

Copyright

Review of the
WORLD INTELLECTUAL PROPERTY
ORGANIZATION (WIPO)

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Contents

Page

BERNE UNION

- Sub-Committee of the Executive Committee of the International Union for the Protection of Literary and Artistic Works on Reprographic Reproduction sitting together with Sub-Committee of the Intergovernmental Copyright Committee on Reprographic Reproduction (Washington, D. C., June 16 to 21, 1975) 159

NATIONAL LEGISLATION

- United Kingdom. The Copyright (International Conventions) (Amendment) Order 1975 (No. 431, of March 18, 1975) 177

INTERNATIONAL ACTIVITIES

- Council of Europe. Legal Committee on Broadcasting and Television (Strasbourg, July 1 to 3, 1975) 178

- CALENDAR OF MEETINGS 178

BERNE UNION

**Sub-Committee of the Executive Committee of the International Union for the Protection
of Literary and Artistic Works on Reprographic Reproduction**

sitting together with

**Sub-Committee of the Intergovernmental Copyright Committee
on Reprographic Reproduction**

(Washington, D. C., June 16 to 21, 1975)

Report

I. Introduction and Participation

1. At the gracious invitation of the Government of the United States of America, the Sub-Committee of the Intergovernmental Copyright Committee and the Sub-Committee of the Executive Committee of the Berne Union on the reprographic reproduction of works protected by copyright met at Washington from June 16 to 21, 1975.

2. The meetings were convened pursuant to resolutions 64(XII) and 65(XII) adopted by the Intergovernmental Copyright Committee at its twelfth ordinary session¹ and to a resolution adopted by the Executive Committee of the Berne Union at its sixth session (second extraordinary)² held at Paris in December 1973.

3. In accordance with the decisions adopted on the occasion of the above-mentioned sessions, participation in the meetings of the Sub-Committee was open to the eighteen States members of the Intergovernmental Copyright Committee and the sixteen States members of the Executive Committee of the Berne Union as well as to the representatives of the seven international non-governmental organizations and to the consultants who had participated in the meeting of the Working Group on Reprographic Reproduction of Works Protected by Copyright which met at Paris in May 1973 under the joint auspices of Unesco and WIPO³.

4. Subsequently, pursuant to the decision adopted by the Director General of WIPO with respect to the Sub-Committee of the Executive Committee of the Berne Union and by the Intergovernmental Copyright Committee regarding its own Sub-Committee, the sessions of the Sub-Committees were open to the public.

5. The eighteen States members of the Intergovernmental Copyright Committee (Algeria, Argentina, Australia, Brazil, France, Germany (Federal Republic of), Ghana, India, Israel,

Italy, Japan, Mexico, Senegal, Spain, Tunisia, United Kingdom, United States of America and Yugoslavia) and fifteen of the sixteen States members of the Executive Committee of the Berne Union (Argentina, Canada, France, Germany (Federal Republic of), Hungary, India, Israel, Italy, Morocco, Philippines, Senegal, Spain, Switzerland, United Kingdom and Yugoslavia) were represented at the meetings.

6. The seven international non-governmental organizations referred to in paragraph 3 above were represented by observers, as follows: the International Confederation of Societies of Authors and Composers (CISAC), the International Council for Reprography (ICR), the International Federation for Documentation (FID), the International Federation of Library Associations (IFLA), the International Literary and Artistic Association (ALAI), the International Publishers Association (IPA) and the International Writers Guild (IWG).

7. The Honorable Torwald Hesser, Justice of the Supreme Court of Sweden, attended the meetings as a consultant.

II. Opening of the Meetings

8. The meetings were opened by Mr. Joel Biller, Deputy Assistant Secretary for Commercial and Special Bilateral Affairs of the Department of State of the United States of America, who extended a warm welcome to the delegates, observers and the secretariats. Mr. Biller said that the issue of reprographic reproduction of copyrighted works had assumed great importance during the last two decades. The development of technology had assisted the spread and dissemination of information but had, at the same time, raised problems in the field of copyright. He expressed the opinion that with goodwill and an open spirit the Sub-Committees might achieve much.

III. Election of Chairman

9. Upon the proposal of the delegation of the United States of America, supported by the delegations of the Federal Republic of Germany, Mexico, Ghana, France, Canada and Senegal, Mr. Ivor J. G. Davis, head of the delegation of the United Kingdom, was elected Chairman of the meetings by acclamation.

¹ See *Copyright*, 1974, pp. 55 and 56.

² *Ibid.*, p. 39.

³ See "Report on the meetings of the Executive Committee sitting together with the Intergovernmental Copyright Committee", paragraph 46, *ibid.*, p. 36.

IV. Opening Declarations

10. Upon taking the chair, Mr. Davis said that the question for consideration by the Sub-Committees was complex and it was possible that there was no clear solution. He did not expect that any definite consensus was possible but that goodwill was never lacking in meetings in the field of copyright and something useful might therefore be achieved.

11. The Director General of WIPO, Dr. Arpad Bogsch, and the representative of the Director-General of Unesco, Mr. Claude Lussier, both expressed the gratitude of their Organizations to the Government of the United States of America for its kind hospitality. They underlined the need to find equitable solutions to the problems of reprographic reproduction which had become increasingly important in view of the significant technological developments in methods of copyright and disseminating written works. The United States of America was in the forefront of the technology making this possible.

V. Adoption of Agendas

12. Upon the proposal of the Chairman, the Sub-Committees adopted their agendas (documents IGC/SC. 2/1 and B/EC/SC/I/1).

13. Upon the adoption of the agenda of the Sub-Committee of the Intergovernmental Copyright Committee, the representative of the Director-General of Unesco recalled that, when in 1973 the Intergovernmental Copyright Committee had in its resolution 65(XII) instructed the Sub-Committee to study not only the question of substance but also that of procedure, he had been obliged to reserve the position of the Director-General of Unesco inasmuch as the General Conference had, at its 17th session, already come to the decision, in its resolution 17 C/5.151 on this second question, that an international instrument on the question of the photographic reproduction of works protected by copyright was desirable and that it should take the form of a recommendation to the Member States in accordance with Article IV, paragraph 4, of the Unesco Constitution. He informed the Sub-Committee that, after studying the report on this subject submitted by the Director-General to the General Conference, the latter had, as proposed by the Director-General, adopted a resolution according to which, after recalling its previous decision, it:

Authorizes the Director-General to take account of the results of the work of these sub-committees and of the views expressed by the above-mentioned committees of the copyright conventions and to prepare, if feasible, a draft recommendation for submission to the General Conference at its nineteenth session;

Invites, moreover, the Director-General to inform the Executive Board of the results of the work of the sessions of the above-mentioned committees which should be held in December 1975;

Authorizes the Executive Board, in the light of the information submitted to it, to make, within the framework of the Rules in force, the changes in the provisions of this resolution, as well as those of resolution 5.151, adopted by the General Conference at its seventeenth session, which it deems indispensable.

The representative of the Director-General of Unesco concluded by pointing out that this resolution in no way prejudged the conclusions which the Sub-Committees and subsequently the Intergovernmental Copyright Committee and the

Executive Committee of the Berne Union might reach, both as regards the possibility of adopting a recommendation and as regards the procedure to be followed for that purpose; that it in no way changed the previous decision of the General Conference since no new element had been introduced before the 18th session but that it made it possible for the Executive Board of Unesco, to which the Director-General would report at its Spring 1976 session on the results of the work of the present Sub-Committees and of the above-mentioned Committees at their sessions in December 1975, to amend as it deemed necessary the provisions of resolutions 17 C/5.151 and 18 C/6.14.

14. Mrs. Kitty-Lina Liguier-Laubhouet, Deputy Director General of WIPO, expressed the satisfaction of the International Bureau of WIPO with the substance of the statement made by the representative of the Director-General of Unesco, which made it possible to envisage a procedure leading to similar results in the two Organizations. She recalled that such parallelism had, in the past, led to successful results and she cited, as an example, the revisions of the multilateral copyright Conventions in 1971. Stressing the need to avoid any differences in the solutions to be recommended to the States, which would place them in an embarrassing position, especially if they were parties to both Conventions, she expressed the opinion that the best procedure would be to have the Executive Committee of the Berne Union and the Intergovernmental Copyright Committee make the final decision. She pointed out that to refer the question to other bodies not sitting together would be to run the risk of arriving at different conclusions, whereas the above-mentioned Committees could more easily agree on similar recommendations.

VI. General Statements

15. The delegation of Senegal expressed the opinion that, since reprography was only a form of reproduction, it should be treated as such. In its view, a recommendation could not have more effect than the existing Conventions. It was a matter for the courts and jurists in countries that had adhered to the Conventions in full knowledge of their provisions to interpret these instruments and for national laws to make decisions regarding the implementation of the Conventions. States must be left to define the meaning of concepts such as private use. It was desirable that the Sub-Committees should deal with the question before them in practical rather than in legal terms. It might be possible for the Sub-Committees to give assistance in the matter of finding effective means; however, it was a matter for authors and publishers to find solutions. There were various possibilities that could be considered where reprographic reproduction had reached lavish proportions: one solution could be payment at the time of purchase of equipment; alternatively, there could be conditions that called for licensing. The delegation of Senegal feared that payment at the point of purchase was a palliative but not equitable. Authors wished to receive payment but not from persons who did not make use of their works. The question who was to receive payment made this solution difficult because some authors' works were never reproduced.

16. The delegation of Hungary referred to its country's copyright law of 1969, which established rules in the field of reproduction. It underlined that both Conventions contained principles involving the author's exclusive right of reproduction and exceptions that might be provided for in national legislation. In the present state of the preparatory work, there was no need or possibility for a new Convention or a modification of the existing Conventions. The task of the Sub-Committees was to examine the possibility of a recommendation. This, however, gave rise to the question of the relationship to the Conventions of any recommendation that might be adopted. In other words, if a government did not follow the recommendation, would it be in violation of the Conventions? Furthermore, would later adherents to the Conventions be required to codify any such instrument in their laws? The delegation of Hungary did not wish to take a position concerning this matter but merely to draw the attention of the Sub-Committees to it.

17. The delegation of Canada said that solutions to the problem of reprographic reproduction, as an example of the effects of technological development, were of particular interest to its Government which was in the process of revising its copyright law. Indeed, it was expected that recommendations for a new copyright law would be issued in December 1975. Studies that had been undertaken had reinforced the original views of the Canadian authorities on the difficulty of resolving the question internationally. It was concerned with the extent to which a recommendation would influence the freedom of States to implement the international copyright Conventions. Moreover, the Canadian delegation was not in favor of detailed recommendations as it was for national legislation to achieve the necessary balance, and it would be necessary to have regard to many factors including the economic status of the country concerned. In Canada, there had been a trend towards the development of organizations for the collective exercise of rights and it was possible that this trend would help to provide a solution in the field of reprographic reproduction.

18. The Director General of WIPO, noting that in expressing his views on a possible resolution he should be taken as referring to resolutions by the Committees of the Berne Convention and the Universal Copyright Convention, said that in no circumstances could a resolution be regarded as binding on States that were parties to the Conventions. If this were not so, any differences between resolutions or recommendations and the requirements of the Conventions would disappear. Resolutions were therefore merely advisory. Nevertheless, it could be assumed that the resolutions would be in conformity with the Conventions and their usefulness would be that they would reflect possible ways of implementing the general terms of the Conventions in an acceptable manner. In this regard, some countries had indicated that they would appreciate having more guidance in the framing of their national laws. A resolution would hopefully reflect solutions which, in 1975, seemed possible solutions that a national law could adopt. In this respect, such a resolution would serve much the same purpose as a model law.

19. The delegation of Mexico stated that it wished to raise certain points that were of importance to Mexico and the developing countries. It was the view of the Mexican delegation that it was not necessary to have a recommendation. There were international copyright Conventions that dealt with reproduction, and States parties to them were well aware of their obligations. While respecting the Conventions, each State was free to choose its own method of implementation. It would be difficult to advise developing countries to make many copies with a view to facilitating access to knowledge because of the obvious costs this would involve for the developing countries which were not holders of patents for copying machines. Therefore, each State should take a position in accordance with its own needs. If there was insistence on a recommendation, it should provide for a preferential system for developing countries as in the 1971 Conventions.

20. The delegation of Yugoslavia referred to the provisions of its copyright law of 1968 relating to reprographic reproduction for teaching and private use. Reprographic reproduction gave rise to problems for the developing countries since they generally did not have access to reprographic equipment and, even where such access was available, students could not afford to pay for copies. The imposition of restrictions relating to the amount of copying or requiring payment of remuneration could have detrimental consequences for these countries. As regards the establishment of a recommendation, the delegation of Yugoslavia reserved its position.

21. The delegation of the United States of America stated that the problem of reprographic reproduction had attracted nationwide attention in its country. It referred to the recent decision of the Supreme Court in the case of *Williams & Wilkins Company v. The United States of America*, an action for copyright infringement against two government medical libraries brought by a publisher of scientific journals. The question in this case was whether the libraries' practice of providing single copies of journal articles to physicians, as a substitute for lending, constituted an infringement of copyright. Although the copyright owner achieved an unqualified victory on the trial level, the full Court of Claims reversed this decision by a narrow majority, with separate and lengthy dissents. The Court of Claims rested its decision upon eight specific findings, all of which were held essential to the result. In view of the importance of the issues raised by this case, the Supreme Court agreed to hear an appeal. Unfortunately, the Supreme Court was equally divided as a result of the voluntary disqualification of one of the Justices and the decision of the Court of Claims was thus affirmed without an opinion by the Supreme Court. The case not only ended without a definitive judicial ruling but its outcome also deprived the Court of Claims decision of precedential value. Judicially the situation in the United States of America therefore seemed likely to remain unclear. The delegation also noted that the bill for the general revision of the copyright law, presently under active consideration by Congress, contained provisions on fair use and library photocopying. It stated that these provisions were not intended as a final solution to the problem but provided a legal basis on which practical solutions could be sought. The

device for seeking these practical solutions was the National Commission on the New Technological Uses of Copyrighted Works (CONTU), created by Congressional enactment in December 1974. The purpose of the Commission would be to study, compile data and make recommendations concerning the reproduction and use of copyrighted works in computers as well as other forms of machine reproduction. Its first task would be to consider the problems raised by reprographic reproduction. The hearings in the House of Representatives on the revision bill were still proceeding and the bill, as presently drafted, contained a detailed provision (section 108) on reprography under which libraries could make single copies, but were prohibited from engaging in multiple or "systematic" copying. "Systematic reproduction" was generally characterized as the situation in which a library deliberately set itself up as the source of reprographic reproductions of works in its collections. In the area of private negotiations, a Conference for the Resolution of Copyright Issues, in which all of the interests concerned with library photocopying were represented, had also been convened. To date the group had not reached a consensus on what the law was or should be, though they had agreed, while reserving the question of legal obligation, to study library practices and to test possible payment mechanisms for authorized library reprographic reproduction. The delegation of the United States of America stated that, although it was unable to take definitive positions at this juncture, it believed the question to be very important and cautioned the Sub-Committees against preparing guidelines that were too vague to be meaningful or too detailed to be implemented.

22. The delegation of Australia said that a Committee on Reprographic Reproduction had been established in Australia with the task of recommending changes in the copyright law and any other measures necessary to achieve a balance of interests between owners of copyright and users of reprographic reproductions. This Committee had received many submissions, had conducted extensive public hearings and had read a great many of the legal studies written on the question. As regards the preparatory documentation it noted that, under the heading "Australia", views supplied by the Australian Copyright Council were set out. The Australian Copyright Council was one of the bodies representing interested parties which had made submissions to the Committee on Reprographic Reproduction but the views expressed by the Council were not to be taken as the views of Australia or of the Australian delegation. In the opinion of the delegation, it was not possible to take any final position but it seemed that more time should be taken to look at the practical working of solutions at the national level before attempting any international regulation of reprographic reproduction.

23. The delegation of the Federal Republic of Germany shared the opinion expressed by the Director General of WIPO in that any recommendation adopted would only be of an advisory nature. Its purpose would be to try to achieve some uniformity in national laws. The delegation doubted whether it would be possible to recommend a single solution. In this regard, the delegation felt that the special problems of

developing countries and special solutions for them should be taken into consideration. The problem should be studied from both the side of the copyright owner and the user. Workable solutions could only be found if the use of reprographic machinery was not made more difficult. Any solution requiring libraries to supply lists showing the title and individual author would be doomed from the start. An important question for the copyright owner would be the distribution of any fund collected from users. In its opinion, a solution lay in the direction of collective agreements, but even there problems would arise in relation to distribution. The main part of the discussions of the Sub-Committees should be an exchange of views on the different experiences of various countries in this field. At present, some schemes were in operation in the Federal Republic of Germany but the interested circles thought that they were insufficient and that the problem had a broader scope. The delegation considered that the problem was urgent and would get out of hand if early solutions were not found.

24. The delegation of Ghana expressed its appreciation of the fact that it had emerged that any recommendation would not be looked on as binding as was the case with Conventions. The developing countries had special problems, particularly in a period of inflation on a world-wide scale. Machines for making copies were more readily available in the developed countries than in the developing countries. If, however, reprographic reproduction made it possible to reduce costs and to make materials available to schools, it would have to be closely examined. Ghana had universities with staff who were producing materials which could not be published and reprography might assist in its dissemination. The delegation agreed with the view expressed in 1973 that the special interests of the developing countries had to be taken into account when the question of reprographic reproduction was discussed.

25. The delegation of France, recalling the questions asked by the Hungarian delegation, stated its view that a recommendation could not be considered as a part of, or supplementary to, the Conventions; by definition, recommendations were not binding whether adopted by the General Conference of Unesco, by the Intergovernmental Committee of the Universal Copyright Convention or by the Assembly or the Executive Committee of the Berne Union. As to the general problem under consideration, there were great difficulties because technological progress had given rise to problems of control and identification of the author as a result of which the principles of copyright were in danger of being thwarted. Any recommendation or resolution on how to solve the problems would have to be as general as possible because in different situations they were not of the same order or of the same kind. Such a recommendation should allow States as much flexibility as possible. Standards set in a recommendation or resolution would have to be in harmony with the provisions of the international copyright Conventions. The actual situation in France was in a state of flux and much had been done without attempting to change national legislation. At the juridical level, there had been one decision which had established some points of law but had not settled all issues. It had been estab-

lished that the advertising of facilities for reprographic reproduction had made the activity of the public body in question commercial and an infringement of the rights of the author. At the practical level, there had been negotiations between authors and future users directed towards a collective negotiated agreement. The delegation of France understood perfectly the attitude of the developing countries and the different situations existing in different countries. Nevertheless, it would be better to frame an instrument giving great latitude rather than to try to frame special provisions for the developing countries. It would be a matter for the developing countries, taking into account their particular situations and their obligations under the Conventions, to decide how to give force to a resolution or recommendation.

26. The delegation of Japan referred to its new copyright law of 1970 under which the basic rule was the protection of the author. The right of the author was subject to some exceptions, for example, private or personal use and reproduction in libraries and certain textbooks but these exceptions applied under strict conditions. Japan was most interested in finding a solution to the problems raised by reprographic reproduction, and consequently was taking into account the views of the experts who were trying to find solutions; it had also begun a study of the question in July 1974 when the Copyright Council of Japan set up an eighteen-member sub-committee representing a variety of interests which included in their number representatives of authors, publishers and manufacturers of reprographic equipment.

27. The delegation of Brazil pointed to the necessity to protect the developing countries as regards the exceptions already granted to them under the international Conventions. If an international system were to be established on the question of reprographic reproduction, it would be in the interest of developing countries that the system should be as perfect as possible so that, in the future, the developing countries might accept it.

28. Mr. Hesser (consultant), stating his willingness to explain any points that arose regarding the report of the Working Group (Paris, May 1973) of which he was Chairman, referred to changes that had occurred in Sweden since the meeting of this Group. He stated his view that the major problem arose in places such as schools, government offices, research institutions and enterprises rather than in libraries where usually only one copy was made at a time. Some dissatisfaction had been expressed regarding the Swedish scheme: on the part of the authors there was criticism of the sample on which remuneration was based, while the school authorities were dissatisfied because of the resistance of teachers to logging reproduction even on a sample basis. There were doubts whether the present agreement would be extended beyond its initial three-year period. The Swedish Government was considering whether to introduce a simplified system which would still provide some kind of remuneration although no decision had been made as to the form such remuneration would take.

29. The observer of the International Literary and Artistic Association referred to the CNRS (National Scientific Re-

search Centre) judicial decision following which the French National Library had decided not to issue copies without the prior authorization of the copyright owner or of the appropriate authors' or publishers' society. While there had been strict insistence on the principle of authorization, he had been conciliatory in dealing with requests. The observer considered that there should be an orientation towards the idea of agreements between the interested parties. While the question had not been settled definitively in France, a solution had been accepted by the National Council of French Employers involving additional subscriptions. The CNRS had decided to prohibit all reproduction, even of parts of books, as well as the photocopying of articles from journals before the expiration of a certain period calculated from the date of publication. The ALAI was opposed to a tax on machines as the sole solution, since it would result in a loss of royalties to the author and unrestricted reproduction. A tax for the benefit of French authors would amount to the expropriation of foreign works. The observer stressed that a pre-paid tax was unacceptable as a main solution.

30. An observer of the International Confederation of Societies of Authors and Composers put forward three ideas in the light of the preceding exchange of views. The problem of reprographic reproduction was urgent since it was fourteen years since it was first raised at the international level; there was a desire to find a balanced solution which did not place a ban on the dissemination of culture and safeguarded the interests of authors; there was a need for practical, realistic solutions and a pragmatic approach. The 1973 Working Group had disclosed the essential principles on which a solution could be based.

31. The observer of the International Writers Guild stated that the commencing point for consideration of the question of reprographic reproduction was that reprography was a form of reproduction which was already dealt with in the international copyright Conventions. There was no need to interfere with the Conventions or to establish a new instrument; this could lead to the idea that the Conventions did not cover reprography. There could, however, be a broad recommendation since the situation in various countries differed greatly. Authors preferred to have negotiated agreements and did not think it necessary to change existing laws. They should make arrangements within the profession regarding the distribution of the remuneration received.

32. The observer of the International Federation of Library Associations referred to the conclusions reached by a working group of the Federation and the International Association of Law Libraries. The primary need of persons requiring copies by reprographic reproduction was for information. The problem was how to allow access while retaining incentives. In this regard, the librarians were not fighting the authors and publishers. The library position was firm on the principle of fair use in relation to the provision of a single copy, not for profit, of material it had purchased. Such copies were to be available for library use, for another library or for someone who had requested a copy. She particularly stressed the view that

libraries were caught in the middle of discussions on a problem which in reality concerned users and copyright owners.

33. The observer of the International Federation for Documentation referred to the fact that people also copy at home and, in this situation, agreements with libraries would not help. Any solution to the problem of reprographic reproduction would have to be practical, e. g., a charge on machines, and it would have to be recognized that in this field one is always confronted with exceptional situations. He could agree with the proposition that the international copyright Conventions should not be touched. It should also be taken into account that normally only one copy was made. Furthermore, consideration should be given to the fact that 4,500,000 publications were issued annually involving 100,000,000 pages of new printed literature.

34. An observer of the International Publishers Association said that technology should come to the aid of copyright. Technology had developed and the competent intergovernmental organizations should undertake enquiries with the producers of equipment to find means to control the number of copies made and to collect royalties. For their own part, it might be said that authors and publishers had given insufficient thought to this possibility.

35. At the end of this first exchange of views, the representative of the Director-General of Unesco gave certain particulars regarding the legal framework in which the possible drafting of a recommendation by the General Conference would be incorporated. This legal framework was defined by the Unesco Constitution which gave the General Conference explicit competence to adopt conventions and recommendations to member States. These constitutional provisions were supplemented by Rules of Procedure which defined the procedure to be followed as well as the special character of these two types of instruments. Unesco had long experience in this connection and precedents had been established since 1956. Thus, a recommendation was considered to be susceptible of partial implementation and even of progressive implementation. Although the General Conference might adopt a convention and a recommendation on the same question at the same time or one after another, such would not be the case in point inasmuch as the Universal Copyright Convention was adopted not by the General Conference itself but by a Diplomatic Conference convened especially for that purpose by Unesco. A recommendation adopted by the General Conference on reprographic reproduction would therefore have no effect on the said Convention: there would be two separate instruments, emanating from two different legal sources, and nothing in the recommendation could change the rights and obligations of the States under the Convention, rights and obligations which would remain completely intact. It was therefore only by taking this legal situation into consideration that the General Conference would undertake the drafting of a recommendation.

36. At the invitation of the Chairman, the meetings then considered the form their detailed study of problems of substance and procedure (item 2.3 of the agendas) should take.

37. In response to a question from the delegation of Canada as to the effect of an international recommendation in relation to the States party to the Berne Convention, a representative of the International Bureau of WIPO said that he had listened carefully to the clear explanation by the representative of the Director-General of Unesco that a recommendation could not affect the interpretation of the Universal Copyright Convention and would not be compulsory for the States. This statement also had application in relation to the Berne Convention. Nevertheless, the question that had remained in his own mind was the additional complication that a recommendation might involve when there were already two international instruments containing provisions on reproduction. Even if a recommendation only had moral force, all concerned with copyright were well aware of the importance of moral obligations and the introduction of a third instrument would add a further element to be taken into consideration by States.

38. The delegation of the Federal Republic of Germany, responding to the invitation of the Chairman for suggestions concerning the further work of the Sub-Committees, said that it would prefer to discuss the problems in relation to the different fields where reprographic reproduction might be used. In this respect, solutions might vary according to the area under consideration. As for the Federal Republic of Germany, it had schemes in operation in the commercial area and in relation to the reproduction of press articles in government offices but had no schemes in operation in relation to schools and libraries. It would be helpful if all delegations were to explain in detail their schemes already in operation.

39. The delegation of Australia said that it would be useful if there was a discussion of problems and an exchange of information, and it would be pleased to participate in this respect. In its own consideration of the question it had come to recognize various means by which a fund for the remuneration of authors might be established. However, it saw little merit in establishing a fund unless it believed there was a practical and economic method of distributing the fund to the authors whose works were copied. In this regard it had taken into consideration a report from the United Kingdom on the practical aspects of making public lending right payments to authors and this did not encourage the Australian delegation to think that distribution to authors without undue cost was at all easy.

40. Observing that a levy on photocopying material could be a solution, the delegation of France said that once a fair distribution procedure had been established a balance could be reached between the interested parties. No solution, however, should be regarded as the sole solution. The meetings should look for a flexible formula providing for a range or plurality of options. The Sub-Committees might go back to the 1973 Working Group report or think of a simplified solution calling for negotiated agreements.

41. The delegation of the United States of America, recalling the Chairman's desire that a structure be established for the further work of the meetings, observed that the preceding

interventions demonstrated the need to focus the discussions on particular, identified topics. It suggested that a working group be set up to identify the specific topics which the Sub-Committees should discuss.

42. The delegation of Mexico, responding to the call of the delegation of the United States of America, proposed the formation of a working group to establish a list of issues for discussion. For its own part, it saw no need for discussion of a recommendation since it would have a complete reservation on the question. A flexible recommendation would not advance consideration of the question and it was not possible to study the problems involved unless the principles set forth in the revised Conventions with respect to developing countries were taken into consideration. A tax on equipment would add to costs whereas the meetings should be thinking of ways of reducing costs in the interests of education.

43. The delegation of Senegal supported the proposal of the delegation of Mexico that a working group be established. It would have to be kept in mind, however, that the Sub-Committees were not empowered to make a recommendation and should only decide whether this was possible. The working group might determine the difficult areas such as private use, libraries and commercial and industrial enterprises. If there was no consensus in the discussion of these topics by the Sub-Committees, further working groups might be established.

44. The delegation of Canada expressed the view that the working group should draw up a list of issues from those discussed at previous meetings.

45. A working group was established consisting of the delegations of Canada, France, Germany (Federal Republic of), Hungary, Mexico, Senegal and the United States of America as well as the Chairman of the Sub-Committees. The Working Group was asked to prepare a list of topics for discussion.

VII. Discussion of List of Points as Proposed by Working Group

46. Ms. Barbara Ringer, head of the delegation of the United States of America and Chairman of the Working Group, was invited to present the list of points for discussion that was drawn up by the Working Group (document IGC/SC.2/5 — B/EC/SC/I/5). She pointed out first of all that, in seeking to develop a list of topics, the Working Group was guided by the suggestion that any recommendation prepared on the basis of the discussions to follow should be general, flexible, and provide for alternatives. It was also agreed that the list was solely for purposes of organizing the discussion, was not exhaustive and was not intended to express any particular point of view on substance. The Working Group had agreed at the outset that, since the Sub-Committees had already discussed two points — the applicability of Article IV^{bis} of the Universal Copyright Convention and Article 9 of the Berne Convention to reprographic reproduction and the need of States to observe their obligations under these Conventions — there was no need to include them in the list. It had also agreed not to include a separate topic covering the various different

types of works involved on the understanding that distinctions between works would emerge in the general discussion. It had been agreed to include a separate item covering the special problems of developing countries, and to list “procedural questions” as a separate topic in order to remind the Sub-Committees of their need to consider this subject.

47. In reply to a question posed by the delegation of Ghana, the Chairman informed the Sub-Committees that the inclusion of a separate item on the special problems of developing countries should not be interpreted as preventing these countries from expressing their views on the other items on the list proposed by the Working Group. In fact, developing countries were most welcome to participate in the discussion on any of the points listed.

48. The delegation of Mexico, while noting that developing countries could not, in principle, approve or disapprove of all the points listed, agreed that, in order not to delay the work of the Sub-Committees, the special problems of developing countries could be discussed as a separate item.

49. The Sub-Committees then proceeded to consider the list of points proposed by the Working Group.

Methods of Remuneration and Control

Contractual schemes

50. When introducing this sub-section, the Chairman noted that it included not only customary arrangements but also situations such as when conditions were written into a book or the price charged for a publication was increased to cover reprographic reproduction.

51. The delegation of the United States of America commented upon the possibility of individual or collective arrangements based on a system in which the copyright owner could state, on the copy itself, the specific terms for reprographic reproduction. This system could be operated with the aid of computers. It was not a case where the copyright owner unilaterally imposed his own terms on the public, since this would probably be held illegal as an “equitable servitude on chattels”; it presupposed a case in which the copyright owner had the right to require individual licenses but instead made clear on the copy that reprographic reproduction was permitted upon payment of a stated fee. Speaking generally of the protection of authors’ rights under any kind of collective system, the delegation of the United States stressed that care had to be taken to ensure that remuneration went to the individual authors whose works were used.

52. An observer of the International Publishers Association stated that most suppliers of works had contracts with the users of information services and that such contracts were governed by the law of contracts and not copyright. Moreover, he noted that publishers were very concerned with the free flow of information since a major part of their profession was to promote the free flow of cultural materials and stressed that publishers wished to work with libraries to attain this result. In reply to a question raised by the delegation of

Spain, he stated that, although it was possible to increase the rates for periodicals, such a step did not appear desirable in that it could lead to a decrease in the number of subscriptions. Finally, he referred to a system of remuneration that was presently under consideration, whereby publishers would establish a clearing center with computer facilities which would focus at first on inter-library loans. It was proposed that at the foot of each journal article the name of the publisher, the journal and the charge per copy page would appear. When a user made copies of a given page in a journal containing this information, it would make an additional copy to be forwarded to the clearing center. Periodically the center would bill the libraries concerned and, with the information collected, distribute the money received.

53. The delegation of Australia expressed the view that, if a system of placing conditions on the work itself were adopted, it would place considerable restrictions on what was allowed under existing law. The implications of such a system required careful study since, if applied to periodicals, it could hamper their growth. Although noting that variable pricing was attractive, the delegation stressed that it should be examined in light of its anti-trust implications.

54. The delegation of the Federal Republic of Germany expressed certain reservations as to placing conditions on a protected work and felt that it would be better to control the situation by way of a contract where the user would have an opportunity to state his views. As for a system of variable pricing, in view of its possible anti-trust implications, the delegation preferred to resolve the problems raised by way of collective agreements between users and collecting societies of the copyright owners. With respect to collective agreements, the Federal Republic of Germany already had some experience; an agreement had been negotiated between the Federation of German Industries and a collecting society representing publishers of scientific works and organizations of scientific workers. At present, there was provision for three systems of remuneration:

- payment received from stamps sold by the collecting society to be placed on all copies of a work;
- remuneration paid to a collecting society and calculated as a percentage of the subscription price of only those specified periodicals of which the enterprise intended to make photocopies;
- a similar system, but one in which a lower rate of remuneration was payable, on the understanding that the enterprise would pay the remuneration in respect of all periodicals to which it subscribed.

In all cases, however, the right only related to the making of copies of single articles. As to data furnished to the collecting society, only the names of the periodicals were required. To date, several hundred thousand German marks per year had been collected under this agreement. One-half of the income received was distributed to publishers and the balance to the organizations of scientific authors to be used for general purposes by the organizations since, in view of the many authors in the scientific field, distribution to single authors was not

possible. The publishers' share was divided in proportion to the number of periodicals of each publisher involved. When the system first began, most industrial enterprises chose the stamp system; however, in view of labor costs, most were now on the price system. In this collective agreement, the author of a work transferred his rights to a publisher who in turn transferred them to a collecting society. However, under the agreement, even when the publisher was the holder of the rights, the authors received their share as a collective payment to their organizations. Another type of agreement had been concluded between the Federal Government and a collecting society representing journalists. This agreement covered compilations of press articles made by photocopying processes for internal use in government offices. Under this agreement, payment was made on the basis of a given amount per page. The delegation of the Federal Republic of Germany noted that, since experience had shown that a page usually contained 50 percent copyright works and 50 percent news and other unprotected material, payment to the collecting society for each page photocopied was computed on this basis. Under this agreement, the amount received by the collecting society was distributed to the individual authors on a precise basis since the society received a copy of every compilation together with the exact number of the compilations made.

55. In reply to the delegation of Australia, the delegation of the Federal Republic of Germany stated that it was not sure whether contracts had been concluded between societies in the Federal Republic of Germany and other countries but it was certain that where such collecting societies existed the German societies would negotiate agreements with them. It noted that under the law of the Federal Republic of Germany the right to remuneration for copies made in commercial enterprises applied to foreign authors as well. The delegation of the Federal Republic of Germany added that the agreement referred to above was made under the existing law which only allowed the making of single copies for internal use. Therefore, it was not possible for an enterprise to buy one copy of a work and distribute photocopies on a large scale within the enterprise. However, the notion of "single copies" was not limited to only one copy, the number of copies allowed being a matter for the courts to decide.

56. Mr. Hesser (consultant) informed the Sub-Committees that the organization established in Sweden called BONUS had concluded an agreement with a group of enterprises, including several major companies. The system of remuneration established under this agreement was similar to the system in the Federal Republic of Germany except that the remuneration was paid per copy page and not for every periodical. According to the Swedish experience, it was found that, even if the royalty payment was high, industry was willing to pay in order to avoid legal difficulties. Concerning the distribution of monies received, BONUS, after deducting a small fee to cover its administrative costs, paid the main part to authors' and publishers' organizations. Mr. Hesser observed that it was possible to make payment to publishers, while, on the authors' side, it was difficult to make individual payments in view of the small amounts involved. However, once the use

of the ISBN covered a larger proportion of books, the distribution of payments would be greatly facilitated. As for foreign authors, contracts could be negotiated with collecting societies in foreign countries in a manner similar to the agreements reached with respect to performing rights in musical works. With respect to the data enterprises were required to furnish, the system was the same as that for the agreement made with schools — the name of the publisher and the article as well as the number of pages and copies being made. Concerning the BONUS agreement in connection with the photocopying of copyright works in Swedish schools, Mr. Hesser stated that approximately 95 percent of the authors whose works were covered by the agreement were members of BONUS. He mentioned, however, that authors were free to remain outside the system, or, if members, to withdraw from the organization when they did not want their works used.

57. The observer of the International Literary and Artistic Association stated that the Association had been informed that the Swedish Government was seeking to make collective agreements for settlements with foreign authors and it was asking the Governments of the United Kingdom and France to facilitate arrangements for the remuneration of English, French and Swedish authors. He observed that in September 1973 an agreement had been concluded between the Copyright Agency of the USSR (VAAP) and the French publishers' association concerning scientific and technical journals and to date thirty-four contracts had been signed under this agreement.

58. The observer of the International Federation of Library Associations referred to the situation under the law of the Netherlands. She stated that under the Royal Decree issued in 1974, which was attached to the 1972 copyright law, photocopying was allowed with compensation. Under the Decree, as of January 1, 1975, photocopies could be made by the Government for its staff, by libraries for inter-library loans and by educational institutions for students and teachers, provided the copyright owner received compensation from the person who made or ordered copies. The intention was to keep to an absolute minimum the administrative burden for all parties concerned. Such a system would benefit authors and, in particular, foreign authors as 90 percent of all material copied was of foreign origin. The records that users were required to keep under the Decree were only numerical since the periodicals in the collections of libraries or government offices were known. In reply to a question asked by the delegation of Spain concerning the monies collected, the observer of the International Federation of Library Associations noted that, since the scheme was new, it was not definite how any fund collected was to be distributed. On the international level, the fund would probably be distributed among authors from the States party to the Berne or Universal Conventions and it was hoped that an individual scheme for distribution to authors could be developed patterned on the Dutch public lending right scheme. The observer also drew attention to the problems arising in connection with a system of variable pricing. She noted that a system of this nature would have a detrimental effect on the free flow of information in that if prices were too high many persons would not be in a position to pur-

chase the publications concerned. Moreover, there was no relation between the subscription price of a work and the number of copies made, and there was a possibility that a small library would subsidize a large library making many copies. For budgetary reasons, it was necessary for a library to set appropriate rates in advance on the use made of certain periodicals for photocopying.

59. The delegation of Israel felt that a solution could not be based on a statutory provision and favored a solution similar to the Netherlands arrangement which allowed for the fair use of protected works. Its country took a pragmatic approach to the problem since there was no provision in its law in this respect. The delegation did not consider that the problem was as urgent as others and felt that if an arrangement were adopted it would result largely in payments abroad. Concerning the question of payment, it referred to the arrangements made in relation to radio and television broadcasts; an annual agreement was made with the local societies for the payment of a lump sum which was divided according to the use of a given work. The situation was different in the case of reprography but the same principle could be applied.

60. The delegation of Japan stated that in its country a limited number of copies could be made for personal or family use and that there were no contracts or arrangements between users and authors or their societies with respect to copying of protected works.

61. The observer of the International Federation for Documentation supplied information concerning payments made to the society representing scientific authors in the Federal Republic of Germany and the dissemination of information in the Soviet Union. In the former case, the income of the society had not yet reached \$US 200,000 per annum. Of this, half went to the publishers and the balance to the authors. The administrative costs for the publishers were 20 percent to 30 percent. In the Union of Soviet Socialist Republics, the largest scientific institution subscribed to 20,000 journals in the fields in which it was interested. These journals were abstracted and the information was made available to the world.

Statutory systems

62. Responding to the Chairman's invitation to introduce the discussion of "statutory systems", the Chairman of the Working Group explained that, in her view, these systems could be divided into three types, all of which would operate under a statutory umbrella and involve some form of compulsion with respect to remuneration or control. In the first type, the copyright owner would have no right to control the use of his work or to negotiate concerning the amount of his remuneration; his only right would be to receive the remuneration specified by statute. The second type would be the compulsory license already existing under a number of copyright laws in which there would be a trigger mechanism; the copyright owner would have exclusive rights up to the time he took a particular action such as issuing a license, whereupon anyone could

use his work without consent upon payment of the remuneration prescribed in the statute. Some compulsory licenses would operate in a way that would preclude individual negotiations, while under others the prescribed fee would function as a maximum under which special agreements could be negotiated. An intermediate system could be envisaged where, within a statutory framework, an agreement would be entered into on the basis of negotiations between a collective organization and potential users, the rates and terms of such agreement being applied by force of statutory provisions to parties not involved in the actual negotiations.

63. The delegation of the Federal Republic of Germany provided an explanation of statutory systems in other fields. It said that in some cases the author did not have an exclusive right but only a claim to remuneration. Its country's law on the public lending right was an example; the author could not prevent his works from being lent by a library. In some cases, the right to remuneration could only be exercised through a collecting agency. Libraries could not function if they had to deal with claims from individual authors. In an intermediate statutory system, the author was free to vest his rights in a collecting society but under the law on collecting societies permission to use the work could not be refused by the society.

64. The Chairman referred to an example in the United Kingdom of a trigger mechanism in the musical field where, by statute, the giving of consent by the copyright owner to the recording of his work operated to allow other persons thereafter to record the work.

65. The delegation of France analyzed the various kinds of statutory systems. It said it would classify an intermediate or mixed system in which a negotiated agreement was imposed on other copyright owners as being a contractual system rather than a statutory system since it began in a negotiated collective contract. From the point of view of the French delegation, the problem of extending the collective contract to other copyright owners was marginal although in other countries the position might be different. Whereas an author was free not to participate in a collective arrangement, he would be anxious to join a collecting society if he was interested in protecting his rights.

66. The delegation of Mexico referred to the need to avoid complications adding to costs; licensing should, therefore, be quick and immediate.

67. The delegation of Switzerland referred to a draft bill for the revision of its copyright law which called for exceptions relating to reproduction in schools, public institutions, libraries and commercial enterprises. In all cases publishers and authors had a right to fair compensation. The Swiss authorities were waiting for the interested parties to get together to make arrangements to implement this right to remuneration. Should this be too difficult to achieve, the legislature might step in to establish a collecting society. In any event, the right to remuneration was not designed to limit the fair use of works.

68. The delegation of the Federal Republic of Germany said that discussions in its country were headed in the same direction as in Switzerland, i. e., equitable remuneration would have to be paid. The law could provide only for equitable remuneration; decisions as to the exact amount to be paid should be made by collective agreements. In the system in the Federal Republic of Germany there was provision for reference to an arbitration body if the parties could not agree and, ultimately, the question could be referred to the courts. The Federal Republic of Germany had had some experience with the problems of sampling in connection with its public lending right scheme where it was intended to make a distribution on the basis of the sampling of library lendings. The variety and diversity of libraries had been found to make sampling difficult and a solution had not yet been found.

69. The delegation of the United States of America stressed that it was important that distinctions be made between different types of works susceptible to reproduction. For example, musical scores and other works prepared to be performed rather than read were particularly vulnerable to widespread copying. In the case of unpublished works, care would have to be taken in compulsory license systems to make sure that authors were not deprived of their basic right of first publication. A further distinction might have to be drawn according to whether or not material was in or out of print in the country involved.

70. The delegation of Israel said that it did not have compulsory licenses in this area but that licenses applied in the case of educational television might provide a precedent.

71. The observer of the International Federation for Documentation referred to the fact that in the Federal Republic of Germany there were depositories where authors deposited manuscripts because publication was often too costly. If reprographic reproduction created possibilities for the dissemination of these writings, the authors would be delighted to see their works published or included in other works.

72. The delegation of Canada pointed out that some authors might not wish to be published and this right should not be prejudiced.

73. The delegation of the Federal Republic of Germany referred to the fact that under the international Conventions countries might be forced to make different rules for different works. For example, under the Berne Convention protection had to be given to moral rights. The delegation noted that musical works might be different from others in that normal exploitation was endangered by reproduction more than in the case of other kinds of work.

74. An observer of the International Confederation of Societies of Authors and Composers said that the distinctions mentioned by the delegation of the United States of America were important and that it was in no case acceptable for unpublished works to be published by reprographic means without the permission of the author.

75. An observer of the International Publishers Association referred to a variation in statutory licensing that was less offensive to authors. In this case, the price for utilization of the work was fixed by statute and a clearing house was established. Those who wished to take advantage of the system could do so but they had the option of staying outside the system.

76. Mr. Hesser (consultant) referred to the fact that, when the school agreement was being discussed in Sweden, musical scores were recognized as being a special problem. The Swedish agreement only covered published works, and musical scores were entitled to remuneration at a rate five times higher than that paid for copying normal printed material.

Surcharge on equipment

77. The delegation of the Federal Republic of Germany provided information on the levy payable on tape recorders in its original intervention and responded to questions from a number of other delegations. The delegation explained that the levy was not a tax but remuneration payable to a collecting society by the manufacturer or importer of tape recording equipment. The levy, which was subject to a ceiling of 5 percent, was intended to cover the case of private use in the private home of tape recorders, i. e., in a situation where it was impossible to control recording. The remuneration was divided between the collecting societies for musical authors (40 percent), performers (40 percent) and literary authors (20 percent). As far as GEMA, the society representing authors of musical works, was concerned, it made a distribution by adding the income to that distributed in relation to remuneration from broadcasting organizations and producers of phonograms; foreign authors were included. In the Federal Republic of Germany, discussions were taking place on the extension of remuneration to the case of reprographic reproduction. Although some people felt this was the complete solution to the problem, the majority opinion was otherwise. The majority view was that the levy would cover copying in the home and by scientists and professional people; the mass producers of reproductions would come under a contractual licensing system. No solution had been found to the question of distributing the income since the number of authors was larger than was the case in the musical field. One group had expressed the view that the income could be used by the existing collecting societies to cover their administrative costs, thus enabling a larger distribution of income from other sources. In reply to a question asked by the delegation of Spain, the delegation of the Federal Republic of Germany said that the levy was not charged on machines exported from the Federal Republic of Germany but only on machines manufactured and sold in the Federal Republic of Germany or imported for sale. The right of the author to remuneration could only be exercised through a collecting society but it was not necessary for the author to become a member of the society in order to receive remuneration. It was left to the society to decide in what way it would deal with the remuneration it received, although the author could challenge a distri-

bution scheme in the courts if he wished to do so. The delegation said that the justification for imposing a levy at the initial stage could be put in two ways. Firstly, it could be said that the manufacturer contributed to jeopardizing authors' interests and should therefore pay; secondly, the person making the recording ultimately paid the levy since the levy was included in the price of the equipment. It was thus an indirect payment by the person using the equipment to make the recording.

78. The delegation of Ghana said that, although the above-mentioned scheme seemed to be satisfactory, it would prefer alternatives to a surcharge on equipment as this would add to the cost of equipment to developing countries. In this regard, the General Conference of Unesco had adopted a position relating to the reduction of taxes on books, and, for the developing countries, equipment for reproduction should be treated in the same way as the publishing of books.

79. The delegation of Australia suggested that the problem of distribution was the key issue. It was difficult to see the justification for establishing a fund unless it was possible to distribute the fund in a roughly equitable way to people whose works were being copied. The delegation questioned the community of interest between, say, a musical publisher in Australia and a scientific writer in New York who might in fact be anxious to have his work disseminated. There would be no equity in making payment to the music publisher in Australia for the copying of the scientific work.

80. The delegation of Japan said that there would be some difficulties with a levy under the Japanese law.

81. The observer of the International Writers Guild said that there was a basic distinction between the use of tape recorders and reprographic reproduction. In the former case, the use was always private or within an expanded family circle and a levy on the equipment settled the question in a judicious manner. In the latter case, there was some private use for which it would be appropriate to impose a levy but there were other cases in which collective arrangements would be necessary because of the semi-public character of the use which could prejudice the normal exploitation of the work.

82. An observer of the International Publishers Association pointed out that some of the discussions on distribution had been based on the assumption that all authors would belong to a society or union. In the United States of America, only 10 percent of the 20,000 authors published by one particular company were members of any such organization. Few scientific, technical or educational writers belonged to associations.

83. The delegation of Canada questioned whether the logic of the scheme for levies on reprographic equipment should not result in levies being imposed in a number of other situations, for example, recording tapes and musical instruments. The delegation also stated that authors should retain freedom to join collectives and that collective arrangements avoided the negative effects of compulsion.

84. The delegation of the Federal Republic of Germany, in answering questions asked by other delegations, pointed out that, although the Conventions required that a right of reproduction be accorded, a levy system was not inconsistent with the Conventions since the system covered private use which was governed by the exceptions provided for by the Conventions and was free in other countries. It was not considered feasible to impose a levy on tapes for recording equipment because it was impossible to distinguish between tapes used to record music in private homes and those used for other purposes. There was a distinction to be drawn between the imposition of a levy on tape recorders and television sets in that a tape recorder was capable of making a reproduction for which no remuneration had been paid.

85. The delegation of Spain observed that the authors would not receive any payment at all unless they belonged to a collecting society and this would mean that scientific authors would not receive remuneration.

86. The delegation of the United States of America shared the doubts expressed by the delegation of Canada and associated itself with the comments of the delegation of Spain. It stated that, although it was difficult to imagine the establishment in its country of a workable system involving surcharges on reprographic equipment, such a possibility should not be ruled out. It was true that there was no union or other collective organization representing all authors in the United States of America and this lack made operation of a system of surcharges impractical. However, there were already in existence several important and growing organizations representing large numbers of authors and there was a clear-cut trend, fostered in part by the problems of photocopying, toward increasing combinations of authors and publishers in collective groups.

87. The delegation of Australia said that it believed that outside of multiple copying, and possibly copying in schools, most copying was of technical articles in journals. There were thousands of authors engaged in research who wrote articles. The questions that arose were: what percentage of these people would be likely to join a society; what would be the cost to the author to become a member; what would be the cost to the society of maintaining records of the author's membership; and how much would an individual author of a single article receive. Since legislative action would be required, the question arose whether governments would feel entitled to introduce legislation to create a fund if the fund was not likely to produce benefits to the author concerned.

88. The delegation of the Federal Republic of Germany agreed that it was not possible to distribute to every author the exact amount due to him. In the scientific field in the Federal Republic of Germany, the authors assigned their rights to the publishers which belonged to the collecting society *Wissenschaft*. Ultimately, authors benefited because part of the income was paid to authors' societies and also because the remuneration paid to them by publishers might depend, among other factors, on the amount the publishers received from *Wissenschaft*.

89. The delegation of France said that the basic question was whether the system was inconsistent with the international Conventions. The fact that authors could not benefit unless they were members was, however, a drawback, and it would be necessary to see how those who did not belong might be protected. A further question that needed consideration was whether such arrangements constituted a direct attack on freedom of association. The delegation said that the meetings were looking at possible solutions and the levy system should be included among them.

90. An observer of the International Confederation of Societies of Authors and Composers said that it was more appropriate to speak in terms of compensation than of taxation when considering systems involving levies. In fact, such systems provided remuneration under copyright with the author being paid in advance. As regards the practical application of methods of remuneration and control, it was necessary to be realistic and the only viable solution was one in which authors and publishers belonged to a central system. As far as distribution was concerned no system was completely perfect; however, any system adopted should be as precise as possible. The authors' societies were very familiar with the difficulties with respect to distribution and reliance could be placed on the authors themselves to determine the best possible way of solving the problems arising in this area.

Users of Reprography

Private users

91. There was a general discussion in which it was made clear that the private user was a person who did not have his copy made in one of the situations covered by the succeeding items. The delegation of Canada recalled that the Working Group had agreed that the list of users was illustrative and not exhaustive.

92. The delegation of the Federal Republic of Germany¹ said that the problem of private use was the most difficult one and private users probably could only be brought into a remuneration system by a levy on machines.

93. Mr. Hesser (consultant) said that authors in Sweden considered that problems in the field of reprographic reproduction should be solved by means of collective agreements. It was implicit in this conception that use by private users should be left free.

94. An observer of the International Publishers Association questioned whether there was a distinction between private use by a person making a copy for his own use and enjoyment and a researcher who made a copy.

95. The delegation of the United States of America said that it echoed what was said in paragraph 2 of the recommendations of the 1973 Working Group, subject to certain qualifications. Although a given reprographic reproduction might not be subject to liability, later uses for unsanctioned purposes, such as performance or publication, could constitute infringement of the rights of the author.

96. The delegation of the Federal Republic of Germany observed that in its country copies made for private use could not be distributed or used for public performance.

Non-profit libraries, archives, documentation centers and public scientific research institutions

97. The delegation of the Federal Republic of Germany said that the making of copies in libraries was a matter of great concern in its country. Libraries posed a particular problem because most works copied were in copyright and the authors' organizations were pressing for the payment of remuneration. Difficulties had been encountered in obtaining data that would enable remuneration to be distributed and it had been considered impossible to have exact data. It was thought that the problem could only be solved by a sampling system but ideas on the question were not yet final.

98. An observer of the International Publishers Association said any use beyond fair use of copyright works was harmful, and it was irrelevant whether the use was for non-profit purposes.

99. The delegation of Spain agreed with the delegation of the Federal Republic of Germany concerning the difficulties in obtaining a statistical record of copying in libraries. The situation in Spain had not caused a problem so far. The large research centers made series of reproductions but not on the scale that occurred in the Federal Republic of Germany and Sweden. Spain was respectful of the rights of authors. It was doubtful whether sampling would provide a fair or effective solution. Moreover, it was probable that almost 95 percent of the Spanish authors whose works were reproduced were not members of the general society of authors and the distribution of a fund by this society would not be equitable. Copies made in the national library and other scientific and technical information centers were of parts of works and not of whole works; authors of the works were mainly professors or research workers. There was no doubt that the use of protected works was prejudicial to the interests of authors and publishers but there were also other interests to be taken into account when seeking practical solutions with a view to reconciling the interests involved.

100. The delegation of Israel said that it agreed entirely with the statement made by the delegation of Spain. In Israel, libraries were limited by the requirement of fair use but there was some doubt as to the precise meaning of the term. Full texts of books were not copied; the main interest lay in the copying of articles. There was a need for accommodating the interests of libraries. In future, consideration should be given to the interpretation of the fair use doctrine to help the libraries and, at the same time, consideration should be given to providing compensation to authors. Israel shared with Spain the problem that authors were not members of organizations. Reprographic reproduction did not appear to be a major problem for authors so the solution could lie in the direction of enlarging the definition of fair use.

101. The delegation of the United States of America described the provisions on reproduction of copyrighted works in

libraries and archives contained in the bill for general revision of the copyright law pending in Congress. These provisions, which could be considered extensions or elaborations of the concept of fair use, did not pretend to solve the problem of how to deal with copying beyond the specific practices allowed. They only stated what a library could and could not do without incurring copyright liability; beyond this, private negotiations were taking place and the National Commission on New Technological Uses was to consider the question. In defining the libraries to be covered, the proposed legislation was not limited to non-profit libraries but also covered libraries that permitted outside researchers to use their collections. The provision would not allow, however, the making of copies for the purpose of direct or indirect commercial advantage. For purposes of preservation, a facsimile copy could be made by a library for its own collection or those of another library. Reproduction could also be made to replace deteriorating or damaged copies. Most important, the provision would allow reproduction of single copies of self-contained works from periodicals and collections, and of short excerpts from all works. It would also permit reproduction of substantial excerpts or of a complete work if copies of the work were not available at a fair price. It was noted, in this connection, that centers existed in the United States, set up under licenses from copyright owners, for the purpose of supplying authorized photocopies of articles, monographs, and other out-of-print works. The provision also stated that a library would not be liable for reproduction on unsupervised coin-operated machines on its premises though the user might be. Under the provision, a library would not be permitted to engage in multiple copying (including cases where it had reason to believe that repeated one-at-a-time copying of the same work actually amounted to multiple copying) or in "systematic reproduction" of single or multiple copies. The prohibition against "systematic" copying, the most controversial feature of the proposed section, would, according to the report of the Senate Committee considering the legislation, cover the situation in which the library set itself up as a center for distribution of reproductions or joined other libraries in a network for this purpose.

102. The delegation of Canada observed that, while one solution might lie in the extension of the provisions on fair dealing as suggested by the delegation of Israel, this would be so if the needs of libraries were considered paramount, i. e., that technology should prevail over the rights of authors. If collectives were formed, then fair dealing might not need to be enlarged. If specific exemptions were required in the case where collectives did not meet needs of libraries, then specific exemptions could be made, consistent with the rights of authors.

103. The observer of the International Federation of Library Associations said that the position of the libraries was clear on the issue of the making of single copies even where this was done on library premises. The availability of such copies was not to be undermined. This also included inter-library loans since, everywhere, networks were regarded as essential. In

this context, the observer referred to the Unesco/NATIS concept. She did not agree that inter-library loans led to a decrease in subscriptions; the reverse was the case. Her Federation would cooperate in looking for practical solutions.

104. The delegation of Japan referred to the provisions of its law which applied to libraries and also to other prescribed institutions.

105. The delegation of Australia said that the problem had to be looked at against the background in which it occurred. Regard must be had to the limitations contained in the international copyright Conventions but within those limitations the public interest had to be considered. Libraries in Australia were the main source of subscriptions for journals in the technical field and were largely funded by the government. Additional copies of back-issues of journals were generally unobtainable for purchase in Australia when they were required. Some freedom to copy without remuneration — at least within the concept of fair dealing — existed in Australia. Compelling practical reasons might need to be established before this situation should be changed, at least in relation to what might broadly be called single copying. Australia accepted it would have to keep the position under constant review but it was the view of the Australian delegation that Australia would not lightly want to depart from the concept of fair dealing or of permitting some copying without remuneration of, for example, single articles in periodicals, or parts of other works, by non-profit libraries for users needing them for appropriate purposes and subject to specific conditions. Nor would it want to inhibit the use of coin-operated machines in non-profit libraries by users of the libraries unless there were compelling reasons to do so.

106. The delegation of France, responding to a statement by the observer of the International Literary and Artistic Association that the copyist was the owner of the photocopying equipment, referred to the fact that the only French judicial decision on this matter was by a court of first instance which had held, to the contrary, that the copyist was the person who ordered the copy. The courts of appeal had not as yet given any decision on this issue.

Educational institutions

107. The Chairman outlined the position in the United Kingdom where a survey had been made of the use of reprographic reproduction in a sample selection of schools. This had been done by the authors and publishers granting to the schools complete freedom to reproduce materials during a stated period in order to ascertain the actual needs of the schools. The parties were now engaged in negotiations for a block contract.

108. The delegation of the United States of America said that classroom photocopying had been a focus of controversy in its country, especially in the late 1960's. All the Congressional reports on the revision bill since 1967 had contained a lengthy passage on what was and what was not fair use in relation to classroom teaching. Although the report's analysis did not have the force of law, it had strong persuasive force, especially if the

bill were enacted. The report declared that fair dealing could extend to reproduction for classroom teaching and then outlined a number of factors to be considered in determining whether, under particular circumstances, activities would constitute fair use or infringement. Among these factors were the following: whether the educational institution operated for profit; whether students were charged for reproductions; whether the teacher acted spontaneously in responding to classroom needs or was acting under direction or as part of a general operating plan for the school; the number of copies made in relation to the number of students in the class and the size of the portion copied; whether reproductions were made for circulation beyond the classroom or were recalled; whether excerpts were compiled by the teacher into informal anthologies; and whether or not the work copied was in print. Representatives of educators had objected to certain portions of this part of the report and since 1973 had put forward a proposal for an outright exemption for various uses of copyrighted works for purposes of non-profit teaching and research, including reprographic reproduction of "portions" of works and certain short self-contained works. Under this proposal, however, the reproduction of "works consumable on use", such as workbooks and standardized tests, and the compiling of reproductions into anthologies would not be permitted. This proposal for an educational exemption was highly controversial and its fate could not be predicted.

109. Mr. Hesser (consultant) said that the agreement covering reproduction of copyright materials in schools in Sweden had covered copying that was free under the Swedish law. This had made the situation easy for teachers to handle since they did not have to worry about the extent of the free area. The rates that had been fixed for reproduction had taken into account the absorption of the free area.

110. The delegation of the Federal Republic of Germany said that it was a controversial issue in its country whether copying for classroom use was lawful. This applied in particular to the question of the right to make reproductions under the provision of the law permitting the making of single copies for private or internal use. There was some hope, however, that common ground could be reached since on both sides it was accepted that the making of reproductions should be allowed. At issue was the question of remuneration. Also the teachers did not want to be involved in logging the reproductions that they made and some had suggested a levy be imposed on machinery that covered classroom use.

111. Mr. Hesser (consultant) observed that Sweden had problems similar to those of the Federal Republic of Germany.

112. The observer of the International Federation of Library Associations provided information on the situation in the Netherlands. Normally \$US .04 per page was charged for copies but for educational use the remuneration was less. Only one copy per student was permitted and the reproduction was regarded as fair if it was supplementary to the normal teaching material the school was expected to use. Remuneration at \$US .01 per page was payable. To permit distribution, sample schools were supplying information.

113. The delegation of Switzerland observed that Article 10(2) of the Paris Act of the Berne Convention opened the door to the making of reprographic reproductions.

114. The delegation of Mexico stated that the provisions of the revised Universal Copyright Convention also opened the door for reprographic reproductions, particularly with regard to developing countries.

115. The delegation of Japan explained that there were difficult problems under its country's law in deciding to what extent works might be freely reproduced and how many copies might be made in the case that reproductions of works were used for the purpose of school education.

116. The delegation of Israel observed that the exceptions to the right of reproduction under the international copyright Conventions were not specifically in terms of reprographic reproduction. It was a matter for internal legislation to interpret what was permitted in the field of reprographic reproduction.

117. The observer of the International Literary and Artistic Association said that, having regard to paragraph (2) of Article 10 of the Paris Act of the Berne Convention, Article 10 should be given a restrictive interpretation.

Commercial enterprises, including libraries, archives, documentation centers and public scientific research institutions

118. The observer of the International Federation for Documentation drew the attention of the Sub-Committees to the need not to restrict the free flow of information and to the facilities provided by reprography in this respect. The latter had completely changed the working methods of researchers and allowed libraries to increase the availability of their collections. In the circumstances, his Federation favored the view that remuneration for authors and publishers should take the form of a percentage of the cost of the photocopies. This solution would not exclude the adoption of other systems such as a surcharge on equipment.

119. The delegation of the Federal Republic of Germany observed that where reproductions were made for internal use in industry they should always be paid for, irrespective of whether they were made for employed scientists or other personnel.

120. The delegation of France said that in France the prevailing opinion was that there was little freedom for industry to copy, at least without the payment of remuneration. The question was not, however, a closed one.

121. An observer of the International Publishers Association referred to difficulties in determining the rights of research scientists located in commercial enterprises to make copies for personal use.

122. The observer of the International Federation for Documentation referred to the situation of some non-profit bodies such as the Max-Planck-Institute which have installations inside commercial organizations.

123. The Chairman, noting that the Deputy Chairman of the Board of the Copyright Agency of the USSR (VAAP) was present at the meetings as an observer of the International Confederation of Societies of Authors and Composers, invited him to comment on the situation in the Union of Soviet Socialist Republics with respect to reprographic reproduction.

124. Responding to the invitation of the Chairman, the observer of the International Confederation of Societies of Authors and Composers stated that the problems under consideration were quite understandable to him but that many of them did not occur in the Union of Soviet Socialist Republics. In 1973, the Union of Soviet Socialist Republics had adhered to the 1952 text of the Universal Copyright Convention and accordingly its national legislation was brought into conformity with the Convention. Practically, the problem of reproducing locally printed works did not exist in the Union of Soviet Socialist Republics since the works were published in big editions and the prices of the printed works were low. In addition to that, the interest of authors and publishers were not affected because royalties were paid in accordance with the rates determined by the government. Reprographic reproduction was made in the Union of Soviet Socialist Republics, as a rule, either in those cases when it was impossible to obtain a copy of the work by usual means or when a customer was interested only in separate articles from a journal or in parts of a book. The recipients of such copies were libraries and other organizations but not individual persons. With respect to commercial reproduction of foreign works, a separate contract was to be signed for each such work. The matter had been discussed with the International Group of Scientific, Technical and Medical Publishers (STM) and other organizations. Thus, an agreement had been signed with French publishers. Commercial reproduction of those journals to which negative replies had been received from the publishers was stopped. He observed that, in view of technical progress, the problem of reprography was likely to become more complicated in the future. However, he felt that national laws might be able to regulate this matter taking into account the interests of users with the aim of promoting exchange of scientific and cultural values as well as taking into account the interests of authors and publishers.

Government offices

125. No declaration was made on this item, other than that set out in paragraph 54.

Special Problems of Developing Countries

126. In response to a call from the Chairman for a delegation from the developing countries to speak on this topic, the delegation of Mexico informed the Sub-Committees that the developing countries represented at the meetings had prepared a statement which was expressed in the form of the following declaration which had been adopted unanimously by them:

The developing countries members of the Sub-Committee of the Executive Committee of the Berne Union and of the Sub-Committee of the Intergovernmental Copyright

Committee on problems of the reprographic reproduction of works protected by copyright,

Bearing in mind the discussions that were held within the above-mentioned Sub-Committees, from which it may be inferred that there is no definite solution to this problem, nor can there be one, and that in view of the present status of its study it is not possible to make recommendations of an international nature which would resolve the problems of all of the countries,

Considering that the Universal Copyright Convention and the Berne Convention for the Protection of Literary and Artistic Works as revised at Paris in 1971 contain the necessary principles for protecting copyright and the spirit of implementation of certain provisions granting privileges to the developing countries,

Considering, likewise, that each State must resolve this problem by means of internal legislative measures which, while respecting the principles and the spirit of the above-mentioned Conventions, will establish whatever is most appropriate for their educational, cultural, social and economic development,

Reserve their position concerning the problem of reprographic reproduction of works protected by copyright, and will follow with interest the solutions to it that the developed countries adopt, stating here and now their concern that these solutions should not raise the prices already paid by the developing countries for the use of reprographic reproduction and not hamper the universal dissemination of works protected by copyright.

127. The delegation of Mexico stated that there were adequate provisions in the international copyright Conventions, which included special provisions for the benefit of developing countries, and each State must itself solve the problems of reprographic reproduction through its own national laws taking into account the educational, cultural, social and economic development of the country concerned. The delegations of Ghana, Israel and Senegal associated themselves with the views expressed by the delegation of Mexico.

128. The delegation of France, supported by the delegation of the Federal Republic of Germany, observed that its delegation shared the view of the developing countries that each State, while respecting its obligations under any conventions to which it might be a party, must resolve the problems raised by reprography under its own national laws.

Procedural questions

129. The delegation of France proposed that the Sub-Committees refer the study of procedural questions to the December 1975 sessions of the Intergovernmental Copyright Committee and of the Executive Committee of the Berne Union.

130. The Chairman remarked that since no universal solution could be proposed it appeared best to leave to the main Committees the decisions on the procedure to be followed in respect of the Sub-Committees' conclusions. The delegation of Canada supported the views of the Chairman and said that it

considered that the Sub-Committees had fulfilled the terms of their mandates.

131. The proposal of the delegation of France was supported by the delegations of Canada, Germany (Federal Republic of), India, Mexico, Senegal and the United States of America.

132. The Sub-Committees consequently decided to leave it to the above-mentioned Committees to reach a decision on this matter.

VIII. Adoption of Resolutions

133. The Sub-Committees set up a Working Group consisting of the delegations members of the earlier Working Group and the delegations of Brazil and Ghana to examine the possibility of drafting resolutions on reprographic reproduction.

134. Ms. Barbara Ringer, Chairman of the Working Group mentioned above, introduced to the Sub-Committees a draft text containing draft resolutions (document IGC/SC. 2/6 — B/EC/SC/I/6) prepared for their consideration by the Working Group. After making some changes to the text submitted by the Working Group, the Sub-Committees adopted, respectively, the resolutions annexed to this report.

135. At the time the draft text was being studied, the delegation of France, in response to a question raised by the observer of the International Federation for Documentation, stated that in its opinion the expression "dissemination of knowledge" appearing in the second paragraph of the preamble to the draft resolutions to be submitted to the Intergovernmental Copyright Committee and the Executive Committee of the Berne Union, respectively, should be interpreted in a broad sense and cover the concept of flow of information.

136. During the discussion of the draft text, the delegation of Australia, referring to the third paragraph of the preamble to the draft resolutions to be submitted to the Committees, stated that it would read the words "freedom to make reprographic reproductions" as referring to cases of excessive freedom to make reprographic reproductions; otherwise it would have to reserve its position.

137. The delegation of India stressed the importance of continuing every effort to become more aware of the various aspects of the problems created by reprographic reproduction and expressed the hope that a climate of international cooperation would continue to develop in the search for solutions, taking into account the interests involved.

IX. Adoption of the Report

138. The draft report of the meetings, as prepared by the Secretariats, was considered by the Sub-Committees. Subject to changes proposed by several delegations, the draft report was adopted.

139. The delegation of the United States of America asked that the final report reflect the delegation's appreciation of the fact that the draft report submitted by the Secretariats had succeeded in meeting the direction given by the Sub-Committees that the report set out the views expressed by individ-

ual delegations rather than provide a general summary of the work of the Sub-Committees. The delegation thought that the information contained in the report would be valuable in the future consideration of the copyright problems relating to reprographic reproduction.

140. The Chairman, observing that the present report was complementary to the report of the 1973 Working Group on Reprographic Reproduction, said he was pleased that it had been possible to prepare a detailed report of the work of the Sub-Committees.

X. Closure of the Meetings

141. The delegation of Ghana, supported by the delegations of the Federal Republic of Germany, France and Canada and

the observer of the International Writers Guild, thanked the Government of the United States of America for making it possible to hold the meetings of the Sub-Committees at Washington and for the facilities and other assistance it had provided. Gratitude was also expressed to the delegation of the United States of America for its hospitality during the meetings. Congratulations were extended to the Chairman for the skill with which he had guided the discussions thus enabling a useful conclusion to be reached on a difficult and complex subject.

142. The Chairman thanked the participants and in particular the Chairman of the Working Groups for their contributions to the work of the Sub-Committees and declared the meetings closed.

ANNEX

Resolution Adopted by the Sub-Committee of the Intergovernmental Copyright Committee

The Sub-Committee of the Intergovernmental Copyright Committee on Reprographic Reproduction submits to the Intergovernmental Copyright Committee the following draft resolution:

The States members of the Intergovernmental Copyright Committee,

Considering that reprographic reproduction of works protected by copyright is covered by those provisions of the Universal Copyright Convention and of the Berne Convention for the Protection of Literary and Artistic Works that concern the right of reproduction, as well as the exceptions permitted to that right,

Anxious not to hamper the dissemination of knowledge to which the use of reprographic reproduction makes a great contribution,

Conscious that the freedom to make reprographic reproductions, where this process is in widespread use, threatens the exercise of the exclusive right of the author in the matter of reproduction and is likely to impair his legitimate interests,

Finding, however, that the problem does not arise in the same way for all countries and that, after a thorough study of these various aspects, it appears that a uniform solution on the international level cannot, for the time being, be found,

Therefore, recommend that the States parties to one or the other of the said Conventions, with a view to reconciling where necessary, the needs of the users of reprographic reproduction with the rights and interests of the authors, seek a solution based on the following principles:

1. It rests with each State to resolve this problem by adopting any appropriate measures which, respecting the provisions of the Conventions mentioned above, establish whatever is best adapted to their educational, cultural, social and economic development; to this end, it rests with each State to decide whether and to what extent the solutions described in document IGC/SC. 2/8 — B/EC/SC/1/8 (Report of the Sub-Committees on Reprographic Reproduction) can be applied, in order to assure authors the protection of their economic interests offered by the Conventions.
2. In those States where the use of processes of reprographic reproduction is widespread, such States could consider, among other measures, encouraging the establishment of collective systems to exercise and administer the right to remuneration.
3. The States party to the Universal Copyright Convention are requested to inform the Secretariat of Unesco of any measure they may adopt in the field of reprographic reproduction, in order to facilitate cooperation between such States.
4. The Secretariat of Unesco will report to the Intergovernmental Copyright Committee on the measures adopted pursuant to the foregoing paragraph.

Resolution Adopted by the Sub-Committee of the Executive Committee of the Berne Union

The Sub-Committee of the Executive Committee of the Berne Union on Reprographic Reproduction submits to the Executive Committee of the Berne Union the following draft resolution:

The States member of the Executive Committee of the Berne Union,

3. The States party to the Berne Convention are requested to inform the International Bureau of WIPO of any measure they may adopt in the field of reprographic reproduction, in order to facilitate cooperation between such States.
4. The International Bureau of WIPO will report to the Executive Committee of the Berne Union on the measures adopted pursuant to the foregoing paragraph.

List of Participants

I. States Members of the Sub-Committees

Algeria (*): A. K. Mekideche. Argentina (*) (**): L. M. Riccheri. Australia (*): R. J. A. Franki; R. A. St. John. Brazil (*): J. Villa Lobos. Canada (**): A. A. Keyes; J. Johnston (Mrs.). France (*) (**): A. Kerever; A. Françon. Germany (Federal Republic of) (*) (**): E. Steup (Mrs.). Ghana (*): J. H. K. Folson; E. B. Odoi Anim. Hungary (**): I. Timár. India (*) (**): I. Rahman. Israel (*) (**): M. Gabay; C. Even-Zohar. Italy (*) (**): R. Giancola; N. Faiel Dattilo; M. Lucentini. Japan (*): S. Hayashi; M. Ito. Mexico (*): G. E. Larrea Richerand; J. Del Rey y Lenero; P. L. Hernández; V. C. García-Moreno; J. M. Fernández Unsain; C. Gómez Barrera; E. Reyes Morfin; R. Márquez Carrillo; A. Vega Aranda; V. Blanco Labra. Morocco (**): A. K. Kadiri. Philippines (**): E. A. V. Espiritu (Mrs.). Senegal (*) (**): N'D. N'Diaye. Spain (*) (**): I. Fonseca-Ruiz (Mrs.). Switzerland (**): J.-L. Marro. Tunisia (*): K. Kaak. United Kingdom (*) (**): I. J. G. Davis. United States of America (*): B. Ringer (Ms.); H. Winter; C. Hamilton; D. Schrader (Ms.); L. Flacks; D. LaBrie. Yugoslavia (*) (**): V. Spaić.

II. Consultant

T. Hesser.

III. Observers

International Non-Governmental Organizations

International Confederation of Societies of Authors and Composers (CISAC): L. Feist; C. Joubert; B. Korman; Y. Zharov; J.-A. Ziegler. Inter-

(*) Indicates a State member of the Sub-Committee of the Intergovernmental Copyright Committee on Reprographic Reproduction.

(**) Indicates a State member of the Sub-Committee of the Executive Committee of the International Union for the Protection of Literary and Artistic Works (Berne Union) on Reprographic Reproduction.

national Council for Reprography (ICR): H. Arntz. International Federation for Documentation (FID): H. Arntz. International Federation of Library Associations (IFLA): M. Wijnstroom (Mrs.). International Literary and Artistic Association (ALAI): A. Géranton. International Publishers Association (IPA): J. A. Koutchoumov; C. G. Benjamin; A. Broido; A. Géranton; R. C. Sharp; C. Lieh. International Writers Guild (IWG): R. Fernay; P. Thibeault.

IV. Secretariats

World Intellectual Property Organization (WIPO)¹:

A. Bogsch (*Director General*); K.-L. Liguier-Lauhhouet (Mrs.) (*Deputy Director General*); C. Masouyé (*Director, Office of the Director General*); E. M. Haddrick (*Counsellor, Head, Copyright Division*).

United Nations Educational, Scientific and Cultural Organization (UNESCO)²:

C. Lussier (*Director, Office of International Standards and Legal Affairs*); M.-C. Dock (Ms.) (*Director, Copyright Division*); D. de San (*Lawyer, Copyright Division*); P. A. Lyons (Ms.) (*Lawyer, Copyright Division*).

¹ Secretariat for the meeting of the Sub-Committee of the Executive Committee of the International Union for the Protection of Literary and Artistic Works (Berne Union) on Reprographic Reproduction and observer at the meeting of the Sub-Committee of the Intergovernmental Copyright Committee on Reprographic Reproduction.

² Secretariat for the meeting of the Sub-Committee of the Intergovernmental Copyright Committee on Reprographic Reproduction and observer at the meeting of the Sub-Committee of the Executive Committee of the International Union for the Protection of Literary and Artistic Works (Berne Union).

NATIONAL LEGISLATION

UNITED KINGDOM

The Copyright (International Conventions) (Amendment) Order 1975

(No. 431, of March 18, 1975, coming into force on April 16, 1975)

1. — (1) This Order may be cited as the Copyright (International Conventions) (Amendment) Order 1975 and shall come into operation on 16th April 1975.

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

2. — The Copyright (International Conventions) Order 1972¹, as amended², shall be further amended as follows:—

- (1) in Schedule 1 (which names the countries of the Berne Copyright Union) there shall be included a reference to Togo;
- (2) in Schedules 4 and 5 (countries whose broadcasting organisations have copyright protection in relation to their sound and television broadcasts) there shall be included references to Italy and related references to 8th April 1975 in the list of dates in those two Schedules;
- (3) for references therein to the Virgin Islands there shall be substituted references to the British Virgin Islands.

3. — (1) This Order except for Article 2(2) shall extend to all the countries mentioned in the Schedule hereto.

(2) Article 2(2) shall extend to Gibraltar and Bermuda.

¹ See *Copyright*, 1972, p. 180.

² *Ibid.*, 1973, pp. 78, 109, 110, 218 and 250, and 1974, p. 235.

SCHEDULE

Countries to which this Order extends

Bermuda	Hong Kong
Belize	Isle of Man
British Virgin Islands	Montserrat
Cayman Islands	Seychelles
Falkland Islands	St Helena
and Dependencies	and its Dependencies
Gibraltar	

EXPLANATORY NOTE

(This Note is not part of the Order)

This Order further amends the Copyright (International Conventions) Order 1972. It takes account of—

- (a) the accession of Togo to the Berne Copyright Convention;
- (b) the ratification by Italy of the International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations.

The Order extends, so far as is appropriate, to dependent countries of the Commonwealth to which the 1972 Order extends.

INTERNATIONAL ACTIVITIES

Council of Europe

Legal Committee on Broadcasting and Television

(Strasbourg, July 1 to 3, 1975)

The Legal Committee on Broadcasting and Television met at the headquarters of the Council of Europe in Strasbourg from July 1 to 3, 1975, under the chairmanship of Mr. Torwald Hesser (Justice of the Supreme Court of Sweden). Governmental experts appointed by the following States took part in the work of the Committee: Austria, Belgium, Cyprus, Denmark, France, Germany (Federal Republic of), Greece, Luxembourg, Netherlands, Norway, Spain, Sweden, Switzerland, Turkey, United Kingdom. Some international non-governmental organizations had nominated observers. WIPO was represented by Mr. Claude Masouyé, Director, Office of the Director General.

The main task of the Committee was to re-examine the whole problem of the protection of television programs when distributed by wire or cable in the light of the development of techniques in this field. This examination was con-

cerned in particular with the scope of the 1960 European Agreement on the Protection of Television Broadcasts, as completed by the Protocol of 1965 and the Additional Protocol of 1974, and with the question whether those texts should be revised or replaced by a new agreement. The examination also covered the problems that would arise in the future if direct broadcasting satellites were used for the transmission of signals. The Committee had a long exchange of views on the various legal aspects of the problems involved. In order that the governmental authorities of interested States might continue their study of this matter, the Committee drew up a list of questions that would be submitted to them for consideration.

The Committee decided to hold its next session from February 2 to 6, 1976.

CALENDAR

WIPO Meetings

- August 28 and 29, 1975 (Geneva) — Hague Union — Conference of Plenipotentiaries
- September 17 to 19, 1975 (Geneva) — ICIREPAT — Plenary Committee (PLC)
- September 22 and 23, 1975 (Geneva) — Trademark Registration Treaty (TRT) — Interim Advisory Committee
- September 23 to 30, 1975 (Geneva) — WIPO Coordination Committee; Executive Committees of the Paris and Berne Unions; Assembly and Committee of Directors of the Madrid Union; Assembly of the Nice Union
- October 1 to 3, 1975 (Geneva) — Scientific Discoveries — Committee of Experts
- October 1 to 3, 1975 (Geneva) — International Patent Classification (IPC) — Bureau
- October 6, 1975 (Geneva) — International Patent Classification (IPC) — Joint ad hoc Committee
- October 7 to 9, 1975 (Geneva) — International Patent Classification (IPC) — Assembly and Committee of Experts
- October 13 to 17, 1975 (Nairobi) — Conference on Industrial Property Laws of English-Speaking Africa — Committees of Experts (convened jointly with the Economic Commission for Africa of the United Nations)

- October 13 to 17, 1975 (Geneva) — ICIREPAT — Technical Committee for Search Systems (TCSS)
- October 20 to 24, 1975 (Washington) — ICIREPAT — Technical Committee for Standardization (TCST)
- October 27 to 31, 1975 (Mexico City) — Latin American and Caribbean Seminar on the Rights of Performers, Producers of Phonograms and Broadcasting Organizations
(Meeting organized jointly with ILO and Unesco)
- October 27 to November 3, 1975 (Geneva) — Patent Cooperation Treaty (PCT) — Interim Committees
- November 3 to 7, 1975 (Geneva) — International Classification of Goods and Services for the Purposes of the Registration of Marks — Committee of Experts
- November 3 to 14, 1975 (Berne) — International Patent Classification (IPC) — Working Group II
- November 10 to 14, 1975 (Geneva) — Revision of the Model Law on Inventions — Working Group (3rd session)
- December 1 to 5, 1975 (Geneva) — International Protection of Appellations of Origin and Other Indications of Source — Committee of Experts
- December 1 to 12, 1975 (Munich) — International Patent Classification (IPC) — Working Group III
- December 8, 9 and 16, 1975 (Geneva) — International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations — Intergovernmental Committee — Ordinary Session (jointly organized with ILO and Unesco)
- December 10 to 12, 1975 (Geneva) — ICIREPAT — Technical Coordination Committee (TCC)
- December 10 to 16, 1975 (Geneva) — Executive Committee of the Berne Union (Extraordinary Session)
- December 15 to 19, 1975 (Geneva) — International Classification of the Figurative Elements of Marks — Provisional Committee of Experts
- December 15 to 22, 1975 (Geneva) — Revision of the Paris Convention for the Protection of Industrial Property — Group of Governmental Experts
- March 15 to 19, 1976 (Geneva) — WIPO Permanent Legal-Technical Program for the Acquisition by Developing Countries of Technology Related to Industrial Property — Permanent Committee (3rd session)
- September 27 to October 5, 1976 (Geneva) — WIPO General Assembly, Conference and Coordination Committee; Assemblies of the Paris, Madrid, Nice, Lishon, Locarno, IPC and Berne Unions; Conferences of Representatives of the Paris, Nice and Berne Unions; Executive Committees of the Paris and Berne Unions; Council of the Lishon Union — Ordinary Sessions
- March 14 to 18, 1977 (Geneva) — WIPO Permanent Legal-Technical Program for the Acquisition by Developing Countries of Technology Related to Industrial Property — Permanent Committee (4th session)
- September 26 to October 4, 1977 (Geneva) — WIPO Coordination Committee and Executive Committees of the Paris and Berne Unions

UPOV Meetings

Council: October 7 to 10, 1975 — Consultative Committee: October 6 and 10, 1975 — Technical Steering Committee: November 6 and 7, 1975 — Committee of Experts on International Cooperation in Examination: November 4 and 5, 1975 — Committee of Experts on the Interpretation and Revision of the Convention: December 2 to 5, 1975; February 17 to 20, 1976

Note: All these meetings will take place in Geneva at the headquarters of UPOV

Technical Working Parties: for Forest Trees: August 19 and 20, 1975 (Hannover - Federal Republic of Germany); for Ornamental Plants: September 9 to 11, 1975 (Hornum - Denmark)

Meetings of Other International Organizations concerned with Intellectual Property

- September 12 and 13, 1975 (Liège) — International League Against Unfair Competition — Study Meetings
- September 16 to 19, 1975 (Budapest) — International Federation of Musicians — Executive Committee
- September 17 to 20, 1975 (London) — Union of European Professional Patent Representatives — General Assembly
- September 22 to 24, 1975 (Basle) — Licensing Executives Society (LES) — International Conference
- October 1 to 3, 1975 (Berlin) — International Literary and Artistic Association — Working Session
- October 13 and 14, 1975 (Paris) — International Confederation of Societies of Authors and Composers — Legal and Legislative Commission
- October 21 to 23, 1975 (Rijswijk) — International Patent Institute — Administrative Board
- November 3 to 12, 1975 (Paris) — United Nations Educational, Scientific and Cultural Organization (UNESCO) — Committee of Governmental Experts on the Double Taxation of Copyright Royalties
- November 17 to December 15, 1975 (Luxembourg) — General Secretariat of the Council of Ministers of the European Communities — Luxembourg Conference on the Community Patent
- December 17 to 19, 1975 (Rijswijk) — International Patent Institute — Administrative Board
- May 25 to June 1, 1976 (Tokyo) — International Publishers Association — Congress

