

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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Contents

	Page
WORLD INTELLECTUAL PROPERTY ORGANIZATION	
— Fiji. Accession to the WIPO Convention	239
INTERNATIONAL UNION	
— Fiji. Accession to the Stockholm Act of the Berne Convention (with the excep- tion of Articles 1 to 21 and of the Protocol Regarding Developing Countries)	239
CONVENTIONS ADMINISTERED BY WIPO	
— Diplomatic Conference on the Protection of Phonograms (Geneva, October 18 to 29, 1971)	
I. Convention for the Protection of Producers of Phonograms Against Unau- thorized Duplication of Their Phonograms	240
II. Report	242
III. List of Participants	249
IV. Bureau of the Conference	255
NATIONAL LEGISLATION	
— United Kingdom. The Copyright (International Conventions) (Amendment) Order 1971 (No. 1850, of November 12, 1971, coming into force on November 19, 1971)	256
BOOK REVIEWS	
— Teorija autorskog prava i autorsko pravo u SFRJ (Vojislav Spaić)	257
— Der Bühnenvertriebsvertrag als Beispiel eines urheberrechtlichen Wahrnehmungs- vertrages (Manfred Beilharz)	257
— Das Folgerecht im deutschen und ansländischen Urheberrecht (Paul Katzenberger)	257
CALENDAR	
— WIPO Meetings	258
— UPOV Meetings	259
— Meetings of Other International Organizations concerned with Intellectual Property	259
Vacancy in WIPO	260

authority has granted the license and shall not extend to the export of duplicates;

- (c) the duplication made under the license gives rise to an equitable remuneration fixed by the said authority taking into account, inter alia, the number of duplicates which will be made.

Article 7

(1) This Convention shall in no way be interpreted to limit or prejudice the protection otherwise secured to authors, to performers, 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 of each Contracting State to determine the extent, if any, to which performers whose performances are fixed in 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 to any phonogram fixed before this Convention entered into force with respect to that State.

(4) Any Contracting State which, on October 29, 1971, affords protection to producers of phonograms solely on the basis of the place of first fixation may, by a notification deposited with the Director General of the World Intellectual Property Organization, declare that it will apply this criterion instead of the criterion of the nationality of the producer.

Article 8

(1) The International Bureau of the World Intellectual Property Organization shall assemble and publish information concerning the protection of phonograms. Each Contracting State shall promptly communicate to the International Bureau all new laws and official texts on this subject.

(2) The International Bureau shall, on request, furnish information to any Contracting State on matters concerning this Convention, and shall conduct studies and provide services designed to facilitate the protection provided for therein.

(3) The International Bureau shall exercise the functions enumerated in paragraphs (1) and (2) above in cooperation, for matters within their respective competence, with the United Nations Educational, Scientific and Cultural Organization and the International Labour Organisation.

Article 9

(1) This Convention shall be deposited with the Secretary-General of the United Nations. It shall be open until April 30, 1972, for signature by any State that 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 a party to the Statute of the International Court of Justice.

(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) It is understood that, at the time a State becomes bound by this Convention, it will be in a position in accordance with its domestic law to give effect to the provisions of the Convention.

Article 10

No reservations to this Convention are permitted.

Article 11

(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, the Convention shall enter into force three months after the date on which the Director General of the World Intellectual Property Organization informs the States, in accordance with Article 13, paragraph (4), of the 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 this 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 12

(1) Any Contracting State may denounce this Convention, on its own behalf or on behalf of any of the territories referred to in Article 11, paragraph (3), by written notification addressed to the Secretary-General of the United Nations.

(2) Denunciation shall take effect twelve months after the date on which the Secretary-General of the United Nations has received the notification.

Article 13

(1) This Convention shall be signed in a single copy in English, French, Russian and Spanish, the four texts being equally authentic.

(2) Official texts shall be established by the Director General of the World Intellectual Property Organization, after consultation with the interested Governments, in the Arabic, Dutch, German, Italian and Portuguese languages.

(3) The Secretary-General of the United Nations shall notify the Director General of the World Intellectual Property Organization, the Director-General of the United Nations Educational, Scientific and Cultural Organization and the Director-General of the International Labour Office of:

- (a) signatures to this Convention;
- (b) the deposit of instruments of ratification, acceptance or accession;
- (c) the date of entry into force of this Convention;
- (d) any declaration notified pursuant to Article 11, paragraph (3);
- (e) the receipt of notifications of denunciation.

(4) The Director General of the World Intellectual Property Organization shall inform the States referred to in Article 9, paragraph (1), of the notifications received pursuant to the preceding paragraph and of any declarations made under Article 7, paragraph (4). He shall also notify the Director-General of the United Nations Educational, Scientific and Cultural Organization and the Director-General of the International Labour Office of such declarations.

(5) The Secretary-General of the United Nations shall transmit two certified copies of this Convention to the States referred to in Article 9, paragraph (1).

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

DONE at Geneva, this twenty-ninth day of October, 1971.

* On October 29, 1971, the Convention was signed by the Plenipotentiaries of the 23 following countries: Brazil, Canada, Colombia, Denmark, Ecuador, France, Germany (Federal Republic), Holy See, India, Iran, Israel, Italy, Luxembourg, Mexico, Monaco, Nicaragua, Spain, Sweden, Switzerland, United Kingdom, United States of America, Uruguay, Yugoslavia.

In accordance with Article 9, the Convention will remain open for signature until April 30, 1972.

II. Report

presented by Mr. Joseph EKEDI SAMNIK, General Rapporteur,
and adopted unanimously on October 27, 1971, by the Conference

I. Convening, purpose, composition and organization of the Conference

1. An International Conference of States (Diplomatic Conference), hereinafter called "the Conference," was held in Geneva, at the Palais des Nations, from October 18 to 29, 1971. It was convened by the Directors General of the United Nations Educational, Scientific and Cultural Organization (Unesco) and the World Intellectual Property Organization (WIPO), in accordance with the resolutions¹ or decisions² of the competent bodies of the two Organizations.

2. The purpose of the Conference was to prepare and adopt an international instrument designed to provide protection for producers of phonograms against unauthorized duplication.

3. Delegations of the following 50 States, or 49 States and one territory, from among those invited by the Director-General of Unesco in the name of the Executive Board of Unesco and by the Director General of WIPO or by one of them, took part in the Conference: Andorra, Argentina, Australia, Austria, Belgium, Brazil, Cameroon, Canada, Colombia, Congo (Democratic Republic), Denmark, Ecuador, Finland, France, Gabon, Germany (Federal Republic), Greece, Guatemala, Holy See, India, Iran, Ireland, Israel, Italy, Japan, Kenya, Lebanon, Luxembourg, Mexico, Monaco, Morocco, Netherlands, Nicaragua, Nigeria, Norway, Panama, Peru, Portugal, South Africa, Spain, Sweden, Switzerland, Tunisia, Turkey,

¹ Resolution No. 5.133 adopted by the General Conference of Unesco at its sixteenth session, and resolution 6.1.2 adopted by the Executive Board of Unesco at its 36th session.

² The decisions of the Assembly and of the Conference of Representatives of the Berne Union at their first ordinary sessions (September 1970), and the decision of the Executive Committee of the Berne Union at its second ordinary session (September 1971).

United Kingdom, United States of America, Uruguay, Venezuela, Viet-Nam (Republic of), Yugoslavia. In addition, the following five States were represented in an observer capacity: Bulgaria, Cuba, Czechoslovakia, Ivory Coast, Union of Soviet Socialist Republics.

4. Two intergovernmental organizations (the International Labour Organisation (ILO) and the League of Arab States) and fifteen international non-governmental organizations were represented by observers.

5. In total, nearly 200 persons were present.

6. The Conference was opened by Professor G. H. C. Bodenhäuser, Director General of WIPO, and Mr. J. E. Fobes, Deputy Director-General of Unesco.

7. On the proposal of the Delegation of the United States of America, supported by the Delegations of Iran, Cameroon, Germany (Federal Republic), Belgium, Italy, France, Japan, Kenya and Spain, Mr. Pierre Cavin, Head of the Delegation of Switzerland, was elected President of the Conference by acclamation.

8. The Conference proceeded to the establishment of the Credentials Committee. On the proposal of the President of the Conference, the representatives of the following countries were elected members of the said Committee: Brazil, Congo (Democratic Republic), Iran, Japan, Sweden, United States of America, Yugoslavia. During the Conference the Credentials Committee met on two occasions, under the chairmanship of H. E. Ambassador Hideo Kitahara, Head of the Delegation of Japan. It examined the credentials of delegations and reported on its work to the Conference (documents Unesco/WIPO/PHON. 2/7 and 34).

9. After introducing some modifications to the provisional text submitted to it (document Unesco/WIPO/PHON. 2/2), the Conference adopted its Rules of Procedure. The final text is contained in document Unesco/WIPO/PHON. 2/14.

10. The following fifteen persons were elected Vice-Presidents of the Conference: Mr. Ricardo A. Ramayón (Argentina), Mr. K. B. Petersson (Australia), Mr. Paolo Nogueira Batista (Brazil), Mr. Wilhelm Axel Weincke (Denmark), H. E. Mr. Jean Fernand-Laurent (France), Baron Otto von Stempel (Germany (Federal Republic)), Mr. Kanti Chaudhuri (India), Mr. Mohamad Ali Hedayati (Iran), H. E. Mr. Pio Archi (Italy), H. E. Mr. Hideo Kitahara (Japan), Mr. Denis Daudi Afande (Kenya), Mr. Abderrazak Zerrad (Morocco), Mr. Francisco Utray (Spain), Mr. Bruce C. Ladd (United States of America), H. E. Mr. Aleksandar Jelić (Yugoslavia).

11. On the proposal of the Delegation of France, supported by the Delegations of Kenya, Italy, Germany (Federal Republic), United States of America, India, Brazil and Canada, Mr. Joseph Ekedji Samnik, Head of the Delegation of Cameroon, was elected General Rapporteur.

12. The Conference, on the proposal of the President, elected the representatives of the following States as members of the Drafting Committee: Brazil, Canada, France, Germany (Federal Republic), Kenya, Spain, Tunisia, United States of America. The Drafting Committee met, under the chairmanship of Mr. André Kerever, Deputy Head of the Delegation of France, in order to draw up in final form the draft international instrument submitted to the Conference for adoption. Document Unesco/WIPO/PHON. 2/30 reflects the results of its work.

13. The Conference, after introducing some modifications to the draft which had been submitted to it (document Unesco/WIPO/PHON. 2/1), adopted its Agenda in the form reproduced in document Unesco/WIPO/PHON. 2/15.

14. On the proposal of the Delegation of India, supported by the Delegations of Canada, Japan, Germany (Federal Republic), Kenya, Netherlands, United States of America, Spain, France, Australia, Italy, Brazil, Nigeria and Mexico, Mr. William Wallace, Head of the Delegation of the United Kingdom, was elected Chairman of the Main Commission. On the proposal of the Delegation of Australia, supported by the Delegations of Argentina, Cameroon, Kenya, Denmark, Brazil, United States of America, France and Spain, Mr. Gabriel E. Larrea Richerand, Head of the Delegation of Mexico, and Mr. Ayo Idowu, Head of the Delegation of Nigeria, were elected Vice-Chairmen of the Main Commission.

15. During the deliberations of the Main Commission on Article 6 of the Convention a Working Group was established, composed of the representatives of the following States: Argentina, Germany (Federal Republic), India, Italy, Kenya, Nigeria, Portugal and United States of America, together with the representatives of France in an observer capacity. On the proposal of the Delegation of Kenya, supported by that of the United States of America, Professor Eugen Ulmer, Deputy Head of the Delegation of Germany (Federal Republic), was elected Chairman of the Working Group.

16. The Secretariat of the Conference was provided jointly by Unesco and WIPO. Miss Marie-Claude Dock (Unesco) and Mr. Claude Masouyé (WIPO) were the Secretaries General of the Conference.

II. Preparation of the draft Convention

17. The deliberations of the Conference were based upon a draft prepared by a Committee of Governmental Experts, convened jointly by the Directors General of Unesco and of WIPO at the Headquarters of Unesco, in Paris, from March 1 to 5, 1971 (document Unesco/WIPO/PHON. 2/3), in accordance with the resolutions and decisions referred to in paragraph 1 above and with a view to giving effect to the wishes expressed respectively by the Intergovernmental Copyright Committee and by the Permanent Committee of the Berne Union.

18. The Conference also had at its disposal a commentary upon this draft prepared by the International Bureau of WIPO (document Unesco/WIPO/PHON. 2/4), a study of comparative law prepared by the Secretariat of Unesco upon the legal protection of producers of phonograms (document Unesco/WIPO/PHON. 2/5), and also observations presented by certain Governments upon the said draft (documents Unesco/WIPO/PHON. 2/6 and 6/Add. 1).

19. During the discussions, a certain number of amendments were proposed by delegations (documents Unesco/WIPO/PHON. 2/8 to 13, 16 to 26, 28, 29, 33, 35 and 37), and also by the Working Group referred to in paragraph 15 above (document Unesco/WIPO/PHON. 2/27).

20. After a preliminary general discussion, most of the other deliberations of the Conference took place in its Main Commission, in which all the States and all the organizations represented in the Conference had the right to participate and in which they all participated. The delegations representing developing countries held several meetings among themselves in order to arrive at common positions on issues of particular interest to them.

21. The discussions in the Plenary and in the Main Commission will be reflected in detail in the summary minutes which will be established by the Secretariat of the Conference and distributed subsequently to the participants. Consequently, this Report mentions only those points which may be important for understanding the intentions of the Conference in adopting certain provisions, including those which the Conference agreed should be mentioned in this Report. These points are dealt with in the order adopted by the Conference for the articles of the Convention.

III. General considerations

22. All delegations which expressed their views during the general discussion emphasized the urgency of adopting international solutions designed to protect producers of phonograms against the unauthorized duplication of their phonograms. Certain delegations indicated the concern of their Governments in the face of the increase of the extent of

piracy in this field and in the face of the damage which results from it not only for producers of phonograms but also for the authors or composers of recorded works and for performers. The observer from the International Federation of the Phonographic Industry drew the attention of the Conference to the fact that piracy not only affected discs but, to an increasing extent, appeared in the form of reproduction on tapes effected from original recordings.

23. The majority of the delegations stated that they were in favor of the preparation of an international instrument based upon the draft prepared by the Committee of Governmental Experts. Several among them declared that they would have preferred to see the Rome Convention of 1961 for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations used to afford protection to producers of phonograms at the international level. They emphasized that the new instrument should not be conceived in such a manner as to impair the wider acceptance of the Rome Convention in the future. This concern was shared by the Conference as a whole and is reflected in the Preamble to the new Convention.

24. Several delegations added that the protection which would be granted to producers of phonograms by the new Convention should not be greater than the rights accorded to authors by the multilateral conventions on copyright.

25. Most of the delegations which approved the conclusion of a new treaty on the basis of the draft submitted to the Conference, or which did not oppose it, declared that the instrument should be as simple as possible and should be open to all States, so as to receive quickly a wide acceptance. These concepts of simplicity and of universality should, in the opinion of these delegations, be reflected in a convention, consisting of a relatively restricted number of articles, which should be limited to determining the obligations of Contracting States, while leaving to them the choice of the legal means to assure the protection; the same concept should also be reflected in the conditions to be provided for accession or ratification.

26. Many delegations declared that the proposed Convention should be based on the principles of reciprocity and of non-retroactivity, and that the criterion of the nationality of the producer should be the sole applicable criterion.

27. The delegations representing developing countries emphasized that the provisions which would be contained in the new international instrument should not disregard the interests of those countries in the use of phonograms. They considered indispensable the establishment of a system of exceptions and of compulsory licenses similar to those contained in the multilateral copyright conventions, particularly for educational purposes. One delegation stated that the latter expression should cover also artistic education.

28. Several delegations declared that, after the adoption of the new treaty, an information campaign should be arranged in order to obtain as universal an acceptance as possible.

29. Finally, certain delegations, noting that phonograms are not only industrial products but also means for the dissemination of culture, considered it necessary that Unesco be associated with the future of the Convention.

IV. Title of the Convention

30. The Conference agreed to give the following title to the new instrument: "Convention for the Protection of Producers of Phonograms Against Unauthorized Duplication of Their Phonograms."

V. Preamble

31. While recognizing that its purpose was the prevention of the piracy of phonograms, the Conference considered that the inclusion of the word "piracy," as a description of the activities against which producers of phonograms should be protected, was not entirely appropriate in an international convention. It preferred to use the expression contained in the title, that is to say, unauthorized duplication.

32. The Conference decided to mention, by an express reference in the Preamble, its recognition of the value of the work of Unesco and WIPO in the preparation of the Convention and the convening of the Conference.

VI. Articles of the Convention

Article 1

(previously Article VI of the draft text)

33. The Conference adopted a proposal, presented orally by the Delegation of Belgium, to place the definitions of certain terms in an introductory article.

34. On the proposal of the Delegation of Brazil, the Conference decided to use, as definitions of a phonogram and of its producer, the wording contained in Article 3 of the Rome Convention.

35. In view of the fact that the definition of a phonogram refers to an exclusively aural fixation, two different interpretations of the Convention were discussed in relation to recordings made from the sound tracks of cinematographic works, or other audio-visual works, when the sound track is fixed simultaneously with the visual recording.

36. Under one view, the sound track constitutes the raw material for the recording, so that, when an exclusively aural fixation of the sound track is made, the resulting recording is a phonogram within the meaning of the Convention. This view is reinforced by the fact that the sound track almost invariably is edited or otherwise altered in the process of producing the recording, so that a new exclusively aural version is created.

37. According to the other view, the sounds embodied in the recording produced from the sound track, having been first fixed in the form of an audio-visual work, do not have any separate character as an exclusively aural fixation, and thus the recording cannot qualify as a phonogram under the Convention, but rather would be part of the original audio-visual work. It was pointed out that, even under this second view,

the Convention provides only for minimum standards of protection so that it is within the competence of each Contracting State to protect recordings produced from sound tracks as phonograms under its national legislation, if it wishes to do so.

38. In any event, the Conference expressed the view that the person to be protected should be the person who first fixes the phonogram as such.

39. The Conference also considered that any exclusively aural fixation should be regarded as a phonogram, even if it is made as an ephemeral recording by a broadcasting organization.

40. As regards the definition of duplicates of a phonogram, the Conference noted that the essential feature of a duplicate was the fact that the article contained sounds taken directly or indirectly from a phonogram. What is aimed at, particularly by the insertion of the word "indirectly," is the copying, by a machine or other appropriate apparatus, of recordings, even if the copying takes place from the broadcasting of a phonogram or from a copy of a phonogram. New recordings imitating or simulating the sounds of the original recording are not covered by the provisions of the Convention.

41. The Conference also expressed the view that the adjective "substantial," which appears in the definition of "duplicates" of a phonogram, expresses not only a quantitative but also a qualitative evaluation; in this respect, quite a small part may be substantial.

42. The Conference decided to add to Article 1 of the Convention a definition of the concept of distribution to the public, on the basis of proposals of Argentina and Mexico, of the United States of America and of Kenya; it adopted a compromise formula suggested by the Delegation of Germany (Federal Republic).

43. In this definition no specific reference is made to commercial purposes, in order not to restrict unnecessarily the field of application of the Convention, for it was considered that commercial aims were understood in the terms of the definition as it appears therein. The Conference considered various examples of the "acts" by which duplicates of a phonogram are offered directly or indirectly to the public. It considered that such acts should include, for example, the supply of duplicates to a wholesaler for the purposes of sale to the public, directly or indirectly.

Article 2

(previously Article I of the draft text)

44. The Conference considered a proposal of Japan to the effect that penal sanctions should be explicitly mentioned among the legal means envisaged in the draft text of the Convention to secure the protection of producers of phonograms, the reference to the grant of a specific right being regarded as including or not, according to the legislative systems, this latter method of protection.

45. The Conference agreed to include penal sanctions in the enumeration of means of protection in the new instrument, but, on the basis of proposals of Australia and of the United States of America, decided to refer to the different systems of protection in Article 3, limiting Article 2 to the determina-

tion of the acts against which protection is to be afforded and of the criterion of protection.

46. As regards the acts against which protection is to be afforded, the Conference adopted those contained in the draft text of the Convention, that is to say, duplication, importation and distribution. A definition of this last concept appears in Article 1 of the new instrument.

47. As regards the criterion of protection, the Conference decided that, subject to the provisions of Article 7, paragraph (4), the sole applicable criterion in the Convention would be that of the nationality of the producer.

48. It was also understood, following a proposal of Australia, that "consent" might, under the domestic law of a Contracting State, be given by the original producer or by his successor in title or by the exclusive licensee in the Contracting State concerned; nevertheless, this would not affect the criterion of nationality for the purposes of protection.

Article 3

(previously Article II, first sentence, of the draft text)

49. As indicated above, the Conference decided to enumerate in this Article the legal means by which the Convention will be implemented, it being understood that these means are not cumulative and that free choice of one or more is left to each Contracting State.

Article 4

(previously Article II, second sentence, of the draft text)

50. So far as the duration of the protection is concerned, the Conference decided to deal with this question in a separate article and to fix a minimum period in the Convention of twenty years calculated from the end of the year in which the sounds embodied in the phonogram were first fixed or first published. This latter reference to the first publication was introduced following a proposal of the United States of America. It was understood that each Contracting State would be able to choose either the first fixation or the first publication as the starting point of the period mentioned above.

51. The Conference noted that it was not possible to specify a minimum duration of protection to be secured by means of national laws concerning unfair competition; however, it assumed that in this case the protection should not in principle end before twenty years from the first fixation or first publication, as provided for in the Convention for the other means of protection, in order to ensure a balance between the different systems.

Article 5

(previously Article III of the draft text)

52. The draft text considered by the Conference provided that, if the domestic law of a Contracting State requires compliance with formalities as a condition of the protection of phonograms, these requirements are considered as fulfilled if all the authorized duplicates of the phonogram or their containers bear a notice identical to that established by the Rome Convention. This notice consists of the symbol ©, accompanied by the year date of first publication. In this

connection, it is to be noted that Article 4, already adopted, refers also to the year of first fixation. It was also provided in the draft text that, if the duplicates or their containers do not identify the producer, his successor in title or the licensee, the notice shall also indicate the name of the producer, his successor in title or the licensee.

53. On the basis of a proposal of the United States of America, the Conference decided to insert the word "exclusive" before the word "licensee," it being understood that the term "exclusive licensee" means the person or legal entity that controls all rights in a phonogram for the entire territory of the Contracting State in question. Under such circumstances, which correspond to normal commercial practices in the phonographic industry, the Delegation of the United States of America indicated that the "exclusive licensee" would be considered the owner of the copyright for the purpose of the United States law.

54. Furthermore, in order to avoid possible confusions, the Conference decided not to include an indication of the year of first fixation, and to adopt the draft text without further modifications.

55. The Conference expressed the opinion that when there was no exclusive licensee the name of the producer would suffice, for the notice requires only an indication of the name of the licensee or of the successor in title or, otherwise, of the producer. The possibility of indicating a name other than that of the producer has no effect on the criterion of protection, the criterion remaining that of the nationality of the producer alone.

Article 6

(previously Article IV of the draft text)

56. Paragraph (1) of this Article in the draft text of the Convention permitted any Contracting State which grants protection to producers of phonograms by means of copyright, or other specific right, to provide, in its domestic law, the same kinds of limitations with regard to the protection of producers of phonograms as those concerning the protection of authors of literary and artistic works. This paragraph also made it clear that no compulsory licenses could be provided for except with regard to duplication for use solely for the purposes of teaching or scientific research.

57. Some delegations asked for the deletion of the provision prohibiting the grant of compulsory licenses, expressing the view that such a provision could result in giving to producers of phonograms a wider protection than that granted to authors. The Delegations of Portugal and Yugoslavia particularly emphasized this point. Certain delegations considered that the provisions of Article 15 of the Rome Convention should be introduced, *mutatis mutandis*, into the new treaty. The majority of the delegations, however, were in favor of maintaining the prohibition, which sets limits upon the grant of licenses. In particular, they stated that Article 15 of the Rome Convention could not be taken over, in view of the fact that the new international instrument should be open to all States, whether or not they were party to a copyright convention, whereas this was not the case for the Rome Convention, to

which only States party to the Universal Copyright Convention or to the Berne Convention could accede.

58. The Conference agreed that the new treaty does not permit the establishment of a general system of compulsory licenses except as specified in Article 6, and that it does not afford protection against secondary uses of phonograms, i. e. public performance and broadcasting.

59. The Conference then examined the questions (i) whether compensation should be granted to a producer whose phonograms are duplicated under a compulsory license; (ii) what would be the position of the original phonogram and of a duplicate made under license with respect to each other; (iii) whether the licensee may have a commercial purpose while duplicating records intended for teaching or scientific research.

60. After an exchange of views on this subject, the Working Group mentioned in paragraph 15 above prepared a text which, after certain modifications of a drafting nature, was adopted for Article 6. This text also takes into account a proposal of the Republic of Viet-Nam to use, in the French and Spanish texts, a general term for "teaching," without qualification, in order to embrace all forms and all branches of teaching.

61. As regards the limitations on the protection of producers of phonograms being of the same kind as those permitted in connection with the protection of authors, the Conference expressed the view that, for States acceding to the new treaty which were not bound by one or more of the multilateral copyright conventions, the principles contained in those conventions would nevertheless be applicable.

62. In addition, the Conference agreed that the limitations which could be established in accordance with the first sentence of Article 6 should in no case have a wider scope than the compulsory licenses provided for in the second sentence. It also noted that the "territory," and the "competent authority," referred to in condition (b) could be a territory, or the competent authority of a territory, to which the Convention applies by virtue of a declaration notified under Article 11, paragraph (3).

63. No provision concerning exceptions appearing to be necessary for countries which protect producers of phonograms by means of laws concerning unfair competition, the Conference did not retain the text of paragraph (2) of the corresponding Article contained in the draft text, which referred to that situation.

Article 7

(previously Article V of the draft text)

64. The Conference adopted without modification paragraphs (1) and (2) of this Article as they appeared in the draft text submitted to it.

65. As regards paragraph (2), the Conference did not adopt the proposals of the Netherlands aimed at placing upon States the obligation of protecting performers in such a way so as to avoid a situation in which, if the producer of phonograms refrains from taking action against the infringer, the per-

formers whose performances have been recorded would be without any remedy. The Conference considered that an obligation upon the producer to take action against the infringer, in the case where the performer shares in the receipts, should normally result from the contract between the producer and the performer; nevertheless it was in agreement in accepting that, in the case of default of the producer in the exercise of the rights which he derives from the Convention, it was desirable that the contract should be so drafted as to permit the performers to take action directly against the infringer.

66. As regards paragraph (3), which deals with the principle of the non-retroactivity of the Convention, the Conference did not adopt a proposal of the Delegation of Japan, supported by the Delegations of France and of Germany (Federal Republic), aimed at prohibiting, after the entry into force of the Convention, any new duplication of phonograms even if the latter had been manufactured earlier, while permitting States nevertheless to declare that they would not apply such a provision.

67. In paragraph (4) of the draft text, the Conference decided to indicate the date of the signature of the instrument.

68. The Conference did not adopt a proposal of the United States of America to add a new paragraph to this Article providing that the Convention shall not prejudice rights already acquired in any Contracting State before the coming into force of the Convention for that State. This paragraph was not considered necessary since its subject matter is dealt with in Article 7, paragraph (1).

Article 8

(new)

69. Following discussions which took place concerning Article XI of the draft text (see paragraphs 74 to 95 below), the Conference decided to establish a secretariat for the Convention and to define its functions in a separate article.

Article 9

(previously Article VII of the draft text)

70. As regards the question of which States may sign the new international instrument or accede to it, the Conference pronounced itself in favor of Alternative B of the draft text, which provides for acceptance by any State that is a member of the United Nations or any of the Specialized Agencies brought into relationship with the United Nations. The Conference added States members of the International Atomic Energy Agency, or party to the Statute of the International Court of Justice.

71. The provision concerning the implementation of the Convention is based on the terms of proposals of the Delegations of Japan, Austria and Sweden. It refers to the time when a State becomes bound by the Convention for the determination of the date by which its domestic law must conform with it.

Articles 10 and 11

(previously Articles X and VIII of the draft text)

72. The Conference did not modify the draft text submitted to it.

Article 12

(previously Article IX of the draft text)

73. The Conference adopted a proposal of the Delegation of Japan concerning the extension of denunciation.

Article 13

(previously Article XI of the draft text)

74. The Conference considered a proposal of the Delegation of the United Kingdom aimed at giving the administration of the Convention to WIPO, by attributing the depositary functions to that Organization instead of to the Secretary-General of the United Nations as had been provided for in the draft Convention and by establishing secretariat functions which would also be exercised by WIPO.

75. The Conference also considered a proposal of the Delegation of Austria whose aim was to create an intergovernmental committee, analogous to that established by the Rome Convention, which would hold its meetings at the same place and dates as the latter.

76. In a preliminary declaration, the representative of the Director-General of Unesco indicated that a distinction should be made between the depositary functions on the one hand, and, on the other hand, the secretariat functions proposed to be provided for in the draft Convention. These functions are not of the same nature and could be entrusted to different organizations. The depositary functions, not being linked to the subject matter of a convention, could, in appropriate circumstances, be entrusted to the Secretary-General of the United Nations, the nature of whose responsibilities was appropriate for this purpose. This had been the case for the Rome Convention and was the case in respect of the present draft text.

77. The Committee of Experts had not proposed any clauses entrusting any particular secretariat functions to one or more organizations; thus Unesco and WIPO each maintained its own competence in relation to the technical content of the Convention. If, however, a solution of this sort had to be considered, Unesco, while declaring itself satisfied by the draft text established by the experts in March 1971, must remind the Conference of the competence derived from its constituent instrument, and from the decisions of its competent bodies, in the field of the protection of phonograms as a means of the dissemination of culture, both from the point of view of copyright and from that of so-called neighboring rights. This competence, recognized by the Intergovernmental Copyright Committee and by the Permanent Committee of the Berne Union, explains and justifies the presence of Unesco at the side of WIPO in the convening of and preparation for the Committee of Experts mentioned above and the present Conference, and also its participation in any possible secretariat.

78. The Rome Convention contained its own provisions concerning its secretariat, and therefore it would not appear appropriate to entrust to the secretariat now proposed functions referring to that Convention. In conclusion, the representative of the Director-General of Unesco emphasized that the im-

portance of the considerations which he had had to bring to the attention of the Conference went beyond the subject matter of the draft under examination.

79. The Director General of WIPO declared that the essential point was to determine how to obtain the best possible means of putting the new Convention into operation; to resolve this problem one should not place oneself in the arena of competition between organizations.

80. So far as the depositary functions were concerned, while recognizing that, in his view, this was not a major question, he emphasized that, in general, organizations with a technical competence carried out such functions with greater dispatch, because they have a direct interest in the geographical extension of the application of the instrument in question.

81. On the other hand, he pointed out that the new international instrument was no more than a framework and therefore required detailed implementation in national laws; in this connection it would be appropriate to be able to give advice to the Governments concerned. Consequently, it appeared necessary to provide for a secretariat which would be able to assist in the development of the field of application of the Convention. The Director General of WIPO declared that, if this need were accepted, his Organization was ready to assume the responsibility, for it had been created to contribute to cooperation among States in the field of the protection of intellectual property.

82. Referring to the precedent of the joint secretariat of the Rome Convention, he expressed the opinion that such a solution would not be appropriate in the circumstances, in that it had not given satisfactory results in terms of efficiency; consequently, he was opposed to a joint exercise of the secretariat functions.

83. He added that, if this method were nevertheless adopted, he would report to the next session of the General Assembly of WIPO, which had the competence to approve measures concerning the administration of international agreements or participation by WIPO in such administration; however, he would not recommend its adoption.

84. As regards the proposal to create an intergovernmental committee, the Director General of WIPO considered that such a step would not respond to the concern to achieve simplicity which guided those who were drafting the new treaty, nor was such a step indispensable.

85. The observer from the International Labour Organisation, having expressed his astonishment at the criticisms made concerning the joint secretariat of the Rome Convention, emphasized the role of his Organisation in the protection of performers and its interest in participating in the secretariat of any intergovernmental committee which might be created.

86. After these declarations, a long discussion took place in the Main Commission, in the course of which most delegations expressed their views upon the proposals under consideration. A very large majority of the delegations considered that the new instrument should provide for secretariat functions and

that it would be preferable, from the point of view of efficiency, to entrust them to a single intergovernmental organization. The majority of these delegations considered that this organization should be WIPO. However, some delegations pronounced themselves in favor of a secretariat whose functions would be exercised jointly by WIPO and Unesco, or by those organizations and the ILO as is the case for the Rome Convention. In this connection, a certain number of delegations declared that in any event a formula for cooperation should be found.

87. At the conclusion of these discussions, the Chairman of the Main Commission identified the separate points enumerated below and requested the Main Commission to take decisions upon them.

88. By twenty-seven votes in favor and one vote against, and with eleven abstentions, the Main Commission decided that it was appropriate to provide for secretariat functions in the Convention.

89. By twenty-seven votes in favor and five votes against, and with six abstentions, it decided that these functions should be entrusted to a single organization.

90. By twenty-seven votes in favor and no votes against, and with eleven abstentions, it decided that this organization should be WIPO.

91. At the request of the Main Commission, the Secretariat of the Conference drafted the text of a clause stipulating that the International Bureau of WIPO would exercise the functions entrusted to it by the Convention in cooperation, for matters within their respective competence, with Unesco and the ILO. This clause was adopted by the Main Commission and incorporated in Article 8.

92. After having decided by a small majority to attribute to the Director General of WIPO all the depositary functions of the Convention, the Main Commission was presented with a proposal of the Delegations of Belgium, Brazil, France, India, Italy and Spain by which the Convention would be deposited with the Secretary-General of the United Nations, who would also receive instruments of ratification, acceptance or accession and declarations or notifications of a diplomatic nature, while the Director General of WIPO would be responsible for notifications to the States and for the receipt and notification of declarations of a technical nature. To establish the necessary links, the Secretary-General of the United Nations would be responsible for notifications to the Directors General of WIPO, of Unesco and of the ILO.

93. After deciding, in accordance with the Rules of Procedure, to reopen discussion of this question, the Main Commission noted a declaration of the representative of the Director-General of Unesco to the effect that such a solution would not be incompatible with the Vienna Convention on the Law of Treaties, as well as a declaration of the Director General of WIPO recalling that a similar suggestion had been made by him during the earlier discussions.

94. The proposal mentioned above was adopted without opposition, and the provisions necessary to give effect to it were inserted in the Convention.

95. The Delegation of Austria indicated that it did not insist upon its proposal concerning the creation of an inter-governmental committee, and withdrew that proposal.

96. The Conference decided that the texts of the Convention which should be equally authentic would be established in English, French, Russian and Spanish.

97. As regards the official texts of the Convention, the Conference adopted three proposals: that of the Delegations of Brazil and Morocco aimed at providing that official texts would be established in Arabic, German, Italian and Portuguese; that of the Delegations of Belgium and of the Netherlands to add to this enumeration the Dutch language; and that of the Delegation of Germany (Federal Republic) suggesting that the texts should be established by the Director General of WIPO after consultation with the interested Governments.

VII. Closing of the Conference

98. The Conference adopted the Convention by thirty-six votes in favor, no votes against and one abstention.

99. The Delegation of India declared that the competent authorities of India would consider the new instrument at the same time as the revised texts, adopted in July 1971, of the Berne Convention and the Universal Copyright Convention, and that they would then adopt a position on the question of acceptance. It added that it considered it necessary in any event to put a stop to the unauthorized duplication of phonograms.

100. The Delegation of Italy emphasized that the Convention, by establishing a complete system of protection, amounted to a partial revision of the Rome Convention. It expressed the hope that the interested international organizations would concern themselves with the problem, particularly in relation to the obligations of States party to both Conventions.

101. After the Delegation of France, speaking on behalf of all the participants, had congratulated the President of the Conference, the latter paid tribute to the Organizations which had convened the Conference, to their secretariats and to the Officers of the Conference, and declared the discussions closed.

III. List of Participants *

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Alphonse Brisson, Secretary General, International Federation of Film Producers Associations.
Pierre Louis Chesnais, Secretary General, Syndicat national des industries et commerces de publications sonores et audio-visuelles.
Rudolf Leuzinger, Secretary General of FIM.

Internationale Gesellschaft für Urheberrecht (INTERGU) (International Copyright Society)

Jos. Anton Saladin, Member of the Administrative Council for Switzerland.

International Law Association (ILA)

Edmond Martin-Achard, Avocat, Genève.

International Literary and Artistic Association (ALAI)

Henri Desbois, Professeur à l'Université de droit, d'économie et des sciences sociales de Paris, Permanent Secretary.

International Music Council (CIM)

Rudolf Lenzinger, Secretary General of FIM.

International Federation of Actors (FIA)

Rolf Rembe, General Secretary.

International Federation of Variety Artistes (IFVA)

Rolf Rembe, General Secretary of FIA.

International Federation of Musicians (FIM)

Hardie Ratcliffe, President.
Rudolf Leuzinger, Secretary General.

International Publishers Association (IPA)

Cornelis Smit, IPA Music Section.
Alexis Koutchoumov, Secretary-General.

International Union of Cinematograph Exhibitors (UIEC)

Joseph Handl, Legal Advisor.

International Writers Guild (IWG)

Roger Fernay, Executive Vice-President, President of the International Copyright Commission.

V. United Nations Educational, Scientific and Cultural Organization (Unesco)

J. E. Fobes, Deputy Director-General.

Claude Lussier, Director, Office of International Norms and Legal Affairs.

M. C. Dock (Miss), Head, Copyright Division.

Daniel de San, Jurist, Copyright Division.

Patrice A. Lyons (Miss), Legal Assistant, Copyright Division.

VI. World Intellectual Property Organization (WIPO)

G. H. C. Bodenhausen, Director General.

Arpad Bogsch, First Deputy Director General.

Claude Masouyé, Senior Counsellor, Head, External and Public Relations Division, Head a. i., Copyright Division.

Roger Harben, Counsellor, Deputy Head, External and Public Relations Division.

Mihailo Stojanović, Counsellor, Copyright Division.

Henri Rossier, Head, Documents and Mail Service.

Maqbool Qayoom, Head, Common Services Section.

IV. Bureau of the Conference

President of the Conference:	Pierre Cavin (Switzerland)
Vice-Presidents of the Conference:	Ricardo A. Ramayón (Argentina) K. B. Petersson (Australia) Paolo Nogueira Batista (Brazil) Wilhelm Axel Weincke (Denmark) Jean Fernand-Laurent (France) Otto von Stempel (Germany (Federal Republic)) Kanti Chandhri (India) Mohamad Ali Hedayati (Iran) Pio Archi (Italy) Hideo Kitahara (Japan) Denis Daudi Afande (Kenya) Abderrazak Zerrad (Morocco) Francisco Utray (Spain) Bruce C. Ladd (United States of America) Aleksandar Jelić (Yugoslavia)
General Rapporteur of the Conference:	Joseph Ekeddi Samnik (Cameroon)
Chairman of the Main Commission:	William Wallace (United Kingdom)
Vice-Chairmen of the Main Commission:	Gabriel E. Larrea Richerand (Mexico) Ayo Idowu (Nigeria)
Chairman of the Credentials Committee:	Hideo Kitahara (Japan)
Chairman of the Drafting Committee:	André Kerever (France)
Secretaries General of the Conference:	Marie-Claude Dock (Miss) (Unesco) Claude Masouyé (WIPO)

UPOV Meetings

- January 25 and 26, 1972 (Geneva) — Technical Working Party for Vegetables
 April 10 to 14, 1972 (Geneva) — Consultative Working Committees
 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

- February 28 and 29, 1972 (Rome) — International Confederation of Societies of Authors and Composers — Legal and Legislative Commission
 March 19 to 24, 1972 (Nice) — International Literary and Artistic Association — Congress
 April 24 to 28, 1972 (Geneva) — 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, 1972 (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
 May 20 to 26, 1973 (Rio de Janeiro) — International Chamber of Commerce — 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 21 to 25, 1972 — Working Party IV
 February 28 to March 3, 1972 — Working Party I
 April 24 to 28, 1972 — Working Party III
 June 19 to 30, 1972 — Intergovernmental Conference
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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'Antenr";
- (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 Colombettes, 1211 Geneva 20, Switzerland. Please refer to the number of the Competition.

Closing date:

February 15, 1972.

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