

# Copyright

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## Committee of Governmental Experts on the Protection of Phonograms

(Paris, March 1 to 5, 1971)

## Final Report

## I. Introduction

1. The Committee of Governmental Experts on the Protection of Phonograms, convened in application of resolution 5.133 adopted by the General Conference of Unesco at its sixteenth session, and of decisions taken at the first ordinary sessions of the Assembly and the Conference of Representatives of the Berne Union, met at Unesco Headquarters from March 1 to 5, 1971. The purpose of this meeting, which was convened jointly by the Directors General of Unesco and of the World Intellectual Property Organization (WIPO), was to give effect to the wish expressed by the Intergovernmental Copyright Committee and by the Permanent Committee of the Berne Union at extraordinary sessions which they held in September 1970.

2. The object of the meeting, as it was defined in resolutions No. 2 (XR.2) and No. 2 adopted respectively by the above-mentioned Committees, was:

(a) to study the comments and proposals formulated by governments "for a draft instrument to protect producers of phonograms against unauthorized reproduction of their phonograms" (see documents Unesco/WIPO/PHON/3 and 3 Add. 1); and

(b) to prepare "a draft instrument on this subject to serve as the basis for the negotiation of an appropriate instrument which will be ready in so far as possible for adoption and signature at a diplomatic conference to be held at the same time and place as the Diplomatic Conferences for the Revision of the Berne and Universal Copyright Conventions."

3. Governmental experts from forty-one countries, as well as observers from three intergovernmental organizations and nine international non-governmental organizations, attended the meeting. The complete list of participants is annexed to this Report (Annex B).

## II. Opening of the Meeting

### *Address by the Acting Director-General of Unesco*

4. Mr. John E. Fobes, Acting Director-General of Unesco, opened the meeting by welcoming the participants. He recalled that intellectual works owe much to technology and that among the problems raised in the course of recent years in the field of intellectual rights as a result of developments in the application of science to industry, the use of phonograms and similar instruments, as means of reproduction, had not failed to attract attention. He stressed the fact that Unesco

was interested in the protection of phonograms because of the important rôle which they had to play as vehicles for intellectual works, and he expressed the hope that the meeting would arrive at an agreement which would ensure that protection while at the same time taking account of the interests of authors and performers.

### *Address by the Director General of WIPO*

5. Professor G. H. C. Bodenhausen, Director General of WIPO, also extended a welcome to the participants on behalf of his Organization and wished the Committee complete success in its work. He expressed some doubt, however, concerning the possibility of holding a diplomatic conference on the question by next July, as proposed. Some time was required for the preparation of such a conference, to enable the secretariats to submit proposed texts to the States and to enable the latter to study them. Moreover, from a purely technical point of view, the holding of such a conference at the same time as those concerning the revisions of the copyright conventions gave rise to problems which would be difficult to solve. The Director General of WIPO therefore proposed that the Diplomatic Conference on the Protection of Phonograms be held a few months later.

### III. Election of the Chairman

6. On the proposal of the Delegation of France, supported in particular by the Delegations of the Federal Republic of Germany, India and Kenya, Miss B. Ringer, Head of the Delegation of the United States of America, was unanimously elected Chairman of the Committee.

#### IV. Adoption of the Rules of Procedure

7. The Committee then adopted without change the Rules of Procedure contained in document Unesco/WIPO/PHON/2.

## V. Election of other Officers

8. On the proposal of the Delegations of India, Tunisia and Canada respectively, seconded by the Delegations of the Dominican Republic, France and the United Kingdom, the Committee unanimously elected as Vice-Chairmen the Heads of the Delegations of Tunisia, Spain and India.

## VI. Preparation of the Report

9. The Committee also decided to entrust the preparation of the report of the meeting to the Secretariat of Unesco and to the International Bureau of WIPO.

## VII. Adoption of the Agenda

10. The provisional agenda was unanimously adopted (document Unesco/WIPO/PHON/1).

## VIII. Preparation of a Draft International Instrument for the Protection of Producers of Phonograms against Unauthorized Duplication of their Phonograms

### *General discussion*

11. The Chairman announced that four countries (France, the Federal Republic of Germany, the United Kingdom and the United States of America) had prepared a draft convention which was included among the working documents sent out to delegates (document Unesco/WIPO/PHON/3 and 3 Add. 1). The Chairman proposed taking this draft as a basis for discussion.

12. The Delegations of Czechoslovakia, Italy and Yugoslavia were of the opinion that the Rome Convention should, in principle, suffice to ensure the protection of phonograms. Those Delegations stated, nevertheless, that they were ready to take part in the preparation of a new instrument, as the Rome Convention had, to date, been accepted by a small number of States. The new convention should take account of the interests of performers and broadcasting organizations, and also of the interests of developing countries.

13. The Delegation of Czechoslovakia observed that the adoption of a new convention for the protection of phonograms was liable to stand in the way of a more general acceptance of the Rome Convention, and that it would have been preferable to carry out a revision of the Rome Convention in the light of the results of the present meeting. If it were decided that there should be a new instrument, the latter ought to be based on the principle of strict reciprocity and ought not to be applicable to phonograms produced in States party to the Rome Convention alone.

14. The Delegations of Kenya and the United Kingdom said that, in their opinion, the new convention ought not to provide protection for the producers of phonograms against secondary uses of the latter.

15. The Delegation of France, anxious, as were the others, to see an end to the piracy of phonograms, said that it had joined with the other countries which had prepared the aforementioned draft although that draft did not exactly reflect its views. The protection to be instituted at the international level should relate to the producers of phonograms and not the phonograms themselves, and it should be limited to the repression of the commercial use of unauthorized phonograms. In some countries, producers' rights were protected by virtue of copyright, in others by virtue of the Rome Convention, and in others again in pursuance of Article 10<sup>bis</sup> of the Paris Convention which was concerned with the repression of unfair competition. It would be advisable, then, for the new convention to make it clear that contracting States were obliged to protect the nationals of other contracting States according to one or other of those systems. Leaving domestic legislation free in this way and not setting up uniform rights under the

convention was, in the eyes of the Delegation of France, an essential condition for the preparation of an instrument which would be acceptable to the greatest number of countries. The new instrument should therefore have as simple a structure as possible and, in any case, could not be modelled on the structure of the copyright conventions since these established rights under the convention in question whose duration, nature and scope were defined, together with the permitted exceptions. It was important to avoid confusion with those conventions, because what was desired was not to define a specific property right like copyright but solely to protect a manufacturer, whose product was being copied, against the commercial use of that copy. The Delegation of France therefore announced that it was submitting a text which reflected its own views.

16. The Delegations of Finland, the Federal Republic of Germany, India, Japan, the Netherlands, Sweden and the United States of America, as well as the observer from the International Music Council, declared themselves in favor of the preparation of a new international instrument designed to solve the serious problem of the piracy of phonograms, seeing that domestic laws and conventions dealing with copyright, industrial property or so-called neighboring rights, appeared to be insufficiently effective. They were convinced that the Rome Convention would certainly have been suitable but observed that it had received, to date, only a few accessions.

17. The Delegation of the United States of America said that the proposed instrument should be general enough to attract the greatest number of accessions. In its opinion, the convention ought also to provide for such matters as the duration of protection, exceptions and formalities, and should not simply leave these matters to domestic legislation.

18. The Delegations of Brazil, the Federal Republic of Germany, Italy, the Netherlands, Sweden and the United Kingdom thought it essential that the new instrument should not weaken the Rome Convention, nor be prejudicial to the interests of the other categories covered by that Convention.

19. The Delegation of the Federal Republic of Germany also noted that the aim of the draft convention contained in document Unesco/WIPO/PHON/3, Annex 1, was to combine systems of copyright protection or "neighboring" rights with the system of protection on the basis of rules preventing unfair competition. It emphasized that if the new instrument afforded protection by way of copyright or "neighboring" rights, it should also specify, *inter alia*, possible exceptions such as use for educational purposes, as well as the formalities required, to ensure that the settlement of such questions was not left to the individual judgement of national legislators.

20. The observer from the International Federation of the Phonographic Industry (IFPI) stressed the gravity of the problem of piracy, and pointed out that its victims included not only producers of phonograms but also authors and performers. He stated that he favored a new convention which would leave each country free to choose its own methods of protection. He feared, however, that protection afforded

within the framework of provisions relating to unfair competition would not be efficacious, because the real pirate, i. e. the producer of unauthorized phonograms, is usually difficult to discover and an action against the seller may fail either on the ground that there is no "competition" between him and the producer or because it is difficult to prove that he knew the phonograms were illicitly made.

21. The Delegation of Kenya asked what was the precise meaning of the concept of "commercial use" referred to by the Delegation of France. It also stated that the proposed instrument, if it was to be acceptable, should be based upon the principle of reciprocity.

22. The Delegation of France expressed the view that the sole obligation deriving from the new international agreement would be to pass national legislation providing protection by one of the three methods mentioned above, but that any country opting for a system of protection based on regulations against unfair competition should recognize that the reproduction of phonograms without the authorization of the producer constitutes an act of unfair competition. It added that each country would be responsible for defining in its domestic legislation the extent, scope and duration of protection. The question of exceptions did not arise as France saw the problem, since in the French view the agreement would contain no objective conventional rules, and consequently there would be no need to provide for exceptions.

23. On the conclusion of the general discussion a new text for a draft convention submitted by the Delegation of France was placed before the Committee (see document Unesco/WIPO/PHON/4).

#### *Preparation of a draft convention*

24. The Committee decided to examine simultaneously the draft texts referred to in paragraphs 11 and 23 above. It appointed a working group to draft certain provisions in the light of the views expressed in the plenary sessions. The working group was composed of the Delegations of France, the Federal Republic of Germany, India, Kenya, Tunisia, the United Kingdom and the United States of America together with the Delegations of Denmark, Italy and Japan for the study of certain articles. It met under the chairmanship of Mr. William Wallace, Head of the Delegation of the United Kingdom, and prepared draft texts which were examined by the Committee in plenary sessions. At the conclusion of its deliberations the Committee adopted a draft convention which is annexed to this Report (Annex A).

#### *Title of the proposed instrument*

25. Bearing in mind the arguments put forward in favor of protection either for producers of phonograms or for the phonograms themselves, the Committee decided to add, in the title, the words "producers of" before the word "phonograms".

26. The Delegation of Venezuela suggested that the title should refer to the protection of producers of phonograms against "the commercial use of duplicates...", in order to make it clear that the purpose of the proposed convention is

to protect a person, and not an object, against the commercial use of his product; this, in its opinion, was the only act to be regarded as reprehensible.

27. The Delegations of Canada, of Kenya and of the United States of America proposed that, in the title, the words "unauthorized duplication" be replaced by the word "piracy". The Delegation of Italy, while declaring itself in favor of this latter expression, nevertheless considered, taking into account the penal sense which it carried, that this question should be referred to the International Conference of States which would be responsible for adopting the instrument in question.

28. The Delegation of Austria suggested that the title should include references to the three acts envisaged in the draft convention, that is to say, unauthorized duplication, importation and distribution.

29. Following this exchange of views the Committee decided, on a proposal of the Delegations of Belgium and of France, to indicate in the title that the protection is concerned with "unauthorized duplications".

#### *Preamble*

30. The Committee decided: (i) to retain the first sub-paragraph of the draft text contained in document Unesco/WIPO/PHON/3, Annex 1; (ii) to submit as the second sub-paragraph the text given in that document as amended following a proposal of the Federal Republic of Germany; and (iii) to add a third sub-paragraph combining Alternatives A and B set forth in the above-mentioned document, so as to refer both to international agreements already in force in general and to the Rome Convention (1961) in particular.

31. The Committee decided, after studying the question, not to add a fourth sub-paragraph containing a draft submitted by the Delegation of France, as follows: "Recognizing that there is not, in the international community, any general agreement on the system to be used as a basis for the legal protection of the producers of phonograms, and that such protection would be strengthened by the application of a convention under which the Contracting States would be required to guarantee protection by adopting the legal system of their choice."

#### *Article I*

32. The Delegations of Austria, Canada, Czechoslovakia, France, the Federal Republic of Germany, Japan, Kenya, Spain, Sweden, the United States of America and Yugoslavia stated that they favored Alternative A of the text contained in document Unesco/WIPO/PHON/3, Annex 1, which introduces the principle of reciprocity into protection.

33. The Delegations of Denmark, India and the United Kingdom expressed their preference for Alternative B, which extends protection to producers of phonograms who are nationals of one of the States party to the Universal Copyright Convention or one of the countries members of the Berne or Paris Unions.

34. Three possible criteria for protection were considered: the criterion of the producer's nationality, that of the first fixation of the phonogram and that of its first publication.

35. The Delegations of Czechoslovakia, the Federal Republic of Germany, Japan, Kenya, Spain and the United States of America were of the opinion that the criterion of the producer's nationality or, in the case of companies, the location of the company's head office, would be sufficient of itself, as it had the advantage of being simple and effective, and avoided reference to the idea of simultaneous publication, which would be necessary if the criterion of first publication were adopted.

36. The Delegations of Denmark, Finland and Sweden thought that the new instrument should contain a provision similar to Article 17 of the Rome Convention, under which any State whose national legislation, at the time when the Convention enters into force, applies the criterion of fixation alone may declare that it will apply only this criterion.

37. At this stage of the discussion, the working group prepared a new draft of Article I, which is contained in document Unesco/WIPO/PHON/5. This text, which combines the ideas expressed in Article I of document Unesco/WIPO/PHON/3, Annex 1, and those expressed in the text submitted by the Delegation of France, was drafted as follows:

"Each Contracting State shall, either by means of its domestic law preventing unfair competition or by means of the grant of a property right, protect producers of phonograms who are nationals of other Contracting States against the making, importation or distribution of duplicates made without the consent of the producer or his successor in title, provided that any such making or importation is for the purpose of distribution to the public, and that any such distribution is to the public."

38. On the proposal of the Delegation of France, supported by the Delegations of the Netherlands and the United Kingdom, the Committee decided to delete the adjective "domestic" before the word "law", on the grounds that it appeared to be unnecessary.

39. As regards the designation of systems, other than that based on unfair competition, under the heading of which the protection concerned could be granted, the Committee thought that it should not retain the expression "property right" suggested by the working group because, in certain legislations, that expression related specifically to rights other than those now in question.

40. Several possibilities were then suggested, including the use of the expressions "right", "particular right", "author's right", "neighboring rights", "intellectual property right", "exclusive right" and "specific right". Finally, this last expression was adopted by the Committee. The Delegation of Yugoslavia, however, observed that any right could have the character of a specific right.

41. The Delegation of the Republic of Viet-Nam stated that in the legislation of its country the expression "literary and artistic property right" was used. It considered therefore that the reference in Article I of the draft under consideration to a property right would have the result of recognizing for producers of phonograms a right analogous to that guaranteed for authors.

42. The Delegation of Japan expressed the view that relying on the concept of a property right would exclude any possibility of penal sanctions in the framework of the protection concerned. It proposed that such a possibility should be explicitly provided for in the proposed instrument.

43. The Delegation of France declared that it did not favor the inclusion of a reference to penal sanctions in the text of Article I in view of the fact that, in its opinion, Article II would offer the possibility of recourse to such sanctions.

44. The Delegation of Czechoslovakia, considering that the word "national" applied only to individuals, suggested that reference should also be made to the headquarters of companies. The Delegation of the United Kingdom declared that it was in favor of maintaining the single word "national" which referred to the "producer" who could be either a physical person or a legal entity. The Committee adopted this position.

45. The Committee considered that it should not retain in the text of this Article the reference to the successors in title of the producer, for, as had been observed by the Delegations of Austria, of France, of Italy and of Kenya, this reference is unnecessary, the successor in title being, as a matter of law, merely substituted for the original owner of the rights.

46. In relation to the distribution of duplicates of phonograms, the Delegation of the Netherlands wondered whether it would not be useful to make it clear that such distribution must be for commercial purposes, in accordance with the concept of commercial use suggested by the Delegation of France.

47. In this connection the Delegation of the Republic of Viet-Nam observed that the question whether the distribution was commercial or not had no relevance to the wrong committed before the distribution took place by the act of duplication carried out without authorization.

48. A discussion took place upon the concept of "placing at the disposal of the public" ("mise à la disposition du public" (French text only)).

49. The Delegations of France, of the Federal Republic of Germany, of Italy and of Switzerland considered that it should not be necessary to wait for the duplicates to be placed at the disposal of the public in order that the protection should arise, but that the mere intention to proceed to it, manifested in some manner or other — for example by advertising — should permit the application of Article I.

50. The Delegations of Kenya and the United Kingdom observed that the proposed English text implied that application.

51. The Delegation of Yugoslavia suggested that the concept of placing at the disposal of the public should be defined in the instrument.

52. The Committee recognized, following an observation made by the Delegation of Canada, that the protection established by the proposed instrument should aim at all forms of duplication, that is to say not only phonograms themselves, but also copies made from the latter, whatever their form of physical support.

53. After this exchange of views, and taking into account certain drafting modifications, the Committee adopted the new version of Article I which is contained in Annex A to this Report.

#### *Article II*

54. The Committee decided to approve the draft text which appears in document Unesco/WIPO/PHON/3, Annex 1.

55. The Delegations of Japan and Nigeria, however, requested that the minimum period for protection under the convention should be reduced to ten years, starting at the end of the year during which the sounds incorporated in the phonogram were fixed for the first time.

56. The Delegation of Yugoslavia considered that the minimum period of protection should not be the subject of a rule of substantive law, and declared that it was therefore opposed to retaining the second sentence of this Article.

57. The Delegation of Czechoslovakia, considering that the principle of reciprocity was essential, expressed the hope that Article II would contain a provision establishing the principle of the comparison of terms.

58. The Delegation of Italy declared that it accepted for the moment the provision contained in Article II concerning the period of protection. However, it reserved the later position of its Government on the question of reciprocity.

59. Referring to the suggestion made by the Delegation of Japan with respect to Article I relating to the possibility of providing the protection concerned by means of penal sanctions, the Delegation of France proposed to add either the words "civil or penal" or the words "including possible penal sanctions" after the words "legal means" appearing in the first sentence of this Article. The Committee, however, considered that such a clarification was not essential, the expression "legal means" being wide enough to include penal means.

#### *Article III*

60. This Article deals with three questions: (i) formalities; (ii) possible exceptions to protection; (iii) recognition of performers' rights.

##### *(i) Formalities*

61. The following solutions concerning formalities were proposed: that there should be no formalities at all; that Contracting States should be free to make provision for any formalities in their national legislation; and that formalities should be established by the Convention.

62. The Delegation of the Federal Republic of Germany expressed a preference for this last suggestion, which had the advantage of being simple and uniform and would make acceptance of the new instrument easier. This opinion was shared by the Delegations of Austria, India and the United States of America.

63. While agreeing with this view, the Delegations of Japan and the United Kingdom pointed out that this text was taken from Article 11 of the Rome Convention.

64. The Delegation of Italy observed that this solution had the advantage of providing for the use of a symbol for pro-

tection similar to the copyright symbol provided for in the Universal Copyright Convention, which was in general use even in States which were not party to that Convention.

65. The Delegation of Kenya, while associating itself with the foregoing remarks, regretted that the proposed text referred only to the year of first publication and not to the year of first fixation, especially since it did not require the producer's nationality to be indicated.

66. The Committee considered the question whether it would be useful to add a reference to the nationality of the producer among the elements which must accompany the symbol © as had been suggested by the Delegation of Kenya. Nevertheless, it preferred to retain on this point the system provided for by the Rome Convention.

67. The Delegation of the Republic of Viet-Nam expressed the view that a wide acceptance of the proposed instrument would be encouraged if considerable latitude were left to States in the specification of formalities.

68. The Delegation of France, having reasserted its opposition in principle to the introduction of a system of formalities into the new convention, declared, nonetheless, in a spirit of conciliation, that it was prepared to support the draft which had been proposed by the working group.

69. The Delegation of Czechoslovakia said that the symbol © which was proposed for the new instrument might cause confusion because the same symbol was prescribed by the Rome Convention. The Delegation of Spain agreed with this observation.

70. In order to take account of the various possible holders of rights over phonograms, the Committee decided that identification should apply not only to the producer but also to his successor in title or to the licence holder.

##### *(ii) Exceptions*

71. Concerning exceptions, the delegations of countries which protect producers of phonograms under copyright legislation or "neighboring" rights expressed the opinion that the new instrument should include a clause allowing national legislation to provide for limitations of the same nature as those for the protection of the authors of literary or artistic works.

72. On the other hand, for countries protecting producers of phonograms under regulations against unfair competition, no provision concerning exceptions seemed necessary in the proposed instrument.

73. To allow for the coexistence of the various systems of protection, the Committee adopted the proposal of the Delegation of the Federal Republic of Germany according to which reference would be made, as appropriate, to one or other of those systems.

74. The Delegation of Yugoslavia asked for the deletion of the sentence forbidding the grant of compulsory licences except for duplicates intended for use in teaching and scientific research. Such a ban would, in its opinion, lead to the recognition of a protection for producers of phonograms which would be wider than that granted to authors and performers



by virtue of other conventions, for the latter provided for compulsory licences with respect to broadcasting. In addition, the Delegation of Yugoslavia underlined the importance for developing countries of the possibility of introducing general licences in this field.

75. Following an intervention by the Delegation of Kenya, the Committee accepted that the reproduction of phonograms by broadcasting organizations, as also the exchange of programs between them, did not constitute distribution to the public and was not, accordingly, affected by the proposed convention.

76. The Delegation of Canada, commenting upon this intervention, pointed out that the word "distribution" was used, while in other provisions of the proposed instrument reference was made to "first publication". It wondered whether it would not be useful to harmonize the terminology. However, in order to avoid the proposed instrument departing too far from the Rome Convention in the matter of formalities, the Committee did not adopt this suggestion.

77. The Delegations of France and Kenya proposed that a definition of distribution to the public be written into the proposed instrument in the following terms: "placing at the disposal of the public for commercial purposes and in any form". The Committee, however, took no decision on this subject.

### (iii) *Performers' rights*

78. With regard to the recognition of performers' rights, the Delegations of Brazil, the Federal Republic of Germany, India, the Netherlands and the United States of America, as well as the observers from the International Music Council and the International Theatre Institute, considered that the proposed new instrument should contain a provision whereby the domestic law of each Contracting State would determine the extent of the protection granted to performers whose performance was fixed on a phonogram, in order to avoid upsetting the balance established by the Rome Convention between the interests of the three groups concerned.

79. On the other hand, the Delegation of Kenya considered this provision to be unnecessary, since performers would in any case retain these rights.

80. The Delegation of France opposed the inclusion of any such provision. In its opinion, the aim of the new instrument being to protect producers of phonograms rather than phonograms, the proposed text ran the risk of damaging the protection of performers. To leave complete freedom in this field to each State was merely to repeat the obvious, without providing for performers any minimum of protection while appearing to fulfil their rights.

81. This view was shared by the Delegations of Belgium and Italy. The latter also drew the attention of the Committee to the fact that simply to leave the matter to national legislation, without a guarantee of any minimum level of protection for performers, would raise, in relation to performers, the question of reciprocity.

82. The Delegations of India and of the Netherlands, as well as the consultant at the Unesco Secretariat, recalled the terms of resolution 5.133, adopted by the General Conference of Unesco at its sixteenth session, which provided that such protection should be secured with due regard also for the rights of performers and authors.

83. At the conclusion of the discussion concerning Article III, the Committee decided to retain in this Article only paragraph 1 concerning formalities, making paragraph 2 concerning exceptions the subject of a new Article IV. Paragraph 3, dealing with the rights of performers, was incorporated as a second paragraph in the old Article IV which, as the result of this reorganization, became Article V of the draft contained in Annex A to this Report.

### *Article IV (New Article V)*

84. The Committee adopted as paragraphs 1 and 3 paragraphs 1 and 2 of draft Article IV set forth in document Unesco/WIPO/PHON/3, Annex 1, after deleting the word "supersede" in the text of paragraph 1. It appeared to the Committee that to provide that the proposed new instrument should not be interpreted so as to supersede the protection secured to those concerned by virtue of other international conventions could give rise to problems in the matter of relations between States party both to the Rome Convention and to the new instrument, taking into account possible divergences in the assessment of their respective levels of protection.

85. With regard to paragraph 3 of the Article, and in opposition to the proposal made by France, the Committee refused to limit the benefit of the transitional provisions solely to phonograms licitly fixed before the entry into force of the convention. The Delegation of France pointed out that this decision might result in the benefit of those provisions being extended to phonograms illicitly fixed before the entry into force of the convention. The same solution was adopted with regard to another proposal made by France which would have restricted the transitional provisions to duplicates alone, to the exclusion of phonograms themselves fixed before the entry into force of the convention.

86. The Delegation of Czechoslovakia drew attention to the case of records of classical music which, having been fixed before the entry into force of the convention, could, in these circumstances, be copied with impunity.

87. Furthermore, upon a proposal submitted by the Delegation of Sweden and seconded by the Delegations of Denmark, Finland, Japan and the United States of America, the Committee decided to introduce, as paragraph 4, a provision taking up *mutatis mutandis* the terms of Article 17 of the Rome Convention, it being understood that the date to take into consideration to establish the content of national legislation would be that of the signature of the proposed new instrument.

### *Article V (New Article VI)*

88. The Committee adopted without change paragraphs 1 and 2 of the text of Article V contained in document Unesco/WIPO/PHON/3, Annex 1.

89. In view of the wording proposed for Article I, the Committee, on a proposal of the Delegation of France, considered that it would be useful to define the concept of "duplicate". It adopted the definition suggested by the Delegation of the United Kingdom, by which "duplicates" of a phonogram would mean articles which contain all or part of the sounds originally fixed in the phonogram. Nevertheless, the Committee decided to enclose in square brackets the words "all or part of" because differing opinions were expressed on this point. In this connection, the Delegation of the United Kingdom emphasized that it should not be permissible to pirate phonograms with impunity under the pretext that only a part of a phonogram has been copied.

90. It was further made clear that imitations of original works should not be assimilated to wrongful copies.

#### *Article VI (New Article VII)*

91. The Delegations of Austria, Brazil, Canada, Czechoslovakia, the Federal Republic of Germany, India, Kenya, Nigeria, the United States of America and Yugoslavia expressed themselves in favor of Alternative B of paragraph 1 of this Article as set forth in document Unesco/WIPO/PHON/3, Annex 1, in order to enable as many States as possible to sign the convention.

92. The Delegation of Italy declared itself in favor of Alternative A since, in its view, the new instrument should approximate as closely as possible to the Rome Convention. The Delegation of Spain also expressed its preference for that alternative, in view of the need for the said instrument to be linked with the conventions with regard to intellectual property.

93. The Delegations of India and Nigeria proposed an amalgamation of the two alternatives.

94. However the Delegations of Canada, France, the Federal Republic of Germany, India, Nigeria and the United States of America stressed that, since the choice between the two alternatives had political implications, they should both be submitted to the International Conference of States.

95. With regard to the depositary of the new instrument, the Delegations of France and the United States of America pointed out that, since it had been drafted under the auspices of Unesco and WIPO, it should normally be deposited with the Secretary-General of the United Nations. This view was shared by the Delegation of Australia.

96. The Committee adopted paragraphs 2 and 3 of the text contained in document Unesco/WIPO/PHON/3, Annex 1.

97. Having regard to the provisions of Article I, it ruled out paragraph 5 of the said text. It also ruled out paragraph 4, the Delegation of the United Kingdom not having pressed for it to be maintained.

98. Following a proposal made by the Delegation of Kenya and supported by the Delegation of the United States of America, it decided to include in that Article, as new paragraph 4, the provisions of Article 26, paragraph 2, of the Rome Convention.

#### *Article VII*

99. The Delegations of Brazil, Canada, India, Kenya, Nigeria and the United States of America were against making the maintenance in force of the new instrument subject to a given number of acceptances of the Rome Convention. They pointed out that if the said instrument were thus to become null at a given date, the way would be clear for the unlawful reproduction of phonograms in States which were not yet bound by the Rome Convention. Moreover, such a provision hardly appeared compatible with the system of protection based on the rules repressing unfair competition. Lastly, it seemed to them that a clause of this kind might prove to be an obstacle to the ratification of the proposed instrument.

100. The Delegation of Japan also declared itself opposed to the provision in question and suggested that, if it were nevertheless to be adopted, it would be appropriate to include among the States which, by becoming party to the Rome Convention, would bring about the nullity of the new instrument, two-thirds of the States bound by that instrument.

101. It seemed to several delegations that, in any case, the relations between the States which were party to the Rome Convention and to the new instrument should be examined. In that connection, the Delegation of Italy pointed out that, in the relations between two countries which were party to the Rome Convention and also bound by the new convention, a certain lack of balance might come about in the protection granted to the three categories covered by the Rome Convention. This would especially be so if the protection of phonograms as contemplated in the proposed new convention were to be interpreted as attaining a higher level than that established in the Rome Convention. The Delegation of Italy therefore wondered whether, in that case, it would not be possible to keep to the provisions of the latter Convention, pending its possible revision.

102. The Delegation of the Federal Republic of Germany, supported by the Delegation of France, expressed the opinion that the question was one of an interpretation of the Rome Convention, which provided for protection against the reproduction of phonograms, and that this notion could, under some legal systems, include the operations of distribution and importation.

103. After this exchange of views, the Committee decided not to adopt the text of Article VII contained in document Unesco/WIPO/PHON/3, Annex 1, and, on the suggestion of the Delegation of the United Kingdom, to delete the word "supersede" in the text of Article IV, sub-paragraph 1 (as indicated in paragraph 84 of this Report).

#### *Article VIII*

104. The Committee decided to take as a basis for the discussion of the final provisions of the new instrument (Articles VIII-XI) the text proposed by the United States of America and contained in Annex 2 of document Unesco/WIPO/PHON/3.

105. The Delegation of Japan expressed the opinion that among the five ratifications, acceptances or accessions stipulated for the entry into force of the new instrument, at least



two should come from States which were not party to the Rome Convention. The Committee did not adopt that suggestion.

106. On a proposal by the Delegation of the United Kingdom, the Committee decided that the new instrument should include a new provision making it possible to extend its application to certain territories, and to take up for that purpose the provision relating thereto contained in the Patent Cooperation Treaty (PCT) adopted in Washington in June 1970.

#### *Articles IX and X*

107. For these Articles, the Committee adopted the text contained in document Unesco/WIPO/PHON/3, Annex 2.

#### *Article XI*

108. The Committee adopted the text contained in document Unesco/WIPO/PHON/3, Annex 2, subject to the replacement by the term "established" of the word "signed" in the first line of paragraph 1, in accordance with a suggestion made by the Delegation of France.

109. As regards the list of languages in which the Convention was to be established, the Committee decided to add in square brackets Russian as one of the authentic versions. If membership in the United Nations were to be the criterion adopted for determining to which States the new instrument would be open, Russian should be added to the English, French and Spanish versions already mentioned.

110. With regard to the languages in which official versions of the new Convention might be established, the Delegation of India proposed either deleting the provision relating thereto or inserting the languages of all the signatory States. The Delegations of Brazil and the Federal Republic of Germany, on the contrary, thought it necessary to make specific reference to the German, Italian and Portuguese languages which were spoken in a number of countries.

111. In those circumstances, the Committee decided to put this provision in square brackets without specifying any language, leaving it to the International Conference of States to take a decision on the point.

112. The Delegation of India observed that if it was necessary to provide for the establishment of official versions of the new instrument in certain languages, then Hindi should be included among those languages.

113. The Delegation of the Federal Republic of Germany considered that an official German version was indispensable; this could be established by agreement between the competent authorities of its country and those of Austria and Switzerland.

114. The Delegation of Brazil emphasized the same need in respect of the Portuguese language.

#### *Revision of the proposed instrument*

115. The Delegation of Venezuela drew the attention of the Committee to the fact that the proposed draft instrument contained no provisions concerning its possible revision.

116. The Director General of WIPO and the consultant at the Unesco Secretariat observed that although such provisions

could well be useful they were not indispensable; in their absence reference could be made to the common law concerned, and in particular to the Vienna Convention on the Law of Treaties.

### **IX. Dates and Place of the International Conference of States**

117. Replying to a question put by the Delegation of India concerning the date on which the International Conference of States responsible for adopting this new instrument might be held, the consultant at the Unesco Secretariat recalled that the Intergovernmental Copyright Committee and the Permanent Committee of the Berne Union had hoped that it would be convened at the same time as the Conferences for the revision of the copyright conventions. The General Conference of Unesco, at its sixteenth session, had decided to convene the conference in question, jointly with WIPO, in 1971-1972 and had asked the Executive Board to set a precise date and place for it. The latter had decided that, subject to the results of the present Committee's work, the conference would be held at Unesco at the same dates as the revision Conferences.

118. The Director General of WIPO, after repeating his fears concerning the practical possibility of holding such a conference as early as July 1971, proposed that it should meet in October or November 1971, in Geneva. He attached the following three reservations to this proposal:

- (i) the prior approval of the competent bodies, that is to say the Executive Committee of the Berne Union and the Coordination Committee of WIPO;
- (ii) the need for a certain lapse of time in order to enable the secretariats to draw up the preparatory documentation for the use of the conference and to enable the governments to communicate their observations; this need was shown by the fact that it had not been possible for the Committee to reach agreement on a large number of questions;
- (iii) the possibility of finding in Geneva an available and appropriate conference room at a date which could possibly permit the intergovernmental committees of the copyright conventions and of the Rome Convention to hold their sessions immediately after the conference.

119. The consultant at the Unesco Secretariat recognized that it would be practical to postpone the dates previously proposed for the International Conference of States in order to enable the secretariats to undertake careful preparation for it and in order to give governments the time to study in depth the proposals drawn up by the Committee. He indicated that any recommendation to this effect made by the Committee would be brought to the attention of the Executive Board of Unesco, which had reserved for itself the possibility of postponing the International Conference of States which Unesco and WIPO were to convene jointly for the adoption of the instrument concerned. In addition he drew the attention of the Committee to the need, should the said conference meet in November 1971, to keep to a timetable by which the governments would have to communicate their observations on the

proposals submitted to the secretariats by September 15, at the latest. In this connection he pointed out that, since the next session of the Executive Board of Unesco would be held from April 28 to May 15, the governments would be informed by about May 15, of the final date of the International Conference of States and would be asked at the same time to send their observations.

120. The Delegation of the United Kingdom declared that it was ready to accept the postponement of the International Conference of States, provided that it were held in 1971. It also emphasized that it would be useful if the proposals to be communicated to governments could be accompanied by a commentary and it requested the International Bureau of WIPO to prepare such a commentary.

121. After this exchange of views, the Committee, considering that the International Conference of States, which would have the power to draw up and adopt the proposed international instrument, should be prepared with care and in depth, concluded that it would be premature to submit a draft instrument for adoption by and signature at a diplomatic conference at the same place and date as the Diplomatic Conferences for the Revision of the Universal Copyright Convention and the Berne Convention. The Committee noted the proposal made by the Director General of WIPO, and recommended that the conference to be convened jointly by the Director General of Unesco and the Director General of WIPO should be postponed to a period which would, in any event, be before the end of 1971.

#### X. Closing of the Meeting

122. The Delegation of Brazil expressed its satisfaction with the results achieved by the Committee and underlined the importance to the economy of its country of putting an end to the piracy of phonograms.

123. The observer from the European Broadcasting Union recalled the importance of protection against piracy of phonograms and indicated that the broadcasting organization hoped, for their part, to obtain a protection of their signals broadcast by satellites. He regretted that it had not been possible to draw up provisions relating to such a protection at the same time as those relating to phonograms.

124. The observer of the International Federation of the Phonographic Industry thanked the Secretariat of Unesco and the International Bureau of WIPO for their efforts to give swift effect to the wishes expressed at the meetings held in September 1970 of the intergovernmental committees of the copyright conventions. He considered that the work of the Committee had opened up possibilities of agreement which were a good omen for the success of the International Conference of States.

125. The Delegation of India speaking on behalf of the Committee congratulated the Chairman for her competence in the handling of the debates and her mastery of the subject-matter.

126. The Chairman, after thanking the secretariats for their help, declared the meeting closed.

## ANNEX A

### Draft Convention for the Protection of Producers of Phonograms against Unauthorized Duplication

#### *Preamble*

The Contracting States,

1. Concerned at the widespread and increasing piracy of phonograms and the damage this is occasioning to the interests of authors, performers and producers of phonograms;
2. Convinced that the protection of producers of phonograms against piracy will also benefit the performers whose performances, and the authors whose works, are recorded on the said phonograms;
3. Anxious not to impair in any way international agreements already in force and in particular in no way prejudice wider acceptance of the Rome Convention of 26 October 1961, which affords protection to performers and to broadcasting organizations as well as to producers of phonograms,

agree as follows:

#### *Article I*

Each Contracting State shall, either by means of its law preventing unfair competition or by means of the grant of a specific right, protect producers of phonograms who are nationals of other Contracting States<sup>1</sup> against the making of duplicates manufactured without the consent of the producer and against the importation and distribution of such duplicates, provided that any such making or importation is for the purpose of distribution to the public, and that any such distribution is to the public.

#### *Article II*

The legal means by which this Convention is implemented and the duration of the protection given shall be a matter for the domestic law of each Contracting State. However, if the domestic law prescribes a specific duration for the protection, that duration shall not be less than 20 years from the end of the year in which the sounds embodied in the phonogram were first fixed.

#### *Article III*

If, as a condition of protecting the producers of phonograms, a Contracting State, under its domestic law, requires compliance with formalities, these shall be considered as fulfilled if all the authorized duplicates of the phonogram distributed to the public or their containers bear a notice consisting of the symbol ©, accompanied by the year date of the first publication, placed in such manner as to give reasonable notice of claim of protection; and if the duplicates or their containers do not identify the producer his successor in title, or the licensee (by carrying his name, trade mark, or other appropriate designation), the notice shall also include the name of the producer, his successor in title or the licensee.

<sup>1</sup> If it is felt that the nationality of the phonogram producer alone is too narrow a criterion for protection, the criteria could be enlarged to include the country of first fixation or the country of first publication. However, if the criteria are enlarged, the experience in formulating Article 5 of the Rome Convention indicates that States should also be permitted to choose which of these two additional criteria they will apply.

*Article IV*

Notwithstanding Article I,

1. any Contracting State which grants protection by means of a specific right may, in its domestic law, provide for the same kind of limitations with regard to the protection of producers of phonograms as it provides for, in its domestic law, in connection with the protection of authors of literary and artistic works; however, no compulsory licences may be provided for except with regard to duplication for use solely for the purpose of teaching and scientific research;
2. when in any Contracting State protection is not granted by means of a specific right, the protection provided for in Article I may be refused in cases in which the acts mentioned in the said Article are not contrary to honest practices in industrial or commercial matters.

*Article V*

1. This Convention shall in no way be interpreted to limit or prejudice the protection otherwise secured to authors, or to performers, or to producers of phonograms, or to broadcasting organizations under any domestic law or international agreement.
2. It shall be a matter for the domestic law in each Contracting State to determine the extent, if any, to which performers whose performances are fixed on a phonogram are entitled to enjoy protection and the conditions for enjoying any such protection.
3. No Contracting State shall be required to apply the provisions of this Convention with respect to any phonogram fixed before this Convention entered into force in that State.
4. Any Contracting State which, on . . . . ., grants protection to producers of phonograms solely on the basis of the place of first fixation may, by a notification deposited with the Secretary-General of the United Nations, declare that it will apply this criterion instead of the criterion of the nationality of the producer.

*Article VI*

For the purposes of this Convention:

1. "phonogram" means any exclusively aural fixation of sounds;
2. "producer" means the person who, or the legal entity that, first fixes the sounds embodied in the phonogram;
3. "duplicates" of a phonogram are articles which contain [all or part of] the sounds originally fixed in the phonogram.

*Article VII*

1. This Convention shall be deposited with the Secretary-General of the United Nations. It shall be open until . . . . . for signature by any State

*Alternative A*

that is a member of the Berne Union for the Protection of Literary and Artistic Works, that is a party to the Universal Copyright Convention, or that is a member of the Paris Union for the Protection of Industrial Property.

*Alternative B*

that is a member of the United Nations or any of the Specialized Agencies brought into relationship with the United Nations.

2. This Convention shall be subject to ratification or acceptance by the signatory States. It shall be open for accession by any State referred to in paragraph 1 of this Article.
3. Instruments of ratification, acceptance, or accession shall be deposited with the Secretary-General of the United Nations.
4. At the date of deposit of its instrument of ratification, acceptance or accession, each State must be in a position, in accordance with its national legislation, to apply the provisions of this Convention.

*Article VIII*

1. This Convention shall enter into force three months after deposit of the fifth instrument of ratification, acceptance or accession.
2. For each State ratifying, accepting or acceding to this Convention after the deposit of the fifth instrument of ratification, acceptance or accession, this Convention shall enter into force three months after deposit of its instrument.
3. Any State may, at the time of ratification, acceptance or accession or at any later date, declare by notification addressed to the Secretary-General of the United Nations that the present Convention shall apply to all or any one of the territories for whose international affairs it is responsible. This notification will take effect three months after the date on which it is received.
4. However, the preceding paragraph may in no way be understood as implying the recognition or tacit acceptance by a Contracting State of the factual situation concerning a territory to which this Convention is made applicable by another Contracting State by virtue of the said paragraph.

*Article IX*

1. Any Contracting State may denounce this Convention by written notification addressed to the Secretary-General of the United Nations.
2. Denunciation shall take effect twelve months after the date of receipt by the Secretary-General of the United Nations of the notification of denunciation.

*Article X*

Reservations to this Convention shall not be permitted.

*Article XI*

1. This Convention shall be established in a single original in English, French [and] Spanish [and Russian], all three [four] versions being equally authentic.
- [2. In addition, official versions of this Convention shall be established in the . . . . . languages.]
3. The Secretary-General of the United Nations shall notify the States to which reference is made in Article VII, paragraph 1, as well as the Director-General of the United Nations

Educational, Scientific and Cultural Organization and the Director General of the World Intellectual Property Organization, of:

- (a) signatures to this Convention;
- (b) the deposit of instruments of ratification, acceptance and accession;
- (c) the date of entry into force of this Convention;
- (d) the text of any declaration made by virtue of this Convention;
- (e) the receipt of notifications of denunciation.

4. The Secretary-General of the United Nations shall transmit two certified copies of this Convention to all States to which reference is made in Article VII, paragraph 1.

IN WITNESS WHEREOF, the undersigned, being duly authorized, have signed this Convention.

DONE at Paris, this . . . . . day of . . . . . 1971.

## ANNEX B

### List of Participants

#### I. Participants

Australia: G. Davies; D. Deane. Austria: R. Ditttrich; N. Thoma. Belgium: G. L. de San; J. Bocqué; P. Peetermans; A. Namurois. Brazil: C. de Souza Amaral; R. A. Tavora. Canada: F. W. Simons; A. A. Keyes; R. E. Turenne; R. C. Sharp; P. Boucher. Colombia: A. Camacho Ramirez. Costa Rica: V. H. Román; C. Corrales. Czechoslovakia: M. Reiniš. Denmark: W. Weincke; J. Nørup-Nielsen; E. Carlsen. Dominican Republic: F.-M. Smester; J. L. Mercé. Ecuador: G. Ponce; G. Plaza. Finland: R. Meinander. France: A. Kerever; M. Boutet; P. Nollet; M. Cazé; P. Lunet; J. Buffin; J. L. Tournier. Germany (Federal Republic): E. Ulmer; E. Steup (Mrs.); E. Bungeroth. Greece: G. Spyridakis. Holy See: E. Rovidá; D. Julien; M.-S. de Chalus (Mrs.). India: K. Chaudhuri. Iran: B. Naderzad. Ireland: M. J. Quinn; F. O'Hannracháin. Italy: G. Galtieri; G. Trotta; A. Ciampi; V. De Sanctis. Ivory Coast: J. Kessé. Japan: M. Kato. Kenya: D. Afande; G. Straschnov. Khmer Republic (The): S. Essaro; Phan Buoy Hak. Lebanon: S. Stetié. Luxembourg: G. Graas. Mexico: M. Cabrera (Mrs.). Monaco: R. Bocca. Morocco: A. Zerrad. Netherlands: W. L. Haardt; J. Verhoeve; F. Klaver (Miss). Nigeria: G. E. E. Umukoro. Republic of Viet-Nam: Le-Tai-Trien; Nguyen-Vang-Tbo. Spain: E. Garrigues y Diaz-Cañabate; I. Fonseca (Mrs.). Sweden: H. Danelius. Switzerland: J.-L. Marro. Tunisia: R. Saïd. United

Kingdom: W. Wallace; I. J. G. Davis; A. I. Aust. United States of America: B. A. Ringer (Miss); R. D. Hadl; J. Adams; C. E. Lahiguera; R. V. Evans; H. Kaiser; E. S. Meyers. Uruguay: R. Botto. Venezuela: H. Rondón de Sansó (Mrs.). Yugoslavia: V. Spaić.

#### II. Observers

##### *United Nations and other Organizations of the United Nations system*

International Labour Office: E. Thompson.

##### *Other Intergovernmental Organizations*

International Institute for the Unification of Private Law (UNIDROIT): H. Desbois. League of Arab States: R. Chaffey.

##### *International non-governmental Organizations*

European Broadcasting Union (EBU): H. Brack; G. Hansson; K. Remes; M. Cazé. International Confederation of Societies of Authors and Composers (CISAC): J.-A. Ziegler. International Film and Television Council (IFTC): A. Brisson; P. Chesnais; R. Leuzinger. International Federation of the Phonographic Industry (IFPI): S. M. Stewart; M. Lenoble; S. Diamond; B. Menon; H. H. von Rauscher auf Weeg; G. Davies (Miss); J. H. West. International Literary and Artistic Association (ALAD): H. Desbois. International Music Council (IMC): J. Bornoff; R. Leuzinger. International Theatre Institute (ITI): J. Darcante. International Writers Guild (IWG): R. Fernay; E. Le Bris. Internationale Gesellschaft für Urheberrecht (INTERGU): H. Boursigot.

#### III. Consultant to the Secretariat of Unesco

H. Saba.

#### IV. Secretariat

United Nations Educational, Scientific and Cultural Organization (Unesco): J. E. Fobes (*Acting Director-General*); C. Lussier (*Acting Director, Office of International Standards and Legal Affairs*); M. C. Dock (Miss) (*Head, Copyright Division*); D. de San (*Lawyer, Copyright Division*); P. Lyons (Miss) (*Assistant Lawyer, Copyright Division*).

##### **World Intellectual Property Organization (WIPO):**

G. H. C. Bodenhausen (*Director General*); C. Masouyé (*Senior Counsellor, Head, External and Public Relations Division, Head a. i., Copyright Division*).

#### V. Officers of the Committee

*Chairman*: B. Ringer (Miss) (United States of America). *Vice-Chairmen*: K. Chaudhuri (India); E. Garrigues y Diaz-Cañabate (Spain); R. Saïd (Tunisia). *Secretaries*: M. C. Dock (Miss) (Unesco); C. Masouyé (WIPO).

# NATIONAL LEGISLATION

## IRAN

### Law on the Protection of the Rights of Authors, Composers and Artists\*

#### CHAPTER I

##### Definition

*Article 1.* — Any creation by an author, composer or artist, achieved by a scientific or artistic process or by action taken to that end shall, irrespective of the mode or form of its expression, be considered a "work" within the meaning of this Law.

*Article 2.* — Works protected under this Law shall be the following:

- (1) books, anthologies, essays, theatrical plays and all other scientific, technical, literary or artistic writings;
- (2) poetry, tunes, songs and any other musical composition, irrespective of the manner of their creation, recording or publication;
- (3) works created for sound or visual broadcasting, stage performance or cinematographic projection, whether expressed by recording, publication or other means;
- (4) musical works, irrespective of the manner in which they are created, recorded or published;
- (5) works of painting, drawing and lithography, unpublished maps, ornamental writings and scripts and all decorative or figurative works, whatever the process by which they are created, whether on the basis of a single element or of a combination of several elements;
- (6) sculptures of all kinds;
- (7) works of architecture, which include both plans and models and the construction itself;
- (8) photographic works, to which are assimilated original visual effects;
- (9) objects created in the field of the artistic handicrafts and applied art, which include both sketches or models and the work itself;
- (10) creations inspired by folklore and traditional culture;
- (11) any other creations of original works resulting from any synthesis of the aforementioned works.

#### CHAPTER II

##### Copyright

*Article 3.* — Copyright shall include the exclusive right of publication, distribution and performance of the work and the right of economic and moral exploitation of the name and work of the author.

*Article 4.* — The moral right of the author shall not be limited in either time or place; this right shall be intransferable.

*Article 5.* — The author of works protected under this Law may assign to other persons the benefit of his economic rights in all cases, and particularly in the following cases:

- (1) cinematographic, television and similar productions;
- (2) theatrical and choreographic performance and other shows;
- (3) recording on videotape, sound recording tape, disc or any other phonogram;
- (4) broadcasting by radio, television or other media;
- (5) translation, publication, distribution and reproduction of works in the form of print, paintings, photographs, engravings, plates, mouldings or other similar means of expression;
- (6) use of a work for the purposes of creating other works as provided by Article 2 of this Law.

*Article 6.* — A "work of joint authorship" means a work produced jointly by one or several authors, in so far as the contribution of one co-author cannot be distinguished from that of the other co-author or co-authors.

*Article 7.* — Quotations and borrowings from published works, or references to such works for literary, scientific, technical or educational purposes, or for the purposes of criticism, shall be authorized, on condition that the source is indicated, to the extent and in the manner that this is in conformity with fair practice.

*Note:* It is not necessary to indicate the source in the case of works intended for teaching purposes in educational establishments when the works are written and distributed by members of the teaching staff of such establishments, on condition that no material benefit is to be derived therefrom.

*Article 8.* — Public libraries, non-commercial documentation centers, scientific institutes and non-profit-making educational establishments shall be authorized, subject to the provisions of the regulations which will be approved by the Council of Ministers, to reproduce, by a photographic or similar process, works protected under this Law within the limits of their needs and the exercise of their activities.

*Article 9.* — Following the entry into force of this Law, the Ministry of Information shall be authorized to continue to use works previously published by it.

\* This Law was promulgated on January 12, 1970, and came into force 15 days after the date of its publication in the Official Gazette of February 10, 1970. The French translation was communicated to WIPO by courtesy of the Office for the Registration of Companies and Industrial Property. Translated into English by WIPO.

*Article 10.* — Pursuant to the Law on Educational Works, the Ministry of Education shall be authorized to continue to use works printed and published by it prior to the date of promulgation of this Law.

*Article 11.* — The reproduction of works protected according to the provisions of Article 2(1) of this Law and the recording of radio and television programs shall be authorized solely and exclusively for personal use to non-profit-making ends.

### CHAPTER III

#### Term of Protection of Copyright and of other Rights protected under the Law

*Article 12.* — The term of copyright protection granted under this Law shall include the life of the author and thirty years following the date of his death, and the enjoyment of this right is transferable by will or succession to the heirs or their successors in title. If the author has no heirs or if, in his will, he does not transfer the right, the work in which the copyright subsists shall be lawfully made accessible to the public during the same period by the Ministry of Culture and the Arts.

*Note:* The term of protection of works of joint authorship, provided for in Article 6 of this Law, shall be thirty years from the date of the death of the last surviving co-author.

*Article 13.* — Copyright on commissioned works shall belong, for thirty years from the date of the creation of the work, to the person having commissioned such work, in the absence of a contrary provision imposing a shorter period or more restricted terms.

*Note:* Cash prizes and bonuses, and rewards obtained in scientific, artistic or literary competitions, shall be governed by this Law and shall belong to the respective authors according to the rules of such competitions.

*Article 14.* — The party to whom copyright has been assigned may enjoy this right for a period of thirty years from the date of such assignment, unless the agreement specifies a shorter period.

*Article 15.* — On expiration of the periods provided for in Articles 13 and 14 of this Law, the right of exploitation of the work shall revert to the author, if he is still alive; if not, the provisions of Article 12 shall apply.

*Article 16.* — In the following two cases, copyright shall be protected for thirty years from the date on which the work was lawfully made accessible to the public:

- (1) in the case of cinematographic or photographic works;
- (2) in cases where the right in the work belongs or has been assigned to a body corporate.

*Article 17.* — The name, the title and the special mark characterizing a work shall be protected under this Law, and no person shall be authorized to use them, with the risk of misleading the public, for other works of the same type or for similar works.

*Article 18.* — Subject to provisions to the contrary, the assignee, the publisher and those who, pursuant to the provisions of this Law, are authorized to publish a work for profit-making purposes, either in its complete form or in a derivative or adapted form, shall be obliged to indicate the name of the author and the title and the special mark of the work, to the extent and in the manner that is in conformity with fair practice, on any copy reproducing the work and each time the work is made accessible to the public.

*Article 19.* — All modifications or alterations to works protected by this Law, and their publication without the author's consent, shall be prohibited.

*Article 20.* — Printers, phonogram producers and firms which print, publish, record or distribute works protected under this Law must indicate, on phonograms and on all copies of works distributed, the edition, the number of copies of the work and the number of each copy, also stating the date and the name of the publishing firm or phonogram producer.

*Article 21.* — The author shall have the possibility of registering his work, the name, the title and his special mark, if any, by depositing the said work with a body to be designated by the Ministry of Culture and the Arts. Regulations concerning the registration procedure and the competent authority responsible shall be approved by the Council of Ministers.

*Article 22.* — The economic right of the author shall be protected under this Law on condition that the work is published, distributed or performed in Iran, and if it has not been previously published, distributed or performed in another country.

### CHAPTER IV

#### Infringements and Penalties

*Article 23.* — Any person having knowingly published, distributed or presented all or part of a work protected under this Law, in his own name or in the name of the author without the latter's consent, or having published, distributed or presented a work under the name of a person other than the author, shall be liable to a penalty of imprisonment for six months to three years.

*Article 24.* — Any person having, without authorization, published or distributed in his own name the translation of another person shall be liable to a penalty of imprisonment for three months to one year.

*Article 25.* — Any person having infringed the copyright granted on any work protected under Articles 17, 18, 19 and 20 of this Law shall be liable to a penalty of imprisonment for three months to one year.

*Article 26.* — If, in cases of infringement of the provisions of Articles 17, 18, 19 and 20 of this Law, the term of protection of the works has expired in terms of this Law, and the works have consequently fallen into the public domain, the Ministry of Culture and the Arts may bring a civil action.



*Article 27.* — The party bringing a civil action may request the competent court to order the publication of the text of the decision rendered in a journal designated by him, and at his expense.

*Article 28.* — If the provisions of this Law are infringed by a body corporate, in addition to the criminal action brought against the physical person responsible for the infringement, the amount of damages awarded to the party bringing the action shall be taken from the assets of the body corporate. If those assets are insufficient, the difference shall be taken from the assets of the physical person responsible for the infringement.

*Article 29.* — The judicial authorities may, during examination of the claim of the party bringing civil action, give the necessary instructions to the authorities charged with suspending the publication, distribution and recording of the work in question.

*Article 30.* — Works created prior to the promulgation of this Law shall enjoy protection under this Law. Any person who has exploited the works of other persons, without their authorization, until the date of promulgation of this Law,

shall no longer have the right to publish, perform, distribute, present or sell such works without the authorization of the authors or their legal representatives.

Any person who infringes the provisions of this Article or who, to circumvent this Law, indicates a date prior to that of its promulgation as being that of the printing, recording or distribution of their works, shall be liable to the penalties provided for in Article 23.

Legal proceedings instituted and complaints filed with the courts prior to the entry into force of this Law shall remain valid thereafter.

*Article 31.* — Prosecution for infringements defined by this Law shall begin with the filing of a complaint by the person bringing the civil action; in the event of withdrawal of the complaint, however, the case shall not proceed further.

*Article 32.* — Articles 245, 246, 247 and 248 of the Code of Criminal Law are hereby repealed.

*Article 33.* — Regulations for the implementation of this Law shall be drawn up by the Ministries of Culture and the Arts, Justice, and Information, and shall be submitted to the Council of Ministers for approval.

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## BOOK REVIEWS

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**Book Development - Some Current Problems, 1969.** Report on the Seminar on Book Publishing, New Delhi, March 1969. One volume of 182 pages, 21×15 cm. Dina N. Malhotra for the Federation of Publishers and Booksellers Associations in India, Delhi, 1969.

This book is a collection of papers and speeches delivered at the Seminar on Book Publishing held in New Delhi, India, from March 11 to 15, 1969, and sponsored by the Federation of Publishers and Booksellers Associations in India and Franklin Book Programs Inc. It contains a foreword and an address of welcome by Mr. Dina N. Malhotra, Co-Chairman and President of the Federation of Publishers and Booksellers Associations in India, the inaugural address of Dr. V. K. R. V. Rao, an eminent writer and educationist and the then Minister for Education, Government of India, and a message from Mrs. Indira Gandhi, the Prime Minister of India. The book also contains a section dealing exclusively with "Copyright - National and International", being the speeches made and the papers read by Mr. Sadanand Bhatkal, Mr. Kanti Chaudhuri, Joint Secretary, Ministry of Education, and Mr. T. S. Krishnamurti, Registrar of Copyright, Government of India.

This Seminar, in which the publishing industry of India was very well represented, was organized with the cooperation and financial support of the Ministry of Education and the U. S. Agency for International Development (AID), which provided travel grants to the participants. Its foreign participants included delegates from Afghanistan, Iran and Nepal; but the largest contingent of foreign delegates came from the United States which was represented by six important publishers. Among the observers were important functionaries of the Ministry of Education, Government of India, the U. S. AID, the Ford Foundation, the U. S. Information Service, U. S. Library of Congress, the British Council and also the Director, Unesco Regional Centre for Book Development in Asia from Karachi, Pakistan.

Since it was a Seminar organized by the publishers, the papers dealt primarily with the various problems of the publishing industry in India — problems which are similar to the problems of the other developing coun-

tries — yet this volume also contains a separate section dealing with copyright, both national and international, which gives both the official and the publishers' points of view.

Dr. V. K. R. V. Rao, in his inaugural address, pointed out that the main problem of India is, what he calls, the "student explosion" and the immediate necessity of textbooks and educational literature. He maintained that it was a "very serious question which affects many people in this country". Similarly, Mr. Kanti Chaudhuri, emphasizing the need of "textbooks and supplementary reading material", suggested the production of these books and hoped that the rights of these books would become available without difficulty. Mr. T. S. Krishnamurti, in his speech, argued that, since the paramount objective of a government was to give education and provide books for its people, the doctrine of eminent domain should be applied for the removing of any obstacles in the achievement of this objective. He maintained that "the only consideration is that when a foreign work is used under a compulsory licence, remuneration at national standards should be paid to the author or copyholder".

There is also another article on copyright by Mr. Sadanand Bhatkal, a publisher, and also certain remarks regarding copyright in the welcome address of Mr. Dina N. Malhotra, President of the Federation of Publishers and Booksellers Associations in India. These remarks are significant in their own right for they represent the opinion of an industry which has made considerable progress after the achievement of independence, yet, since most of the publishers are in most cases also representatives and agents of foreign publishing houses, their opinions are closer to the point of view of the publishers in the developed countries than to the official Indian point of view.

In conclusion, it must be said in all fairness that the organization of such a seminar on the national level in a country with the dimensions of India and the production of such a volume as the end product of such a seminar is a credit both to the Federation of Publishers and Booksellers Associations in India and to the growing publishing industry of a developing country.

S. K.

# CALENDAR

## WIPO Meetings

- 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 \*
- 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, International Patent Institute — *Observer:* Brazil
- 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

- May 14 and 15, 1971 (Oslo) — International Federation of Inventors Associations — General Assembly
- May 18 to 21, 1971 (Caracas) — Inter-American Association of Industrial Property — 3<sup>rd</sup> 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):
- September 13 to 17, 1971 — Working Party I
  - October 11 to 22, 1971 — Working Party I
  - November 15 to 19, 1971 — Working Party I