

# Copyright

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## Contents

	Pages
NATIONAL LEGISLATION	
— Tunisia. I. Law relating to Literary and Artistic Property (No. 66-12, of February 14, 1966) . . . . .	23
— Tunisia. II. Law amending the Law No. 66-12 of February 14, 1966, relating to Literary and Artistic Property (No. 67-3, of January 4, 1967) . . . . .	27
CORRESPONDENCE	
— Letter from Brazil (Hermano Duval) . . . . .	28
NEWS ITEMS	
— United Kingdom. Notification concerning the application to Gibraltar of the Rome Convention for the International Protection of Performers, Producers of Phonograms and Broadcasting Organisations . . . . .	36
— Netherlands. Ratification of the European Agreement concerning Programme Exchanges by Means of Television Films (with effect from March 5, 1967) . . . . .	36
— Italy . . . . .	36
BOOK REVIEWS	
— La Convention de Rome (10-26 octobre 1961). Etude de la protection des artistes, interprètes ou exécutants, des producteurs de phonogrammes et des organismes de radiodiffusion (Xavier Desjeux) . . . . .	37
— Photography and the Law (George Chernoff and Hershel Sarbin) . . . . .	37
— Art Proceeds Act: A study of the <i>droit de suite</i> and a proposal enactment for the United States (Diane B. Schulder) . . . . .	37
CALENDAR	
— Meetings of BIRPI . . . . .	38
— Meetings of Other International Organizations concerned with Intellectual Property . . . . .	39



# NATIONAL LEGISLATION

## TUNISIA

### I

## Law relating to Literary and Artistic Property

(No. 66-12, of February 14, 1966) \*)

### CHAPTER I

#### Subject-matter, scope and beneficiaries of copyright

*Article 1.* — Copyright shall subsist in:

(a) all original literary, scientific or artistic works, irrespective of their value, destination, manner or form of expression, such as:

- (1) books, pamphlets and other literary, scientific or artistic writings;
- (2) lectures;
- (3) works for stage performance or for broadcasting (sound or visual), dramatic and dramatico-musical as well as choreographic and pantomimic works;
- (4) musical works, with or without text;
- (5) works of painting, drawing, lithography, etchings, woodcuts and similar works;
- (6) sculpture of all kinds;
- (7) architectural works, designs and models, as well as the building itself;
- (8) pictorial woven tissues and articles of artistic handicraft and applied art, including sketches and prototypes as well as the work itself;
- (9) maps, and also drawings and graphic and plastic representations of a scientific or artistic nature;
- (10) cinematographic works, to which are assimilated, for the purposes of this law, works expressed by a process producing visual effects analogous to those of cinematography;
- (11) photographic works, to which are assimilated, for the purposes of this law, works expressed by a process analogous to photography;
- (12) translations, arrangements and adaptations of the above-mentioned works;
- (13) works inspired by folklore;

(b) the title of a work.

*Article 2.* — Copyright shall include the exclusive right to do or to authorise the doing of any of the following acts, namely:

- (1) to reproduce the work in any material form, including cinematograph films and phonograms;
- (2) to communicate the work to the public by performance or by broadcasting;

(3) to communicate the broadcasting of the work to the public by wire, by loudspeaker, or by any other instrument transmitting signs, sounds or images;

(4) to make any translation or any adaptation of the work.

For the purposes of this law, "work" means the work either in its original form or in any form recognisably derived from the original.

*Article 3*<sup>1</sup>). — The author of a work is, in the absence of proof to the contrary, the person under whose name the work is divulged.

However, and subject to the provisions of Article 21 below, when the agents of a public corporation produce a work within the framework of their functions, the copyright shall belong to the said agents, subject to any stipulation to the contrary deriving from the contract existing between the corporation and its agents.

*Article 4.* — A work of joint authorship is a work in the creation of which several physical persons have co-operated, and whose respective contributions are inseparable from each other.

A composite work is a new work in which a pre-existing work has been incorporated, without the collaboration of the author of this latter work.

A collective work is a work created upon the initiative of a physical person or legal entity, who divulges it under his or its own direction and name, being a work in which the personal contributions of the various authors participating in its elaboration merge into the aggregation in respect of which it was conceived, without it being possible to attribute to each of them a distinct right in respect of the aggregation realised.

*Article 5.* — The authors of translations, adaptations, new versions or arrangements of literary, scientific or artistic works shall enjoy the protection provided by this law, without prejudice to the copyright in the original work.

This shall also apply to authors of anthologies or collections of various works which, by reason of the selection and arrangement of their contents, constitute intellectual creations.

*Article 6.* — (1) Folklore constitutes a part of the national patrimony.

(2) Apart from an exception in favour of public national organisations having the status of legal entities, the direct or

\*) Published in *Journal officiel de la République Tunisienne* of February 15, 1966. — BIRPI translation.

<sup>1</sup> See *infra*, Law No. 67-3, of January 4, 1967, amending this Law (Article 1).

indirect fixation of such folklore, with a view to its exploitation with gainful intent, requires an authorisation from the Department in charge of Cultural Affairs, which may impose for such fixation a charge in accordance with such conditions as may be prescribed by decree.

(3) No total or partial assignment of copyright in a work inspired by folklore, or no exclusive licence relating to such a work, shall be valid unless it has received the approval of the Department in charge of Cultural Affairs.

For the purposes of this law, "a work inspired by folklore" means any work composed with the aid of elements borrowed from the cultural traditional patrimony of the Tunisian Republic.

*Article 7.* — In the absence of a stipulation to the contrary, when copies of a work are produced, or when it is made accessible to the public, the name of the author shall be stated to the extent and in the manner required by proper practice.

A work may not be modified in any manner without the written consent of its author; nor may it be made accessible to the public in any form or circumstances injurious to the author.

## CHAPTER II

### Limitations on copyright

*Article 8.* — When a work has been lawfully made accessible to the public, the author shall not be entitled to prohibit:

- (1) communications, such as performance and broadcasting:
  - (a) if they are private and free of charge;
  - (b) if they are made free of charge for educational purposes;
- (2) reproductions, translations and adaptations destined exclusively for personal and private use.

However, in the case of theatrical performances, whether free of charge or not, the managers are required to give advance notification to the author or his successors in title, or to the organisation referred to in Article 31 of this law.

*Article 9.* — It shall be lawful to make quotations and borrowings from a work already lawfully made accessible to the public, provided that they are compatible with fair practice, and to the extent justified by the scientific, critical, educational or informatory purpose, including quotations and borrowings from articles from periodicals in the form of press summaries.

Such quotations and borrowings may be utilised in their original form or in translation, and should be accompanied by a mention of their source and by the name of the author, if his name appears in such source.

*Article 10.* — Sound, or sound and visual, recordings and reproductions of broadcast literary, scientific or artistic works are equally lawful, if such recordings or reproductions are destined for schools.

*Article 11.* — The Department in charge of Cultural Affairs may, in cases of need, authorise public libraries, non-commercial documentation centres, scientific institutions and educational establishments to reproduce literary, scientific or artistic works, in the necessary number and limited to the

needs of their activities, subject to equitable remuneration, to be fixed, failing friendly agreement, by the commission referred to in Article 32 of this law.

*Article 12.* — Articles on current political, social and economic topics may be reproduced by the press, or broadcast, unless reproduction is expressly prohibited.

However, the source must always be clearly indicated.

*Article 13.* — In reports of a current event by means of photography, cinematography, or sound or visual broadcasting, literary, scientific or artistic works, which can be seen or heard in the course of the said event, may be recorded, reproduced and communicated to the public, to the extent necessary for the informatory purpose.

*Article 14.* — Reproduction for cinematography or television, and communication to the public of works of plastic art and of architecture, may be made if the said works are permanently located in a public place or included in the film or in the broadcast only by way of background, or by a way otherwise incidental to the essential matters represented.

*Article 15.* — The Tunisian Radio and Television Organisation (*Radiodiffusion Télévision Tunisienne*) may reproduce a work by its own means and for the purpose of its own broadcasts. However, after the lapse of one year, and where the contract concluded between the author and the Tunisian Radio and Television Organisation does not stipulate, for the benefit of the latter Organisation, the assignment of the rights of exploitation, such reproductions cannot be broadcast unless the Organisation is authorised anew, and this, in the absence of any contract by which the author assigns to the Organisation the right to exploit his work.

Reproductions having an exceptional documentary character shall be preserved. A copy of recordings having a cultural value shall be kept in the official archives designated for this purpose by the Department in charge of Cultural Affairs. A list of categories of such reproductions shall be established by a decree of the Secretary of State in charge of Cultural Affairs.

*Article 16.* — The acts enumerated in paragraphs (2) and (3) of Article 2, in relation to works already made lawfully accessible to the public, shall be legitimate if the author is not represented by the organisation of authors referred to in Article 31 below.

However, in this case, the rights of the author contained in Article 7 shall not be infringed, as well as his right to receive a fair compensation, which shall be fixed, in the absence of a friendly arrangement, by the commission designated in Article 32 below.

## CHAPTER III

### Transfer of copyright

*Article 17.* — The total assignment of future works shall be null and void unless it has been made in favour of the organisation of authors referred to in Article 31 below.

When transmission of copyright takes place for the benefit of the State, by way of succession, copyright is deemed to be assigned to the organisation of authors referred to in Article 31

of this law, and the proceeds derived from such copyright shall be devoted to social purposes, without prejudice to the rights of creditors and the fulfilment of contracts of assignment which may have been concluded by the author or his successors in title.

Notwithstanding any assignment of the original work itself, the authors of graphic and plastic works shall nevertheless have an inalienable right to participate in the proceeds of any sale of the work effected at public auctions or through the intermediary of a trader. After the death of the author, this *droit de suite* shall continue during the current Gregorian year and for fifty years thereafter. Five per cent of the proceeds of the sale shall be set aside for the benefit of the author or his heirs.

*Article 18.* — The transfer of the right to communicate the work to the public shall not imply transfer of the right to reproduce it, and *vice versa*.

*Article 19.* — The transfer of the sole copy or of one or several copies of the work shall not imply transfer of the copyright.

*Article 20.* — In the absence of any stipulation to the contrary clearly enunciated in a contract concluded between the Tunisian Radio and Television Organisation and the author, the authorisation to broadcast a work covers all broadcasts by the Organisation, effected by its own means and under its own responsibility.

#### CHAPTER IV

##### Cinematographic works

*Article 21*<sup>2)</sup>. — As regards televised and cinematographic works.

Copyright belongs to the producer of the work.

The producer of a cinematographic work is the physical person or legal entity who takes the initiative in production and the responsibility for the exploitation of the work.

*Article 22.* — The producer is required, before undertaking the production of a cinematographic work, to conclude contracts with all persons whose works will be utilised in the making of the work.

Such contracts, apart from those concluded with the authors of musical compositions with or without words, shall, in the absence of any clause to the contrary, involve assignment, for the benefit of the producer, of the exclusive right of exploitation.

*Article 23.* — A cinematographic work is deemed to be completed when the first master copy of the film has been established by common accord between the director and the producer.

The director of a cinematographic work is the physical person who undertakes the direction and the artistic responsibility for the transformation into images and sounds of the portions of the cinematographic work, as well as its final mounting.

<sup>2)</sup> See *ibid.*, Article 2.

*Article 24.* — If one of the collaborators in a cinematographic work refuses to complete his contribution to such work, or finds himself unable to complete it by reason of *force majeure*, he shall not be entitled to oppose the utilisation, for the purposes of the completion of the work, of that portion of the contribution already realised.

In the absence of any provision to the contrary, the collaborators in a cinematographic work may freely dispose of their personal contribution with a view to its exploitation through a different medium, provided this does not prejudice the exploitation of the work in which they have collaborated.

#### CHAPTER V

##### Publishing contract, in graphic form

*Article 25.* — The publishing contract, in graphic form, is the contract by which the author of a work, or his successors in title, assign to the publisher, subject to specified conditions, the right to manufacture, or cause to be manufactured, to a specified number, copies of the work, with the obligation upon him to assure the publication and diffusion of the work.

The contract must, under penalty of nullity, be drawn up in writing.

*Article 26.* — In the absence of any stipulation to the contrary, the contract shall provide for remuneration, proportional to the proceeds of exploitation, for the benefit of the author or his successors in title.

*Article 27.* — The publisher is required to furnish to the author all proof necessary to establish the accuracy of his accounts. At least once a year, the author may require the production by the publisher of a statement indicating:

- (a) the number of copies manufactured within the period, with precise information as to the date and importance of the editions;
- (b) the number of copies in stock;
- (c) the number of copies sold by the publisher; the number of unused copies, or copies destroyed fortuitously or by *force majeure*;
- (d) the amount of royalties due and of those, if any, already paid to the author.

Any clause to the contrary shall be deemed not to have been written.

*Article 28.* — The publishing contract can be terminated by the author independently of cases provided for by common law when, after formal notice allowing him a reasonable period, the publisher has not proceeded to the publication of the work or, in the case of its exhaustion, to its re-publication.

The edition shall be considered to be exhausted if two demands for the delivery of copies, addressed to the publisher, are not satisfied within three months.

#### CHAPTER VI

##### Duration of protection

*Article 29.* — Copyright shall continue for the life of the author and for fifty Gregorian years, calculated from the end

of the year of his death, or from the date ascribed by the declarative judgment of decease in cases of absence or disappearance.

In the case of a work of joint authorship, only the date of death of the last surviving co-author, or the date ascribed by the declarative judgment of decease in case of his absence or disappearance, shall be taken into consideration for calculating the duration.

*Article 30.* — Copyright shall continue for fifty Gregorian years, calculated from the end of the year in the course of which the work was lawfully made accessible to the public:

- (1) in the case of photographic or cinematographic works;
- (2) in the case of anonymous or pseudonymous works, as long as the author of the work remains unknown.

#### CHAPTER VII

##### Exercise of copyright

*Article 31.* — The handling of rights, as well as the defence of the moral and economic interests of authors and composers shall, by decree, be entrusted to an organisation of authors and composers, who alone shall be allowed to operate on the territory of the Tunisian Republic. This organisation, to the exclusion of all other physical persons or legal entities, shall be entitled to act as intermediaries between the author and his heirs, and users or associations of users, for the granting of authorisations and for the collection of royalties arising therefrom.

This organisation shall be substituted, as of right, for all other societies of authors and composers in the fulfilment of subsisting contracts with users and associations of users on the territory of the Tunisian Republic.

Further, and in relation to users of works, it shall represent its members, or foreign societies of authors, or members of such societies, whether by virtue of specific authorisation or of a reciprocal agreement.

This organisation shall be placed under the tutelage of the Department in charge of Cultural Affairs.

*Article 32.* — A commission is established, charged with adjudicating upon disputes which might arise between the organisation of authors and composers referred to in Article 31, and the physical persons or legal entities who desire to obtain the necessary authorisations to utilise the works of its repertoire.

This commission may grant such authorisations if it is satisfied that they have been arbitrarily refused, and may modify any clauses and conditions which it may consider to be exorbitant.

A decree issued by the Department in charge of Cultural Affairs shall determine the composition and functioning of the said commission.

#### CHAPTER VIII

##### Procedure and sanctions

*Article 33.* — The importation into the territory of the Tunisian Republic of any copies of a work which would constitute in this territory an infringement of the rights protected under this law is prohibited.

*Article 34.* — If any person shall infringe the copyright in any work protected under this law, such person shall be liable to pay to the proprietor of this right such damages as may be fixed by the competent jurisdiction.

*Article 35.* — If any person knowingly accomplishes or causes to be accomplished any action in violation of the provisions of this law, such person shall be liable to a fine of from twenty to two hundred dinars.

In case of recidivism, such person shall be liable to a fine of from forty to four hundred dinars, and to imprisonment of from one to six months.

Recidivism shall be deemed to exist when, within a period of five years preceding the act at issue, the contravener has already been condemned for an identical offence.

*Article 36.* — At the request of the author, the competent jurisdiction may, in case of need, prescribe the seizure, confiscation or destruction of copies implicated in the infringement or in the violation of copyright, as well as all other measures deemed necessary.

#### CHAPTER IX

##### Field of application of the law

*Article 37<sup>3)</sup>.* — This law applies to all works which, at the moment of its coming into force, have not fallen into the public domain.

It shall apply in particular:

- (1) to all works of which the original owner of the copyright, at the moment when the creation of the work is completed, is a physical person who is a national of the Tunisian Republic or is domiciled within the territory of the Tunisian Republic, or who is a stateless person or a refugee having his habitual residence therein;
- (2) further, to works published for the first time within the territory of the Tunisian Republic, or published within such territory within thirty days from first publication in a foreign country;
- (3) to works of architecture erected upon the territory of the Tunisian Republic, and to any work of art incorporated in a building situated on the territory of the Tunisian Republic.

In the case of a work of joint authorship, it is sufficient, in order that this law shall apply, that only one of the collaborators should satisfy the condition specified in sub-section (1) of paragraph (2) of this Article.

*Article 38.* — Works which do not fall within one of the categories referred to above shall not enjoy the protection provided by this law, unless the country of which the original owner of the copyright is a national, or in which he is domiciled, grants equivalent protection to the works of Tunisian nationals. Countries in respect of which this condition is considered to be fulfilled shall be determined by the Department in charge of Cultural Affairs.

<sup>3)</sup> See *ibid.*, Article 3.

## CHAPTER X

## Miscellaneous provisions

*Article 39.* — The organisation referred to in Article 31 of this law shall be charged with entering into negotiations with interested foreign societies of authors with the object:

- (a) of obtaining the transfer of the affiliation of Tunisian nationals;
- (b) of safeguarding, in favour of the authors in respect of whom it obtains the transfer of affiliation, the social advantages acquired by them, in relation to such societies, prior to this transfer;
- (c) of concluding, within a period of one year, reciprocal agreements with foreign societies of authors for repre-

sentation and reciprocal handling of their repertoires on their respective territories.

*Article 40.* — All earlier provisions contrary to those of this law are abrogated and, in particular:

- the law of June 15, 1889, relating to literary and artistic property;
- the decree of January 6, 1944, relating to the African Office of Writers and Lecturers and the African Copyright Office.

This law shall be published in the *Journal officiel de la République Tunisienne*, and given effect as a law of the State.

## II

## Law amending the Law No. 66-12 of February 14, 1966, relating to Literary and Artistic Property

(No. 67-3, of January 4, 1967)

*Article 1.* — Article 3 of the Law No. 66-12 of February 14, 1966, relating to Literary and Artistic Property, is repealed and superseded by the following provisions:

“Article 3 (*new*). — The author of a work is, in the absence of proof to the contrary, the person under whose name the work is divulged.

“However, and subject to the provisions of Article 21 below, when the agents of a public or private corporation produce a work within the framework of their functions, the copyright shall belong to the said agents, subject to any stipulation to the contrary deriving from the contract existing between the corporation and its agents.”

*Article 2.* — Article 21 of the Law No. 66-12 of February 14, 1966, referred to above is repealed and superseded by the following provisions:

“Article 21 (*new*). — As regards cinematographic works, copyright belongs to the producer of the work.

“The producer of a cinematographic work is the physical person or legal entity who takes the initiative in production and the responsibility for the exploitation of the work.”

*Article 3.* — Article 37 of the Law No. 66-12 of February 14, 1966, referred to above is repealed and superseded by the following provisions:

“Article 37 (*new*). — This law applies to all works which, at the moment of its coming into force, have not fallen into the public domain.

“It shall apply in particular:

- (1) to all works of which the original owner of the copyright, at the moment when the creation of the work is completed:
  - (a) is a physical person who is a national of the Tunisian Republic or is domiciled within the territory of the Tunisian Republic, or who is a stateless person or a refugee having his habitual residence therein;
  - (b) is a body corporate under the Tunisian jurisdiction;
- (2) to works published for the first time within the territory of the Tunisian Republic, or published within such territory within thirty days from the first publication in a foreign country;
- (3) to works of architecture erected upon the territory of the Tunisian Republic, and to any work of art incorporated in a building situated on the territory of the Tunisian Republic.

“In the case of a work of joint authorship, it is sufficient, in order that this law shall apply, that only one of the collaborators should satisfy the condition specified in sub-section (1) of paragraph (2) of this Article.”

This law shall be published in the *Journal officiel de la République Tunisienne*, and given effect as a law of the State.

\*) Published in *Journal officiel de la République Tunisienne* of January 6, 1967.

*CORRESPONDENCE*

**Letter from Brazil**















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Hermano DUVAL  
Barrister, Rio de Janeiro







# CALENDAR

## Meetings of BIRPI

Date and Place	Title	Object	Invitations to Participate	Observers Invited
March 14 to 17, 1967 Geneva	Permanent Committee of the Berne Union (Extraordinary Session)	Consideration of various questions concerning copyright	Belgium, Brazil, Denmark, France, Germany (Fed. Rep.), India, Italy, Portugal, Rumania, Spain, Sweden, Switzerland, United Kingdom of Great Britain and Northern Ireland	All other Member States of the Berne Union; United Nations; International Labour Office; Unesco; Council of Europe; Unidroit
April 10 to 12, 1967 Geneva (Headquarters of ILO)	Intergovernmental Committee (Neighbouring Rights). Meeting convened jointly by BIRPI, ILO and UNESCO (First Session)	Adoption of the rules of procedure; election of officers; various questions	Congo (Brazzaville), Czechoslovakia, Ecuador, Mexico, Sweden, United Kingdom of Great Britain and Northern Ireland	—
April 18 to 21, 1967 Geneva	Committee of Experts for the Classification of Goods and Services	To bring up to date the international classification	All Member States of the Nice Union	—
June 12 to July 14, 1967 Stockholm	Intellectual Property Conference of Stockholm, 1967	<p>(a) General Revision of the Berne Convention (Copyright)</p> <p>(b) Revision of the Paris Convention (Industrial Property) on the question of inventors' certificates</p> <p>(c) Revision of the administrative and final clauses of the Berne and Paris Conventions and of the Special Agreements concluded under the latter</p> <p>(d) Establishment of a new Organization</p>	<p>For (a), (b) and (c): Member States of the various Unions</p> <p>For (d): States Members of the United Nations or any of the UN Specialized Agencies</p>	<p>States: States not members of the Unions [for (a), (b) and (c)]</p> <p><i>Intergovernmental Organizations:</i> United Nations; International Labour Organization; World Health Organization; United Nations Educational, Scientific and Cultural Organization; General Agreement on Tariffs and Trade; International Institute for the Unification of Private Law; International Olive Oil Council; International Patent Institute; International Vine and Wine Office; African and Malagasy Industrial Property Office; Council of Europe; Latin-American Free Trade Association; Organization of American States</p> <p><i>Interested International Non-Governmental Organizations</i></p>
December 12 to 15, 1967 Geneva	Permanent Committee of the Berne Union (13 <sup>th</sup> Session)	Consideration of various questions concerning copyright	Belgium, Brazil, Denmark, France, Germany (Fed. Rep.), India, Italy, Portugal, Rumania, Spain, Switzerland, United Kingdom of Great Britain and Northern Ireland	All other Member States of the Berne Union; interested international inter-governmental and non-governmental organizations
December 18 to 21, 1967 Geneva	Interunion Coordination Committee (5 <sup>th</sup> Session)	Program and Budget of BIRPI	Belgium, Brazil, Ceylon, Czechoslovakia, Denmark, France, Germany (Fed. Rep.), Hungary, India, Italy, Japan, Mexico, Morocco, Netherlands, Nigeria, Portugal, Rumania, Spain, Sweden, Switzerland, Union of Soviet Socialist Republics, United Kingdom of Great Britain and Northern Ireland, United States of America, Yugoslavia	All other Member States of the Paris Union or of the Berne Union
December 18 to 21, 1967 Geneva	Conference of Representatives of the International Union for the Protection of Industrial Property (2 <sup>nd</sup> Session)	Program and Budget for the next three-year period	All Member States of the Paris Union	—

Date and Place	Title	Object	Invitations to Participate	Observers Invited
December 18 to 21, 1967 Geneva	Executive Committee of the Conference of Representatives of the Paris Union (3rd Session)	Program and Budget (Paris Union)	Ceylon, Czechoslovakia, France, Germany (Fed. Rep.), Hungary, Italy, Japan, Mexico, Morocco, Netherlands, Nigeria, Portugal, Spain, Sweden, Switzerland, Union of Soviet Socialist Republics, United Kingdom of Great Britain and Northern Ireland, United States of America, Yugoslavia	All other Member States of the Paris Union
December 18 to 21, 1967 Geneva	Council of the Lisbon Union for the Protection of Appellations of Origin and their International Registration (2nd Session)	Annual Meeting	All Member States of the Lisbon Union	All other Member States of the Paris Union

### Meetings of Other International Organizations concerned with Intellectual Property

Place	Date	Organization	Title
The Hague	March 8 and 9, 1967	International Patent Institute (IPI)	Session of the Administrative Council
Strasbourg	March 13 to 17, 1967, and April 3 to 7, 1967	Council of Europe	Working Group of the Committee of Experts on Patents
Basle	March 29 to April 4, 1967	International Literary and Artistic Association (ALAI)	52nd Congress
Montreal	May 13 to 20, 1967	International Chamber of Commerce (ICC)	21st Congress
Guatemala	May 25 to 28, 1967	Inter-American Association of Industrial Property (ASIPI)	Executive Committee
Helsinki	August 28 to September 1, 1967	International Association for the Protection of Industrial Property (IAPIP)	Executive Committee
Stockholm	September 18 to 29, 1967	Committee for International Cooperation in Information Retrieval among Examining Patent Offices (ICIREPAT)	7th Annual Meeting

