

Copyright

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ORGANIZATION (WIPO)

and the United International Bureaux for the
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INTERNATIONAL UNION



Historical Outline of the Preparations for the Revision of the Berne Convention

Report by the Director General of WIPO*

I. The Stockholm Revision (1967)

1. The "Stockholm Intellectual Property Conference (1967)" was held in the capital of Sweden from June 11 to July 14, 1967.

2. With regard to the Berne Convention, the agenda of the Conference included the revision of the substantive provisions (Articles 1 to 20) and the amendment of the administrative provisions and final clauses, the latter concurrently with the amendment of the administrative provisions and final clauses of the Paris Convention and its Special Agreements (on industrial property), and with the establishment of WIPO.

3. The previous revision of the Berne Convention had taken place in Brussels in 1948 and resulted in the Brussels Act. That of 1967 resulted in the Stockholm Act, which was signed in English and French and was published in this Review¹.

4. The new, or revised, substantive provisions are contained in Articles 2, 2^{bis}, 3, 4, 5, 6, 6^{bis}, 7, 9, 10, 10^{bis}, 11^{ter}, 13, 14, 14^{bis} and 15 of the Stockholm Act, and in the Protocol Regarding Developing Countries, which forms an integral part of the Act itself. The administrative provisions are contained in Articles 22 to 26, and the final clauses in Articles 27 to 38.

5. Any country which is a member of the Berne Union may, if it has signed the Stockholm Act (39 countries signed within the prescribed period) ratify it, and, if it has not signed it, may accede to it. Instruments of ratification or accession are deposited with the Director General of WIPO. Any country may declare in its instrument that its ratification or accession shall not apply either to the substantive provisions (Articles 1 to 21 and the Protocol Regarding Developing Countries), or to the administrative provisions (Articles 22 to 26). In addition, any country of the Union may declare, before becoming bound by the substantive provisions, either that (by virtue of Article 5(1)(a) of the Protocol) it will apply its provisions to works of which the country of origin is one which accepts such application, if it is itself a developing country, or, if it is not, that (by virtue of Article 5(1)(b)) it will admit the application of the provisions of the Protocol to works of which it is the country of origin.

II. Acceptance of the Stockholm Revision

6. As of the date of this document, the Stockholm Act has been accepted as follows:

- (i) Senegal has ratified it in full; Pakistan has acceded to it in full (but without availing itself of the reservations under Article 1(a) of the Protocol); Romania has ratified it in full, with the reservations provided for in Article 7(7) (term of protection) and Article 33(2) (jurisdiction of the International Court of Justice); an instrument of accession to the Act in its entirety has been deposited by the German Democratic Republic, but the validity of this instrument has been contested by a certain number of States;
- (ii) Bulgaria and Sweden have deposited declarations under Article 5(1)(b) of the Protocol; Pakistan and Senegal have deposited declarations under Article 5(1)(a) of the Protocol;
- (iii) the countries listed below have excluded Articles 1 to 21 and the Protocol from their ratification or accession: Canada, Denmark, Finland, Germany (Federal Republic), Israel, Spain, Sweden, Switzerland, United Kingdom (9);
- (iv) the countries listed below have availed themselves of the possibility provided for in Article 38(2), whereby they may, until five years after the entry into force of the Convention Establishing WIPO (that is, until April 26, 1975) exercise the rights provided under Articles 22 to 26 of the Stockholm Act (administrative provisions) and have deposited declarations to this effect: Belgium, Brazil, Bulgaria, Cameroon, Czechoslovakia, Dahomey, France, Gabon, Greece, Holy See, Hungary, Ireland, Italy, Ivory Coast, Japan, Luxembourg, Malta, Morocco, Netherlands, Niger, Norway, Portugal, South Africa, Tunisia, Turkey, Yugoslavia (26).

7. The required minimum number of ratifications has been reached only in respect of Articles 22 to 38 of the Stockholm Act (administrative provisions and final clauses): consequently those Articles entered into force early in 1970. The substantive provisions, on the other hand (Articles 1 to 21 and the Protocol Regarding Developing Countries), have not yet entered into force.

III. Recommendation No. III of the Stockholm Conference

8. At the end of its deliberations, the Stockholm Conference adopted several recommendations concerning copyright, among them the following:

"The countries members of the Berne Union for the Protection of Literary and Artistic Works,

* This document, bearing the number B/DC/3, is a part of the documentation prepared by the International Bureau of WIPO for the Diplomatic Conference for the Revision of the Berne Convention, to be held in Paris from July 5 to 24, 1971. The draft texts for the revision formulated by the Permanent Committee of the Berne Union have already been published (see *Copyright*, 1970, p. 212).

¹ *Copyright*, 1967, p. 165.

In a Conference assembled at Stockholm from June 12 to July 14, 1967,

Recognizing the special economic and cultural needs of developing countries,

Desirous of enabling developing countries to have access to works protected by copyright for their educational requirements,

Having for this purpose adopted the Protocol Regarding Developing Countries,

Recommend the International Bureau to undertake in association with other governmental and non-governmental organizations a study of ways and means of creating financial machinery to ensure a fair and just return to authors."

9. In accordance with this Recommendation, a working group was convened in Geneva in March 1968, for the purpose of collecting data on the problems involved, examining the practical implications of the application of the provisions of the Protocol and endeavoring to evolve solutions in keeping with the Recommendation.

10. The general consensus of the working group was that the final adoption of any solution would be premature, since that solution would necessarily be contingent on the decisions of Governments regarding the application of the Protocol (ratification, accession, declaration of application). The considerations adopted by the working group were published in this Review².

IV. Formulation of special provisions for the benefit of developing countries

11. One of the objectives of the Stockholm revision was to provide, within the Berne Union, a special system of international copyright for certain countries regarded as "developing countries" in conformity with the established practice of the General Assembly of the United Nations. This objective was achieved at a juridical level by the establishment of provisions embodied in a Protocol forming an integral part of the Stockholm Act of the Berne Convention.

12. However, the revision of the Berne Convention was not the only step taken in the interests of developing countries. There were plans for other measures to bring about a revision of the Universal Copyright Convention in order to facilitate the accession of developing countries to that instrument.

13. When the Universal Copyright Convention was concluded, in 1952, it was indicated that the Convention would in no way affect the provisions of the Berne Convention or membership of the Union established by the latter (Article XVII of the Universal Copyright Convention). To this end, a Declaration was appended to the Article in question as an integral part of the Convention; it provides for a sort of sanction (tantamount to absence of protection) imposed on countries which abandon the level of the Berne Convention and descend to that of the Universal Copyright Convention. This

provision is generally known as the "Berne Convention safeguard clause".

14. Since the Universal Convention is administered by Unesco, the General Conference of that Organization asked, at its fourteenth session in 1966, that a study be undertaken by the competent bodies of the possibility of suspending, in the interests of developing countries, the application of the clause mentioned above (subparagraph (a) of the Appendix Declaration relating to Article XVII).

15. In accordance with the resolution adopted by the General Conference, the Director-General of Unesco consulted the States party to the Universal Copyright Convention on the desirability of revising the Convention in the manner indicated above. It should be noted here that, by virtue of Article XII of the Universal Copyright Convention, the Intergovernmental Committee has the responsibility of convening revision conferences "whenever it deems necessary or at the request of at least ten contracting States".

16. In response to this consultation, a certain number of States expressed their views on the subject, and the Intergovernmental Committee met in extraordinary session in Paris in February 1969, when it was decided to convene a conference for the revision of Article XVII of the Universal Copyright Convention and the Appendix Declaration relating to that Article. To this end, it set up a sub-committee to examine the problems raised by the suspension of the "safeguard clause" embodied in Article XVII and the Appendix Declaration.

17. This sub-committee met in Paris from June 23 to 27, 1969; previously, however, the Permanent Committee of the Berne Union had been convened in extraordinary session in Geneva on June 20 and 21, in particular to assist the Director of BIRPI in formulating the advice to be given to the sub-committee on the questions included in its terms of reference. The report of this extraordinary session was published in this Review³.

18. The Stockholm Protocol had attempted to satisfy the requirements of developing countries by specifying a certain number of cases in which they would have the right not to apply the minimum provisions of the Berne Convention. The fact that the Protocol has been accepted only by a very small number of States, and the likelihood that it will not be accepted by industrialized countries whose works are most used in developing countries, induced member States, desiring to maintain their mutual international copyright relations, to look for alternative solutions.

19. Moreover, the fact that the Universal Copyright Convention was undergoing revision, for the precise purpose of satisfying the needs of developing countries, made it appear necessary to undertake an overall examination of the position of those countries within the framework of international copyright relations.

20. At its ordinary session in Geneva in December 1967 — in other words only six months after the Stockholm Confer-

² *Ibid.*, 1968, p. 86.

³ *Ibid.*, 1969, p. 146.

ence — the Permanent Committee of the Berne Union, meeting jointly with the Intergovernmental Committee set up by the Universal Copyright Convention, emphasized that necessity. Both Committees expressed the wish that a joint study group (that is, a study group common to the two Convention systems) be set up to undertake the examination in question. The resolution adopted to this effect was published in this Review⁴.

V. The Washington Recommendation

21. In Paris, in February 1969, the same two Committees, assembled in extraordinary session, gave effect to this wish and established, by a joint resolution, a group "for the study of the entire situation of international relations in the field of copyright, to be called the International Copyright Joint Study Group". The text of this resolution was published in this Review⁵.

22. This body, composed of representatives of 26 States and some observers, was given a mandate to deal with the following subjects as a matter of priority:

- (a) the establishment of an international mechanism for permitting developing countries a greater degree of access to protected works while respecting the rights of authors;
- (b) the needs of developing and developed countries in the international copyright field, particularly that of education, the effect of the régime of international copyright relations on the satisfaction of these needs, as well as any improvements that could be made in this respect, taking into account the interests of authors with a view to encouraging the creation of intellectual works;
- (c) the problems arising from the existence of two copyright conventions of world-wide scope and possible methods of providing links between them.

23. The Joint Study Group met in Washington from September 29 to October 3, 1969. With regard to the revision of the Berne Convention and that of the Universal Copyright Convention, it adopted a recommendation, known as the "Washington Recommendation", the text of which was reproduced in this Review⁶.

VI. The preparation of a new revision of the Berne Convention

24. The Permanent Committee of the Berne Union, at the end of its ordinary session held in Paris in December 1969, adopted, after having noted the results of the Washington deliberations, a resolution establishing the "timetable" for the preparation of a new revision of the Berne Convention. The text of that resolution was published in this Review⁷.

25. In general, the Permanent Committee expressed the view that "the preparation for the revision of the Berne Convention should be made in accordance with the considerations stated in the Preamble to the Washington Recommendation and the specific recommendations contained therein".

It also expressed the wish that, with regard to the revision of the Universal Copyright Convention, the Intergovernmental Committee take the same Recommendation into account. Finally it hoped that the Conference for the Revision of the Berne Convention would be held around May-June 1971, at the same place and time as the Conference for the Revision of the Universal Copyright Convention.

26. The Permanent Committee requested the Director of BIRPI, in preparation for the revision of the Berne Convention, to invite member States of the Berne Union and international non-governmental organizations to submit draft texts or comments to him by March 15, 1970.

27. In addition, the Permanent Committee set up an Ad Hoc Preparatory Committee, to prepare a draft version of the proposals for revision on the basis of these draft texts and comments and of documentation supplied by BIRPI.

28. The Ad Hoc Preparatory Committee met in Geneva from May 19 to 21, 1970. The final report on its deliberations was published in this Review⁸. Nevertheless it would seem useful to give some information here on the draft text of the proposals for revision as prepared by the Committee.

29. The Committee proposed that the special provisions for the benefit of developing countries be embodied in an Additional Act which would form an integral part of the Berne Convention. The Protocol annexed to the Stockholm Act would be replaced by this Additional Act in the new, revised Act. Consequently all references to the Protocol in the Stockholm Act would need to be replaced by references to the Additional Act.

30. The Additional Act would consist of five articles. The first would deal with the mechanism of reservations, the second with the conditions in which a system of non-exclusive and non-transferable licenses granted by the competent authority could be substituted for the exclusive right of translation, the third with the conditions in which such a system could be substituted for the exclusive right of reproduction, and the fourth with common provisions governing the grant of such licenses. The fifth article (taken from Article 5 of the Stockholm Protocol) would make possible the anticipated application of the Additional Act, that is, its application prior to ratification of or accession to the new Act of the revised Berne Convention.

31. Some of the provisions were presented with alternatives among which a choice could be made later. The Preparatory Committee proposed that the reservations be permitted without the possibility of material reciprocity. In other words, the fact that reservations have been notified would not permit another country of the Union to give less protection to works of which the country of origin is the country availing itself of the reservations than is provided for in the substantive provisions of the Convention (Articles 1 to 20).

32. In addition, taking the Washington Recommendation into account, the Preparatory Committee proposed that the entry into force of the new, revised Act of the Berne Con-

⁴ *Ibid.*, 1968, p. 29.

⁵ *Ibid.*, 1969, p. 52.

⁶ *Ibid.*, 1969, p. 227.

⁷ *Ibid.*, 1970, p. 26.

⁸ *Ibid.*, 1970, p. 144.

vention should not take place before the revised Universal Copyright Convention has been accepted by France, Spain, the United Kingdom and the United States of America, and has itself entered into force.

33. The Preparatory Committee further proposed that countries should no longer be allowed, after the entry into force of the new Act, to ratify or accede to previous Acts or to make declarations applying or admitting the application of the Stockholm Protocol.

34. The results of the work of the Preparatory Committee were communicated in early June 1970 by the Director of BIRPI to the member States of the Berne Union and to interested organizations; at the same time the Director invited them to submit their comments by August 1, 1970.

35. The Permanent Committee of the Berne Union met again in extraordinary session in Geneva from September 14 to 18, 1970. Its task was to examine the draft text of the proposals for revision prepared by the Ad Hoc Preparatory Committee, draft Rules of Procedure for the Revision Conference and any other matters relating to it.

36. The final report on the Permanent Committee's deliberations was published in this Review⁹.

37. In the resolution adopted by it at the above-mentioned extraordinary session, the Permanent Committee recommended that the Conference for the Revision of the Berne Convention be convened at the same place and time as the Conference for the Revision of the Universal Convention. Subject to certain conditions which have now been met, the place will be Paris at the premises of Unesco. The desired dates were June 21-July 10, 1971. However, since the French Government announced that there would be great difficulty, at the beginning of that period, in the accommodation of delegates, the two Revision Conferences were postponed to July 5 to 24, 1971.

38. In the resolution mentioned above, the Permanent Committee also made certain recommendations concerning invitations to the Revision Conference and the consultation of member States of the Berne Union and interested international non-governmental organizations on the revision proposals.

39. Finally, after having studied the texts prepared by the Ad Hoc Preparatory Committee, the Permanent Committee formulated proposals for the revision of the Berne Convention in 1971.

40. On the whole, these proposals are based on the system elaborated in May 1970 and summarized in paragraphs 29 to 33 of this document.

41. It should be noted, however, that there are no longer alternatives for certain points, since the Permanent Committee gave its approval to single texts for the draft Additional Act and for the amendments to be made to certain articles of the Stockholm Act.

42. There are, in addition, certain substantive differences in relation to the draft text of the Ad Hoc Preparatory Committee. They may be summarized as follows.

43. The draft Additional Act no longer contains provisions limiting its application to countries which are members of the Berne Union at the time of its entry into force or to countries becoming members within a specified period.

44. With regard to both the right of translation and the right of reproduction, the proposals submitted determine precisely the duration of the exclusive right; there exists almost complete parallelism between the license system provided for those two rights and that proposed for the revision of the Universal Convention for the benefit of developing countries.

45. For the translation right, it is proposed that developing countries have an irrevocable choice between the compulsory license system provided for in the Additional Act and the possibility of reservations under Article 30(2)(a) and (b) of the Convention (the "ten-year" system — Paris Act 1896), without the possibility of combining the two. In addition, when the latter system has been chosen, reciprocity may not be applied to developing countries. If, however, a country ceases to be a developing country and wishes to make use or continues to make use of the "ten-year" system, reciprocity may then be applied to it.

46. For the reproduction right, it is proposed that the reservations permitted to developing countries on the conditions laid down by the Additional Act apply also to the reproduction of audio-visual works, but only to those of such works which are prepared and published for the sole purpose of being used in connection with systematic instructional activities.

47. The Permanent Committee also altered the draft text of the Ad Hoc Preparatory Committee on certain other points in order to take into account the proposals for the revision of the Universal Copyright Convention drawn up by the Intergovernmental Committee at its extraordinary session held in Paris from September 2 to 11, 1970, and to achieve similarity of the provisions on translation and reproduction rights which are to be incorporated in both Conventions for the benefit of developing countries.

VII. Approval by the bodies of the Berne Union

48. Following the entry into force, in the course of 1970, of the Convention Establishing WIPO and of the administrative provisions of the Stockholm Act of the Berne Convention (as well as other texts adopted at Stockholm), the new bodies of WIPO and of the Unions administered by WIPO and BIRPI held a series of meetings in Geneva, from September 21 to 28, 1970.

49. The tasks assigned to the Assembly of the Berne Union by the Stockholm Act include that of giving directions to the International Bureau concerning the preparation for revision conferences (Article 22(2)(a)(ii)).

50. However, in view of the possibility that certain member countries of the Berne Union may not be bound by the texts adopted at Stockholm, because they have not deposited instruments of ratification or accession, or may not have made use of the five-year privilege provided for in Article 38(2), which is at present the case, the Stockholm Act (in the provision mentioned above) provides that the directions are to

⁹ *Ibid.*, 1970, p. 209.

be given by the Assembly, "due account being taken of any comments made by those countries of the Union which are not bound by Articles 22 to 26".

51. On a proposal by the Director of BIRPI, the countries in this category decided, at the meetings referred to above, to set up a Conference of Representatives which, like the Assembly of the Berne Union, held its first ordinary session on the dates mentioned above.

52. After having noted the state of preparatory work for the revision of the Berne Convention, these two bodies approved the triennial program (1971-1973) of the Berne Union, which includes the convening of the appropriate Revision Conference.

53. At the said session of the Berne Union Assembly, the Delegation of Japan drew attention to a difficulty which might arise in connection with the manner in which the Stockholm Act would be revised. It recalled that, pursuant to Article 14(2) of the Convention Establishing WIPO, States party to the Berne Convention alone might only become parties to the

Convention Establishing WIPO by simultaneously becoming, or after having become, party to the Stockholm Act of the Berne Convention in its entirety, or at least to its administrative provisions and final clauses (Articles 22 to 38). It pointed out that, if new accessions to the Stockholm Act were no longer allowed after the entry into force of the 1971 revised text, countries which had not acceded to the said Act in the meantime would be deprived of any possibility of accession to WIPO.

54. It was agreed that this problem would be examined closely, and that proposed solutions would be submitted to the Diplomatic Conference in 1971.

55. On the basis of the foregoing, the Director General of WIPO has convened a Conference for the Revision of the Stockholm Act of the Berne Convention in Paris from July 5 to 24, 1971. Pursuant to Article 24(7)(a) of that Act, proposals for limited revision have been prepared by the International Bureau.

NATIONAL LEGISLATION

MOROCCO

Dahir (Act) relating to the Protection of Literary and Artistic Works

(No. 1-69-135, of 25 Jumada I 1390 [July 29, 1970]) *

CHAPTER I

Subject Matter, Scope and Beneficiaries of Copyright

Article 1. — An intellectual work, whether literary, scientific or artistic, irrespective of its value, purpose, manner or form of expression, shall belong to its author, who shall have the power to dispose of it, use it or otherwise enjoy it, or authorize its use or enjoyment, either fully or in part.

The attributes of this right are of a moral and economic nature.

Article 2. — The author alone shall have the right to disclose his work. He shall have the right to claim the authorship and defend the integrity thereof during his lifetime.

He may object to any distortion, mutilation or other modification of, or other derogatory action in relation to, the said work, which would be prejudicial to his honor or reputation.

The rights conferred upon the author by virtue of paragraphs (1) and (2) above shall be inalienable. They shall be maintained after his death for the benefit of his heirs, who may exercise them jointly with the body referred to in Article 53, even after the extinction of the economic rights.

Article 3. — A work is original when its characteristic features and its form, or its form alone, make possible the identification of its author.

A work is derivative when it is based on elements already in existence.

Article 4. — A "composite work" is a new work into which a pre-existing work is incorporated, without the collaboration of the author of the latter.

A "collective work" is a work created by the initiative of a person or body corporate under whose direction and name it is disclosed, and in which the personal contributions of the various authors who participated in its preparation are combined within the whole for which it was conceived, so that it is impossible to attribute to each author a distinct right in the whole thus created.

A "work of joint authorship" is a work to the creation of which two or several authors have contributed, in so far as the contribution of one of those authors cannot be separated from that of the other author or authors.

Article 5. — (1) In the absence of proof to the contrary, the author of a work shall be the person in whose name the work is disclosed.

(2) However, where a work is produced by an employee pursuant to an employment contract, the copyright on such work shall, unless otherwise provided in the said employment contract, belong originally to the author.

(3) Where a work is commissioned by a person who is not the employer of the author and who pays or agrees to pay for it, the provisions of paragraph (2) shall apply as if the work had been produced under an employment contract binding the author.

(4) Nevertheless, in the case of a work of plastic art or of a commissioned portrait produced by painting, photography or other means, its author shall not have the right to exploit the work or the portrait, by any means or at any time, without the express consent of the person having commissioned it.

In cases of manifest abuse perpetrated by the proprietor, preventing the exercise of the right of disclosure, the regional tribunal to which the matter is referred under Article 29 may order such measures as are appropriate.

Article 6. — The following shall in particular be considered intellectual works:

- (1) books, pamphlets and other writings;
- (2) lectures, addresses, religious exegeses and other works of the same nature;
- (3) dramatic or dramatico-musical works;
- (4) choreographic works and entertainments in dumb show;
- (5) musical compositions, with or without words;
- (6) cinematographic works, to which are assimilated works expressed by a process producing effects similar to those of cinematography;
- (7) works of drawing, painting, architecture, sculpture, engraving and lithography;
- (8) photographic works, to which are assimilated works expressed by a process analogous to photography, on condition that the name of the author is expressly indicated;
- (9) tapestries and articles of artistic handicraft and applied art, including both sketches or models and the work itself;
- (10) illustrations, maps, plans, sketches and three-dimensional works relating to geography, topography, architecture and the sciences;
- (11) works inspired by folklore.

Article 7. — Copyright shall extend also to the title of the work, in so far as such title is original in character.

* The French text of this Dahir was published in the *Bulletin officiel* of the Kingdom of Morocco, of October 7, 1970. — WIPO translation.

No person may, even if the work is no longer protected in terms of this Dahir, use that title to identify a work of the same type in a manner liable to give rise to confusion.

Article 8. — Protection under this Dahir shall extend also to the publication of ancient manuscripts preserved in public libraries or in public or private archives, with the proviso that the author of such publication may not object to the republication of the same manuscripts on the basis of the original text.

Article 9. — The following shall be assimilated to original works, without prejudice to the rights of the author of the original work:

- (1) translations, adaptations, new versions or arrangements of intellectual works;
- (2) collections of literary or artistic works such as encyclopaedias and anthologies which, by reason of the selection or arrangement of their contents, constitute intellectual creations.

Article 10. — (1) Folklore shall be part of the national heritage.

(2) The fixation (direct or indirect) of folklore with a view to its utilization for profit-making purposes shall be subject to prior authorization by the organization provided for in Article 53 of this Dahir, on payment of a fee, the proceeds of which shall be used in the public or professional interest, in conditions which shall be laid down by order of the supervisory minister.

(3) The provisions of this Dahir shall not apply to the use of folklore in events organized by the public authorities.

(4) The total or partial assignment of copyright on a work inspired by folklore, or an exclusive license relating to such a work shall only be valid if it has obtained the approval of the body referred to above.

(5) Folklore shall be taken to mean unpublished works where the identity of the author is unknown but where there is every ground to presume that he is or was a Moroccan national.

(6) "A work inspired by folklore" shall be taken to mean any work composed with the aid of elements borrowed from the traditional Moroccan cultural heritage.

Article 11. — The author's right of exploitation shall include:

- (1) the right of performance, which consists in the direct communication of the work to the public;
- (2) the right of reproduction, which consists in its material fixation by any process making possible its indirect communication;
- (3) the *droit de suite* provided for in Article 28 of this Dahir.

Article 12. — The author shall enjoy the exclusive right to make his work available to the public, that is, to authorize:

- (1) the public performance of his works;
- (2) any communication to the public of the performance of his works;

- (3) the broadcasting of his works or the communication thereof to the public by any other means of wireless diffusion of signs, sounds or images;
- (4) any communication to the public, by wire or by rebroadcasting, of the broadcast of the work, when this communication is made by an organization other than the original one;
- (5) the public communication by loudspeaker or any other analogous instrument transmitting by signs, sounds or images, the broadcast of the work.

Article 13. — The author shall enjoy the exclusive right to authorize:

- (1) the recording of his works by means of instruments capable of reproducing them mechanically;
- (2) public performance by means of such instruments of works thus recorded.

Article 14. — Unless otherwise agreed, the name of the author shall be indicated on all copies of a reproduction of the work and whenever the work is made accessible to the public.

In the case of anonymous works or works published under a pseudonym, the publisher whose name appears on the work shall, in the absence of proof to the contrary, be regarded as representing the author, and in this capacity he shall be entitled to protect and enforce the author's rights.

The provision of paragraph (2) above shall cease to apply when the author reveals his identity and proves his authorship.

Article 15. — The assignee may not, without the consent of the author, alter the work which he has obtained the authorization to perform in public or reproduce.

CHAPTER II

Limitations on Copyright

Article 16. — When a work has been lawfully made accessible to the public, the author may not prohibit:

- (1) private, charge-free performances made exclusively within a family circle;
- (2) exhibition to the public;
- (3) reproductions, translations and adaptations destined exclusively for personal and private use;
- (4) subject to mention of the source and the name of the author, and to the extent justified by the purpose, the use of the work, in the original version or in translation, by way of illustration in broadcasts or sound or visual recordings for teaching.

Article 17. — The following shall also be lawful, subject to mention of the source, and of the name of the author, if it appears thereon:

- (a) short quotations from a work which has already been lawfully made available to the public, provided that their making is compatible with fair practice and their extent does not exceed that justified by the purpose,

including quotations from newspaper articles and periodicals in the form of press summaries; such quotations may be made in the original version or in translation; (b) in so far as the right of reproduction has not been expressly reserved, the reproduction of articles on current political, economic or religious topics published, in the original version or in translation, in newspapers or periodicals.

Article 18. — Public libraries, non-commercial documentation centers, scientific institutions and educational establishments shall be authorized to reproduce, by a photographic or similar process, literary, scientific or artistic works which have already been lawfully made available to the public, on condition that such reproductions and the number of copies thereof are limited to the purpose of their activities.

Article 19. — In reports on current events by means of photography or cinematography or by sound or visual broadcasting, it shall be permissible, to the extent justified by the informatory purpose, to reproduce and communicate to the public literary, scientific or artistic works which may be seen or heard in the course of the event.

Article 20. — It shall be permissible to reproduce, by means of cinematography or by visual broadcasting, and communicate to the public works of art and architecture permanently located in a public place or included in the film or broadcast only by way of background or by a way otherwise incidental to the essential matters represented.

Article 21. — Unless otherwise agreed by the author, the authorization for sound or visual broadcasting shall cover all charge-free sound or visual communications, as the case may be, made for scholastic or other educational purposes by the radio and television organization by means of its own facilities, and on its own responsibility.

This authorization shall not extend to communications made in public places such as coffee bars, restaurants, hotels, cabarets, youth clubs, various shops, cultural centers and private clubs, for which prior authorization must be sought in accordance with paragraph (5) of Article 12.

Article 22. — Without prejudice to the author's rights on the broadcasting of his work, the radio and television organization shall be authorized to record such work on discs or magnetic tapes or by a similar process, with a view to its sound and visual, and sound or visual, broadcasting deferred on account of technical or time considerations, provided that the recording is destroyed or rendered unusable after use.

Article 23. — Without prejudice to the right of the author to receive an equitable remuneration, reproductions of an exceptional documentary character and copies of recordings of cultural value may be preserved in official archives designated for this purpose by the Minister of Cultural Affairs.

A list of the reproductions and recordings referred to above shall be drawn up by order of the Minister of Information and of the Minister of Cultural Affairs.

CHAPTER III

Transfer of Copyright

Article 24. — The right of performance and the right of reproduction, adaptation and translation may be transferred free of charge or for a consideration.

They are transferred by inheritance to the author's general or specific legatees.

They may be assigned in whole or in part, but the assignment of the right of performance shall not imply that of the right of reproduction, neither shall the assignment of the right of reproduction imply that of the right of performance.

The assignment of copyright shall be evidenced in writing. The agreement shall be mixed in character: it shall be civil with regard to the author and commercial with regard to the other party, if such other party has commercial status.

When a contract implies total assignment of one of the rights referred to in this Article, the effects of the assignment shall be limited to the methods of exploitation provided in that contract.

Article 25. — Total assignment of future works shall be null and void. However, publishing agreements made under Article 42 shall be lawful, and also, in respect of graphic or three-dimensional works, comprehensive order contracts which provide for exclusive rights on a temporary basis and respect the independence and freedom of expression of the artist.

Article 26. — Authorizations to perform or to reproduce a work protected by this Dahir must be evidenced by a written document and bear a definite date.

Each of the two rights shall be specifically mentioned in the authorization or in the instrument of assignment with respect to importance, extent, purpose, place and duration.

Article 27. — Escheated copyright shall accrue to the organization of authors provided for in Article 53, and the proceeds from such copyright shall be used for social purposes to benefit Moroccan authors, without prejudice to the claims of creditors and the fulfilment of contracts of assignment entered into by the author or his successors in title.

Article 28. — Notwithstanding any assignment of the original work, the authors of graphic and three-dimensional works shall have an inalienable right to a share in the proceeds of any sale of that work by public auction or through a dealer, whatever the methods used by the latter to carry out the operation.

After the death of the author, his general or specific legatees shall benefit from the *droit de suite* during the fifty Gregorian calendar years which follow his death.

Five percent of the proceeds of the sale shall accrue to the author or his general or specific legatees.

An order of the minister responsible for the supervision of the body provided for in Article 53 shall determine the conditions in which authors or their successors in title may claim the rights conferred upon them by this Article at the time of sale as referred to in paragraph (1) above.

Article 29. — In the case of manifest abuse in the exercise or non-exercise of the right of disclosure on the part of the purchaser of a work, the regional tribunal to which the maker is referred by the author or his successors in title, the organization provided for in Article 53 or the Minister of Cultural Affairs, may order such measures as are appropriate.

CHAPTER IV

Cinematographic Works

Article 30. — Authorship of a cinematographic work shall belong to the authors of the scenario, the adaptation, the dialogue and the musical compositions, with or without words, which are created for the production of that work, and the principal director of the cinematographic work.

Article 31. — (1) The maker of a cinematographic work is the person or body corporate who has taken the initiative in, and responsibility for, the making of the work.

(2) He shall be obliged to conclude, prior to the making of the cinematographic work, contracts with all those whose works are to be used in that making.

Article 32. — (1) The cinematographic work shall be considered completed when the first master print (*copie standard*) has been established by agreement between the principal director and the maker.

(2) The principal director of a cinematographic work is any person who assumes the direction of, and the artistic responsibility for, the transformation into sound and pictures of the cinematographic work after cutting, and the final editing.

Article 33. — Authors as defined in Article 30 above, with the exception of authors of musical works, may not, in the absence of contrary or special provisions, object to the exploitation of the cinematographic work.

Article 34. — If one of the authors refuses to complete his contribution to the cinematographic work or is prevented from doing so by circumstances beyond his control (*force majeure*), he shall not be entitled to object to the use of the part of his contribution already in existence for the purpose of completing the work.

He shall be deemed to be the author of his contribution, and shall enjoy the rights which derive therefrom.

Unless otherwise agreed, each of the authors of the cinematographic work may dispose freely of the part of the work which constitutes his personal contribution, with a view to its exploitation in a different manner.

Article 35. — The authors of a cinematographic work, other than the author of musical compositions, with or without words, shall be bound to the producer by a contract which, unless otherwise agreed, shall imply assignment to the producer of such rights as are necessary for cinematographic exploitation, to the exclusion of any other form of exploitation, whether theatrical, literary or other.

CHAPTER V

Publishing Agreements

Article 36. — A publishing agreement is a contract whereby the author of the work or his successors in title transfer to the publisher, under specified conditions, the right to manufacture copies of the work, or have such copies manufactured, in a given quantity, on condition that the latter undertake their publication and distribution.

Article 37. — A contract for publication at the author's expense (*contrat à compte d'auteur*) shall not constitute a publishing agreement but a work by contract agreement, governed by custom and the provisions of Articles 723 to 729 inclusive and 759 to 780 inclusive of the Dahir instituting a Code of Obligations and Contracts.

The author or his successors in title undertake to meet the cost of manufacture, and the printing, publication and distribution of the work shall be incumbent on the publisher.

Article 38. — A "shares" contract (*contrat dit "de compte à demi"*) shall not constitute a publishing agreement but a partnership (*association en participation*) governed by Articles 982 *et seq.* of the Dahir instituting a Code of Obligations and Contracts, and Articles 52 and 53 of the Dahir instituting a Commercial Code.

Subject to a reciprocal agreement to share the benefits and losses of exploitation in the proportion provided, the author or his successors in title commission a publisher to manufacture, at his expense and in a certain quantity, copies of the work in the form and presentation specified in the contract, and to provide for their publication and distribution.

Article 39. — The contract must be drawn up in writing, failing which it shall be null and void.

Subject to the provisions which govern contracts made by minors and persons declared incompetent, the personal consent of the author shall be required in the case of a legally incompetent author, unless he is physically unable to give such consent.

This exception to general rules of law shall not apply when the publishing agreement is signed by the successors in title of the author.

Article 40. — In the absence of a clause to the contrary, the agreement must provide for remuneration payable to the author or his successors in title in proportion to the proceeds of the exploitation of the work.

Article 41. — The publishing agreement must indicate the minimum number of copies constituting the first printing, unless it provides for a minimum of remuneration guaranteed to the author by the publisher.

Article 42. — The author may grant to a publisher, for the publication of his future works of clearly specified kinds, a limited right of preference in respect of five new works of each kind.

Subject to reimbursement of such advances as he may have received, the author may recover his freedom as of right after refusal by the publisher of two successive works.

Article 43. — The author shall be obliged:

- (1) to guarantee to the publisher the peaceful and, in the absence of an agreement to the contrary, the exclusive exercise of the right transferred; consequently, he shall also be obliged to ensure the respect of this right and defend it against any possible infringement;
- (2) to make it possible for the publisher to fulfil his obligation.

Article 44. — The publisher shall be obliged:

- (1) to manufacture the edition in the agreed form;
- (2) to refrain from adding to or removing from the work without the written consent of the author;
- (3) in the absence of an agreement to the contrary, to place on each copy of the work the name, pseudonym or mark of the author;
- (4) to publish the edition within the term customary in the profession, in the absence of a special agreement;
- (5) to ensure the permanent and constant exploitation and the commercial distribution of the work.

Article 45. — The publisher shall be obliged to furnish all the documentary evidence necessary to establish the accuracy of his accounts. The author may require that the publisher produce, at least once a year, a statement indicating:

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

Article 46. — Neither the bankruptcy of the publisher nor a settlement by the court shall terminate the contract.

If the receiver or the liquidator continues exploitation in the conditions specified in Articles 226 and 343 of the Dahir instituting a Commercial Code, he shall have the same rights and be subject to the same obligations as the publisher.

If the business is transferred at the request of the receiver or of the liquidator under the terms of Articles 226 and 343 of the Dahir instituting a Commercial Code, the transferee shall be substituted for the transferor.

When the exploitation is not continued and no transfer of the business has taken place within a year following the adjudication of the bankruptcy, the author may request termination of the contract.

Copies may be remaindered by the receiver only if the author, who has a right of pre-emption has been informed by registered letter fifteen days in advance.

Article 47. — In the absence of authorization by the author, any reassignment of individual works to third parties is prohibited.

In cases where the publisher disposes of the business in its entirety, the author may request termination of the contract if such disposal is likely to prejudice seriously his material and moral interests.

When the publishing business has been operated as a partnership or under joint ownership, the allocation of the business to one of the partners or to one of the joint owners, as a result of liquidation or division, shall not constitute a transfer.

Article 48. — The publishing contract shall end automatically when the publisher, on account of sale at a loss or for any other reason, destroys all the copies.

It may be terminated by the author, independently of the cases provided for in general rules of law, when the editor, in receipt of a formal notice granting him a reasonable time, does not publish the work or, if an edition is out of print, does not reprint it.

An edition shall be considered out of print if two orders for the delivery of copies addressed to the publisher are not fulfilled within three months.

If the work is unfinished on the author's death, the contract shall terminate in respect of the uncompleted part of the work, in the absence of an agreement between the publisher and the successors in title of the author.

CHAPTER VI

Term and Guarantee of Protection

Article 49. — Copyright in a work shall exist from the time of the creation of such work.

Subject to the provisions of Article 51, it shall subsist for the life of the author and for fifty Gregorian calendar years from the end of the year in which the author died.

In the case of works of joint authorship, the fifty years shall be counted from the end of the year of the death of the last surviving co-author.

Article 50. — The pecuniary rights of the author shall incorporate a preferential claim on the goods and chattels of the debtor.

This preferential claim shall remain valid in the event of bankruptcy or a liquidation by the court. It shall come immediately after the salary claims of employed persons.

Article 51. — Copyright shall last for fifty Gregorian calendar years from the end of the year during which the work is disclosed:

- (1) in the case of photographic or cinematographic works;
- (2) in the case of anonymous works or works published under a pseudonym, unless the identity of the author of such a work becomes known before expiration of the period provided for in this Article, in which case the period specified in Article 49 shall apply.

Article 52. — In the event of dispute between the successors in title of the author, or in the absence of any known successor in title, or in the case of an estate in abeyance or escheated, the court of the place at which the succession is opened, or, in cases of urgency, the summary jurisdiction (*jurisdiction des référés*) which is competent by virtue of its own regulations, may order such measures as are appropriate.

The same shall apply to cases of manifest abuse in the exercise or non-exercise of the right of disclosure on the part of the successors in title of the deceased author.

The court or the judge acting *en référé* may be referred to in either case by the Minister of Information, or by the Minister for Cultural Affairs, or by the organization provided for in Article 53.

CHAPTER VII

Exercise of Copyright

Article 53. — The protection and exercise of authors' rights as defined in this Dahir shall be entrusted to an organization of authors, the powers, structure and functions of which shall be laid down by decree.

Article 54. — This organization shall have the right to carry on legal proceedings for the defense of the interests entrusted to it, in particular in disputes directly or indirectly concerning the reproduction or communication to the public of works of its members or mandators.

Article 55. — Agents operating on the authority of the minister responsible for the supervision of the organization referred to in Article 53, and sworn in as provided by legislation in force on the swearing-in of agents empowered to make official reports (*agents verbalisateurs*), shall be competent to record infringements of this Dahir.

CHAPTER VIII

Procedure and Sanctions

Article 56. — Subject to the provisions of Articles 16 to 23, any infringement of moral and economic rights as defined in this Dahir shall be punished in accordance with Articles 575 to 579 of the Penal Code.

Article 57. — The President of the *Tribunal du sadad* shall, at the request of the author of an intellectual work protected by this Dahir, or of his successors in title, order the seizure of copies constituting an unlawful reproduction of the work.

If seizure is intended to delay or suspend public performances which are in progress or have already been announced, a special authorization must be obtained from the President of the competent regional tribunal by an order issued on request.

The President of the regional tribunal may also, in the same form, order:

- (1) the suspension of all manufacture in progress aimed at the unlawful reproduction of a work;

- (2) the seizure, even at hours not provided for in Article 64 of the Dahir instituting a Code of Penal Procedure, of copies constituting an unlawful reproduction of the work, whether already manufactured or in the process of manufacture, of the receipts obtained and of copies unlawfully utilized;

- (3) the seizure of receipts resulting from any reproduction, performance or dissemination, by whatever means, of an intellectual work, effected in violation of the author's rights.

The President of the regional tribunal may, in issuing the decrees provided for hereinabove, order that appropriate security be given in advance by the distrainer.

Article 58. — The distrainee or the garnishee may demand that the magistrate having ordered seizure end such seizure or limit its effects, or authorize the resumption of manufacture or public performances, under the authority of an administrator constituted as receiver, so that whoever is the proprietor may benefit by the manufacture or exploitation.

The judge acting *en référé* may, if he allows the request of the distrainee or garnishee, order the petitioner to deposit a sum applicable as a guarantee for damages which the author might claim.

Article 59. — When the proceeds of an exploitation which are due to the author of an intellectual work have been subjected to seizure, the President of the regional tribunal may order payment to the author, as an allowance for maintenance, of a certain sum or of a specified portion of the amounts seized.

Article 60. — In the event of infringement of the provisions of Article 28, the buyer, the seller and the official entrusted with the sale by public auction may be pronounced jointly liable to damages in favor of those benefiting from the *droit de suite*.

Article 61. — The person solely responsible for unlawful reproduction or communication to the public shall be the person or body corporate who has caused the work to be unlawfully reproduced or communicated to the public on his or its premises, to the exclusion of any other person, whether superior or otherwise, even if such person actually committed the infringement.

CHAPTER IX

Scope of the Law

Article 62. — This Dahir shall apply to all works which, at the time of its entry into force, have not yet fallen into the public domain through the expiry of the term of protection.

Article 63. — Subject to the provisions of international conventions to which Morocco is a party, in cases where, after consultation with the Ministry of Foreign Affairs, it is established that a State does not provide adequate and effective protection for works disclosed for the first time in Morocco, in whatever form, works disclosed for the first time in the

territory of that State shall not enjoy copyright protection as provided by this Dahir.

However, no prejudice may be caused to the integrity or authorship of such works.

Article 64. — All prior provisions contrary to those of this Dahir are repealed, and particularly the following:

the Dahir of 21 Sha'ban 1334 (June 23, 1916) relating to the protection of literary and artistic works;

the Dahir of 4 Jumada I 1345 (November 9, 1926) applying to the former international zone of Tangiers;

the Dahir of 14 Sha'ban 1345 (February 16, 1927) applying to the former Spanish protectorate;

the Dahir of 26 Hijja 1362 (December 24, 1943) relating to the African Copyright Office and the African Office of Writers and Authors of Lectures;

Royal Decree No. 325-66 of 22 Rabi I 1386 (July 11, 1966), complementing Decree No. 2-64-406 of 5 Qa'dah 1384 (March 8, 1965) establishing the Moroccan Copyright Office.

Article 65. — This Dahir shall be published in the *Bulletin officiel*.

It shall enter into force six months after the date of its publication in the *Bulletin officiel*.

UNITED STATES OF AMERICA

Public Law 91-555 (91st Congress, S. J. Res. 230)

(Of December 17, 1970)

Joint Resolution extending the duration of copyright protection in certain cases

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That in any case in which the renewal term of copyright subsisting in any work on the date of approval of this resolution, or the term thereof as extended by Public Law 87-668, by Public

Law 89-142, by Public Law 90-141, by Public Law 90-416, or by Public Law 91-147 (or by all or certain of said laws), would expire prior to December 31, 1971, such term is hereby continued until December 31, 1971.

Approved December 17, 1970.

- May 24 to 28, 1971 (Strasbourg) — Joint ad hoc Committee on the International Classification of Patents — Meeting of the Bureau *
- June 14 to 16, 1971 (Geneva) — ICIREPAT — Technical Coordination Committee
- June 22 to 25, 1971 (Montreux) — WIPO Lecture Series: "Current Trends in the Field of Intellectual Property"
Participation open to all interested persons subject to payment of a registration fee
- July 5 to 9, 1971 (Munich) — Joint ad hoc Committee on the International Classification of Patents — Working Group III *
- July 5 to 24, 1971 (Paris) — Diplomatic Conference for the Revision of the Berne Convention
Object: Revision of the Stockholm Act — *Invitations:* Member States of the Berne Union — *Observers:* Other States, members of the United Nations or of a Specialized Agency; Intergovernmental and non-governmental organizations concerned
- September 6 to 10, 1971 (London) — Joint ad hoc Committee on the International Classification of Patents — Working Group IV *
- September 13 to 17, 1971 (The Hague) — Joint ad hoc Committee on the International Classification of Patents — Working Group I *
- September 21 and 22, 1971 (Geneva) ** — WIPO Headquarters Building Subcommittee
Members: Argentina, Cameroon, France, Germany (Fed. Rep.), Italy, Japan, Netherlands, Soviet Union, Switzerland, United States of America
- September 22 to 24, 1971 (Geneva) — ICIREPAT — Plenary Committee
- September 27 to October 1, 1971 (Berne) — Joint ad hoc Committee on the International Classification of Patents — Working Group II *
- September 27 to October 2, 1971 (Geneva) — WIPO Coordination Committee, Executive Committees of the Paris and Berne Unions, Assembly and Committee of Directors of the National Property Offices of the Madrid Union, Council of the Lisbon Union
- October 4 to 11, 1971 (Geneva) — Committee of Experts on International Registration of Marks
Object: Preparation of the Revision of the Madrid Agreement or of the Conclusion of a New Treaty — *Invitations:* Member States of the Paris Union and organizations concerned
- October 4 to 9, 1971 (Geneva) — Joint ad hoc Committee on the International Classification of Patents — Working Group V *
- October 11 to 15, 1971 (Geneva) — ICIREPAT — Technical Committee for Computerization
- October 13 to 15, 1971 (Geneva) — ICIREPAT — Advisory Board for Cooperative Systems
- October 18 to 22, 1971 (Geneva) — ICIREPAT — Technical Committee for Shared Systems
- October 25 to 29, 1971 (Geneva) — ICIREPAT — Technical Committee for Standardization
- November 9 to 12, 1971 (Geneva) — Joint ad hoc Committee on the International Classification of Patents — Meeting of the Bureau *
- November 15 to 18, 1971 (Geneva) — Joint ad hoc Committee on the International Classification of Patents — Plenary Committee *
- November 15 and 16, 1971 (Geneva) — Intergovernmental Committee Established by the Rome Convention (Neighboring Rights)
Note: Meeting convened jointly with the International Labour Office and Unesco
- November 17 to 20, 1971 (Geneva) — Executive Committee of the Berne Union
- December 6 to 8, 1971 (Geneva) — Patent Cooperation Treaty (PCT) — Interim Advisory Committee for Administrative Questions
Members: Signatory States of the PCT
- December 8 to 10, 1971 (Geneva) — Patent Cooperation Treaty (PCT) — Standing Subcommittee of the Interim Committee for Technical Cooperation
Members: Austria, Germany (Fed. Rep.), Japan, Soviet Union, Sweden, United Kingdom, United States of America — *Observers:* Brazil, International Patent Institute
- December 13 to 15, 1971 (Geneva) — ICIREPAT — Technical Coordination Committee

* Meeting convened jointly with the Council of Europe.

** Dates to be confirmed later.

Meetings of Other International Organizations Concerned with Intellectual Property

- April 17 to 24, 1971 (Vienna) — International Chamber of Commerce — Congress
- May 18 to 21, 1971 (Caracas) — Inter-American Association of Industrial Property — 3rd Congress
- May 18 to 22, 1971 (Stockholm) — International Federation of Patent Agents — General Assembly
- May 25 to 29, 1971 (Leningrad) — International Association for the Protection of Industrial Property — Council of Presidents
- June 21 to 28, 1971 (Toronto - Montreal) — International Writers Guild — 3rd Congress
- July 5 to 24, 1971 (Paris) — Unesco — Diplomatic Conference for the Revision of the Universal Copyright Convention
- International Conference for the Setting Up of a European System for the Grant of Patents (Luxembourg):
- April 20 to 30, 1971 — Conference
- September 13 to 17, 1971 — Working Party I
- October 11 to 22, 1971 — Working Party I
- November 15 to 19, 1971 — Working Party I