anniversary of the Berne Convention, a book like the one brought out three years ago for the centenary of Swiss legislation has been published under the direction of Professor Manfred Rehbinder and Mr. Wolfgang Larese, both of Zurich University.

This work is a collection of the writings of the following 23 legal writers (in the order of their articles): Hans Tbieme, Johann Rudolf Thurneysen, Jean Cavalli, Roland Grossenbacher, Joseph Voyame, Ernst Brem, Ulrich Uchtenhagen, Paul Brügger, Alois Troller, Bernhard Wittweiler, Lucas David, Reto M. Hilty, Barbara Wyler, Mario Pedrazzini, Beat

Reinhart, Edmond Martin-Achard, Ivan Cherpillod, Peter Kälin, Martin J. Lutz, Wolfgang Larese, François Dessemon-tet, Manfred Rehhinder, Patrick Liechi.

The articles deal with various subjects concerning the influence of the Berne Convention on Swiss legislation and Switzerland's relations with the Berne Union. They are of

great interest to both lawyers and historians. The book is a testimony to the large number of copyright specialists in Swit-zerland, and also to the important part that they play in the research and analytical work on international copyright rela-tions.

P.C.M.

Calendar of Meetings

WIPO Meetings

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

1987

- March 9 to 13 (Geneva) — Permanent Committee for Development Cooperation Related to Copyright and Neighboring Rights
- March 18 to 20 (Stockholm) — Group of Experts on the Preparation of the IPC Seminar
- March 23 to 27 (Geneva) — Committee of Experts on the Harmonization of Certain Provisions in Laws for the Protection of Inventions (Third Session)
- March 30 to April 3 (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 15 (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)
- May 28 (Geneva) — WIPO Coordination Committee (Extraordinary Session)
- June 11 to 19 (Washington) — Permanent Committee on Patent Information (PCPI): Working Groups on Special Questions and on Planning
- June 15 and 16 (Geneva) — Symposium on Effective Protection of Industrial Property Rights
- June 22 to 26 (Geneva) — Madrid Union: Working Group on Links Between the Madrid Agreement and the Proposed (European) Community Trade Mark
- 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)
- September 2 to 4 (Geneva) — Permanent Committee on Patent Information (PCPI): Working Group on Patent Information for Developing Countries
- September 7 to 11 (Geneva) — Permanent Committee on Patent Information (PCPI) and PCT Committee for Technical Cooperation (PCT/CTC)
- September 14 to 19 and 22 (Geneva) — 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)
- November 23 to December 4 (Geneva) — Permanent Committee on Patent Information (PCPI): Working Group on Search Information
- November 30 to December 4 (Geneva) — Committee of Governmental Experts on the Printed Word (convened jointly with Unesco)

UPOV Meetings

1987

- March 17 to 20 (Kiryat Anavim) — Technical Working Party for Fruit Crops, and Subgroup
- March 23 to 26 (Kiryat Anavim) — Technical Working Party for Ornamental Plants and Forest Trees
- March 30 (Geneva) — Subgroup on Biotechnology
- March 31 and April 1 (Geneva) — Administrative and Legal Committee
- April 2 (Geneva) — Consultative Committee
- June 2 to 4 (Bamberg) — Technical Working Party for Vegetables
- June 10 to 12 (Copenhagen) — Technical Working Party on Automation and Computer Programs
- June 23 to 25 (Geneva) — Technical Working Party for Agricultural Crops
- October 13 and 14 (Geneva) — Technical Committee
- October 15 and 16 (Geneva) — Administrative and Legal Committee
- October 17 (Geneva) — Subgroup on Biotechnology
- October 19 (Geneva) — Consultative Committee
- October 20 (Geneva) — Meeting with International Organizations
- October 21 and 22 (Geneva) — Council

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

Non-Governmental Organizations

1987

- April 6 to 8 (Sydney) — International Confederation of Societies of Authors and Composers (CISAC): Executive Bureau and Administrative Council
- May 21 to 23 (Warsaw) — International Confederation of Societies of Authors and Composers (CISAC): Legal and Legislation Committee
- 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

