Copyright

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

6th year - No. 9

September 1970

Contents

NATIONAL LEGISLATION

AUSTRALIA

Copyright Act 1968

(No. 63 of 1968)

An Act relating to copyright, and for other purposes

(Articles 1 to 83)

PART I

Preliminary

Short title

1. — This Act may be cited as the *Copyright Act* 1968.

Commencement

2. — This Act shall come into operation on a date to be fixed by Proclamation [1].

Parts

3. — This Act is divided into Parts, as follows:

Extension to external Territories

4. — This Act extends to every Territory of the Commonwealth not forming part of the Commonwealth.

Exclusion of Imperial Copyright Act, 1911

5. — (1) This Act operates to the exclusion of the Copyright Act, 1911.

(2) For the purposes of section 8 of the *Acts Interpretation Act* 1901-1966, the Copyright Act, 1911, shall be deemed to be an Act passed by the Parliament of the Commonwealth and to be repealed by this Act, and the enactment of Part XI shall not be taken to affect the operation of section 8 of the *Acts Interpretation Act* 1901-1966 as it operates by virtue of this sub-section in relation to matters to which that Part does not apply.

Repeal of Copyright Acts

6. — The following Acts are repealed:

Copyright Act 1912;
Copyright Act 1933;
Copyright Act 1935;
Copyright Act 1963.

[1] This Act came into force on May 1, 1969, by virtne of a Proclamation dated April 18, 1969.

Act to bind the Crown

7. — Subject to Part VII, this Act binds the Crown but nothing in this Act renders the Crown liable to be prosecuted for an offence.

Copyright not to subsist except by virtue of this Act, the Designs Act or the prerogative of the Crown

8. — (1) Subject to the next succeeding sub-section, copyright does not subsist otherwise than by virtue of this Act or of the *Designs Act* 1906-1968.

(2) This Act does not affect any prerogative right or privilege of the Crown.

Operation of other laws

9. — (1) This Act does not affect the right of, or of a person deriving title directly or indirectly from, the Commonwealth or a State to sell, use or otherwise deal with articles that have been, or are, forfeited under a law of the Commonwealth or of the State.

(2) This Act does not relieve a person from complying with the requirements of sections 120 and 121 of the *Broadcasting and Television Act* 1942-1967.

(3) This Act does not affect the operation of the law relating to breaches of trust or confidence.

PART II

Interpretation

Definitions

10. — In this Act, unless the contrary intention appears —

" adaptation " means —

(a) in relation to a literary work in a non-dramatic form — a version of the work (whether in its original language or in a different language) in a dramatic form;

(b) in relation to a literary work in a dramatic form — a version of the work (whether in its original language or in a different language) in a non-dramatic form;

(c) in relation to a literary work (whether in a non-dramatic form or in a dramatic form) —

(i) a translation of the work; or

(ii) a version of the work in which a story or action is conveyed solely or principally by means of pictures; and

(d) in relation to a musical work — an arrangement or transcription of the work;

" artistic work " means —

(a) a painting, sculpture, drawing, engraving or photograph, whether the work is of artistic quality or not;

(b) a building or a model of a building, whether the building or model is of artistic quality or not; or

(c) a work of artistic craftsmanship to which neither of the last two preceding paragraphs applies;

" Australia " includes the Territories of the Commonwealth not forming part of the Commonwealth;

" Australian protected person " means a person who, by virtue of regulations in force under the *Nationality and Citizenship Act* 1948-1967, is, for the purposes of that Act, under the protection of the Australian Government;

" author ", in relation to a photograph, means the person who took the photograph;

" broadcast " means broadcast by wireless telegraphy, and " broadcasting " has a corresponding meaning;

" building " includes a structure of any kind;

" calendar year " means a period of twelve months commencing on the first day of January;

" cinematograph film " means the aggregate of the visual images embodied in an article or thing so as to be capable by the use of that article or thing —

(a) of being shown as a moving picture; or

(b) of being embodied in another article or thing by the use of which it can be so shown,

and includes the aggregate of the sounds embodied in a sound-track associated with such visual images;

" construction " includes erection, and " reconstruction " has a corresponding meaning;

" copy ", in relation to a cinematograph film, means any article or thing in which the visual images or sounds comprising the film are embodied;

" dramatic works " includes —

(a) a choreographic show or other dumb show if described in writing in the form in which the show is to be presented; and

(b) a scenario or script for a cinematograph film,

but does not include a cinematograph film as distinct from the scenario or script for a cinematograph film;

" drawing " includes a diagram, map, chart or plan;

" engraving " includes an etching, lithograph, product of photogravure, woodcut, print or similar work, not being a photograph;

" exclusive licence " means a licence in writing, signed by or on behalf of the owner or prospective owner of copyright, authorizing the licensee, to the exclusion of all other persons, to do an act that, by virtue of this Act, the owner of the copyright would, but for the licence, have the exclusive right to do, and " exclusive licensee " has a corresponding meaning;

" future copyright " means copyright to come into existence at a future time or upon the happening of a future event;

" holder of a licence for a broadcasting station " means a holder of a subsisting licence for a commercial broadcasting station under the *Broadcasting and Television Act* 1942-1967;

" holder of a licence for a television station " means a holder of a subsisting licence for a commercial television station under the *Broadcasting and Television Act* 1942-1967;

" holder of a wireless telegraphy licence " means a holder of a subsisting licence under the *Wireless Telegraphy Act* 1905-1967 to establish, erect, maintain or use a station or appliance for the purpose of transmitting messages by means of wireless telegraphy;

" infringing copy " means —

(a) in relation to a literary, dramatic, musical or artistic work — a reproduction of the work not being a copy of a cinematograph film of the work;

(b) in relation to a sound recording — a record embodying the recording not being a sound-track associated with visual images forming part of a cinematograph film;

(c) in relation to a cinematograph film — a copy of the film;

(d) in relation to a television broadcast or a sound broadcast — a copy of a cinematograph film of the broadcast or a record embodying a sound recording of the broadcast; and

(e) in relation to a published edition of a literary, dramatic, musical or artistic work — a reproduction of the edition,

being an article the making of which constituted an infringement of the copyright in the work, recording, film, broadcast or edition or, in the case of an imported article, would have constituted an infringement of that copyright if the article had been made in Australia by the importer;

" international organization to which this Act applies " means an organization that is declared by regulations made for the purposes of section 186 of this Act to be an international organization to which this Act applies, and includes —

(a) an organ of, or office within, an organization that is so declared; and

(b) a commission, council or other body established by such an organization or organ;

" judicial proceeding " means a proceeding before a court, tribunal or person having by law power to hear, receive and examine evidence on oath;

" law of the Commonwealth " includes a law of a Territory of the Commonwealth;

" literary work " includes a written table or compilation;

" manuscript ", in relation to a work, means an original document embodying the work, whether written by hand or not;

" photograph " means a product of photography or of a process similar to photography, other than an article or thing in which visual images forming part of a cinematograph film have been embodied, and includes a product of xerography, and " photographic " has a corresponding meaning;

" plate " includes a stereotype, stone, block, mould, matrix, transfer, negative or other similar appliance;

" prospective owner " means —

(a) in relation to a future copyright that is not the subject of an agreement of a kind referred to in subsection (1) of section 197 of this Act — the person who will be the owner of the copyright on its coming into existence; or

(b) in relation to a future copyright that is the subject of such an agreement — the person in whom, by virtue of that sub-section, the copyright will vest on its coming into existence;

" record " means a disc, tape, paper or other device in which sounds are embodied;

" sculpture " includes a cast or model made for purposes of sculpture;

" sound broadcast " means sounds broadcast otherwise than as part of a television broadcast;

" sound recording " means the aggregate of the sounds embodied in a record;

" sound-track ", in relation to visual images forming part of a cinematograph film, means —

(a) the part of any article or thing, being an article or thing in which those visual images are embodied, in which sounds are embodied; or

(b) a disc, tape or other device in which sounds are embodied and which is made available by the maker of the film for use in conjunction with the article or thing in which those visual images are embodied;

" sufficient acknowledgement ", in relation to a work, means an acknowledgement identifying the work by its title or other description and, unless the work is anonymous or pseudonymous or the author has previously agreed or directed that an acknowledgement of his name is not to be made, also identifying the author;

" television broadcast " means visual images broadcast by way of television, together with any sounds broadcast for reception along with those images;

" the Australian Broadcasting Commission " means the Australian Broadcasting Commission constituted under the *Broadcasting and Television Act* 1942-1967;

" the Commonwealth " includes the Administration of a Territory of the Commonwealth;

" the Copyright Act, 1911 " means the Imperial Act knowu as the Copyright Act, 1911;

" the Copyright Tribunal " or " the Tribunal " means the Copyright Tribunal established by Part VI, and includes a member of that Tribunal exercising powers of that Tribunal;

" the Crown " includes the Crown in right of a State and also includes the Administration of a Territory of the Commonwealth;

" the minimum royalty ", in relation to a record, means the amounts applicable in respect of the record under subsection (5) of section 56, and sub-paragraph (i) of paragraph *(b)* of section 57, of this Act or, if those provisions are affected by regulations made for the purposes of section 58 of this Act, under those provisions as so affected;

" the National Librarian " has the same meaning as in the *National Library Act* 1960-1967;

" the National Library " means the National Library established under the *National Library Act* 1960-1967;

" the royalty ", in relation to a record, means the amount applicable in respect of the record under sub-section (1) of section 56 of this Act or, if that sub-section is affected by regulations made for the purposes of section 58 of this Act, under that sub-section as so affected;

" will " includes a codicil;

" wireless telegraphy " means the emitting or receiving, otherwise than over a path that is provided by a material substance, of elcctromagnetic energy;

" wireless telegraphy apparatus " means an appliance or apparatus for the purpose of transmitting or receiving sounds or visual images by means of wireless telegraphy;

" work " means a literary, dramatic, musical or artistic work;

" work of joint authorship " means a work that has been produced by the collaboration of two or more authors and in which the contribution of each author is not separate from the contribution of the other author or the contributions of the other authors;

" writing " means a mode of representing or reproducing words, figures or symbols in a visible form, and " written " has a corresponding meaning.

Residence in a country not affected by temporary absence

11. — For the purposes of this Act, a person who, at a material time, was ordinarily resident in a country (including Australia) but was temporarily absent from that country shall be treated as if he had been resident in that country at that time.

References to Parliament

12. — A reference in this Act to a Parliament shall be read as a reference to the Parliament of the Commonwealth or of a State or a legislature of a Territory of the Commonwealth.

Acts comprised in copyright

13. — (1) A reference in this Act to an act comprised in the copyright in a work or other subject-matter shall be read as a reference to any act that, under this Act, the owner of the copyright has the exclusive right to do.

(2) For the purposes of this Act, the exclusive right to do an act in relation to a work, an adaptation of a work or any other subject-matter includes the exclusive right to authorize a person to do that act in relation to that work, adaptation or other subject-matter.

Acts done in relation to substantial part of work or other subject-matter deemed to be done in relation to the whole

14. — (1) In this Act, unless the contrary intention appears —

(a) a reference to the doing of an act in relation to a work or other subject-matter shall be read as including a reference to the doing of that act in relation to a substantial part of the work or other subject-matter; and

(b) a reference to a reproduction, adaptation or copy of a work, or to a record embodying a sound recording, shall be read as including a reference to a reproduction, adaptation or copy of a substantial part of the work, or to a record embodying a substantial part of the sound recording, as the case may be.

(2) This section does not affect the interpretation of any reference in sections 32, 177, 180, 187 and 198 of this Act to the publication, or absence of publication, of a work.

Refereuces to acts doue with licence of owner of copyright

15. — For the purposes of this Act, an act shall be deemed to have been done with the licence of the owner of a copyright if the doing of the act was authorized by a licence binding the owner of the copyright.

References to partial assignment of copyright

16. — A reference in this Act to a partial assignment of copyright shall be read as a reference to an assignment of copyright that is limited in any way.

Statutory employmeut

17. — For the purposes of this Act, the employment of a person, or the employment of a person as an apprentice, under a law of the Commonwealth or of a State but otherwise than under a contract of service or contract of apprenticeship shall be treated as if that employment were employment under a contract of service or employment under a contract of apprenticeship, as the case may be.

Libraries established or couducted for profit

18. — For the purposes of this Act, a library shall not be taken to be established or conducted for profit by reason only that the library is owned by a person carrying on business for profit.

References to Copyright Act, 1911

19. — A reference in a provision of this Act to the Copyright Act, 1911, in relation to any time before the commencement of this Act, shall, for the purposes of the application of that provision in relation to a State or a Territory of the Commonwealth, be read as a reference to the Copyright Act, 1911 as it applied in that State or Territory at that time.

Names under which work is published

20. — (1) A reference in this Act to the name or names under which a work was published shall be read as a reference to the name or names specified in the work as the name of the author or the names of the authors of the work.

(2) For the purposes of this Act, a publication of a work under two or more names shall not be taken to be pseudonymous unless all those names are pseudonyms.

Reproductiou of works

21. — (1) For the purposes of this Act, a literary, dramatic or musical work shall be deemed to have been reproduced in a material form if a sound recording or cinematograph film is made of the work, and any record embodying such a recording and any copy of such a film shall be deemed to be a reproduction of the work.

(2) The last preceding sub-section applies in relation to an adaptation of a work in like manner as it applies in relation to a work.

(3) For the purposes of this Act, an artistic work shall be deemed to have been reproduced —

(a) in the case of a work in a two-dimensional form — if a version of the work is produced in a three-dimensional form; or

(b) in the case of a work in a three-dimensional form — if a version of the work is produced in a two-dimensional form,

and the version of the work so produced shall be deemed to be a reproduction of the work.

(4) The last preceding sub-section has effect subject to Division 7 of Part III.

Provisions relating to the making of a work or other subject-matter

22. — (1) A reference in this Act to the time when, or the period during which, a literary, dramatic or musical work was made shall be read as a reference to the time when, or the period during which, as the case may be, the work was first reduced to writing or to some other material form.

(2) For the purposes of this Act, a literary, dramatic or musical work that exists in the form of sounds embodied in an article or thing shall be deemed to have been reduced to a material form and to have been so reduced at the time when those sounds were embodied in that article or thing.

(3) For the purposes of this Act —

(a) a sound recording shall be deemed to have been made at the time when the first record embodying the recording was produced; and

(b) the maker of the sound recording is the person who owned that record at that time.

(4) For the purposes of this Act —

(a) a reference to the making of a cinematograph film shall be read as a reference to the doing of the things necessary for the production of tbe first copy of the film; and

(b) the maker of the cinematograph film is the person by whom the arrangements necessary for the making of the film were undertaken.

(5) For the purposes of this Act, a television broadcast or sound broadcast shall be deemed to have been made by the person by whom, at the time when, and from the place from which, the visual images or sounds constituting the broadcast, or both, as the case may be, were broadcast.

Sound recordings and records

23. — (1) For the purposes of this Act, sounds embodied in a sound-track associated with visual images forming part of cinematograph film shall be deemed not to be a sound recording.

(2) A reference in this Act to a record of a work or other subject-matter shall, unless the contrary intention appears, be read as a reference to a record by means of which the work or other subject-matter can be performed.

References to sounds and visual images embodied in an article

24. — For the purposes of this Act, sounds or visual images shall be taken to have been embodied in an article or thing if the article or thing has been so treated in relation to those sounds or visual images that those sounds or visual images are capable, with or without the aid of some other device, of being reproduced from the article or thing.

Provisions relating to broadcasting

25. — (1) A reference in this Act to broadcasting shall, unless the contrary intention appears, be read as a reference to broadcasting whether by way of sound broadcasting or of television.

(2) A reference in this Act to the doing of an act by the reception of a television broadcast or sound broadcast shall be read as a reference to the doing of that act by means of receiving a broadcast —

(a) from the transmission by which the broadcast is made; or

(b) from a transmission made otherwise than by way of broadcasting, but simultaneously with the transmission referred to in the last preceding paragraph,

whether the reception of the broadcast is directly from the transmission concerned or from a re-transmission made by any person from any place.

(3) Where a record embodying a sound recording or a copy of a cinematograph film is used for the purpose of making a broadcast (in this sub-section referred to as " the primary broadcast "), a person who makes a broadcast (in the sub-section referred to as " the secondary broadcast ") by receiving and simultaneously making a further transmission of —

(a) the transmission by which the primary broadcast was made; or

(b) a transmission made otherwise than by way of broadcasting but simultaneously with the transmission referred to in the last preceding paragraph,

shall, for the purposes of this Act, be deemed not to have used the record or copy for the purpose of making the secondary broadcast.

(4) In this Act —

(a) a reference to a cinematograph film of a television broadcast shall be read as including a reference to a cinematograph film, or a photograph, of any of the visual images comprised in the broadcast; and

(b) a reference to a copy of a cinematograph film of a television broadcast shall be read as including a reference to a copy of a cinematograph film, or a reproduction of a photograph, of any of those images.

(5) In this section, " re-transmission " means any re-transmission, whether over paths provided by a material substance or not, and includes a re-transmission made by making use of any article or thing in which the visual images or sounds constituting the broadcast, or both, as the case may be, have been embodied.

References to transmission to subscribers to a diffusion service

26. — (1) A reference in this Act to the transmission of a work or other subject-matter to subscribers to a diffusion service shall be read as a reference to the transmission of the work or other subject-matter in the course of a service of distributing broadcast or other matter (whether provided by

the person operating the service or by other persons) over wires, or over other paths provided by a material substance, to the premises of subscribers to the service.

(2) For the purposes of this Act, where a work or other subject-matter is so transmitted —

(a) the person operating the service shall be deemed to be the person causing the work or other subject-matter to be so transmitted; and

(b) no person other than the person operating the service shall be deemed to be causing the work or other subject-matter to be so transmitted, whether or not he provides any facilities for the transmission.

(3) For the purposes of the application of this section, a service of distributing broadcast or other matter shall be disregarded where the service is only incidental to a business of keeping or letting premises at which persons reside or sleep, and is operated as part of the amenities provided exclusively for residents or inmates of the premises or for those residents or inmates and their guests.

(4) A reference in this section to the person operating a service of distributing broadcast or other matter shall be read as a reference to the person who, in the agreements with subscribers to the service, undertakes to provide them with the service, whether he is the person who transmits the broadcast or other matter or not.

(5) Where a service of distributing matter over wires or over other paths provided by a material substance is only incidental to, or part of, a service of transmitting telegraphic or telephonic communications, a subscriber to the last-mentioned service shall be taken, for the purposes of this section, to be a subscriber to the first-mentioned service.

Performance

27. — (1) Subject to this section, a reference in this Act to performance shall —

(a) be read as including a reference to any mode of visual or aural presentation, whether the presentation is by the operation of wireless telegraphy apparatus, by the exhibition of a cinematograph film, by the use of a record or by any other means; and

(b) in relation to a lecture, address, speech or sermon — be read as including a reference to delivery,

and a reference in this Act to performing a work or an adaptation of a work has a corresponding meaning.

(2) For the purposes of this Act, broadcasting, or the causing of a work or other subject-matter to be transmitted to subscribers to a diffusion service, shall be deemed not to constitute performance or to constitute causing visual images to be seen or sounds to be heard.

(3) Where visual images or sounds are displayed or emitted by any receiving apparatus to which they are conveyed by the transmission of electromagnetic signals (whether over paths provided by a material substance or not), the operation of any apparatus by which the signals are transmitted, directly or indirectly, to the receiving apparatus shall be deemed not to constitute performance or to constitute causing visual images to be seen or sounds to be heard but, in so far as the display or emission of the images or sounds constitutes a performance, or causes the images to be seen or the sounds to be heard, the performance, or the causing of the images to be seen or sounds to be heard, as the case may be, shall be deemed to be effected by the operation of the receiving apparatus.

(4) Without prejudice to the last two preceding sub-sections, where a work or an adaptation of a work is performed or visual images are caused to be seen or sounds to be heard by the operation of any apparatus referred to in the last preceding sub-section or of any apparatus for reproducing sounds by the use of a record, being apparatus provided by or with the consent of the occupier of the premises where the apparatus is situated, the occupier of those premises shall, for the purposes of this Act, be deemed to be the person giving the performance or causing the images to be seen or the sounds to be heard, whether he is the person operating the apparatus or not.

Performance of works or other subject-matter in the course of educational instruction

28. — (1) Where a literary, dramatic or musical work —

(a) is performed in class, or otherwise in the presence of an audience; and

(b) is so performed by a teacher in the course of his giving educational instruction, not being instruction given for profit, or by a student in the course of his receiving such instruction,

the performance shall, for the purposes of this Act, be deemed not to be a performance in public if the audience is limited to persons who are taking part in the instruction or are otherwise directly connected with the place where the instruction is given.

(2) For the purposes of the last preceding sub-section, educational instruction given by a teacher at a place of education that is not conducted for profit shall not be taken to be given for profit by reason only that the teacher receives remuneration for giving the instruction.

(3) For the purposes of sub-section (1) of this section, a person shall not be taken to be directly connected with a place where instruction is given by reason only that he is a parent or guardian of a student who receives instruction at that place.

(4) The last three preceding sub-sections apply in relation to sound recordings and cinematograph films in like manner as they apply in relation to literary, dramatic and musical works but, in the application of those sub-sections in relation to such recordings or films, any reference to performance shall be read as a reference to the act of causing the sounds concerned to be heard or the visual images concerned to be seen.

Publication

29. — (1) Subject to this section, for the purposes of this Act —

(a) a literary, dramatic, musical or artistic work, or an edition of such a work, shall be deemed to have been published if, but only if, reproductions of the work or edition

have been supplied (whether by sale or otherwise) to the public;

(b) a cinematograph film shall be deemed to have been published if, but only if, copies of the film have been sold, let on hire, or offered or exposed for sale or hire, to the public; and

(c) a sound recording shall be deemed to have been published if, but only if, records embodying the recording or a part of the recording have been supplied (whether by sale or otherwise) to the public.

(2) In determining, for the purposes of paragraph *(a)* of the last preceding sub-section, whether reproductions of a work or edition have been supplied to the public, section 14 of this Act does not apply.

(3) For the purposes of this Act, the performance of a literary, dramatic or musical work, the supplying (whether by sale or otherwise) to the public of records of a literary, dramatic or musical work, the exhibition of an artistic work, the construction of a building or of a model of a building, or the supplying (whether by sale or otherwise) to the public of photographs, or engravings of a building, of a model of a building or of a sculpture, does not constitute publication of the work.

(4) A publication that is merely colourable and is not intended to satisfy the reasonable requirements of the public shall be disregarded for the purposes of this Act except in so far as it may constitute an infringement of copyright or a breach of a duty under Part IX.

(5) For the purposes of this Act, a publication in Australia or in any other country shall not be treated as being other than the first publication by reason only of an earlier publication elsewhere, if the two publications took place within a period of not more than thirty days.

(6) In determining, for the purposes of any provision of this Act —

(a) whether a work or other subject-matter has been published;

(b) whether a publication of a work or other subject-matter was the first publication of the work or other subject-matter; or

(c) whether a work or other subject-matter was published or otherwise dealt with in the life-time of a person,

any unauthorized publication or the doing of any other unauthorized act shall be disregarded.

(7) Subject to section 52 of this Act, a publication or other act shall, for the purposes of the last preceding sub-section, be taken to have been unauthorized if, but only if —

(a) copyright subsisted in the work or other subject-matter and the act concerned was done otherwise than by, or with the licence of, the owner of the copyright; or

(b) copyright did not subsist in the work or other subject-matter and the act concerned was done otherwise than by, or with the licence of —

(i) the author or, in the case of a sound recording, cinematograph film or edition of a work, the maker or publisher, as the case may be; or

(ii) persons lawfully claiming under the author, maker or publisher.

(8) Nothing in either of the last two preceding sub-sections affects any provisions of this Act relating to the acts comprised in a copyright or to acts constituting infringements of copyrights or any provisions of Part IX.

Ownership of copyright for particular purposes

30. — In the case of a copyright of which (whether as a result of a partial assignment or otherwise) different persons are the owners in respect of its application to —

(a) the doing of different acts or classes of acts; or

(b) the doing of one or more acts or classes of acts in different countries or at different times,

the owner of the copyright, for any purpose of this Act, shall be deemed to be the person who is the owner of the copyright in respect of its application to the doing of the particular act or class of acts, or to the doing of the particular act or class of acts in the particular country or at the particular time, as the case may be, that is relevant to that purpose, and a reference in this Act to the prospective owner of a future copyright of which different persons are the prospective owners has a corresponding meaning.

PART III

Copyright in Original Literary, Dramatic, Musical and Artistic Works

Division 1. — Nature, Duration and Ownership of Copyright in Works

Nature of copyright in original works

31. — (1) For the purposes of this Act, unless the contrary intention appears, copyright, in relation to a work, is the exclusive right —

(a) in the case of a literary, dramatic or musical work, to do all or any of the following acts:

(i) to reproduce the work in a material form;

(ii) to publish the work;

(iii) to perform the work in public;

(iv) to broadcast the work;

(v) to cause the work to be transmitted to subscribers to a diffusion service;

(vi) to make an adaptation of the work;

(vii) to do, in relation to a work that is an adaptation of the first-mentioned work, any of the acts specified in relation to the first-mentioned work in sub-paragraphs (i) to (v), inclusive, of this paragraph; and

(b) in the case of an artistic work, to do all or any of the following acts:

(i) to reproduce the work in a material form;

(ii) to publish the work;

(iii) to include the work in a television broadcast;

(iv) to cause a television programme that includes the work to be transmitted to subscribers to a diffusion service.

(2) The generality of sub-paragraph (i) of paragraph *(a)* of the last preceding sub-section is not affected by sub-paragraph (vi) of that paragraph.

Original works in which copyright subsists

32. — (1) Subject to this Act, copyright subsists in an original literary, dramatic, musical or artistic work that is unpublished and of which the author —

(a) was a qualified person at the time when the work was made; or

(b) if the making of the work extended over a period — was a qualified person for a substantial part of that period.

(2) Subject to this Act, where an original literary, dramatic, musical or artistic work has been published —

(a) copyright subsists in the work; or

(b) if copyright in the work subsisted immediately before its first publication — copyright continues to subsist in the work,

if, but only if —

(c) the first publication of the work took place in Australia;

(d) the author of the work was a qualified person at the time when the work was first published; or

(e) the author died before that time but was a qualified person immediately before his death.

(3) Notwithstanding the last preceding sub-section but subject to the remaining provisions of this Act, copyright subsists in —

(a) an original artistic work that is a building situated in Australia; or

(b) an original artistic work that is attached to, or forms part of, such a building.

(4) In this section, " qualified person " means an Australian citizen, an Australian protected person or a person resident in Australia.

Duration of copyright in original works

33. — (1) This section has effect subject to sub-section (2) of the last preceding section and to the next succeeding section.

(2) Subject to this section, where, by virtue of this Part, copyright subsists in a literary, dramatic or musical work, or in an artistic work other than a photograph, that copyright continues to subsist until the expiration of fifty years after the expiration of the calendar year in which the author of the work died.

(3) If, before the death of the author of a literary, dramatic or musical work —

(a) the work had not been published;

(b) the work had not been performed in public;

(c) the work had not been broadcast; and

(d) records of the work had not been offered or exposed for sale to the public,

the copyright in the work continues to subsist until the expiration of fifty years after the expiration of the calendar year in which the work is first published, performed in public, or broadcast, or records of the work are first offered or exposed for sale to the public, whichever is the earliest of those events to happen.

(4) A reference in the last preceding sub-section to the doing of an act in relation to a work shall be read as including a reference to the doing of that act in relation to an adaptation of the work.

(5) If, before the death of the author of an engraving, the engraving had not been published, the copyright in the engraving continues to subsist until the expiration of fifty years after the expiration of the calendar year in which the engraving is first published.

(6) Copyright subsisting in a photograph by virtue of this Part continues to subsist until the expiration of fifty years after the expiration of the calendar year in which the photograph is first published.

Duration of copyright in anonymous and pseudonymous works

34. — (1) Subject to the next succeeding sub-section, where the first publication of a literary, dramatic or musical work, or of an artistic work other than a photograph, is anonymous or pseudonymous, the last preceding section does not apply in relation to the work but any copyright subsisting in the work by virtue of this Part continues to subsist until the expiration of the period of fifty years after the expiration of the calendar year in which the work was first published.

(2) The last preceding sub-section does not apply in relation to a work if, at any time before the expiration of the period referred to in that sub-section, the identity of the author of the work is generally known or can be ascertained by reasonable inquiry.

Ownership of copyright in original works

35. — (1) This section has effect subject to Parts VII and X.

(2) Subject to this section, the author of a literary, dramatic, musical or artistic work is the owner of any copyright subsisting in the work by virtue of this Part.

(3) The operation of any of the next three succeeding subsections in relation to copyright in a particular work may be excluded or modified by agreement.

(4) Where a literary, dramatic or artistic work is made by the author in pursuance of the terms of his employment by the proprietor of a newspaper, magazine or similar periodical under a contract of service or apprenticeship and is so made for the purpose of publication in a newspaper, magazine or similar periodical, the proprietor is the owner of any copyright subsisting in the work by virtue of this Part in so far as the copyright relates to —

(a) publication of the work in any newspaper, magazine or similar periodical;

(b) broadcasting the work; or

(c) reproduction of the work for the purpose of its being so published or broadcast,

but not otherwise.

(5) Subject to the last preceding sub-section, where —

(a) a person makes, for valuable consideration, an agreement with another person for the taking of a photograph, the painting or drawing of a portrait or the making of an engraving by the other person; and

(b) the work is made in pursuance of the agreement,

the first-mentioned person is the owner of any copyright subsisting in the work by virtue of this Part, but, if at the time the agreement was made that person made known, expressly or by implication, to the author of the work the purpose for which the work was required, the author is entitled to restrain the doing, otherwise than for that purpose, of any act comprised in the copyright in the work.

(6) Where a literary, dramatic or artistic work to which neither of the last two preceding sub-sections applies, or a musical work, is made by the author in pursuance of the terms of his employment by another person under a contract of service or apprenticeship, that other person is the owner of any copyright subsisting in the work by virtue of this Part.

Division 2. — Infringement of Copyright in Works

Infringement by doing acts comprised in the copyright

36. — (1) Subject to this Act, the copyright in a literary, dramatic, musical or artistic work is infringed by a person who, not being the owner of the copyright, and without the licence of the owner of the copyright, does in Australia, or authorizes the doing in Australia of, any act comprised in the copyright.

(2) The next three succeeding sections do not affect the generality of the last preceding sub-section.

Infringement by importation for sale or hire

37. — The copyright in a literary, dramatic, musical or artistic work is infringed by a person who, without the licence of the owner of the copyright, imports an article into Australia for the purpose of —

(a) selling, letting for hire, or by way of trade offering or exposing for sale or hire, the article;

(b) distributing the article —

(i) for the purpose of trade; or

(ii) for any other purpose to an extent that will affect prejudicially the owner of the copyright; or

(c) by way of trade exhibiting the article in public,

where, to his knowledge, the making of the article would, if the article had been made in Australia by the importer, have constituted an infringement of the copyright.

Infringement by sale and other dealings

38. — (1) The copyright in a literary, dramatic, musical or artistic work is infringed by a person who, in Australia, and without the licence of the owner of the copyright —

(a) sells, lets for hire, or by way of trade offers or exposes for sale or hire, an article; or

(b) by way of trade exhibits an article in public,

where, to his knowledge, the making of the article constituted an infringement of the copyright or, in the case of an imported article, would, if the article had been made in Australia by the importer, have constituted such an infringement.

(2) For the purposes of the last preceding sub-section, the distribution of any articles —

(a) for the purpose of trade; or

(b) for any other purpose to an extent that affects prejudicially the owner of the copyright concerned,

shall be taken to be the sale of those articles.

Infringement by permitting place of public entertainment to be used for performance of work

39. — (1) The copyright in a literary, dramatic or musical work is infringed by a person who permits a place of public entertainment to be used for the performance in public of the work, where the performance constitutes an infringement of the copyright in the work.

(2) This section does not apply where the person permitting the place to be so used establishes —

(a) that he was not aware, and had no reasonable grounds for suspecting, that the performance would be an infringement of the copyright; or

(b) that he gave the permission gratuitously, or for a consideration that was only nominal or, if more than nominal, did not exceed a reasonable estimate of the expenses to be incurred by him by reason of the use of the place for the performance.

(3) In this section, "place of public entertainment" includes any premises that are occupied principally for purposes other than public entertainment but are from time to time made available for hire for purposes of public entertainment.

Division 3. — Acts not Constituting Infringements of Copyright in Works

Fair dealing for purpose of research or private study

40. — A fair dealing with a literary, dramatic, musical or artistic work, or with an adaptation of a literary, dramatic or musical work, for the purpose of research or private study does not constitute an infringement of the copyright in the work.

Fair dealing for purpose of criticism or review

41. — A fair dealing with a literary, dramatic, musical or artistic work, or with an adaptation of a literary, dramatic or musical work, does not constitute an infringement of the copyright in the work if it is for the purpose of criticism or review, whether of that work or of another work, and a sufficient acknowledgement of the work is made.

Fair dealing for purpose of reporting news

42. — (1) A fair dealing with a literary, dramatic, musical or artistic work, or with an adaptation of a literary, dramatic or musical work, does not constitute an infringement of the copyright in the work if —

(a) it is for the purpose of, or is associated with, the reporting of news in a newspaper, magazine or similar periodical and a sufficient acknowledgement of the work is made; or

(b) it is for the purpose of, or is associated with, the reporting of news by means of broadcasting or in a cinematograph film.

(2) The playing of a musical work in the course of reporting news by means of broadcasting or in a cinematograph film is not a fair dealing with the work for the purposes of this section if the playing of the work does not form part of the news being reported.

(3) This section applies where a literary, dramatic, musical or artistic work, or an adaptation of a literary, dramatic or musical work, is caused to be transmitted to subscribers to a diffusion service in like manner as it applies where such a work or adaptation is broadcast.

Reproduction for purposes of judicial proceeding

43. — The copyright in a literary, dramatic, musical or artistic work is not infringed by anything done for the purposes of a judicial proceeding or of a report of a judicial proceeding.

Inclusion of works in collections for use by places of education

44. — (1) The copyright in a published literary, dramatic, musical or artistic work is not infringed by the inclusion of a short extract from the work, or, in the case of a published literary, dramatic or musical work, from an adaptation of the work, in a collection of literary, dramatic, musical or artistic works contained in a book, sound recording or cinematograph film and intended for use by places of education if —

(a) the collection is described in an appropriate place in the book, on the label of each record embodying the recording or of its container, or in the film, as being intended for use by places of education;

(b) the work or adaptation was not published for the purpose of being used by places of education;

(c) the collection consists principally of matter in which copyright does not subsist; and

(d) a sufficient acknowledgement of the work or adaptation is made.

(2) The last preceding sub-section does not apply in relation to the copyright in a work if, in addition to the extract concerned, two or more other extracts from, or from adaptations of, works (being works in which copyright subsists at the time when the collection is published) by the author of the first-mentioned work are contained in that collection, or are contained in that collection taken together with every similar collection, if any, of works intended for use by places of education and published by the same publisher within the period of five years immediately preceding the publication of the first-mentioned collection.

Division 4. — Acts not Constituting Infringements of Copyright in Literary, Dramatic and Musical Works

Reading or recitation in public or for a broadcast

45. — The reading or recitation in public, or the inclusion in a sound broadcast or television broadcast of a reading or recitation, of an extract of reasonable length from a published literary or dramatic work, or from an adaptation of such a work, does not constitute an infringement of the copyright in the work if a sufficient acknowledgement of the work is made.

Performance at premises where persons reside or sleep

46. — Where a literary, dramatic or musical work, or an adaptation of such a work, is performed in public, by the operation of wireless telegraphy apparatus or by the use of a record, at premises where persons reside or sleep, as part of the amenities provided exclusively for residents or inmates of the premises or for those residents or inmates and their guests, the performance does not constitute an infringement of the copyright in the work.

Reproduction for purpose of broadcasting

47. — (1) Where the broadcasting by a person of a literary, dramatic or musical work, or of an adaptation of such a work, would not (whether by reason of an assignment or licence or of the operation of a provision of this Act) constitute an infringement of the copyright in the work, but the making by the person of a sound recording or a cinematograph film of the work or adaptation would, apart from this sub-section, constitute such an infringement, the copyright in the work is not infringed by his making such a recording or film solely for the purpose of the broadcasting of the work or adaptation.

(2) The last preceding sub-section does not apply in relation to a recording or film if a record embodying the recording or a copy of the film is used for a purpose other than —

(a) the broadcasting of the work or adaptation in circumstances that do not (whether by reason of an assignment or licence or of the operation of a provision of this Act) constitute an infringement of the copyright in the work; or

(b) the making of further records embodying the recording or further copies of the film for the purpose of the broadcasting of the work or adaptation in such circumstances.

(3) Sub-section (1) of this section does not apply in relation to a recording or film where a record embodying the recording or a copy of the film is used for the purpose of the broadcasting of the work or adaptation by a person who is not the maker of the recording or film unless the maker has paid to the owner of the copyright in the work such amount as they agree or, in default of agreement, has given an undertaking in writing to the owner to pay to him such amount as is determined by the Copyright Tribunal, on the application of either of them, to be equitable remuneration to the owner for the making of the recording or film.

(4) A person who has given an undertaking referred to in the last preceding sub-section is liable, when the Copyright Tribunal has determined the amount to which the undertaking relates, to pay that amount to the owner of the copyright in the work and the owner may recover that amount in a court of competent jurisdiction from the person as a debt due to the owner.

(5) Sub-section (1) of this section does not apply in relation to a recording or film unless, before the expiration of the period of twelve months commencing on the day on which any of the records embodying the recording or any of the

copies of the film is first used for broadcasting the work or adaptation in accordance with that sub-section, or before the expiration of such further period, if any, as is agreed between the maker of the recording or film and the owner of the copyright in the work, all the records embodying the recording or all the copies of the film are destroyed or are delivered, with the consent of the National Librarian, to the National Library.

Division 5. — Copying of Works in Libraries

Interpretation

48. — In this Division —

(a) a reference to an article contained in a periodical publication is a reference to anything (other than an artistic work) appearing in such a publication; and

(b) a reference to a librarian of a library includes a reference to a person in charge of a library.

Copying by libraries for students and members of Parliament

49. — (1) Subject to this section, the copyright in an article contained in a periodical publication is not infringed by the making of a copy of the article or of part of the article by or on behalf of the librarian of a library that is not established or conducted for profit.

(2) Subject to this section, the copyright in a published literary, dramatic or musical work other than an article contained in a periodical publication is not infringed by the making of a copy of part of the work by or on behalf of the librarian of a library that is not established or conducted for profit.

(3) The last two preceding sub-sections do not apply in relation to a copy of an article, or of part of an article, contained in a periodical publication or a copy of part of any other published literary, dramatic or musical work, as the case may be, unless —

(a) the copy is supplied only to a person who satisfies the librarian, or a person acting on behalf of the librarian, that he requires the copy for the purpose of research or private study and that he will not use it for any other purpose or, if the person is a member of a Parliament and the librarian is the librarian of a library the principal purpose of which is to provide library services for members of that Parliament, that he requires the copy for the purpose of the performance of his duties as such a member and that he will not use it for any other purpose;

(b) the person to whom the copy is supplied has not previously been supplied by the librarian, or by a person acting on behalf of the librarian, with a copy of the same article or part of an article or of the same part of a work; and

(c) where the copy is supplied to a person other than a member of a Parliament — the person is required to pay for the copy an amount not less than the cost of making the copy.

(4) Sub-section (1) of this section does not apply in relation to a copy of, or of parts of, two or more articles contained in the same periodical publication unless the articles relate to the same subject-matter.

(5) Sub-section (2) of this section does not apply in relation to a copy of part of a published literary, dramatic or musical work unless the copy contains only a reasonable portion of the work.

(6) The regulations may exclude the application of sub-section (1) or sub-section (2) of this section in such cases as are specified in the regulations.

Copying by libraries for other libraries

50. — (1) Subject to this section, the copyright in an article contained in a periodical publication or in any other published literary, dramatic or musical work is not infringed by the making of a copy of the article or other work, or of part of the article or other work, by or on behalf of the librarian of a library.

(2) The last preceding sub-section does not apply in relation to a copy of an article or other work or of part of an article or other work unless —

(a) the copy is supplied only to the librarian of another library; and

(b) where the work is not an article contained in a periodical publication and the copy is a copy of the whole of the work or of a part of the work that is more than a reasonable portion of the work — at the time when the copy is made, the librarian by whom or on whose behalf it is made does not know the name and address of any person entitled to authorize the making of the copy and could not by reasonable inquiry ascertain the name and address of such a person.

(3) The regulations may exclude the application of sub-section (1) of this section —

(a) where the copy is supplied by the librarian of the other library to a person otherwise than in accordance with the regulations; and

(b) in such other cases as are specified in the regulations.

Copying of unpublished works in libraries

51. — (1) Where, at a time more than fifty years after the expiration of the calendar year in which the author of a literary, dramatic or musical work, or of an artistic work being a photograph or engraving, died, and more than seventy-five years after the time at which, or the expiration of the period during which, the work was made, copyright subsists in the work but —

(a) the work has not been published; and

(b) a copy of the work, or, in the case of a literary, dramatic or musical work, the manuscript of the work, is kept in a library or other place where it is, subject to any regulations governing that library or other place, open to public inspection,

the copyright in the work is not infringed —

(c) by the making of a copy of the work by a person for the purpose of research or private study or with a view to publication; or

(d) by the making of a copy of the work by, or on behalf of, the person in charge of that library or other place if the copy is supplied to a person who satisfies the person in charge that he requires the copy for the purpose of research or private study or with a view to publication and that he will not use it for any other purpose.

(2) Where a manuscript, or a copy, of a thesis or other similar literary work that has not been published is kept in a library of a university or other similar institution, the copyright in the thesis or other work is not infringed by the making of a copy of the thesis or other work by or on behalf of the librarian of the library if the copy is supplied to a person who satisfies the librarian, or a person acting on behalf of the librarian, that he requires the copy for the purpose of research or private study and that he will not use it for any other purpose.

Publication of unpublished works kept in libraries

52. — (1) Where —

(a) a published literary, dramatic or musical work (in this section referred to as " the new work ") incorporates the whole or a part of a work (in this section referred to as " the old work ") to which sub-section (1) of the last preceding section applied immediately before the new work was published;

(b) before the new work was published, the prescribed notice of the intended publication of the work had been given; and

(c) immediately before the new work was published, the identity of the owner of the copyright in the old work was not known to the publisher of the new work,

then, for the purposes of this Act, the first publication of the new work, and any subsequent publication of the new work whether in the same or in an altered form, shall, in so far as it constitutes a publication of the old work, be deemed not to be an infringement of the copyright in the old work or an unauthorized publication of the old work.

(2) The last preceding sub-section does not apply to a subsequent publication of the new work incorporating a part of the old work that was not included in the first publication of the new work unless —

(a) sub-section (1) of the last preceding section would, but for this section, have applied to that part of the old work immediately before that subsequent publication;

(b) before that subsequent publication, the prescribed notice of the intended publication had been given; and

(c) immediately before that subsequent publication, the identity of the owner of the copyright in the old work was not known to the publisher of that subsequent publication.

(3) Where a work, or a part of a work, has been published and, by virtue of this section, the publication is to be deemed not to be an infringement of the copyright in the work, the copyright in the work is not infringed by a person who, after that publication took place, broadcasts, causes to be transmitted to subscribers to a diffusion service, performs in public, or makes a record of, the work or that part of the work, as the case may be.

Application of Division to illustrations accompanying articles and other works

53. — Where an article, thesis or other literary, dramatic or musical work is accompanied by artistic works provided for the purpose of explaining or illustrating the article, thesis or other work (in this section referred to as " the illustrations "), the preceding sections of this Division apply as if —

(a) where any of those sections provides that the copyright in the article, thesis or work is not infringed — the reference to that copyright included a reference to any copyright in the illustrations;

(b) a reference in section 49, section 50 or section 51 to a copy of the article, thesis or work included a reference to a copy of the article, thesis or work together with a copy of the illustrations;

(c) a reference in section 49 or section 50 to a copy of a part of the article or work included a reference to a copy of that part of the article or work together with a copy of the illustrations that were provided for the purpose of explaining or illustrating that part; and

(d) a reference in section 52 to the doing of any act in relation to the work included a reference to the doing of that act in relation to the work together with the illustrations.

Division 6. — Recording of Musical Works

Interpretation

54. — (1) For the purposes of this Division —

(a) a reference to a musical work shall be read as a reference to the work in its original form or to an adaptation of the work;

(b) a reference to the owner of the copyright in a literary, dramatic or musical work shall, unless the contrary intention appears, be read as a reference to the person who is entitled to authorize the making in, and the importation into, Australia of records of the work; and

(c) a reference to sale of a record by retail or to retail sale of a record shall be read as not including a reference to —

(i) sale for a consideration not consisting wholly of money; or

(ii) sale by a person not ordinarily carrying on the business of making or selling records.

(2) For the purposes of this Division, where a musical work is comprised partly in one record and partly in another record or other records, all the records shall be treated as if they constituted a single record.

(3) A reference in this Division to a record of a musical work does not include a reference to a sound-track associated with visual images forming part of a cinematograph film.

Conditions upon which manufacturer may make records of musical work

55. — (1) Subject to this Division, the copyright in a musical work is not infringed by a person (in this section referred to as " the manufacturer ") who makes, in Australia, a record of the work if —

(a) a record of the work —

(i) has previously been made in, or imported into, Australia for the purpose of retail sale and was so made or imported by, or with the licence of, the owner of the copyright in the work;

(ii) has previously been made in Australia for use in making other records for the purpose of retail sale and was so made by, or with the licence of, the owner of the copyright in the work;

(iii) has previously been made in, or imported into, a country other than Australia for the purpose of retail sale, being a country that, at the time of the previous making or importation, was specified in the regulations to be a country in relation to which this Division applies, and was so made or imported by, or with the licence of, the person who was, under the law of that country, the owner of the copyright in the work; or

(iv) has previously been made in a country other than Australia for use in making other records for the purpose of retail sale, being a country that, at the time of the previous making, was specified in the regulations to be a country in relation to which this Division applies, and was so made by, or with the licence of, the person who was, under the law of that country, the owner of the copyright in the work;

(b) before the making of the record, the prescribed notice of the intended making of the record was given to the owner of the copyright;

(c) the manufacturer intends to sell the record by retail, or to supply it for the purpose of its being sold by retail by a person other than the manufacturer, or intends to use it for making other records that are to be so sold or supplied; and

(d) where the record is so sold or supplied by the manufacturer —

(i) the sale or supply is made with the licence of the owner of the copyright; and

(ii) there is paid to the owner of the copyright, as prescribed by the regulations, a royalty ascertained in accordance with the succeeding sections of this Division.

(2) The last preceding sub-section does not apply in relation to a record of an adaptation of a musical work if the adaptation debases the work.

(3) Sub-paragraph (i) of paragraph *(d)* of sub-section (1) of this section does not apply in relation to a record of a work (other than a work that was made for the purpose of being performed, or has been performed, in association with a dramatic work or has been included in a cinematograph film) if the sale or supply is made after the expiration of the prescribed period after the earliest of the following dates:

(a) the date of the first making in, or the date of the first importation into, Australia of a previous record of the work in circumstances referred to in sub-paragraph (i) or sub-paragraph (ii) of paragraph *(a)* of sub-section (1) of this section;

(b) the date of the first supplying (whether by sale or otherwise) to the public in a country referred to in sub-paragraph (iii) or sub-paragraph (iv) of paragraph *(a)* of sub-section (1) of this section of a previous record of the work made in, or imported into, that country in circumstances referred to in that sub-paragraph.

(4) Regulations prescribing a period for the purposes of the last preceding sub-section may prescribe different periods in relation to different classes of records.

(5) Without limiting the generality of paragraph *(d)* of sub-section (1) of this section, regulations made for the purposes of that paragraph may provide —

(a) that payment of the royalties in respect of records, or of an amount, ascertained in accordance with the regulations, in respect of the royalties in respect of records, is, or is in such classes of cases as are specified in the regulations, to be made before the records are sold or supplied by the manufacturer; and

(b) that the doing of such acts as are specified in the regulations, being such acts as the Governor-General considers convenient for ensuring the receipt by the owner of the copyright of the royalties in respect of records or, if the owner of the copyright cannot be found by reasonable inquiry, as the Governor-General considers reasonable in the circumstances, is to be deemed to constitute payment of the royalties.

Amount of royalty

56. — (1) Subject to this Division, the royalty payable in respect of a record is five per centum of the retail selling price of the record.

(2) For the purposes of the last preceding sub-section —

(a) if the selling price to the public of the record is marked by the maker of the record on the label of the record — the retail selling price of the record shall be taken to be that price;

(b) if the selling price to the public of the record is not so marked but is specified in the appropriate price list issued by the maker of the record — the retail selling price of the record shall be taken to be the price so specified; or

(c) if the selling price to the public of the record is not so marked or specified but other records embodying the same sound recording as, and bearing an identical label to, the record have been sold to the public — the retail selling price of the record shall be taken to be the highest price at which those other records are ordinarily sold to the public in the capital city of a State.

(3) A reference in the last preceding sub-section to the label of a record shall be read as including a reference to the label on the container of the record.

(4) If the royalty payable in respect of a record under this section includes a fraction of a cent that is less than or more than one-half of a cent —

(a) where that fraction is less than one-half of a cent — that fraction shall be treated as one-half of a cent; and

(b) where that fraction is more than one-half of a cent — that fraction shall be treated as a whole cent.

(5) If, apart from this sub-section, the royalty payable in respect of a record under this section would be less than One cent, that royalty is One cent.

Provisions relating to royalty where two or more works are on the one record

57. — Where a record comprises two or more musical works, whether or not there is any other matter comprised in the record —

(a) if the record includes a work in which copyright does not subsist or works in which copyrights do not subsist — the roaylty payable in respect of the record is, subject to the next succeeding paragraph, the amount that bears to the amount that, but for this section, would be the amount of the royalty the same proportion as the number of works in the record in which copyrights subsist bears to the total number of works in the record; and

(b) if the record includes two or more works in which copyrights subsist —

(b) in relation to the minimum royalty payable in respect of spect of the record shall not be less than One cent in respect of each work in the record in which copyright subsists; and

(ii) if the owners of the copyrights in the works in the record in which copyrights subsist are different persons — there shall be paid to the owner of the copyright in each work, in respect of that work, an amount ascertained by dividing the amount of the royalty payable in respect of the record by the number of works in the record in which copyrights subsist.

Revision of royalty and minimum royalty

58. — (1) If at any time after the expiration of one year after the commencement of this Act it appears to the Attorney-General that the royalty, or the minimum royalty, payable in respect of records generally or in respect of records included in a particular class of records is not equitable, he may request the Copyright Tribunal to hold an inquiry into the matter and report the result of its inquiry to the Attorney-General.

(2) At any time after the Tribunal has made a report in relation to the royalty, or the minimum royalty, payable in respect of records generally or in respect of records included in a particular class of records, the regulations may provide that the relevant provision of this Act, in its application in respect of records generally or in respect of records included in that class of records, as the case may be, shall have effect as if it were subject to such variations as are provided by the regulations, being such variations as the Governor-General thinks equitable.

(3) Before making regulations for the purposes of the last preceding sub-section, the Governor-General shall take into account the report of the Tribunal.

(4) Where the Tribunal has made a report in relation to the royalty, or the minimum royalty, payable in respect of records included in a particular class of records (whether the report related only to records included in that class or also related to other records), the Attorney-General shall not, before the expiration of five years after the report was made, request the Tribunal to hold an inquiry under this section in relation to the royalty, or the minimum royalty, as the case may be, payable in respect of records included in that class.

(5) In this section, " the relevant provision of this Act " means —

(a) in relation to the royalty payable in respect of any records — sub-section (1) of section 56 of this Act or, if that sub-section is affected by regulations made for the purposes of this section, that sub-section as so affected; and

(b) in relation to the minimum royalty payable in respect of any records — sub-section (5) of section 56, and sub-paragraph (i) of paragraph *(b)* of section 57, of this Act or, if those provisions are affected by regulations made for the purposes of this section, those provisions as so affected.

Conditions upon which manufacturer may include part of a literary or dramatic work in a record of a musical work

59. — (1) Where —

(a) a person makes in Australia a record comprising the performance of a musical work in which words are sung, or are spoken incidentally to or in association with the music, whether or not there is any other matter comprised in the record;

(b) copyright does not subsist in that work or, if copyright so subsists, the requirements specified in sub-section (1) of section 55 of this Act are complied with in relation to that copyright;

(c) the words consist or form part of a literary or dramatic work in which copyright subsists;

(d) a record of the musical work in which those words, or words substantially the same as those words, were sung, or were spoken incidentally to or in association with the music —

(i) has previously been made in, or imported into, Australia for the purpose of retail sale and was so made or imported by, or with the licence of, the owner of the copyright in the literary or dramatic work;

(ii) has previously been made in Australia for use in making other records for the purpose of retail sale and was so made by, or with the licence of, the owner of the copyright in the literary or dramatic work;

(iii) has previously been made in, or imported into, a country other than Australia for the purpose of retail sale, being a country that, at the time of the previous making or importation, was specified in the regulations to be a country in relation to which this Division applies, and was so made or imported by, or with the licence of, the person who was, under the law of that country, the owner of the copyright in the literary or dramatic work; or

(iv) has previously been made in a country other than Australia for use in making other records for the purpose of retail sale, being a country that, at the time of the previous making, was specified in the regulations to be a country in relation to which this Division applies, and was so made by, or with the licence of, the person who was, under the law of that country, the owner of the copyright in the literary or dramatic work; and

(e) the like notice was given to the owner of the copyright in the literary or dramatic work as is required by paragraph *(b)* of sub-section (1) of section 55 of this Act to be given to the owner of the copyright (if any) in the musical work and there is paid to the owner of the copyright in the literary or dramatic work such amount (if any) as is ascertained in accordance with this section,

the making of the record does not constitute an infringement of the copyright in the literary or dramatic work.

(2) Where copyright does not subsist in the musical work, the amount to be paid in respect of the literary or dramatic work is an amount equal to the royalty that, but for this section, would have been payable in respect of the musical work if copyright had subsisted in the musical work.

(3) Where copyright subsists in the musical work as well as in the literary or dramatic work —

(a) if the copyrights in those works are owned by the same person — an amount is not payable in respect of the literary or dramatic work; or

(b) if the copyrights in those works are owned by different persons — the royalty that, but for this section, would have been payable in respect of the musical work shall be apportioned between them in such manner as they agree, or, in default of agreement, as is determined by the Copyright Tribunal on the application of either of them.

(4) Where the owner of the copyright in a musical work and the owner of the copyright in a literary or dramatic work do not agree on the manner in which an amount is to be apportioned between them but the person who made the record gives an undertaking in writing to each owner to pay to him the portion of that amount that the Tribunal determines to be payable to him, then —

(a) paragraph *(d)* of sub-section (1) of section 55 of this Act and paragraph *(e)* of sub-section (1) of this section have effect as if the payments referred to in those paragraphs had been made; and

(b) the person who made the record is liable, when the amount to which an undertaking relates is determined, to pay that amount to the owner of the copyright to whom the undertaking was given and the owner may recover that amount in a court of competent jurisdiction from that person as a debt due to the owner.

(5) Regulations made for the purposes of paragraph *(d)* of sub-section (1) of section 55 of this Act in relation to payments to the owner of the copyright in a musical work have the like effect, with any necessary modifications, for the purposes of paragraph *(e)* of sub-section (1) of this section in relation to payments to the owner of the copyright in a literary or dramatic work.

Records made partly for retail sale and partly for gratuitous disposal

60. — Where a person makes, in Australia, a number of records embodying the same sound recording, being a recording of a musical work or of a musical work and of words consisting or forming part of a literary or dramatic work, with the intention of —

(a) selling by retail, or supplying for sale by retail by another person, a substantial proportion of the records (in this section referred to as " the records made for retail sale "); and

(b) disposing gratuitously of the remainder of the records or supplying the remainder of the records for gratuitous disposal by another person,

this Division applies in relation to the records other than the records made for retail sale as if —

(c) those records had been made with the intention of selling them by retail or of supplying them for sale by retail by another person;

(d) the gratuitous disposal of those records by the maker of the records, or the supplying of those records by the maker of the records for gratuitous disposal by another person, were a sale of the records by retail; and

(e) the retail selling price of those records were the same as the retail selling price of the records made for retail sale.

Making inquiries in relation to previous records

61. — Where —

(a) a person makes inquiries, as prescribed, for the purpose of ascertaining whether a record of a musical work, or a record of a musical work in which words consisting or forming part of a literary or dramatic work were sung or spoken, has previously been made in, or imported into, Australia by, or with the licence of, the owner of the copyright in the musical work or in the literary or dramatic work, as the case may be, for the purpose of retail sale or for use in making other records for the purpose of retail sale; and

(b) an answer to those inquiries is not received within the prescribed period,

a record of that musical work, or a record of that work in which those words were sung or spoken, as the case may be, shall, for the purposes of the application of this Division —

(c) in relation to the person who made the inquiries; or

(d) in relation to a person who makes records of the musical work, or records of that work in which those words or substantially the same words are sung or spoken, for the purpose of supplying those records to the person who made the inquiries in pursuance of an agreement entered into between those persons for the making of the records,

be taken to have been previously made in, or imported into, Australia with the licence of the owner of that copyright for the purpose of retail sale or for use in making other records for the purpose of retail sale, as the case may be.

Application of Division in relation to record of part of a work

62. — (1) Subject to the next succeeding sub-section, the preceding sections of this Division apply in relation to a record of a part of a musical work in like manner as they apply in relation to a record of the whole of the work.

(2) Sub-section (1) of section 55 of this Act —

(a) does not apply in relation to a record of the whole of a work unless the previous record referred to in paragraph *(a)* of that sub-section was a record of the whole of the work; and

(b) does not apply in relation to a record of a part of a work unless that previous record was a record of, or comprising, that part of the work.

Application of Division in relation to musical works published before 1 July 1912

63. — (1) Subject to this section, the preceding sections of this Division apply in relation to musical works published before the first day of July, One thousand nine hundred and twelve, as if paragraph *(a)* and sub-paragraph (i) of paragraph *(d)* of sub-section (1), and sub-sections (3) and (4), of section 55, paragraph *(d)* of sub-section (1) of section 59, section 61 and sub-section (2) of section 62 of this Act were omitted.

(2) This section does not extend the operation of section 59 of this Act to a record in respect of which a requirement specified in paragraph *(d)* of sub-section (1) of that section has not been complied with unless the words comprised in the record, as well as the musical work, were published before the first day of July, One thousand nine hundred and twelve, and were so published as words to be sung to, or spoken incidentally to or in association with, the music.

(3) This section ceases to have effect at the expiration of two years after the commencement of this Act.

Sections 55 and 59 to be disregarded in determining whether an infringement has been committed by the importation of records

64. — For the purpose of any provision of this Act relating to imported articles, in determining whether the making of a record made outside Australia would have constituted an infringement of copyright if the record had been made in Australia by the importer, sections 55 and 59 of this Act shall be disregarded.

Division 7. — Acts not Constituting Infringements of Copyright in Artistic Works

Sculptures and certain other works in public places

65. — (1) This section applies to sculptures and to works of artistic craftsmanship of the kind referred to in paragraph *(c)* of the definition of "artistic work" in section 10 of this Act.

(2) The copyright in a work to which this section applies that is situated, otherwise than temporarily, in a public place, or in premises open to the public, is not infringed by the making of a painting, drawing, engraving or photograph of the work or by the inclusion of the work in a cinematograph film or in a television broadcast.

Buildings and models of buildings

66. — The copyright in a building or a model of a building is not infringed by the making of a painting, drawing, engraving or photograph of the building or model or by the inclusion of the building or model in a cinematograph film or in a television broadcast.

Incidental filming or televising of artistic works

67. — Without prejudice to the last two preceding sections, the copyright in an artistic work is not infringed by the inclusion of the work in a cinematograph film or in a television broadcast if its inclusion in the film or broadcast is only incidental to the principal matters represented in the film or broadcast.

Publication of artistic works

68. — The copyright in an artistic work is not infringed by the publication of a painting, drawing, engraving, photograph or cinematograph film if, by virtue of section 65, section 66 or section 67 of this Act, the making of that painting, drawing, engraving, photograph or film did not constitute an infringement of the copyright.

Artistic works transmitted to subscribers to a diffusion service

69. — Sections 65, 66 and 67 of this Act apply in relation to a television programme that is caused to be transmitted to subscribers to a diffusion service in like manner as they apply in relation to a television broadcast.

Reproduction for purpose of including work in television broadcast

70. — (1) Where the inclusion of an artistic work in a television broadcast made by a person would not (whether by reason of an assignment or licence or of the operation of a provision of this Act) constitute an infringement of copyright in the work but the making by the person of a cinematograph film of the work would, apart from this sub-section, constitute such an infringement, the copyright in the work is not infringed by his making such a film solely for the purpose of the inclusion of the work in a television broadcast.

(2) The last preceding sub-section does not apply in relation to a film if a copy of the film is used for a purpose other than —

(a) the inclusion of the work in a television broadcast in circumstances that do not (whether by reason of an assignment or licence or of the operation of a provision of this Act) constitute an infringement of the copyright in the work; or

(b) the making of further copies of the film for the purpose of the inclusion of the work in such a broadcast.

(3) Sub-section (1) of this section does not apply in relation to a film where a copy of the film is used for the purpose of the inclusion of the work in a television broadcast

made by a person who is not the maker of the film unless the maker has paid to the owner of the copyright in the work such amount as they agree or, in default of agreement, has given an undertaking in writing to the owner to pay to him such amount as is determined by the Copyright Tribunal, on the application of either of them, to be equitable remuneration to the owner for the making of the film.

(4) A person who has given an undertaking referred to in the last preceding sub-section is liable, when the Copyright Tribunal has determined the amount to which the undertaking relates, to pay that amount to the owner of the copyright in the work and the owner may recover that amount in a court of competent jurisdiction from the person as a debt due to the owner.

(5) Sub-section (1) of this section does not apply in relation to a film unless, before the expiration of the period of twelve months commencing on the day on which any of the copies of the film is first used for including the work in a television broadcast in accordance with that sub-section, or before the expiration of such further period, if any, as is agreed between the maker of the film and the owner of the copyright in the work, all the copies of the film are destroyed or are delivered, with the consent of the National Librarian, to the National Library.

Reproduction of work in different dimensions

71. — For the purposes of this Act —

(a) the making of an object of any kind that is in three dimensions does not infringe the copyright in an artistic work that is in two dimensions; and

(b) the making of an object of any kind that is in two dimensions does not infringe the copyright in an artistic work that is in three dimensions,

if the object would not appear to persons who are not experts in relation to objects of that kind to be a reproduction of the artistic work.

Reproduction of part of work in later work

72. — (1) The copyright in an artistic work is not infringed by the making of a later artistic work by the same author if, in making the later work, the author does not repeat or imitate the main design of the earlier work.

(2) The last preceding sub-section has effect notwithstanding that part of the earlier work is reproduced in the later work and that, in reproducing the later work, the author used a mould, cast, sketch, plan, model or study made for the purposes of the earlier work.

Reconstruction of buildings

73. — (1) Where copyright subsits in a building, the copyright is not infringed by a reconstruction of that building.

(2) Where a building has been constructed in accordance with architectural drawings or plans in which copyright subsists and has been so constructed by, or with the licence of, the owner of that copyright, that copyright is not infringed by a later reconstruction of the building by reference to those drawings or plans.

Division 8. — Industrial Designs

Interpretation

74. — (1) In this Division, "corresponding design", in relation to an artistic work, means a design that, when applied to an article, results in a reproduction of that work.

(2) In this Division —

(a) a reference to the scope of the copyright in a registered design is a reference to the aggregate of the things that, by virtue of the *Designs Act* 1906-1968, the person registered as the owner of the design has the exclusive right to do;

(b) a reference to the scope of the copyright in a registered design as extended to all associated designs and articles is a reference to the aggregate of the things that, by virtue of that Act, the person registered as the owner of the design would have had the exclusive right to do if —

(i) when that design was registered, there had at the same time been registered every other possible design consisting of that design with modifications or variations not sufficient to alter the nature, or substantially to affect the identity, of that design and the person registered as the owner of that design had been registered as the owner of every such other possible design; and

(ii) that design, and every such other possible design, had each been registered in respect of all the articles to which it was capable of being applied; and

(c) a reference to the doing of an act in Australia does not include a reference to the doing of the act in a Territory of the Commonwealth to which the *Designs Act* 1906-1968 does not apply or has not been extended.

Copyright not infringed by doing things that are within the scope of registered design

75. — Subject to the next succeeding section, where copyright subsits in an artistic work and a corresponding design is registered under the *Designs Act* 1906-1968, it is not an infringement of the copyright in the work —

(a) to do anything, while the copyright in the registered design subsists under the *Designs Act* 1906-1968, that is witbin the scope of the copyright in the design; or

(b) to do anytbing, after the copyright in the registered design has expired, that, if it had been done while the copyright in the design subsisted, would have been within the scope of that copyright as extended to all associated designs and articles.

False registration of industrial designs

76. — (1) This section has effect where —

(a) copyright subsists in an artistic work and proceedings are brought under this Act in relation to that work;

(b) a corresponding design has been registered under the *Designs Act* 1906-1968 and the copyright in the design that subsisted by virtue of that registration had not expired by effluxion of time before the commencement of those proceedings; and

(c) it is established in those proceedings that the person registered as the owner of the design was not the owner of the design for the purposes of the *Designs Act* 1906-1968 and was so registered without the knowledge of the owner of the copyright in the artistic work.

(2) Subject to the next succeeding sub-section, for the purposes of the proceedings referred to in the last preceding sub-section —

(a) the design shall be deemed never to have been registered under the *Designs Act* 1906-1968;

(b) the last preceding section does not apply in relation to anything done in respect of the design; and

(c) nothing in the *Designs Act* 1906-1968 constitutes a defence.

(3) Notwithstanding anything in the last preceding sub-section, if in the proceedings it is established that an act to which the proceedings relate —

(a) was done by an assignee of, or under a licence granted by, the person registered as the owner of the design; and

(b) was so done in good faith in reliance upon the registration and without notice of any proceedings for the cancellation of the registration or for rectifying the entry in the Register of Designs in relation to the design,

the last preceding section applies in relation to that act for the purposes of the first-mentioned proceedings.

Application of artistic works as industrial designs without registration of the designs

77. — (1) Where —

(a) copyright subsists in an artistic work;

(b) a corresponding design is applied industrially by, or with the licence of, the owner of the copyright in the work;

(c) articles to which the corresponding design has been so applied (in this section referred to as " articles made to the corresponding design ") are sold, let for hire or offered or exposed for sale or hire in Australia; and

(d) at the time when those articles are so sold, let for hire or offered or exposed for sale or hire, they are not articles in respect of which the corresponding design has been registered under the *Designs Act* 1906-1968,

the succeeding sub-sections of this section have effect.

(2) During the period of fifteen years commencing on the date on which articles made to the corresponding design were first sold, let for hire or offered or exposed for sale or hire in the circumstances referred to in paragraph *(d)* of the last preceding sub-section, it is not an infringement of the copyright in the work to do anything that, at the time when it is done, would have been within the scope of the copyright in the corresponding design if the corresponding design had, immediately before that time, been registered in respect of all articles made to the corresponding design that had, before that time, been sold, let for hire or offered or exposed for sale or hire in those circumstances.

(3) After the expiration of the period referred to in the last preceding sub-section, it is not an infringement of the copyright in the work to do anything that, at the time when it is done, would, if the corresponding design had been registered immediately before that time, have been within the scope of the copyright in that design as extended to all associated designs and articles.

(4) For the purposes of this section, account shall not be taken of any articles in respect of which, at the time when they were sold, let for hire or offered or exposed for sale or hire, the corresponding design concerned was excluded from registration under the *Designs Act* 1906-1968 by regulations made under that Act for the purpose of excluding from registration designs for articles that are primarily literary or artistic in character and, for the purposes of any proceedings under this Act, a design shall be conclusively presumed to have been so excluded if —

(a) before the commencement of those proceedings, an application for the registration of the design under that Act in respect of those articles had been refused;

(b) the reason or one of the reasons given for the refusal was that the design was excluded from registration under that Act by regulations made under that Act for the purpose of excluding from registration designs for articles that are primarily literary or artistic in character; and

(c) no appeal against the refusal had been allowed before the date of commencement of the proceedings or was pending on that date.

(5) The regulations may make provision for determining the circumstances in which a design is, for the purposes of this section, to be deemed to be applied industrially.

Division 9. — Works of Joint Authorship

References to all of joint authors

78. — Subject to this Division, a reference in this Act to the author of a work shall, unless otherwise expressly provided by this Act, be read, in relation to a work of joint authorship, as a reference to all the authors of the work.

References to any one or more of joint authors

79. — The references in section 32, and in sub-section (2) of section 34, of this Act to the author of a work shall, in relation to a work of joint authorship, be read as references to any one or more of the authors of the work.

References to whichever of joint authors died last

80. — The references in sections 33 and 51 of this Act to the author of a work shall, in relation to a work of joint authorship other than a work to which the next succeeding section applies, be read as references to the author who died last.

Works of joint authorship published under pseudonyms

81. — (1) This section applies to a work of joint authorship that was first published under two or more names of which one was a pseudonym or two or more (but not all) were pseudonyms.

(2) This section also applies to a work of joint authorship that was first published under two or more names all of which were pseudonyms if, at any time within fifty years after the

expiration of the calendar year in which the work was first published, the identity of one or more (but not all) of the authors was generally known or could be ascertained by reasonable inquiry.

(3) The references in sections 33 and 51 of this Act to the author of a work shall, in relation to a work to which this section applies, be read as references to the author whose identity was disclosed or, if the identity of two or more of the authors was disclosed, as references to whichever of those authors died last.

(4) For the purposes of this section, the identity of an author shall be deemed to have been disclosed if —

(a) one of the names under which the work was published was the name of that author; or

(b) the identity of that author is generally known or can be ascertained by reasonable inquiry.

Copyright to subsist in joint works without regard to any author who is an unqualified person

82. — (1) Sub-section (2) of section 35 of this Act has effect, in relation to a work of joint authorship of which one of the authors is an unqualified person, or two or more (but not all) of the authors are unqualified persons, as if the author or authors, other than unqualified persons, had alone been the author or authors, as the case may be, of the work.

(2) For the purposes of the last preceding sub-section, a person is an unqualified person in relation to a work where, if he had alone been the author of the work, copyright would not have subsisted in the work by virtue of this Part.

Inclusion of joint works in collections for use in places of education

83. — The reference in sub-section (2) of section 44 of this Act to other extracts from, or from adaptations of, works by the author of the extract concerned —

(a) shall be read as including a reference to extracts from, or from adaptations of, works by the author of the extract concerned in collaboration with any other person; or

(b) if the extract concerned is from, or from an adaptation of, a work of joint authorship — shall be read as including a reference to extracts from, or from adaptations of, works by any one or more of the authors of the extract concerned, or by any one or more of those authors in collaboration with any other person.

(To be continued)

GENERAL STUDIES

Problems of the " domaine public payant "

Dr. Carlos MOUCHET

INTERNATIONAL ACTIVITIES

International Confederation of Societies of Authors and Composers (CISAC)

(27th Congress, Las Palmas de Gran Canaria, June 22 to 27, 1970)

On the invitation of the Spanish General Society of Authors (SGAE), CISAC, the World Congress of Authors and Composers, held its 27th Congress in Las Palmas de Gran Canaria from June 22 to 27, 1970. The Congress was preceded by meetings of the Executive Bureau and the Administrative Council on June 19 and 20.

Delegations from the authors' societies of the following 37 countries took part in the Congress: Argentina, Australia, Austria, Belgium, Brazil, Canada, Colombia, Czechoslovakia, Denmark, Finland, France, German Democratic Republic, Germany (Federal Republic), Greece, Hungary, Iceland, Israel, Italy, Japan, Morocco, Mexico, Netherlands, Norway, Poland, Portugal, Romania, South Africa, Spain, Sweden, Switzerland, Tunisia, United Arab Republic, United Kingdom, United States of America, Uruguay, Venezuela, Yugoslavia.

BIRPI, which was invited to attend in an observer capacity, was represented by Mr. Claude Masouyé, Senior Counsellor, Head, External Relations Division, and Unesco by Miss Marie-Claude Dock, Head, Copyright Division.

Some international non-governmental organizations also delegated observers. These included the International Literary and Artistic Association (ALAI), the International Writers Guild (IWG) and the International Publishers Association (IPA).

The Congress was held under the patronage of H. E. D. José Luis Villar Palasi, Minister of Education in the Spanish Government, and was also attended by Spanish authorities, in particular H. E. D. Luis Sanchez Belda, Director General of Archives and Libraries. As is customary, it was the occasion for a number of receptions and other events.

The agenda included a large number of questions of a professional or technical nature, which were discussed within the various bodies of CISAC. The Legal and Legislative Commission devoted its attention to legal questions, especially current developments in the field of international copyright, for the purpose of the comments which CISAC will submit to the competent intergovernmental organizations on the subject of the planned revision of the Berne Convention and the Universal Copyright Convention.

At the close of its discussions, the 27th Congress of CISAC elected the Belgian composer Marcel Poot President of the Confederation and the Italian writer Mrs. Alba de Cespedes Vice-President. The Administrative Council appointed Mr. J. A. Ziegler to succeed Mr. Léon Malaplate in the post of Secretary General, the latter having been appointed Honorary Secretary General on the acceptance of his retirement.

The next Congress of CISAC will be held in Mexico in 1972.

International Literary and Artistic Association (ALAI)

(Symposium, Paris, July 6 to 9, 1970)

The Symposium of the International Literary and Artistic Association (ALAI) was held in Paris, at the headquarters of the Société des Gens de Lettres (Hôtel de Massa), from July 6 to 9, 1970.

The members of several national groups of ALAI took part in this meeting (Belgium, France, Germany (Federal Republic), Italy, Netherlands, South Africa, Sweden, Switzerland). Observers from BIRPI (Mr. Mihailo Stojanović, Legal Assistant, Copyright Division) and Unesco (Miss Marie-Claude Dock, Head, Copyright Division) also attended.

The meetings were presided over by the President of the Association, Mr. Marcel Boutet.

The agenda included primarily the examination of proposals for the revision of the Universal Copyright Convention and the Berne Convention which had been drawn up by the two Ad Hoc Preparatory Committees, composed of the Intergovernmental Copyright Committee and the Permanent Committee of the Berne Union respectively. Some introductory remarks by the Permanent Secretary of ALAI, Professor H. Desbois, were followed by a very animated discussion of the two proposals. The text of the conclusions adopted at the close of the meeting appears below under the title " Comments ".

In connection with another item on the agenda (communications on current events), the President of the Dutch group, Professor H. Cohen Jehoram, submitted a report on " public lending rights ", that is, the compensation which authors would soon be entitled to receive when their works are lent by libraries in the Netherlands.

Participants also expressed a wish concerning the international copyright information center to be set up by Unesco in accordance with the recommendation on this subject adopted by the Joint Study Group in ashington, as well as national centers. This *vœu* also appears below.

Comments

ALAI, meeting as a study group from July 6 to 9, 1970, submits the following comments upon the proposals for the revision of the two international copyright conventions resulting from the work of the Ad Hoc Preparatory Committees:

As regards the Universal Copyright Convention:

Article IV^bis

Paragraph 1: Recommends that the right of adaptation be expressly added to the fundamental rights set out in this Article;

Paragraph 2: Expressed the preference of the majority for Alternative A, for its general tenor is more in keeping than that of Alternative B with the spirit of the Universal Convention;

Article V^ter

Having excluded Alternatives A and C by reason of the shortness of a period of one year, retained Alternative B. a period of three years appearing to be an indispensable minimum.

Considers further that the period should run not from the date of publication of the original work but from the date of the request for consent to translate;

Having expressly chosen Alternative B. makes the following suggestions relating to it:

Paragraph 1(b), Alternative B: Considers that the prohibition upon export should be absolute, not only for languages which are of general use in one or more developed countries, but also for all others;

Paragraph 2, Alternative B: Proposes the following text: " Subject to the provisions of this Article, any license granted by virtue of it shall he governed by the provisions of Article V and shall remain in force even after the expiry of the period of seven years.

However, after the expiry of the said period, the owner of the right may request the substitution for such a license of a license governed exclusively by Article V ";

Article V^quater

Proposes the following modifications:

Paragraph 1(a): In the proposal beginning with the words " provided that such national ", add, after the words " authorization by the proprietor of the right to publish such work " the words " for the purpose of teaching, scholarship or research ";

Paragraph 2(a): Declared the opposition of the majority to this paragraph, which provides for the possibility of a license common to two or more Contracting States having close cultural relations, for this proposal would significantly weaken the prohibition against export and is in conflict with it;

Article XI

Paragraph 3: Considers that the reference in this paragraph to a country as an " importer or exporter " is not desirable, for it introduces a new criterion which is and should remain foreign to the field of copyright and which is. in any case, inappropriate;

Article XVII

Approves by a majority the modifications suggested to be made to the existing Appendix Declaration.

As regards the Berne Convention:

Additional Act

Article 1

Approves, in principle, the introduction of the reservations provided for in Articles 2, 3 and 4 which would enable developing countries to remain in the Berne Union;

Expressed two opinions on the possibility of accession to the present Act, taking advantage of the aforementioned reservations, on the part of developing countries which, at the date of entry into force of the Act, are not members of the Union. According to the first, the possibility should be granted only during a period to be determined starting from the entry into force of the said Act; according to the second, the possibility should not be subject to any time restriction;

Article 2, paragraph (3)

Considers it inappropriate that any distinction should be made between developing and other countries in respect of the sale and importation of copies. In conformity with the observations relating to Article V^ter of the Universal Copyright Convention, the prohibition against export should be absolute. The second and consequently also the third sentence of this paragraph should be omitted.

Article 2, paragraph (4)

Objects to the insertion of this paragraph, considering it unsuitable for the Berne Convention which, unlike the Universal Copyright Convention (Article V), does not allow any translation license at the expiration of a period of seven years.

Voeu

Having noted the communications received, and being fully aware that relations between developed and developing countries would be greatly facilitated by the establishment of centers of information and assistance to provide information relating to the exercise of copyright in developed countries, [ALAI] expresses the following wish, independent of the comments relating to the draft texts for the revision of the international copyright conventions which have resulted from the current preparatory work:

(a) would consider with the greatest interest any coordinated action on the part of national organizations, private or otherwise, likely to achieve the above-mentioned results;

(b) expresses the wish that the provisions of Annex A of the Washington Recommendation relating to the establishment of an international copyright information center be implemented as soon as possible.

CALENDAR

WIPO/BIRPI Meetings

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 6 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

November 30 to December 4, 1970 (Geneva) — Provisional Committee of Experts for the International Classification of Industrial Designs
Invitations: Signatory States of the Locarno Agreement — *Observers:* Member States of the Paris Union

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

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

December 15 to 17, 1970 (The Hague) — International Patent Institute (IIB) — 104th Session of the Administrative Council

May 18 to 22, 1971 (Stockholm) — International Federation of Pateut Agents (FICPI) — General Assembly

Luxembourg — Intergovernmental Conference for the Setting Up of a European System for the Grant of Patents:
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)
November 30 to December 4, 1970 — Working Party I (6td Meeting)
December 8 to 11. 1970 — Working Party I — "Regulations on Fees" Subcommittee