

Copyright

Review of the
WORLD INTELLECTUAL PROPERTY
ORGANIZATION (WIPO)

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WORLD INTELLECTUAL PROPERTY ORGANIZATION

IVORY COAST

Ratification of the WIPO Convention

The Director General of the World Intellectual Property Organization (WIPO) has notified the Governments of the countries invited to the Stockholm Conference that the Government of the Republic of the Ivory Coast deposited, on February 1, 1974, its instrument of ratification of the Convention Establishing the World Intellectual Property Organization (WIPO).

The Republic of the Ivory Coast has fulfilled the condition set forth in Article 14(2) of the Convention by concur-

rently ratifying the Stockholm Act of the Paris Convention and the Paris Act (1971) of the Berne Convention as provided for by Article 29^{bis} of the latter Act.

Pursuant to Article 15(2), the Convention Establishing the World Intellectual Property Organization (WIPO) will enter into force, in respect to the Republic of the Ivory Coast, three months after the date of deposit of the instrument of ratification, that is, on May 1, 1974.

WIPO Notification No. 51, of February 4, 1974.

BERNE UNION

IVORY COAST

Ratification of the Paris Act (1971) of the Berne Convention

The Director General of the World Intellectual Property Organization (WIPO) has notified the Governments of member countries of the Berne Union that the Government of the Republic of the Ivory Coast deposited on February 1, 1974, its instrument of ratification of the Berne Convention for the Protection of Literary and Artistic Works of September 9, 1886, as revised at Paris on July 24, 1971.

Pursuant to the provisions of Article 28(3) of the Paris Act (1971) of the said Convention, Articles 22 to 38 will

enter into force, with respect to the Republic of the Ivory Coast, three months after the date of this notification, that is, on May 4, 1974.

A separate notification will be made of the entry into force of Articles 1 to 21 and the Appendix, when the conditions provided for in Articles 28(2)(a) are fulfilled.

Berne Notification No. 53, of February 4, 1974.

**Executive Committee of the International Union
for the Protection of Literary and Artistic Works (Berne Union)**

Sixth Session (2nd extraordinary)
(Paris, December 5 to 11, 1973)

Report

prepared by the Secretariat and adopted by the Committee

Part I: Report on the meetings of the Executive Committee sitting alone

Opening of the session

1. The Executive Committee of the Berne Union (hereinafter called "the Committee"), having been convened by the Director General of the World Intellectual Property Organization (WIPO), met in extraordinary session from December 5 to 11, 1973, at Unesco House in Paris.

2. Fourteen of the sixteen States members of the Committee were represented: *Ordinary Members*: Canada, France, Germany (Federal Republic of), Hungary, India, Israel, Italy, Senegal, Spain, Switzerland, United Kingdom, Yugoslavia (12); *Associate Members*: Philippines, Poland (2). Argentina and Morocco (ordinary members) were not represented.

3. The following States, members of the Berne Union, were represented in an observer capacity: Australia, Austria, Belgium, Brazil, Cameroon, Czechoslovakia, Denmark, Finland, Greece, Holy See, Japan, Mexico, Monaco, Netherlands, Norway, Portugal, Sweden, Tunisia (18).

4. As a result of the fact that the Committee held some of its sittings jointly with the Intergovernmental Copyright Committee (IGC) of the Universal Copyright Convention (UCC), the following States were also represented in an observer capacity: Algeria, Andorra, Cuba, Ecuador, Ghana, Guatemala, Kenya, Khmer Republic, Soviet Union, Ukrainian SSR, United States of America (11).

5. Three intergovernmental organizations and eighteen international non-governmental organizations appointed observers.

6. The list of participants is contained in Annex B to this Report.

7. The session was opened by Dr. Arpad Bogsch, Director General, WIPO, who welcomed the participants and thanked Unesco for the hospitality offered for the holding of the meeting. He referred to the Working Agreement between

Unesco and WIPO which was approved by the competent bodies of WIPO in November 1973 and said that this would ensure the continuance of the cordial relations which already existed between the two bodies. He also warmly thanked Sr. Lic. Gabriel Ernesto Larrea Richerand (Mexico), the previous Chairman of the Committee. Since the present Committee had been elected during the last meetings of the Assembly and Conference of the Berne Union held in Geneva in November 1973, and as this was the first meeting of the new Committee, a chairman and two vice-chairmen were to be elected.

Election of Officers

8. On a proposal made by the Delegation of India and supported by the Delegations of the United Kingdom, Germany (Federal Republic of), Spain, France and Italy, Mr. Andrew A. Keyes (Canada) was elected as Chairman and Dr. István Tímár (Hungary) and Mr. N'Déné N'Diaye (Senegal), as Vice-Chairmen.

Adoption of the Agenda

9. The Committee adopted the agenda proposed in document B/EC/VI/1 Rev.

Legal and Technical Assistance to States

10. The Secretary of the Committee outlined in his introductory statement the legal and technical assistance extended to States by WIPO during the past one year. These included: the grant of a traineeship to an officer from Ghana, the visit of the Director General to India and his discussions with the Government and the Copyright Board, the discussions which the Director General had with the Registrar of Copyrights, Bangladesh, and the documentation furnished by WIPO to the Governments of Bangladesh and Sri Lanka. This was noted.

Part II:

Report on the meetings of the Executive Committee sitting together with the Intergovernmental Copyright Committee

Reprographic Reproduction of Works Protected by Copyright

11. The Secretariat of Unesco introduced document B/EC/VI/2 - IGC/XII/2 and drew the attention of the Committees to their Resolutions (No. 62(XI) of the Intergovernmental Copyright Committee and No. 1 of the Executive Committee of the Berne Union) adopted in 1971, Resolution 5.151

adopted by the General Conference of Unesco at its seventeenth session in 1972 and the report of the Working Group on Reprographic Reproduction of Works Protected by Copyright (hereinafter called "the Working Group"), which was convened pursuant to the above Resolutions in May 1973, under the joint auspices of Unesco and WIPO.

12. This was followed by a detailed explanation of the recommendations of the Working Group by Mr. Justice T. Hesser (Sweden) who was the Chairman of the Working Group.

13. In the discussions that followed, all speakers praised the work of the Working Group and the valuable material it had made available.

14. The Delegation of Brazil felt that this question should be studied in the light of internal needs and international effects. Far too little jurisprudence was available on the domestic level and the question was so far hazy and fluctuating. Reference was also made to the recent court decision in the United States of America in the *Williams and Wilkins Co.* case. Though the recommendations of the Working Group might be reasonable, their adoption would raise many problems. It was doubtful whether the system adopted by Sweden could be applied elsewhere. Except for paragraph 4, the Delegation of Brazil was of the opinion that the recommendations of the Working Group were too general and might be of little assistance to States in drafting legislation on this subject; more specific recommendations would be required. This would entail further study on such issues as whether a library resorting to reprography is a non-profit organization or operates for profit, subsidized photocopying by Governments, what differentiation should be made between reprography in institutions open to the public and other organizations operating for internal use only, the treatment to be accorded to educational establishments, whether different treatment should be accorded with respect to photocopying of books, journals, cultural works, scientific and technical works, and whether a difference should be made between first degree copying, that is, the current practice of libraries to build up their collection or to fill up any gaps therein by resorting to photocopying, and other forms.

15. The Delegation of Tunisia supported the views of Brazil and cautioned that it might not be wise to approve a draft proposal which States would find difficult to apply. It suggested that it was premature to adopt any recommendations at this stage.

16. The Delegation of Senegal shared the misgivings expressed by Brazil and Tunisia and said that, contrary to general feeling, developing countries did not wish to reduce copyright protection. Article 9 of the Paris Act of the Berne Convention permits certain exceptions, as does Article 13 regarding musical works. It felt that the recommendations of the Working Group were premature and that further studies were needed.

17. The Delegation of Canada stated that it shared some of the views expressed by the Delegation of Brazil. While congratulating the Working Group on the results of its work, it noted that it was somewhat premature to propose recommendations to Governments at this stage and hoped that the problem would be considered by a committee of governmental experts.

18. The observer from Austria felt that this subject was both important and urgent; however, he was of the opinion that further study was needed on the question.

19. The Delegation of Kenya stated that this subject was of great importance to developing countries. It observed, however, that developing countries could not afford to protect copyright idealistically but should try to establish a balance between the need to obtain foreign works and pay for them in hard currency. Therefore, it felt that neither paragraph (6) of the recommendations of the Working Group, nor a system based on discrimination between scientific works and other works, would really help developing countries. It pointed out that Kenyan law provides for reproduction for educational uses without authorization of the owner of the copyright and without payment, provided these reproductions are destroyed within twelve months. Reproduction can be made under the control of the Government, if it is in the public interest and no income is derived therefrom or no fee is charged. Kenya is considering changing its domestic law and would need more guidance than is contained in paragraph (6) of the recommendations of the Working Group. The subject should be studied further by governmental experts, with particular attention to the needs of developing countries.

20. The Delegation of the United States of America pointed out that this question had been under study for 12 years. It was aware of the feelings expressed at the seventeenth session of the General Conference of Unesco; namely, that it was desirable to give States some guidance in this area. However, it associated itself with the views of other delegations that it would be premature to take any action at the eighteenth session of the General Conference of Unesco on these or other recommendations. In the United States, the extent of reprographic reproduction had grown to extraordinary proportions. The matter had been pending before the United States Congress since 1965; however, although the issue was recognized as of crucial importance, the differences between the parties had proved too difficult to reconcile as yet. In the recent case of *Williams and Wilkins Co. v. The United States of America*, the Court of Claims, reversing an earlier finding, held that photocopying by two governmental medical libraries, under certain circumstances, was not a copyright infringement. The decision of the Court of Claims was closely divided and included two strong dissenting opinions. Although the Supreme Court of the United States is not compelled to accept an appeal from this decision, the importance of the case makes such an appeal desirable. The decision of the Court of Claims does not establish comprehensive guidelines for libraries, research institutions and documentation centers; on the contrary, it is narrowly confined by the Court to the unique facts of the case. The majority decision against the publishers rests upon eight grounds, all of which were required for the result in the case. In view of this, the legal situation under United States law remains unclear. It does, however, demonstrate the unsettled state of United States law and, most significantly, the Court challenges the United States Congress to resolve this issue by legislation. Although the Delegation of the United States of America believed that the Committee should not declare itself against the feasibility of any instrument on the subject, it felt that a recommendation to States at this stage would be premature and therefore supported the

proposal of Canada that further studies be carried out at a meeting of governmental experts.

21. The observer from Denmark informed the meeting that the matter had been under study in the four Scandinavian countries and that solutions on the national level were in the offing. Their success would to a large extent depend on developments in other countries. He felt that the recommendations of the Working Group could form the basis for future work. However, if the general feeling was for further studies to be carried out, he would pose no objection and would agree to setting up a committee of governmental experts.

22. The Delegation of the United Kingdom stated that on balance it was against a recommendation to States at this stage. Any recommendation to be made should be a distillation of experience gained. Every country was trying to find a path and in the United Kingdom a system of blanket licensing was under consideration. Work already in progress in the United Kingdom and other States might possibly be upset by any recommendation at this stage. If the time was premature for any recommendation, it would also be premature for referring the matter to a committee of governmental experts.

23. The observer from Australia stated that the matter had not yet been fully examined in that country and that Australia was watching with interest the progress in the international field. While he felt that the draft recommendations were an appropriate basis on which an international instrument could be established, he would not, however, oppose a further study by a committee of governmental experts.

24. The observer from Mexico felt that it was premature to make any recommendations to States on the subject. He expressed himself in favor of establishing a balance between the interests concerned. He wondered whether a possible solution might not be to levy a charge on the owner of the reprographic equipment to compensate the copyright owner.

25. The observer from Algeria felt that this was a complicated subject and that measures to control reprographic reproduction were not as urgent in all countries of the world. For many developing countries, there would be no interest in any international instrument. He felt that the matter should wait and that, in the meantime, the implications of paragraph (6) of the recommendations of the Working Group should be clarified so as to have a precise idea concerning the exceptions available to developing countries if they should adopt the recommendations.

26. The Delegation of the Federal Republic of Germany stated that the question was under consideration on the national level in its country and it was thus difficult for it to decide on the outlines of a solution. It noted that the discussion in the Federal Republic of Germany dealt not only with the points covered by the Working Group, but also with the question of whether a levy on the selling price of the reprographic equipment should form part of an adequate solution of the problem.

27. The Delegation of France referred to the large number of copies involved, as noted in the report of the Working Group.

It pointed out that in developing countries the incidence of photocopying was not as widespread as in developed countries, but that it was bound to grow with the passage of time. In France itself, they were still awaiting a court decree to help solve the problems raised concerning this matter. It expressed the view that there were two basic approaches to this question: either a reprographic reproduction is a reproduction under the copyright Conventions, in which case a recommendation could not provide for exceptions which are not authorized by the Conventions, or it is not a reproduction under the Conventions and thus a recommendation could not be based on copyright protection. In both cases, it favored the adoption of a recommendation to provide States with some guidance in this area. It was of the opinion that the recommendations of the Working Group cannot be accepted as they stand, and proposed that the Committees recommend the adoption of a general recommendation based on the principle of equitable remuneration, either individual or collective, as set forth in paragraph (1) of the recommendations of the Working Group. The implementation of such a recommendation would be left for States to decide on the national level. The observer from Australia supported the views expressed by the Delegation of France.

28. The Delegation of Italy agreed that the essential point, as stated by France, is to assert the general principle that equitable remuneration should always be reserved for the author. It was of the opinion that reprographic reproduction was a form of reproduction covered by Article 9 of the Berne Convention. Article 68 of the Italian Copyright Law governs the matter. The Delegation of Italy supported the view of the Delegation of France that it would be appropriate to agree on a simple recommendation to States based on the principle of equitable remuneration. However, any recommendation should not try to interpret the provisions of the Berne Convention which are binding on States party to the Convention.

29. The Delegation of Switzerland favored the preparation of a recommendation containing a few basic rules of a practical nature which could provide national legislation with some guidance. It felt that the recommendations of the Working Group provided a good basis for further discussion. If a simple recommendation cannot be drafted by the Committee, then it would have no objection to the convening of a committee of governmental experts, composed of specialists in this area. On the basis of the recommendations of that Committee, States could set up administrative bodies, especially with respect to scientific periodicals.

30. The Delegation of Hungary referred to Article 18(1) of the new Hungarian Law and felt that, while it was premature to attempt to make detailed recommendations to States, a general recommendation covering the basic questions, as was proposed by France and Italy, would be reasonable. It was agreeable to the setting up of a working group to draw up these recommendations.

31. The Delegation of Spain cautioned that any recommendation to be made to States should be viable for them. The recommendations of the Working Group were good but in most

States it would be difficult to implement them. More thorough study was needed. It was agreeable to a working group being set up to carry out further studies.

32. The observer from Portugal felt that the problem was not yet ripe. He asked who would bear the cost if the principle of equitable remuneration were applied. The financial burden would fall mainly on libraries or public institutions or researchers, and there would be administrative problems. He also thought that the procedures for compulsory licenses might be cumbersome.

33. The observer from Japan stated that the recommendations of the Working Group were in general acceptable to him but that, nevertheless, he would be prepared to support the setting up of a committee of governmental experts.

34. The observer from Sweden pointed out that this was not a theoretical problem but one of vital importance to authors. This was so in industrialized countries, though probably less so in some other countries. The use of reprographic methods was widespread in industrialized countries. For these countries at least, there should be a recommendation. Such a recommendation would not be of immediate value to the other countries but may become so in the future when the problem arises. To wait for States to adopt solutions on the national level and then to try to find the common denominator might be putting the cart before the horse. He endorsed the views of the Delegations of France, Italy, Switzerland and Hungary that a short recommendation based on general principles should go out to States immediately. He felt that industrialized countries should provide for negotiations between users and owners of copyright. He was agreeable to the setting up of a committee to work out the recommendations.

35. The Delegation of the United States of America pointed out that, in accordance with the resolution adopted by the seventeenth session of the General Conference of Unesco, the Intergovernmental Copyright Committee had the task of declaring itself on the question of the "feasibility" of adopting a recommendation, rather than the task of adopting a recommendation itself. Although the Delegation of the United States was not yet in a position to discuss or associate itself with the substantive contents of such a recommendation, it understood the sense of urgency to come to grips with the problem. However, it felt that there might be more danger in adopting a recommendation cast in general terms than in drafting a detailed recommendation. Even though, in its opinion, the framework of a recommendation had not yet emerged, it thought the Committee should declare that the adoption of a recommendation was feasible and that work towards this end should be undertaken as soon as possible. It proposed that a subcommittee should prepare a document for consideration by a committee of governmental experts meeting in 1975 or 1976, and that, thereafter, the recommendations of the committee of governmental experts could be communicated to the Director-General of Unesco for submission to the nineteenth session of the General Conference of Unesco. The Delegation of the United States of America pointed out, however, that, since the Berne Union was also considering a

similar item, the Committee might consider other procedural possibilities.

36. The Delegation of Canada agreed with the necessity for further study but was concerned about making a statement that a recommendation on the matter was feasible since it was not yet demonstrated that it was feasible.

37. The Delegation of France shared the view of the Delegation of the United States of America that the Committees should decide on the question of whether a recommendation was feasible. It thought that a large majority was of the opinion that a recommendation was feasible and it proposed that the results of the work of the Committees be materialized, not in the shape of a recommendation, but proposals or wishes addressed to the Director-General of Unesco stating that a recommendation was feasible and that it should place priority on solutions adopted on the national level based on certain general principles. It was opposed, however, to convening a meeting of governmental experts on this subject, since this might be felt to commit the concerned Governments.

38. The Delegation of India stated that it was difficult to support the recommendations of the Working Group. It felt that the matter was not of urgency. The conditions in India were different. There was no photocopying equipment in schools. Some photocopying was resorted to for wider dissemination of scientific papers. Any restrictions on this would be contrary to public interest. The author is already paid. India imports scientific journals at full cost without discounts. The blanket licensing system envisaged in paragraph (4) of the recommendations of the Working Group is not feasible in India where there was no authors' society. It was clear that no recommendation was feasible at this stage, at least in regard to developing countries, and further study by a committee of governmental experts was desirable.

39. The observer from the International Federation of Library Associations (IFLA), who was also speaking on behalf of the International Association of Law Libraries (IALL), stated that a joint working group on copyright, comprising 12 ordinary and a large number of corresponding members, had recently been established, that the United States had provided the chairmanship, and that the USSR had been offered the vice-chairmanship. The group is studying the copyright problem from the libraries' point of view. The results of its studies will be made available to the governmental and non-governmental committees involved. The observer felt that it would be unwise to attempt to draft any recommendations without consultation with IFLA. Libraries stand as the link between the author and the user and, if the problems and needs of libraries are ignored, both interests would be jeopardized.

40. The observer from the International Confederation of Societies of Authors and Composers (CISAC) considered that the problem was urgent. A large number of copies were being made by reprographic techniques as evidenced by the report of the Working Group. Even if the situation was not the same in all countries, it was bound to become so in the near future. The subject had been under study since 1961, and abundant

documentation already existed. He felt that it would be a pity if the Committees did not think it feasible to move forward as yet. The recommendations of the Working Group, at which all interests were represented, may appear too general or far-reaching; however, they amply illustrate the three general principles involved, namely, that reprographic reproduction is reproduction, that equitable remuneration is necessary and that general, freely-negotiated agreements are needed. Some progress could be made on this basis. He supported the proposal of the Delegation of France that a general recommendation should be made without further delay.

41. The observer from the International Publishers Association (IPA) regretted that for many years the Committees had considered the question premature. Sweden had shown that it was ripe and in the Netherlands and the United Kingdom a solution was imminent. He thought that the time was ripe for a general, if not a detailed recommendation, dealing in particular with the search for negotiated agreements. He shared the opinion of the observer from CISAC regarding the basic principles and suggested that a recommendation be made to States, keeping in view the needs of developing countries. A decision on such a recommendation would be left for each country to take.

42. The observer from the International Federation for Documentation (FID), speaking for the International Council for Reprography (ICR), stated that he could not agree to a recommendation based on present knowledge as reprographic technology was changing rapidly. He emphasized the necessity for further studies into the development of reprographic techniques so that a recommendation would not be outdated before it was adopted.

43. On the question of general procedure, the Chairman of the meeting stated that the majority opinion was that further examination of the problems involved was needed and useful, that the Intergovernmental Committee should recommend that the General Conference of Unesco should not decide on the matter at its eighteenth session, but should postpone its decision to a future session, and that subcommittees of the two Committees should be convened to make a further study of the question and report back to the next sessions of the Committees, sitting together, in 1975, which should decide on future action to be recommended.

44. At the request of the Chairman, the two Committees set up an ad hoc group consisting of Brazil, France, Senegal and the United States of America, with the Chairman as the ex officio Chairman, to draft the necessary resolutions for adoption by the Committees.

45. The ad hoc group proposed two draft resolutions for adoption by the Intergovernmental Copyright Committee and one draft resolution for adoption by the Executive Committee of the Berne Union (reproduced in documents IGC/XII/14 and B/EC/VI/7, respectively).

46. When presenting these resolutions to the Committees, the Chairman referred to the proposal of the ad hoc group that, if the Committees should decide to recommend the convening of

subcommittees of the two Committees, all the participants in the Working Group which met at Paris from May 2 to 4, 1973, be invited to attend as observers. This proposal was approved by the Committees.

47. With respect to these resolutions, the representative of the Director-General of Unesco made a declaration in which he drew the attention of the Intergovernmental Copyright Committee to the fact that the mandate of the subcommittee, as defined in draft Resolution 65(XII), went, in the opinion of the Director-General, beyond the scope of the question which the General Conference of Unesco invited the Committee to examine in its Resolution 5.151 adopted at its seventeenth session. In fact, as he also pointed out, part of this mandate dealt with the question of procedure which had been decided by the General Conference in Resolution 5.151. This Resolution, which was adopted by 79 votes for, none against, and, in particular, its paragraph 2, still stood. He was therefore obliged to reserve expressly the position of the Director-General of Unesco on the stand he will be called upon to take when he reports to the General Conference of Unesco on the results of the work on this item of the agenda, as well as at the subcommittee and the Committees during their next meetings, and at any other stage of this project.

48. The Delegation of Tunisia stated that the Intergovernmental Committee was faced with a question of extreme importance. It noted that its Government could not associate itself with Resolution 65(XII) which went beyond the mandate to the Committee. The procedural question referred to in the draft resolution had already been decided by the General Conference of Unesco and none of the States represented on the Intergovernmental Committee had voted against the General Conference decision. The Intergovernmental Committee was not, in its opinion, qualified to modify the procedure adopted by the General Conference of Unesco, or adopt a position which might not be confirmed by that body. The Delegation of Tunisia added that its Government approved and supported the collaboration and cooperation between Unesco and WIPO, but that this collaboration should result neither in a paralysis in the work of either of the two Organizations nor a reconsideration of the decisions taken concerning the program of either of them, which could only be prejudicial to the States for which they worked. The Delegation of Senegal and the observer from Algeria associated themselves with the views expressed by the Delegation of Tunisia.

49. During the discussion of this Report, the Delegation of France stated that it regretted that "procedure" had been included in the terms of reference of the subcommittees mentioned in the draft resolutions without a detailed discussion taking place with respect to this inclusion.

50. The observer from Algeria, supported by the Delegations of Brazil and Tunisia and the observer from Mexico, stated that the problem of reprography was of no interest to developing countries and therefore the preparation of a recommendation was not of interest to them. He requested the Committees to adopt the position that the recommendation to be worked out would not be addressed to developing countries.

51. The Delegation of Senegal shared the views of Algeria and Tunisia, but felt that it was up to the subcommittees to go into the matter more fully.

52. With respect to the views expressed by some developing countries, the Chairman proposed that a new consideratum be added to draft Resolution 65(XII), noting the declaration of the developing countries members of the Intergovernmental Committee. The same was to be done to the resolution to be adopted by the Executive Committee of the Berne Union.

53. Referring to the imminent entry into force of the 1971 texts, the Delegation of Hungary was of the opinion that developing countries cannot avoid considering the question of reprography. It felt that it would be a great mistake to exclude developing countries, but that the subcommittees should take into account the special interests of these countries.

54. In a spirit of compromise, the Delegations of Brazil, Kenya, Israel and the United States of America and the observer from Algeria supported the proposal of the Chairman, referred to in paragraph 52. The Delegation of the United Kingdom noted that it had considerable doubts about the effectiveness of a committee several of whose members appeared to have opted out of its conclusions and said that it would have to reserve the United Kingdom position with regard to the Committees' findings. The Delegation of Israel indicated, however, that the adoption of the Chairman's proposal did not exclude the developing countries from participating in any group which might be established to study this subject.

55. The Committees thus decided to include the new paragraph, as proposed by the Chairman, in draft Resolution 65(XII) of the Intergovernmental Committee and the draft resolution presented to the Executive Committee of the Berne Union.

56. The Intergovernmental Copyright Committee and the Executive Committee adopted respectively the draft resolutions as presented to them by the ad hoc group with the addition of the new consideratum. The resolution as adopted by the Executive Committee appears in Annex A of this Report.

Transmissions via Space Satellites

57. The Secretariat of Unesco introduced document B/EC/VI/3 - IGC/XII/3 concerning the results of the Third Committee of Governmental Experts convened jointly by the Directors General of Unesco and WIPO which met in Nairobi (Kenya) from July 2 to 11, 1973.

58. The Committees took note of the recommendation of the Third Committee of Experts, and decided to leave further discussion of the matter to the diplomatic conference to be held in Brussels from May 6 to 21, 1974.

International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations

59. The Committees noted the progress of the International Convention for the Protection of Performers, Producers of

Phonograms and Broadcasting Organizations (Rome, 1961), as reported in document B/EC/VI/4 - IGC/XII/4.

Phonograms Convention

60. The International Bureau of WIPO presented document B/EC/VI/5 - IGC/XII/5 concerning the development of the Convention for the Protection of Producers of Phonograms Against the Unauthorized Duplication of Their Phonograms and informed the Committees that the Government of the United States of America had deposited its instrument of ratification with the Secretary-General of the United Nations on November 26, 1973.

61. The Delegations of India and the Federal Republic of Germany informed the Committees that their respective competent authorities had decided to ratify the Convention and that their instruments of ratification would be deposited shortly.

Model Laws on Copyright for Developing Countries

62. When introducing document B/EC/VI/6 - IGC/XII/6, the Secretariat of Unesco explained the genesis of this program and the steps so far taken by Unesco in cooperation with WIPO.

63. The Director General of WIPO drew the attention of the Executive Committee of the Berne Union to its earlier mandate for the establishment of at least two model laws, one for English-speaking countries and one for French-speaking countries, and stated that the International Bureau of WIPO would like to have guidance from the Committee on the question whether it wished to have a single model law or several different model laws, for countries of different regions or languages. He said that the administrative meetings of the Berne Union held in Geneva in November 1973 had voted the necessary funds for carrying on further studies on this subject but that a decision on the said question had been left to this meeting. He stated that, notwithstanding the stated earlier mandate, WIPO had collaborated with the Secretariat of Unesco in the preparation of a single draft model law and in the convening of the meeting of the African consultants at Geneva in March 1973. WIPO also actively participated in the Abidjan meeting in October 1973, although that meeting was convened, and the Secretariat of the meeting was provided, by Unesco alone. He said that the work of establishing a model law would be continued in cooperation with Unesco in the manner in which the present meeting would wish it to be continued.

64. The Delegation of Tunisia expressed a sense of regret that the draft model law prepared by the Committee of African Experts in Abidjan had not been made available to the Committee for consideration. It supported the adoption of the Abidjan resolution.

65. The Delegation of Kenya shared the concern of the Delegation of Tunisia. It noted that Kenya would welcome a final draft as soon as possible in order to take advantage of the special provisions of the 1971 Conventions. As regards the substance of the draft, it had felt at one time that a single model

law for countries following different legal traditions might not be a workable solution but it had, since the Abidjan meeting, revised its view. It also hoped that the Committees would be able to adopt paragraphs (ii) and (iii) of the resolution adopted by the Abidjan Committee.

66. In view of the many variations in the social philosophies and precedents among developing countries, the Delegation of India was not sure whether it would be possible to have a single model law. It felt that, unless one or more seminars were held in different continents to consider a model law, any draft prepared would be of no practical application.

67. The Delegation of Israel felt that copyright was an area in which uniformity might be achieved. This was especially true in view of the fact that most countries had adopted the underlying principles of the Berne Convention. It accordingly favored the development of a single model law for developing countries, applicable on a worldwide basis.

68. The Delegation of Brazil felt that the draft prepared at Abidjan for African countries could not be proposed for other regions with a different background. It suggested that similar meetings should be held on a regional level. A global meeting could only be thought of thereafter.

69. The Delegation of Senegal, while supporting the views expressed by Tunisia and Kenya, drew attention to the fact that the mandate previously given to the International Bureau of WIPO was to prepare two basic texts and that this should now be reconsidered. It felt that, as was decided in Abidjan, the draft law should be a single one designed for global application, irrespective of the language, cultural or legal traditions of the developing countries concerned.

70. The Delegation of the United States of America stated that the resolution adopted in Abidjan had much to commend it. It felt that perhaps the most practical way to put the text before the largest number of countries would be to develop a single text for all developing countries instead of trying to organize regional meetings. It was aware that differences in cultural and legal traditions exist and it could be argued that a series of regional meetings, each building on the experience of the preceding, might be useful. Although it was of the opinion that the Abidjan text provided a basis for a worldwide meeting, it thought that it was not for a developed country to pronounce on this topic which was essentially to be regulated by the wishes of the developing countries. In conclusion, it urged that the Abidjan text and the commentary thereon be established as soon as possible and made available to developing countries for use and comments.

71. The Delegation of Italy felt that this was a matter essentially for domestic legislation in developing countries. The two Conventions had been revised in 1971 and both offered similar provisions for the benefit of developing countries. A single model law containing draft provisions, particularly with respect to these special faculties, might be of use to all developing countries. However, this was essentially a matter which should be regulated according to the wishes of the developing countries themselves.

72. The Delegation of France shared the views expressed by the Delegation of Tunisia and stated that the question of a single law was a matter for developing countries to decide.

73. The observer from Mexico felt that the idea that one single draft might suffice to meet the needs of all developing countries was utopian. Problems, cultural backgrounds, legal systems and needs differ from country to country and, therefore, it was not possible to have one model law for all countries. Although, in his opinion, regional seminars would be useful, he thought it might be even more desirable for specialists from developing countries to be given an opportunity to consult directly with the two Secretariats on copyright questions of concern to them.

74. The observer from Ghana expressed the view that the Abidjan resolution was a practical one and stressed that the text prepared at Abidjan was not based on any regional considerations or approaches and was thus susceptible of worldwide application.

75. The observer from Algeria stated that the Abidjan text had brought together both the Anglo-Saxon and French traditions. Though he did not wish to impose this text on other developing countries, he felt that such a model law would be useful in other areas.

76. The Secretariat of Unesco stated that the final Abidjan text could not be established for presentation at the present meeting because of the little time left after the Abidjan meeting. It also noted that the International Bureau of WIPO could not participate so far in the establishment of the said text pending an appropriate decision of the Executive Committee of the Berne Union regarding the matter.

77. Based on these discussions, the two Committees decided as follows:

- (i) the two Secretariats should incorporate in the draft model law presented to the Abidjan meeting the changes recommended by that meeting and they should, as soon as possible, communicate the resulting text and a commentary thereon to all the African States for information purposes;
- (ii) the said text and commentary should be transmitted for written comments to all members of the Berne Union and the Universal Copyright Convention; and
- (iii) a committee of experts, to which the Governments of developing countries would be invited to appoint representatives, should be convened, preferably by a developing State party to the Berne or Universal Copyright Convention in cooperation with and with the assistance of Unesco and WIPO, for establishing a model law on copyright for developing countries on the basis of the text and comments referred to in the preceding paragraph and compatible with the Paris (1971) revisions of the Berne and Universal Copyright Conventions.

Date and Place of the Next Sessions

78. The Committees decided that the next sessions of the Intergovernmental Copyright Committee and the Executive Committee of the Berne Union, sitting together, should be held in Geneva in the fall of 1975.

Adoption of the Report

79. The Committee unanimously adopted this Report.

Closing of the Meeting

80. After thanking Unesco for the hospitality provided, the Chairman emphasized the quality of the preparatory work done by the Secretariats of Unesco and WIPO and congratulated the participants on the work they had accomplished. The meeting was then declared closed.

ANNEX A

Resolution

Reprographic Reproduction of Works Protected by Copyright

The Executive Committee of the Berne Union, at its sixth session (second extraordinary) held in Paris during December 5 to 11, 1973,

Having considered the item of its agenda relating to reprographic reproduction of works protected by copyright,

Recalling in this connection the Resolution No. 1 adopted by it at its third (first extraordinary) session in Geneva during November 3 to 5, 1971,

Noting that this important problem was the subject of deliberations of the Working Group on Reprographic Reproduction of Works Protected by Copyright, convened under the joint auspices of Unesco and the World Intellectual Property Organization (WIPO) in Paris from May 2 to 4, 1973,

Taking into account the results of the said Working Group and expressing its gratitude for the important contribution of that Group,

Being of the opinion that the matter is not yet ripe for taking a definitive stand and that accordingly its study should be continued,

Noting the declaration of the developing States members of the Committee according to which the matter did not appear to be of interest to them and that they reserved their position on the question whether they wished to be among the addressees of any recommendation which might result from the study referred to in this Resolution,

Resolves that

- (i) the said matter, both its substantive and procedural aspects, should be studied further by a subcommittee of this Committee consisting of representatives of States members of this Committee;
- (ii) the subcommittee should make the study, sitting together with the similar subcommittee appointed by the Intergovernmental Copyright Committee of the Universal Copyright Convention;
- (iii) the study of the Working Group mentioned above, as well as a reference to the various solutions adopted at the national level, should be among the documentation submitted to the subcommittee; and
- (iv) the results of the study be submitted to the next session of this Committee sitting together with the Intergovernmental Copyright Committee.

ANNEX B

List of Participants

I. States Members of the Committee

(a) Ordinary Members

Canada: A. A. Keyes; N. Senécal (Miss). France: A. Kerever; H. Desbois; J. Buffin; P. Nollet; E. de Dampierre (Miss). Germany (Federal Republic of): E. Steup (Mrs.); E. Bungeoth. Hungary: I. Timár. India: K. Chaudhuri. Israel: M. Gabay. Italy: G. Galtieri; G. Trotta; A. Ciampi; V. De Sanctis.

Senegal: N'D. N'Diaye; D. Diéne. Spain: I. Fonseca-Ruiz (Mrs.). Switzerland: J.-L. Marro. United Kingdom: I. J. G. Davis; D. L. T. Cadman. Yugoslavia: V. Spaić.

(b) Associate Members

Philippines: J. Yambao. Poland: W. Ketrzynski; J. Wolski; A. Kopff.

II. Observer States Members of the Berne Union

Australie: J. McKenzie; D. K. Catterns. Austria: R. Dittrich. Belgium: G. de San; F. van Isacker. Brazil: J. F. da Costa; L. F. Gouvêa de Athayde; A. L. de Lyra Tavares (Miss); C. de Souza Amaral. Cameroon: J.-A. Ndongo. Czechoslovakia: O. Kunz. Denmark: W. Weincke; J. Nørup-Nielsen. Finland: R. Meinander. Greece: M. Zografou (Miss). Holy See: L. Conti; L. Rousseau; M.-S. de Chalus (Mrs.). Japan: M. Kato; Y. Oyama. Mexico: G. E. Larrea Richerand; V. C. Garcia Moreno; E. Lizalde; V. Blanco Labra. Monaco: R. Bocca. Netherlands: M. van Silfbout-Bartels (Mrs.); W. J. Blackstone. Norway: T. Saebø (Miss). Portugal: A. Ribeiro Mendes; L. Nunes de Almeida. Sweden: T. Hesser; A. H. Olsson. Tunisia: R. Saïd; A. Amri.

III. Other Observer States

Algeria: R. Souibes; S. Abada. Andorra: E. Rossell. Cuba: W. Arguëlles. Ecuador: C. F. Uribe; G. Ponce Benavides; G. Peña Matheus. Ghana: B. W. Prah; E. A. Sai. Guatemala: O. Bertholin y Gálvez. Kenya: S. F. O. Muka; C. Mwangiemi; G. Straschnov. Khmer Republic: K. Vannsak; P. Buoy Hak. Soviet Union: B. Pankin; J. Gaïdoukova (Mrs.). Ukrainian SSR: Y. Kotchoubel. United States of America: D. M. Searby; B. Ringer (Ms.); H. J. Winter; L. Flacks; R. M. Maxim.

IV. Intergovernmental Organizations (Observers)

International Labour Office (ILO): E. Thompson. United Nations Educational, Scientific and Cultural Organization (Unesco): C. Lussier; M.-C. Dock (Miss); D. de San; P. Lyons (Miss). International Institute for the Unification of Private Law (UNIDROIT): A. Françon.

V. International Non-Governmental Organizations (Observers)

European Broadcasting Union (EBU): G. Straschnov. International Confederation of Professional and Intellectual Workers (CITD): G. Poulle; R. Berquier. International Confederation of Societies of Authors and Composers (CISAC): J. A. Ziegler. International Federation for Documentation (FID): H. Arntz; S. Galliot (Miss). International Federation of Actors (FIA): F. Delahalle (Mrs.); R. Rembe. International Federation of Library Associations (IFLA): G. Dahlmans. International Federation of Musicians (FIM): J. Morton; R. Leuzinger. International Federation of the Phonographic Industry (IFPI): S. M. Stewart; G. Davies (Miss). Internationale Gesellschaft für Urheberrecht (INTERGU) (International Copyright Society): G. Halla. International Federation of Variety Artists (IFVA): R. Rembe. International Group of Scientific, Technical & Medical Publishers (STM): F. Nijhoff Asser. International Hotel Association (IHA): J. David. International Literary and Artistic Association (ALAD): A. Françon; R. Blaustein (Miss); X. Desjeux. International Music Council (IMC): J. Morton; R. Leuzinger. International Publishers Association (IPA): J. A. Koutchoumow; R. C. Sharp; A. Géranton; C. Leduc. International Secretariat of Entertainment Trade Unions (ISETU): K. Rössel-Majdan; R. Cupwell. International Union of Cinematograph Exhibitors (UIEC): J. Handl. International Writers Guild (IWG): R. Fernay; E. Le Bris.

VI. World Intellectual Property Organization (WIPO)

A. Bogsch (*Director General*); T. S. Krishnamurti (*Counsellor, Head, Copyright Division*); M. Stojanović (*Counsellor, Copyright Division*).

VII. Officers

Chairman: A. A. Keyes (Canada). *Vice-Chairmen*: I. Timár (Hungary); N'D. N'Diaye (Senegal). *Secretary*: T. S. Krishnamurti. *Assistant Secretary*: M. Stojanović.

International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations

Non-Governmental Study Group to Consider the Draft Model Law Relating to the Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations

(Geneva, January 22 to 25, 1974)

Note*

The Non-Governmental Study Group to Consider the Draft Model Law Relating to the International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations (Rome Convention) met for a second time in Geneva from January 22 to 25, 1974, at the Headquarters of the World Intellectual Property Organization.

This meeting was convened by the Secretariat of the Intergovernmental Committee established under Article 32 of the Rome Convention, in accordance with a decision taken by the Committee at its fourth ordinary session held at Paris in December 1973¹. The Committee requested the three Organizations forming the Secretariat to consult the international non-governmental organizations concerned on the five objections to the text of the draft model law raised during the course of the December meeting of the Committee. The five points on which the international non-governmental organizations had to be consulted were as follows: the problem of performers who are permanent employees of a broadcasting organization; the problem that arose where performers had previously ceded their rights to a trade union, a collecting society or another third person; the problem of exceptions and their concordance with copyright legislation; the period during which ephemeral recordings might be retained; the problem of presentation of the optional character of some provisions of the draft model law.

After long discussions during which the interested parties stated their respective positions, no agreement could be achieved at the meeting itself. Thereafter, there were further prolonged private discussions amongst the representatives of the EBU, FIA, FIM and IFPI in the presence of the Chairman of the Group. As a result thereof, a compromise formula was suggested for each of the above-mentioned points subject to subsequent confirmation by the organizations concerned.

The matter will now be submitted to the extraordinary session of the Intergovernmental Committee which is to be held at Brussels in May 1974.

The list of persons who participated in the meeting is given below. The meeting was presided over by Mr. I. J. G. Davis (United Kingdom), Vice-Chairman of the Intergovernmental Committee.

List of Participants

I. International Non-Governmental Organizations

European Broadcasting Union (EBU): A. Scharf; K. Remes; R. de Kalbermatten; G. Straschnov. International Broadcast Institute (IBI): H. S. Bloom. International Confederation of Societies of Authors and Composers (CISAC): D. de Freitas. International Copyright Society (INTERGU): G. Halla. International Federation of Actors (FIA): G. Croasdell. International Federation of Musicians (FIM): J. Morton; R. Leuzinger. International Federation of the Phonographic Industry (IFPI): S. M. Stewart; G. Davies (Miss); M. Lenoble; H. H. von Rauscher auf Weeg. International Literary and Artistic Association (ALAI): D. de Freitas. International Music Council (IMC): J. Morton. International Publishers Association (IPA): J. A. Koutchoumow. International Secretariat of Entertainment Trade Unions (ISETU): K. Rössel-Majdan; R. G. Gupwell. International Union of Cinematograph Exhibitors (UIEC): J. Handl. International Writers Guild (IWG); D. de Freitas.

II. Secretariat

International Labour Office (ILO):

E. Thompson (*Chief, Non-Manual Workers' Section, Conditions of Work and Life Department*); B. Knapp (*Head of Disputed Claims Section*).

United Nations Educational, Scientific and Cultural Organization (Unesco): M. C. Dock (Miss) (*Director a. i. Copyright Division, Head, International Copyright Information Centre*); P. Lyons (Miss) (*Copyright Division*).

World Intellectual Property Organization (WIPO):

T. S. Krishnamurti (*Counsellor, Head, Copyright Division*); M. Stojanović (*Counsellor, Copyright Division*).

III. Officers

Chairman: I. J. G. Davis (United Kingdom). *Co-Secretaries*: E. Thompson (ILO); M.-C. Dock (Miss) (Unesco); T. S. Krishnamurti (WIPO).

* This Note has been prepared by the International Bureau of WIPO on the basis of the report of the meeting.

¹ See *Copyright*, 1974, p. 17.

NATIONAL LEGISLATION

SWEDEN

I

Law amending the Law of 1960 (No. 729) on Copyright in Literary and Artistic Works

(of May 25, 1973) *

§ 8. — A work is considered as having been made public when it has lawfully been made available to the general public.

A work is considered as having been published when copies thereof have with the consent of the author been placed on sale or otherwise distributed to the general public.

§ 9. — Laws, decisions issued by public authorities, reports issued by Swedish public authorities and official translations of such texts are not subject to copyright.

Without prejudice to this provision, copyright may be claimed in respect of official maps, works of drawing, painting and engraving, musical works and works of poetry in so far as such work forms part of a work referred to in the first paragraph. Works of drawing, painting and engraving, musical works and works of poetry may, however, be reproduced without the consent of the author. The author is entitled to compensation for such reproduction, provided that the work is not reproduced in connection with the activity of public authorities. Furthermore, no compensation shall be paid if the work is reproduced in connection with a statement of fact for legal proceedings in a case in which the work figures and only to the extent necessary for the purpose of such a statement.

The provisions of § 26 are correspondingly applicable to reproduction referred to in the second paragraph above.

§ 19. — If a musical work is performed with text, the text may be reproduced in concert programmes, etc., for the use of the audience.

§ 21. — For the purpose of furnishing information on a current event by means of a radio or television broadcast, direct transmission or film, works seen or heard in the course of the event may be reproduced to the extent justified by the informatory purpose.

§ 24. — Documents other than those mentioned in § 9, first paragraph, issued by Swedish public authorities may be reproduced without the consent of the author. This provision shall not apply to official maps, technical models, works created for use in education or which constitute the findings of scientific research, works of drawing, painting and engraving,

musical works, works of poetry or works copies of which are made available to the general public through public authorities in connection with commercial activity.

Oral and written statements made before a public authority or in government or municipal representative bodies, or at public debates on public concerns may also be reproduced without the consent of the author; however, statements as well as writings or similar works, cited as evidence, may only be reproduced in connection with a statement of fact for legal proceedings or in a case in which they figured and only to the extent necessary for the purpose of such a statement. The author shall have the exclusive right to publish a compilation of his statements.

§ 24a. — Notwithstanding copyright, official documents shall be made available to the public as prescribed in chapter 2 of the Freedom of the Press Act.

§ 25. — When an author has transferred copies of a work of art or when such work has been published, copies thus transferred or included in the publication may be further distributed and publicly exhibited by means other than those of film or television broadcast.

A work of art referred to in the first paragraph may also be included in the production or public performance of a film or television programme, provided that such reproduction is of secondary importance to the contents of the film or programme.

A work of art included in a collection, exhibited, or placed on sale, may be reproduced in catalogues and notices concerning the exhibition or sale. A work of art may also be reproduced in pictorial form when it is permanently situated outdoors on or at a public place.

A building may be freely reproduced in pictorial form.

§ 39. — A transfer of the right to produce a film of a literary or artistic work shall include the right to make the work available to the public by showing the film in motion picture theatres, on television and otherwise, and to make the subtitling or dubbing of the texts. This provision does not apply to musical works.

§ 45. — A performing artist's performance of a literary or artistic work may not without his consent be recorded on gramophone records, films, or other mechanical instruments

* The official translation of the three legislative texts was kindly transmitted to the International Bureau by the Swedish Ministry of Justice.

by means of which it can be reproduced, nor may it, without such consent, be broadcast by radio or television or made available to the general public by direct transmission.

The recording of a performance on a mechanical instrument as referred to in the first paragraph, may not be transferred to another such instrument without the consent of the performer, until twenty-five years have elapsed from the year in which the first recording took place.

The provisions of §§ 3 and 9, § 11, first paragraph, § 14, first paragraph, §§ 17, 20 and 21, § 22, first paragraph, and §§ 24, 24a, 27-29 and 41-42 shall apply to the recording, broadcasting, transmission, and rerecording mentioned in this section.

§ 46. — A gramophone record or other sound recording may not be copied without the consent of the producer, until twenty-five years have elapsed from the year in which the recording was made. The transfer of a sound recording from one mechanical instrument to another shall also be regarded as copying.

The provisions of § 9, § 11, first paragraph, § 14, first paragraph, §§ 17 and 21, § 22, first paragraph, and §§ 24 and 24a shall apply to any procedure which, pursuant to this section, requires the consent of the producer.

§ 47. — If a sound recording referred to in § 46 is used before the end of the term therein prescribed for a radio or television broadcast, a compensation shall be paid both to the producer of the recording and to the performer whose performance is recorded. If two or more performers have participated in a performance, their right may only be claimed jointly. The performer's claim on a radio or television organization shall be made through the producer.

The provisions of § 9, § 14, first paragraph, and §§ 20, 21 and 24 shall apply accordingly. The provisions of §§ 27-29 and 41-42 shall apply in regard to the right of a performer.

This section shall not apply to sound films.

§ 48. — A radio or television broadcast may not be rebroadcast or recorded on mechanical instruments by means of which it can be reproduced without the consent of the radio or television organization. Nor may a television broadcast, without such consent, be made available to the general public in a cinema or similar premises.

If a broadcast has been recorded on a mechanical instrument referred to in the first paragraph, it may not be transferred to another instrument without the consent of the radio or television organization before twenty-five years have elapsed from the year in which the broadcast took place.

The provisions of § 9, § 11, first paragraph, § 14, first paragraph, §§ 17, 20 and 21, § 22, first paragraph, and §§ 24 and 24a shall apply to cases specified in this section.

§ 49. — Catalogues, tables, and similar compilations in which a large number of particulars have been summarized may not be reproduced without the consent of the producer before ten years have elapsed from the year in which the production was published.

The provisions of § 9, § 11, first paragraph, and §§ 14, 24 and 24a shall apply to the productions mentioned in this

section. If a production of this kind or a part thereof is subject to copyright, the copyright may also be claimed.

§ 58. — The District Court of Stockholm shall have jurisdiction in cases involving radio or television broadcasts which violate this Law. The same shall apply to actions for compensation under § 9, second paragraph, § 14, second paragraph, § 16, § 22, second paragraph, or § 47.

§ 60. — The provisions laid down in this Act concerning copyright in a proper sense shall apply to:

1. works of Swedish subjects or persons who have their habitual residence in Sweden;
2. works first published in Sweden or simultaneously in Sweden and abroad;
3. cinematographic works the maker of which has his headquarters or habitual residence in Sweden;
4. works of architecture erected here;
5. artistic works incorporated in a building here or in some other way permanently fixed to the ground.

For the purposes of the application of the first paragraph, item 2, a simultaneous publication shall be considered as having taken place if the work has been published in Sweden within thirty days of its publication abroad. For the purposes of the application of the first paragraph, item 3, the person whose name appears on a cinematographic work in the usual manner shall, in the absence of proof to the contrary, be presumed to be the maker of the said work.

The provisions of §§ 50 and 51 shall apply to all literary or artistic works, regardless of their origin.

§ 61. — The provisions of §§ 45-48 shall apply to performances, sound recordings, and radio or television broadcasts which take place in Sweden.

The provisions of § 49 shall apply to productions of Swedish subjects or Swedish corporations or persons who have their habitual residence in Sweden, and to productions first published in Sweden.

* * *

This Law shall enter into force on July 1, 1973.

The new Law shall apply also to works created before it comes into force, however with the following exceptions:

1. copies of a work produced under the old law may be freely distributed and exhibited;
2. a person who, under the old law, has produced composed type, plates, forms and other devices for the reproduction of a particular work may use them for this purpose until the end of 1975 and freely distribute and exhibit such copies.

The provisions concerning works shall apply to performances, sound recordings and radio or television broadcasts referred to in §§ 45-48 and to productions referred to in § 49.

II

Law amending the Law of 1960 (No. 730) on Rights in Photographic Pictures

(of May 25, 1973)

§ 8. — For the purpose of furnishing information on a current event by means of a television broadcast, direct transmission or film, photographic pictures seen in the course of the event may be reproduced to the extent justified by the informatory purpose.

§ 12. — A photographic picture may be used freely in the interest of the administration of justice and public safety.

The provisions of §§ 9 and 24 of the Law of 1960 (No. 729) on copyright in literary and artistic works shall apply accordingly to the right in photographic pictures, but the provisions on works of picture laid down in that Law shall instead apply to photographic pictures of an artistic or scientific value.

Notwithstanding the right in photographic pictures, official documents shall be made available to the public as prescribed in chapter 2 of the Freedom of the Press Act.

§ 20. — The District Court of Stockholm shall have jurisdiction in cases involving television broadcasts which violate this Law. The same shall apply to actions for compensation under § 7 or § 9, or § 12, second paragraph.

§ 22. — This Law shall apply to:

1. photographic pictures produced by Swedish subjects or persons who have their habitual residence in Sweden;

2. photographic pictures first published in Sweden or simultaneously in Sweden and abroad;
3. photographic pictures incorporated in a building in Sweden or in another device here which is permanently fixed to the ground.

For the purposes of the application of the first paragraph, item 2, publication shall be regarded as simultaneous if the photographic picture is published in Sweden within thirty days of its publication abroad.

* * *

This Law shall enter into force on July 1, 1973.

The new Law shall also apply to photographic pictures produced before it comes into force; however with the following exceptions:

1. copies of a photographic picture produced under the old law may be freely distributed and exhibited;
2. a person who has produced plates and other devices for the reproduction of a particular photographic picture under the old law may use them for this purpose until the end of 1975, and freely distribute and exhibit such copies.

III

Royal Decree**on the Application of the Laws of December 30, 1960 (Nos. 729 and 730), on Copyright in Literary and Artistic Works and on Rights in Photographic Pictures in respect of other countries, etc.**

(of May 25, 1973)

Section 1

Subsection 1. The provisions of the Law of 1960 (No. 729) on Copyright in Literary and Artistic Works which concern copyright in a proper sense shall, in accordance with the provisions of subsections 2 and 3, also apply to:

1. works of nationals of one of the foreign countries of the International Union for the Protection of Literary and Artistic Works (Berne Union) or persons who have their habitual residence in such country;
2. works first published in a foreign country of the Union or simultaneously in such country and in a country outside the Union;

3. cinematographic works the maker of which has his headquarters or habitual residence in one of the foreign countries of the Union;
4. works of architecture erected in a foreign country of the Union;
5. artistic works of foreign authors which works are incorporated in a building located in a foreign country of the Union or which are in some other way permanently fixed to the ground in such a country.

For the purposes of the application of the first paragraph, item 2, a simultaneous publication shall be considered as having taken place if the work has been published in a foreign

country belonging to the Union within thirty days of its publication in a country outside the Union. For the purposes of the application of the first paragraph, item 3, the person whose name appears on a cinematographic work in the usual manner shall, in the absence of proof to the contrary, be presumed to be the maker of the said work.

Subsection 2. Protection under Swedish law shall not apply if the term of protection established by the country of origin has expired.

In the case of works first published in a country of the Union, the country in which the publication took place shall be considered as the country of origin. If the work has been published simultaneously in several countries of the Union which grant different terms of protection, the country whose legislation grants the shortest term of protection shall be considered to be the country of origin. If the work has been published simultaneously in a country outside the Union and in a country of the Union the latter country shall be considered to be the country of origin.

In the case of works not having their country of origin established according to the provisions of the second paragraph, the country of origin shall be the country of the Union of which the author is a national or in which he has his habitual residence. In the case of cinematographic works the maker of which has his headquarters or habitual residence in a country of the Union, the latter country shall be considered to be the country of origin. In the case of works of architecture erected in a country of the Union and in the case of artistic works incorporated in a building located in a country of the Union or which are in some other way permanently fixed to the ground in such a country, the latter country shall be considered as the country of origin of the work.

For the purposes of the application of the provisions of this subsection, the provisions of the second paragraph of subsection 1 of this section shall apply accordingly.

Subsection 3. Agreements on contributions brought to the making of a cinematographic work referred to in subsection 1, items 1 to 3, shall, in the absence of any contrary stipulation in the contract or in the provisions of the second paragraph, be considered to imply that the author has no right to object to the reproduction, distribution to the general public, public performance, communication to the public by wire, broadcasting or any other communication to the public or to the subtitling or dubbing of texts of the work.

The question whether or not the agreement referred to in the first paragraph shall, for the application of that provision, be drawn up in writing shall be a matter for the legislation of the country of the Union where the maker of the cinematographic work has his headquarters or habitual residence.

Subsection 4. The provisions of subsection 3 shall also apply to agreements on contributions brought to the making of a cinematographic work associated with Sweden according to § 60 of the Law of 1960 (No. 729) on Copyright in Literary and Artistic Works if the work, pursuant to subsection 2, has its country of origin in some country of the Union other

than Sweden or if the work, pursuant to the same subsection, has Sweden as its country of origin but Swedish legislation is not applicable to the agreement.

Subsection 5. The following foreign States and territories are at present members of the Berne Union: Argentina, Australia with some territories, Austria, Belgium, Brazil, Bulgaria, Cameroon, Canada, Chad, Chile, Cyprus, Czechoslovakia, Dahomey, Denmark, Fiji, Finland, France with overseas departments and territories, Gabon, German Democratic Republic, Germany (Federal Republic of), Greece, Holy See, Hungary, Iceland, India, Ireland, Israel, Italy, Ivory Coast, Japan, Lebanon, Liechtenstein, Luxembourg, Madagascar, Mali, Malta, Mauritania, Mexico, Monaco, Morocco, Netherlands with Surinam and the Antilles of the Netherlands, New Zealand, Niger, Norway, Pakistan, People's Republic of the Congo, Philippines, Poland, Portugal, Romania, Senegal, South Africa, Spain, Sri Lanka, Switzerland, Thailand, Tunisia, Turkey, United Kingdom of Great Britain and Northern Ireland with some colonies, possessions and protectorates, Uruguay, Yugoslavia, Zaire.

Section 2

Subsection 1. The provisions of the Law of 1960 (No. 729) on Copyright in Literary and Artistic Works which concern copyright in a proper sense shall, in accordance with the provisions of subsections 2 and 3, also apply to:

1. works of nationals of one of the foreign States party to the Universal Copyright Convention of 1952 or that Convention as revised at Paris on July 24, 1971, or persons who are domiciled in such a State provided that the State has, by domestic legislation, assimilated them to its own nationals for the purpose of the Universal Copyright Convention;
2. works of stateless persons and refugees who have their habitual residence in a State party to Protocol 1 annexed to the Universal Copyright Convention of 1952 or that Convention as revised;
3. works first published in a State party to the Universal Copyright Convention of 1952 or that Convention as revised.

Subsection 2. No protection is provided by Swedish law if the term of protection granted by the country of origin has expired.

In the case of works first published in a State party to the Universal Copyright Convention that State shall be considered as the country of origin. In the case of a work published simultaneously or within thirty days in two or more such States which grant different terms of protection, the State granting the shortest term of protection shall be regarded as the country of origin. In the case of works first published in a State not party to the Universal Copyright Convention and unpublished works the State of which the author is a national or where he is domiciled or has his habitual residence in accordance with the provisions of subsection 1, item 1 or 2, shall be regarded as the country of origin.

Subsection 3. The provisions of this section shall not apply to works which, according to section 1, subsection 2, second and third paragraphs, have, as their country of origin, a country which is not a member of the Berne Union or which has withdrawn from the Union after January 1, 1951, provided that that country is not regarded as a developing country in conformity with paragraph (b) of the Appendix Declaration relating to Article XVII of the revised Universal Copyright Convention and has deposited with the Director-General of the United Nations Educational, Scientific and Cultural Organization, at the time of its withdrawal from the Berne Union, a notification to the effect that it regards itself as a developing country.

Subsection 4. The following foreign States and territories are at present party to

1. the 1952 Universal Copyright Convention: Andorra, Argentina, Australia, Austria, Belgium, Brazil, Cameroon, Canada, Chile, Costa Rica, Cuba, Czechoslovakia, Denmark, Ecuador, Fiji, Finland, France with the Departments of Guadeloupe, Martinique, Guiana and Réunion, Germany (Federal Republic of), Ghana, Greece, Guatemala, Haiti, Holy See, Hungary, Iceland, India, Ireland, Israel, Italy, Japan, Kenya, Khmer Republic, Laos, Lebanon, Liberia, Liechtenstein, Luxembourg, Malawi, Malta, Mauritius, Mexico, Monaco, Morocco, Netherlands, New Zealand, Nicaragua, Nigeria, Norway, Pakistan, Panama, Paraguay, Peru, Portugal, Spain, Switzerland, Tunisia, Union of Soviet Socialist Republics, United Kingdom of Great Britain and Northern Ireland with some colonies, possessions and protectorates, United States of America with some territories, Venezuela, Yugoslavia and Zambia;
2. the Universal Copyright Convention as revised at Paris on July 24, 1971: Cameroon, France, Hungary, United Kingdom of Great Britain and Northern Ireland, United States of America with some territories;
3. Protocol I annexed to the Universal Copyright Convention of 1952: Andorra, Argentina, Australia, Austria, Belgium, Brazil, Costa Rica, Cuba, Denmark, Ecuador, Finland, France with the departments of Guadeloupe, Martinique, Guiana and Réunion, Germany (Federal Republic of), Ghana, Greece, Guatemala, Haiti, Holy See, India, Ireland, Israel, Italy, Japan, Kenya, Khmer Republic, Laos, Lebanon, Liberia, Liechtenstein, Luxembourg, Mauritius, Monaco, Morocco, Netherlands, New Zealand, Nicaragua, Norway, Pakistan, Panama, Paraguay, Portugal, Switzerland, Tunisia, United Kingdom of Great Britain and Northern Ireland with some colonies, possessions and protectorates, United States of America with some territories, Venezuela, Yugoslavia;
4. Protocol I annexed to the Universal Copyright Convention as revised at Paris on July 24, 1971: France, United Kingdom of Great Britain and Northern Ireland, United States of America with some territories.

Section 3

The provisions of the Law of 1960 (No. 729) on Copyright in Literary and Artistic Works which concern copyright in a proper sense shall also apply to works published for the first time by the United Nations, by the Specialized Agencies in relationship therewith, or by the Organization of American States and to unpublished works which may be published by any of the said organizations.

Section 4

Subsection 1. The provisions of § 48 of the Law of 1960 (No. 729) on Copyright in Literary and Artistic Works and other provisions of the Law associated with the said paragraph shall, in accordance with the provisions of subsections 2 and 3, also apply to television broadcasts transmitted from the territory of a State party to the European Agreement on the Protection of Television Broadcasts, of June 22, 1960, and the Protocol to that Agreement, of January 22, 1965.

Subsection 2. No protection is provided by Swedish law if the term of protection granted by the country from which the broadcast was transmitted has already expired.

Subsection 3. In the case of television broadcasts from the United Kingdom of Great Britain and Northern Ireland, the provisions of § 48 of the Law of 1960 (No. 729) on Copyright in Literary and Artistic Works as regards protection against unlawful recording of a television broadcast on mechanical instruments by which it can be reproduced and against unlawful rerecording shall not apply to still photographs or reproductions of such photographs.

Subsection 4. The following foreign States are at present party to the Agreement and the Protocol annexed hereto mentioned in subsection 1: Belgium, Cyprus, Denmark, France, Germany (Federal Republic of), Norway, Spain, United Kingdom of Great Britain and Northern Ireland.

Section 5

Subsection 1. The provisions of §§ 45 to 48 of the Law of 1960 (No. 729) on Copyright in Literary and Artistic Works and other provisions of the Law associated with the said paragraphs shall, in accordance with the provisions of subsections 2 and 3, also apply to performances, sound recordings and radio or television broadcasts which take place in a foreign State party to the International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations, of October 26, 1961.

Subsection 2. No protection is provided by Swedish law if the term of protection granted by the country in which the performance, sound recording or radio or television broadcast has taken place has already expired.

Subsection 3. The provisions of § 47 of the Law of 1960 (No. 729) on Copyright in Literary and Artistic Works shall not apply to sound recordings made in Fiji, the People's Republic of the Congo or Niger.

Subsection 4. The following foreign States are at present party to the Convention mentioned in subsection 1: Brazil, Costa Rica, Czechoslovakia, Denmark, Ecuador, Fiji, Germany (Federal Republic of), Mexico, Niger, Paraguay, People's Republic of the Congo, United Kingdom of Great Britain and Northern Ireland.

Section 6

Subsection 1. The provisions of § 46 of the Law of 1960 (No. 729) on Copyright in Literary and Artistic Works and other provisions of the Law associated with the said paragraph shall, in accordance with the provisions of subsection 2, also apply to sound recordings made in a foreign State party to the Convention for the Protection of Producers of Phonograms Against Unauthorized Duplication of Their Phonograms, of October 29, 1971.

Subsection 2. No protection is provided by Swedish law if the term of protection granted by the country where the sound recording has been made has already expired.

Subsection 3. The following foreign States are at present party to the Convention mentioned in subsection 1: Argentina, Fiji, Finland, France, United Kingdom of Great Britain and Northern Ireland.

Section 7

The provisions of sections 1-3 shall also apply to the Law of 1960 (No. 730) on Rights in Photographic Pictures.

Section 8

The provisions of sections 1 and 2 shall also apply to works created before the date on which the foreign State in question became a member of the Berne Union or party to the Universal Copyright Convention, other than in the cases specified in the second and third paragraphs.

Copies of a work produced prior to the date referred to in the first paragraph may be freely distributed and exhibited. However, the provision of § 23 of the Law of 1960 (No. 729) on Copyright in Literary and Artistic Works concerning the lease of sheet music apply to such copies.

Composed type, plates, forms and other devices produced before the date referred to in the first paragraph for the reproduction of a particular work may be used for the purpose for which they were made for a period of two and a half years from the date mentioned above. The provisions of the first paragraph shall apply to copies so produced.

The provisions of the first, second and third paragraphs shall also apply to the rights mentioned in sections 4-6 and to photographic pictures referred to in section 7 herein.

* * *

This Decree shall enter into force on July 1, 1973, when the Decree of 1964 (No. 107) on the Application of the Laws of December 30, 1960 (Nos. 729 and 730), on Copyright in Literary and Artistic Works and on Rights in Photographic Pictures in respect of other countries, etc., shall become null and void.



CORRESPONDENCE



Letter from Yugoslavia

Ivan HENNEBERG *

INTERNATIONAL ACTIVITIES

Intergovernmental Copyright Committee (Universal Copyright Convention)

Twelfth Session
(Paris, December 5 to 11, 1973)

Report

submitted by the Secretariat and adopted by the Committee

Introduction

1. The Intergovernmental Copyright Committee (hereinafter called the "Intergovernmental Committee") established under Article XI of the Universal Copyright Convention, held its twelfth ordinary session at the Headquarters of the United Nations Educational, Scientific and Cultural Organization (Unesco), in Paris, from December 5 to 11, 1973.

2. Eleven of the twelve Member States of the Committee (Brazil, France, Germany (Federal Republic of), India, Italy, Israel, Kenya, Spain, Tunisia, United Kingdom, United States of America) were represented at this session.

3. The following States, party to the Universal Copyright Convention or members of the United Nations Educational, Scientific and Cultural Organization, or the United Nations, were represented by observers: Algeria, Andorra, Australia, Austria, Belgium, Cameroon, Canada, Cuba, Czechoslovakia, Denmark, Ecuador, Finland, Ghana, Greece, Guatemala, Holy See, Hungary, Japan, Khmer Republic, Mexico, Monaco, Netherlands, Norway, Philippines, Poland, Portugal, Senegal, Sweden, Switzerland, Soviet Union, Ukrainian SSR, Yugoslavia.

4. The representatives of four intergovernmental organizations and eighteen international non-governmental organizations followed the work of the Committee as observers.

5. The list of participants appears in an annex to this report¹.

Opening of the twelfth ordinary session

6. The twelfth ordinary session of the Committee was opened by its Chairman, H. E. Mr. Rafik Saïd (Tunisia).

7. The representative of the Director-General of Unesco, Mr. Claude Lussier, Director of the Office of International Standards and Legal Affairs, welcomed the members of the Committee and the observers designated by the States, and the intergovernmental and non-governmental organizations.

¹ See above, p. 39, the list of participants of the Executive Committee of the Berne Union. The persons mentioned in this list are the same as the participants of the Intergovernmental Copyright Committee, subject, as regards the States concerned, to the membership of both Committees.

Election of officers

8. On the proposal of the delegation of the United States of America, seconded by the delegations of Brazil, France, Kenya, Spain and Tunisia, Mrs. Elisabeth Steup, head of the delegation of the Federal Republic of Germany, and Mr. Kanti Chaudhuri, head of the delegation of India, were elected Chairman and Vice-Chairman of the Committee respectively, by acclamation.

Tribute to the outgoing Chairman

9. On the proposal of the delegation of India, the Committee paid unanimous tribute to the outgoing Chairman, H. E. Mr. Rafik Saïd, for all that he had done during his term of office for the furtherance of copyright.

Drafting of the report

10. In accordance with Rule 17 of the Rules of Procedure, the Secretariat of the Committee was provided by the United Nations Educational, Scientific and Cultural Organization. The present report was drafted by the Secretariat of the Committee.

Adoption of the agenda

11. The agenda contained in document IGC/XII/1 Rev. was unanimously adopted.

12. At this juncture, the delegation of Tunisia, seconded by the delegations of the United States of America and India, asked the Secretariat to study the possibility of changing Rules 2 and 11 of the Committee's Rules of Procedure relating to the procedure for the Committee's renewal and the rules concerning the election of the Chairman. It was agreed that revised draft Rules of Procedure would be submitted by the Secretariat for consideration and adoption by the Intergovernmental Copyright Committee instituted by Article XI of the Universal Copyright Convention revised at Paris in 1971, which is to hold its first session one year after the said instrument comes into force.

13. The representative of the Union of Soviet Socialist Republics, taking part for the first time as an observer in the

Committee's meeting following the Soviet Union's recent accession to the Universal Copyright Convention adopted in 1952, said that his Government's decision formed part of a general policy designed to develop international relations and contacts with the peoples and cultures of other States, and to allow for a better acquaintance with the achievements of other nations in the spheres of science, literature and the arts, as these factors encouraged the spread of knowledge and information.

He said that the accession of the USSR to the Convention had occasioned changes in his country's copyright legislation, in particular the recognition of an author's right to authorize the translation of his work into a foreign language and the extension of the period of copyright protection to 25 years *post mortem auctoris*. In addition, a Soviet Copyright Agency had been set up to discharge all the duties connected with the protection of copyright both inside and outside the country. The Agency would take part in the work of international organizations on copyright, would represent the Union of Soviet Socialist Republics at international meetings, conferences and symposia, and would conclude bilateral working agreements with national organizations of authors with a view to the reciprocal representation of authors' interests.

The representative of the Soviet Union stated that his country was very interested in the work of the Intergovernmental Committee and was ready to cooperate in all the departments of its activity.

[For paragraphs 14 to 81, see paragraphs 11 to 78 of the report on the sixth session (2nd ordinary) of the Executive Committee of the Berne Union (pp. 32 to 38 above). The text of resolutions 64(XII) and 65(XII) as adopted by the Intergovernmental Copyright Committee is reproduced below.]

Partial renewal of the Intergovernmental Copyright Committee

82. The Committee proceeded to the partial renewal of the Intergovernmental Committee by means of a formal vote taken on December 7, in accordance with Rules 2 and 29 of its Rules of Procedure.

83. In conformity with Rule 2 of the Rules of Procedure, the Chairman drew lots to designate, from among the four outgoing countries — namely France, Italy, Kenya and the United Kingdom — the country whose term of office could not immediately be renewed. The country thus designated was Kenya.

84. The Committee then proceeded to vote on the subject of the vacant seats. The results of the vote were the following: Ghana: 11 votes; United Kingdom: 10 votes; France: 9 votes; Italy: 4 votes; Union of Soviet Socialist Republics: 4 votes; Canada: 3 votes; Sweden: 3 votes.

85. Ghana, the United Kingdom and France were declared elected. As Italy and the Union of Soviet Socialist Republics had received the same number of votes, a further ballot restricted to those two countries was taken, in conformity with Rule 29 of the Rules of Procedure. The results of this latter vote were the following: Italy: 7 votes; Union of Soviet Socialist Republics: 4 votes. Italy was accordingly declared elected.

86. The observer from Ghana thanked the Committee for having elected his country. The delegations of the United Kingdom, Italy and France also thanked the Committee for having re-elected their countries. The delegations of Italy and France further expressed the hope that the USSR would soon be a member of the Committee. The Chairman extended the gratitude of the Committee to the delegation of Kenya for the valuable contribution to its work during its membership on the Committee and welcomed Ghana as a new member of the Committee.

Application and operation of the Universal Copyright Convention

87. The Committee took note of the information contained in document IGC/XII/8 concerning accessions to the Convention adopted in 1952 which had occurred since its eleventh session. Three further countries (German Democratic Republic, Morocco, Union of Soviet Socialist Republics) had deposited with the Director-General of Unesco their instruments of accession to the Convention and, in the case of Morocco, to annexed Protocols 1, 2 and 3. In addition, the Director-General of Unesco had received from the Government of Fiji a communication informing him that it considered itself bound by the Universal Copyright Convention, the application of which had been extended to its territory before the attainment of independence. Lastly, the Director-General of Unesco had received from the Government of the United Kingdom a notification concerning the extension of the Convention to Hong Kong.

88. The Committee also took note of documents IGC/XII/9 and 9 Add. 1 giving an account of the situation in regard to ratifications of and accessions to the Convention as revised in 1971. The Committee further took note of the fact that Kenya had just ratified the Convention, and of the statements made by the delegations of Spain and India to the effect that their governments would shortly deposit their instruments of ratification of the 1971 Convention.

Examination of the copyright protection enjoyed by translators

89. The Committee examined the report submitted to it by the Secretariat on copyright protection enjoyed by translators (document IGC/XII/10).

90. The delegation of the United States of America considered that the time was ripe for the Committee to adopt a stand on this question which had been studied by a committee of experts and had been the subject of several excellent surveys prepared by the Secretariat of Unesco. As the General Conference of Unesco had, at its seventeenth session, adopted a resolution inviting the Committees of the Copyright Conventions to prepare any measures they might deem necessary for improving the situation of translators, the delegation of the United States of America proposed that the Intergovernmental Committee adopt a resolution on that subject. Considering that the protection enjoyed by translators under the provisions of the copyright Conventions and of many national

laws was adequate, but that there were difficulties in connection with the practical application of those provisions — a field in which the International Copyright Information Centre could play an important rôle — the delegation of the United States of America suggested that the Committee's resolution should recognize the importance of translation, should invite the States party to the Universal Convention to extend to translators protection equivalent to that granted to them by Article 2(3) of the Berne Convention, and should ask them to take steps to ensure the application in practice of such protection.

91. The delegations of Tunisia, the Federal Republic of Germany, Kenya, Brazil, Spain and France supported the proposal of the delegation of the United States of America. The delegation of France suggested, moreover, that the resolution should bring out the fact that while, from the legal point of view, the situation of translators was satisfactory, the difficulties to be faced were difficulties of application in practice.

92. In the light of the above observations, the Intergovernmental Copyright Committee adopted Resolution 66(XII) which is appended to the present report.

Legal and technical assistance to States in developing their national copyright legislation

93. The Committee heard with satisfaction the report submitted to it by the Secretariat on this question, which forms part of the Programme of Participation in the Activities of Member States implemented by the Unesco Secretariat. It noted that, since its eleventh session, the following programmes of assistance to developing countries have been, or are being, carried out to help them to develop their national copyright legislation, to set up administrative structures such as national copyright information centres, societies of authors, etc., or to train copyright specialists: (i) award of three to six-month fellowships to nationals of the Central African Republic, the People's Republic of the Congo, Ghana, Mauritius, Nepal, Sri Lanka, and Trinidad and Tobago; (ii) dispatch of experts to Argentina, Dahomey, Ghana, Ivory Coast and the Khmer Republic.

Proposal for an international instrument for the protection of folklore

94. This item was placed on the agenda at the request of the Government of Bolivia, which had prepared a memorandum on the subject (see document IGC/XII/12).

95. Referring to the memorandum submitted by the Government of Bolivia, the delegation of Algeria pointed out that the existing Conventions protected tangible objects but not such forms of expression as music, dance or folk arts. As part of the national cultural heritage, folklore should be considered as State property and should not be surrendered to the public domain. To this end, the possibility should be explored: of adding to the Universal Convention a new Protocol recognizing the proprietary right of States party to the Convention over cultural expressions of collective or anonymous origin which have acquired traditional character in their territory;

of signing a Convention to regulate the aspects of folklore preservation, promotion and diffusion; of establishing an "International Register of Folkloristic Cultural Property"; and, lastly, of extending the sphere of competence of the Intergovernmental Committee to include the study of the problems which might arise in applying the proposed Protocol such as the research-based assignation of paternity between two or more States in respect of common forms of expression.

96. The United Kingdom delegation stated that it would not be possible to introduce a provision concerning folklore into British law owing to the difficulty of determining, in a country whose cultural heritage has many roots, from which of these the different folk arts stem. The delegation considered that, from the practical point of view, folklore was considered such only in its country of origin. Accordingly, folklore should not be protected at the international level.

97. The delegation of India endorsed the view expressed by the United Kingdom delegation.

98. Seconding the delegation of Algeria, the delegation of Mexico stressed the importance of folklore for the preservation of a people's identity. It proposed that an expert committee be appointed without delay to prepare a draft international instrument on the subject.

99. The delegation of Kenya, seconded by the delegation of Tunisia, recalled the work of the Stockholm Conference for Revision of the Berne Convention, and the proposal made in this connection by the delegation of Yugoslavia at the 1952 Intergovernmental Copyright Conference at which the Universal Convention was adopted. It stated that the problem of international protection of works of folklore had taken on an urgent character because of the increasing number of fixations of examples of folk arts. Since these were not works protected by the copyright Conventions, the principle of national treatment embodied in those Conventions was in their case inoperative, even though provision might be made for the protection of national folklore in the domestic legislation of a country, as for example in the draft model law prepared at Abidjan. In the opinion of the delegation of Kenya, it would, therefore, be necessary to draft an appropriate new international instrument and if need be to appoint for that purpose an expert committee to study the question and to propose measures designed to provide such protection.

100. The delegation of the United States of America endorsed the statement made by the delegation of Kenya. In its view, folklore ought to be protected both at the national and at the international level. The United States delegation considered that at the international level, a Protocol appended to the Universal Convention or any other separate instrument would be desirable; in view of the difficulties encountered in the protection of folklore even at the national level, it would, however, be advisable for further studies to be carried out regarding, in particular, the ways in which the protection of folklore might affect the access of authors in the developed and the developing countries to that source of culture. Since, in its view, the problem of the protection of folklore arose not only in connection with the Universal Convention but also in

connection with the Berne Convention, the United States delegation proposed that the International Bureau of WIPO be invited to participate in Unesco's study of the question.

101. The delegation of France observed that, whereas the protection of folklore seemed feasible at the national level, it appeared to raise a number of problems at the international level. The French delegation mentioned, by way of example, a few such problems: the limitation of the benefit of such protection to the developing countries alone or its extension to the developed countries as well — a course which the French delegation did not advocate on account of the too great interpenetration of cultures in the developed countries and the consequent difficulty of determining the origin of works of folklore; moreover, in the event of the benefit of protection being limited to the developing countries alone, the need for finding a precise criterion for determining which countries belonged to that category might give rise to difficulties; the rights acquired over works of folklore when they had already been fixed or used in some other way; the scope of the protection contemplated; the tremendous amount of administrative work entailed in the compiling of an "International Register of Cultural Property" for example, and its financial repercussions.

In the opinion of the French delegation, all the foregoing questions should form the subject of preliminary studies.

102. The delegation of Italy recalled that the Stockholm Diplomatic Conference for Revision of the Berne Convention had discussed the matter of the protection of folklore at length and that its findings were summed up in Article 15(4) of the Berne Convention, to wit, that the matter should be left to the competence of the national legislations. The Italian delegation also stressed the complexity of the problems involved in such protection, especially in so far as acquired rights were concerned. It considered, however, that the developed countries ought not to be excluded from that protection. It stated, further, that if the protection of folklore were to be sought at the international level, the folklore of the developed countries ought not to be excluded and that, in the event of its being excluded, Italy for its part would not renounce the protection of its national folklore.

103. At the conclusion of its discussion on this subject the Committee decided to entrust the Unesco Secretariat with the task of studying the problem and reporting thereon to the two Committees at their forthcoming sessions.

Report on the activities of the International Copyright Information Centre

104. The Committee noted with satisfaction the report submitted to it by the Secretariat on the activities of the International Copyright Information Centre (document IGC/XII/13).

105. The delegation of Czechoslovakia noted that in its country the creation of a national copyright information centre was viewed favorably and that a final decision in this respect would be communicated to the Director-General of Unesco in the near future. The delegation of Brazil announced that its

Government had decided to set up a national copyright information centre in its country.

106. The delegation of Tunisia expressed its appreciation of the work done by the Centre, which was particularly useful to the developing countries.

107. The Committee endorsed the statement made by the Tunisian delegation.

Adoption of the report

108. The Committee unanimously adopted this report.

Closing of the meeting

109. The delegation of Brazil congratulated the Chairman of the Intergovernmental Copyright Committee on the competence and authority with which she had conducted the work of the Committee.

110. The Chairman then declared the meeting closed.

Resolutions

Reprographic reproduction of works protected by copyright

Resolution 64(XII)

The Intergovernmental Copyright Committee meeting at its twelfth ordinary session in Paris, from December 5 to 11, 1973,

Having examined the item on its agenda relating to the reprographic reproduction of works protected by copyright,

Recalling in this connection resolution 62(XI) adopted by it at its eleventh ordinary session in Geneva from November 3 to 5, 1971,

Considering that, under the provisions of paragraph 3 of resolution 5.151 adopted by the General Conference of Unesco at its seventeenth session, the Intergovernmental Copyright Committee and the Executive Committee of the Berne Union have been invited to examine, at their joint meetings in 1973, the feasibility of preparing a recommendation on this question,

Recalling that under the provisions of paragraph 4 of this resolution the Director-General of Unesco is authorized "to take account of the results of the work of the Intergovernmental Copyright Committee and the Executive Committee of the Berne Union and, if feasible, to prepare a draft recommendation for submission to the General Conference at its eighteenth session",

Noting that this important problem was the subject of deliberations of the Working Group on Reprographic Reproduction of Works Protected by Copyright, convened under the joint auspices of Unesco and the World Intellectual Property Organization (WIPO) in Paris from May 2 to 4, 1973,

Taking into account the results of the said Working Group and expressing its gratitude for the important contribution of that Group,

Noting the declaration of developing States members of the Committee according to which the matter did not appear to be of interest to them and that they reserved their position on the question whether they wished to be among the addressees of any recommendation which might result from the studies referred to in this resolution,

Being of the opinion that the matter is not yet ripe for taking a definitive stand as to the feasibility of adopting a recommendation on this subject and its study should be continued,

Noting the resolution adopted on the same matter by the Executive Committee of the Berne Union,

Decides to continue the examination of the question at its thirteenth session which will be held in 1975, sitting together with the third extraordinary session of the Executive Committee of the Berne Union;

Recommends that the General Conference of Unesco postpone to a future session its decision concerning the adoption of a recommendation on the reprographic reproduction of works protected by copyright.

Resolution 65(XII)

The Intergovernmental Copyright Committee meeting at its twelfth ordinary session in Paris from December 5 to 11, 1973,

Recalling its resolution 64(XII) on the reprographic reproduction of works protected by copyright,

Decides to appoint a sub-committee of this Committee consisting of representatives of States members of this Committee which will be charged with examining the matter covered by resolution 64(XII) both with respect to its substantive and procedural aspects;

Charges this sub-committee with making this study, sitting together with the similar sub-committee appointed by the Executive Committee of the Berne Union;

Decides that the study of the Working Group mentioned in paragraph 5 of resolution 64(XII), as well as a reference to the various solutions adopted at the national level should be among the documentation submitted to the sub-committee;

Requests the sub-committee to submit the results of this examination to the next session of this Committee, sitting together with the Executive Committee of the Berne Union.

Protection of translators*Resolution 66(XII)*

The Intergovernmental Copyright Committee meeting at its twelfth ordinary session in Paris, from December 5 to 11, 1973,

Having examined the item on its agenda relating to the copyright protection enjoyed by translators,

Stresses the very important rôle which translation plays in the general context of development as well as in the interpenetration of cultures;

Considers that the protection enjoyed by translators under the Universal Copyright Convention, the Berne Convention and the majority of national laws is adequate;

Is of the opinion nevertheless, that in order to promote the dissemination of works, States party to the Universal Copyright Convention should accord translators, on the national level, the full rights granted to authors of literary, scientific and artistic works, without prejudice to the copyright in the original works;

Invites States to adopt measures of a practical nature to ameliorate the effective application of the principles contained in the international Conventions and national laws on this subject.

International Literary and Artistic Association (ALAI)

General Assembly (Paris, January 18, 1974)

The International Literary and Artistic Association held its annual General Assembly at the *Cercle de la librairie* in Paris on January 18, 1974, under the chairmanship of the President of the Association, Professor Henri Desbois.

The agenda of the meeting included several topical questions in the copyright field and in the intellectual property field in general, such as:

- draft convention for the protection of transmissions by satellite (Nairobi draft);
- reprographic reproduction of works protected by copyright;
- draft model law on copyright for developing countries;

protection of type faces (Agreement adopted at the Vienna Diplomatic Conference);

protection of scientific discoveries.

As usual, various rapporteurs gave accounts of these questions to the Assembly; these accounts were followed by a general discussion.

WIPO was represented, in observer capacity, by Mr. Mihailo Stojanović, Counsellor, Copyright Division, and Unesco by Miss Marie-Claude Dock, Director a. i., Copyright Division.

UPOV Meetings

March 12 and 13, 1974 (Geneva) — Technical Steering Committee

April 2 to 4, 1974 (Geneva) — Consultative Working Committee

October 21 to 25, 1974 (Geneva) — Council

Meetings of Other International Organizations concerned with Intellectual Property

March 18 to 20, 1974 (Rijswijk) — International Patent Institute — Administrative Board

May 6 to 9, 1974 (Rijswijk) — International Patent Institute — Training Seminar

May 6 to 30, 1974 (Luxembourg) — Conference of the Member States of the European Communities concerning the Convention on the European Patent for the Common Market

June 19 to 21, 1974 (Rijswijk) — International Patent Institute — Administrative Board

July 2 to 5, 1974 (Monte Carlo) — International Writers Guild — Congress

October 6 to 10, 1974 (Rome) — International League Against Unfair Competition — Congress

November 11 to 15, 1974 (Santiago) — Inter-American Association of Industrial Property — Congress

May 3 to 10, 1975 (San Francisco) — International Association for the Protection of Industrial Property — Congress
