

# Copyright

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# INTERNATIONAL UNION

## Working Group on Copyright Problems of Satellite Communications

(Geneva, October 14 to 16, 1968)

### Final Report

1. A Working Group, convened by the Director of BIRPI, met at the BIRPI headquarters from October 14 to 16, 1968. Its purpose was to undertake an exchange of views on the copyright and neighboring rights problems that might arise from the transmission of radio and television broadcasts by communications satellites. The list of participants is attached to this document.

2. Following a welcoming address by the Director of BIRPI, the Working Group viewed two films on the manufacture, launching and use of communications satellites. These two films had been provided by the Communications Satellite Corporation (COMSAT) and by the Internationale Gesellschaft für Urheberrecht.

3. Two consultants attached to the BIRPI Secretariat then gave explanations of a technical nature. One of the consultants had also presented a general background report on space communications and communications satellite systems and the activities of the international organizations concerned. Opinions or explanations given by the consultants during the course of the discussions further benefited the Working Group.

4. The Working Group also had at its disposal preparatory documents which set forth a number of considerations on the problems that might arise from transmissions of radio and television programs by communications satellites. These related to the matter of copyright protection on the one hand and neighboring rights protection on the other (performers, producers of phonograms and broadcasting organizations).

5. At the outset it appeared to the Working Group that the problems which might be raised in the future by the use of direct broadcasting satellites should be studied separately at a later date and that the discussion should concentrate on cases of transmissions by point-to-point satellites or distribution satellites.

6. In addition, it seemed preferable to the Working Group to begin its work with a study of the problems of neighboring rights and firstly with the question whether the Rome Convention of 1961 can be considered to apply to transmissions by communications satellites.

7. Two types of transmissions were envisaged in this respect, depending on whether or not the originating organization, which feeds wireless signals into the space segment, makes a simultaneous broadcast to its own audience.

8. The Rome Convention includes, in Article 3(f), a definition of broadcasting ("transmission by wireless means for

public reception of sounds or of images and sounds"). Depending on the interpretation given to this definition, the injection of signals into the space segment may or may not be considered to be covered by the Rome Convention.

9. It was noted that the Rome Convention was intended to reach any transmission ultimately destined "for public reception", and, furthermore, that the definition was not limited to direct reception. The notion of destination ("for public reception") and the purpose of the Rome Convention (to protect the productions of broadcasting organizations) both led to a broad interpretation of the definition of broadcasting. Under this view, the operation consisting in the transmission of signals intended ultimately for public reception, even if only for the purpose of satellite communication, would be considered broadcasting within the meaning of the Convention.

10. Nevertheless, doubts were expressed as regards this interpretation, since the sending of signals towards the satellite, on frequencies that cannot be picked up by the public, could be said not to constitute a broadcast. In view of the differing opinions expressed on this matter, the injection of signals into the space segment is hereafter referred to as a "transmission".

11. The Working Group also studied the situation resulting from the fact that the number of States presently bound by the Rome Convention was still limited. On this point, it devoted its attention to the problems that make it difficult for certain States, particularly developing countries, to ratify or accede to the Convention.

12. In this connection it was observed that the economic aspects of the protection granted to performers and to producers of phonograms could make these countries less interested in becoming parties to the Rome Convention. It was argued, however, that the obligations required by the Rome Convention were relatively simple and easy to understand and to apply and that cases likely to involve financial charges (for example, by virtue of Article 12) were optional at any time in view of the system of reservations provided for by the Convention itself.

13. In light of the necessity of protecting the interests of the various beneficiaries of rights involved in transmissions using communications satellites, the Working Group continued to seek solutions in this matter. Apart from the course of simply urging more States to join the Rome Convention, the idea of drawing up a new international instrument was proposed.

14. Two suggestions were presented to the Working Group. The first was to set up a treaty that would facilitate, in the more or less distant future, ratification of the Rome Convention or accession thereto. The second was to set up a treaty under which States would undertake to repress, by penal sanction, any non-authorized use of satellite transmissions.

15. Before discussing the content of such international instruments, the Working Group dealt with their possible relationship to the Rome Convention and their connection with that Convention. At the outset it appeared that Article 22 would prevent States parties to the Rome Convention from adhering to such a special agreement unless such an agreement granted more extensive rights than those granted by the Convention itself. However, it was also pointed out that such an agreement would respect Article 22 as long as it did not contain provisions contrary to the Convention and this might include an agreement on satellite communication. It was suggested that these interpretations receive further study.

16. Secondly, it was observed that if this agreement was drawn up only within the framework of the Rome Convention, its application would be restricted by Article 24(2) to States party to the Berne Convention or to the Universal Copyright Convention. This Article limits membership in the Rome Convention to members of one of those two Conventions.

17. Thirdly, the Working Group felt that the idea that only one of the interested parties would be specifically covered in the special agreement was an idea which would not be easily accepted. It was then suggested that, if a special agreement were made within the framework of the Rome Convention, this could be done in the form of a protocol open to countries which, for the time being, do not wish to join the Convention itself.

18. Moreover, the establishment of a new instrument, independent of the Rome Convention and of the multilateral copyright conventions, might have the advantage of offering the interested parties the possibility of protection in countries which do not grant to foreign authors, performers and producers of phonograms, the rights accorded by this new instrument.

19. The Working Group's attention was then drawn to the copyright problems involved in transmissions of radio and television programs by communications satellites.

20. It was suggested that these problems were essentially of an economic nature. Furthermore it was felt that for the most part they concerned contract relations as well as the licenses that broadcasting organizations must obtain from the owners of copyright. However, it was also observed that in countries where rates are fixed by official tribunals, these problems could not be solved contractually.

21. The Working Group then took up the question of whether satellite transmissions were covered by Article 11<sup>bis</sup> of the Berne Convention. On this point the Group was faced with the same question that was posed in connection with the Rome Convention, that is, the definition of broadcasting. It was noted that, at the time of the Brussels Revision Conference (1948), such a definition had not been deemed necessary in view of the existence of a definition of broadcasting in the regulations of the International Telecommunications Union

(ITU); under the terms of these regulations, the frequencies used for satellite relays were different from those used for broadcasts, and the former can not be picked up by the public. Hence, it seemed that, in cases where there was only an injection of signals into the space segment without simultaneous broadcasting at the point of origin, the operation was not included in the definition of broadcasting. However, several experts suggested that such an opinion was neither compatible with the spirit of the Berne Convention nor an evolutionary interpretation of Article 11<sup>bis</sup>.

22. During the discussion, it was also mentioned that the Canadian Supreme Court, had given a restrictive interpretation to the notion of broadcasting after considering Canadian law and the Berne Convention.

23. Moreover, it was stressed that, just as in the case of the Rome Convention, it would be proper to examine the copyright situation as regards countries not party to the Berne Convention. In this case, there would be no basis for contractual negotiations on the use of transmissions outside the country of origin. Furthermore, the same situation might also arise in the relations between countries party to the Berne Convention and countries party only to the Universal Copyright Convention in view of the fact that the latter contained no provisions protecting the right of broadcasting.

24. In the light of these various considerations, the Working Group felt that it was necessary for the broadcasting organizations to have the ability to control the geographic area in which their transmissions were used in the interest of all those who had contributed to the making of the program itself; otherwise, the parties controlling the rights in the programs transmitted would have reason to require that the broadcasting organizations negotiate with them for the worldwide rights. This would result not only in too heavy costs for the broadcasting organizations but also in such difficulties, even constitutional ones, in the different countries, which might prompt the broadcasting organizations to limit their utilization of satellites.

25. The question was raised whether control by the broadcasting organizations of the use of their transmissions by third parties might not be resolved by other means than a new international instrument. Reference was made to the possibility of regulatory measures within the framework of Intelsat, the International Telecommunications Satellite Consortium. Nevertheless, the problem would continue to exist as against those countries not belonging to such an organization or which were members of a separate regional system. Reference was also made to the regulations of the ITU which prohibit the unauthorized interception of radio communications, but it was pointed out that this solution would not offer all the guarantees possible due to the fact that no express sanction was provided for in the event that these regulations were not observed.

26. The Working Group then made a more detailed study of which interests were to be protected, what they should be protected from, and how they should be protected.

27. It came to the conclusion that the categories of owners of rights which might be adversely affected by the use of satellites were the authors, artists (who must be able to

give their consent to the original transmission and to define the geographical area in which their performances will be used), producers of phonograms (who must have the right to prohibit the reproduction of their records), the broadcasting organizations (whose transmissions must be protected) and other categories such as news agencies and organizers of sports events.

28. As regards the means of ensuring such protection, the Working Group looked into two possibilities that had been suggested.

29. As indicated above, the first would lead to the establishment of a treaty that would induce the member States also to become parties to the Rome Convention. It would be stipulated that, by a certain date, no State could remain party to such an agreement or become party to it without also being bound by the Rome Convention. The precedent of the European Agreement for the Protection of Television Broadcasts and the Protocol attached thereto was cited by way of example. Such an international instrument could also be linked in the same way to the Berne Convention, which, contrary to the Universal Copyright Convention, contains specific provisions on the right of broadcasting.

30. The second possibility would concern essentially the establishment of penal protection at the request of any interested party against the non-authorized use of satellite transmissions with the consequences established by national legislation. However, provisions along these lines would not prejudice protection which the parties concerned might derive from other international conventions or from national legislation.

31. It was observed that, under this solution, the parties concerned might, moreover, be able to obtain compensation even if the non-authorized use of the satellite transmissions took place in countries not yet affording any protection to copyright or neighboring rights.

32. The Working Group felt that, in general, it was fitting to consider particularly the case of countries party to neither the Berne Convention nor the Rome Convention.

33. At the conclusion of the discussion, several experts stressed the importance of recommending that more countries become party to the Rome Convention. In this regard, the Secretariats of the organizations charged with the administration of this Convention affirmed their desire to enlarge its applicability.

34. However, in view of the doubts that were expressed as to the effects of such a recommendation and the possibility of using the Rome Convention as a framework for a resolution of the special and urgent problems posed by the use of communications satellites, the Working Group considered that BIRPI should be requested to continue the study of these problems in the light of the two proposals advanced, and to make such suggestions as it then deemed appropriate.

35. The Director of BIRPI thanked the experts, and the representatives of the interested organizations and all the participants for their contributions to the search for solutions to the problems which confronted them. He complimented the Working Group on the high legal and technical level of

the discussion and indicated that the interesting exchange of views which had taken place would be useful to the Secretariat in its further studies on the subject.

36. The Observer of Unesco emphasized the interest of that Organization in the questions considered and indicated that the Draft Program of Unesco for 1969 had included for approval by the 15<sup>th</sup> Session of the General Conference of Unesco the study of this matter.

37. The Director of BIRPI, after once more thanking the participants declared the meeting closed.

## List of participants

### I. Experts invited in their individual capacity

- Mr. Kenji Adachi, Deputy Director General, Agency for Cultural Affairs, Japan; *Technical adviser*: Mr. Yoshio Nomura, Member of the Copyright System Council, Japan.
- Mr. Torwald Hesser, Justice of the Supreme Court, Sweden.
- Miss Barbara A. Ringer, Assistant Register of Copyrights, Copyright Office, Library of Congress, United States of America.
- Mr. Valerio De Sanctis, Attorney-at-Law, Italy.
- Mr. Jean-Loup Tonrrier, Director-General, Society of Authors, Composers and Music Publishers (SACEM), France.
- Mr. Eugen Ulmer, Professor, University of Munich, Federal Republic of Germany.
- Mr. William Wallace, C. M. G., Assistant Comptroller, Industrial Property and Copyright Department, Board of Trade, United Kingdom.
- Mr. Willi Weincke, Head of Division, Ministry of Cultural Affairs, Denmark.

### II. Representatives of Broadcasting Organizations

- Mr. Jacques R. Alleyn, General Counsel, Canadian Broadcasting Corporation (CBC), Ottawa.
- Mr. Robert V. Evans, Deputy General Counsel, Columbia Broadcasting System (CBS), New York.
- Mr. Walter S. Hamilton, Assistant General Manager, Australian Broadcasting Commission (ABC), Sydney.
- Mrs. Madeleine Larrue, Assistant to the Director of Legal Affairs, European Broadcasting Union (EBU), Geneva.
- Mr. Harry R. Olsson, Jr., General Attorney, American Broadcasting Company (ABC), New York.
- Mr. John V. Shute, Assistant General Attorney, National Broadcasting Company (NBC), New York.
- Mr. Georges Straschnov, Director, Department of Legal Affairs, European Broadcasting Union (EBU), Geneva.
- Mr. Akio Yamashita, Delegate of the Japan Broadcasting Corporation (NHK), Paris.

### III. Delegates from Non-Governmental Organizations

- Mr. Raoul Castelain, Attorney-at-Law, Member of the Executive Committee, International Literary and Artistic Association (ALAI).
- Mr. Pierre Chesnais, Secretary-General of the French Association, International Federation of the Phonographic Industry (IFPI).
- Mr. Henri Desbois, Professor at the Faculty of Law and Economics of Paris; Permanent Secretary, International Literary and Artistic Association (ALAI).
- Mr. Roger Fernay, President, International Copyright Commission, International Writers Guild (IWG).
- Mr. Herman Finkelstein, General Counsel, American Society of Composers, Authors and Publishers (ASCAP).

- Mr. Rudolf Leuzinger, Secretary-General, International Federation of Musicians (FIM).
- Mr. Léon Malaplate, Secretary-General, International Confederation of Societies of Authors and Composers (CISAC).
- Mr. H. H. von Rauscher auf Weeg, Legal Advisor, International Federation of the Phonographic Industry (IFPI).
- Mr. Rolf Remhe, Vice-President, Acting Secretary General, International Federation of Actors (IFA).
- Mr. J. A. L. Sterling, Deputy Director-General, International Federation of the Phonographic Industry (IFPI).
- Mr. S. M. Stewart, Director-General, International Federation of the Phonographic Industry (IFPI).
- Mr. Jean-Alexis Ziegler, Deputy Secretary-General, International Confederation of Societies of Authors and Composers (CISAC).

#### IV. Observers from Intergovernmental Organizations

- I. L. O.: Mr. Edward Thompson, Chief, Non-Manual Workers' Section.
- I. T. U.: Mr. Clifford Stead, Chief, Department of External Relations.
- Unesco: Miss Marie-Claude Dock, Acting Head, Copyright Division.
- Council of Europe: Mr. Per von Holstein, Administrator, Directorate of Legal Affairs.

#### V. Observers from Canada

- H. E. Mr. Jean-Louis Delisle, Ambassador and Permanent Representative of Canada at Geneva.
- Mr. Jacques Corbeil, Second Secretary, Permanent Mission of Canada, Geneva.
- Mr. Réal Therrien, Commissioner, Canadian Radio and Television Commission, Ottawa.
- Mr. Andrew A. Keyes, Liaison Officer, National Film Board, Ottawa.

#### VI. Consultants

- Mr. Richard R. Colino, Director, European Office, Communications Satellite Corporation (Comsat), Geneva.
- Mr. Edward W. Ploman, Head, International Relations, Assistant to the Director General, Swedish Broadcasting Corporation, Stockholm.

#### VII. BIRPI

- Professor G. H. C. Bodenhausen, Director.
- Mr. Claude Masouyé, Counsellor, Head of the Copyright Division.
- Mr. Robert D. Hadl, Legal Assistant, Copyright Division.

# NATIONAL LEGISLATION

## UNITED KINGDOM

### Design Copyright Act 1968

(Of October 25, 1968)

An Act to amend the law relating to the copyright of the design of certain manufactured articles,  
and for connected purposes

1. — (1) Section 10 of the Copyright Act 1956 (special exception in respect of industrial designs) shall be amended as follows —

- (a) subsection (1) shall be omitted;
- (b) (i) in subsection (2)(b) after the words “ offered for sale or hire ” there shall be inserted the words “ whether in the United Kingdom or elsewhere ”;
- (ii) subsection (2)(c) shall be omitted;
- (c) for subsection (3) there shall be substituted the following subsection: —

“ (3) Subject to the next following subsection, after the end of the relevant period of 15 years it shall not be an infringement of the copyright in the work to do anything which at the time when it was done would, if a corresponding design had been registered under the Registered Designs Act 1949 (in this section referred to as ‘ the Act of 1949 ’) immediately before that time, have been within the scope of the copyright in the design as extended to all associated designs and articles.

In this subsection ‘ the relevant period of 15 years ’ means the period of 15 years beginning with the date on which articles, such as are mentioned in paragraph (b) of the last preceding subsection, were first sold, let for hire or offered for sale or hire, whether in the United Kingdom or elsewhere.”

(2) Schedule 1 to that Act (False Registration of Industrial Designs) shall continue to have effect subject to the following amendments —

- (a) in paragraph 2 the words “ subsection (1) of section ten of this Act shall not apply, and ” shall be omitted;
- (b) in paragraph 3 for the last two lines there shall be substituted the words “ this shall be a good defence to such proceedings ”.

#### *Short title*

2. — This Act shall be cited as the Design Copyright Act 1968.



*GENERAL STUDIES*



**The United Kingdom protects « works of applied art »**

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William WALLACE, C. M. G.  
Assistant Comptroller  
Board of Trade, London

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**The right of reproduction in the Berne Convention  
as revised at Stockholm on July 14, 1967 \*)**



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Xavier DESJEUX  
Chargé de Cours at the Faculty of Law  
and Economics, Nancy



