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Copyright

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Contents

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Notifications Concerning Treaties

Berne Convention

New Member of the Berne Union

UNITED STATES OF AMERICA

The Government of the United States of America deposited, on November 16, 1988, its instrument of accession to the Berne Convention for the Protection of Literary and Artistic Works of September 9, 1886, as revised at Paris on July 24, 1971.

The Berne Convention, as revised at Paris on July 24, 1971, and amended on October 2, 1979, will enter into force, with respect to the United States of America, on the date indicated in the said instrument of accession, that is, on March 1, 1989. On that date, the United States of America will become the 80th member of the International Union for the Protection of Literary and Artistic Works ("Berne Union").

The United States of America has not heretofore been a member of the Berne Union, founded by the Berne Convention.

The United States of America will belong to Class I for the purpose of establishing its contribution towards the budget of the Berne Union.

Berne Notification No. 121, of November 17, 1988.

WIPO Meetings

Committee of Governmental Experts on the Evaluation and Synthesis of Principles on Various Categories of Works

(Geneva, June 27 to July 1, 1988)

(Continued from October 1988 issue)

Editor's Note. In the October 1988 issue, the publication started of the documents of the Committee of Governmental Experts on the Evaluation and Synthesis of Principles on Various Categories of Works. Those documents consist of the *preparatory document* (hereinafter: the memorandum) that the International Bureau of WIPO and the Secretariat of Unesco (hereinafter: the Secretariats) prepared and the *report* of the Committee. In that issue, the first part of the memorandum was published. That first part included the introduction to the memorandum and draft principles on four categories of works (audiovisual works, phonograms, works of architecture, works of fine art) as well as comments on those principles. In this issue, the second part of the memorandum—including draft principles on four other categories of works (dramatic and choreographic works, musical works, works of applied art, the printed word) and comments on them—and an addendum to the memorandum (on photographic works) are published. In the December 1988 issue, the publication of the documents of the Committee will be completed by the publication of the report of the Committee.

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MEMORANDUM PREPARED BY THE SECRETARIATS

Part II

Draft Principles

DRAMATIC AND CHOREOGRAPHIC WORKS

Creations To Be Protected as Dramatic and Choreographic Works

Principle DC1. (1) "Dramatic and choreographic works" mean works created for performance, generally on stage, such as dramatic works, dramatico-musical works (operas, operettas, musicals, etc.), choreographic works (ballets, etc.) and pantomimes (entertainments in dumb show).

(2) Dramatic and choreographic works should be protected by copyright.

(3) The protection of dramatic and choreographic works may be restricted to works that are fixed in writing or in any other material form.

The Authors of Dramatic and Choreographic Works. The Status of Theater Directors

Principle DC2. (1) The authors of dramatic and choreographic works are the persons (playwrights, composers, choreographers, etc.) whose creative contributions establish such works.

Alternative A

(2) Stage productions of dramatic and choreographic works should be generally considered as performances of such works rather than works themselves, and the directors of such productions should be protected as performers rather than authors. If, however, directors modify the works in an original manner, their contributions, in that respect, should be protected as adaptations without prejudice to the copyright in the original works. The creation and use of such adaptations are subject to the right of adaptation of the authors of the original works according to Principle DC4(1)*(d)*.

Alternative B

(2) Stage productions of dramatic and choreographic works should be protected—without prejudice of the copyright in such works—as derivative works if, and to the extent that, such productions are of original nature. The authorization given by the authors of the dramatic works for the performances of their works should be considered, unless expressly provided otherwise in contract, to include the authorization for any complements or alterations which are normally necessary for stage productions based on possible interpretations of such works. Any further alterations in such works are subject to the right of adaptation of the authors of the original works according to Principle DC4(1)*(d)*.

(3) Certain contributions to stage productions such as sceneries (decorations) and costumes may

enjoy separate protection according to the relevant copyright provisions, e.g. as works of fine art, if they are of original nature.

Moral Rights

Principle DC3. Independently of the authors' economic rights, and even after the transfer of the said rights, the authors of dramatic and choreographic works should have the right to

(a) claim authorship and have their names indicated on the copies of their works, on the playbills (programs) announcing theatrical performances and, as far as is practicable, mentioned in connection with any utilization of their works;

(b) object to any distortion, mutilation or other modification of, or other derogatory action in relation to, their works, which would be prejudicial to their honor or reputation.

Economic Rights

Principle DC4. (1) The authors of dramatic and choreographic works should have the exclusive right to authorize at least the following acts:

(a) the reproduction of the written or otherwise fixed version of the work in any manner or form (right of reproduction);

(b) the rental of the copies of the musical part of a dramatico-musical or choreographic work reproduced in the form of sheet music and of the sound recordings containing a dramatic or choreographie work (right of rental);

(c) the translation of the work (right of translation);

(d) making adaptations, arrangements or similar alterations of the work (right of adaptation);

(e) the public performance of the work (right of public performance);

(f) any communication to the public of the work including its communication by wire in a cable-originated program (right of communication to the public);

(g) the broadcasting of the work, any communication to the public by wire (by cable), or by rebroadcasting, of the broadcast of the work, when this communication or rebroadcasting is made by an organization other than the original one, and the public communication by loudspeaker or any other analogous instrument of the broadeast of the work (right of broadcasting and related rights);

(h) the einematographic adaptation and reproduction of the work and the distribution of the work thus adapted or reproduced (cinematographic rights).

(2) The right of the authors of dramatic and choreographie works to authorize the acts mentioned in paragraph (1) should not be limited but in the cases and to the extent allowed under the international copyright conventions.

The Right of Public Performance

Principle DC5. (1) The fees of the authors of dramatic and choreographic works for the authorization of publie performance of such works should be determined, as a rule, on the basis of negotiations. [If such fees are calculated as a share from the income of the theater and the theater is subsidized, not only the box-office income but also the subsidies should be duly taken into account for the calculation of fees.]

(2) Exceptions to the right of public performance may be allowed in certain specific cases (for example, in the case of the performance of a dramatic work by an amateur group of a school for an audience restricted to those who belong to the same school and, at most, to their closest relatives if there is no entry fee, the participants do not receive any payment and the performance does not serve profit even in an indirect way) but the mere non-profit nature of a performance should not be a basis for allowing, under the law, such performances of dramatic and choreographic works without the authors' authorization.

The Right of Broadcasting

Principle DC6. Non-voluntary licenses should, as a rule, not be applied instead of the exclusive right of the authors to authorize the broadcasting of their dramatic and choreographic works.

The Rights of Performers of Dramatic and Choreographic Works

Principle DC7. Independently of the performers' economic rights and even after the transfer of the said rights,

(a) individual performers and, in the case of groups of performers, the conductors (and other equivalent persons such as choir leaders) and the soloists should have the right to have their names indicated, as far as is practicable and in the customary way, on the copies of the fixation, or in connection with any public utilization, of their performances; members of groups of performers should have the same right in respect of the indication of the name of their group;

(b) performers should have the right to object to any distortion, mutilation or other modification

of, or other derogatory action in relation to, their performances which would be prejudicial to their honor or reputation.

Principle DC8. (1) Performers should have the exclusive right to authorize at least the following acts:

(a) the broadcasting of their performances, except where the broadcast is made from a fixation of the performance, other than a fixation made according to Principle DC9(2);

(b) the communication to the public—including cable distribution—of their performances, except where the communication is made from:

(i) a fixation of the performance; or

(ii) a broadcast of the performance;

(c) the fixation of their unfixed performance and the reproduction of a fixation of their performances.

(2) In the absence of any contractual agreement to the contrary or of circumstances of employment from which the contrary would normally be inferred,

(a) the authorization to broadcast does not imply an authorization to license other broadcasting organizations to broadcast the performance;

(b) the authorization to broadcast does not imply an authorization to fix the performance;

(c) the authorization to broadcast and fix the performance does not imply an authorization to reproduce the fixation;

(d) the authorization to fix the performance and to reproduce the fixation does not imply an authorization to broadcast the performance from the fixation or any reproduction of such fixation.

Principle DC9. (1) The rights of performers to authorize the acts mentioned in Principle DC8(1) should not be limited but in the following cases:

(a) private use, provided that it does not conflict with a normal exploitation of the performance and does not unreasonably prejudice the legitimate interests of the performer;

(b) the reporting of current events, provided that no more than short excerpts of a performance are used;

(c) use solely for the purposes of teaching or scientific research;

(d) quotations in the form of short excerpts of a performance provided that such quotations are compatible with fair practice and are justified by the informatory purpose of such quotations;

(e) other limitations which are not incompatible with the Rome Convention;

(f) other limitations which also exist in respect of literary and artistic works protected by copyright.

(2) The requirements for authorization under Principle DC8(1)*(c)* for making fixations of performances and for reproducing such fixations should not apply where the fixation or reproduction is made by a broadcasting organization by means of its own facilities and for its own broadcasts, provided that

(a) in respect of each broadcast of a fixation of a performance or of a reproduction thereof made under this paragraph, the broadcasting organization has the right to broadcast the particular performance; and

(b) in respect of any fixation made under this paragraph or any reproduction thereof, the fixation and any reproduction thereof are destroyed within the same period as applies to fixations and reproductions of works protected by copyright, except for a single copy which may be preserved exclusively for archival purposes.

MUSICAL WORKS

Creations To Be Protected as Musical Works

Principle MW1. (1) "Musical works" mean all kinds of original combinations of sounds (compositions) with or without text (lyrics or libretto). In the context of the present document, however, dramatic and choreographic works with music (dramatico–musical works, etc.) are considered as dramatic and choreographic works (see Principle DC1) rather than musical works.

(2) Musical works should be protected by copyright.

(3) The protection of musical works may be restricted to works that are fixed in material form (scores, sound recordings, etc.).

New Forms of Musical Composition. The Use of Computers and Other Equipment for the Creation of Musical Works

Principle MW2. When computer systems and/or other equipment (synthesizers, etc.) are used for the creation of musical works, such systems and equipment should be considered only as technical means in the process of creation for achieving the results desired by human beings.

Principle MW3. In the case of works produced by means of computer systems and/or other equipment (synthesizers, etc.), the copyright owners in such works are the persons who have 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) and technicians (sound engineers, etc.) 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.

Adaptations and Arrangements of Musical Works. Translations of the Texts of Musical Works

Principle MW4. Adaptations and arrangements of musical works and the translations of the texts related to such works should be protected by copyright—without prejudice to the copyright in the original works—if they are original in nature. Such adaptations, arrangements and translations are subject to the right of adaptation and the right of translation, respectively, of the author of the original work according to Principle MW8(1)*(c)* and *(d)*.

Improvisations. Aleatoric Musical Works

Principle MW5. Musical improvisations may be protected—according to the level of their dependence on preexisting works—as adaptations or independent works provided that they are of an original nature. The protection of such improvisations may depend on their fixation according to Principle MW1(3). In respect of improvisations protected as adaptations, Principle MW4 also applies.

Principle MW6. (1) "Aleatoric musical works" mean compositions where the composers leave room to the creative contributions of performers authorizing and inviting them to make certain choices (concerning the intensity, duration and other elements of sound or melodic units, the repetition or combination of some parts of the work, etc.) or finalize the works in certain respects on the basis of parameters and instructions given by the composer.

(2) The contributions by performers to aleatoric works may be protected—according to the nature of their relations to the aleatoric works as created by the composers—as adaptations or as contributions to a joint work. The protection of such contributions may depend on their fixation according to Principle MW1(3).

Moral Rights

Principle MW7. Independently of the authors' economic rights and even after the transfer of the said rights, the authors of musical works should have the right to

(a) claim authorship and have their names indicated on the copies of their works (including sound recordings) and, as far as is practicable and in the customary way, mentioned in connection with any utilization of their works;

(b) object to any distortion, mutilation or other modification of, or other derogatory action in relation to, their works, which would be prejudicial to their honor or reputation.

Economic Rights

Principle MW8. (1) The authors of musical works should have the exclusive right to authorize at least the following acts:

(a) the reproduction of the work in any manner or form, particularly in the form of sheet music (score and printed text of the work) and in the form of sound recording (right of reproduction);

(b) the rental of the copies of the work reproduced in the form of sheet music and in the form of sound recordings containing the work (right of rental);

(c) the making of adaptations and arrangements of the work (right of adaptation);

(d) the translation of the text of the musical work (right of translation);

(e) the public performance of the work (right of public performance);

(f) any communication to the public of the work, including its communication in a cable-originated program (right of communication to the public);

(g) the broadcasting of the work, any communication to the public by wire (by cable), or by rebroadcasting, of the broadcast of the work, when this communication or rebroadcasting is made by an organization other than the original one, and the public communication by loudspeaker or any other analogous instrument of the broadcast of the work (right of broadcasting and related rights);

(h) the cinematographic adaptation and reproduction of the work and the distribution of the work thus adapted and reproduced (cinematographic rights).

(2) The exclusive right of the author of the musical work to authorize the acts mentioned in paragraph (1) above should not be restricted but in the cases and to the extent allowed under the international copyright conventions.

The Right of Reproduction in Respect of Sound Recordings

Principle MW9. (1) The application of compulsory licenses for the recording of musical works once the

authors have already authorized their recording is not incompatible with the international copyright conventions; consideration should be given, however, to their elimination in States where the protection of the phonogram industries does not justify such licenses any more.

(2) In States where compulsory licenses mentioned in paragraph (1) are applied, the remuneration of the authors should be fixed at a level which is not lower than the one which prevails in the internationally established practice in cases where authorization is given on the basis of an exclusive right of authors.

"Performing Rights"

Principle MW10. (1) In the context of the present principle

(a) "performing rights" mean the right of public performance, as well as the right of communication to the public and the right of broadcasting and related rights as defined in Principle MW8(1)*(e)* to *(g)* above, all in relation to the use of musical works and the non-theatrical use of excerpts from dramatico-musical works (in other words the so-called "*petits droits*");

(b) "collective administration" means the administration of the above-mentioned rights by authors' societies or other organizations fulfilling the same functions (hereafter referred to as "authors' societies") on behalf of, and on the basis of, the authorization of the authors who are their members or whom they represent according to reciprocal agreements with other (foreign) authors' societies; those functions involve the control of and the issuing of authorizations for use of the rights administered by them as well as the collection of royalties for such use and their distribution among the owners of rights whose works have been used under such authorization.

(2) The collective administration of performing rights by authors' societies should be encouraged. Such societies should be exempted from antitrust restrictions under competition law.

(3) Compulsory licenses, as a rule, should not be applied in respect of musical performing rights.

(4) The exclusive nature of musical performing rights should not be restricted in the framework of their collective administration. Therefore,

(a) all decisions concerning any important aspects of collective administration should be taken by the authors whose rights are involved or by bodies representing them;

(b) the authors should receive regular, full and detailed information about all the activities of the authors' society that may concern the exercise of their rights;

(c) the tariffs and other conditions for the authorizations mentioned in paragraph (1)*(b)* should be determined, as a rule, on the basis of negotiations with users;

(d) without the authorization of the authors concerned (given directly or by the bodies representing them), no proportion of the royalties collected by authors' societies should be used for any other purposes (for example for cultural or social purposes, or for financing other activities) than the covering of the actual costs of administering performing rights in the musical works involved and the distribution of royalties among owners of copyright;

(e) the amounts of royalties collected for the authorization for the use of performing rights—after the deduction of the actual costs of collective administration and other potential deductions that the owners of copyright may authorize according to point *(d)* above—should be distributed among individual owners of copyright in proportion to the actual use of their works.

(5) The members of foreign authors' societies represented by an authors' society in a certain country should enjoy the same treatment as the members of the authors' society concerned in keeping with paragraphs (1) to (4) of the present principle. Foreign authors' societies should receive regular, full and detailed information about all the activities of the authors' society representing their repertoire in a certain country that may concern the exercise of the rights of the members of such foreign authors' society.

The Rights of Performers of Musical Works

Principle MW11. Principles DC7 to DC9 are also applicable in regard of the performers of musical works.

WORKS OF APPLIED ART

Creations To Be Protected as Works of Applied Art

Principle AA1. (1) "Works of applied art" are two-dimensional or three-dimensional artistic creations with utilitarian functions or incorporated in useful articles, whether handicraft or produced on an industrial scale. Works of applied art also include industrial designs to the extent that such designs correspond to the definition provided for in the preceding sentence.

(2) "Useful articles" are articles having an intrinsic utilitarian function that is not merely to portray the appearance of the articles or to convey information.

(3) "Industrial designs" are compositions of lines or colors or three-dimensional forms, whether or not associated with lines or colors, provided that such compositions or forms give a special appearance to products of industry or handicraft and can serve as a pattern for products of industry or handicraft.

Principle AA2. Works of applied art and industrial designs should be protected either by copyright or by *sui generis* design law or by both.

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

Principle AA3. When computer systems are used for the creation of works of applied art, such systems should be considered as technical means in the process of creation for achieving the results desired by human beings.

Principle AA4. In the case of works produced by means of computer systems, the copyright owners in such works are the persons who have 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.

Moral Rights

Principle AA5. Independently of the authors' economic rights and even after the transfer of the said rights and/or after the alienation of the copies of the work of applied art, the authors of works of applied art should have the right to claim authorship and be named, as far as is practicable and in the customary way, on the copies of their works or in connection with them.

Principle AA6. (1) Independently of the authors' economic rights and even after the transfer of the said rights and/or after the alienation of the copies of works of applied art, the authors should have the right to object to any distortion, mutilation or other modification of, or other derogatory action in relation to, their works, which would be prejudicial to their honor or reputation.

(2) Where their works have been altered without their consent, the authors of works of applied art—irrespective of whether their right mentioned in paragraph (1) could be exercised or not—should have the right to prohibit the association of their names with their works.

Economic Rights

Right of Reproduction

Principle AA7. (1) The authors of works of applied art should have the exclusive right to authorize

(a) the making of reproductions of their works, that is, copies that are in every respect (material, color, dimensions) identical with the originals;

(b) the making of pictures of their works by drawings, photography, cinematography or by processes similar to drawing, photography or cinematography.

(2) The rights of the authors of works of applied art mentioned in paragraph (1) should not be limited but in the cases, and to the extent, allowed under the international copyright conventions. Such a limitation may be, for example, that where the works or copies thereof are permanently in a public place with the authorization of the authors, any person may be allowed to make pictures thereof as described in subparagraph (1)*(b)* and use such pictures for personal use, for the purpose of reporting current events or for criticism.

Right of Adaptation

Principle AA8. (1) The authors of works of applied art should have the exclusive right to authorize the making of adaptations (derivative works) of their works.

(2) The owners of copies of works of applied art should be entitled to make any alterations in copies of the works which are necessary for their utilization of such copies as useful articles. The rights of the authors mentioned in Principle AA6 should be respected also in case of such alterations.

THE PRINTED WORD

Piracy

Principle PW1. (1) Piracy of the printed word (books, magazines, etc.) is

(a) the manufacturing, or the preparation of manufacturing, of copies of literary and artistic

works on a commercial scale and without the authorization of the owners of copyright in such works (hereinafter referred to as "pirate copies"); and/or

(b) the packaging or the preparation of packaging, the exportation, importation and transit, the offering for sale, rental, lending or other distribution, the sale, rental, lending or other distribution, and the possession with the intention of doing any such acts, of pirate copies, provided that such acts are committed on a commercial scale and without the authorization of the owners of copyright.

(2) Piracy is an illegal and criminal activity—a form of theft—and as such, thoroughly antisocial and contrary to the public interest and not merely a matter affecting the private rights of individuals.

(3) States should take efficient measures to eliminate piracy which appropriately match its illegal, criminal and antisocial nature. Such measures should include at least the following:

(a) strong and unconditional public condemnation of piracy;

(b) granting copyright protection that corresponds, at least, to the provisions of the Berne Convention and the Universal Copyright Convention, and that also takes fully into account the new uses of literary and artistic works;

(c) provision for criminal sanctions of sufficient severity to punish and deter piracy (including fines and/or—preferably—imprisonment terms equivalent to those which are to be applied for other serious thefts of property in the States concerned);

(d) provision for seizure and for the further destination—including the possible destruction—of pirate copies and of the equipment used in their production;

(e) provision for full compensation for damages;

(f) prompt and effective enforcement of the sanctions and measures mentioned in points *(c)*, *(d)* and *(e)*;

(g) procedures to facilitate the detection and proof of piracy, including pre-trial seizure of copies, equipment and documents, freezing of assets, funding and provision of sufficiently effective enforcement agencies and introduction of presumptions in favor of plaintiffs in respect of copyright ownership;

(h) prompt and effective measures to prevent distribution, exportation and importation of pirate copies;

(i) the promotion of international cooperation between police and customs authorities.

(4) States which are not yet party to the conventions mentioned in paragraph (3)*(b)* should actively consider the adherence to those conventions.

Reprography

Principle PW2. (1) Reprographic reproduction means the facsimile reproduction of writings or graphic works, for example by photocopying.

(2) Reprographic reproduction is covered by the authors' exclusive right to authorize the reproduction of their works. Consequently, the authors' exclusive right to authorize reprographic reproduction should not be limited but in the cases and to the extent that international copyright conventions permit the limitation of the right of reproduction.

Principle PW3. In providing for limitations (free uses or non-voluntary licenses) to the right of reproduction, the following conditions should be taken into account:

(a) Limitations should be restricted to precisely defined special cases. The cumulative effects of such limitations should not be allowed to result in a generalized or unreasonably wide scope of free reproductions and/or non-voluntary licenses and should not endanger a reasonable degree of effective protection of the right of reproduction in respect of reprographic reproduction.

(b) No limitations should be allowed that would conflict with a normal exploitation of works to be reproduced. Reprographic reproduction does conflict with a normal exploitation of works, at least, in cases where

(i) copies are made for commercial distribution;

(ii) multiple copies or related and/or systematic single copies are made;

(iii) it concerns works whose market is particularly vulnerable to such reproduction (such as sheet music, artistic works of restricted edition, maps, exercise books, other one-use publications, etc.);

(iv) copies are made of entire works, or of self-contained parts of works.

(c) No limitations should be allowed that, even if not conflicting with a normal exploitation of the work, would unreasonably prejudice the legitimate interests of authors. When considering whether a limitation might unreasonably prejudice the legitimate interests of authors, at least the following aspects should be taken into account:

(i) the purpose of the reprographic reproduction;

(ii) the nature of the work copied;

(iii) the number of copies;

(iv) the substantiality of the portion copied in relation to the work as a whole;

(v) the effect of the reproduction upon the potential market for the work.

Principle PW4. The question whether limitations to the right of reproduction are justified or would

conflict with a normal exploitation of works or would unreasonably prejudice the legitimate interests of authors, should be considered case by case at the national level on the basis of all concrete circumstances. It should also be taken into account that relevant circumstances may change after a certain time, for example as a result of technological developments (home photocopying machines, for instance, may become widespread and the cumulative effect of uncontrolled home photocopying may unreasonably prejudice the legitimate interests of authors). Such changes may justify the abolition of the limitations or the introduction of certain measures (such as a compensatory payment) to eliminate or mitigate prejudices.

Principle PW5. (1) If the exclusive right of reproduction cannot be exercised on an individual basis, collective administration schemes relating to the said right should be encouraged. Non-voluntary licenses should only be introduced if, and during the time when, no appropriate individual arrangements are available and no appropriate collective administration organizations can be set up or can function in practice.

(2) Governments should eliminate any obstacles to the establishment and the operation of appropriate collective administration organizations and should provide for measures for the benefit both of users and of authors and publishers in case certain owners of rights in works belonging to the categories of works administered by such organizations are not members of such organizations. The following measures may be considered in this respect:

(a) Collective administration organizations should be exempted from antitrust restrictions under competition law.

(b) Legislative provisions should facilitate the control, by collective administration organizations, of the extent of reprographic reproduction as well as the collection and distribution of remunerations for reprographic reproduction. For this purpose the imposition of the obligatory use in reprographic reproduction machines of appropriate electronic devices should be considered wherever it is possible.

(c) In the case of collective administration organizations operating licensing schemes for the reprographic reproduction of a particular category of works, an obligation should be considered to incorporate in such schemes a provision indemnifying licensees against infringement actions in relation to reproduction (within the general scope of the license) of works which are within that category but whose copyright owners are not members of the scheme.

(d) When a collective administration organization representing a large number of authors of a certain category of works authorizes reprographic reproduction of works in its repertoire, the validity of this authorization may, by legal provisions, be extended to works of the same category, the authors of which are not represented by the organization. In such cases, appropriate guarantees should be introduced to protect the rights and interests of authors not represented by the organization (for example a right of the author to claim payment even if otherwise the income is not distributed among individual authors, the right to prohibit the reprographic reproduction of their works, etc.).

(e) It may be provided in certain cases that the right of reproduction in respect of reprographic reproduction may only be exercised through collective administration organizations.

(3) The remuneration to be paid and other conditions of authorizing reprographic reproduction should be determined, as a rule, by means of negotiations between users and collective administration organizations. If the partners cannot agree, the remuneration and the other conditions could be fixed by an impartial body—preferably by a court—designated by law.

Principle PW6. There should be a guarantee that the collective administration of the right of reproduction, in respect of reprographic reproduction is in conformity with the exclusive nature of that right. From the exclusive nature of the right of reproduction, at least, the following obligations follow:

(a) All decisions concerning any important aspects of collective administration should be taken by the owners of copyright whose rights are involved or by bodies representing them.

(b) Owners of copyright should receive regular, full and detailed information about all the activities of the organization that may concern the exercise of their rights.

(c) The amounts of remuneration collected for the authorization of reprographic reproduction—after the deduction of the actual costs of collective administration and other potential deductions that the owners of copyright whose rights are represented by the collective administration organization explicitly authorize—should be distributed, whenever possible, among the owners of copyright in proportion to the actual extent of the reproduction of their works.

(d) Copyright owners who are not members of the collective administration organizations—including particularly foreigners—should enjoy the same rights and receive the same remuneration as members. Furthermore, any decision by members

concerning the use of the income for purposes other than their remuneration should be invalid in respect of non-members unless they or bodies representing them have agreed to it.

Principle PW7. (1) If the application of non-voluntary licenses is necessary, it should, in extent and in time, be restricted as much as possible. As soon as the reasons for the application of non-voluntary licenses cease to exist, such licenses should be immediately abolished.

(2) In the case of non-voluntary licensing, Principle PW3 about the conditions of limitations of the right of reproduction should be applied, and Principle PW5(3) about the determination of the remuneration as well as Principle PW6*(c)* and *(d)* about the distribution of the remuneration and the rights of non-members, including particularly foreigners, should also be applied *mutatis mutandis.*

(3) When the law provides for the payment of an equitable remuneration in the framework of non-voluntary licensing, appropriate provisions should be considered—taking into account the nature and custom of the relevant publishing sector—so as to guarantee equitable participation in the remuneration by both authors and publishers.

Principle PW8. (1) If reprographic reproduction of works by equipment operated in private homes becomes widespread, it may conflict with a normal exploitation of works or may unreasonably prejudice the legitimate interests of authors. In such a case, the introduction of a charge on equipment and/or material used for reprographic reproduction should be considered within the framework of a special indirect, non-voluntary licensing system.

(2) The charge mentioned in paragraph (1) should be paid by the manufacturer or importer, and equipment and photocopying material exported into another country should be exempt from the charge.

(3) It should be provided that the right to participate in revenue from the charge can only be exercised through a collective administration organization.

(4) Principle PW7 should be applied *mutatis mutandis* to the indirect non-voluntary licensing system described in paragraphs (1) to (3).

Storage in and Retrieval from Computer Systems of Protected Works. Electronic Publishing. Electronic Libraries

Principle PW9. (1) The storage in computer systems (either in the internal memory of a computer or in external storage devices, such as magnetic or optical discs) of writings and graphic works is covered by the authors' exclusive right to authorize the reproduction of their works.

(2) The retrieval of writings or graphic works from computer systems by means of reproduction in any manner or form (hard-copy printout, facsimile reproduction, transfer into other devices for internal or external storage, [display on screen,] etc.) is a separate and new act of reproduction and is subject to the authors' exclusive right to authorize the reproduction of their works.

(3) The authors' exclusive right to authorize the reproduction of their works mentioned in paragraphs (1) and (2) should not be limited but in the cases and to the extent that the international copyright conventions permit the limitation of the right of reproduction.

(4) In providing for limitations (free uses or non-voluntary licenses) to the right of reproduction, Principles PW3 and PW4 apply *mutatis mutandis.*

Principle PW10. In respect of the applicability of non-voluntary licenses as well as of the need for promoting collective administrative schemes and the measures guaranteeing the appropriate operation of such schemes, Principles PW5 to PW8 apply *mutatis mutandis.*

Principle PW11. Authors should have an exclusive right to authorize the rental of copies of their works stored in external storage devices (magnetic or optical discs, etc.) to be used for computer systems.

Principle PW12. Acts by which a work stored in a computer system is transmitted by broadcasting or by any other means of wireless diffusion to the public should be considered as broadcasting and should be covered by the authors' exclusive right to authorize such acts. In respect of the availability of non-voluntary licenses as well as of the copyright implications of satellite broadcasting and cable retransmission of broadcast programs, the general principles and provisions of the international copyright conventions and national copyright laws should be applied.

Principle PW13. Authors should have the exclusive right to authorize the display of their works, stored in a computer system, on a screen or in any similar manner at a place open to the public or at any place where a substantial number of persons outside a normal circle of family and its social acquaintances is gathered.

Principle PW14. Authors should have the exclusive right to authorize the communication of their works, stored in a computer system, [by broadcasting,] by wire (cable, telephone line, etc.) or by any other similar means, to the public to be displayed [(reproduced)] on a screen or in other similar manner, irrespective of whether the members of the public capable of receiving the communication of works to be displayed [(reproduced)] receive them in the same place or in separate places and at the same time or at different times.

Principle PW15. Authors of works which are stored in and retrieved from a computer system, independently of their economic rights and even after the transfer of the said rights, should have the right to

(a) claim authorship and, as far as it is practicable and in the customary way, have their names mentioned in connection with their works;

(b) object to any distortion, mutilation or other modification of, or other derogatory action in relation to, their works which would be prejudicial to their honor or reputation.

Data Bases

Principle PW16. (1) "Electronic data base" means an aggregate of information—which may include protected works but may also be composed only of non-protected works or other data—and which is systematically arranged and stored in computer systems.

(2) In respect of the storage in and retrieval from computer systems of writings and graphic works as parts of electronic data bases, Principles PW9 to PW15 should apply.

(3) Electronic data bases which, by reason of the selection, collection, coordination, assembling or arrangement of their contents, etc., constitute intellectual creations, should be protected as such without prejudice to the copyright in each of the works which may form part of such electronic data bases. In respect of the protection of such electronic data bases, Principles PW9 to PW15 should apply *mutatis mutandis.*

[*Principle PW17.* (1) In respect of electronic data bases which are not eligible for copyright protection because of their lack of originality, the granting of a specific protection to data base producers should be considered.

(2) The specific protection mentioned in paragraph (1) should include the exclusive right of data base producers to authorize the reproduction, in any manner or form, of the data bases produced by them or substantial parts thereof.

Principle PW18. The term of protection of the right mentioned in Principle PW17(2) should not be shorter than 20 years calculated from the end of the year in which the data base is first made available to the public or, after having been made available to the public, is substantially updated.

Principle PW19. The limitations applicable in respect of literary and artistic works included in electronic data bases should also be applicable in respect of the right mentioned in Principle PW17(2) or of any other rights which may be granted to data base producers.

Principle PW20. The specific protection granted to data base producers according to Principles PW17 to PW19 should leave intact and should in no way affect the protection of copyright in literary and artistic works included in electronic data bases.]

Public Lending Right

[*Principle PW21.* (1) In countries where widespread lending by libraries of books and similar publications to the public unreasonably prejudices the legitimate interests of authors of writings and graphic works protected by copyright and included in such books and similar publications, the introduction of a right of the authors concerned to receive equitable remuneration for such lending ("public lending right") should be considered.

(2) If public lending right is recognized in a country party to the Berne Convention or the Universal Copyright Convention, foreign authors should be granted the same right in accordance with Article 5(1) of the Berne Convention and Article II of the Universal Copyright Convention, respectively.

Principle PW22. (1) Public lending right should be exercised through collective administration organizations.

(2) The amounts of remuneration collected for public lending—after the deduction of the actual costs of collective administration and other potential deductions that the owners of copyright whose rights are represented by the collective administration organization explicitly authorize—should be distributed, whenever possible, among the owners of copyright in proportion to the actual extent of the use of their works for lending purposes.]

The Right to Authorize Translations. The Rights of Translators

Principle PW23. Authors of writings should enjoy the exclusive right to authorize the translation of their works. This right should not be limited but in the cases and to the extent that the international copyright conventions permit its limitation.

Principle PW24. (1) Translations should be protected as literary works without prejudice to the copyright in the original works which have been translated.

(2) The translations mentioned in paragraph (1) should be protected irrespective of whether the original works are already in the public domain or otherwise are not protected because, for example, they are official texts of a legislative, administrative or legal nature. (Official translations of such official texts, however, may be excluded from copyright protection.)

Principle PW25. Authors of translations should enjoy the same rights for the same term of protection and under the same conditions as authors of original works do, without prejudice to the rights of the authors of the original works concerned.

The Protection of Typographical Arrangements of Published Editions

[*Principle PW26.* (1) States should consider granting appropriate protection to publishers in respect of the typographical arrangements of their published editions irrespective of whether such editions contain works protected by copyright.

(2) The protection mentioned in paragraph (1) should include the right of the puhlisher to authorize the reproduction of the typographical arrangements of published editions by reprographic or similar processes providing facsimile copies. This right should be protected for at least 25 years from the end of the year in which the edition concerned was first published.

(3) The limitations applicable in respect of the rights in literary and artistic works included in published editions should also be applicable in respect of the protection of typographical arrangements of published editions.

(4) Principles PW2 to PW8 on the protection of the right of reproduction of authors in respect of reprography apply, *mutatis mutandis*, to the protection of typographical arrangements of published editions.

(5) The protection of the typographical arrangements of published editions should leave intact and should in no way affect the protection of copyright in literary and artistic works published in such editions and the ownership of such copyright (e.g. by a publisher under transfer).]

Part III

Comments on the Draft Principles

DRAMATIC AND CHOREOGRAPHIC WORKS

Creations To Be Protected as Dramatic and Choreographic Works

121. At the meeting of the Committee of Governmental Experts on Dramatic, Choreographic and Musical Works, certain participants drew attention to the fact that although dramatic and choreographic works are created, as a rule, for stage, in the case of certain modern presentations of such works, performance may take place elsewhere tban on a stage proper (see paragraph 21 of the report). In tbe new version of paragraph (1) of Principle DC1, those comments have been taken into account by substituting the words "works created for performance, generally, on stage" for the words "works created for stage."

122. In the new version of paragraph (2) of Principle DC1, a reference is made simply to copyright protection rather tban to the general rules of copyright law. This is in harmony with tbe comments made at tbe meeting of the Committee of Governmental Experts (see paragraph 22 of the report).

The Authors of Dramatic and Choreographic Works. The Status of Theater Directors

123. There was an intensive discussion at the meeting on the copyright status of theater directors. Opinions were fairly divided. Several participants expressed the view that it was not enough to protect theater directors as performing artists; very often they deserved protection also as authors. Some participants were of the opinion that directors could only enjoy copyright protection as adaptors or as coauthors, as it was suggested in the document. Some other participants said that they would find independent copyright protection of "scenic creations" justified. The latter participants stressed that the text of a dramatic work and the instructions by the author did not fully determine all

aspects of the stage version of the work; there was always more or less room for the director's creative contribution (see paragraph 25 of the report).

124. The differing opinions of the participants in the meeting reflected the changes in the approach of theater directors to dramatic and choreographic works and the lack of agreement among copyright experts about the possible consequences of those changes in the field of copyright and neighboring rights.

125. Those who advocate the recognition of theater directors' authorship very often claim that theater directors are authors just as directors of audiovisual works are. Behind such a claim there is necessarily the view that the relationship between a dramatic and choreographic work and its theatrical production is the same as that between a scenario and the audiovisual work produced on the basis of the scenario.

126. Such a view does not seem to be justified. An audiovisual work is not a presentation of a scenario but something which is of a completely new quality in relation to it. The creators of an audiovisual work—first of all the director—transform the scenario into another artistic language, into the language of images where dialogues and everything else that the scenario may contain are only mere contributions—maybe important ones—to a new artistic unity. An audiovisual work still does not exist at the stage of a scenario; it comes into existence by the activity of the director and the other contributors to the creation of the work. In the case of dramatic and choreographic works, the situation is different. Those works do exist before they are staged. Dramatic works contain not only dialogues but—as a rule—a series of more or less detailed instructions concerning the scenery, the characteristics, costumes and movements of the actors, etc. It follows from the nature of dramatico-musical works (operas, operettas, etc.), choreographic works and pantomimes that their contents are determined by their creators (librettists, composers, choreographers, etc.) in an even more detailed manner.

127. It is fairly evident that the authors of dramatic and choreographic works create with the intention that those works be staged and performed in the form which they have given them. Certain theater directors are ready to serve the works and to stage them in keeping with the intentions of their authors. Some other directors, however, have greater ambitions. They would like to simply use the work—what they sometimes call "raw material"—to produce something else. Their productions very frequently involve extensive deletions from the text, the leaving out of some roles, the change in order of parts, placing events into circumstances other than the ones described by the author and thus changing the meaning of the dialogues, adding new elements (even if not necessarily a new text but, for example, new designs of decorations and costumes, new movements, etc.) which lead to "interpretations" never intended by the author. In such a case the dramatic or choreographic work is staged in a basically modified version.

128. The question is whether it is justified to claim in such cases that the theatrical production is a new quality in relation to the dramatic or choreographic work and, consequently, that the theater director is the original author of the new creation (the same way as the director of an audiovisual work is not an "adaptor" of the scenario but an author of a work of new quality, that is the audiovisual work). There is a test question: could the author of the original work himself delete certain parts of the text, leave out some roles, change the order of acts, give instructions for different scenery, costumes, movements of actors, etc.? The obvious answer is that he could. Consequently, a theatrical production in such a case is different from the original work not because theatrical productions represent a new quality of such works but simply because it is not the original work which has been put on stage but a modified version of it. A modified version of a work is an adaptation. Consequently, a director may enjoy copyright protection in such cases not because he is a director, but because he is an adaptor (unless the author recognizes the latter as coauthor).

129. The recognition of theater directors as authors of adaptations is not in conflict with a more traditional approach to the question of the copyright status of directors. Alternative A of paragraph (2) of Principle DC2 is based on that approach.

130. Where a new approach to the same question may result in a more or less differing legal qualification is the field where changes, modifications and completions are considered—according to the traditional classification—to be part of the interpretation and presentation of the work. Certain dramatic works hardly contain much more than dialogues, and even if the author gives more instructions concerning the scenery, the movements of the actors, etc., there is still more or less room for various interpretations of the same work. Those who advocate a more generous copyright protection for directors draw attention to the fact that stage productions that are based on individual interpretations of

dramatic and choreographic works also may—and in modern theater, in general, do—contain original, creative elements which do deserve copyright protection.

131. It is a further question what kind of copyright relationship exists between the dramatic work and its stage production and, consequently, between the author of the dramatic work and the theater director. The production and performance of a work on stage can hardly be considered as a new independent work. If the production does not go further than what is considered to be a more or less liberal interpretation of the work, the dependence on the work is fairly obvious. On the other hand, if the changes made by the director go beyond a mere interpretation, what is involved—as is discussed in paragraphs 127 and 128 above—is an adaptation of the work.

132. Because a stage production of a work can be qualified, at most, as a derivative work, the question emerges how the right of adaptation enjoyed by the author of the original work could be exercised in respect of such productions. If what is involved is not a simple interpretation of original character but an adaptation in the classical sense, then the authorization of the author of the dramatic work is necessary. If, however, the original elements of the production remain in the framework of what can still be considered to be the interpretation of the work, then, unless expressly provided otherwise in contract, the authorization given by the author for the performance of his work can be considered to include the authorization to execute any completions or changes which are not alien to the work and which are necessary to stage that work on the basis of a specific interpretation. Nevertheless, it should be considered a common element in both cases—in the case where an explicit authorization is needed and in the case where the authorization can be considered to have been granted—that the possible protection of the contribution of the director should not prejudice the copyright in the original work.

133. The new Alternative B is based on the considerations discussed in paragraphs 130 to 132 above which, in turn, correspond to the views expressed by certain participants in the meeting of the Committee of Governmental Experts and referred to in paragraph 128 above.

134. The last sentence of the original version of Principle DC2(2)—concerning the status of non-authorized adaptations—has been omitted because there was no agreement on it at the meeting of the Committee of Governmental Experts (see paragraphs 30 to 32 of the report), and it does not seem indispensable to include any statement about this question in the principles themselves.

Moral Rights

135. No comments were made in respect of paragraph (1) of Principle DC3 containing general statements about the right to claim authorship and the right to object to distortions, mutilations, etc. Therefore, this paragraph has been left unchanged in the new version of the principle.

136. There was discussion about paragraph (2) of the same principle. Finally, it was generally approved by the participants, with some minor modifications (see paragraphs 34 to 36 of the report). However, in the new version of the principles, the two alternatives of paragraph (2) of Principle DC2 completely take care of the question dealt with in paragraph (2) of Principle DC3, namely, the question of what modifications the author of the dramatic work cannot object to. Therefore, paragraph (2) of Principle DC3 has been omitted in the new version of the principle.

Economic Rights

137. From the list of economic rights contained in Principle DC4(1) it was point (ii) (now *(b)*) on the right of rental and public lending about which some comments were made at the meeting of the Committee of Governmental Experts. Some reservations were expressed concerning the right of rental, but otherwise the participants supported the recognition of that right (see paragraphs 38 and 39 of the report). More doubts were expressed, however, as to whether the recognition of the right of public lending is equally justified or not (see paragraph 40 of the report). The reference to the latter right has been deleted for the same reasons as those mentioned in paragraph 20 above in respect of audiovisual works and phonograms.

138. Although on the basis of differing considerations, several participants in the meeting proposed the deletion of the reference to the real market value of the right of performance in the first sentence of Principle DC5(1) (see paragraphs 42 to 44 of the report). That reference has been deleted accordingly; the remaining part of the sentence fully expresses the essence of the principle—namely, that fees should be determined by means of free negotiation.

139. Certain participants were also in favor of the deletion of the second sentence of Principle

DC5(1), one delegation because in its country the nature of subsidies excludes the application of the principle included in that sentence, other delegations because they found the declaration of the freedom of contract sufficient (see paragraphs 43 and 44 of the report).

140. Several other participants, however, supported the ideas expressed in the second sentence of Principle DC5(1) concerning the need for the authors' participation in the subsidies (see paragraph 45 of the report).

141. In respect of subsidies, consideration of the following circumstances seems to be necessary.

142. Theatrical productions have become more difficult recently from the viewpoint of economic considerations. Theaters are faced with a delicate choice when setting the price of tickets. Either they have high enough prices to cover all the costs of a production and then may run the risk that many people cannot afford expensive tickets and the production fails because of lack of interest, or they set prices at a more reasonable level and then they cannot recover their expenses which can lead to the bankruptcy of the theater. Theaters can solve such difficult situations in two ways. Either they do not take any risk and concentrate on certain popular works—sometimes in taking over successful productions from other theaters—or they cover their deficits from subsidies by the State or by private organizations. Subsidizing theaters from the public budget is a fairly widespread phenomenon in many countries which follows from the general cultural policy of those countries; they find subsidizing necessary to ensure the access to valuable theatrical productions for the widest possible public.

143. In the case of subsidies, an extensive limitation on the fees of authors of dramatic and choreographic works may be that which follows the usual system of calculating such fees—on the basis of certain percentages of the box-office income—without taking into account the effect of subsidies. The price of the tickets is kept below their real value and the deficit is covered by subsidies. The result is that everybody is subsidized in the theater: the producer, the director, the actors, even the ushers; there is only one exception: the author. The author is not subsidized because his fees are calculated on the basis of the box-office income from the selling of the tickets below their real value. Such discrimination is unjustified. If theater productions are subsidized, authors should receive a reasonable share not only from the box-office income but also from the subsidy (or some other solution should be found, for example, a matching increase of the percentage from the box-office income).

144. The considerations discussed in the preceding paragraphs show that the principle included in the second sentence of Principle DC5(1) may be fairly important in certain countries in certain situations. Therefore, it has been retained as suggested by the participants mentioned in paragraph 140 above; however, the sentence has been put into brackets to indicate that, in certain countries, its application may not be justified because of the special circumstances prevailing there.

The Rights of Performers of Dramatic and Choreographic Works

145. A new principle (Principle DC7) on the moral rights of performers has been inserted into the revised set of principles, as suggested by some participants—without any opposition from others—at the meeting of the Committee of Governmental Experts (see paragraph 54 of the report).

146. The new Principle DC7 is of a pioneering nature. It establishes a "right of respect" in favor of performing artists along the lines of such a right of authors. The essence of that right is the protection against actions which would be prejudicial to the honor or reputation of the persons (authors, performers) concerned. It would not be justified to restrict such protection to a certain circle of performers. The recognition of the other moral right, that is, the right to be named on the copies of the fixations of, or otherwise in connection with, the performance cannot, however, be of such a general nature because it would be completely impractical to insist, for example, on the obligation to name all the members of a big orchestra. The recognition of that latter right is suggested by the principle—as a minimum—in favor of individual performers (soloists) and conductors; in respect of groups of performers, the obligation to name the group is suggested.

147. As a result of the insertion of the new Principle DC7, the original Principle DC7 on the economic rights of performers has become Principle DC8.

148. The original version of Principle DC7 (now DC8) has been based, practically, on the Model Law Concerning the Protection of Performers, Producers of Phonograms and Broadcasting Organizations adopted by the Second Extraordinary Session of the Intergovernmental Committee of the Rome Convention held in Brussels in May 1974.

149. Since the adoption of the above-mentioned Model Law, secondary uses of performances have

become much more widespread as a result of new technologies, and this development has contributed to a general trend towards the recognition of the need for a more generous protection of performers. This trend was also expressed in the discussions at the meeting of the Committee of Governmental Experts in respect of the rights of performers.

150. On the basis of the comments made at the meeting in respect of the right of broadcasting (see paragraphs 50 to 53 of the report), the reference in subparagraph (1)*(a)*(ii) of Principle DC7 (now DC8) to rebroadcasting has been deleted. In the new text, the word "broadcasting" is intended to mean all kinds of broadcasting (both original broadcasting and rebroadcasting). The deletion of that subparagraph seems to be justified because there does not seem to be any serious argument against the extension of the principle contained in subparagraph (2)*(a)* to rebroadcasting. The latter subparagraph states that "the authorization to broadcast does not imply an authorization to license other broadcasting organizations to broadcast the performance," but it is flexible enough because according to the opening lines of paragraph (2) that principle is only applicable "in the absence of any contractual agreement to the contrary or of circumstances of employment from which the contrary would normally be inferred."

151. In Principle DC8(1)*(b)* (former DC7(1)*(b)*), it is made clear that cable distribution is a form of communication to the public. Otherwise, the legal situation of performers in the case of cable distribution of their performances is dealt with in detail in the framework of the principles on such distribution in the chapters on audiovisual works and phonograms.

152. Following a proposal made at the meeting of the Committee of Governmental Experts (see paragraph 49 of the report), subparagraphs *(c)* and *(d)* of Principle DC7(1) (now DC8) have been combined and the right of authorization of the performer has been extended to the reproduction of a fixation of his performance. No limitations other than those indicated in Principle DC9 (former DC8) seem to be justified in respect of such a right under the circumstances of the present recording techniques.

153. In the list of possible limitations to the economic rights of performers in Principle DC9 (former DC8), two modifications have been made.

154. The first modification follows from a proposal made at the meeting of the Committee of Governmental Experts (see paragraph 55 of the report). According to tthat proposal, it is not appropriate to refer to "private use" as a possible case of limitation without any further conditions, and the best solution would be to add the conditions contained in Article 9(2) of the Berne Convention. The results of the analysis about the effects of "home taping"—reflected in Principles AW8 and PH9—seem to show that such a solution may be justified. Subparagraph *(a)* of Principle DC9(1) (former DC8) has been completed accordingly.

155. The new Principle DC8 is much more generous towards performers concerning their economic rights than Principle DC7 was. At the meeting of the Committee of Governmental Experts, an observer from an international non-governmental organization warned against a unilateral extension of performers' rights which—according to that observer—would seriously endanger the balance based on the compromise expressed in the Rome Convention and in the Model Law mentioned in paragraph 148 above (see paragraph 58 of the report). In certain countries, under certain conditions, such danger may be real if Principle DC8 is fully applied. Therefore, in Principle DC9(1) (former DC8(1)), in the list of possible limitations, a new subparagraph *(e)* has been included referring to possible limitations which are not in conflict with the provisions of the Rome Convention (therefore, subparagraph *(e)* has become subparagraph *(f)*).

156. It should be noted that the new Principle DC8 only covers the basic economic rights of performers. In the chapters on audiovisual works and phonograms, several further principles can be found about the protection of performers in respect of the questions discussed there: such questions as piracy (Principles AW1 and PH1); secondary uses of phonograms for broadcasting or other communications to the public (Principle PH2); private copying ("home taping") (Principles AW8 and PH9); rental (Principle PH13); satellite broadcasting (Principles AW11 to AW19 and PH14 to PH22); cable distribution (Principles AW29 to AW32 and PH33 to PH36); and cable distribution of programs transmitted by fixed service satellites (Principles AW35 to AW38 and PH43 to PH46).

The Rights of the Producers of Theatrical Performances

157. Although one delegation supported Principle DC9 (in the original version of principles)

about a possible neighboring rights type right of the producers of theatrical performances (see paragraph 62 of the report), all the other participants who spoke on this matter at the meeting of the Committee of Governmental Experts were in favor of the deletion of that principle, either because they found it unnecessary or because they found it premature (see paragraphs 60 and 61 of the report). The principle, therefore, has been omitted in the new version.

158. It will be decided later on the basis of studies of future developments at the national level whether it is necessary to reopen the discussion about the possible recognition of such a right.

MUSICAL WORKS

Creations To Be Protected as Musical Works

159. In Prineiple MW1, two modifications have been made as a result of the discussions at the meeting of the Committee of Governmental Experts on Dramatic, Choreographic and Musical Works.

160. For the same reasons as those on the basis of which such a change was also made in Principle DC1(2) (see paragraph 122 above), the reference to the general rules of copyright law has been deleted from paragraph (2) of Principle MW1; in the new version, it is only stated that musical works should be protected by copyright (see also paragraph 64 of the report of the meeting).

161. The clause "such a restriction, however, should be avoided as far as possible" has been deleted from the end of paragraph (3) of the same principle to avoid too strongly opposing this principle to certain national laws where fixation is a condition of copyright protection (see paragraph 65 of the report).

New Forms of Musical Composition. The Use of Computers and Other Equipment for the Creation of Musical Works

162. All participants who spoke on this subject at the meeting of the Committee of Governmental Experts expressed their full support for Principles MW2 and MW3. They have been reproduced unchanged.

Adaptations and Arrangements of Musical Works. Translations of the Texts of Musical Works

163. In general, there was agreement on Principle MW4 at the meeting. It was understood, however, that the opinions expressed by the participants in respect of the unauthorized adaptations of dramatic and choreographic works (Principle DC2(2), last sentence, see paragraph 134 above) were also relevant, *mutatis mutandis*, in respect of unauthorized adaptations of musical works (see paragraph 69 of the report). Therefore, the last sentence of Principle MW4 has also been deleted.

Improvisations. Aleatoric Musical Works

164. There was agreement about Principles MW5 and MW6 at the meeting of the Committee of Governmental Experts. They have been reproduced unchanged.

Moral Rights

165. Several participants in the meeting expressed their agreement with Principle MW7 (see paragraph 75 of the report). Only one proposal was made concerning the text of point *(b)* (former (ii)) of the principle (see paragraph 79 of the report) about which, however, there was disagreement because it was found that the proposed modification would not be in keeping with Article 6bis of the Berne Convention (see paragraph 80 of the report). Therefore, Principle MW7 has been reproduced unchanged.

Economic Rights

166. There was agreement at the meeting about the catalog of rights included in Principle MW8 (see paragraph 81 of the report) which, thus, has been reproduced unchanged.

167. Referenee was made to the need for the recognition of the right of rental also in respect of videograms (see paragraph 82 of the report). Videograms are copies of audiovisual works. Therefore, that question has been discussed in the chapter on audiovisual works (under subchapter "Rental").

The Right of Reproduction in Respeet of Sheet Music

168. There was agreement at the meeting of the Committee of Governmental Experts on Dramatic,

Choreographic and Musical Works that there would be a final decision about Principle MW9 (which was mainly intended to settle the questions of reprography in respect of sheet music) after the Committee of Governmental Experts on the Printed Word had discussed the questions of reprography in general (see paragraph 84 of the report). The principles on reprography included in the chapter on the printed word also cover the reprographic reproduction of sheet music (see particularly Principle PW3*(b)*(iii)). Therefore, Principle MW9 has been omitted in the set of principles on musical works, and Principles MW10 to MW12 have become Principles MW9 to MW11.

The Right of Reproduction in Respect of Sound Recordings

169. Although certain reservations were expressed at the meeting of the Committee of Experts (see paragraphs 85 and 86 of the report), Principle MW10 (now MW9) was not opposed in general.

170. Only one modification was proposed in the text of the above-mentioned principle which has been taken into consideration in the new version. In paragraph (2) of the principle, the reference to the full market value has been replaced by a reference to the internationally established practice in calculating fees for the recording of musical works (see paragraph 86 of the report).

"Performing Rights"

171. While, in general, there was agreement at the meeting of the Committee of Governmental Experts about the purpose and content of Principle MW11 (now MW10), several comments were made about certain details of the principle.

172. The most important modification which has become necessary as a result of the discussions is that the last sentence of paragraph (2) which contained certain procedural details in respect of possible disputes between authors' societies and users has been deleted and subparagraph (4)*(c)* has been modified accordingly. The comments showed that that sentence might lead to misunderstandings (see paragraphs 97 and 98 of the report). Because it seems to be more appropriate to leave such procedural questions to be settled at the national level according to the particular features of the legal systems involved, the sentence has been deleted as was also suggested at the meeting (see the third sentence of paragraph 105 of the report). That seemed to be an appropriate solution, the more so because the essence of the principle is included in the first two sentences of the paragraph. In respect of the second sentence of the paragraph, it has been taken into account that it covers the same question as subparagraph (2)*(a)* of Principle PW5 concerning reproduction rights societies. The latter principle has been accepted without opposition at the meeting of the Committee of Governmental Experts. Therefore, the same wording has been chosen in the second sentence of paragraph (2) of Principle MW10 (former MW11) as in subparagraph (2)*(a)* of Principle PW5.

173. In addition to the modifications mentioned in the preceding paragraphs, the following minor changes have been made in the text of Principle MW10 (former MW11):

—In subparagraph (1)*(a)* (former (i)), a reference has been made to subparagraphs *(e)* to *(g)* (former (v) to (vii)) of paragraph (1) of Principle MW8 which cover the right of public performance, the right of communication to the public and the right of broadcasting and related rights rather than to the whole paragraph without specification (see paragraph 94 of the report).

—In subparagraphs (1)*(b)* (former (ii)), (4)*(c)* and *(e)* (former (iii) and (v)), the adjective "blanket" has been deleted in relation to the word "authorization" because it was stressed at the meeting that the authorization by authors' societies might take forms other than blanket authorizations (see paragraph 101 of the report).

—The words "frequency of the" have been deleted from the last line of subparagraph (4)*(e)* (former (v)), and now a reference is made to the actual use of works, in general, because not only the frequency of the use but also other factors should be taken into account when calculating the royalties to be paid (see paragraph 103 of the report).

The Rights of Performers of Musical Works

174. Principle DC7 (now DC8) about the rights of performers was worded in a general way so that it could be taken as applicable without changes also in respect of performers of musical works. That is why Principle MW12 (now MW11) referred to Principle DC7. In Principle MW12 (now MW11), two changes were necessary; in the revised version, a reference has been made also to the new Principle DC7 on the moral rights of performers, and Principle DC9 about possible limitations has also been included in the reference.

WORKS OF APPLIED ART

Creations To Be Protected as Works of Applied Art

175. Several questions were raised in respect of the definitions included in Principle AA1. On the basis of the explanation given by the Secretariats, the principle was, however, accepted in general (see paragraph 26 of the report).

176. It was proposed that, in paragraph (1) of Principle AA1, the words "artistic creation incorporated in a useful article" should be replaced by the words "artistic works with utilitarian functions" because it was thought that the original wording did not express all aspects of all kinds of works of applied art (see paragraph 27 of the report). The reference to artistic creations with utilitarian functions has been included, as suggested, but the reference to artistic creations incorporated in a useful article has not been deleted because both seem to be necessary to cover all kinds of works of applied art.

177. The idea was raised that the definition of industrial designs should be made more detailed in certain respects (see paragraph 28 of the report). However, the terms of reference of the Committee of Governmental Experts did not cover all kinds of industrial designs in all possible respects; such designs were to be dealt with only to the extent to which they could also be considered to be covered by the notion of works of applied art as stressed in paragraph (1) of Principle AA1. Therefore, a more general definition of industrial designs—as included in paragraph (3) of the same principle—seems to be sufficient in the present context.

178. It was generally held that, in Principle AA2, paragraph (1) was sufficient and that paragraph (2) could be deleted, as it did not add new elements to the preceding paragraph and might lead to misunderstandings. Paragraph (2) has been deleted accordingly.

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

179. No comments were made at the meeting of the Committee of Governmental Experts in respect of the text of Principles AA3 and AA4, therefore they have been reproduced unchanged.

180. An observer from an intergovernmental organization suggested that the protection of computer programs should also be covered by the principles. In answer to that proposal, it was made clear that the terms of reference of the Committee of Governmental Experts did not cover the questions of the protection of computer programs (see paragraphs 31 and 32 of the report).

181. Another delegation stressed that the creation of works by means of computers was not a phenomenon that would only concern works of applied art and it was of the opinion that it would be useful to deal with this question separately in respect of all categories of works (see paragraph 33 of the report). That proposal could only be deemed to refer to a possible future program because the terms of reference of the Committee of Governmental Experts on Works of Applied Art did cover the use of computer systems for the creation of works of applied art.

Works of Applied Art Created by Employed Authors

182. In the original version of the set of principles on works of applied art, there was a separate principle (Principle AA5) about the copyright status of works of applied art created in the scope of employment contracts. This principle has been omitted in the revised principles for the reasons which were indicated in paragraph 39 of the report of the meeting of the Committee of Governmental Experts.

183. The above-mentioned paragraph reads as follows: "One delegation referred to the results of the Committee of Governmental Experts on Model Provisions for National Laws on Employed Authors, held in Geneva in January 1986, and particularly to the fact that the Committee had been unable to offer principles which would have been acceptable both for countries with 'continental' legal traditions and for common law countries. Nevertheless, it found it important that the discussions concerning employed authors should continue, but in a broader context. No attempt to offer separate principles concerning works of applied art should be made because there were no specific considerations which would only be relevant in respect of such works. Another delegation supported those views."

184. The statement of the two delegations quoted in the preceding paragraph seems to be justified. As paragraphs 34 to 38 of the same report reflect, the same discussions were repeated at the meeting of the Committee of Governmental Experts on Works of Applied Art between representatives of countries with "continental" legal traditions, on the one hand, and of countries with common law tradi-

tions, on the other, which had taken place at the meeting of the Committee of Governmental Experts on Model Provisions for National Laws on Employed Authors mentioned in the preceding paragraph.

185. The discussion at the meeting of the Committee of Governmental Experts on Works of Applied Art proved that there was no reason to suggest separate principles, in this field, in respect of works of applicd art (otherwise, neither the original nor the revised versions of the principles on the other categories of works contained and contain principles or comments on works created by employed authors).

186. As a result of the deletion of Principle AA5, Principles AA6 to AA9 have become Principles AA5 to AA8.

Moral Rights

187. It followed from the deletion of Principle AA5 that paragraph (2) of Principle AA6 also had to be deleted because it also dealt with the status of employed authors. The deletion of that paragraph was, otherwise, also proposed by some delegations (see paragraph 42 of the report).

188. After the deletion of Principle AA5, the discussion reflected in paragraphs 43 and 44 of the report has become objectless.

189. In Principle AA6(1) (now AA5), the words "as far as is practicable and in the customary way" have been inserted after the words "be named," as proposed at the meeting (see second sentence of paragraph 42 of the report), to make the principle more practicable.

190. In respect of Principle AA7 (now AA6), there was agreement. One delegation, however, proposed that paragraph (2) be transferred to Principle AA6 (now AA5) concerning the right to claim authorship. Nevertheless, that modification has not been made because paragraph (2) is one of the possible consequences of modifications of works without the author's consent, and it is paragraph (1) of Principle AA6 (former AA7) which deals with the consequences of certain other—more serious—modifications. There is a closer logical relationship between the two paragraphs of Principle AA6 (former AA7) than between paragraph (2) of that principle and Principle AA5 (former AA6), although it is undeniable that there is a certain relationship between the latter principles, too.

Economic Rights

Right of Reproduction

191. In paragraph (1) of Principle AA7 (former AA8), only one modification has been made. It has been made clearer that the right of authorization was of an exclusive nature, as suggested at the meeting of the Committee of Governmental Experts (see paragraph 52 of the report).

192. Several comments were made concerning paragraphs (2) and (3) of the same principle which dealt with the possible limitations to economic rights.

193. The participants opposed, in general, the second part of paragraph (2) which provided for free use in respect of making pictures of copies of works reproduced lawfully by industrial methods (see paragraphs 55 and 60 of the report). The reference to the possibility of such a limitation has been left out.

194. In respect of the first part of the same paragraph—allowing the making of pictures of works of applied art which were permanently in a public domain—there was fairly general agreement, although reference was made to the possible restriction of this exception (see paragraph 58 of the report).

195. Attention was drawn to the fact that the relationship between paragraphs (2) and (3) was not clear enough (see paragraph 57 of the report), and it was suggested that reporting current events should also be mentioned as a particular case of exception (see paragraph 61 of the report).

196. The comments and proposals mentioned in the preceding paragraphs have been taken into account and practically the same solution, and nearly the same wording, have been used to eliminate the possibility of misunderstandings—which might have been created by the existence of two parallel paragraphs on limitations—as in the case of the new Principle FA6(3) in respect of the limitations to the economic rights in works of fine art (see paragraph 114 above). Paragraphs (2) and (3) of Principle AA7 (former AA8) have been merged and all the modifications mentioned above have been included in the text of the new paragraph.

Right of Adaptation

197. In paragraph (1) of Principle AA8 (former AA9), it has also been made clearer that the right of

authorization is of an exclusive nature (see paragraph 62 of the report).

198. In paragraph (2) of the same principle, two completions have been made, both on the basis of proposals made at the meeting of the Committee of Governmental Experts: first, the words "as a useful article" were added to the end of the paragraph to make its meaning clearer (see paragraph 67 of the report) and second, a new sentence has been added referring to the moral rights of authors (see paragraph 66 of the report).

THE PRINTED WORD

Piracy

199. Concerning the changes made in, and the new version of, Principle PW1, see paragraphs 5 to 11 above.

Reprography

200. A great number of participants in the meeting of the Committee of Governmental Experts on the Printed Word expressed their agreement with the main lines of the subchapter on reprography and, in particular, with Principles PW2 to PW8 (see paragraph 40 of the report). Nevertheless, several comments were made concerning some details of the principles.

201. Certain remarks were made on Principle PW2 (which contains the definition of reprographic reproduction and states the need for recognizing the exclusive right to authorize reproduction in respect of reprography), but they only concerned the interpretation of the principle and have not made drafting changes necessary (see paragraphs 42 to 45 of the report).

202. It was suggested by one delegation that in the text of Principle PW3 and in all other relevant principles, the word "limitations" should be replaced by the word "exceptions" (see paragraph 46 of the report). There was hesitation at the meeting about that proposal, and, in the revised set of principles, the word "limitations" has been retained because it clearly covers both types of possible restrictions of rights, that is, free uses and compulsory licenses, while the word "exceptions" might suggest that users are exempt from any obligations which is only the case in respect of one—the less extensive—type of limitations, namely, of free uses.

203. The following modifications have been made in Principle PW3 (which provides for the conditions of limitations) as a result of the discussions at the meeting:

—The original text ("the number of copies is very large") of subparagraph *(b)*(ii) has been replaced by the following text: "multiple copies or related and/or systematic single copies are made" because any level of multiple copying necessarily conflicts with the normal exploitation of the work and the same is true in respect of any form of systematic copying (see paragraph 49 of the report).

—The word "maps" has been included in the list of works contained in subparagraph *(b)*(iii). It was suggested that scientific works should also be included; it has not, however, been found justified because such a general reference might extend the scope of the subparagraph to cases which are not intended to be covered (see paragraph 50 of the report).

—A new subparagraph (iv) has been added to paragraph *(b)* which reads as follows: "copies are made of entire works, or of self-contained parts of works," because it has been found that no limitations are justified either in such cases (see paragraph 51 of the report).

—The reference to commercial purposes or to the non-profit character of the use has been deleted from subparagraph *(c)*(i), because limitations may be unjustified irrespective of such purposes and of such a character of the use (see paragraph 53 of the report).

—The words "and the remuneration of the author" have been deleted from subparagraph *(c)*(v) because, in respect of certain publications, such as scientific ones, the existence or the lack of any remuneration is not a decisive factor in determining whether limitations are justified or not (see paragraph 54 of the report).

204. There was no agreement at the meeting of the Committee of Governmental Experts about paragraph (1) of Principle PW4. Some delegations were of the opinion that it defined the cases in which free use might be allowed too rigidly and mentioned that in certain countries, for example, personal use or private use was free without the conditions mentioned in point *(a)* of that paragraph (see paragraph 55 of the report). Other participants were of opposite view and stated that paragraph (1) of Principle PW4 outlined the sphere of possible free uses too widely and that, in certain cases mentioned in that paragraph, such use was not justified (see the first sentence of paragraph 56 of the report). As was finally suggested (see the sec-

ond sentence of paragraph 56 of the report), paragraph (1) has heen deleted because Principle PW3 seems sufficient in this context.

205. In the original paragraph (2) of Principle PW4—which, thus, has hecome the only paragraph of the principle—two modifications have heen made: first, the reference to free uses has been replaced by a reference to limitations, in general, hecause the principle seems equally applicable in respect of compulsory licenses (see paragraph 59 of the report) and second, in addition to the unreasonable prejudice to legitimate interests of authors, the possihle conflict with a normal exploitation of the works has also heen mentioned as a circumstance that may make limitations unjustified (see paragraph 58 of the report).

206. In connection with Principle PW5, several participants stressed that, while collective administration was preferable to compulsory licenses, it should not he considered as the only alternative; in certain cases, individual arrangements might also be a workahle means of exercising rights in respect of reprography. It was suggested that the phrase "—which is generally the case in respect of reprographic reproduction—" should he deleted from the first sentence of paragraph (1) of Principle PW5, furthermore, that the word "promoted" should he replaced by the word "encouraged" at the end of tbe same sentence and that, finally, in the second sentence of paragraph (1) of Principle PW5, reference should also he made to the lack of appropriate individual arrangements in addition to the lack of appropriate collective administration schemes (see paragraph 61 of the report). Those modifications have heen included in the new version of paragraph (1).

207. Some delegations were of the opinion that the memorandum overemphasized the need for avoiding compulsory licenses. One delegation suggested that the second sentence of paragraph (1) of Principle PW5 should start with the words "[n]on–voluntary licenses can be considered as such encouragement particularly in the case where, and during the time when, ..." rather than witb the words "[n]on–voluntary licenses should only be introduced if, and during the time when, ...", furthermore, that in Principle PW6, the reference to the exclusive nature of the right of reproduction in connection with collective administration should be left out and the second sentence of the principle should read as follows: "[a]t least the following obligations should be respected: ...", and finally, that in paragrapb (1) of Principle PW7, the word "inevitable" should be replaced by the word "necessary." Another delegation supported those proposals; several other participants, however, opposed them and insisted that all the references to the need for avoiding compulsory licenses should be kept (see paragraph 64 of the report). Of the ahove-mentioned three proposed changes, the last one concerning the replacement of the word "inevitable" hy the word "necessary" in paragraph (1) of Principle PW7, has been made, the other two changes, however, have not been included in the new version. Paragraph (1) of Principle PW5 only concerns the possihle choice hetween collective administration and compulsory licenses and in respect of that choice—as was emphasized by several participants in the meeting—strong preference for collective administration seems justified. The deletion of the reference to exclusive rights in the second sentence of Principle PW6 is unjustified because that principle only covers the situation where such rights are recognized, and it is paragraph (2) of Principle PW7 which covers the case of compulsory licensing.

208. In paragraph (2) of Principle PW5 of the document, the phrase "[g]overnments should promote the establishment and the operation of appropriate collective administration organizations" has been replaced by the pbrase "[g]overnments should eliminate any ohstacles to the establishment and the operation of appropriate collective administration organizations" to describe more precisely what role governments may have in that respect (see the first sentence of paragraph 62 of the report). It was agreed that the elimination of ohstacles should not constitute an encouragement for the creation of parallel societies for the administration of tbe same kind of rights (see the second sentence of paragraph 62 of the report).

209. One delegation found subparagraph (2)*(a)* of Principle PW5 too rigid and proposed that its text should be replaced by the following text: "To the extent that the activities of the collective administration organizations are effectively regulated, such activities should be exempted from antitrust restrictions under competition law, either explicitly or implicitly, according to the laws of the country" (see paragraph 65 of the report). That proposal was not supported at the meeting, and subparagraph (2)*(a)* has not been modified hecause its general wording seems to he more appropriate; the details mentioned in the proposed text may he settled in differing ways at the national level depending on the legal, economic and other conditions existing in various countries.

210. Some delegations opposed the idea of the ohligatory use, in reprographic reproduction machines, of electronic devices to control reproduc-

tion, as proposed in paragraph (2)*(b)* of Principle PW5, while an observer from an international non-governmental organization regarded that proposal premature. Several other delegations and representatives of international non-governmental organizations insisted, however, that such a measure should be seriously considered in the framework of national legislation (see paragraph 67 of the report). Subparagraph (2)*(b)* has been retained in the new version of Principle PW5 because it only proposes the consideration of the obligatory use of such devices and does not suggest that such a measure would be immediately applicable in all countries—and under all circumstances—where photocopying machines are operated.

211. An observer from an international non-governmental organization proposed that the following subparagraph *(f)* should be added to paragraph (2) of Principle PW5: "Legislative provisions should facilitate representative groups of authors and publishers to become participating members of collective administration organizations when the number of authors or publishers in a specific group makes individual membership unpracticable" (see paragraph 69 of the report). The proposal was not supported at the meeting and the suggested new subparagraph has not been included in the principle because the problem dealt with has not been considered to be of general importance; such problem may emerge in certain countries in certain situations, but it seems to be more appropriate to leave to national laws to choose how to solve it.

212. An observer from another international non-governmental organization said that paragraph (2) of Prineiple PW5 should also refer to the need for the promotion of international cooperation between collective administration organizations (see paragraph 70 of the report). This proposal was not supported either, and such a reference has not been included in the principle because it was thought to fit better into the comments.

213. Several partieipants stressed that the second sentenee of paragraph (3) of Principle PW5 should not be interpreted as an obligatory participation of an impartial body in the disputes about remuneration because that would bring an element of compulsory lieensing into the system, and therefore the word "should" should be replaced by the word "could" in that sentence (see paragraph 71 of the report). This ehange has been made in the new version.

214. One delegation was of the opinion that a separate principle might be helpful providing for the rules of distribution of the fees collected by the collective administration organizations, with special attention to the parallel interests of the authors and publishers (see paragraph 72 of the report). The proposal was not supported, just to the contrary, several participants expressed the view that even the existing principles went too far in trying to offer guarantees for the appropriate operation of collective administration organizations (see paragraph 73 of the report). It has been considered that those principles are necessary and at the same time sufficient and no more details should be covered in respect of the distribution of fees than those which are already covered by subparagraphs *(c)* and *(d)* of Principle PW6.

215. The idea was also raised that it should be made clear in the principles themselves that the suggested principles about collective administration reflected an ideal system which could not be immediately implemented in every country (see the last two sentences of paragraph 73 of the report). It is, however, a general purpose of the principles to suggest ideal solutions and it may also be true in respect of other principles on various subjects that they cannot be immediately implemented everywhere. It does not seem justified to make such a declaration in relation to this single principle.

216. In paragraph (3) of Prineiple PW7, after the word "considered," the following phrase has been inserted into paragraph (3) of Principle PW7: "—taking into account the nature and custom of the relevant publishing sector—" because in certain cases, such as that of certain scientific journals, special arrangements are justified which may involve that the whole remuneration should go to the publisher (see paragraph 74 of the report).

217. It was also proposed that the first sentence of paragraph (1) of Principle PW8, in addition to the prejudice to the legitimate interests of authors, should also refer to the possible conflict with the normal exploitation of works (see paragraph 75 of the report). This completion seems justified and has been included in the new version.

Storage in and Retrieval from Computer Systems of Protected Works. Electronic Publishing. Electronic Libraries

218. The delegations that spoke on this subject matter at the meeting of the Committee of Governmental Experts on the Printed Word underlined the usefulness of the memorandum, particularly in view of the detailed description of the technology and the suggestions for legislative solutions contained in it which elements were of special impor-

tance for future legislative measures at the national level. All delegations that spoke, furthermore, said that they were in general agreement with the principles proposed (see paragraphs 76 and 77 of the report). Nevertheless, several comments were made concerning certain details of the principles.

219. In respect of paragraph (1) of Principle PW9 (whicb stated that the storage of works in computer systems was reproduction), there was agreement (see paragraph 77 of the report). One delegation, however, proposed that the following sentence should be added to the end of that paragraph: "In any case, the storage of a work which has not been published or otherwise made available to the public should not be allowed without the written authorization of the author" (see paragraph 80 of the report). This proposal was not supported and the new sentence has not been included in paragraph (1) because it was believed that the need for explicit authorization is sufficiently expressed by the original text of the paragraph. The regulation of the form of authorization—in respect of which the suggested new sentence contained a complementary element—may differ from country to country and it seems to be more appropriate to leave this detail to national laws.

220. Paragraph (2) of PW9 referred to the display of works stored in computer systems as a form of reproduction covered by the right of reproduction. The reference was in brackets to express that it was a possible option. The reasons for this optional principle were discussed in detail in the memorandum prepared by the Secretariats for the meeting of tbe Committee of Governmental Experts (see paragraphs 210 to 215 of the memorandum). Because this so-called reproduction theory was a new approach to the question of copyright status of display, it seems to be necessary to refer to those arguments also in tbis memorandum, which is done in the following paragraphs.

221. The display of writings or grapbic works on a screen differs in nature from the performance of a dramatic, dramatico-musical or musical work, the recitation of a literary work and the communication to the public or broadcasting of such a performance or recitation as well as from the performance, communication to the public or broadcast of a cinematographic work. The essence of the difference is that when writings and graphic works are displayed on a screen, they are fixed for a shorter or longer time, while in respect of the above-mentioned other uses that is not the case. The fixation takes place at least for the time wbich is necessary for reading the text and studying or enjoying the graphic work concerned. What appears on the screen is actually a copy of the work (or a part of it), usually in page format, that is, a reproduction of the work.

222. If it is true—and it seems to be true—that the display of a writing or a graphic work on a screen is reproduction and tbe presentation of the work is a copy, such a display is necessarily covered by the right of reproduction. The relationship between the storage of the work in the computer system (as a copy) and the screen display of the same work (as another copy) is similar to the relationship between a printing plate and the printed copies. The preparation of the printing plate does already qualify as tbe reproduction of the work and, of course, both that reproduction and the making of printed copies are covered by the right of reproduction. It is another matter that the preparation of the plate and the making of the copies can be—and actually are—considered as two stages of the same use, and usually both stages are covered—explicitly or implicitly—by the same authorization. When a writing or a graphic work is stored in a computer system for tbe purpose of making it available to the public through display on screens, the two acts of reproduction can be—and actually are—also considered as two stages of the same complex use and usually the same authorization covers both (the authorization may also extend to another possible reproduction, namely to the hard-copy reprographic reproduction of the same work).

223. This so-called reproduction theory offers a *de lege lata* solution (based on the provisions of the international copyright conventions about the right of reproduction) for the protection of authors' rights in respect of all elements of the use of works in tbe framework of storage in computer systems, and retrieval in the form of screen display of writings and graphic works. If the other—"traditional"—line is followed, in certain respects *de lege ferenda* solutions can only be offered, for example, tbrough the recognition of a special "right of display." (This does not mean, however, that no basis exists in the international conventions for the copyright control of display if the "reproduction theory" is rejected. Such control can be exercised through contracts authorizing input on the basis of the right of reproduction. Under national laws, display may be, and in certain countries is, also covered by the right of communication to the public.)

224. At tbe meeting of the Committee of Governmental Experts, several delegations said that they did not consider display a reproduction of thc work, because the copy of the work was not obtained in tangible form, but rather a communication to the public or a public performance which

was covered by the author's exclusive right. One delegation referred to the case law in its country under which the showing of a work on a screen was not considered as producing a copy of the work, but noted that an express right of public display of literary and graphic material was now provided in its copyright statute. Several other delegations and observers from international non-governmental organizations, however, were in favor of further study concerning the possibility of qualifying display as reproduction. Some of these participants underlined the fact that it was sufficient that a work was reproduced and that it was not a further condition that the reproduction be a tangible and lasting fixation (see paragraphs 78 and 79 of the report). On the basis of the results of the discussions, it has seemed to be justified to retain the original principle reflecting the "reproduction theory" as an optional solution.

225. In paragraph (2) of Principle PW9, otherwise, the words "a separate act" have been completed to read "a separate and new act" as proposed at the meeting (see paragraph 81 of the report).

226. In paragraph *(a)* of Principle PW15, a reference has been made to the customary way of indicating the names of authors to make this principle more flexible as suggested by an observer from an international non-governmental organization (see paragraph 84 of the report).

Data Bases

227. There was fairly general agreement about Principle PW16 which contained the definition of data bases and the basic principles concerning their protection (see the last lines in paragraph 77 of the report).

228. One delegation proposed that the first sentence of paragraph (3) of Principle PW16 should mention further possible acts which would result in recognizing data bases as intellectual creations and, thus, the sentence should refer to data bases which, by reason of the "selection, collection, coordination, assembling or arrangement of their contents, etc.," constitute intellectual creations (see paragraph 85 of the report). Paragraph (3) has been completed accordingly.

229. Furthermore, another delegation proposed that, in Principle PW16, a new paragraph should be inserted to read: "When a summary of a work is stored in a computer system, such a summary should be made either by the author of the work himself or on the basis of his authorization" (see the first sentence of paragraph 91 of the report). An observer from an international non-governmental organization expressed concern whether it was meant by that proposal that authorization to prepare a summary would be required if it had not otherwise amounted to an infringement of rights (see the second sentence of the same paragraph). The remark made by the above-mentioned observer drew attention to the possible misunderstandings that might have been created by the insertion of the proposed new paragraph. The question of whether certain types of summaries (reviews, etc.) can be made only with the authorization of the author or not is of general nature and does not only concern summaries prepared for data bases. Much depends also on the nature of the summaries, etc. Therefore, it seems more appropriate to leave this question to national copyright legislation and case law.

230. In respect of the related rights type protection of data bases proposed in Principles PW17 to PW20, there was no agreement at the meeting of the Committee of Governmental Experts.

231. One delegation expressed serious reservations concerning Principle PW17 on possible *sui generis* protection of data bases and also concerning Principles PW18 to PW20 related to that principle. It expressed the opinion that States should extend copyright protection to electronically compiled collections of data on the basis of a reasonable standard of originality and should never insist on a higher standard than for traditional compilations. The delegation was of the view that the danger inherent in *sui generis* protection was that it would fall outside the system of the international copyright conventions and their principle of national treatment, that the coexistence of copyright and *sui generis* protection could result in the dilution of copyright protection and, finally, that *sui generis* protection could in itself be too broad and cover also fairly meager collections which were not worthy of protection (see paragraph 86 of the report).

232. Some participants shared the opinion of the above-mentioned delegation, some other participants were, however, of the view that the need for *sui generis* protection of certain data bases could not be excluded. One delegation referred to the *sui generis* protection of catalogs and similar collections of data which existed in the Nordic countries and said that because it was not justified to differentiate protection according to whether a collection was made on paper manually or in a computer electronically, computerized data bases should necessarily share the status of collections protected under

sui generis protection. It was also empbasized that there were countries where mere skill and labor were not enough for collections to qualify as works protected by copyright on the basis of tbe notion of originality prevailing in such countries, but where the significant investments made by data base producers did, on the other hand, need and deserve some kind of protection (see paragraph 87 of the report).

233. The discussions referred to above showed that there are at least some countries where certain data bases are not protected by copyright, although they would deserve some kind of protection. In those countries, the need for related rights type protection cannot be excluded, the more so because, as an observer from an international non-governmental organization stressed, there is an urgent need to offer global and legally safe protection to data base producers, otherwise they may become reluctant to invest in such an expensive and at the same time increasingly vulnerable service (see paragraph 89 of the report). Therefore, Principles PW17 to PW20 have been retained but put in brackets to express the differing opinions and the fact that those principles may only be needed in certain countries.

234. In Principle PW18, tbe 10-year minimum term of protection has been replaced by a 20-year minimum term as suggested at the meeting (see paragraph 93 of the report).

Public Lending Right

235. Some participants in the meeting of the Committee of Governmental Experts opposed Principles PW21 and PW22 on public lending right, mainly on the basis that they did not consider it a copyright institution, but rather a way of supporting national culture (see paragraphs 96, 104 and 109 of the report). Some other participants supported those principles and were of the view tbat public lending right is a right enjoyed by authors on the basis of the actual use of their works and, therefore, it is necessarily a copyright institution covered by tbe principle of national treatment (see paragraphs 98, 102, 106, 107 and 108 of the report). Still other participants expressed hesitation and were of the view that principles on public lending right would be premature (see paragraphs 97 and 103 of the report).

236. In the new version, Principles PW21 and PW22 have been retained but put in brackets to express tbe hesitation and the divided views of the participants in the meeting.

The Right to Authorize Translations. The Rights of Translators

237. There was fairly general agreement at the meeting of the Committee of Governmental Experts about Principles PW23 to PW25 dealing with these subjects. Only few comments were made in respect of certain details.

238. In paragraph (1) of Principle PW24, the words "of original character" have been deleted to avoid misunderstandings which might lead to an interpretation that the originality of translations was qualified on the basis of criteria otber than those whicb were taken into consideration in respect of literary and artistic works (see paragraph 114 of the report).

239. In Principle PW25, the reference, in brackets, to the right to authorize the translation of a translation into a third language bas been omitted as suggested at the meeting (see paragrapbs 116 and 119 of the report), the more so because the principle has retained its full functions witbout sucb a reference.

240. There were some otber proposals, too, suggesting some completions in the principles (see paragraphs 115 and 117 of the report), but they were not supported by the majority of the participants. Several participants insisted that those changes should not be included (see paragraph 118 of the report). Otherwise, one of those proposals (see paragraph 115 of the report) was not in keeping with Article 2(4) of the Berne Convention, and the other proposal (see paragrapb 117 of the report) would not have added too much to the principles; furthermore, if a statement similar to the suggested principle ("[s]tates should provide, in their national laws, for efficient measures to guarantee to translators an effective exercise of their rights on the basis of copyright") bad not been added to all the other principles which covered rights of authors and of the beneficiaries of neighboring rights, those other principles (as a result of tbe lack of such a specific emphasis) would have been, indirectly, weakened.

The Protection of Typographical Arrangements of Published Editions

241. A number of participants in the meeting of the Committee of Governmental Experts expressed their support for the proposed Principle PW26 (see paragraphs 122, 130, 131 and 132 of the report). Other participants opposed the principle, *inter alia*, because they thought that the protection of publish-

ers should be based on their position as exclusive right holders and, in certain cases, as authors and that the adoption of the proposed principles on a specific right for publishers might lead to an erosion of publishers' rights; they also expressed the concern that the system proposed in the principle would fall outside the international copyright conventions (see paragraph 123 of the report). Still other participants stressed that although they understood the rationale behind the principle, they would find it premature to agree on it (see paragraphs 122 and 128 of the report).

242. Principle PW26 has been retained but put in brackets to express the hesitation and the divided views of the participants. One modification has been made in paragraph (5) of the principle; the following words have been added, as suggested at the meeting: "and the ownership of such copyright (e.g. by a publisher under transfer)" to avoid the possibility of any interpretation on the basis of which it would be thought that publishers' rights are intended to be restricted, in any manner whatsoever, by this principle (see paragraph 132 of the report).

ADDENDUM TO THE MEMORANDUM PREPARED BY THE SECRETARIATS

Part I

Introduction

1. The memorandum prepared by the Secretariats for this meeting (document UNESCO/WIPO/CGE/SYN/3–I to III) covers the eight categories of works mentioned in paragraph 3 of the Introduction to the memorandum which were discussed by Unesco/WIPO Committees of Governmental Experts in the 1986–87 biennium.

2. As indicated in paragraphs 17 and 18 of the Introduction to the memorandum, one more meeting of a committee of governmental experts has been held, since the completion of the memorandum, on a further category of works, namely on photographic works. The present memorandum covers that category of works.

3. The meeting of the Committee of Governmental Experts on Photographic Works was held in Paris from April 18 to 22, 1988.

4. Government delegations from 50 countries (namely from Algeria, Argentina, Barbados, Brazil, Burundi, Byelorussian SSR, Cameroon, Chad, Chile, China, Congo, Costa Rica, Côte d'Ivoire, Cuba, Denmark, Ecuador, Egypt, Finland, France, Gabon, German Democratic Republic, Germany (Federal Republic of), Greece, Guinea, Holy See, Hungary, India, Italy, Japan, Jordan, Kuwait, Lebanon, Malta, Mexico, Morocco, Netherlands, Nigeria, Pakistan, Panama, Philippines, Soviet Union, Spain, Sweden, Tanzania, Thailand, Tunisia, Turkey, United States of America, Uruguay and Yemen) and observers from the Palestine Liberation Organization (PLO) attended the meeting.

5. Observers from four intergovernmental organizations (Agency for Cultural and Technical Cooperation (ACCT), Arab Educational, Cultural and Scientific Organization (ALECSO), Commission of the European Communities (CEC), Council of Europe (CE)) and from 14 international non-governmental organizations (International Association of Art (IAA), International Commission of Jurists (ICJ), International Confederation of Free Trade Unions (ICFTU), International Confederation of Societies of Authors and Composers (CISAC), International Copyright Society (INTERGU), International Council on Archives (ICA), International Federation of Journalists (IFJ), International Federation of Newspaper Publishers (FIEJ), International Federation of Photographic Art (FIAP), International Literary and Artistic Association (ALAI), International Organization of Journalists (IOJ), International Publishers Association (IPA), International Secretariat for Arts, Mass Media and Entertainment Trade Unions (ISETU), Max Planck Institute for Foreign and International Patent, Copyright and Competition Law) participated in the meeting.

6. Discussions were based on the memorandum prepared by the Secretariats (document UNESCO/WIPO/CGE/PHW/3).

7. The participants in the meeting of the Committee of Governmental Experts, while appreciating the quality of the memorandum and stating that the principles and the comments included in it were, in general, acceptable to them, made several observations and proposals concerning certain principles and comments which are reflected in the report of the meeting (document UNESCO/WIPO/CGE/PHW/4).

8. The present addendum follows the structure of the memorandum to which it has been prepared. Part II of the addendum contains the revised set of principles on photographic works as a continuation of the revised set of principles on the eight other categories of works contained in Part II of the memorandum. Part III of the addendum gives the reasons for the changes suggested in the text of the

principles and it also refers to some proposals which emerged at the meeting of the Committee of Governmental Experts but which, for various reasons, do not seem to justify changes, in the same manner as Part III of the memorandum does in respect of the other eight categories of works.

9. For the convenience of the users of the addendum, a table of contents is annexed to the present part (as a continuation of the annex to Part I of the memorandum) indicating the draft principles in Part II and the comments in Part III of the addendum relating to the same subjects.

Table of Contents

Part II

Draft Principles

PHOTOGRAPHIC WORKS

Creations To Be Protected as Photographic Works

Principle PHW1. (1) Photographs are still pictures produced on surfaces sensitive to light [or other radiation] irrespective of the technical nature of the picture-taking process (chemical, electronic or other).

(2) All photographs that contain original elements should be protected by copyright as photographic works. [Those photographs should be considered as containing original elements, and, thus, as being photographic works, in the case of which there is any human influence on the composition and/or any other significant elements of the picture.]

Principle PHW2. Alternative A: To photographs extracted from cinematographic works, the law concerning photographic works should apply.

Alternative B: To photographs extracted from cinematographic works, the law concerning cinematographic works should apply.

Formalities as Conditions of Protection or as Sources of Prima Facie Evidence

Principle PHW3. The copyright protection of photographic works should not be subject to any formalities (such as the indication of the name of the author and/or the year of the production or publication of the photograph on its copies) as a condition of copyright protection.

Principle PHW4. In the absence of proof to the contrary, the persons whose names are indicated on the original copy and/or on the other copies of the photographic works should be presumed to be the authors of such works. This principle is also applicable if the names indicated are pseudonymous where, under the circumstances, there is no doubt as to the identity of the authors who use the pseudonyms.

Ownership of Copyright in Photographic Works

Principle PHW5. The authors (that is, the creators) of photographic works should, as a rule, be recognized as the original owners of copyright in such works.

Principle PHW6. Alternative A: In respect of photographic works created on commission, unless

otherwise provided in contract, the authors (that is, the creators) of such works should be recognized as original owners of copyright. The persons who commissioned the works should, however, have [an exclusive] [a non-exclusive] license to use the works for all purposes for which they have been commissioned.

Alternative B: In respect of photographic works created on commission, unless otherwise provided in contract, the persons who commissioned the works should be recognized as original owners of economic rights (see Principle PHW8) in such works.

Moral Rights

Principle PHW7. Independently of the authors' economic rights, and even after the transfer of the said rights and/or after the alienation of the original copies or any other copies of the photographic works, the authors should have the right to

(i) claim authorship and, as far as is practicable and in the customary way, have their names indicated on the copies, or in connection with any public use, of their works;

(ii) object to any distortion, mutilation or other modification of, or other derogatory action in relation to, their works which would be prejudicial to their honor or reputation.

Economic Rights

Principle PHW8. (1) The owners of copyright in photographic works should have the exclusive right to authorize at least the following acts:

(a) the reproduction of the works in any manner or form (including storage of the works in a computer);

(b) the display of the works to the public on a screen (insofar as such display is not recognized as a reproduction of the works);

(c) the public exhibition of the works;

(d) the making of adaptations of the works;

(e) any communication to the public of the works (including their communication by wire in cable-originated programs);

(f) the broadcasting of the works; any communication to the public by wire (by cable), or by rebroadcasting, of the broadcast of the works, when this communication or rebroadcasting is made by an organization other than the original one;

(g) the inclusion of the (preexisting) works into audiovisual works.

(2) The exclusive right of the authors of photographic works to authorize the acts mentioned in paragraph (1) should not be restricted but in the cases and to the extent allowed under the international copyright conventions. The lawful owners of copies of photographic works should, however, have the non-exclusive right to do or authorize the acts mentioned in points *(b)* and *(c)* of paragraph (1) in respect of such copies.

The Role of the Ownership of the Original Copies of Photographic Works

Principle PHW9. Alternative A: If the ownership of the original copies (for example, the negatives) of photographic works is transferred, it should be considered, unless otherwise provided in contract, that the economic rights (see Principle PHW8) are simultaneously transferred.

Alternative B: If the ownership of the original copies (for example, the negatives) of photographic works is transferred, the authors, unless otherwise provided in contract, should be deemed to retain the economic rights (see Principle PHW8) in such works. The transferees should, however, have the non-exclusive right to do or authorize the acts mentioned in paragraph (1) of Principle PHW8.

Alternative C: If the ownership of the original copies (for example, the negatives) of photographic works is transferred, the authors, unless otherwise provided in contract, should be deemed to retain the economic rights (see Principle PHW8) in such works.

Term of Protection

Principle PHW10. The term of protection of photographic works should, as a rule, be the life of the author and, at least, 25 years after his death.

Part III

Comments on the Draft Principles

Creations To Be Protected as Photographic Works

1. At the meeting of the Committee of Governmental Experts on Photographic Works, the participants expressed their agreement on paragraph (1) and on the first sentence of paragraph (2) of Principle PHW1 which, thus, have been reproduced unchanged in the new set of principles (see paragraphs 27 and 28 of the report).

2. The views of the participants were, however, divided on the second sentence of paragraph (2) of Principle PHW1 (see paragraphs 30 to 38 of the report).

3. Several participants supported the principle included in that sentence, stressing that it offered an objective basis for the delimitation between photographic works and photographs not eligible for copyright protection. Some delegations referred to the legislation and the case law of their countries which were in keeping with that principle.

4. Several other participants opposed the sentence as it was worded in the memorandum because they considered it as a quasi presumption of originality of photographs. Some delegations referred to their national legislation and case law where the concept of originality was different from the one which was reflected in the second sentence of paragraph (2) of Principle PHW1, and emphasized that the same concept should prevail in respect of all categories of works.

5. One delegation proposed that the second sentence of paragraph (2) of Principle PHW1 should be reworded: the principle should reflect that those photographs should be protected as photographic works in the case of which the person who took the picture had influence on the composition of the picture or on any other elements constituting intellectual creation. The delegation considered that, by means of such a wording, the quasi presumption of originality contained in that sentence could be avoided. Some other delegations supported that proposal.

6. Another delegation proposed that the second sentence of paragraph (2) of Principle PHW1 should not refer to the influence of the person taking the photograph but to human influence, in general, because such a wording would cover better all cases where the copyright eligibility of photographs should be recognized. Several participants supported this proposal.

7. Several participants proposed that the second sentence of paragraph (2) of Principle PHW1 should be deleted from the text of the principle and the question of the interpretation of originality should be left to the commentary where the differing approaches at the national level were correctly analyzed.

8. Finally, one delegation proposed that the second sentence of paragraph (2) of Principle PHW1 be put in square brackets to express that it was not applicable in all countries.

9. The Secretariats have considered that the solution mentioned in the preceding paragraph reflects most correctly the fact that the views of the participants were divided at the meeting, as indicated above. Therefore, in the new version, the second sentence of paragraph (2) of Principle PHW1 has been retained but it has been put in square brackets. The sentence has, however, been modified according to the proposal mentioned in paragraph 6 above. Referring to human influence seems really more appropriate than referring to the influence of the person who takes the photograph because it better covers all kinds of photographs (for example, photographs taken by satellites) in which originality may be manifested.

10. In respect of Principle PHW2, several participants were in favor of Alternative A while several other participants were in favor of Alternative B. As agreed at the meeting (see paragraph 40 of the report), both alternatives have been retained to reflect the differing solutions at the national level.

Formalities as Conditions of Protection or as Sources of Prima Facie Evidence

11. All the participants who took the floor in the discussion at the meeting of the Committee expressed their agreement on Principle PHW3 (see paragraph 41 of the report). Therefore, it has been reproduced unchanged.

12. Principle PHW4 was also generally supported. Some delegations, however, were of the opinion that the principle should be restricted to the indication of the name of the author which was only covered by Article 15(1) of the Berne Convention and should not be extended to the indication of the year of the production or publication of the work (see paragraph 42 of the report). Because of the absence of agreement on that part of the principle, the reference to the indication of the year of the production or publication has been left out of the new version of Principle PHW4.

Ownership of Copyright in Photographic Works

13. At the meeting of the Committee, several participants expressed their full support for Principle PHW5.

14. Other participants drew attention to what was described in paragraph 55 of the memorandum in respect of possible exceptions to this principle

and suggested that, in order to avoid misunderstandings, the text of Principle PHW5 should also refer to the possiblity of exceptions. As a solution, it was proposed to insert the words "as a rule" into the text of the principle. As another solution, it was suggested that the principle should simply state that exceptions were possible (see paragraphs 44 and 45 of the report). In the new version of the principle, the former solution has been applied because it was the expression "as a rule" which was used also in other principles on various catagories of works where it was necessary to express that although the principles concerned were offered as general guidance, certain exceptions to them still could not be excluded.

15. In respect of Principle PHW6, some participants expressed their preference for Alternative A, while other participants were in favor of Alternative B (see paragraph 46 of the report).

16. Some participants drew attention to the last phrase of Alternative A and said that a more objective basis should be found than the contemplation of the parties at the moment of commissioning the work. One delegation proposed that, instead of that phrase, Alternative A should simply refer to the purposes for which the photographic work had been commissioned (see paragraphs 47 and 48 of the report).

17. Several participants said that they did not agree either with Alternative A or with Alternative B of Principle PHW6, and one delegation suggested that an Alternative C should be added to the two alternatives contained in the memorandum, which should read as follows: "In respect of photographic works created on commission, the author (that is, the creator) of the photographic work, unless otherwise provided in contract, should be recognized as the original owner of economic rights." Some participants supported this proposal (see paragraphs 51 and 52 of the report).

18. In the new version of Principle PHW6, the comments mentioned in the preceding paragraphs have been taken into account in the following way: Alternative B has been retained without any changes (except that the French version of that alternative has been brought into harmony with the English version by replacing the word "*convention*" by the word "*contrat*"). The original Alternative A and the proposed Alternative C have been merged into one alternative which has become the new Alternative A, and, in this new Alternative A, the reference to the contemplation of the parties has been replaced by the reference to the purposes for which the work has been commissioned. The merger of the two alternatives seemed justified because the original Alternative A was, at least implicitly, also based on the principle suggested as Alternative C, that is on the original ownership of the authors. At the same time, it seems to be obvious that Alternative C, as suggested, would also inevitably involve granting, at least, a non-exclusive license to use the work for the purposes for which it has been commissioned. The original Alternative A went further than that only to the extent that it provided for exclusive licenses in favor of the commissioner. Because, thus, the original Alternative A and the proposed new Alternative C would only have differed in respect of the exclusive or non-exclusive nature of the license granted to the commissioner, those two alternatives have been expressed in the new Alternative A by putting the words "an exclusive," on the one hand, and the words "a non-exclusive," on the other, in square brackets.

Moral Rights

19. In respect of Principle PHW7, it was suggested at the meeting of the Committee that it should be made clear, in the opening lines of the principle, that when copies were mentioned, the original copy of the work was also meant (see paragraph 65 of the report). The new version of the principle makes this clear.

20. It was also proposed that point (i) of Principle PHW7 should be worded in a more flexible manner to make it clear that the obligation to indicate the author's name did not cover cases where it would be unreasonable to meet such an obligation (see paragraph 66 of the report). Point (i) of Principle PHW7 has been changed accordingly by means of using the expression "as far as practicable and in the customary way," an expression which is also used in the memorandum in principles on moral rights in respect of other categories of works.

Economic Rights

21. The participants in the meeting of the Committee generally supported Principle PHW8, and its paragraph (1) has been reproduced in the new version of the principles without changes.

22. One delegation proposed that the opening part of paragraph (1) of Principle PHW8 be worded as follows: "The owner of copyright in a

photographic work should have the exclusive right to authorize any form of exploitation of his work presently known or to be invented in future. In accordance with the provisions of the Berne Convention, he should have the exclusive right to authorize at least the following acts ... etc." (see paragraph 70 of the report). This proposal was not supported by other participants and it is not reflected in the new version of Principle PHW8. The first sentence of the proposed text seems to be too wide, while its second sentence, which only refers to the Berne Convention, is too restrictive; Principle PHW8—as all the other principles—is intended to serve as guidance for national legislators and is not a mere reproduction of certain provisions of either the Berne Convention or the Universal Copyright Convention, although it is true that it corresponds more closely to the more detailed provisions of the Berne Convention than to the more general ones of the Universal Copyright Convention.

23. One delegation, while supporting Principle PHW8, referred to the right of display mentioned in point (ii) of paragraph (1) of Principle PHW8 for which the international copyright conventions did not provide explicitly. Therefore, there were no provisions in the conventions concerning the possible exceptions to that right and, thus, paragraph (2) of the principle did not refer to any exception either. The delegation informed the Committee that, in the national law of its country, there was a particular exception to the right of display of the author of a photograph. The lawful owner of a copy of a photograph had the right to display or otherwise exhibit that copy publicly without the authorization of the author (see paragraph 68 of the report).

24. A special exception in respect of the right of display and the right of exhibition seems to be justified along the lines of the solution mentioned in the preceding paragraph. Therefore, paragraph (2) of Principle PHW8 has been modified accordingly.

The Role of the Ownership of the Original Copy of a Photographic Work

25. At the meeting of the Committee, the views of the participants were divided about Alternative A and Alternative B of Principle PHW9 and a third alternative—Alternative C—was also proposed according to which the author retained his economic rights in his work when the original copy (for example, the negative) was transferred to another person, unless otherwise provided in contract (see paragraphs 73 to 76 of the report).

26. As proposed, a new Alternative C has been inserted in Principle PHW9, and Alternative B has been changed accordingly, namely, the text of Alternative C has been reproduced in it as its first sentence because it had been implicitly understood also in the original version of Alternative B that, unless otherwise provided in contract, the author is the original owner of economic rights. That is the basis on which the original Alternative B stated that economic rights should be considered to be transferred simultaneously with the transfer of the proprietary right in the original copy of the work. This statement has become the second sentence of Alternative B but has been changed as proposed at the meeting of the Committee (see paragraph 76 of the report), namely, the reference to the transfer of the economic rights has been replaced by a reference to the non-exclusive right of the transferee to do or authorize the acts covered by the economic rights.

Term of Protection

27. No change has been necessary in the English version of Principle PHW10. The French version, however, has been corrected, as proposed at the meeting of the Committee (see paragraph 80 of the report) to be brought into harmony with the original English version.

(To be continued)

Studies

Recent Cases and Issues in Australian Copyright

Susan BRIDGE*

Collective Administration of Copyrights and Neighboring Rights

The Experience in the Federal Republic of Germany

Margret MÖLLER*

Correspondence

Letter from Australia

Lauren HONCOPE*

Calendar of Meetings

WIPO Meetings

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

1988

November 28 to December 2 (Geneva)

Committee of Experts for the Preparation of the Diplomatic Conference for the Conclusion of a Treaty on the International Registration of Audiovisual Works

The Committee will examine a revised version of the draft Treaty on the International Registration of Audiovisual Works. The Committee will decide what substantive documents should be submitted to the Diplomatic Conference and establish the draft agenda and the draft Rules of Procedure of that Conference.
Invitations: States members of WIPO or the Berne Union and, as observers, States members of the United Nations and certain organizations.

December 5 to 7 (Geneva)

Madrid Union: Preparatory Committee for the Diplomatic Conference for the Conclusion of Two Protocols Relating to the Madrid Agreement Concerning the International Registration of Marks

The Preparatory Committee will decide what substantive documents should be submitted to the Diplomatic Conference—scheduled to be held in Madrid in June 1989—and which States and organizations should be invited to the Diplomatic Conference. The Preparatory Committee will establish the draft agenda and the draft Rules of Procedure of the Diplomatic Conference.
Invitations: States members of the Madrid Union and Denmark, Greece, Ireland and the United Kingdom.

December 9 (Geneva)

Information Meeting for Non-Governmental Organizations on Intellectual Property

Participants in this informal meeting will be informed about the recent activities and future plans of WIPO in the fields of industrial property and copyright and their comments on the same will be invited and heard.
Invitations: International non-governmental organizations having observer status with WIPO.

December 12 to 16 (Geneva)

Committee of Experts on the Harmonization of Certain Provisions in Laws for the Protection of Inventions (Fifth Session; Second Part)

The Committee will continue to examine a draft treaty on the harmonization of certain provisions in laws for the protection of inventions.
Invitations: States members of the Paris Union and, as observers, States members of WIPO not members of the Paris Union and certain organizations.

December 12 to 16 (Geneva)

Executive Coordination Committee of the PCIPI (Permanent Committee on Industrial Property Information) (Third Session)

The Committee will review the progress made in carrying out tasks of the Permanent Program on Industrial Property Information for the 1988–89 biennium. It will consider the recommendations of the PCIPI Working Groups and review their mandates.
Invitations: States and organizations members of the Executive Coordination Committee and, as observers, certain organizations.

1989

February 20 to March 3 (Geneva)

Committee of Experts on Model Provisions for Legislation in the Field of Copyright (First Session)

The Committee will consider proposed standards in the field of literary and artistic works for the purposes of national legislation on the basis of the Berne Convention for the Protection of Literary and Artistic Works.
Invitations: States members of the Berne Union or WIPO and, as observers, certain organizations.

April 3 to 7 (Geneva)

WIPO Permanent Committee for Development Cooperation Related to Copyright and Neighboring Rights (Eighth Session)

The Committee will review and evaluate the activities undertaken under the WIPO Permanent Program for Development Cooperation Related to Copyright and Neighboring Rights since the Committee's last session (March 1987) and make recommendations on the future orientation of the said Program.
Invitations: States members of the Committee and, as observers, States members of the United Nations not members of the Committee and certain organizations.

May 8 to 26 (Washington, D.C.)

Diplomatic Conference for the Conclusion of a Treaty on the Protection of Intellectual Property in Respect of Integrated Circuits

The Diplomatic Conference will negotiate and adopt a Treaty on the protection of layout-designs of integrated circuits.
Invitations: to be announced in December 1988.

May 29 to June 2 (Geneva)

WIPO Permanent Committee for Development Cooperation Related to Industrial Property (Thirteenth Session)

The Committee will review and evaluate the activities undertaken under the WIPO Permanent Program for Development Cooperation Related to Industrial Property since the Committee's last session (May 1988) and make recommendations on the future orientation of the said Program.
Invitations: States members of the Committee and, as observers, States members of the United Nations not members of the Committee and certain organizations.

June 12 to 28 (Madrid)

Diplomatic Conference for the Conclusion of Two Protocols Relating to the Madrid Agreement Concerning the International Registration of Marks

The Diplomatic Conference will negotiate and adopt two Protocols Relating to the Madrid Agreement Concerning the International Registration of Marks. One of the Protocols is intended to make applicable, with certain changes, the Madrid Agreement in respect of countries not yet party to that Agreement; the other Protocol concerns the complementary use of the Madrid Agreement and the (future) Regulation on the Community Trade Mark.
Invitations: to be announced in December 1988.

UPOV Meetings

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

1989

April 14 (Geneva)

Consultative Committee (Thirty-ninth Session)

The Committee will mainly discuss the outcome of the twenty-fourth session (April 10 to 13) of the Administrative and Legal Committee and prepare the meeting with international organizations.
Invitations: Member States of UPOV.

October 16 (Geneva)

Consultative Committee (Fortieth Session)

The Committee will prepare the twenty-third ordinary session of the Council.
Invitations: Member States of UPOV.

October 17 and 18 (Geneva)

Council (Twenty-third Ordinary Session)

The Council will examine the program and budget for the 1990-91 biennium, the reports on the activities of UPOV in 1988 and the first part of 1989.
Invitations: Member States of UPOV and, as observers, certain non-member States and intergovernmental organizations.

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

Non–Governmental Organizations

1989

September 26 to 30 (Quebec)	International Literary and Artistic Association (ALAI): Congress