

# Copyright

Review of the  
WORLD INTELLECTUAL PROPERTY  
ORGANIZATION (WIPO)

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

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11. The representative of Denmark expressed the view that the new Phonograms Convention and the proposed new Satellites Convention created a certain risk for the future of the Rome Convention by ignoring the legitimate interests of performers. It seemed to be in the interests of all countries to grant to performers the basic protection provided for in Article 7 of the Rome Convention, in order to promote national culture. It would therefore be desirable for the Committee and its Secretariat to take all appropriate action with a view to obtaining the widest possible acceptance of the Rome Convention.

12. The Committee approved the idea, put forward at the preceding session, of the preparation of a draft model law to facilitate the application of the Rome Convention or accession to it. For this purpose it decided:

- (i) that its Secretariat should prepare a text, in consultation with a limited number of experts;
- (ii) that this text should be sent for comments to the States party to the Rome Convention and to the interested international non-governmental organizations;
- (iii) that the Committee should, at its next session, consider the text and any comments received.

13. In the course of the discussion it was emphasized that such a model law would be particularly useful for developing countries; it would set out examples of legislative provisions for the implementation of the Rome Convention at the national level. In addition it was proposed that information meetings should be arranged by the Secretariat to make the Rome Convention better known among States and interested circles. The representative of a State member of the Committee considered that such meetings should await the preparation of the proposed model law.

#### Protection of Phonograms

14. The Committee took note of document ILO/Unesco/WIPO/ICR.3/4, and received a verbal report presented by its Secretariat upon the International Conference of States on the Protection of Phonograms, held in Geneva from October 18 to 29, 1971, and upon the Convention for the Protection of Producers of Phonograms Against Unauthorized Duplication of Their Phonograms, which had resulted from the said Conference.

15. The question having been raised of compatibility between the new Convention and Article 22 of the Rome Convention, several representatives of States members of the Committee stated that in their opinion the new Convention did not contain provisions contrary to the Rome Convention, and that States party to both instruments would apply the text which gave the stronger protection in their relations with each other.

#### Problems in the Field of Copyright and of the Protection of Performers, Producers of Phonograms and Broadcasting Organizations Raised by Transmission Via Space Satellites

16. The Committee took note of document ILO/Unesco/WIPO/ICR.3/5, containing the results of the Committee of Governmental Experts convened jointly by the Directors

General of Unesco and of WIPO which met from April 21 to 30, 1971.

17. The Committee decided to express its opinion on this subject in a resolution. This resolution is contained in Annex A to this Report. It reflects the points upon which the Committee adopted a position.

18. On the question of whether the definition of "broadcasting" contained in Article 3 of the Rome Convention covers the transmission of a signal to a satellite with the ultimate purpose of reception by the public, the representatives of Denmark, Germany (Federal Republic), Mexico and the United Kingdom expressed an affirmative opinion. The representative of Brazil declared that he had no instructions from his Government on this point. The representative of Niger was opposed to the point of view expressed by the majority of the Committee and, in addition, considered that the question was one of interpretation of the Rome Convention which was not within the competence of the Committee. On this latter point, the other representatives considered that the opinions expressed did not constitute an interpretation given by the Committee as such; the Committee agreed that interpretation was not within its competence.

19. During the discussion which took place before the adoption of the said resolution, the representative of the United Kingdom expressed doubts as to the necessity for a further meeting of a committee of governmental experts and reserved his position as to the need to prepare a new international instrument. The representative of Denmark also expressed doubts as to the need for such an instrument. The representative of Mexico, supported by the observer from Sweden, drew attention to the concern felt by the interested circles, particularly the authors and performers, as a result of the search for a solution outside the framework of the Rome Convention. This point of view was shared by the observers appointed by the international non-governmental organizations representing authors, performers and producers of phonograms.

20. The representative of Germany (Federal Republic) declared that her Government, sharing the view that separate agreements constitute a certain danger to the Rome Convention, would have preferred to have the protection of transmissions via satellites secured under the Rome Convention alone. However, it considered that worldwide protection of such transmissions was necessary and that a realistic solution of the problem must take into account the fact that the Rome Convention had, until now, received only a relatively small number of ratifications or accessions. The representatives of Brazil and Niger also considered that a realistic solution of the problem must take this factor into account.

21. In this connection the observers appointed by the broadcasting organizations of Africa and Asia recalled that their international organizations had decided to recommend to their members to make approaches to their Governments with a view to advising them against accepting the Rome Convention, and had expressed themselves in favor of the adoption of a separate treaty in respect of transmission by space satellites.

22. The observer from Italy, while reserving the position of his Government upon the appropriateness of a new convention open to all States, recalled a suggestion which still held good to regulate the whole question of the protection of signals in a protocol to be annexed to the Rome Convention.

23. As regards the substance of the provisions of any convention which would govern the questions in issue, the observer appointed by the organizations representing authors drew the attention of the Committee to the fact that a new convention protecting a program-carrying signal, without reference to "broadcasting" as understood in the multilateral copyright conventions and in the Rome Convention, could cause grave damage to the interests of authors and performers. Such a protection, rather than providing benefits also for authors and performers, could well result in the opposite effect for them, in that it would establish an exclusive right in favor of broadcasting organizations which would apply in advance of the rights recognized for authors and performers. The authors, for their part, were firmly opposed to such a situation.

24. At the time of adoption of the resolution, the representative of Denmark said that in any new instrument the choice of the criterion of protection should take into account certain situations resulting from national legislations.

#### Miscellaneous

25. Under this heading, after having taken note of document ILO/Unesco/WIPO/ICR.3/6, the Committee decided to grant the request of the International Hotel Association to be admitted to the list of international non-governmental organizations which attend the meetings of the Committee in an observer capacity.

#### Adoption of the Report

26. This Report was adopted unanimously by the Committee.

#### Closing of the meeting

27. After the representative of the United Kingdom, on behalf of all the participants, had congratulated the Chairman upon his conduct of the debates, the Chairman declared the session closed.

### ANNEX A

#### Resolution

The Intergovernmental Committee established under Article 32 of the International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations, at its third ordinary session, held on November 1 and 2, 1971,

Having examined the report presented by the Secretariat of the Committee concerning the work of the 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 Transmissions Via Space Satellites, convened by the Directors General of Unesco and WIPO at Lausanne-Onchy from April 21 to 30, 1971,

Sharing the view of the said Committee of Experts that the unauthorized distribution to the general public of program-carrying signals seriously jeopardizes the development of satellite transmissions and that

measures should be adopted to avoid any prejudice, and considering that in any event unauthorized distribution to the public of signals transmitted by satellites should be condemned,

Recognizing that the representatives of States members of the Committee have not been unanimous concerning the necessity of drafting a new international instrument to protect television signals transmitted by communications satellites,

Having noted that the representatives of four of the six States members of the Committee considered that the transmission of the signal, for the ultimate purpose of reception by the public, constitutes "broadcasting" within the meaning of Article 3 of the International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations,

Recommends, should it be decided to adopt a new international instrument in this field, that:

1. the words "and in particular in no way to prejudice wider acceptance of the Rome Convention of October 26, 1961, which affords protection to performers and producers of phonograms as well as to broadcasting organizations", suggested as an alternative in subparagraph (d) of the Preamble to the draft Convention drawn up by the Committee of Experts mentioned above, be retained after the words "anxious not to impair in any way international agreements already in force";
2. the said instrument must not prejudice the protection otherwise secured to authors, performers, producers of phonograms, broadcasting organizations or other contributors to the programs, under any domestic law or international agreement;
3. the instrument be as simple as possible in order to receive universal acceptance;
4. the instrument be open to any State which is a member of the United Nations, any of the Specialized Agencies brought into relationship with the United Nations, or the International Atomic Energy Agency, or is party to the Statute of the International Court of Justice;
5. the protection be limited to satellite transmissions of images or a combination of sounds and images and not cover sounds alone;
6. the criterion of protection be, in principle, only that of the nationality of the originating organization;
7. the instrument be founded on the principle of reciprocity;
8. so far as limitations on the protection of the transmitted signal are concerned, the needs of developing countries in the fields of teaching and scientific research should be particularly taken into account.

### ANNEX B

#### List of Participants\*

##### I. States members of the Committee

Brazil: J. C. Ribeiro. Denmark: J. Nørup-Nielsen; B. von Linstow. Germany (Federal Republic): E. Steup (Mrs.). Mexico: G. E. Larrea Richerand; J. L. Caballero Cárdenas. Niger: G. Straschnov. United Kingdom: W. Wallace; D. L. T. Cadman.

##### II. Observers

###### (a) States party to the Convention

Costa Rica: M. A. Mena Chaves. Czechoslovakia: J. Stahl. Ecuador: R. Valdez-Ballen. Sweden: A. Klum.

###### (b) Other States

Australia: K. B. Petersson. Belgium: G. de San. Canada: F. W. Simons; A. A. Keyes. France: M. Bontet; J. Buffin; P. B. Nolle. India: K. Chaudhuri. Israel: M. Gabay. Italy: G. Trotta. Yugoslavia: V. Spaić.

###### (c) Intergovernmental Organizations

League of Arab States: A. Seif Radi.

\* A list containing the titles and functions of the participants may be obtained from the International Bureau upon request.

**(d) International Non-Governmental Organizations**

Asian Broadcasting Union (ABU): M. Larrue (Mrs.). European Broadcasting Union (EBU): M. Larrue (Mrs.). International Confederation of Professional and Intellectual Workers (CITD): G. Poulle; J. Mourier; D. Martin-Achard. International Confederation of Societies of Authors and Composers (CISAC): R. Fernay. International Federation of Actors (FIA): R. Rembe. International Federation of Film Distributors' Associations (FIAD): G. Schwaller. International Federation of Film Producers Associations (FIAPF): A. Brisson. International Federation of Musicians (FIM): H. Ratcliffe; R. Leuzinger; G. Sala-Tardiu. International Federation of the Phonographic Industry (IFPI): S. M. Stewart; J. A. L. Sterling; G. Davies (Miss). International Federation of Variety Artistes (IFVA): R. Rembe. International Film and Television Council (IFCT): R. Leuzinger. International Literary and Artistic Association (ALAD): R. R. J. Dupuy. International Music Council (IMC): P. Colombo; R. Leuzinger. Internationale Gesellschaft für Urheberrecht (INTERGU) (International Copyright Society): W. Jost. International Secretariat of Entertainment Trade Unions (ISETU): A. J. Forrest; J. Koelemeij; K. Rössel-Majdan. International

Writers Guild (IWG): R. Fernay. Union of National Radio and Television Organizations of Africa (URTNA): A. Chakroun.

**III. Secretariat****International Labour Organisation (ILO):**

E. Thompson (*Chief, Non-Manual Workers Section, General Conditions of Work Branch*); M. Canova (Mrs.) (*Non-Manual Workers Section, General Conditions of Work Branch*).

**United Nations Educational, Scientific and Cultural Organization (Unesco):**

C. Lussier (*Director, Office of International Norms and Legal Affairs*); M. C. Dock (Miss) (*Head, Copyright Division*); P. A. Lyons (Miss) (*Legal Assistant, 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*); R. Harben (*Counsellor, Deputy Head, External and Public Relations Division*); M. Stojanović (*Counsellor, Copyright Division*).



- (g) *posthumous work* means a work that has been disclosed only after the death of its author;
- (h) *original work* means the work as first created;
- (i) *derived work* means a work resulting from the adaptation, translation or other transformation of an original work, provided that it constitutes an autonomous creation;
- (j) *performer* means the actor, reciter, narrator, speaker, singer, dancer, musician or any other person who interprets or performs a literary or artistic work;
- (k) *producer of phonograms* means the natural person or corporate body responsible for the publication of phonograms;
- (l) *broadcasting organization* means the radio or television undertaking which transmits programs for public reception;
- (m) *phonogram* means a fixation on a material medium of the sounds of a performance or other sounds, and likewise other aural fixations synchronized with images;
- (n) *broadcasting or transmission* means distribution, by means of radio-electric waves, of sounds or of images synchronized with sounds;
- (ñ) *rebroadcasting* means the broadcasting by one broadcasting organization of the broadcast of another broadcasting organization, or the broadcast made subsequently by one or the other of the same transmission, and
- (o) *publication* means the reproduction of a work in tangible form and the making available of copies thereof, so that the public can read it or take cognizance of it by sight or hearing.

## CHAPTER II

### Subjects of copyright

*Article 6.* — The owner of the copyright has the exclusive right to decide whether the work is to be disclosed, either in part or in its entirety.

*Article 7.* — The original owner of copyright is the author of the work concerned. The secondary owner of copyright is the person who acquires it from the author on any basis.

*Article 8.* — The author of a work is presumed to be the person whose name appears as such on the copy which is registered or the person to whom, in accordance with the relevant registration, the pseudonym under which the work is published belongs.

*Article 9.* — Copyright in a derived work vests in the person who makes the adaptation, translation or transformation of the original protected work with the authorization of the original owner. The name or pseudonym of the original author must be indicated in any publication of the derived work.

Where the original work belongs to the common cultural heritage, the adaptor, translator or transformer enjoys all the rights which this law affords in his version; he may not, however, prevent other persons from using the same original work for the production of different versions.

## CHAPTER III

### Duration of protection

*Article 10.* — The protection granted by this law shall extend throughout the life of the author and for thirty years after the date of his death, in respect of his heirs, legatees or assigns. If the right passes to the surviving spouse, the protection granted shall extend throughout the life of the said spouse.

*Article 11.* — The following belong to the common cultural heritage:

- (a) works in respect of which the term of protection has expired;
- (b) works by unknown authors, including songs, legends, dances and expressions of folklore;
- (c) works whose owners renounce the protection granted by this law;
- (d) works by foreign authors domiciled abroad who are not protected in the manner provided for in Article 2, and
- (e) works that have been expropriated by the State, except where a beneficiary is designated by law.

The amount of the royalties to be paid by anyone using works belonging to the common cultural heritage shall be established by the Regulations.

*Article 12.* — In the case of works of joint authorship, the thirty-year term shall run from the date of the death of the last surviving co-author.

Without prejudice to the rights of a spouse as referred to in Article 10, if a collaborator dies intestate and there are no heirs who cannot be totally disinherited (*asignatarios forzosos*), his rights shall be aggregated with those of the co-author or co-authors.

*Article 13.* — In the case of an anonymous or pseudonymous work, the term of protection shall run for thirty years from the date of first publication. If the author discloses his identity before the expiry of that period, the provisions of Article 10 shall apply.

## CHAPTER IV

### Moral rights

*Article 14.* — The author, as exclusive owner of the moral rights, shall throughout his lifetime have the following prerogatives:

1. to claim authorship of the work, associating his name or known pseudonym therewith;
2. to object to any distortion, mutilation or other modification made without his express and prior consent. Such modifications shall not be deemed to include the conservation, reconstitution or restoration of works that have suffered damage which alters or diminishes their artistic value;
3. to keep a work unpublished;
4. to authorize any other person to complete an unfinished work, subject to prior consent by the publisher or the assign, if any, and

5. to require respect for his wish that the work should remain anonymous or pseudonymous, so long as the work does not belong to the common cultural heritage.

*Article 15.* — In the event of the author's death, the moral rights are transmissible to the surviving spouse and to the author's heirs *ab intestat*.

*Article 16.* — The rights mentioned in the foregoing articles are inalienable and any agreement to the contrary shall be null and void.

## CHAPTER V

### Pecuniary rights; their exercise and limitations

#### Section I

##### *The pecuniary rights in general*

*Article 17.* — The pecuniary rights confer on the owner of the copyright the right to use the work directly and personally, to transfer his rights therein — in full or in part — and to authorize its use by a third party.

*Article 18.* — The owner of the copyright or anyone expressly so authorized by him shall have the exclusive right to use the work in any of the following forms:

- (a) to communicate the work to the public by publication, recording, radio or television broadcasting, performance, reading, recitation, exhibition and, in general, any other medium of communication to the public that is already known or may become known in the future;
- (b) to reproduce the work by any process;
- (c) to adapt the work to another medium, or to use it in any other form that involves any variation, adaptation or transformation of the original work, including translation, and
- (d) to perform the work in public by means of radio or television broadcasting, phonographic records, cinematographic films, magnetic bands or tape or any other material medium suitable for use in equipment reproducing sound and voice, whether or not with images, or by any other means.

*Article 19.* — A work in the private domain may not be used in public by anyone unless express authorization has been obtained from the owner of the copyright.

Persons responsible for any infringement of the provisions of this Article shall be liable to the relevant civil and penal sanctions.

*Article 20.* — *Authorization* means permission granted by the owner of the copyright, given in any contractual form, to use the work in any of the manners and by any of the means provided for under this law.

The authorization must specify the rights granted to the person so authorized, indicating the duration, the remuneration and method of payment thereof, the minimum or maximum number of performances or copies authorized or, if these are unlimited, the territory of application and all other restrictive clauses imposed by the owner of the copyright. In no case may the agreed remuneration be less than the percentage specified in the Regulations.

The person authorized shall not have any rights over and above those specified in the authorization, with the exception of those inherent therein in accordance with its nature.

*Article 21.* — Subject to the provisions of the preceding articles, any proprietor, concessionary manager, impresario, lessee or person operating any theater, public hall or radio or television station where theatrical works, musical compositions or phonographic recordings of works by national or foreign authors are performed shall be required to pay remuneration, in an amount to be fixed by contract or in pursuance of the Regulations, to the holders of the copyright or of related rights, or to their representatives in accordance with the rules for which provision is made in this law.

*Article 22.* — Any authorization granted in respect of a literary or musical work shall not confer the exclusive right to use the work; the holder of the copyright shall, unless otherwise agreed, retain the right to grant similar authorizations, also without exclusivity, to third parties.

*Article 23.* — In the case of a work of joint authorship, the prerogatives deriving from the pecuniary rights and any financial benefits therefrom shall accrue jointly to the co-authors.

Any of the co-authors may require that the work be published. Any co-author who does not agree that it should be published may only require that his name be excluded, while retaining his pecuniary rights.

#### Section II

##### *Special rules*

*Article 24.* — In the case of the works indicated hereunder the following rules shall be applicable:

- (a) in the case of anthologies, chrestomathies and other similar compilations the owner of copyright in the compilation shall be the arranger, who shall be obliged to obtain the consent of the owners of copyright in the works used and to pay the remuneration agreed upon, except where it is expressly agreed that the said authorization is granted free of charge;
- (b) the owner of copyright in encyclopaedias, dictionaries and other similar compilations made pursuant to a commission of the arranger shall be the said arranger, in respect of both the compilation as a whole and also the individual contributions;
- (c) with respect to newspapers, magazines and other periodical publications:
  - (1) The publishing firm concerned acquires the right to publish in the newspaper, magazine or periodical to which the author or authors contribute their services the articles, sketches, photographs or other productions presented by the staff operating under a work contract, and the authors concerned retain the other rights protected under this law.

In the event of publication of these productions in newspapers, magazines or periodicals other than those to which the authors contribute their ser-

vices, but which belong to the same publishing firm, the authors thereof shall be entitled to receive a fee additional to that provided for in the Journalists Tariff of Chile. If such publication is made by a publishing firm other than the employer, that firm must pay to the author or authors the fee provided for in the above-mentioned tariff.

Entitlement to the remuneration provided for in the preceding paragraph shall lapse at the end of one year from the date of publication of the productions concerned; it shall nevertheless be suspended for the benefit of the author or authors in respect of the periodicals firm which is the employer, throughout the duration of the work contract.

- (2) In the case of productions commissioned by a distributing body from persons not subject to a work contract, the said body shall hold the exclusive right to publish such productions in the first issue following their delivery, unless it has been specified that they are intended for a later issue. After expiration of the relevant time-limit, the author may freely dispose of them;
- (d) with respect to news and information agencies, the provisions of paragraph (c) above shall be applicable with respect to articles, sketches, photographs or other productions protected by this law, and
- (e) in the case of radio or television broadcasting stations, the information medium and the authors of the productions which it communicates to the public shall have the same rights as are provided for in paragraph (c) (1) and (2) according to the case.

*Article 25.* — The producer of a cinematographic work shall own the copyright therein.

*Article 26.* — The producer of a cinematographic work shall be the natural person or corporate body who takes the initiative and the responsibility for making it.

*Article 27.* — A natural person or persons who carry out the intellectual creation of a cinematographic work shall have the legal status of author thereof.

Failing proof to the contrary, the authors of the story, scenario, adaptation, dialogue and of music specially composed for the work, as well as the director, shall be deemed to be co-authors of a cinematographic work made in collaboration.

If the cinematographic work has been taken from a protected work or script, the authors of the earlier work shall also be deemed to be authors of the new work.

*Article 28.* — If one of the authors of a cinematographic work ceases to participate in its making, he shall not lose the rights accruing to him by virtue of his contribution, but he may not prevent the use of that contribution in the completion of the work.

Each of the authors of a cinematographic work may freely work, in a different medium, that part thereof which constitutes his personal contribution.

*Article 29.* — The contract between the authors of a cinematographic work and the producer shall imply the assignment to the latter of all rights therein, including the right to show the work in public, present it on television, reproduce copies of the work, hire or transfer it, without prejudice to the rights to which the authors of the works used therein and the other collaborators are entitled in pursuance of this law.

In contracts for the hire of foreign cinematographic films, the rental agreed upon shall always be deemed to include the amount of all the royalties and related fees deriving from the cinematographic work concerned; such royalties and related fees shall be the exclusive responsibility of the distributor.

*Article 30.* — The cinematographic producer shall be required to record on the film, so as to be clearly visible upon projection, his own name or business style together with the names of the director, of the authors of the scenario, the original work, the adaptation, the dialogue, the music and the lyrics of songs, and likewise the names of the principal performers.

*Article 31.* — The authors of the story, the music, the lyrics of songs, the dubbing and of any work which may have been the subject of cinematographic adaptation shall retain the right to use their respective contributions separately, provided that they have not agreed to the exclusive use thereof for the cinematographic production in question.

*Article 32.* — The producer shall have the right to alter works used in the cinematographic production, to the extent necessary for their adaptation to this artistic medium.

*Article 33.* — If the producer has not completed the cinematographic work within two years following receipt of the story and submission of the literary or musical works whose use was intended, the owners thereof shall be entitled to terminate the contract. In such case, the author shall officially notify the producer to that effect and shall be free to dispose of his contributions to the work; this shall not, however, imply any renunciation by him of the right to claim redress for any damage and injury suffered by him because of the delay.

Before the expiration of the period mentioned in the preceding paragraph, the producer may apply to the court at the author's place of domicile for a prolongation, which shall be granted if he can prove that the delay was due to circumstances beyond his control, a contingency or difficulties arising out of the nature of the work.

*Article 34.* — The photographer shall have the exclusive right to reproduce, exhibit, publish and sell his photographs, with the exception of those made in pursuance of a contract, in which case the said right shall belong to the person who ordered the work, without prejudice to the provisions of Article 24(c)(1).

Assignment of the negative or any similar medium for reproduction of the photograph shall imply assignment of the exclusive right recognized in the present Article.

*Article 35.* — In order to benefit from the afore-mentioned protection, copies of the photograph must bear the following indications:

- (1) name of the photographer or of the person who ordered the work;
- (2) year of reproduction of the photograph;
- (3) name of the author of the work of art photographed, where such is the case, and
- (4) the notice "Reproduction prohibited".

If the copy of the photograph does not bear these indications, it may be freely reproduced.

*Article 36.* — Any Chilean author of a painting, sculpture, drawing or sketch shall, as from the entry into force of this law, have the inalienable right to receive 5 percent of the increase in true value obtained by any person who had acquired the work concerned, upon sale of the work by public auction or through an established trader.

This right shall be exercised on the occasion of any future sale of the work, and shall belong to the author exclusively and not to his heirs, legatees or assigns.

The author must show proof of the original price of the work and of the prices paid on the occasion of subsequent sales.

*Article 37.* — Acquisition, on whatever basis, of a painting, sculpture, drawing or other work of the plastic arts shall not entitle the person thus acquiring the work to reproduce, exhibit or publish it for any profit-making purpose.

The author shall retain the right of reproduction of the work, but may not transfer such reproductions or use them for commercial purposes, except with the consent of the owner of the original. He may likewise allow reproductions of an original work that has been transferred to be published or exhibited for non-commercial purposes, provided it is expressly stated that the reproductions concerned are copies of the original work.

### Section III

#### *Exceptions from the foregoing rules*

*Article 38.* — It shall be lawful, without remuneration to the author or obtaining his consent, to reproduce in works of a cultural, scientific or educational character extracts from protected works of another author, provided that the source, title and author are mentioned.

*Article 39.* — It shall be lawful freely to reproduce photographs in anthologies intended for educational use and in scientific or educational works; provided that the photographer's name and the date of the photograph must be indicated, if they appear on the photograph reproduced.

*Article 40.* — Lectures and speeches may be published for information purposes; they may not, however, be published in a separate, complete or partial collection without the author's permission.

*Article 41.* — Lecture courses given in universities, colleges or schools may be annotated or summarized in any form

by the persons to whom they are addressed; they may not, however, be published either wholly or in part without the written authorization of their authors.

*Article 42.* — In commercial establishments in which musical instruments, radio and television sets, phonographs and other similar apparatus for the reproduction of sound or images, or discs or magnetic bands or tapes are displayed and sold, phonograms or scores may be used freely and without payment of any remuneration for the sole purpose of giving demonstrations to clients, provided that such demonstrations are given on the premises or in the particular section of the establishment which is used for this purpose, and in circumstances that preclude any dissemination outside.

*Article 43.* — The reproduction of works of architecture by means of photography, cinema, television or any other similar process, and likewise the publication of the relevant photographs in newspapers, periodicals and school-books shall be free and not subject to payment of royalties.

*Article 44.* — All monuments and, in general, artistic works ornamenting squares, avenues and public places may be freely reproduced by means of photography, drawing or any other process; the publication and sale of such reproductions shall be lawful.

*Article 45.* — The rules laid down in Articles 30 and 35 shall not be applicable to advertising or publicity films and photographs.

### Section IV

#### *Exceptions from the author's right*

*Article 46.* — The author of an architectural work may not prevent the owner from making alterations thereto; he may, however, refuse to allow his name to be mentioned as author of the plan.

*Article 47.* — For the purposes of this law, the use of a work, including a phonogram, in a private home or in an educational, charitable or other similar institution shall not be deemed to constitute communication of the work to the public or public performance thereof, provided such use is not intended for any profit-making purpose. In such cases it shall not be necessary to pay any remuneration to the author or to obtain his authorization.

### CHAPTER VI

#### *Publishing contracts*

*Article 48.* — Under a publishing contract, the owner of copyright furnishes or promises to furnish a work to the publisher and the latter undertakes to publish it at his expense and for his own profit, by printing and distributing it, and to pay a remuneration to the author.

The publishing contract shall be set down in a written deed executed and authenticated by a notary or in a private document signed in the presence of a notary; it must specify:

- (a) the name of the author and of the publisher;
- (b) the title of the work;

- (c) the number of editions agreed upon, and the number of copies in each edition;
- (d) a statement as to whether or not the publisher has any exclusive right;
- (e) the remuneration agreed upon with the author, which may not be less than that provided for in Article 50, and the mode of payment thereof, and
- (f) any other stipulations agreed upon between the parties.

*Article 49.* — The publishing contract shall not confer on the publisher any rights other than that of printing, publishing and selling copies of the work under the conditions agreed upon. The author shall retain the exclusive rights of translation, public performance, cinematographic, phonographic or television adaptation and all other rights to use the work.

Where a publisher is granted the right to publish a number of separate works, such right shall not entitle him to publish them together in one single volume, and *vice versa*.

*Article 50.* — Where the remuneration agreed upon consists of a share in the proceeds of sale, such share may not be less than 10 percent of the sale price to the public of each copy.

In such case, the publisher must report to the owner of the copyright at least once a year, by means of a complete account in documentary form stating the number of copies printed, the number sold, the balance remaining in warehouses, book-shops, on deposit or consignment, the number of copies destroyed accidentally or by *force majeure*, and the amount of the share paid or due to the author.

If the publisher fails to report in the manner described above, the entire edition shall be presumed to have been sold and the author shall be entitled to require payment of the percentage corresponding to the entire edition.

*Article 51.* — The author shall have the right to terminate a publishing contract in any of the following cases:

- (a) where the publisher does not comply with the obligation to publish and disclose the work within the period specified or, if no such period has been stipulated, within one year from the date on which the original was furnished to him, or
- (b) if the publisher, having been authorized to publish more than one edition and having exhausted the copies available for sale, fails to publish a new edition within one year following a legal notification made at the author's request.

In any case where the contract is terminated on the grounds of non-compliance on the publisher's part, the author may retain any advances that he may have received from the publisher, without prejudice to the right to bring any appropriate proceedings against him.

The publisher, for his part, may request termination of the contract if the author fails to furnish the work within the period agreed upon or, if no such period has been stipulated, within one year following the date of the agreement, without prejudice to the right to plead against him in any legal action concerning the matter.

Subject to the provisions of subparagraph (b), where a work has been published in two or more editions and those editions have been exhausted, the author of the work may require the publisher to bring out a new edition comprising the same number of copies as the last edition published, within one year following the date on which such request is made.

If the publisher refuses to issue a new edition, the author may refer the matter to the Department of Intellectual Rights, established under Article 90, which, after having heard the publisher, may, if it considers that his refusal was unjustified, order him to make the printing requested and offer the edition for public sale; if the publisher fails to comply with the order, the Department may arrange for the printing to be carried out by a third party, at the publisher's expense.

*Article 52.* — The author may cancel the contract if, within five years following the date on which the edition was first offered for sale, the public has not purchased more than 20 percent of the copies. In such case, the author must purchase all the copies remaining unsold from the publisher, at cost price.

*Article 53.* — If a work by an unknown author is published and he subsequently identifies himself, the publisher shall be obliged to pay him 10 percent of the selling price to the public of copies already sold, and shall retain the right to sell the remaining copies, subject to payment of the aforementioned percentage or any other agreed to with the author.

The author shall have a priority right to purchase copies in the publisher's possession, subject to deduction of the discount granted by the publisher to distributors and consignees.

If the publisher has acted in bad faith, the author shall in addition be entitled to appropriate indemnity.

*Article 54.* — The publisher shall be entitled to require, through legal channels, the withdrawal from circulation of any unauthorized editions that may appear during the period of validity of the contract, and even after its expiration, so long as copies of the edition have not been exhausted.

The author shall be entitled to the full price in respect of any additional copies published or reproduced in breach of the contract.

Under the Regulations, measures shall be established in order to prevent the printing and sale of a larger number of copies than that agreed upon between the author and the publisher.

*Article 55.* — Any person who publishes a work protected within the national territory shall be required to include on all the copies, in a clearly visible place, the following indications:

- (a) title of the work;
- (b) name or pseudonym of the author or authors, and of the translator or coordinator, unless they have decided to remain anonymous;
- (c) copyright notice, indicating the name or pseudonym of the owner of copyright and the number of the inscription in the Register;

- (d) year and place of publication, and of any earlier publications;
- (e) name and address of the publisher and the printer;
- (f) number of copies belonging to the edition.

Failure to indicate the above particulars shall not invalidate the rights deriving from this law, but shall nevertheless be punishable by a fine in accordance with Article 81 of this law, with the requirement that the omission must be made good.

## CHAPTER VII

### Stage performance contracts

*Article 56.* — A stage performance contract is an agreement under which the author of a work of any kind grants to an impresario the right to perform the work in public, in exchange for the remuneration agreed upon between the two parties. Such remuneration may not be less than the percentages indicated in Article 61.

The stage performance contract shall be set down in a written deed executed and authenticated by a notary or in a private document signed in the presence of a notary.

*Article 57.* — The impresario shall be obliged to cause the work to be performed in public within six months following the date of signature of the contract.

If upon the expiration of the legal or agreed term the work has not had a first performance, the author may terminate the contract without being required to reimburse any advance payment that he may have received.

*Article 58.* — In the absence of any contractual stipulation, the impresario acquires an exclusive license to perform the work only for six months following the first performance, and a non-exclusive license for a further period of six months.

*Article 59.* — The impresario may terminate the contract, forfeiting any advance payment made to the author, if performances of the work are discontinued during the first seven performances by reason of any cause or circumstance beyond his control, except in case of contingency or *force majeure*.

If performances of the work are discontinued for any cause attributable to the impresario, the author may terminate the contract and request compensation for damages, retaining any advance payment that he may have received.

*Article 60.* — The impresario shall be obliged:

- (1) to perform the work in the conditions stipulated in the contract, without introducing any additions, cuts or modifications to which the author has not consented, and to announce the work to the public with its title, author's name and, where applicable, name of the translator or adapter;
- (2) to allow the author to watch the performance of the work, and
- (3) to retain the principal performers or the conductors of the orchestra and choir, if they were selected in agreement with the author.

*Article 61.* — Where the remuneration of the author or authors has not been determined by contract at a higher per-

centage rate, they shall jointly be entitled to 10 percent of the total value of admissions for each performance, and to 15 percent of total admissions for the first performance, after deduction of any taxes charged on admissions.

*Article 62.* — If in addition the performance was broadcast or televised, the author shall be entitled to receive, as a minimum, 5 percent of the amount received by the broadcasting organization for the advertizing made during the program or, if there was no advertizing, 10 percent of the amount received by the impresario from the broadcasting organization for broadcasting the performance. This remuneration shall be payable without prejudice to any other remuneration payable by anyone in pursuance of Article 61.

*Article 63.* — The author's share of box-office receipts shall be deemed to be a deposit held by the impresario at the author's disposal, and shall not be affected by any attachment of the impresario's assets.

If, when so requested by the author, the impresario fails to hand over the share which he holds on deposit, the competent judicial authority may, at the request of the party concerned, order a suspension of performances of the work or seizure of the proceeds from admissions, without prejudice to the author's right to terminate the contract and initiate appropriate proceedings.

*Article 64.* — The foregoing provisions shall, where applicable, govern the performance of musical works and the recitation or reading of literary works in public.

## TITLE II

### Rights related to copyright

#### CHAPTER I

##### Performers

*Article 65.* — Rights related to copyright shall be those afforded by this law to performers allowing them to permit or prohibit the communication of their performances to the public, and to receive remuneration in respect of public use of such performances, without prejudice to any rights to which the author of the work is entitled.

None of the provisions of this law regarding related rights may be interpreted as prejudicing the protection which it affords to copyright.

*Article 66.* — It shall be prohibited to record, reproduce, broadcast or re-broadcast by any radio or television broadcasting organization, or to use by any other means for profit-making purposes, any performance of a performer, without his consent or the consent of his heir or assign.

#### CHAPTER II

##### Phonograms

*Article 67.* — Any person who uses, for profit-making purposes, a phonogram or a reproduction thereof, in order to broadcast it by radio or television or by any other means of communication to the public, shall be required to pay a remuneration to the performers; the amount of the remuneration

and the method of collection shall be established in the Regulations.

In determining the related rights, the Regulations shall accord preferential treatment to national artistic activities, by establishing different amounts depending on whether or not the performers are Chilean nationals, and whether the fixation was made in Chile or abroad.

The sums collected in respect of related rights, in accordance with the provisions of the Regulations, shall be subject to a surcharge not exceeding 100 percent, as determined by the President of the Republic; the proceeds of the said surcharge shall be used for the objectives stipulated in Article 104. The remuneration paid in respect of related rights for the use, for profit-making purposes, of a phonogram or a reproduction thereof which has been produced abroad shall be used for the same objectives.

*Article 68.* — Producers of phonograms shall enjoy the right to authorize or prohibit the reproduction of their phonograms. The term of this protection shall be thirty years from the thirty-first of December of the year in which the fixation of the phonogram concerned was made.

In addition to indicating the title of the recorded work and the name of its author, producers of phonograms must indicate on the label of the phonogram the name of the performer, the identification mark and the year of publication. Where it is materially impossible to include all these particulars directly on the reproduction, they must be indicated on the cover, sleeve, case or card which customarily accompanies it.

#### CHAPTER III

##### Broadcasting organizations

*Article 69.* — Radio or television broadcasting organizations shall enjoy the right to authorize or prohibit the fixation of their broadcasts and the reproduction thereof.

An organization holding this right shall be entitled to receive a fee, in an amount to be determined by the Regulations, in respect of the rebroadcasting of any of its broadcasts or the communication to the public of such broadcasts in places accessible to the public.

Radio or television broadcasting organizations may make ephemeral fixations of performances, for the sole purpose of using them in their broadcasts, for an agreed number of times; they shall be obliged to destroy the fixations immediately after the last authorized broadcast.

#### CHAPTER IV

##### Term of protection of related rights

*Article 70.* — The term of the protection granted under this Title shall be thirty years from the thirty-first of December of the year in which the fixation was made, with respect to the performances recorded thereon; in which the broadcast was made, in the case of programs of broadcasting organizations; and in which the performance took place, in the case of performances.

*Article 71.* — Persons holding related rights may alienate them wholly or in part, on any basis. Such rights shall be transmissible in case of death.

### TITLE III

#### General provisions

##### CHAPTER I

##### Register

*Article 72.* — The author's rights and the related rights established by this law must be inscribed in the Register of Intellectual Property.

The duties and functions of the Registrar and the form of and the procedure for inscription shall be determined by the Regulations.

*Article 73.* — Any transfer in whole or in part of copyright or related rights, on whatever basis, must be inscribed in the Register within sixty days following the date of conclusion of the relevant deed or contract. The transfer must be effected by a written deed or by a private document signed in the presence of a notary.

Within the same period, termination of the contract by which the transfer was operated must likewise be registered.

*Article 74.* — The publisher shall enjoy the rights afforded by this law only provided that the respective contract is inscribed in the Register established under Article 72; failure to comply with this formality shall not, however, deprive the author of the rights accruing to him under this law or under the contract.

*Article 75.* — At the time of inscription of a work in the Register of Intellectual Property, a complete copy in manuscript, printed or reproduced form shall be deposited. In the case of works other than literary works, the following provisions shall be applicable:

- (a) for works of painting, drawing, sculpture, engineering and architecture, it shall be sufficient to deposit such sketches, photographs or plans of the original as will permit identification, together with the relevant explanations;
- (b) for cinematographic works, it shall be sufficient to deposit a copy of the story, scenario and subtitles of the work;
- (c) for photographic works, it shall be sufficient to deposit a copy of the photograph;
- (d) for phonograms, it shall be sufficient to deposit a copy of the record or of the magnetic tape or band on which the phonogram is fixed;
- (e) for performances, it shall be sufficient to deposit a copy of the fixation. Presentation of this copy shall not be required where the performance concerned is incorporated in a phonogram or broadcast registered in accordance with paragraphs (d) or (f) of this Article;
- (f) for broadcasts, a copy of the radio or television program shall be deposited. Presentation of this copy shall not be required where it has been sent to the Information and Broadcasting Office of the Presidency of the Republic in compliance with the legal provisions in force, and
- (g) for musical works, a written score shall be required; provided that in the case of orchestral works, a tran-

scription for piano shall be sufficient. Vocal works shall be accompanied by the text.

*Article 76.* — Inscription in the Register of Intellectual Property shall be subject to payment of the following fees, calculated as percentages of a monthly minimum wage, category A, for the department of Santiago:

- (1) engineering and architectural plans, 15 percent;
- (2) cinematographic works, 20 percent, and
- (3) any other inscription as provided for in this law, 0.5 percent.

All such fees shall be deposited in a special account opened in the name of the Ministry of Public Education in the State Bank of Chile, under the responsibility and safe-keeping of an official designated by that Ministry, and shall be allocated for use in cultural activities.

*Article 77.* — For the purposes of the fees payable for inscription in the Register of Intellectual Property, the following shall be deemed to constitute one single work:

- (a) theatrical works, even if comprising more than one act, and
- (b) any phonographic record or recorded magnetic band or tape, even if comprising more than one performance.

## CHAPTER II

### Infringements and penalties

*Article 78.* — Any breach or infringement of the provisions of this law and its regulations shall be punished in conformity with the rules set forth in this Title.

*Article 79.* — Infringements of copyright or of related rights shall be punishable by fines equivalent to two to ten times the annual minimum wage, category A, for the department of Santiago.

Notwithstanding this penalty, if the statement referred to in Article 50 contains a false declaration regarding the number of copies effectively sold, the manager or legal representative of the publishing firm shall be held responsible for an offence punishable under Article 467 of the Penal Code.

*Article 80.* — Any owners of copyright or related rights who, without having registered the work in the manner prescribed by this law, offer for distribution or for sale copies in which they claim such ownership, or in any other manner mislead third parties with respect to the work, shall be liable to pay a fine equivalent to the annual minimum wage, category A, for the department. Anyone who fails clearly to indicate the sources in the cases provided for by the law shall be liable to the same penalty.

*Article 81.* — Anyone who knowingly publishes or exhibits a work belonging to the common cultural heritage under a name other than that of the true author shall be liable to pay a fine equivalent to two to four times the annual minimum wage, category A, for the department of Santiago.

The plaintiff may, in addition, request that the sale, circulation or display of the copies be prohibited.

*Article 82.* — When granting compensation to the plaintiff in respect of injury caused by the offence, the Court may order, in response to a request by the injured party:

- (1) the delivery, sale or destruction:
  - (a) of the copies of the work made or placed in circulation in infringement of copyright;
  - (b) of the equipment used exclusively for the unlawful production of copies of the work;
- (2) the seizure of the proceeds from recitation, reproduction or performance. During the trial, the Court may order, in response to a request, the immediate suspension of sale, circulation, exhibition or performance.

*Article 83.* — In response to a request by the injured party, the Court may order publication of the verdict, with or without the reasons therefor, in a newspaper designated by it and at the infringer's expense.

*Article 84.* — Popular action shall exist for denunciation of the offences punishable under this law. The denouncer shall be entitled to receive one half of the relevant fine.

*Article 85.* — In cases of infringements of copyright or related rights, the relevant Civil Judge (*Juez de Mayor Cuantía en lo Civil*) shall apply the abridged and summary procedure.

## CHAPTER III

### General provisions

*Article 86.* — The patrimonial rights which this law affords to the owners of copyright and related rights shall be inalienable, in particular the percentages referred to in Articles 50, 61, 62 and 67.

*Article 87.* — The fines imposed by this law shall be added to the amounts received in accordance with the provisions of Article 86 and shall be used for the purposes established thereunder.

*Article 88.* — The State, municipal authorities, official corporations, semi-fiscal or autonomous institutions and other State corporate bodies shall hold the copyright in works produced by their employees as part of their duties.

*Article 89.* — The rights afforded by this law to the holders of copyright and related rights shall not affect the protection to which they are entitled under the Law on Industrial Property or other existing legal provisions which have not been expressly revoked.

## TITLE IV

### Department of Intellectual Rights

*Article 90.* — There is hereby created a Department of Intellectual Rights which shall be responsible for the Register of Intellectual Property and for all other functions entrusted to it under the Regulations. The Department shall be under the responsibility of the Directorate of Libraries, Archives and Museums and shall have the following staff:

*Executive, professional and technical staff*

- 1 Registrar of Intellectual Rights, Lawyer, Category 3
- 1 Head of Section, Lawyer, Category 5

*Administrative staff*

- 1 Officer, Category 5
- 1 Officer, Category 6
- 1 Officer, Category 7
- 2 Officers, Grade 1

*Auxiliary staff*

- 1 Chief Clerk, Grade 6
- 1 Clerk, Grade 8

The relevant staff costs for this year shall be met out of the Current Expenditures Budget of the Secretariat and General Administration of the Ministry of Public Education.

TITLE V  
Small rights

*Article 91.* — Administration of small rights, or performing rights as referred to in Article 21, shall be entrusted to the Small Rights Department (*Departamento del Pequeño Derecho de Autor*) of the University of Chile, in the form and with the responsibilities and prerogatives specified in this law.

*Article 92.* — The Department shall be under the direction of a Standing Committee, composed of two representatives of the University of Chile, one of whom shall be Executive Director of the Department and Chairman of the Committee, and three representatives designated by Chilean authors and composers.

The Governing Body of the University shall issue Regulations specifying the procedure for appointment and re-appointment of members of the Committee, their term of office, the rules of procedure of the Committee, and the remuneration to which members of the Committee shall be entitled.

*Article 93.* — The Standing Committee on small rights shall have the following terms of reference:

- (a) to establish and amend the small rights tariff, subject to approval by the Governing Body of the University;
- (b) to establish and amend general rules relating to the procedures for verifying, charging, collection and distribution of small rights royalties;
- (c) to collect and distribute, through the Department, all royalties due to Chilean and foreign authors in respect of public performance, in accordance with the provisions of this law;
- (d) to collect and distribute, through the Department, all other remuneration due to the holders of related rights in respect of public performance, in accordance with the relevant Regulations, and
- (e) to ensure the correct and appropriate application of the rules referred to in paragraphs (a), (b) and (c), and order compliance with them, where necessary.

*Article 94.* — The Small Rights Department may, if it deems necessary, have recourse to the services of the National Directorate of Inland Revenue and the General Treasury of the Republic with a view to the determination and collection of small rights royalties; for such purpose it may delegate the relevant responsibilities in accordance with the procedures established for those Services. In such cases, the General Treasury of the Republic shall open a special account for income from such royalties and the Department shall transfer the income into that account within thirty days following collection.

*Article 95.* — Failure to pay the royalties mentioned in Article 21, and likewise failure to comply with the rules referred to in Articles 93(a) and (b) shall be punishable by a fine equivalent to 2½ to 10 times the annual minimum wage, category A, for the department of Santiago. Any repetition shall be punishable, if the Department so requests, by temporary or definitive suspension of the municipal permit granted for the functioning of the premises concerned. This same rule shall be applicable in connection with the remuneration provided for in Article 67.

The proceeds from fines imposed by application of these penalties shall be paid into the University Arts Fund referred to in Article 97.

*Article 96.* — Legal actions arising from the implementation of the rules set forth in this Title shall be brought in accordance with the rules established in Volume III, Title XI of the Code of Civil Procedure.

The sole instance competent to hear such actions shall be the Civil Judge (*Juez de Letras en lo Civil*) of the place of domicile of the plaintiff, in accordance with the amount involved.

The penalty established for any repetition of an offence as referred to in Article 95 shall be applied by the competent court, on the request of the Department, which shall provide evidence of such repetition by means of a certified copy of the earlier verdict.

*Article 97.* — The Small Rights Department shall transfer to the University of Chile the funds deriving from works belonging to the common cultural heritage, works by unidentified authors, works not inscribed in the Register of Intellectual Property and likewise any royalties not collected within one year following payment thereof.

With these resources and any others available to it, the University shall establish a University Arts Fund to be used for the adoption of measures conducive to the protection, encouragement and promotion of the work of Chilean authors, in the fields of artistic creation and research.

TITLE VI

The Chilean Cultural Corporation

*Article 98.* — The Chilean Cultural Corporation (*Corporación Cultural Chilena*) is hereby established as an autonomous corporation under public law, in order to coordinate and encourage activities in the field of artistic creation and

the dissemination of culture throughout the country, particularly in the more remote communities or localities.

*Article 99.* — In the attainment of its objectives, the Chilean Cultural Corporation shall carry out the following activities:

- (a) it shall act through existing human and material organizations and facilities and shall coordinate their action, formulating joint programs;
- (b) it shall promote the creation, publication and reproduction of works by Chilean authors;
- (c) it shall encourage the professional abilities of Chilean artists, in particular through fellowship grants and exchange programs, particularly in the Latin American ambit;
- (d) it shall encourage lectures, exhibitions and concerts, in particular by using mass communication media;
- (e) throughout the country, it shall give assistance to the establishment of professional or amateur groups for the various forms of artistic expression, and shall give them all appropriate advice;
- (f) it shall disseminate knowledge of the most valuable expressions of universal art, and
- (g) it shall collaborate with the appropriate authorities in the formulation of cultural policy activities or programs, and shall contribute to their implementation through practical measures.

*Article 100.* — The Chilean Cultural Corporation shall be directed by a Council of 26 members whose term of office, with the exception of that of the Chairman, shall be two years; they shall be eligible for re-election by the Corporations which appointed them.

In addition, there shall be an Executive Committee composed of the Chairman of the Council, two members of the Council designated by that body, and the Executive Secretary of the Corporation.

The Executive Committee shall be responsible for carrying out the activities stipulated in Article 99 and such other functions as may be assigned to it by the Council.

*Article 101.* — The membership of the Council shall be as follows:

- (1) the Director of Libraries, Archives and Museums, who shall hold the office of Chairman;
- (2) two representatives designated by the President of the Republic;
- (3) one representative of the Council of Rectors;
- (4) one representative of the Municipal Cultural Institutes, designated by the Confederation of Municipalities;
- (5) one representative of the Central Office of Workers (CUT);
- (6) one representative of the Language Academy;
- (7) one representative of the National Society of Arts;
- (8) one representative of the Painters' and Sculptors' Association;
- (9) one representative of the Chilean Writers' Society;
- (10) one representative of the National Association of Musical Composers;

- (11) one representative of the Corporation of Authors and Musical Composers;
- (12) one representative of the Orchestra Musicians Professional Union;
- (13) one representative of the Lyric Arts Corporation;
- (14) one representative of the Theater Actors' Trade Union;
- (15) one representative of the Chilean Playwrights' Society;
- (16) one representative of ballet activities;
- (17) the Director (*Conservador*) of the National Museum of the Arts;
- (18) one journalist specialized in artistic activities, designated by the Journalists' Association;
- (19) one representative of the Academy of History;
- (20) one representative of the National Commission for Scientific and Technological Research;
- (21) one representative of the Chilean Professional Union of Folklore Artists and Guitarists;
- (22) one representative of the Chilean Professional Union of Radio and Television Actors;
- (23) one representative of the National Professional Union of Variety Artists;
- (24) one representative of the Chilean Association of Broadcasting Organizations; and
- (25) one representative of the Chilean Book Chamber.

*Article 102.* — An Executive Secretary of the Corporation shall be appointed by the President of the Republic from a list of three candidates proposed by the Council; his functions shall be:

- (a) to prepare meetings of the Council, which shall meet in regular session once each month and in special session whenever a majority of members so decide or when convened by the Chairman, and to carry out the decisions of that body;
- (b) to maintain relations between the Chilean Cultural Corporation and the organizations represented in the Council, and likewise to maintain liaison with persons in foreign organizations, and
- (c) to present to the Council for consideration and decision an outline of priorities in an annual program of work, in accordance with the directives established by the Executive Committee and with requests made by the various organizations.

*Article 103.* — The Council shall encourage the establishment of committees or working groups, both in the capital and in the provinces, by area or subject-matter, for the various cultural specialities.

*Article 104.* — The Chilean Cultural Corporation shall have its own budget for carrying out its activities, financed out of the following resources:

1. the proceeds of the related rights royalties charged in respect of the public performance of phonograms, in accordance with the provisions of Article 67, third paragraph;
2. 5 percent of the amounts paid to foreign artists in respect of their activities in Chile; the impresario con-

cerned shall be jointly liable for making this payment, and

3. donations, grants and gifts made by natural persons or corporate bodies, whether Chilean or foreign.

*Article 105.* — The Chilean Cultural Corporation shall be governed by Regulations to be issued by the President of the Republic, on the basis of a proposal by the Council of the Corporation.

TITLE VII

Final provisions and transitional clauses

*Article 106.* — The Decree-Law on Intellectual Property, No. 345 of March 17, 1925, and Law No. 9,549 of January 21, 1950, are hereby revoked.

*Article 107.* — Regulations for the implementation of this law shall be issued by the President of the Republic within 180 days.

*Article 108.* — The present law shall enter into force 180 days after its publication in the Official Gazette.

*Article 109.* — In order to be eligible for the protection afforded by this law, the holders of related rights whose performances or recordings were published in the national territory prior to the enactment of this law must inscribe such performances or recordings in the Register of Intellectual Property within 180 days following its publication. For the inscription referred to in this Article, presentation of a sworn statement shall be sufficient, without prejudice to proof of the contrary.

*Article 110.* — The Small Rights Department shall bring together in one single text all the provisions regarding the fixing and collection of small rights royalties, as set forth in Law No. 5,563 of January 10, 1935, Decree No. 35/6,331 of November 19, 1942, and University Decree No. 1,070 of May 16, 1951, and amendments thereto. During the preparation of the said text, the Standing Committee on small rights shall have all the prerogatives, functions and responsibilities formerly held by the Small Rights Department of the University of Chile.

*Article 111.* — Within 90 days following the establishment of the Chilean Cultural Corporation in pursuance of Title VI of this law, the Executive Committee of the said Corporation shall submit to the Council for consideration draft internal rules concerning its activities, which shall be drawn up, to the fullest extent possible, in consultation with the Corporations represented in the Council.

*Article 112.* — The persons mentioned in Article 1 of Law No. 15,478 who, on October 27, 1966, had reached 65 years of age and who can show evidence of having been engaged in any of the activities indicated therein for not less than 30 years shall be allowed a further period of 180 days for claiming the benefits afforded under transitional Article 1 of Law No. 16,571.

The Private Employees' Provident Fund shall publish the necessary press notices in order to ensure wide circulation of the provision set forth in the preceding paragraph.

UNITED STATES OF AMERICA

Public Law 92-140 (92<sup>nd</sup> Congress, S. 646)

(Of October 15, 1971)

An Act to amend title 17 of the United States Code to provide for the creation of a limited copyright in sound recordings for the purpose of protecting against unauthorized duplication and piracy of sound recording and for other purposes

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That title 17 of the United States Code is amended in the following respects:

(a) In section 1, title 17, of the United States Code, add a subsection (f) to read:

“To reproduce and distribute to the public by sale or other transfer of ownership, or by rental, lease, or lending, reproductions of the copyrighted work if it be a sound recording: *Provided,* That the exclusive right of the owner of a copyright in a sound recording to reproduce it is limited to the right to duplicate the sound recording in a tangible form

that directly or indirectly recaptures the actual sounds fixed in the recording: *Provided further,* That this right does not extend to the making or duplication of another sound recording that is an independent fixation of other sounds, even though such sounds imitate or simulate those in the copyrighted sound recording; or to reproductions made by transmitting organizations exclusively for their own use.”

(b) In section 5, title 17, of the United States Code, add a subsection (n) to read:

“Sound recordings.”

(c) In section 19, title 17, of the United States Code, add the following at the end of the section: “In the case of repro-

ductions of works specified in subsection (n) of section 5 of this title, the notice shall consist of the symbol © (the letter P in a circle), the year of first publication of the sound recording, and the name of the owner of copyright in the sound recording, or an abbreviation by which the name can be recognized, or a generally known alternative designation of the owner: *Provided*, That if the producer of the sound recording is named on the labels or containers of the reproduction, and if no other name appears in conjunction with the notice, his name shall be considered a part of the notice.”

(d) In section 20, title 17, of the United States Code, amend the first sentence to read: “The notice of copyright shall be applied, in the case of a book or other printed publication, upon its title page or the page immediately following, or if a periodical either upon the title page or upon the first page of text of each separate number or under the title heading, or if a musical work either upon its title page or the first page of music, or if a sound recording on the surface of reproduction thereof or on the label or container in such manner and location as to give reasonable notice of the claim of copyright.”

(e) In section 26, title 17, of the United States Code, add the following at the end of the section: “For the purposes of this section and sections 10, 11, 13, 14, 21, 101, 106, 109, 209, 215, but not for any other purpose, a reproduction of a work described in subsection 5(n) shall be considered to be a copy thereof. ‘Sound recordings’ are works that result from the fixation of a series of musical, spoken, or other sounds, but not including the sounds accompanying a motion picture. ‘Reproductions of sound recordings’ are material objects in which sounds other than those accompanying a motion picture are fixed by any method now known or later developed, and from which the sounds can be perceived, reproduced, or otherwise communicated, either directly or with the aid of a machine or device, and include the ‘parts of instruments serving to reproduce mechanically the musical work’, ‘mechanical reproductions’, and ‘interchangeable parts, such as discs or tapes for use in mechanical music-producing machines’ referred to in sections 1(e) and 101(e) of this title.”

*Sec. 2.* That title 17 of the United States Code is further amended in the following respect:

In section 101, title 17 of the United States Code, delete subsection (e) in its entirety and substitute the following:

“(e) *Interchangeable Parts for Use in Mechanical Music-Producing Machines.* — Interchangeable parts, such as discs or tapes for use in mechanical music-producing machines adapted to reproduce copyrighted musical works, shall be considered copies of the copyrighted musical works which they serve to reproduce mechanically for the purposes of this section 101 and sections 106 and 109 of this title, and the unauthorized manufacture, use, or sale of such interchangeable parts shall constitute an infringement of the copyrighted work rendering the infringer liable in accordance with all provisions of this title dealing with infringements of copyright and, in a case of willful infringement for profit, to criminal prosecution pursuant to section 104 of this title. Whenever any person, in the absence of a license agreement, intends to use a copyrighted musical composition upon the parts of instruments serving to reproduce mechanically the musical work, relying upon the compulsory license provision of this title, he shall serve notice of such intention, by registered mail, upon the copyright proprietor at his last address disclosed by the records of the copyright office, sending to the copyright office a duplicate of such notice.”

*Sec. 3.* This Act shall take effect four months after its enactment except that section 2 of this Act shall take effect immediately upon its enactment. The provisions of title 17, United States Code, as amended by section 1 of this Act, shall apply only to sound recordings fixed, published, and copyrighted on and after the effective date of this Act and before January 1, 1975, and nothing in title 17, United States Code, as amended by section 1 of this Act, shall be applied retroactively or be construed as affecting in any way any rights with respect to sound recordings fixed before the effective date of this Act.

Approved October 15, 1971.



*GENERAL STUDIES*

**Some Notes on Copyright in Latin America**

















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**Dr. Carlos MOUCHET**



May 2 to 8, 1972 (Geneva) — Committee of Experts on the International Registration of Marks

*Object:* Preparation of draft texts for the Vienna Diplomatic Conference in 1973 (see below) — *Invitations:* Member countries of the Paris Union; organizations concerned

May 29 to June 2, 1972 (\*) — International Patent Classification (IPC) — Bureau of the Joint ad hoc Committee

June 5 to 9, 1972 (\*) — International Patent Classification (IPC) — Joint ad hoc Committee

June 26 to July 7, 1972 (The Hague) — International Patent Classification (IPC) — Working Group I of the Joint ad hoc Committee

July 5 to 7, 1972 (Geneva) — ICIREPAT — Technical Coordination Committee

July 10 to 14, 1972 (The Hague) — International Patent Classification (IPC) — Working Group III of the Joint ad hoc Committee

September 4 to 8, 1972 (\*) — International Patent Classification (IPC) — Working Group II of the Joint ad hoc Committee

September 11 to 15, 1972 (London) — International Patent Classification (IPC) — Working Group V of the Joint ad hoc Committee

September 20 to 22, 1972 (Geneva) — ICIREPAT — Plenary Committee

September 25 to 29, 1972 (The Hague) — International Patent Classification (IPC) — Working Group IV of the Joint ad hoc Committee

September 25 to 30, 1972 (Geneva) — Coordination Committee of WIPO, Executive Committees of the Paris and Berne Unions, Assemblies of the Madrid and Locarno Unions

October 2 to 6, 1972 (Geneva) — Patent Cooperation Treaty (PCT) — Interim Committees and Standing Subcommittee of the Interim Committee for Technical Cooperation

*Members of the Interim Committees:* Signatory States of the PCT — *Observers:* Intergovernmental organizations and international non-governmental organizations concerned; *Members of the Standing Subcommittee:* Austria, Germany (Fed. Rep.), Japan, Soviet Union, Sweden, United Kingdom, United States of America, International Patent Institute — *Observer:* Brazil.

October 9 to 13, 1972 (Geneva) — ICIREPAT — Technical Committee for Standardization

October 16 to 20, 1972 (Geneva) — ICIREPAT — Technical Committee for Computerization

October 23 to 27, 1972 (Geneva) — ICIREPAT — Technical Committee for Shared Systems

October 23 to 27, 1972 (Geneva) — ICIREPAT — Advisory Board for Cooperative Systems

December 13 to 15, 1972 (Geneva) — ICIREPAT — Technical Coordination Committee

May 7 to June 2, 1973 (Vienna) — Diplomatic Conference on (a) the International Registration of Marks, (b) the International Classification of the Figurative Elements of Marks, (c) the Protection of Type Faces

\* Place to be notified later.

## UPOV Meetings

December 14 and 15, 1971 (Geneva) — Working Party on Fees

January 25 and 26, 1972 (Geneva) — Technical Working Party for Vegetables

May 23 and 24, 1972 (Cambridge) — Technical Working Party for Cross-fertilized Agricultural Crops

May 25 and 26, 1972 (Antibes) — Technical Working Party for Ornamental Plants

November 7 and 10, 1972 (Geneva) — Diplomatic Conference

*Object:* Amendment of the Convention

November 8 and 9, 1972 (Geneva) — Council

## Meetings of Other International Organizations concerned with Intellectual Property

December 13 to 16, 1971 (Brussels) — International Association for the Protection of Industrial Property — Council of Presidents

December 20 to 22, 1971 (The Hague) — International Patent Institute — Administrative Council

March 19 to 24, 1972 (Nice) — International Literary and Artistic Association — Congress

April 24 to 28, 1972 (\*) — International Association for the Protection of Industrial Property — Council of Presidents

April 25 to 27, 1972 (Helsinki) — International Writers Guild — Executive Council

May 21 to 25, 1972 (Geneva) — International League Against Unfair Competition — Congress

October 16 to 21 (Mexico) — International Confederation of Societies of Authors and Composers — Congress

November 12 to 18, 1972 (Mexico) — International Association for the Protection of Industrial Property — Congress

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

January 24 to February 4, 1972 — Intergovernmental Conference

February 22 to 25, 1972 — Working Party IV

June 19 to 30, 1972 — Intergovernmental Conference

\* Place to be notified later.

## VACANCY IN WIPO

Applications are invited for the following post:

*Competition No. 171\**

*Head of Copyright Division*

*Category and grade: P. 5*

*Principal duties:*

The incumbent will direct the Copyright Division of the International Bureau. In this capacity his duties will include:

- (a) formulation of proposals for the preparation and implementation of the WIPO copyright and neighboring rights program;
- (b) writing of legal studies;
- (c) acting as editor of "Copyright" and "Le Droit d'Auteur";
- (d) representing WIPO at meetings concerning copyright and neighboring rights and preparation of working papers for and reports on such meetings;
- (e) directing the work of maintaining up to date a collection of copyright and neighboring rights legislation.

*Qualifications:*

- (a) University degree in law or equivalent legal qualifications.
- (b) Wide experience in the field of copyright and neighboring rights, including its international aspects.
- (c) Excellent knowledge of one of the following working languages: English or French, and at least a good knowledge of the other. Additional linguistic abilities would be an advantage.

*Nationality:*

Candidates must be nationals of one of the member States of WIPO or of the Paris or Berne Unions. Qualifications being equal, preference will be given to candidates who are nationals of States of which no national is on the staff of WIPO.

*Date of entry on duty:*

As mutually agreed.

*Applications:*

*Application forms* and full information regarding the *conditions of employment* may be obtained from the Head of the Administrative Division, WIPO, 32, chemin des Colomnettes, 1211 Geneva 20, Switzerland. Please refer to the number of the Competition.

*Closing date:*

February 15, 1972.

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\* *Note:* This vacancy announcement cancels and supersedes Competition No. 137, of December 1970, for the same post.

