

Copyright

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CORRESPONDENCE

Letter from Great Britain
dealing with copyright and related matters which occurred in 1969

Dr. Paul ABEL
Consultant on International
and Comparative Law
London

INTERNATIONAL ACTIVITIES

8th Inter-American Congress on Copyright

(Asunción, May 4 to 8, 1970)

On the kind invitation of the Society of Authors and Composers of Paraguay (*APA - Autores Paraguayos Asociados*), the Pan American Council of the International Confederation of Societies of Authors and Composers (CISAC) held the 8th Inter-American Congress on Copyright at Asunción from May 4 to 8, 1970.

The meeting was attended by delegates of authors' societies from the following countries: Argentina, Brazil, Chile, Mexico, Paraguay, Peru, Uruguay and Venezuela, as well as by prominent persons from legal and university circles in Paraguay.

BIRPI, invited as an observer, was represented by Mr. Claude Masouyé, Senior Counsellor, Head of the External and Public Relations Division.

The opening meeting of the Congress took place in the presence of H. E. General Don Alfredo Stroessner, President of the Republic of Paraguay, together with numerous Paraguayan dignitaries.

The agenda included an examination of copyright problems at present existing in certain Latin American countries (in particular, Chile, where Parliament has before it a Bill on the protection of copyright and neighboring rights) and in the international field as a result of the revisions now being envisaged to the Berne Convention and the Universal Copyright Convention.

On the occasion of this Congress, a Seminar on copyright was arranged at the Law Faculty of the National University of Paraguay, during which the BIRPI representative gave a lecture on the present status of international copyright law*.

A resolution, the text of which is reproduced below, was adopted and handed personally to Dr. Raúl Sapena Pastor,

Minister of Foreign Affairs of Paraguay, when he received the BIRPI representative, accompanied by a delegation of the Pan American Council of CISAC.

The 8th Inter-American Congress on Copyright expressed its satisfaction at the encouraging results of the approaches made to Ecuador and Colombia with a view to accession by those countries to the Berne Convention.

During the discussions at Asunción, the Pan American Council of CISAC appointed its officers for the coming two years. The chairmanship will be exercised by the Mexican Society (SACM) and the vice-chairmanship by the Chilean Society (SATCH). The next Congress is to take place in 1971 at Santiago de Chile.

Resolution

The 8th Inter-American Congress on Copyright, meeting at Asunción (Paraguay), from May 4 to 8, 1970,

Considering the need to afford to Paraguayan authors and composers really effective protection of their works throughout the world, and thus to permit the development of the valuable cultural resources of Paraguay, which is closely bound up with economic and social development;

Considering that the Berne Convention, as revised at Brussels, is the most appropriate instrument of world-wide scope for the protection of literary and artistic works at international level;

Considering that five Latin-American countries are already parties to the Berne Convention, namely Argentina, Brazil, Chile, Mexico and Uruguay;

Considering the importance for all Latin-American countries of participating fully, as members of the Berne Union, in the forthcoming world conferences which are to revise the copyright system with a view to adapting it to the needs of the world of today,

Respectfully requests His Excellency the President of the Republic to allow the Government of Paraguay to examine the possibility of depositing with the Swiss Government, as soon as possible, Paraguay's instrument of accession to the Berne Convention for the Protection of Literary and Artistic Works in its Brussels text.

* The text of the lecture is published in the quarterly review of BIRPI *La Propiedad Intelectual*, No. 2, 1970.



NEWS ITEMS

UNITED KINGDOM

Notification concerning the application to Bermuda of the Rome Convention for the International Protection of Performers, Producers of Phonograms and Broadcasting Organisations

The Secretary-General of the United Nations informs us that, in a communication received on March 10, 1970, the Government of the United Kingdom of Great Britain and Northern Ireland notified him, in accordance with the provisions of Article 27 of the International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations, done at Rome on October 26, 1961, that the said Convention shall extend to Bermuda, subject to the following reservations:

"(1) In respect of Article 5(1)(b) and in accordance with the provisions of Article 5(3) of the said Convention, Bermuda will not apply, in respect of phonograms, the criterion of fixation.

(2) In respect of Article 6(1) and in accordance with the provisions of Article 6(2) of the said Convention, Bermuda will protect broadcasts only if the headquarters of the broadcasting organisation is situated in another Contracting State and the broadcast was transmitted from a transmitter situated in the same Contracting State.

(3) In respect of Article 12 and in accordance with the provisions of Article 16 of the said Convention:

(a) Bermuda will not apply the provisions of Article 12 in respect of the following uses:

- (i) the causing of a phonogram to be heard in public at any premises where persons reside or sleep, as part of the amenities provided exclusively or mainly for residents or inmates therein except where a special charge is made for admission to the part of the premises where the phonogram is to be heard;
- (ii) the causing of a phonogram to be heard in public as part of the activities of, or for the benefit of, a club, society or other organisation which is not established or conducted for profit and whose main objects are charitable or are otherwise concerned with the advancement of religion, education or social welfare, except where a charge is made for admission to the place where the phonogram is to be heard, and any of the proceeds of the charge are applied otherwise than for the purposes of the organisation;
- (b) as regards phonograms the producer of which is not a national of another Contracting State or as regards phonograms the producer of which is a national of a Contracting State which has made a declaration in accordance with the provisions of Article 16(1)(a)(i) stating that it will not apply the provisions of Article 12, Bermuda will not grant the protection provided for by Article 12, unless, in either event, the phonogram has been first published in a Contracting State which has made no such declaration."

In accordance with Article 27 of the Convention, the above-mentioned notification will take effect three months after the date of its receipt, that is to say, on June 10, 1970.



OBITUARY

Torben Lund

Professor Torben Lund died in Paris on January 25, 1970, after attending a meeting of the Executive Committee of the International Literary and Artistic Association (ALAI) of which he had been a member for many years. His modesty had always been a source of wonderment for his colleagues, and it was only recently that international copyright circles learned of the passing of this eminent Dane. Professor Torben Lund spoke little but was extremely observant, and he always made a point of attending every meeting concerned with literary and artistic property. He took up the subject as a hobby and then, becoming enthralled by it, he devoted the major part of his activities to it, up to the moment of his death.

Born on October 12, 1902, Torben Lund pursued a long administrative career, mainly in the Ministry of Education of Denmark, before becoming professor at the Law Faculty of

the University of Aarhus in 1947. Before taking up that appointment, in 1944 he presented a remarkable doctor's thesis on the protection of the figurative arts. In addition to teaching Danish university students, he wrote many articles, commentaries or studies which were published in reviews and periodicals specializing in intellectual property matters. He also contributed the "Letter from Denmark" to this Review.

At the national level, Professor Torben Lund was the leading member of the committee which prepared the new Danish legislation on copyright in 1961, and from 1963 to 1970 he served as Chairman of the Copyright Council.

At the international level, Professor Torben Lund represented the Danish Government at many international conferences, among them the Brussels Diplomatic Conference in 1948 for the revision of the Berne Convention and the Geneva Diplomatic Conference in 1952 for the establishment of the

Universal Copyright Convention. In addition, he was for many years Denmark's representative in the Permanent Committee of the Berne Union.

Professor Torben Lund will be remembered as a man of the utmost integrity, a fervent advocate of the rights and

interests of Danish authors and artists, a well-known international figure to whom all who ever had occasion to appreciate his qualities pay a tribute today.

C. MASOUYÉ
Senior Counsellor

Pierre Recht

The death occurred in Brussels on March 14, 1970, of a copyright expert whose fame had long spread beyond the frontiers of his country, which he represented so frequently at international meetings. This Review, which on several occasions published articles written by him, owes him a posthumous tribute.

Pierre Recht was a plain-speaking man who enjoyed disrupting an animated discussion with speeches which some considered uproarious, while others thought them to be full of common sense and still others found them debatable. All, however, admired their quality and forcefulness. He had his idea, his conception and even his own theory of copyright, and he defended these with impassioned stubbornness, according to the established principles of the Bar. His views were not always shared by his listeners, but is not the essence of personality the desire to impose one's views by means of coherent argument and a well-directed line of thought?

One would not hesitate to use the accepted term "eminent lawyer" to describe Pierre Recht, whose experience in this field was abundant and whose competence was widely acknowledged. Born in Namur on May 10, 1889, he made a brilliant career for himself, both as an attorney and as a professor of law at the Agricultural Science Faculty. He was also a director-general at the Ministry of National Education and Culture and a member of the Administrative Science Institute.

Much of his work, especially towards the end of his life, was devoted to the study and defense of copyright. The Belgian Society of authors, composers and publishers (SABAM) acquired his services as a legal advisor. At the international level, Pierre Recht was a member of the International Literary and Artistic Association (ALAI) and of the

legislative committee of the International Confederation of Societies of Authors and Composers (CISAC). At the governmental level, he was founding chairman of the Belgian National Commission on Copyright, an advisory body attached to the Ministry of National Education and Culture. He was also Belgian Delegate at certain meetings of the Permanent Committee of the Berne Union, and at the Diplomatic Conferences held at Brussels (1948), Geneva (1952) and Rome (1961). Illness prevented him from attending the Stockholm Conference in 1967.

Pierre Recht enriched legal literature with several works which were frequently praised by legal experts. He has left three interesting books to posterity: *Le droit d'auteur en Belgique* [Copyright in Belgium], published in 1955; *Le droit d'auteur sur les exécutions publiques des œuvres musicales* [Authors' rights in respect of the public performance of musical works], published in 1960; and especially *Le droit d'auteur, une nouvelle forme de propriété* [Copyright, a new form of property], which appeared in 1969 and is, in a manner of speaking, his doctrinal legacy.

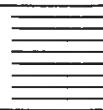
The Belgian authorities conferred a number of distinctions on him: Grand Officer of the Order of the Crown, Grand Officer of the Order of Leopold II and Commander of the Order of Leopold.

The broad, solid frame of Pierre Recht, rather reminiscent of the characters which the Flemish painter Brueghel liked to portray, will ever remain in the memories of his friends, who bitterly regret his passing.

C. MASOUYÉ
Senior Counsellor



BOOK REVIEWS



La Convention de Berne et la loi fédérale sur le droit d'auteur [The Berne Convention and the Federal Copyright Law], by François Curchod. One volume of 254 pages, 23×16 cm. Imprimerie Pont Frères, Lausanne, 1969.

The subject of this work, a doctoral thesis which was submitted to the Law Faculty of Lausanne University, is the influence of the Berne Convention on Swiss copyright law. The author thought the time right to study this problem for two reasons: first, because the Berne Convention was revised at Stockholm in 1967; and second, because a new Swiss federal law on copyright is currently in preparation.

The work is in two parts. The first, aptly entitled "General Remarks", consists of a brief exposition of the history, nature and content of copyright, and a historical outline of the Berne Convention, other multilateral conventions and Swiss copyright legislation. It is not until the second part that the author embarks on the main theme of his study. There he deals with the position of the Swiss legislator in relation to the substantive law created by the Berne Convention, the works and persons protected and the territorial scope of copyright protection.

The extent of compulsory international protection differs according to the constitutional provisions of each State, in other words according to whether or not a treaty becomes a source of national law on its ratification (without need for its incorporation in the national law by means of a special law). In this connection, the author draws attention to the difference which exists between the Brussels version of the Berne Convention and the preceding texts.

With regard to the eventuality of conflict between the provisions of the Berne Convention and those of Swiss law, the author mentions a Federal Tribunal decision, which incidentally has been wildly disputed by legal doctrine, in terms of which the more recent law supersedes the older treaty (on the principle of *lex posterior derogat priori*).

Mr. Curchod maintains that, while the provisions of the Convention are indeed imperative, it is also true that States members of the Union are in this respect bound only by a moral obligation, since there exists no sanction which can compel a country to provide protection under the Convention. However, even after inclusion of the provisions of the Convention in the national law, the State member of the Union cannot use internal legislative measures to amend these provisions (which remain a foreign law).

In the section devoted to the Stockholm Act the author points out that considerable progress has been made in relation to the previous system, as far as eligibility criteria are concerned. The adoption of the principle of the author's nationality has the double advantage of simplifying the situation and bringing the Berne Convention into line with both the Universal Convention and internal legislation, which gives protection to national authors irrespective of the place in which their works are published. In this connection Mr. Curchod raises a question which concerns the cinema in particular: is the fact that one co-author is a national of a Union country sufficient to protect the film in terms of Article 3, paragraph (1)(a), of the Stockholm Act? His reply to the question is affirmative, although this very liberal conclusion does not necessarily follow from the text of the Convention: the reason for it is the need to ensure that cinematographic works receive uniform treatment.

In his conclusion, the author feels that the influence of the provisions of the Convention on Swiss national law does not work in one direction only. The formula could be expanded to include not only law, but also political, economic and cultural considerations. In this context one might quote one of the reasons put forward by the Swiss Federal Council in its message to the Houses in 1881, advocating the promulgation of a Federal copyright law: "... international negotiations are envisaged [which were to result in the Berne Convention], and a consideration which will very probably predominate is that of granting an author absolute and permanent protection at society's expense, and particularly at the expense of its educational needs; Switzerland intends to resist this tendency, and will be better placed to do so if it has the

support of an internal law protecting the interests of society". The author finds it "surprising and disappointing that Switzerland should decide to introduce copyright legislation for the purpose of restricting the protection of authors". It should be added, in all fairness, that problems may still be found today in the agendas of international meetings, albeit in a different context, similar to those which preoccupied Switzerland almost a century ago.

The author ends his work with the observation that the ultimate aim should be the adoption of uniform rules at an international level; he acknowledges, however, that such an objective, which would make all the countries bound by the Convention into "a real Union", is still little more than an ideal.

M. S.

* * *

¿Que es la Convención de Berna? [What is the Berne Convention?]. Consejo Panamericano de la Confederación Internacional de Sociedades de Autores y Compositores (CISAC). A brochure of 12 pages, 24×17 cm. Buenos Aires, 1969.

The purpose of this little information brochure, prepared by Mr. Carlos Mouchet, Legal Adviser of the Pan-American Council of CISAC, with a foreword by Mr. Ariel Ramirez, the President of the Council, is to present a summary of the fundamental principles of the Berne Convention to the Latin American public. Some of these principles, such as moral rights, the *droit de suite* and especially protection without formalities, are explained in greater detail. The situation and the international activities which followed the Stockholm Conference are also mentioned. The brochure ends with a brief exposition of the position of the American countries in relation to international conventions on copyright. This general information is distributed by Latin American societies of authors to the competent governmental authorities of their respective countries, thereby enabling these to acquire a better understanding of the Berne Convention and, if desired, to prepare their accession to this international instrument.

* * *

Das Urheberrecht in Griechenland [Copyright in Greece], by Constantinos Asprogerakas-Grivas. One volume of 83 pages, 21×15 cm. Munich-Pullach, Verlag Dokumentation. Schriftenreihe der UFITA, Vol. No. 34.

This concise study of copyright in Greece, with a preface by Professor Eugen Ulmer, is divided into two parts. In the first part, by way of introduction, the author gives a summarized account of the position of copyright from a legislative standpoint; this is followed by a German translation of the laws and decrees currently in force. The second part is devoted to court decisions in the field of copyright and the rights of performing artists.

Copyright in Greece is still governed by two principal laws, those of 1909 and 1920. However, decree-law No. 4624 of November 12, 1962, established the principle according to which Greek nationals might demand the application of the provisions of the Berne Convention (Brussels Act) whenever such provisions would be more favorable to them than those of national legislation. This "conversion" of the provisions of the Berne Convention into national law resulted first in the rescission of a number of internal provisions (relating to the translation right, photography, the reproduction of works in newspapers and periodicals, etc.). Other provisions of the Berne Convention have supplemented those of the national law (moral rights, broadcasting right). In addition, certain court decisions were confirmed where previously they had been based solely on an interpretation of the laws in force.

It should be pointed out that the Greek legislator, when drafting the decree-law mentioned above, appears to have drawn inspiration from the Belgian law of July 27, 1953¹.

¹ For the text of this law, see *Le Droit d'Auteur*, 1954, p. 28; also Victor Th. Mélas, « Lettre de Grèce » in *Le Droit d'Auteur*, 1964, p. 85.



CALENDAR

BIRPI Meetings

June 29 and 30, 1970 (Geneva) — Sub-Committee of the Committee of Experts for the International Classification of Goods and Services (Marks)

Object: Consideration of proposals for amendments and additions to the International Classification — *Invitations:* Members of the Sub-Committee

June 29 to July 3, 1970 (London) — Joint ad hoc Committee on the International Classification of Patents — Working Group V (2nd Session)

Object: Supervision of the uniform application of the Classification — *Invitations:* Germany (Fed. Rep.), Netherlands, Soviet Union, United Kingdom, United States of America — *Note:* Meeting convened jointly with the Council of Europe

July 1 to 10, 1970 (Geneva) — Committee of Experts for the International Classification of Goods and Services (Marks)

Object: Decisions concerning the proposals for amendments and additions to the International Classification — *Invitations:* All member States of the Nice Union — *Observers:* All member States of the Paris Union

July 13 to 17, 1970 (Geneva) — Joint ad hoc Committee on the International Classification of Patents — Bureau (3rd Session)

Object: Supervision and coordination of the activities of the Working Groups — *Invitations:* Czechoslovakia, Germany (Fed. Rep.), Netherlands, Soviet Union, United Kingdom, United States of America — *Observer:* International Patent Institute — *Note:* Meeting convened jointly with the Council of Europe

September 14 and 15, 1970 (Geneva) — BIRPI Headquarters Building Subcommittee (a Subcommittee of the Interunion Coordination Committee) (2nd Session)

Object: Plans for the extension of the Headquarters Building of BIRPI — *Invitations:* Argentina, Cameroon, France, Germany (Fed. Rep.), Italy, Japan, Netherlands, Soviet Union, Switzerland, United States of America

September 14 to 18, 1970 (Geneva) — Permanent Committee of the Berne Union (Extraordinary Session)

Object: Consideration of various questions concerning copyright — *Invitations:* Belgium, Brazil, Denmark, France, Germany (Fed. Rep.), India, Italy, Portugal, Rumania, Spain, Switzerland, United Kingdom — *Observers:* All other member States of the Berne Union; Unesco; International non-governmental Organizations concerned

September 16 to 18, 1970 (Geneva) — Paris Union Committee for International Cooperation in Information Retrieval Among Patent Offices (ICIREPAT) — Plenary Committee (2nd Session)

September 21 to 29, 1970 (Geneva) — Administrative Bodies of WIPO and of the Paris, Berne, Nice and Lisbon Unions

Object: Constitution of the new organs on the basis of the entry into force of some of the Stockholm (1967) texts; elections; budget and program; other administrative questions — *Invitations:* Member States of WIPO and the Paris, Berne, Nice and Lisbon Unions — *Observers:* To be announced later

October 5 to 9, 1970 (Madrid) — Joint ad hoc Committee on the International Classification of Patents — (4th Session)

Object: Supervision and coordination of the activities of the Working Groups — *Invitations:* Czechoslovakia, France, Germany (Fed. Rep.), Japan, Netherlands, Soviet Union, Spain, Switzerland, United Kingdom, United States of America — *Observer:* International Patent Institute — *Note:* Meeting convened jointly with the Council of Europe.

October 12 to 14, 1970 (Geneva) — ICIREPAT — Technical Committee I (Retrieval Systems, Design and Testing) (4th Session)

October 14 to 16, 1970 (Geneva) — ICIREPAT — Technical Committee VI (Systems Implementation) (4th Session)

October 15 and 16, 1970 (Geneva) — ICIREPAT — Advisory Board for Cooperative Systems (ABCS) (13th Session)

October 19 and 20, 1970 (Geneva) — ICIREPAT — Technical Committee II (Technical Fields: Forward Planning) (4th Session)

October 21 to 23, 1970 (Geneva) — ICIREPAT — Technical Committee III (Advanced Computer Techniques) (3rd Session)

October 26 to 28, 1970 (Geneva) — ICIREPAT — Technical Committee V (Patent Format and Printing) (4th Session)

October 29 and 30, 1970 (Geneva) — ICIREPAT — Technical Committee IV (Microform) (4th Session)

November 23 to 27, 1970 (Geneva) — Joint ad hoc Committee on the International Classification of Patents — Working Group V (3rd Session)

Object: Supervision of the uniform application of the Classification — *Invitations:* Germany (Fed. Rep.), Netherlands, Soviet Union, United Kingdom, United States of America — *Note:* Meeting convened jointly with the Council of Europe

December 7 and 8, 1970 (Geneva) — ICIREPAT — Technical Coordination Committee (5th Session)

December 14 to 18, 1970 (The Hague) — Joint ad hoc Committee on the International Classification of Patents — Temporary Working Group VI

Object: Harmonization of French and English texts — *Note:* Meeting convened jointly with the Council of Europe

February 22 to 26, 1971 (Geneva) — Committee of Experts for an Agreement on the Protection of Type Faces

March 15 to 24, 1971 (Strasbourg) — Diplomatic Conference for the Adoption of the Agreement Concerning the International Patent Classification

Note: Conference convened jointly with the Council of Europe

Meetings of Other International Organizations Concerned with Intellectual Property

June 22 to 27, 1970 (Las Palmas) — International Confederation of Societies of Authors and Composers (CISAC) — 27th Congress

June 30 to July 2, 1970 (The Hague) — International Patent Institute (IIB) — Administrative Council (103rd Session)

July 6 to 9, 1970 (Paris) — International Literary and Artistic Association (ALAI) — Symposium

September 2 to 11, 1970 (Paris) — United Nations Educational, Scientific and Cultural Organization (Unesco) — Intergovernmental Copyright Committee — Extraordinary Session

September 21 to 25, 1970 (Amsterdam) — International Federation of Actors (IFA) — 8th Congress

October 18 to 23, 1970 (Madrid) — International Association for the Protection of Industrial Property (IAPIP) — Executive Committee

Luxembourg — Intergovernmental Conference for the Setting Up of a European System for the Grant of Patents:

June 23 to 26, 1970 — Working Party I — "Implementing Regulations" Subcommittee (1st Meeting)

July 1 to 3, 1970 — Working Party III (2nd Meeting)

July 6 to 9, 1970 — Working Party IV (2nd Meeting)

September 1 to 5, 1970 — Working Party II (2nd Meeting)

September 8 to 11, 1970 — Working Party I (5th Meeting)

September 15 to 18, 1970 — Working Party I — "Implementing Regulations" Subcommittee (2nd Meeting)

October 6 to 8, 1970 — Working Party II (3rd Meeting)

October 13 to 15, 1970 — Working Party IV (3rd Meeting)

October 20 to 23, 1970 — Working Party I — "Implementing Regulations" Subcommittee (3rd Meeting)

November 24 to 27, 1970 — Working Party I — "Implementing Regulations" Subcommittee (4th Meeting)

December 1 to 4, 1970 — Working Party I (6th Meeting)