

Copyright

Monthly Review of the
WORLD INTELLECTUAL PROPERTY
ORGANIZATION (WIPO)

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

7th year - No. 3
MARCH 1971

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WORLD INTELLECTUAL PROPERTY ORGANIZATION

Advisory Group of Governmental Experts on the Protection of Computer Programs

(Geneva, March 8-12, 1971)

Report

Introduction

1. The purpose of the meeting of this Advisory Group was to advise the International Bureau of WIPO on the preparation of a study of the following questions:

(i) What form of legal protection of computer programs at the national level is most appropriate both from the point of view of the developing countries and from that of the producers of software?

(ii) What new international arrangements, or modification or reinforcement of existing arrangements, are called for?

This study is called for in a report of the Secretary-General of the United Nations on the application of computer technology for development (UN document E/4800, paragraph 201).

Opening of the meeting

2. The meeting was opened by the Director General of WIPO, who welcomed the governmental experts. The list of participants is annexed to this Report.

Election of Officers

3. On the proposal of the Expert of the United States of America, supported by the Expert of Germany (Federal Republic), Mr. F. W. Simons, Expert of Canada, was elected Chairman of the meeting.

Adoption of the agenda

4. The draft agenda contained in document AGCP/1 was adopted.

General discussion on the legal protection of computer programs

5. Document AGCP/3, a memorandum prepared by the International Bureau of WIPO on questions to be discussed, was considered paragraph by paragraph, after a general discussion had taken place upon these questions.

6. It was emphasized that the views expressed by the experts did not necessarily reflect any official views of the governments which had nominated them and were in no way binding upon those governments.

7. The Director General suggested that attention should be concentrated on four major points during the general discussion.

(i) Should consideration be given to the protection of all forms of computer software, or of computer programs only?

(ii) Should protection be provided for all programs, or only those which resulted from truly inventive or creative efforts? (In this context, the Director General referred to an estimate made by a major computer manufacturer that at the very most some 20% of investment in the development of software was devoted to new concepts.)

(iii) In what way can the interests of the developing countries best be served?

(iv) Would it be helpful, for further study, to obtain the written views of the governments of member States and states concerning their relevant existing laws?

8. The Expert of the United States of America considered that it was important not to confuse the study of the legal protection of computer software by including also questions concerning the use of works protected by copyright in computer systems. Within that limitation, the terms of reference of the study should be wide enough to include all computer programs, whether truly inventive or not. So far as the needs of the developing countries were concerned, particular emphasis should be given to the question of international relations not only as between developing and developed countries and as among developing countries themselves, but also as among the developed countries, in addition to the possibility of preparing model laws for assistance at the national level. For any future meeting of a committee of governmental experts with participation on behalf of the private sector very thorough documentation would be required; although questionnaires to governments did not always produce successful results, this method was probably appropriate in this case provided that it followed independent studies undertaken under the responsibility of WIPO.

9. The Expert of the United Kingdom said that the first requirement was an investigation of the question whether a real need existed for new systems of legal protection of computer software. Current experience in the United Kingdom suggested that existing laws of contract and practices relating to trade secrets provided adequate protection.

10. The Expert of Germany (Federal Republic) said that it would be helpful to obtain the written views of governments of both developed and developing countries upon the need for legal protection of computer software and their plans, if any, to meet such needs, bearing in mind the desirability of a degree of harmonization.

11. The Expert of the Soviet Union stressed that the question of the needs of the developing countries was one upon which

the governments of those countries should express their own views. In the Soviet Union computer programs were protected by common law, and inventiveness was rewarded through the normal channels. Experience in the field of international trade in computer software was not yet sufficient; if, however, proposals for international arrangements were made by other countries, the Soviet Union would be willing to take part in the negotiation of such arrangements. He emphasized that, in such arrangements, there should be no discrimination between developed and developing countries.

12. The Expert of France recalled that the new French patent law specifically excluded computer programs from patentability; he emphasized that this did not imply that France opposed the legal protection of computer programs by other means. In this connection, the Expert of the United Kingdom expressed the view that patents were not the appropriate form of protection for computer programs. He stated that the Banks Committee on the British Patent System had recommended that computer programs should not be patentable. He added, however, that the United Kingdom might be willing to reconsider the matter if other countries came out in favor of patent protection.

13. The Expert of Spain informed the meeting that no specific protection for computer software was provided by the laws of Spain, although some help could be obtained under the copyright law. Spain wished to examine the experience of other countries in this field.

14. The Expert of Canada pointed out that any protection available under existing Canadian law was accidental. There was an absence of economic facts upon which specific proposals for the legal protection of computer software could be made; it was difficult even to define a program or to specify the nature of appropriate protection and of possible exceptions to it in certain circumstances. Programs were of many different types, and it could well be that different types of protection or terms of protection would be appropriate to different types of programs.

Scope of the study

15. It was generally agreed that the question to be studied should embrace all computer programs, whether or not regarded as "inventive" or "original", in a creative sense, for the purposes of existing legal systems, in view of the substantial investment required for the development of even non-inventive computer programs, and in view of their commercial value. The question of a precise definition of a program would depend upon the type of protection to be granted to it.

16. In this connection, the Expert of the United States of America pointed out, in relation to some possible methods of protection, the distinction between programs merely as instructions to a machine and programs in a form making a computer operable or changing its internal configuration. In any event, the question of whether the concept of "program" should include preliminary works such as workflow descriptions, flow charts and block diagrams should be scrutinized.

The need for legal protection

17. The Advisory Group examined the arguments in favor of the legal protection of computer programs set out in paragraph 6 of document AGCP/3. The Expert of Germany (Federal Republic) laid particular emphasis on the importance of the argument that the absence of legal protection drives inventors to rely on secrecy which, from the point of view of the advance of technology, is undesirable. An adequate form of legal protection would improve the possibility of access to computer programs for the public in the developed and the developing countries.

18. The Expert of Canada thought that the weight of the arguments suggested could vary according to the type of program concerned; evidence would be necessary before it could be decided that the arguments justified the establishment of special legal protection for programs. This view was supported by the Expert of the United Kingdom, although it was agreed that the nature of the evidence could not always be factual but might involve the assessment of probabilities. Subject to the need for further study of the factual background relating to the development of programs and commercial transactions in programs, it was generally agreed that the arguments contained in paragraph 6 of document AGCP/3 constituted reasons which were valid in principle for the establishment of legal protection of computer programs.

Contracts and trade secrets

19. The Expert of the United States of America gave a brief account of the changes which had taken place in the pattern of commercial transactions in computer programs in her country, which had led to pressures from some quarters for the recognition of the need for legal protection of computer programs by means other than the law of contract and of trade secrets. The Expert of Canada emphasized that one objective of any system of protection of programs was disclosure of technological advances in this field with a view to the avoidance of duplication of effort and increased availability of programs for users. For this purpose the possibility could well be considered of providing, in any special legislation for computer programs, that no protection of a trade secrets' nature would be available. In this connection the Expert of the United States of America informed the meeting that recent decisions of the American courts had thrown some doubt on the applicability of trade secrets protection in cases where the subject matter had been communicated to others, or had been licensed, even under contractual obligations of confidentiality.

20. After considering paragraph 9 of document AGCP/3, the Advisory Group decided to examine, in addition to the questions set out in that paragraph, the following aspects of legal protection:

- (i) possible limitations of the protection in certain circumstances;
- (ii) means of detecting infringements.

The Advisory Group noted that the question of what acts should be protected involved the further question of the definition of the program.

21. The Expert of the Soviet Union, expressing the view of the Committee for Inventions and Discoveries attached to the Council of Ministers of the USSR, said that the protection of programs could most easily be assimilated to that of utility models or an invention at the national level. Such protection would be effective against unauthorized use, and would last for a reasonably short period; in the view of the Committee for Inventions and Discoveries, from 5 to 10 years would be a reasonable period for computer programs; a longer period would make no sense. At the international level, the protection of utility models was already covered by the Paris Convention which could be extended in relation to computer programs. It would be necessary to provide for at least a registration of a brief description of the program and for the deposit of a copy in machine-readable language in order to overcome any difficulties relating to priority and in order to avoid innocent infringement.

Protection against use

22. The Advisory Group noted that the copyright laws of many countries would not provide protection against the use of a program effected without copying or reproduction of the program. In spite of the fact that it was normally necessary, in the present state of technology, for a program to be "reproduced" in order to be used in a computer, the Advisory Group expressed the view that any system for the legal protection of computer programs should desirably provide protection against use without reproduction, particularly for the reason that it is impossible to predict the technological developments which may take place. In this connection the Expert of the United States of America drew attention to the fact that certain interests, particularly educational groups, had expressed concern over possible restrictions against the use of programs whose physical possession had been legally acquired; this was a matter which could probably be dealt with by legal presumptions which would operate in the absence of specific agreement.

23. The Advisory Group agreed to consider not only the two "property rights" approaches referred to in paragraphs 11 and 12 of document AGCP/3, but also a third such approach, following the suggestion made by the Expert of the Soviet Union, based on the concept of utility models (paragraph 21, *supra*).

24. The Expert of the United States of America gave a brief account of developments in the United States in relation to the patentability of inventive computer programs. The situation was still far from clear, in spite of recent court decisions in the area. Some representatives of the private sector had advanced proposals for a new system of protection which in many respects would resemble the "utility model" approach suggested by the Expert of the Soviet Union. The United States Copyright Office accepted computer programs for registration, although no decision of the courts had yet been taken upon whether these works were protected by United States copyright law. In the last six years less than 200 programs had been registered with the Office, probably because only

published works could be registered and potential applicants might fear the loss of protection under trade secrets laws.

25. The Expert of Germany (Federal Republic) reported that the application of the existing patent law to computer programs was still not clear in her country. She posed the question whether patent protection would, in practical terms, be appropriate for computer programs, bearing in mind the difficulty of examining such programs for novelty and inventiveness and the doubtful need for a protection in the nature of a patent monopoly as opposed to a protection against use or copying without authorization. The existing legislation in her country on the subject of utility models was certainly not applicable to the majority of computer programs. So far as the copyright approach was concerned, she drew attention to the danger that the broad concept of adaptation, coupled with the long period of protection granted by copyright laws, could result in an indefinite period of protection being granted to a succession of programs derived from one original program.

26. The Expert of Spain observed that in his country it would be impossible to obtain protection for computer programs by means of utility models because, according to the national legislation, the latter protection applied only to the functional elements of the external form of industrial articles.

27. The Advisory Group noted that the definition of originality, for the purposes of copyright law, varied from country to country and that the aim of protecting all computer programs, referred to in paragraph 15 of this Report, could not be met by some such laws.

28. In relation to the "unfair use" approach referred to in paragraphs 13 and 16 of document AGCP/3, the Expert of Germany (Federal Republic) suggested that, in the absence of a specific right of the program-maker, certain developments in the law of unfair competition in her country would prevent the application of such principles to the main bulk of computer programs. The Expert of the United States of America commented that constitutional problems might have a similar effect in her country, and might even make it difficult to adopt a new federal law for the protection of computer programs based on such an approach.

29. At the conclusion of the discussion of the possible advantages of the three approaches referred to in document AGCP/3 and the further approach suggested by the Expert of the Soviet Union, the Advisory Group agreed that the study should concentrate upon the desirable ingredients of any system of legal protection of computer programs, rather than follow rigidly the lines of established legal concepts which differed substantially from country to country.

Protection against other acts

30. The Advisory Group agreed that translation of a computer program from one computer language to another should desirably be protected, and that, for reasons including those advanced earlier by the Expert of Germany (Federal Republic), the concept of adaptation as a protected act required considerable study and refinement, in order to avoid the pos-

sibility that a system to protect the form in which instructions were expressed should accidentally extend to a protection of the ideas from which the instructions had been derived. The Expert of France suggested that no distinction should be made between programs in machine-readable form and programs at an earlier stage of development requiring translation into such form. The Expert of the United Kingdom suggested that any system would probably require the hearing of expert evidence in relation to the question of adaptation and to the related question of whether one program was substantially similar to another or was the same as another with minor modifications only.

Remedies

31. The Advisory Group accepted the suggestions contained in paragraph 21 of document AGCP/3.

Period of the protection

32. The Advisory Group agreed that the principles governing the period of protection under copyright laws were not necessarily applicable to the appropriate period of protection to be granted for computer programs. However, in the absence of specific evidence concerning such matters as the effective commercial life of a computer program, or the time needed for the reasonable recoupment of investment in its development, the Advisory Group was unable to suggest any particular period of protection, and drew attention to the fact that current opinions upon this matter might well prove to be out of date particularly if technological changes ceased to take place at the present rapid rate.

33. The Expert of the United States of America pointed out that a system of legal protection could provide for different terms of protection subject to different conditions, and could include the possibility of renewals of the period.

Limitation on the protection

34. The Advisory Group noted that limitations on the protection granted to computer programs might be required by the existing legislative policies of some countries, and might be imposed either by the general legislation of a country for the control of monopolies, misuse and restrictive business practices or by specific provisions, relating, for instance, to compulsory licensing, to be contained in the system itself.

35. The Expert of Germany (Federal Republic) said that if protection were granted in respect of use, then some "fair use" provisions should be considered, for instance for purposes of trial or of comparison between programs. The Expert of France observed that in his opinion a limitation on the copying of programs for internal purposes within an installation would, in the present state of the technology, constitute an obstacle to their use. The Experts of Canada and the United Kingdom suggested that the compulsory licensing provisions contained in the patent laws of their countries might well be regarded as appropriate in relation to the protection of programs.

Procedure and conditions

36. The Expert of the United Kingdom, while emphasizing that his country had no experience of a registration system in the field of copyright, suggested that consideration should be given to problems of standardization of format should registration or deposit be required. The Expert of Canada expressed the view that some system of disclosure would be desirable in order to assist in achieving the aim that protected computer programs should be readily available for use.

37. The Advisory Group noted that compulsory registration systems (as in the United States of America for copyright purposes) or optional registration systems (as in India and Canada) might be desirable; their establishment would depend on the legislative traditions and the administrative resources of the country concerned.

Beneficiary of the protection

38. The Advisory Group expressed general support for the suggestion made in paragraph 24 of document AGCP/3, provided that the "person" who orders (i. e., who commissions or controls) the development of the program should be interpreted sufficiently widely to include enterprises. The Expert of Germany (Federal Republic) pointed out that in some countries the position of employed inventors was regulated by laws which would have an influence upon this question.

Means of detecting infringement

39. The Advisory Group agreed that a system for the protection of computer programs could be effective even if minor or individual infringements could not readily be detected or proved. The state of knowledge existing in the computer profession (which could itself assist by establishing codes of professional conduct) about the activities of different enterprises could normally be relied upon to supply at least *prima facie* evidence of major or continuing infringements. In this event, consideration could be given to an onus of proof being placed upon the possible infringer to show that his program had been developed independently, or to the law giving power to the courts to order an independent inspection. The Expert of Canada pointed out that the expected increase in the use of computer utilities could assist largely in the practical task of detecting infringements.

Application at the national level

40. The Advisory Group agreed that the basic issues upon which decisions concerning the legal protection of computer software would have to be taken were not yet sufficiently clarified. However, it was agreed that further study at the international level, including possibly the drafting of model provisions upon which national legislation could be based, would be of value even at this stage in the interest of obtaining reasonable harmonization or compatibility of national laws.

International arrangements

41. The Advisory Group agreed that, in the long run, international links between national laws for the protection of computer software would be desirable and that such links

could appropriately take the form of international treaties incorporating the principle of national treatment, with certain minimum levels and maximum conditions of protection. Preliminary discussion of such instruments could well assist in preventing wide divergences between national laws.

42. The Expert of the Soviet Union pointed out that his country would prefer such negotiations to take place within the context of the International (Paris) Convention for the Protection of Industrial Property, in view of the fact that it was not a member of any of the international conventions concerning copyright.

Possible future action

(a) Convening a committee of governmental experts

43. The Advisory Group agreed that a committee of governmental experts to study the question of the legal protection of computer programs, to which the governments of all member States of the Paris and Berne Unions, or possibly of the United Nations, would be invited, should not be convened except upon the basis of thoroughly prepared documentation giving an indication of the economic evidence on the need for legal protection, and information about the state of the relevant laws in the member countries. A more limited meeting of governmental experts might be of assistance to the International Bureau of WIPO in preparing such documentation. The documentation should include special studies on the specific needs of the developing countries. It was noted that decisions upon the convening of future meetings would be taken by the appropriate Administrative Bodies of WIPO.

44. It was further agreed that the undertaking of the studies necessary for the preparation of documents for a future large-scale meeting of governmental experts should appropriately be entrusted to the International Bureau of WIPO, with the assistance of governments and of such outside consultants as might be necessary, and in consultation with other intergovernmental or international non-governmental organizations with relevant experience, whose work should, so far as possible, be used in such studies.

45. The Expert of Canada suggested that a thorough factual study of the technological and commercial aspects of the industry should precede the next meeting. The aims of the study should include the encouragement, nationally and internationally, of the development and use of computer programs, by means of effective disclosure and the provision of reasonable access. The study should also be coordinated with other existing studies of the computer industry on the international level. Any recommended system of legal protection should be capable of being administered economically and of granting protection in time for the needs of the software industry. In his view, the studies upon which future documentation should be based should take into account the following questions:

What are the effects of trade secret protection? Is more incentive needed? If so, intellectual property rights are only one of a variety of possible ways of providing new incentives. Do hardware manufacturers require the same types of guarantees as software houses? Does trade secrecy really hinder the disclosure or utilization of computer programs, or do the

marketing efforts of producers serve to distribute them adequately? Would a statutory scheme of protection have any effect beyond substituting another legal basis for marketing? Would special statutory protection necessarily mean that the industry would not continue to rely heavily on trade secrecy? Should it be accompanied by a denial of trade secrecy protection through the courts? Are the needs for protection likely to change if the industry stabilizes or programs acquire a longer average life? How would a new basis of protection affect the structure of the computer industry? Would it favor the hardware manufacturers and restrain the current dynamic growth of the industry as a whole, or would it help guarantee the positions of software houses? In terms of domestic industries and balance of payments, would an international regime of protection be unduly favorable to countries with established hardware manufacturing capability?

The Expert of Canada accepted that some of these questions were not capable of being answered except in terms of presumptions and probabilities. In general, three types of questions should be addressed:

(i) What types of programs lend themselves technologically to special legal protection?

(ii) Of those that do, which types should receive protection, and in what way?

(iii) The needs of developing countries, in terms of unsatisfied need and the commercial impact of a special system of protection, should receive special attention, with the objective of making programs readily available to developing countries.

46. The Expert of the United Kingdom suggested that attention should be concentrated on three basic questions:

(i) What types of programs should be protected?

(ii) What type of protection would be appropriate?

(iii) What are the needs of the developing countries?

47. The Advisory Group emphasized the need to associate representatives of computer users and of the industry (including both the hardware and the software sectors) with the study at as early a stage as possible, as well as the intergovernmental and international non-governmental organizations concerned.

(b) Preparation of documents

48. The Expert of the Soviet Union suggested that at least the following three documents should be presented to a meeting of governmental experts of all member States of the Paris and Berne Unions:

(i) a memorandum setting out the major points and the history of the problem;

(ii) an outline draft of substantive provisions of a possible new international arrangement (which could form part of or a protocol to the Paris Convention) as a basis for discussion;

(iii) a summary of information on relevant laws and current trading practices in the member States.

The purpose of the meeting of governmental experts should be to determine whether international arrangements in this field are necessary or desirable and, if so, within what framework they should be achieved.

(c) *Technical assistance, and*

(d) *Preparations for the revision of conventions or for the establishment of new instruments*

49. The Advisory Group agreed that these questions could not be the subject of practical recommendations at this stage.

Summary of the conclusions of the Advisory Group

50. The Advisory Group therefore agreed unanimously that:
concerning the scope and nature of the study

(i) the study to be undertaken in accordance with the recommendation contained in the report of the Secretary-General of the United Nations (UN document E/4800) should embrace the legal protection of all computer programs whether or not such programs can be regarded as "inventive" or "original" in a creative sense;

(ii) the study should concentrate upon the desirable ingredients of any system of legal protection of computer programs, rather than follow rigidly the lines of established legal concepts for the protection of other inventions or works;

concerning possible ingredients of any legal system

(iii) any system for the legal protection of computer programs should probably provide protection against use;

(iv) the mere fact that a program has been translated from one computer language to another should not deprive the program of protection;

(v) the beneficiary of the protection should be the person or enterprise responsible for ordering (i. e., for commissioning or controlling) the development of the program; national laws on the protection of employed inventors should be taken into account;

(vi) the period of protection to be granted for computer programs should be based not upon established concepts of intellectual property law but upon up-to-date evidence concerning the effective commercial life of a program and the time needed for the reasonable recoupment of investment;

(vii) whether or not required for the administration of any system of legal protection, some form of disclosure through registration or deposit might be desirable if the administrative resources of the country concerned made this possible;

(viii) the remedies for infringement of protection should include the right to prevent possible infringements and to obtain financial compensation for past infringements;

(ix) while there might be practical difficulties in the detection of individual infringements of the protection, ways

could be found to render a system of legal protection generally effective;

concerning future action

(x) further international study of the problem would be of value for the avoidance of unnecessary divergences of national laws;

(xi) international agreements linking national laws and possibly providing for minimum conditions of protection would be desirable;

(xii) the International Bureau of WIPO should be entrusted with the task of preparing or commissioning studies in depth upon the economic and legal aspects of the problem, with particular reference to the needs of the developing countries, and of preparing documentation based on those studies to be presented to a future meeting of governmental experts.

Adoption of the Report

51. A draft report prepared by the International Bureau of WIPO (document AGCP/5) was considered paragraph by paragraph by the Advisory Group and, certain modifications having been agreed, the Advisory Group adopted this Report.

Closing of the meeting

52. The Director General thanked the experts for their valuable contributions to the discussion, and for the advice which the Advisory Group had given. He expressed particular thanks to the Chairman, whose efficient and agreeable conduct of the debates had contributed largely to their success.

53. After several experts had endorsed the comments of the Director General, the Advisory Group agreed on a vote of thanks to its Chairman, who then declared the meeting closed.

List of Participants

I. Governmental Experts

Brazil: J. G. Marques Porto. Canada: F. W. Simons; B. C. McDonald; F. W. Herrmann. Congo: R. Kumbu; A. Nkuba-Mpozi (Mrs.). France: J. Gunther; J. P. Costa. Germany (Federal Republic): E. Steup (Mrs.). India: G. Shankar. Soviet Union: V. Kalinine. Spain: J. D. Montero-Rios; C. Marquez Labajo; D. Torra. United Kingdom: N. W. P. Wallace. United States of America: B. A. Ringer (Miss); J. B. Farmakides.

II. WIPO

G. H. C. Bodenhausen (*Director General*); C. Masouyé (*Senior Counsellor, Head, External and Public Relations Division*); R. Harben (*Counsellor*); M. Stojanović (*Counsellor*).

NATIONAL LEGISLATION

MALAYSIA

Copyright Act, 1969

An Act to revise and consolidate the law relating to copyright

Short title, extent, commencement and application

1. — (1) This Act may be cited as the Copyright Act, 1969.

(2) This Act shall extend throughout Malaysia.

(3) This Act shall come into operation on a date to be appointed by the Minister by notification in the *Gazette*, and different dates may be so appointed for different provisions of this Act*.

(4) This Act shall apply in relation to works made before the commencement of this Act as it applies in relation to works made thereafter.

Interpretation

2. — (1) In this Act, unless the context otherwise requires —

“adaptation” includes any of the following, that is to say —

- (a) in relation to a literary work, a version of the work (whether in its original language or a different language) in which it is converted into a dramatic work;
- (b) in relation to a dramatic work, a version of the work (whether in its original language or a different language) in which it is converted into a literary work;
- (c) in relation to a literary or dramatic work —
 - (i) a translation of the work;
 - (ii) a version of the work in which the story or action is conveyed wholly or mainly by means of pictures in a form suitable for reproduction in a book or in a newspaper, magazine or similar periodical;
- (d) in relation to a musical work, an arrangement or transcription of the work;

“artistic work” means, irrespective of artistic quality, any of the following, or works similar thereto —

- (i) paintings, drawings, etchings, lithographs, woodcuts, engravings and prints;
- (ii) maps, plans, charts and diagrams;
- (iii) works of sculpture;
- (iv) photographs not comprised in a cinematograph film;
- (v) works of architecture in the form of buildings or models; and
- (vi) work of artistic craftsmanship, including pictorial woven tissues and articles of applied handicrafts and industrial art;

“author” means, in the case of a cinematograph film or sound recording, the person by whom the arrangements for the making of the film or recording were undertaken, or, in the case of a broadcast transmitted from within any country, the person by whom the arrangements for the making of the transmission from within that country were undertaken; and in any other cases the person referred to in section 12 of this Act;

“broadcast” means radio and/or television broadcast by wireless telegraphy or wire or both and includes rebroadcast, and “broadcasting” shall be construed accordingly;

“broadcasting service” means any service of radio and/or television broadcasts operated under the general direction and control of or under licence by the Government in any part of Malaysia;

“building” includes any structure;

“cinematograph film” means the first fixation of any sequence of visual images on material of any description (whether translucent or not) so as to be capable, by use of that material —

- (a) of being shown as a moving picture; or
- (b) of being recorded on other material (whether translucent or not) by the use of which it can be so shown, and includes the sounds embodied in any sound track associated with a cinematograph film;

“citizen” includes a person who, if he had been alive on the relevant day, would have been qualified for citizenship under the Federal Constitution; and “relevant day” means Merdeka Day in respect of West Malaysia and Malaysia Day in respect of East Malaysia;

“communication to the public” includes, in addition to any live performance or delivery, any mode of visual or acoustic presentation, but does not include a broadcast or rebroadcast, and “communicate to the public” shall be construed accordingly;

“copy” means a reproduction of a work in written form, in the form of a recording or cinematograph film, or in any other material form;

“copyright” means copyright under this Act;

“educational institution” shall have the meaning assigned thereto under the provisions of the Education Act, 1961;

“future copyright” means copyright which will or may come into existence in respect of any future work or class of

* This Act came into force on August 1, 1969, by notification of July 23, 1969, in *His Majesty's Government Gazette* of July 31, 1969.

works or other subject matter, or on the coming into operation of any provisions of this Act, or in any future event;

“Government” means Government of Malaysia or Government of a State in Malaysia as the case may be;

“licence” means a lawfully granted licence permitting the doing of an act controlled by copyright;

“literary work” means, irrespective of literary quality, any of the following, or works similar thereto:

- (a) novels, stories and poetical works;
- (b) plays, stage directions, film scenarios and broadcasting scripts;
- (c) textbooks, treaties, histories, biographies, essays and articles;
- (d) encyclopaedias, dictionaries and other works of reference;
- (e) letters, reports and memoranda;
- (f) lectures, addresses and sermons,

but does not include official texts of a legislative, administrative and legal nature nor official translations of such texts;

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

“Minister” means the Minister charged with the responsibility for commerce and industry;

“musical work” means any musical work, irrespective of musical quality, and includes works composed for musical accompaniment;

“photograph” means any product of photography or of any process akin to photography (other than a part of a cinematograph film);

“prescribed” means prescribed by regulations made under this Act;

“rebroadcast” means a simultaneous or subsequent broadcast by one broadcasting service of the broadcast of another broadcasting service, whether situated in Malaysia or abroad, and includes diffusion of such broadcast over wires, and “rebroadcasting” shall be construed accordingly;

“reproduction” means the making of one or more copies, and includes, in the case of an artistic work, a version produced by converting the work into a three-dimensional form or, if it is in three dimensions, by converting it into a two-dimensional form, and reference to “reproducing” a work shall be construed accordingly;

“sound recording” means the first fixation of a sequence of sounds capable of being perceived aurally and of being reproduced, but does not include a soundtrack associated with a cinematograph film;

“work” includes translations, adaptations, new versions or arrangements of pre-existing works, and anthologies or collections of works which, by reason of the selection and arrangement of their content, present an original character;

“work of joint authorship” means a work produced by the collaboration of two or more authors in which the contribution of each author is not separable from the contribution of the other author or authors.

(2) For the purposes of this Act the following provisions shall apply with respect to publication —

- (a) a work shall be deemed to have been published if a copy or copies thereof have been made available with the consent of the author in a manner sufficient to satisfy the reasonable requirements of the public;
- (b) where in the first instance a part only of a work is published, that part shall be treated for the purposes of this Act as a separate work;
- (c) a publication in any 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.

No copyright except by virtue of this Act

3. — Subject to this Act, no copyright shall subsist otherwise than by virtue of this Act.

Works eligible for copyright

4. — (1) Subject to the provisions of this section the following works shall be eligible for copyright —

- (a) literary works;
- (b) musical works;
- (c) artistic works;
- (d) cinematograph films;
- (e) sound recordings;
- (f) broadcasts.

(2) A literary, musical or artistic work shall not be eligible for copyright unless —

- (a) sufficient effort has been expended on making the work to give it an original character; and
- (b) the work has been written down, recorded or otherwise reduced to material form.

(3) A work shall not be ineligible for copyright by reason only that the making of the work, or the doing of any act in relation to the work, involved an infringement of copyright in some other work.

Copyright by virtue of citizenship or residence

5. — (1) Copyright shall be conferred by this section on every work eligible for copyright of which the author or, in the case of a work of joint authorship, any of the authors is, at the time when the work is made, a qualified person, that is to say —

- (a) an individual who is a citizen of, or is a permanent resident in, Malaysia; or
- (b) a body corporate constituted and vested with legal personality under the laws of Malaysia and established in Malaysia.

(2) The terms of copyright conferred by this section shall be calculated according to the following table —

<i>Type of Work</i>	<i>Date of Expiration of Copyright</i>
(i) Literary, musical or artistic works other than photographs	Twenty-five years after the end of the year in which the author dies.
(ii) Cinematograph films and photographs	Twenty-five years after the end of the year in which the work was first published.
(iii) Sound recordings	Twenty years after the end of the year in which the recording was made.
(iv) Broadcasts	Twenty years after the end of the year in which the broadcast took place.

(3) In the case of anonymous or pseudonymous literary, musical or artistic works the copyright therein shall expire twenty-five years after the end of the year in which the work was first published, but not later than the end of the year in which it is reasonable to presume that the author has been dead for twenty-five years:

Provided that in the event of the identity of the author becoming known the terms of copyright shall be calculated in accordance with the provisions of paragraph (i) of the last preceding sub-section.

(4) In the case of a work of joint authorship, reference in the preceding table to the death of the author shall be taken to refer to the author who dies last, whether or not he is a qualified person.

Copyright by reference to country of origin

6. — (1) Copyright shall be conferred by this section on every work which is eligible for copyright and which —

- (a) being a literary, musical or artistic work or cinematograph film is first published in Malaysia;
- (b) being a work of architecture is erected in Malaysia or being another artistic work is incorporated in a building located in Malaysia;
- (c) being a sound recording, is made in Malaysia; and
- (d) being a broadcast, is transmitted from Malaysia and which has not been the subject of copyright conferred by section 5 of this Act.

(2) Copyright conferred on a work by this section shall have the same duration as is provided for in section 5 of this Act in relation to the same type of work.

Copyright in works of Government and international bodies

7. — (1) Copyright shall be conferred by this section on every work which is eligible for copyright and which is made by or under the direction or control of the Government and also such international bodies or other government organizations as may be prescribed.

(2) Copyright conferred by this section on a literary, musical or artistic work, other than a photograph, shall subsist until the end of the expiration of twenty-five years from the end of the year in which it was first published.

(3) Copyright conferred by this section on a film, photograph, sound recording or broadcast shall have the same dura-

tion as is provided for by section 5 of this Act in relation to the same type of work.

(4) Sections 5 and 6 of this Act shall not be taken to confer copyright on works to which this section applies.

Nature of copyright in literary, musical or artistic works and cinematograph films

8. — (1) Copyright in a literary, musical or artistic work or in a cinematograph film shall be the exclusive right to control the doing in Malaysia of any of the following acts, namely the reproduction in any material form, the communication to the public and the broadcasting of the whole work or a substantial part thereof, either in its original form or in adaptation:

Provided that copyright in any such work shall not include the right to control —

- (a) the doing of any of the aforesaid acts by way of fair dealing for purposes of research, private use, criticism or review, or the reporting of current events, subject to the condition that if such use is public, it is accompanied by an acknowledgement of the title of the work and its authorship, except where the work is incidentally included in a broadcast;
- (b) the doing of any of the aforesaid acts by way of parody, pastiche or caricature;
- (c) the inclusion in a film or broadcast of any artistic work situated in a place where it can be viewed by the public;
- (d) the reproduction and distribution of copies of any artistic work permanently situated in a place where it can be viewed by the public;
- (e) the incidental inclusion of an artistic work in a film or broadcast;
- (f) the inclusion of a work in a broadcast, communication to the public, collection of literary or musical works, sound recording, or film if such inclusion is made by way of illustration for teaching purposes and is compatible with fair practice and provided that mention is made of the source and of the name of the author which appears on the work thus used;
- (g) the recording made in schools, universities or educational institutions of a work included in a broadcast intended for such schools, universities or educational institutions;
- (h) the making of a sound recording of a literary or musical work, as well as the reproduction of such sound recording by the maker or under licence from him, provided that the copies thereof are intended for retail sale in Malaysia and that such work has already been previously recorded under licence from the owner of the relevant part of the copyright, whether in Malaysia or abroad, subject to such conditions and to the payment of such compensation as the Minister may prescribe;
- (i) the reading or recitation in public or in a broadcast by one person of any reasonable extract from a published literary work if accompanied by a sufficient acknowledgement;
- (j) any use made of a work by or under the direction or control of the Government, by such public libraries and educational and scientific institutions as may be pre-

scribed, by the National Archives or the State Archives of any State in Malaysia, where such use is in the public interest, is compatible with fair practice and the provisions of regulations, if any, no profit is derived therefrom and no admission fee is charged for the communication, if any, to the public of the work thus used;

(k) the reproduction of a work by or under the direction or control of a broadcasting service where such reproduction or any copies thereof are intended exclusively for a lawful broadcast and are destroyed before the end of the period of six calendar months immediately following the making of the reproduction or such longer period as may be agreed between the broadcasting service and the owner of the relevant part of the copyright in the work:

Provided that any reproduction of a work made under this paragraph may, if it is of an exceptional documentary character, be preserved in the archives of the broadcasting service which are hereby designated official archives for the purpose, but, subject to the provisions of this Act, shall not be used for broadcasting or for any other purpose without the consent of the owner of the relevant part of the copyright in the work;

(l) the broadcasting of a published work with which no licensing body referred to under section 16 of this Act is concerned, subject to the condition that, saving the provisions of this section, the owner of the broadcasting right in the work receives a fair compensation determined, in the absence of agreement, by the competent authority appointed under section 16 of this Act;

(m) the communication to the public of a work, in a place where no admission fee is charged in respect of such communication, by any club whose aim is not profit making;

(n) any use made of a work for the purpose of a judicial proceeding or of any report of any such proceeding;

(o) the making of quotations from a published work if they are 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, provided that mention is made of the source and of the name of the author which appears on the work thus used;

(p) the reproduction by the press and the inclusion in a broadcast or a communication to the public of articles published in newspapers or periodicals on current economic, political or religious topics, if such reproduction or inclusion has not been expressly reserved and provided that the source is clearly indicated;

(q) the reproduction by the press, the broadcasting and the communication to the public of lectures, addresses and other works of the same nature which are delivered in public, if such use is justified by the informatory purpose and has not been expressly reserved.

(2) Copyright in a work of architecture shall also include the exclusive right to control the erection of any building which reproduces the whole or a substantial part of the work either in its original form or in any form recognizably derived from the original:

Provided that the copyright in any such work shall not include the right to control the reconstruction in the same style as the original, of a building to which that copyright relates.

(3) Copyright in a literary, musical or artistic work or in a cinematograph film includes the right of the author, during his lifetime, to claim authorship of the work and to object to any distortion, mutilation or other alteration thereof which would be prejudicial to his honour or reputation:

Provided that, subject to the provisions of the preceding paragraph, an author who authorizes the use of his work in a cinematograph film or a broadcast may not oppose modifications which are absolutely required on technical grounds or for the purpose of exploitation.

Broadcasting of work incorporated in cinematograph films

9. — (1) Where the owner of the copyright in any literary, musical or artistic work authorizes a person to incorporate the work in a cinematograph film and a broadcasting service broadcasts the film, it shall, in the absence of any express agreement to the contrary between such owner and person, be deemed that the owner of the copyright authorized such broadcast.

(2) Notwithstanding the provisions of sub-section (1) of this section, where a broadcasting service broadcasts a cinematograph film in which a musical work is incorporated, the owner of the right to broadcast the musical work shall, subject to the provisions of this Act, be entitled to receive fair compensation from the broadcasting service.

(3) In the absence of an agreement on the compensation payable under the last preceding sub-section the amount of such compensation shall be determined by the competent authority appointed under section 16 of this Act.

Nature of copyright in sound recording

10. — Copyright in a sound recording shall be the exclusive right to control in Malaysia the direct or indirect reproduction of the whole or a substantial part of the recording either in its original form or in any form recognizably derived from the original:

Provided that the provisions of paragraphs (a), (f), (g), (j), (k) and (n) of the proviso to sub-section (1) of section 8 of this Act shall apply to the copyright in a sound recording in like manner as they apply to copyright in a literary, musical or artistic work or in a cinematograph film.

Nature of copyright in broadcasts

11. — Copyright in a broadcast shall be the exclusive right to control the doing in Malaysia of any of the following acts, namely, the recording, the reproducing and the rebroadcasting of the whole or a substantial part of the broadcast and the communication to the public, in places where an admission fee is charged, of the whole or a substantial part of a television broadcast, either in its original form or in any form recognizably derived from the original:

Provided that —

(a) the provisions of paragraphs (a), (g), (j), (n) and (q) of the proviso to sub-section (1) of section 8 of this Act

shall apply to the copyright in a broadcast in like manner as they apply to copyright in a literary, musical or artistic work or a cinematograph film;

- (b) the copyright in a television broadcast shall include the right to control the taking of still photographs from such broadcasts.

First ownership of copyright

12. — (1) Copyright conferred by sections 5 and 6 of this Act shall vest initially in the author:

Provided that notwithstanding the provisions of sub-section (6) of section 13 of this Act, where a work —

- (a) is commissioned by a person who is not the author's employer under a contract of service or apprenticeship, or
(b) not having been so commissioned, is made in the course of the author's employment,

the copyright shall be deemed to be transferred to the person who commissioned the work or the author's employer, subject to any agreement between the parties excluding or limiting such transfer.

(2) Copyright conferred by section 7 of this Act shall vest initially in the Government or such international bodies or other governmental organizations as may be prescribed, and not in the author.

(3) Subject to the provision of the last preceding sub-section —

- (a) the name on a work purporting to the name of its author shall be considered as such, unless the contrary is proved;
(b) in the case of an anonymous or pseudonymous work, the publisher whose name is indicated in the work as such shall be deemed to be, unless the contrary is proved, the legal representative of the anonymous or pseudonymous author and shall be entitled to exercise and protect the rights belonging to the author under this Act;
(c) in the case of an unpublished work where the identity of the author is unknown, but where there is every reason to presume that he is a citizen of Malaysia the copyright conferred by this Act shall be deemed to vest in the Minister charged with the responsibility for culture.

(4) The provisions of paragraphs (b) and (c) of the last preceding sub-section shall cease to apply when the identity of the author becomes known.

Assignments and licences

13. — (1) Subject to the provisions of this section, copyright shall be transmissible by assignment, by testamentary disposition, or by operation of law, as movable property.

(2) An assignment or testamentary disposition of copyright may be limited so as to apply to some only of the acts which the owner of the copyright has the exclusive right to control, or to a part only of the period of the copyright, or to a specified country or other geographical area.

(3) No assignment of copyright and no exclusive licence to do an act the doing of which is controlled by copyright shall have effect unless it is in writing.

(4) A non-exclusive licence to do an act the doing of which is controlled by copyright may be written or oral, or may be inferred from conduct.

(5) An assignment or licence granted by one copyright owner shall have effect as if granted by his co-owners also, and, subject to any contract between them, fees received by the grantor shall be divided equitably between all the co-owners. For the purposes of this sub-section persons shall be deemed to be co-owners —

- (a) if they share a joint interest in the whole or any part of a copyright; or
(b) if they have interests in the various copyrights in a composite production, that is to say, a production consisting of two or more works.

(6) An assignment, licence or testamentary disposition may be effectively granted or made in respect of a future work, or an existing work in which copyright does not yet subsist, and the prospective copyright in any such work shall be transmissible by operation of law as movable property.

(7) A testamentary disposition of the manuscript shall, unless the testament has provided otherwise, be deemed to include any copyright or prospective copyright in the work which is vested in the deceased.

Infringements

14. — (1) Copyright shall be infringed by any person who does, or causes any other person to do, without the licence of the owner thereof, an act the doing of which is controlled by copyright.

(2) Copyright shall also be infringed by any person who, without the licence of the owner of the copyright, imports into Malaysia, otherwise than for his private and domestic use, or distributes therein by way of trade, hire or otherwise, or by way of trade exhibits in public, any article in respect of which copyright is infringed under the last preceding sub-section.

(3) Subject to the provisions of this Act, infringements of copyright shall be actionable at the suit of the owner of the copyright; and in any actions for such an infringement all such relief, by way of damages, injunction, accounts or otherwise, shall be available to the plaintiff as is available in any corresponding proceedings in respect of infringement of other proprietary rights.

(4) Where in an action for infringement of copyright it is proved or admitted —

- (a) that an infringement was committed, but
(b) that at the time of the infringement the defendant was not aware, and had no reasonable grounds for suspecting, that copyright subsisted in the work to which the action relates,

the plaintiff shall not be entitled under this section to any damages against the defendant in respect of the infringement, but shall be entitled to an account of profits in respect of the infringement whether any other relief is granted under this section or not.

(5) Where in an action under this section an infringement of copyright is proved or admitted, and the court, having regard (in addition to all other material considerations) to —

- (a) the flagrancy of the infringement; and

(b) any benefit shown to have accrued to the defendant by reason of the infringement, is satisfied that effective relief would not otherwise be available to the plaintiff, the court, in assessing damages for the infringement, shall have power to award such additional damages by virtue of this sub-section as the court may consider appropriate in the circumstances.

(6) No injunction shall be issued in proceedings for infringement of copyright which requires a completed or partly built building to be demolished or prevents the completion of a partly built building.

(7) In this section —

“action” includes a counter-claim, and reference to the plaintiff and to the defendant in an action shall be construed accordingly;

“court” means the appropriate High Court in Malaysia;

“owner of the copyright” means the first owner, an assignee or an exclusive licensee, as the case may be, of the relevant portion of the copyright.

Offences

15. — (1) Any person who at a time when copyright subsists by virtue of this Act in a work —

- (a) makes for sale or hire any infringing copy; or
- (b) sells, lets for hire or by way of trade exposes or offers for sale or hire any such infringing copy; or
- (c) distributes any such infringing copies; or
- (d) by way of trade exhibits in public any such infringing copy; or
- (e) imports into Malaysia, otherwise than for his private and domestic use, any such infringing copy; or
- (f) makes or has in his possession any contrivance capable of being used for the purposes of making infringing copies,

shall, unless he proved that he acted in good faith and had no reasonable grounds for supposing that copyright would or might be thereby infringed, be guilty of an offence and on conviction shall be liable to a fine not exceeding two hundred dollars for each infringing copy in respect of which the offence was committed (subject to a maximum of fifty thousand dollars in respect of any one offence) or to imprisonment for a term not exceeding one year, or to both.

(2) The court trying any person accused of an offence under the last preceding sub-section may at the conclusion of the trial, whether the alleged offender is convicted or not, order that any infringing copies (and any contrivance used or intended to be used for making infringing copies) in the possession of the alleged offender or before the court shall be destroyed, delivered up to the first owner of the copyright in question, his assignee or exclusive licensee, as the case may be, or otherwise dealt with as the court thinks fit.

(3) Where an offence under this section is committed by a body corporate or by a person who is a partner in a firm, every director, secretary or manager of the body corporate or, as the case may be, every other partner in the firm shall be deemed to be guilty of the offence unless he proves that the offence was committed without his consent or connivance

and that he exercised all due diligence to prevent the commission of the offence.

(4) If information is given upon oath to any magistrate that there is reasonable cause for suspecting that there are in any house, premises, vessel or other place any infringing copies (or any contrivance used or intended to be used for making infringing copies) by means of or in relation to which any offence under sub-section (1) of this section has been committed, he may issue a warrant under his hand by virtue of which any police officer named or referred to in the warrant may enter the house, premises, vessel or other place at any reasonable time by day and search for and seize any such copy or contrivance; and if a copy or contrivance is seized under this sub-section in connection with an offence and —

- (a) in proceedings brought under this section in connection with the offence no order is made under sub-section (2) of this section as to the copy or contrivance; or
- (b) no such proceedings are instituted within six months of the seizure,

the copy or contrivance shall be returned to the person in whose possession it was when it was seized or, if it is not reasonably practicable to return it to that person, shall be disposed of in accordance with the law regulating the disposal of lost or unclaimed property in the hands of police authorities.

(5) For the purpose of this section, an “infringing copy” means an article which if made in Malaysia constitutes an infringement of copyright under this Act, and if made outside Malaysia would constitute an infringement of copyright under this Act if the making thereof had taken place in Malaysia.

Appointment of competent authority and duties of such authority

16. — (1) In any case where it appears to the competent authority that a licensing body —

- (a) is unreasonably refusing to grant licences in respect of copyright; or
- (b) is imposing unreasonable terms or conditions on the granting of such licences,

the competent authority may direct that, as respects the doing of any act relating to a work with which the licensing body is concerned, a licence shall be deemed to have been granted by the licensing body at the time the act is done, provided the appropriate fees fixed by such competent authority are paid or tendered before the expiration of such periods as the competent authority may determine.

(2) In this section —

“competent authority” means an authority consisting of three persons one of whom shall be the Chairman appointed from time to time by the Minister for the purpose of exercising jurisdiction under the provisions of this Act;

“licensing body” means a society, firm or other organization which has as its main object, or one of its main objects, the negotiation or granting of licences in respect of copyright works, and includes an individual carrying on the same activity.

(3) The Chairman of the competent authority shall be a person who holds, has held or is qualified for the office of a

judge of the High Court, and the other members shall be appointed from among such other persons as appear to the Minister to be suitably qualified for membership:

Provided that no person shall be appointed under the provisions of this section, nor shall any person so appointed act, as a member of the competent authority, if he, his partner, his employer or any body (whether statutory or not) of which he is a member has any pecuniary interest in any matter which requires to be determined by such authority.

(4) The Minister, where he makes any appointment under the last preceding sub-section affecting a person who holds the office of a judge of the High Court, shall do so in accordance with the advice of the Lord President of the Federal Court.

(5) Where a member of the competent authority is not a judge or public officer —

- (a) he shall be paid such remuneration and other allowances (if any) as may be specified by the Minister by order published in the *Gazette*; and
- (b) he shall be deemed to be public servant within the meaning of section 21 of the Penal Code of West Malaysia and the corresponding sections of the Penal Codes of East Malaysia, but shall not otherwise be regarded as holding office in any of the public services by reason of his membership of the competent authority.

(6) No appeal shall lie from a decision of the competent authority.

(7) No action or other legal proceeding shall lie against any person in respect of anything done or omitted to be done in good faith in or in connection with the exercise of the competent authority's functions under this Act.

(8) The Minister shall make regulations governing the proceedings before the competent authority and, without prejudice to the generality of the foregoing, may make regulations —

- (a) prescribing the manner in which any matter may be referred to the competent authority;
- (b) prescribing the procedure to be adopted by the competent authority in dealing with any matter referred to it under this Act and the records to be kept by the competent authority;
- (c) prescribing the manner in which the competent authority shall be convened and the place where the competent authority shall hold its sittings;
- (d) prescribing a scale of costs and fees; and
- (e) generally for the better carrying out of the functions assigned to the competent authority by this Act.

Provisions for restricting importation of infringing copies

17. — (1) The owner of copyright in any work may give notice in writing to the Minister —

- (a) that he is owner of the copyright in the work; and
- (b) that he requests the Minister, during a period specified in the notice, to treat as prohibited goods copies of the work to which this section applies:

Provided that the period specified in a notice under this sub-section shall not exceed such period of years as may be

prescribed by the Minister under sub-section (4) and shall in any case not extend beyond the end of the period for which the copyright is to subsist.

(2) This section applies to any copy of a work made outside Malaysia which, if it had been made in Malaysia, would have infringed the copyright in the work; and for the purpose of this section such copies shall be referred to as "infringing copies".

(3) Where a notice has been given under this section in respect of a work and has not been withdrawn, the importation into Malaysia at a time before the end of the period specified in the notice of any infringing copies shall, subject to the following provisions of this section, be prohibited:

Provided that this sub-section shall not apply to the importation of any article by a person for his private and domestic use.

(4) The Minister may make regulations prescribing the form in which notices are to be given under this section and requiring a person giving such a notice, either at the time of giving the notice or at the time when the infringing copies are imported, or at both those times, to furnish such evidence and to comply with such other conditions (if any) as may be specified in the regulations.

(5) Without prejudice to the generality of sub-section (4), regulations made under that sub-section may include provision for requiring a person who has given a notice under sub-section (1) —

- (a) to give to the Comptroller-General of Customs and Excise such security as may be prescribed by the regulations in respect of any liability or expense which he may incur in consequence of the detention at any time within the period specified in the notice of any infringing copies or in consequence of anything done in relation to a copy so detained;
- (b) whether any such security is given or not, to keep the Comptroller-General indemnified against any such liability or expense as is mentioned in paragraph (a).

(6) Infringing copies shall be liable to forfeiture as if they were prohibited goods under the law relating to customs.

(7) In this section, "Minister" means the Minister charged with the responsibility for Customs and Excise.

Licence to produce and publish translations

18. — (1) Any person may apply to the competent authority appointed under section 16 for a licence to produce and publish in the National language a translation of a literary or dramatic work written in any other language; and, where such an application is made in respect of a work, the competent authority after holding such inquiry as it thinks necessary may, subject to this section, grant to the applicant a licence (not being an exclusive licence) to produce and publish a translation of the work in the National language, on condition that the applicant shall pay to the owner of the right of translation in the work in respect of copies sold to the public royalties at a rate to be determined by the competent authority in the prescribed manner.

(2) A licence may be granted on an application made under sub-section (1) in respect of a work only where —

- (a) a translation of the work in the National language has not been published by the owner of the copyright in the work (or by any person authorized by him) within seven years after the first publication of the work or, if such translation has been so published, it is out of print; and
- (b) the applicant has requested and been denied authorization by the owner of the right to produce and publish the translation or is, after due diligence on his part, unable to find that owner; and
- (c) the applicant, if he is unable to find the owner of the right of translation, has not less than two months before his application sent to the publisher whose name appears on the work a copy of his request for the translation to be authorized; and
- (d) the applicant, if the nationality of the owner of the right of translation is known, has sent a copy of his request for the translation to the diplomatic or consular representative of the State of which that owner is a national, or to the organization which may have been designated by the government of that State; and
- (e) the competent authority is satisfied that —
 - (i) the applicant is able to produce and publish a correct translation of the work and possesses the means to pay to the owner of the right of translation the royalties payable under this section; and
 - (ii) the applicant undertakes to have the original title and the name of the author of the work printed on all copies of the published translation; and
- (f) the author of the work has not withdrawn it from circulation; and
- (g) an opportunity of being heard is first given, wherever practicable, to the owner of the right of translation in the work.

Administration of government copyright

19. — Where the copyright in any work is vested in the Government, the heads of the Ministries or Departments concerned with the copyright shall be responsible for the administration and control of that copyright on behalf of the Government:

Provided that the Minister may authorize the Director of National Archives to administer and control that copyright on behalf of the Government.

Regulations and extensions of application of Act

20. — The Minister shall make regulations prescribing anything which may be prescribed under this Act and may make regulations extending the application of this Act in respect of any or all of the works referred to in sub-section (1) of section 4 of this Act —

- (a) to individuals who are citizens of, or permanent residents in,
- (b) to bodies corporate constituted and established in or under the laws of,
- (c) to works, other than sound recordings and broadcasts, first published in,

- (d) to works of architecture erected in, and to other artistic works incorporated in a building located in,
- (e) to sound recordings made in,
- (f) to broadcasts transmitted from,

a country which is a party to a treaty or a member of any convention or union to which Malaysia is also a party or a member as the case may be and which provides for protection of copyright in works which are protected under this Act.

Determination of certain contracts

21. — Immediately upon the coming into operation of this Act, every contract entered into substantially for the licensing of the doing of any act in respect of copyright which is not controlled by copyright under the provisions of this Act shall, if entered into before the coming into operation of this Act, be determined and of no further effect, and shall, if entered into after the operation of this Act, be null and void.

Savings

22. — (1) Nothing in this Act shall affect any right or privilege of any person (including the Government) under any written law, except in so far as that law is expressly repealed, amended or modified by or inconsistent with this Act.

(2) Nothing in this Act shall affect the right of the Government of Malaysia (or any person deriving title from that Government) to sell, use or otherwise deal with articles forfeited under the laws relating to customs, including articles so forfeited by virtue of this Act or any written law repealed by this Act.

Repeals and transitional provisions

23. — (1) The Acts of the United Kingdom specified in Schedule (in so far as they have effect in Malaysia with or without modification) and the other written laws specified in that Schedule are hereby repealed.

(2) The repeals effected by sub-section (1) include the revocation of —

- (a) any Order in Council applying either of the Acts repealed by that sub-section to any territory comprised in Malaysia at the commencement of this Act; and
- (b) all subsidiary legislation made under any written law so repealed.

SCHEDULE
(Section 23)

Repeals

United Kingdom

- 1911 c. 46 Copyright Act, 1911
- 1956 c. 74 Copyright Act, 1956

Federated Malay States

- Cap. 73 Copyright Enactment
- Cap. 74 Telegram Copyright Enactment

Straits Settlements

- Cap. 160 Copyright Ordinance
- Cap. 161 Telegram Copyright Ordinance

UNITED KINGDOM

I

The Copyright (International Conventions) (Amendment No. 2) Order 1970

(No. 637, of April 28, 1970, coming into force on May 5, 1970)

1. — (1) This Order may be cited as the Copyright (International Conventions) (Amendment No. 2) Order 1970, and shall come into operation on 5th May 1970.

(2) The Interpretation Act 1889 shall apply to the interpretation of this Order as it applies to the interpretation of an Act of Parliament.

2. — The Copyright (International Conventions) Order 1964¹, as amended², shall be further amended by adding to Schedule 6 (which names the countries whose organisations are afforded copyright protection in the United Kingdom in relation to their television broadcasts) the following entry:

“Cyprus . . . 5th May 1970”.

¹ See *Le Droit d'Auteur (Copyright)*, 1964, p. 150.

² *Ibid.*, 1964, p. 184; *Copyright*, 1965, pp. 40, 240 and 241; 1966, pp. 93, 187, 247 and 275; 1967, p. 134; 1968, p. 65; 1969, p. 28; 1970, p. 87.

3. — The provisions of Article 2 of this Order shall extend to Bermuda and Gibraltar (to which Part II of the Copyright (International Conventions) Order 1964 has been extended).

EXPLANATORY NOTE

(This Note is not part of the Order)

This Order further amends the Copyright (International Conventions) Order 1964.

It takes account of the ratification by Cyprus of the European Agreement on the protection of Television Broadcasts and the protocol to the Agreement.

The provisions of the Order are extended to Bermuda and Gibraltar.

II

The Copyright (Isle of Man) Order 1970

(No. 1437, of September 30, 1970, coming into force on October 12, 1970)

EXPLANATORY NOTE

This Order amends the Copyright (Isle of Man) Order 1959, which extended the Copyright Act 1956 to the Isle of

Man, so as to extend to the Isle of Man the amendments made to that Act by the Design Copyright Act 1968¹.

¹ See *Copyright*, 1968, p. 234.

INTERNATIONAL ACTIVITIES

International Literary and Artistic Association (ALAI)

Executive Committee and Annual General Assembly

(Paris, January 15, 1971)

The Executive Committee of the International Literary and Artistic Association met in Paris on January 15, 1971, under the chairmanship of Maître Marcel Boutet, the President of the Association. The meeting was attended by a number of personalities representing the Belgian, Dutch, French, German, Italian and Swiss groups of ALAI, and by delegates of the International Confederation of Societies of Authors and Composers (CISAC) and the International Publishers Association (IPA). WIPO was represented by Mr. Claude Masouyé, Senior Counsellor, Head, External and Public Relations Division.

The meetings of the Executive Committee were followed by the Annual General Assembly of ALAI, in which, in addition to the persons mentioned above, a certain number of members of the Association took part. Unesco was represented by Miss Marie-Claude Dock, Head, Copyright Division.

The deliberations of these two bodies concerned for the most part the examination of the proposals for the revision of the Universal Copyright Convention and the Berne Convention, and a draft international instrument for the protection of producers of phonograms against unauthorized reproduction of their phonograms. Professor Desbois, the Permanent Secretary of ALAI, was entrusted with the task of drawing up, with the assistance of some of his colleagues, members of the Executive Committee, the observations which ALAI would send to the Director-General of Unesco and the Director General of WIPO concerning the revision of the Universal Copyright Convention and the Berne Convention respectively. These observations will be included in the preparatory documentation which will be submitted to the revision conferences to be held in Paris in July 1971.

International Confederation of Societies of Authors and Composers (CISAC)

Legal and Legislative Commission

(London, February 22 and 23, 1971)

The Legal and Legislative Commission of CISAC met in London on February 22 and 23, 1971. The meeting was opened by Mr. Marcel Poot, President of CISAC. Mr. Valerio De Sanctis was re-elected President of the Commission.

Invited to attend in an observer capacity, WIPO was represented by Mr. Mihailo Stojanović, Counsellor, Copyright Division. Observers from Unesco and several international non-governmental organizations (International Literary and Artistic Association, International Bureau of the Societies administering the Rights of Mechanical Recording and Reproduction, Internationale Gesellschaft für Urheberrecht, International Writers Guild, International Publishers Association) also attended this meeting.

The agenda included, in the first place, the examination of draft proposals for the revision of the Berne Convention and the Universal Copyright Convention established respectively by the Permanent Committee of the Berne Union and the Intergovernmental Copyright Committee. After a thorough discussion, Mr. J.-A. Ziegler, Secretary-General of CISAC, who was also Rapporteur for this question, was given the task

of formulating the observations of CISAC which are to be submitted to WIPO and to Unesco.

The Commission also dealt with two topical questions raised by technical development. The first concerned video-cassettes or audio-visual recording and presentation systems. The report on this question had been prepared by Mr. Denis de Freitas. The conclusions of the Commission are to be formulated by a small working group presided over by the Rapporteur. The other question concerned communications by satellites (Rapporteur: Mr. Roger Fernay). On this last point the opinions expressed during the debates will serve to define CISAC's position at the meeting of the Committee of Governmental Experts convened jointly by WIPO and Unesco in April 1971.

The Commission also examined the national legislation of several countries, and particularly that of Portugal, Spain, Sweden, the United Kingdom and the United States of America. It further decided to observe closely the preparation of new legislation in the field of copyright in the following four countries: Argentina, Congo, Ghana and the Republic of Vietnam.

BOOK REVIEWS

Laws and Treaties of the World on the Protection of Performers, Producers of Phonograms and Broadcasting Organizations, published by the United Nations Educational, Scientific and Cultural Organization, Paris, and The Bureau of National Affairs, Inc., Washington, D. C., 1969. 24×17.5 cm., loose-leaf.

The present compilation of laws and treaties was prepared jointly by the International Labour Organisation (ILO), the United Nations Educational, Scientific and Cultural Organization (Unesco) and the United International Bureaux for the Protection of Intellectual Property (BIRPI), the three Organizations under the sponsorship of which the Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations was adopted.

The need for a work of this nature has long been felt, particularly after the Rome Convention was signed in 1961. As a matter of fact, the Convention provides, among others, for national treatment to be mutually accorded among contracting States. It is, therefore, highly desirable that information should be made available as to the precise provision of national laws of States that are or may become parties to this Convention.

It should be emphasized that one of the great difficulties in preparing this compilation consisted in the fact that performers, producers of phonograms or broadcasting organizations are protected in many legal systems by virtue of legislation concerning copyright. Accordingly, this compilation needed to include all the relevant provisions of such legislation.

This publication is divided into two parts: the first one, under the title "States", contains the relevant legislative and other provisions arranged by countries in alphabetical order; the second part, entitled "Multilateral Conventions", includes the texts of the Rome Convention and of the European Agreement on the Protection of Television Broadcasts with the corresponding lists of States which have ratified or acceded to these instruments. It is planned that the compilation will be kept up-to-date by means of loose-leaf supplements which will include additional material.

A similar French version of this compilation will be published by WIPO in the course of this year.

CALENDAR

WIPO Meetings

April 14 to 16, 1971 (Geneva) — ICIREPAT — Advisory Board for Cooperative Systems

April 14 to 16, 1971 (Geneva) — ICIREPAT — Technical Committee for Computerization

April 19 to 23, 1971 (Geneva) — ICIREPAT — Technical Committee for Shared Systems

April 26 to 30, 1971 (Geneva) — ICIREPAT — Technical Committee for Standardization

April 21 to 30, 1971 (Lausanne) — Committee of Governmental Experts on Problems in the Field of Copyright and of the Protection of Performers, Producers of Phonograms and Broadcasting Organizations Raised by Transmission Via Space Satellites

Object: Study of the problems — *Invitations:* Member States of the Berne Union, Member States of the Paris Union and Member States of the United Nations or of a Specialized Agency — *Observers:* Intergovernmental and non-governmental organizations concerned — *Note:* Meeting convened jointly with Unesco and in cooperation with the International Labour Office and the International Telecommunication Union

May 3 to 7, 1971 (London) — International Classification of Patents (IPC) — Working Group V of the Joint ad hoc Committee *

May 24 to 28, 1971 (Strasbourg) — International Classification of Patents (IPC) — Bureau of the Joint ad hoc Committee *

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) — International Classification of Patents (IPC) — Working Group III of the Joint ad hoc Committee *

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) — International Classification of Patents (IPC) — Working Group IV of the Joint ad hoc Committee *

September 13 to 17, 1971 (The Hague) — International Classification of Patents (IPC) — Working Group I of the Joint ad hoc Committee *

* Meeting convened jointly with the Council of Europe.

- 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) — International Classification of Patents (IPC) — Working Group II of the Joint ad hoc Committee *
- 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 9, 1971 (Geneva) — International Classification of Patents (IPC) — Working Group V of the Joint ad hoc Committee *
- 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 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) — International Classification of Patents (IPC) — Bureau of the Joint ad hoc Committee *
- November 15 to 18, 1971 (Geneva) — International Classification of Patents (IPC) — Joint ad hoc 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
- December 13 to 18, 1971 (Cairo) — Seminar on Treaties Concerning Industrial Property
Object: Discussion on the principal multilateral treaties on industrial property and the WIPO Convention — *Invitations:* States members of the Arab League — *Observers:* Intergovernmental and international non-governmental organizations concerned — *Note:* Meeting convened jointly with the Industrial Development Centre for Arab States (IDCAS)

* Meeting convened jointly with the Council of Europe.

** Dates to be confirmed later.

Meetings of Other International Organizations Concerned with Intellectual Property

- April 14 to 16, 1971 (The Hague) — International Patent Institute — Administrative Council
- 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 19 to 22, 1971 (Vienna) — International Secretariat of Entertainment Trade Unions — Congress
- May 25 to 29, 1971 (Leningrad) — International Association for the Protection of Industrial Property — Council of Presidents
- July 5 to 24, 1971 (Paris) — Unesco — Diplomatic Conference for the Revision of the Universal Copyright Convention
- September 9 and 10, 1971 (West Berlin) — International League Against Unfair Competition — Study Mission on German Restrictive Trade Practices Law
- 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