

Copyright

Monthly Review of the United
International Bureaux for the Protection
of Intellectual Property (BIRPI)

1st year - No. 10

October 1965

Contents

	Pages
NATIONAL LEGISLATION	
— Japan. Cabinet Order for the Enforcement of the Law concerning the Exceptional Provisions to the Copyright Law required in Consequence of the Enforcement of the Universal Copyright Convention (No. 259, of July 18, 1964) . . .	219
— Norway. I. Royal Decree on the Application of the Act relating to Property Rights in Literary, Scientific or Artistic Works (of April 2, 1965)	221
II. Act relating to the Norwegian Composers' Fund (No. 1, of April 9, 1965)	221
— United States of America. Public Law 89-142 (89 th Congress H. J. Res. 431) (of August 28, 1965)	222
GENERAL STUDIES	
— Judicial Appreciation and Judgments of Value in Copyright (G. Konmantos)	223
INTERNATIONAL ACTIVITIES	
— International Literary and Artistic Association (ALAI) (51 st Congress, Stockholm, August 23 to 28, 1965)	230
JURISPRUDENCE	
— France	233
NEWS ITEMS	
— Malawi. Accession to the Universal Copyright Convention (with effect from October 26, 1965)	234
OBITUARY	
— François Hepp	235
CALENDAR	
— Meetings of BIRPI	236
— Meetings of Other International Organizations concerned with Intellectual Property	236

NATIONAL LEGISLATION

JAPAN

Cabinet Order for the Enforcement of the Law concerning the Exceptional Provisions to the Copyright Law required in Consequence of the Enforcement of the Universal Copyright Convention

(No. 259, of July 18, 1964) ¹⁾

Application for a license to publish a translation

Article I. — (1) Any person who intends to obtain a license to publish a translation (hereinafter referred to as “the license”) under the provisions of paragraph 1 of Article V of the Law concerning the Exceptional Provisions to the Copyright Law required in consequence of the Enforcement of the Universal Copyright Convention (hereinafter referred to as “the Law”) ²⁾ shall submit to the Minister of Education an application stating the following:

- (i) the name and address of the applicant and, in the case of a juridical person, the name of its representative;
- (ii) the original title of the work;
- (iii) the name of the author appeared on the original work (or if the work is anonymous, such fact shall be stated);
- (iv) the name of the publisher appeared on the original work;
- (v) the country where the original work was first published (or if the work was published simultaneously in two or more countries, all such countries shall be enumerated; the same shall apply hereinafter);
- (vi) if the country mentioned in the preceding item is not a Contracting State of the Universal Copyright Convention nor a member of the International Union created by the Berne Convention for the Protection of Literary and Artistic Works, the nationality of the author (or if the author is a stateless person or a refugee defined in Article IX of the Law, such fact shall be stated);
- (vii) the year to which belongs the date of the first publication of the original work;
- (viii) the fact that, after the expiration of a period of seven years from the year following the year to which belongs the date of the first publication of the original work, a translation of such work has not been published in Japanese by the owner of the right of translation or with his authorization, or has been so published but is out of print; and
- (ix) the fact that any of the items of paragraph 1 of Article V of the Law is applicable.

(2) The application mentioned in the preceding paragraph shall be accompanied by the following:

- (i) a certified copy or abstract of the family-register or juridical person-register of the applicant, or any other data showing that the applicant is a Japanese national;
- (ii) any data showing the country where the original work was first published;
- (iii) any data showing the year to which belongs the date of the first publication of the original work;
- (iv) any data showing by *prima facie* evidence that, after the expiration of a period of seven years from the year following the year to which belongs the date of the first publication of the original work, a translation of such work has not been published in Japanese by the owner of the right of translation or with his authorization, or has been so published but is out of print; and
- (v) any data showing that any of the items of paragraph 1 of Article V of the Law is applicable.

Public notice of granting the license

Article II. — The Minister of Education shall, upon granting the license, give public notice thereof in the *Official Gazette*.

Refusal to grant the license

Article III. — (1) The Minister of Education shall, when intending to refuse to grant the license, give previous notice to the applicant of the reason for such refusal and afford him an opportunity for explaining himself and furnishing evidence favourable to him.

(2) The Minister of Education shall, when refusing to grant the license, notify the applicant of such refusal in writing accompanied by the reason therefor.

Application for an approval for the amount of compensation

Article IV. — Any person who intends to obtain an approval for the amount of compensation (hereinafter referred to as “the approval”) under the proviso to paragraph 1 of Article V of the Law shall submit to the Minister of Education an application stating the following:

- (i) the name and address of the applicant and, in the case of a juridical person, the name of its representative;
- (ii) the original title of the work and the name of the author appeared thereon (or if the work is anonymous, such fact shall be stated);
- (iii) the date when the license has been granted;

¹⁾ Text in English kindly communicated by the Ministry of Education of Japan. (*Ed.*)

²⁾ Law No. 86, of April 28, 1956.

- (iv) the estimated amount of compensation;
- (v) the form to be taken for publishing a translation; and
- (vi) the number of copies of a translation to be published and the fixed price of each copy, and any other matters forming the basis of calculating the amount of compensation.

Article V. — A person who has obtained the approval shall, when intending to alter any of the matters forming the basis of calculating the amount of compensation, obtain an approval for altering the amount of compensation, by submitting to the Minister of Education an application stating the following:

- (i) the name and address of the applicant and, in the case of a juridical person, the name of its representative;
- (ii) the date when the approval has been granted;
- (iii) the amount of compensation approved;
- (iv) the altered amount of compensation intended to be approved;
- (v) the contents of alteration in the matters forming the basis of calculating the amount of compensation.

Article VI. — The provisions of Articles II and III shall apply *mutatis mutandis* to the approval and an approval for altering the amount of compensation.

Payment and deposit of compensation

Article VII. — The amount of compensation to be paid or deposited under the proviso to paragraph 1 of Article V of the Law shall be the whole amount approved; provided that, in cases where a translation is published in several volumes or issues, it shall be such amount as corresponding to such volumes or issues out of the whole amount approved.

Deposit of Compensation

Article VIII. — (1) A person who has obtained the approval may deposit the amount approved, in any of the following cases:

- (i) where the owner of the right of translation refuses to receive or cannot receive the compensation; or
- (ii) where the owner of the right of translation cannot be identified.

(2) The deposit of compensation under the provisions of the preceding paragraph shall be made at a deposit office conveniently near to the address of the person who has obtained the approval.

Matters to be printed on the copies of a translation

Article IX. — On the copies of a translation to be published under the license, there shall be printed the following:

- (i) the original title of the work and the name of the author appeared thereon (or if the work is anonymous, such fact shall be stated);
- (ii) the name of the publisher appeared on the original work;
- (iii) the year to which belongs the date of the first publication of the original work;
- (iv) the name and address of the publisher of the translation and, in the case of a juridical person, the name of its representative; and
- (v) the fact that the translation is to be published under the license, and the date when such license has been granted.

Supplementary Provision

This Cabinet Order shall come into force as from the day of its promulgation.

NORWAY

I

**Royal Decree on the Application of the Act relating to Property Rights
in Literary, Scientific or Artistic Works**

(Of April 2, 1965)

Pursuant to the Act relating to Property Rights in Literary, Scientific or Artistic Works of May 12, 1961, Article 20, paragraph 1, is provided:

1. — By a recording under these regulations pursuant to the Act relating to Property Rights in Literary, Scientific or Artistic Works of May 12, 1961, is understood production of copy by transfer of the above mentioned works to means which can reproduce the works for broadcasting or television.

2. — The Norwegian State Broadcasting Corporation may make recordings of literary, scientific or artistic works without special consent when

- (a) the recording is made by means of equipment belonging to the Norwegian State Broadcasting Corporation, and
- (b) the recording is made for use by the broadcasts of the Norwegian State Broadcasting Corporation, and
- (c) the Norwegian State Broadcasting Corporation in other respects has the right to include the works concerned in its programs, i. e. that the Norwegian State Broadcasting Corporation, pursuant to law or agreement, has the right to broadcast the work.

3. — Recordings being made pursuant to Article 20, paragraph 1 of the Act relating to Property Rights in Literary, Scientific or Artistic Works (cp. Article 2 of these regulations) may be used by the Norwegian State Broadcasting Corporation for its own broadcasts in programs made for television or radio. Included in use for its own broadcasts are also programs which are broadcast simultaneously over foreign stations. When the Norwegian State Broadcasting Corporation is making use of a recording pursuant to Article 2,

the supposition is that the condition pursuant to Article 2 (c) is present in each case, and that compensation for the production is rendered to the author in accordance with law or agreement.

A recording, however, shall not be used for broadcasts if more than one year has passed since the recording was made, nor can the recording be used in more than four broadcasts during the said year. These restrictions do not apply to literary, scientific or artistic works created by a Norwegian citizen.

4. — Recordings being made pursuant to Article 20, paragraph 1 of the Act relating to Property Rights in Literary, Scientific or Artistic Works (cp. Article 2 of these regulations) may be preserved one year after the recording has been made. Unless the recording relates to a work produced by a Norwegian citizen, or special agreement has been established, the recording shall be destroyed or extinguished at the expiration of the said year. Recordings of documentary character, however, may be kept by the Norwegian State Broadcasting Corporation for more than one year in the number of copies which is necessary.

5. — The provisions of these regulations apply only to recordings which are made after July 1, 1961, and to works which are subject to copyright according to the Act relating to Property Rights in Literary, Scientific or Artistic Works of May 12, 1961.

The provisions shall apply correspondingly to performing artists or other persons according to their rights as laid down in Chapter 5 of the Act relating to Property Rights in Literary, Scientific or Artistic Works of May 12, 1961.

II

Act relating to the Norwegian Composers' Fund

(No. 1, of April 9, 1965)

Article 1. — A Fund for Norwegian composers is hereby established with the aid of the royalties to be paid pursuant to this Act.

The Fund shall be used to assist Norwegian composers and their heirs, and for other purposes, in order to develop the art of musical creation in Norway.

Article 2. — The Fund shall be administered by a Board of Directors consisting of five members, each with an alternate, designated by the King for a period of four years.

The Ministry shall determine the working regulations of the Board of Directors and the detailed rules for verification of the Fund's accounts. It shall determine the remuneration of the members of the Board of Directors.

The Ministry shall report each year to the *Storting* on the Fund's activities.

Article 3. — Royalties shall be paid to the Fund by all companies and other associations which, either themselves or through their designated representatives, for a lucrative purpose or in a continuing manner, function in Norway as intermediaries acting in the name of authors for the collection of the monies due to authors on account of the recording or public performance of musical works.

Companies or other associations which wish to engage in Norway in any activity such as is described in the preceding paragraph must be authorized to do so by the King, who may require a guarantee covering the payment of royalties to the Fund as well as the responsibility which the company or association concerned might incur towards the authors on whose account they have collected monies; other conditions may also be attached to the granting of such authorization.

Within the meaning of this Act, a musical work shall be deemed to be any intellectual creation which is protected as being a musical work, with or without text, pursuant to the Copyright Act of May 12, 1961.

Article 4. — The royalties payable to the Fund shall be calculated on the basis of the gross turnover of the institu-

tion required to pay them. The Ministry shall determine the rate of the royalties within the maximum limits established by the King. The Board of Directors shall be heard before the rates or amounts of payable royalties are determined.

The Board of Directors shall calculate and collect royalties.

Any dispute concerning the obligation to pay royalties or the calculation thereof may be brought before the Ministry.

The Board of Directors shall have the right to require from all whom it considers liable to pay royalties, pursuant to Article 3, whatever information it deems necessary in order to decide whether the obligation to pay royalties exists and to calculate the amount thereof.

The Ministry shall issue detailed instructions concerning the obligation to furnish information and the payment of royalties. In special circumstances, it may reduce or cancel royalties already charged.

Royalties may be collected by means of attachment.

Article 5. — Whosoever, whether intentionally or inadvertently, contravenes or contributes towards the contravention of this Act or the provisions established pursuant to it shall be liable to punishment by a fine.

Article 6. — This Act shall enter into force immediately.

UNITED STATES OF AMERICA

Public Law 89-142 (89th Congress H. J. Res. 431)

(Of August 28, 1965)

Joint Resolution, extending the duration of copyright protection in certain cases:

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That in any case in which the renewal term of copyright subsisting

in any work on the date of approval of this Resolution, or the term thereof as extended by Public Law 87-668, would expire prior to December 31, 1967, such term is hereby continued until December 31, 1967.

Approved August 28, 1965.

GENERAL STUDIES

Judicial Appreciation and Judgments of Value in Copyright '1)

Georges A. KOUMANTOS
Professor, University of Athens

RESOLUTION No. 1

Revision of the Copyright Act of the United States of America

The ALAI, meeting in Congress in Stockholm from August 23 to 28, 1965, after hearing Mr. John Schulman's report on the progress made in the United States between 1961 and 1965 in preparation for the revision of the Federal Law on Copyright, and the résumé of the Bill now before the American Congress,

Notes with satisfaction:

- that the preparatory work is proceeding normally towards the ultimate discussion and vote on the Bill in due course;
- that the Bill provides for a unification of Federal Law, which would take the place of the current diversity of systems of protection, both in respect of published and unpublished works;
- that the Bill envisages extending the present term of protection for works already created, and the application for the future of the system based on the life of the author, plus a period of protection of fifty years *post mortem auctoris*;
- that the exemption hitherto granted to juke-boxes would be abolished;

Regrets on the other hand the maintenance of the provisions relating to the system of compulsory licence in respect of mechanical reproduction, despite the increase in the amount of the royalties due in this case to the authors;

And, considering that the grant of protection to published works of foreign origin would remain subject to the existence of a convention, treaty, or presidential proclamation, urges that the United States accord the greatest possible protection to the said works, in particular, by adhering to the conventional system of the Berne Union.

RESOLUTION No. 2

New copyright legislation in the German Federal Republic

The ALAI, meeting in Congress in Stockholm from August 23 to 28, 1965, being greatly interested in Dr. Reimer's analysis of the new Copyright Act of the German Federal Republic,

Expresses its satisfaction with the provisions in this Act which are favourable to the authors, namely:

- the extension of the term of copyright protection to seventy years *post mortem auctoris*;
- the recognition of the right of public delivery of a literary work which has already been published;
- the introduction of the *droit de suite* for the benefit of authors of works of the figurative arts;
- the grant of equitable remuneration in the case of the loan for pecuniary gain of copies of works reproduced by lending libraries;
- the recognition of the author's right to a share in the selling price of instruments designed to record and reproduce for private use;
- the express recognition by the Act of various aspects of the moral right;

Notes with satisfaction that, parallel to the adoption of the new text, the German Federal Republic is preparing to ratify the Brussels Text of the Berne Convention.

RESOLUTION No. 3

Articles 9, 10 and 10^{bis} of the Berne Convention

The ALAI, meeting in Congress in Stockholm from August 23 to 28, 1965, after hearing Dr. Kleine's report on the right of reproduction and dissemination, and Professor Mario Fahiani's report on press rules, quotations and reports of current events;

Article 9

Approves the express recognition, in Article 9 of the Berne Convention, of the author's exclusive right to authorize reproduction even of articles on current economic, political or religious topics intended for publication in the press;

Requests that this recognition should also extend to the right to distribute copies of the works concerned;

Declares itself opposed to leaving national legislation any option to limit the exercise of the aforesaid rights, apart from the exceptions already provided for in the Convention.

Article 10

Considers that the idea of "quotation" is inadmissible in certain domains, notably as regards works of art, as it usually amounts to re-production in toto;

Declares itself, accordingly, in favour of the maintenance of the present text of paragraph (1);

Alternatively, if the present text must be changed, records its preference for the version proposed by the Authors' Consultative Committee which is, moreover, in harmony with that adopted by the first Committee of Experts.

Article 10^{bis}

Considers that the words "to the extent warranted by the informative aim in view" should be included in the text, but declares itself in favour of the more restrictive text originally proposed by the Study Group and accepted by the Authors' Consultative Committee on the grounds of the limitations and distinctions between the categories of works which it includes.

RESOLUTION No. 4

Articles 14 and 2, new paragraph (2), of the Berne Convention

The ALAI, meeting in Congress in Stockholm from August 23 to 28, 1965, after hearing Mr. J. Van Nus's general report:

(1) With regard to Article 14:

Accepts the amendments proposed in respect of paragraphs (1) and (2);

Opposes the introduction of a presumption of transfer, in any form, into the new paragraph (4) of Article 14 and is in favour of the maintenance of the present system;

Would agree, however, as a second choice, to the wording of the rule for interpreting contracts proposed by the French delegation to the Committee of Governmental Experts in Geneva, which in no way constitutes a presumption of transfer, subject to the two conditions approved by the Authors' Consultative Committee:

- that the word "written" be reintroduced into the text before the word "contract";
- that pre-existent works remain outside the field of application of the said rule;

Expresses satisfaction that the Committee of Governmental Experts should have taken into account the rule proposed for paragraph (6) providing for participation by authors of cinematographic works in the receipts from the exploitation of such works;

Regrets, however, that the Committee saw fit to suggest that the share should be calculated on the basis of the "producer's receipts" instead of on the exhibitor's receipts in all places where the films are screened;

Is opposed to any recognition in Article 14 of the notions of a producer-author and of legal cession to the producer.

(2) With regard to Article 2, new paragraph (2):

Disagrees with the indiscriminate equation with cinematographic works of all works executed by any process producing visual effects analogous to those of cinematography;

Considers that, for the time being, it would be preferable to stop at the inclusion in the list of protected works — which is non-restrictive — (paragraph 1) of works of television, to protect them on the same footing as the rest.

RESOLUTION No. 5

Articles 6^{bis} and 14 of the Berne Convention

The ALAI, meeting in Congress in Stockholm from August 23 to 28, 1965, after hearing Professor Michaélides-Nouaros's report and having considered the proposition of the Committee of Governmental Experts in Geneva,

Welcomes the scheme to extend the obligation of countries of the Union to provide for the protection of an author's moral rights after his death until the expiry of the copyright;

Opposes the addition to Article 14 of any new paragraph concerning authors' moral rights in respect of cinematographic works, as the terms of Article 6^{bis} seem adequate and applicable to all cases.

RESOLUTION No. 6

New Article 25^{bis} and Article 28, new paragraph (2),
of the Berne Convention

The ALAI, meeting in Congress in Stockholm from August 23 to 28, 1965, after hearing Mr. Jean Vilbois's report on the proposal to re-introduce, as a new Article 25^{bis}, the option of accession with reservations for the benefit of countries deeming themselves in the "developing" phase;

Regrets that the Committee of Governmental Experts did not take into consideration the suggestions by the Authors' Consultative Committee in its report, as conditions for acceptance of the principle of the measure recommended, in order to emphasize its exceptional and transitional nature;

Associates itself with the said suggestions, namely

- (1) as to the form,
that an additional protocol be introduced,
- (2) as to the beneficiaries, and given the difficulty of finding a suitable criterion for determining what is a developing country,
that a retroactive date be fixed to be reckoned from the date when these countries either themselves assumed the conduct of their international relations or became independent;
- (3) as to the number and scope of permissible reservations and their duration,
that they be limited to the following matters and be for a period of ten years, renewable once:
 - (a) translation rights;
 - (b) radiodiffusion rights;
 - (c) the minimum term of protection;
 - (d) the conditions governing the exercise of the rights of reproduction, and public presentation and performance, when such reproduction is destined for the exclusive use of educational establishments in the context of their teaching activities;

On the other hand objects to the grant of any option to conclude special arrangements in derogation of the provisions of Article 20;

Further considers that, under the terms of the proposed new paragraph (2) of Article 28, the entry into force of Article 25 on simple notification and before the beneficiary countries have themselves ratified the text of the Convention is inadmissible.

RESOLUTION No. 7

Draft amendment to Article 2, paragraph (2), and to Article 7
of the Berne Convention

The ALAI, meeting in Congress in Stockholm from August 23 to 28, 1965, after hearing Professor André Françon's report on the revision of the provisions of the Berne Convention relating to works of applied art,

Confirms its established doctrine on the protection of works of applied art and of designs and models, whether industrial or not;

Having considered the proposal for a 25-year term of protection for designs and models under Article 7 made by the Committee of Governmental Experts, notes that — although it represents a minimum — it is an improvement as compared with the present situation;

But noting a tendency on the part of certain States systematically to narrow down the scope of protection by their legislation, on the strength of the provisions of the first sentence of paragraph (5), Article 2, and noting on the other hand, apparent emergence, of recent years, of certain trends in some industrial circles seemingly creating a specific category of "industrial" models,

Urges that, in such situations, the provisions of paragraph (5) of Article 2 be limited to these latter industrial designs and models and that works of applied art and the drawings explicitly enumerated in paragraph (1) of Article 2 should not be subjected to restrictions of protection by any national legislation regarding the incidence of such restrictions.

RESOLUTION No. 8

Proposed changes in the administrative structure
of the Unions and of BIRPI

The ALAI, meeting in Congress in Stockholm from August 23 to 28, 1965, after noting the observations presented by Professor H. Deshois on

the contents of the draft Convention on the Intellectual Property Organization (IPO), which has issued from the discussions of the Committee of Governmental Experts in Geneva from March 22 to April 2, 1965;

Shares the rapporteur's fears with regard to certain specific provisions of the draft on the administrative reform of the Unions and of BIRPI and urges their amendment;

Considers, firstly, that the concern which the draft evinces to maintain and consolidate the Unions' autonomy and independence should be approved;

Feels that it is particularly desirable to seek appropriate means of establishing complete parity between the Paris and Berne Unions at their joint meetings and when votes are to be taken on questions of common interest;

Declares itself in favour of accepting the provision of technical and legal assistance in the field of copyright to the developing countries, even if the latter are not yet members of the Unions;

Fears, however, that the acceptance of these countries into the IPO as members, conceded certain prerogatives, might have less than satisfactory consequences;

Considers, in any case, that the role of these countries should be purely recommendatory and be limited to the frame of reference of the pursuit of the technical and legal assistance aforesaid;

Considers that the necessary studies should be continued in greater detail with a view to the preparation of a final draft to be submitted to the governments of the Unions' member countries;

Urges that any texts proposed be so conceived that nothing in the actual tenor of the articles or in the construction which might be put on certain of them taken together can in any way compromise the absolute independence of the Unions;

Requests the national groups of ALAI to take the most effective action possible in their respective countries to these ends.

RESOLUTION No. 9

Article 11^{bis} of the Berne Convention

The ALAI, meeting in Congress in Stockholm from August 23 to 28, 1965, after hearing the report drawn up by Mr. A. Tournier on Article 11^{bis} of the Berne Convention,

Adopts the conclusions of this report;

Decides accordingly to lay the following proposals before the Swedish/BIRPI Study Group:

- (a) to delete paragraph (2) of Article 11^{bis}, which permits the countries of the Union to legislate on the conditions governing the exercise of an author's right to authorize the radiodiffusion of his works or the communication to the public of the original radiodiffusion of such works,
- (b) to delete the second and third sentences of paragraph (3);
Suggests alternatively, should these proposals not be accepted,
- (a) insertion of the words "technical and artistic" before the word "facilities", and of the words "for non-commercial purposes" after the word "emissions" in the second sentence of paragraph (3);
- (b) the following sub-paragraph to be added after paragraph (3):
"Nevertheless legislation at national level, in the cases stipulated in paragraphs (2) and (3) shall not purport to deprive authors of the right to settle their relations with broadcasting organizations by contract".

RESOLUTION No. 10

Article 13 of the Berne Convention

The ALAI, meeting in Congress in Stockholm from August 23 to 28, 1965, after hearing Mr. A. Tournier's report on Article 13 of the Berne Convention,

Adopts the conclusions of this report;

Decides accordingly to lay the following proposals before the Swedish/BIRPI Study Group:

- (a) to delete paragraph (2) which permits each country of the Union to determine in its own legislation reservations and conditions relating to the exclusive right of authors of musical works to authorize the recording of such works by instruments capable of reproducing them mechanically (statutory or compulsory licences);

(b) to delete paragraph (1) if the 1967 Diplomatic Conference recognizes unreservedly the exclusive right of reproduction in a new Article 9, and considering that Article 11 grants to authors of dramatic, dramatico-musical and musical works the exclusive right of authorizing the public distribution by any means of the presentation and performance of their works;

(c) if the author's exclusive right of authorizing the distribution of his works is not introduced in a new Article 9, to substitute for the present paragraph (1) a paragraph granting to authors of musical works the exclusive right of authorizing the distribution of recordings of such works by instruments capable of reproducing them mechanically;

(d) if paragraph (1) is deleted or replaced by a new text introducing the right of distribution of mechanical reproductions, to amend as follows the beginning of paragraph (2), should that paragraph be maintained:

"Reservations and conditions relating to the exclusive right of authors of musical works to authorize the recording of such works by instruments capable of reproducing them mechanically may be

determined by legislation in each country of the Union, in so far as it may be concerned; but . . ." (the rest of the paragraph unchanged);

Expresses the hope that the Study Group will take these proposals into consideration;

Approves the new text proposed for paragraph (3).

RECOMMENDATION

The ALAI, meeting in Congress in Stockholm from August 23, to 28, 1965, after taking cognizance of the wish expressed by the German group to have the general term of copyright protection extended,

Considering the provisions in the new Copyright Act of the German Federal Republic,

Recalls the spirit of its previous resolutions on this question during the Congresses held in Athens and Florence, and

Reiterates its sympathy with any measures calculated to achieve in any other country an extension of the term of protection of literary and artistic works.

JURISPRUDENCE

FRANCE

I

Literary and artistic property. Special rules in respect of the property of works of art. Protected works. Works of applied art. Authors' rights. Protection. Scope. Protection due even when the artistic value of the work is inferior to that of the original models on which it is based.

(*Cour de cassation, ch. commerciale*, March 23, 1965. — *Société Tissage de Soieries des Cévennes v. Société anonyme Manufacture alsacienne de tissus imprimés Mati and Société E. Perrot et Cie*)

The legislative decree of July 19-24, 1793, amended by the law of March 11, 1902, grants a privative right and a monopoly of exploitation to "designers of ornaments whatever the value and the purpose of the work"; this right exists whenever the work is new and distinguishable from the pre-existing public domain; in particular, the novelty may be the result of a simple grouping of elements, already in the public domain, which has never, however, been done before.

In refusing the protection of the law to a new grouping of common decorative elements on the principal ground that the original models from which the designer took his inspiration were of superior artistic value, the judgment contested has been falsely applied and thus violated the afore-mentioned texts.

II

Literary and artistic property. Authors' rights. Moral right. Right to oppose the mutilation of the work. Refrigerator decorated by an artist. Objection to the sale of separate parts.

(*Cour de cassation, Ire ch. civile*, July 6, 1965. — *Fersing v. Bernard Buffet*)

The author's moral right in an artistic work gives him the right to take care that his work is not distorted or mutilated after being disclosed to the public, when the work in question, having been acquired as such, forms a unit in respect to the subjects chosen and the manner in which they have been treated.

Consequently, a Court of appeal has allowed the suit of a painter requesting that the purchaser of a refrigerator, decorated by him with a view to its sale by auction by a benevolent society, be prohibited from selling separately the panels removed from the refrigerator, and has awarded damages of one franc for violation of his moral right to the painter injured by the mutilation of his work as a result of the removal of these panels.

III

1. Claim. Claim for tangible property. The rule in respect of property. Possession is nine points of the law. "Bona fide" possession. Acquisition by a dealer of a work of art by a contemporary artist. Unfinished canvasses. Non-production of proof of good faith.

2. Literary and artistic property. Artistic property. Paintings. Unfinished canvasses. Sale. The painter's right to finish his paintings reserved. Right to correct. Right of the painter to obtain restitution.

(*Cour d'appel d'Orléans, Aud. solennelle*, March 17, 1965. — *Rouault v. Petrides*)

1. Article 2279 of the Civil Code requires that the possessor shall act in good faith, that is, in the belief that at the time of entering into possession of an article the said article has been transmitted to him by the sole and lawful proprietor.

The acquisition of a work of art, such as the painting of a contemporary artist, must be accomplished with due precaution and requires the scrupulous dealer who has verified its authenticity to make sure of the qualifications of the seller and the conditions of his possession.

In the case in point, a Paris picture dealer, aware of the rules of his profession, cannot assert that he has acquired in good faith one of the 819 unfinished canvasses of Rouault which have remained the property of the latter.

2. A work of art cannot be put on sale until its creator has freely relinquished the work by a discretionary act delivering it over to the public, that is to say, by exercising the right of disclosure which is an essential attribute of the moral right. He has the right to claim this work, even if it is in the hands of a *bona fide* purchaser.

OBITUARY

François Hepp

François Hepp has gone and Copyright has lost another of its advocates. The sadness of this loss is heightened by a feeling of solitude, for with each disappearance the road seems harder to those that are left and the burden heavier to shoulders that are wearier.

François Hepp was one of our number for many years, and, looking back, the work he wrote so long ago, in collaboration with the late Professor Escarra and Mr. Jean Rault, on the French doctrine of copyright, already bore witness to a legal mind that was well-acquainted with its subject. François Hepp loved copyright for itself, almost as an abstraction of the mind against a background of reality, but first and foremost as an abstraction.

Those who did not have occasion to hear him at official or other international meetings, developing in evocative terms his own ideas around the central theme, can have no idea how much a little light relief can help a dry discussion.

It would have been difficult, too, to resist his spirited invocations of the Fathers of the Church (Saint Thomas Aquinas was the favourite) in the midst of a syllogism. The Fathers may not always have been convincing, but his roguish glance spoke volumes!

This attitude of mind, in which the heart also had its place, made it possible for François Hepp to maintain the essentials of the doctrine of copyright when he had to insist on their recognition and application.

When the new French Copyright Law was being drafted, François Hepp put his great legal experience at the service of the Society of Legislative Studies and the Intellectual Property Commission set up by the Directorate of Arts and Letters.

As creator and first Head of the Copyright Division of Unesco, he had a difficult task to accomplish: in the teeming world of ideas, copyright seemed to many people like an obstacle to the dissemination of these ideas and their expression. Understanding yet persuasive, François Hepp succeeded, under cover of concessions to all sides in preserving

a doctrine which 150 years of recognition and observance had not weakened.

Thus, slowly and surely, fortified by the support of those who presided at the birth of the new International Institution, he shepherded copyright along the road to a new Convention, established at Geneva in 1952. He may have found the original idea in earlier studies, in particular those of the International Institute of Intellectual Cooperation, but the credit for working it out and bringing it to a successful conclusion belongs largely to him, and those who saw him at work can testify that he spared no trouble and no effort to reach his goal, uniting the sympathisers, encouraging the half-hearted, and winning over confirmed opponents.

As a distinguished jurist, honorary member of the Association, and representative of Unesco or of private groups, François Hepp always gave loyal allegiance to the International Literary and Artistic Association, with that unflinching courtesy of his.

When the time came for him to retire, François Hepp did not lose interest in copyright. He still came to see us, always the same youthful figure, the same alert mind; but the smile in his eyes was tinged with melancholy. Perhaps he had been too hopeful.

It is not the intention of the writer of this modest memorial to recall all the activities of the man who has died; we know that other groups and other associations always found him ready to offer his services.

His life belongs to his own people and to those on whom he bestowed his friendship, discreetly, tactfully if possible, in silence if necessary.

But what belongs to all is the desire of a man to serve and the fulfilment of this desire to the best of his ability. For that alone, François Hepp will not be forgotten.

Marcel BOUTET
President of the International Literary
and Artistic Association
President of the French Legal Association
for the Protection of Copyright

