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World Intellectual Property Organization

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World Intellectual Property Organization

GHANA

Accession to the WIPO Convention

The Director General of the World Intellectual Property Organization (WIPO) has notified the Governments of the countries invited to the Stockholm Conference that the Government of the Republic of Ghana deposited, on March 12, 1976, its instrument of accession to the Convention Establishing the World Intellectual Property Organization (WIPO).

The Republic of Ghana, which is a member of the United Nations, has fulfilled the condition set forth in Article 5(2)(i) of the said Convention.

Pursuant to Article 15(2), the Convention Establishing the World Intellectual Property Organization (WIPO) will enter into force, with respect to the Republic of Ghana, three months after the date of deposit of the instrument of accession, that is, on June 12, 1976.

WIPO Notification No. 87, of March 16, 1976.

Conventions Administered by WIPO

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

Fifth Ordinary Session
(Geneva, December 8 and 12, 1975)

Report

submitted by the Secretariat and adopted by the Committee

Introduction

1. The Intergovernmental Committee of the International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations (Rome Convention), having been convened in accordance with Article 32, paragraph 6, of the Rome Convention and Rule 10 of the Committee's Rules of Procedure, held its fifth ordinary session at Geneva on December 8 and 12, 1975.

2. The Governments of six of the nine States members of the Committee were represented; Austria, Brazil, Czechoslovakia, Mexico, Sweden, United

Kingdom. The Governments of three States party to the Rome Convention but not members of the Committee (Denmark, Germany (Federal Republic of), Italy) and eleven States not party to the Convention (Australia, Cameroon, Canada, France, Guatemala, India, Jamaica, Portugal, Senegal, Switzerland, United States of America) were represented by observers.

3. The representatives of one intergovernmental organization and eight international non-governmental organizations attended the session as observers.

4. The list of participants is annexed to this Report.

Opening of the session

5. The session was opened by Mr. João Frank da Costa (Brazil), the outgoing Chairman, who welcomed the participants at the session. He then outlined his personal views concerning the present stage of development of the Convention. Reflecting on the reason for the limited number of States party to the Rome Convention, he observed that this situation could generally be attributed to three factors. In the first place, membership of the Rome Convention was limited to States party to either the Berne Convention for the Protection of Literary and Artistic Works or the Universal Copyright Convention. Secondly, there had been long-standing opposition on the part of some authors' and broadcasting organizations to the Convention; and, finally, there was the need for many States to draft legislation as the Rome Convention was an innovative convention not based on a large body of existing laws. In this respect, he noted that it was misleading to state that the Rome Convention creates "neighboring rights" since in fact a State wishing to ratify or adhere to the Rome Convention was free to determine how it was going to protect the rights of performers, producers of phonograms and broadcasting organizations — whether by means of copyright, neighboring rights, administrative or penal measures or laws on unfair competition.

6. As regards the opposition of certain authors to the Rome Convention, it was based on theoretical considerations about the preeminence of copyright and intellectual creativity, and on the eminently practical idea that the remuneration of groups other than authors diminished the authors' share ("the cake theory"). Without entering on the obviously subjective territory of the creativity of groups protected by the Rome Convention, it should be observed that the protection of these groups tended to promote the utilization of the works of authors. The interests of authors and those of groups protected by the Rome Convention were therefore complementary and not at all competitive.

7. It should also be noted that there was no hierarchy in the rights of the groups protected by the Rome Convention. However, if a State considered that certain groups were in a position of inferiority compared with others, nothing prevented it from rectifying the imbalance by internal means.

8. As far as the first group (performers) was concerned, two remarks should be made. Firstly, protection was illusory in the absence of the Rome Convention. The reign of mere contracts, according to interested countries, did not grant any concrete protection. Secondly, as the preparatory work for the Rome Convention and the legislation of numerous States indicated, the resources originating from the

secondary use of phonograms could be utilized not only for individual needs but to contribute to favorable conditions on the social and cultural level. Moreover, opposition to the Convention based solely on Article 12 had no meaning. Article 12 was completely optional and States were absolutely free to apply it or not. In the case that States accepted Article 12, they were not restricted as far as the distribution of funds originating from the secondary utilization of phonograms was concerned.

9. In relation to broadcasting, since the adoption at Brussels of the Convention Relating to the Distribution of Programme-Carrying Signals Transmitted by Satellite (Satellites Convention), it was no longer possible to say that the present system was imbalanced in that it did not give sufficient protection to broadcasting organizations. The Satellites Convention was part of a package deal involving the Rome Convention and thus, in looking at the protection of the interests of broadcasting organizations, the Satellites Convention had to be taken into account.

10. An essential feature of the Rome Convention was that it gave balanced protection to the three groups of beneficiaries. The fact that none of the three groups protected by the Rome Convention was entirely satisfied with the Convention was a favorable sign indicating that a balance had been achieved. The Rome Convention also had flexibility in that a large number of options were given to States as to how they would give effect to it; nor was it in any way inconsistent with copyright or the interests of any of the parties it sought to protect. Thus, there was nothing in the Convention to prevent its ratification by any country. He concluded his observations by expressing the opinion that the Rome Convention would attract widespread support in the next ten years.

11. The Delegation of Mexico, supported by the Delegations of the United Kingdom and Austria and the observers from the Federal Republic of Germany, the International Federation of Musicians (FIM) and the International Federation of Producers of Phonograms and Videograms (IFPI), congratulated the outgoing Chairman on what had been achieved during the two years of his chairmanship due to his outstanding capacity and intelligence in promoting acceptance of the rights granted under the Rome Convention.

Election of officers and adoption of agenda

12. On a proposal made by the Delegation of Czechoslovakia, supported by the Delegations of Mexico and Brazil, Mr. Robert Dittrich (Austria) was elected Chairman. The Committee then elected Dr. Milan Reiniš (Czechoslovakia) and Mr. Gabriel

E. Larrea Richerand (Mexico) as Vice-Chairmen upon the proposal of the Delegation of the United Kingdom.

13. The provisional agenda contained in document ILO/UNESCO/WIPO/ICR.5/1 Rev. was adopted.

Application of the Convention

14. The Committee took note of the information in this regard contained in document ILO/UNESCO/WIPO/ICR.5/2. In addition, the Committee was informed by the Secretariat that advice had since been received from the Secretary-General of the United Nations to the effect that an instrument of accession to the Rome Convention had been deposited by Luxembourg. Since particulars of the accession had not been received, it was not possible to say whether, or to what extent, reservations had been formulated by Luxembourg. With the accession of Luxembourg, the number of countries having acceded to the Convention stood at 17.

Other Conventions

15. The Committee took note of the information contained in document ILO/UNESCO/WIPO/ICR.5/3 concerning the application of the Convention for the Protection of Producers of Phonograms Against Unauthorized Duplication of Their Phonograms, Geneva 1971 (Phonograms Convention). The Committee was informed by the Secretariat that Luxembourg had ratified the Phonograms Convention since the issue of document ILO/UNESCO/WIPO/ICR.5/3. With Luxembourg's ratification, 18 countries had now ratified or acceded to the Phonograms Convention.

16. In introducing the report contained in document ILO/UNESCO/WIPO/ICR.5/4 on the Convention Relating to the Distribution of Programme-Carrying Signals Transmitted by Satellite, adopted on May 21, 1974, the Secretariat drew the attention of the Committee to the basic provisions of the Convention. The Committee was also informed that the Convention had been signed by 15 States but that no State had so far deposited an instrument of ratification of, or accession to, the Convention.

17. The representative of the Council of Europe informed the Committee that the Additional Protocol (of January 14, 1974) to the Protocol to the European Agreement on the Protection of Television Broadcasts entered into force on December 31, 1974. The representative pointed out that the Additional Protocol provides that, from January 1, 1985, no State may remain or become party to the European Agreement unless it is also party to the Rome Convention.

Latin American and Caribbean Seminar on the Rights of Performers, Producers of Phonograms and Broadcasting Organizations

18. The discussion of the report of the Secretariat on this Seminar, contained in document ILO/UNESCO/WIPO/ICR.5/5, was opened by Dr. Arpad Bogsch, Director General of WIPO. On behalf of his Organization, Dr. Bogsch asked the Head of the Delegation of Mexico to convey to the Government of Mexico the gratitude of the Secretariat for the invitation to hold the Seminar in Mexico and congratulations on its success. He then underlined the importance of the final statement agreed upon at the Seminar in favor of adherence to the Rome Convention and the Phonograms and Satellites Conventions. The representative of Unesco, speaking on behalf of Mr. Amadou-Mahtar M'Bow, Director-General of Unesco, and the representative of ILO, speaking on behalf of Mr. F. Blanchard, Director-General of ILO, also expressed the thanks of their Organizations to the Government of Mexico for its generous invitation to hold the Seminar in Mexico and their congratulations to the Head of the Mexican Delegation for his contribution to its success.

19. The observer from the International Federation of Musicians (FIM) referred to the activities in the previous two years of the three Organizations forming the Secretariat, of which the Seminar was one example. In the view of his Federation, the Seminar was a success not only in relation to the Latin American and Caribbean countries but also as regards the whole movement towards enlarging the geographical coverage of the Rome Convention. Furthermore, his Federation considered that the Model Law concerning the Protection of Performers, Producers of Phonograms and Broadcasting Organizations which had now been published by the Secretariat would be particularly helpful in facilitating further accessions to the Convention.

20. The Delegation of Mexico, responding to the statements made on behalf of the three Organizations forming the Secretariat, said that it wished the report to reflect Mexico's gratitude to the Organizations for agreeing to hold the Seminar in Mexico and for their contribution to its success. The Delegation was firmly of the view that the Seminar would provide positive results in favor of the Rome Convention, the Phonograms Convention and the Satellites Convention. It added that one of the results of the Seminar had been the establishment, on the occasion of the Seminar, of the *Federación Panamericana de Intérpretes* which included associations from Argentina, El Salvador, Paraguay, Peru, Uruguay, Venezuela and Mexico. The Committee noted that the report (document ILO/UNESCO/WIPO/ICR.5/5) would be completed by the addition of this information.

21. The observer from the International Federation of Producers of Phonograms and Videograms (IFPI) noted the progress made in the previous two years which had seen the development of the Model Law on the rights of performers, producers of phonograms and broadcasting organizations, as well as the convening of the first regional seminar to promote the Rome Convention.

22. Recalling the three fundamental difficulties raised by the outgoing Chairman in connection with the Rome Convention, he observed that in 1961 it was unthinkable to give rights to other groups in States where no protection was accorded to authors. Thus, it had been decided to limit membership of the Rome Convention to States party to either the Universal Copyright Convention or the Berne Convention for the Protection of Literary and Artistic Works. Although this situation could be reviewed on the occasion of a possible revision conference, his Federation made every effort to encourage ratification of, or accession to, the international copyright Conventions as well as the Rome Convention. The observer from IFPI also noted with satisfaction that the opposition of broadcasting organizations had now been removed. The latter had been an inhibiting factor in that States, confronted with the opposition of one of the parties protected by the Rome Convention, would often hesitate to take any action in favor of the other interests concerned.

23. As for legislative developments since 1961, he felt that many such advances were inspired by discussions relating to the Rome Convention. Although objections were sometimes raised to the granting of copyright protection to parties other than authors, he noted that this was true in only a limited number of States. With respect to economic objections to the granting of rights to parties other than authors, the alleged deleterious effect on authors' receipts of payments to other parties had not been established. In this respect, his Federation was attempting to collect relevant statistical information, which, so far as it was available, tended to prove the contrary.

24. As for the future of the Rome Convention, the observer from IFPI was confident that it would soon attract many new ratifications or accessions. Once the Convention had been firmly established, it might be possible to consider incorporating in the Convention matters not covered by it at present. In this event, he felt that broadcasting organizations would most likely benefit.

25. The Delegation of the United Kingdom, recalling that its country had always been a firm supporter of the Rome Convention, emphasized the need for the dissemination of information concerning the Convention and, in this regard, the value of seminars could not be stressed too highly. For this reason,

appreciation should be expressed to the Government of Mexico for offering to host the Seminar for the Latin American and Caribbean countries.

26. The observer from the Federal Republic of Germany, referring to the opening statements of the outgoing Chairman and the representative of the International Federation of Producers of Phonograms and Videograms (IFPI), remarked that, in her opinion, the limitation of membership of the Rome Convention to States party to the copyright Conventions constituted an element of balance between the interests of beneficiaries of the Rome Convention and beneficiaries of copyright.

Inquiry concerning the implementation of the Rome Convention

27. The Delegation of Brazil, regretting that more countries had not so far adhered to the Rome Convention, suggested that a new approach was required to methods of promoting it. For example, although the outcome of the recent Seminar in Mexico had been highly satisfactory, the discussions there had been too much devoted to technical and doctrinal problems related to the nature of the rights dealt with in the Convention rather than to the supply of information on the different methods of its application in member States which would have illustrated the practicability of its application and administration in widely different national legislations. The Delegation described the manner in which the Convention had been applied in its own country and explained how the rights of authors and rights in related fields had been administered for a number of years by one society, *Serviço de Defesa do Direito Autoral (SDDA)*, and how a harmonization of the interests of those involved had been achieved without affecting the remuneration received by the various parties concerned. Although a single society existed, it administered the rights of the parties separately.

28. The Delegation of Brazil informed the Committee that it had submitted to the Secretariat for distribution to the Committee a document showing the collections for authors and composers, on the one hand, and the performers and producers of phonograms, on the other hand, which demonstrated that there had been no decrease in the remuneration being received by authors and composers since the collection of revenues arising from the rights protected under the Rome Convention had commenced. The Delegation considered that the experience of Brazil, which showed that the joint exercise of the rights of beneficiaries of copyright and the rights protected under the Rome Convention was both possible and advantageous to all parties concerned, could serve as an example to other countries. In consequence, the Delegation suggested that the way to encourage other

countries, both developed and developing, to adhere to the Rome Convention was by making available practical information regarding the successful methods of implementation adopted by its member States.

29. The Delegation of Brazil proposed that the Secretariat should undertake a study of the legislation governing the rights protected under the Rome Convention and the practical problems and experience regarding the application of that Convention in its member States. Furthermore, the Delegation considered that, since there were many countries which had not yet ratified the Rome Convention, the study should be extended to cover all countries party to the Universal Copyright Convention or the Berne Convention which had legislation concerning the groups protected by the Rome Convention.

30. In supporting the proposal of the Delegation of Brazil, the Delegation of Mexico suggested that the proposed inquiry should include an investigation of other positive aspects, and not only those of an economic nature, since in Mexico the Rome Convention had served to harmonize the interests of the sectors protected by the Convention amongst themselves and with the authors. That is to say, in practice, the Rome Convention served as a stabilizing element since it established a positive balance between the interests of all the sectors — authors, performers, producers of phonograms and broadcasting organizations.

31. The Delegation of Austria and the observers from Australia, France, Germany (Federal Republic of) and Switzerland supported the proposal to the extent that it dealt with the countries party to the Rome Convention.

32. The Director General of WIPO, in indicating his willingness to undertake such a study, pointed out that the Rome Convention was not solely concerned with the collection and distribution of royalties but also performed the important function of protecting against piracy. The representatives of Unesco and ILO, on behalf of their respective Directors-General, also indicated their willingness to undertake the study which responded to a definite need and would contribute to the clarification of basic issues and the dispelling of misunderstandings regarding the application of the Convention.

33. It was decided in the light of the preceding exchange of views that, with a view to disseminating useful information on the practical application of the Convention, the Secretariat should undertake a joint inquiry covering the following aspects:

(1) statements on the experience in the various countries in the administration of rights under the Rome Convention and the solutions adopted to harmonize the interests of the benefi-

ciaries of these rights among themselves and with the interests of the beneficiaries of copyright. The statement should cover, *inter alia*, the legislative solutions adopted, the mechanisms of collecting and distributing any royalties, any collective agreements, including agreements concluded by collecting societies, and the effect of rights under the Rome Convention on contracts;

(2) statistics on:

(i) moneys collected and distributed in relation to rights conferred by the Rome Convention;

(ii) the incidence of piracy;

(3) relevant court decisions.

It was agreed that, in making the inquiry, the Secretariat would seek information from international non-governmental organizations as well as from Governments. The Committee also decided to request the Executive Committee of the Berne Union and the Intergovernmental Copyright Committee to invite international non-governmental organizations to furnish statistics on copyright royalties where they would be useful for comparing and evaluating the statistics relating to royalties received in respect of rights under the Rome Convention.

34. The observer from the International Federation of Musicians (FIM) said that his Federation hoped that the purpose of the study would be to assist further development of the concepts contained in the Rome Convention and to find ways of encouraging ratification. Although Article 12 was important, particularly in expressing performers' interests in the secondary uses of their works, the study should not be dominated by methods of collecting and distributing remuneration. Equally or possibly more valuable would be a consideration of the effects of Article 7 on the contractual position of performers. Similarly, the effects on piracy and on what the delegate of Mexico had described as the "coordination of interests" could be very significant.

Application for admission as observer

35. The Committee took note of the decision of the *Association européenne des directeurs de bureaux de concerts et spectacles* to withdraw, for the time being, its application to be admitted to sessions of the Intergovernmental Committee as an observer.

Further questions and adoption of the Report

36. Before proceeding to consider the draft report prepared by the Secretariat, the Committee decided, upon the proposal of the Chairman, to include on its agenda consideration of the problems arising from the use of audiovisual cassettes and discs and from the transmission of television programs by cable,

having regard to decisions taken by the Executive Committee of the Berne Union and the Intergovernmental Copyright Committee of the Universal Copyright Convention as revised in 1971 ("the copyright Committees") sitting together at their ninth session (third extraordinary) and first extraordinary session, respectively.

37. The Committee decided, taking into account the program for further study established by the copyright Committees of copyright questions arising from the use of audiovisual cassettes and discs, that a parallel study should be undertaken in relation to performers, producers of phonograms and broadcasting organizations. In the study, the States and international non-governmental organizations which were to be asked to comment in relation to copyright questions on the basis of the report of Professor Franca Klaver entitled "Problems arising from the use of audiovisual cassettes and discs" should also be asked to comment in relation to performers, producers of phonograms and broadcasting organizations.

38. After noting that the Rome Convention did not afford protection in respect of the transmission of television programs by cable and that it would not be wise or practical to envisage, in the near future, a revision of the Convention, the Chairman suggested that the extension of the study decided upon by the copyright Committees to cover also questions related to protection of performers, producers of phonograms and broadcasting organizations would nevertheless be useful since it would assist in the coordination of action at the national level. The Committee then decided that a study similar to that agreed upon by the copyright Committees should be undertaken by the Secretariat.

39. The document submitted by the Delegation of Brazil concerning collections in Brazil on behalf of authors, composers, performers and producers of phonograms having been distributed by the Secretariat (document ILO/UNESCO/WIPO/ICR.5/6: see paragraph 28), the Committee decided to take note of the document.

40. The Committee unanimously adopted the draft report prepared by the Secretariat.

Closing of the session

41. After an expression of appreciation to the Chairman by the Delegation of Mexico on behalf of the participants for the competent way in which he conducted the meeting, the Chairman declared the session closed.

List of Participants

I. Members of the Committee

Austria: R. Dittrich. **Brazil:** J. F. da Costa; C. de Souza Amaral. **Czechoslovakia:** M. Reiniš. **Mexico:** G. E. Larrea Richerand; A. Cué Bolaños (Miss); C. E. Lizalde; L. Gimeno; V. Blanco Labra. **Sweden:** A. H. Olsson. **United Kingdom:** I. J. G. Davis; V. Tarnofsky.

II. Observers

(i) States party to the Convention

Denmark: W. Weincke. **Germany (Federal Republic of):** E. Steup (Mrs.). **Italy:** M. Tomajuoli.

(ii) Other States

Australia: L. J. Curtis. **Cameroon:** B. Yaya Garga. **Canada:** A. A. Keyes; C. Brunet. **France:** S. Balous (Mrs.). **Guatemala:** N. Molina (Mrs.). **India:** H. Sukhdev. **Jamaica:** J. Webster (Mrs.). **Portugal:** A. J. Melo e Sousa. **Senegal:** D. Diéne. **Switzerland:** J.-L. Marro. **United States of America:** D. Schrader (Ms.).

(iii) Intergovernmental Organizations

Council of Europe: H.-J. Bartsch; F. Melichar.

(iv) International Non-Governmental Organizations

European Broadcasting Union (EBU): G. Straschnov. **International Federation of Actors (FIA):** G. Croasdel. **International Federation of Musicians (FIM):** J. Morton; R. Leuzinger. **International Federation of Producers of Phonograms and Videograms (IFPI):** S. M. Stewart; G. Davies (Miss); P. Chesnais. **International Federation of Variety Artistes (IFVA):** G. Croasdel. **International Literary and Artistic Association (ALAI):** D. Catterns. **International Music Council (IMC):** D. Laufer. **International Union of Cinematograph Exhibitors (UIEC):** J. Handl.

III. Secretariat

World Intellectual Property Organization (WIPO):

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

International Labour Office (ILO):

R. Cuvillier (Mrs.) (*Acting Chief, Administrative, Professional and Service Activities Branch*).

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

M.-C. Dock (Ms.) (*Director, Copyright Division*); P. Lyons (Ms.) (*Lawyer, Copyright Division*).

IV. Officers

Chairman: R. Dittrich (Austria); *Vice-Chairmen:* M. Reiniš (Czechoslovakia); G. Larrea Richerand (Mexico); *Co-Secretaries:* R. Cuvillier (Mrs.) (ILO); P. Lyons (Ms.) (UNESCO); M. Haddrick (WIPO).

National Legislation

LUXEMBOURG

Law

on the protection of performers, producers of phonograms and broadcasting organizations

(of September 23, 1975) *

Section I. Preliminary Provisions

Article 1. For the purposes of this Law:

- (a) "performers" means actors, singers, musicians, dancers and other persons who act, sing, deliver, declaim, play in or otherwise perform literary or artistic works;
- (b) "phonogram" means any exclusively aural fixation of sounds of a performance or of other sounds;
- (c) "producer of phonograms" means the person who, or the legal entity which, first fixes the sounds of a performance or other sounds;
- (d) "reproduction" means the making of a copy or copies of a fixation;
- (e) "duplicate" means an article which contains sounds taken directly or indirectly from a phonogram and which embodies all or a substantial part of the sounds fixed in that phonogram;
- (f) "distribution to the public" means any act by which duplicates of a phonogram are offered, directly or indirectly, to the general public or any section thereof;
- (g) "broadcasting" means the transmission by wireless means for public reception of sounds or of images and sounds;
- (h) "rebroadcasting" means the simultaneous or consecutive broadcasting by one broadcasting organization of the broadcast of another broadcasting organization.

Section II. Protection of Performers

Article 2. Performers shall enjoy protection under this Law in cases where:

- (a) the performance takes place in the territory of the Grand Duchy;
- (b) the performance is fixed on a phonogram which is protected under Article 7;

- (c) the performance, not being fixed on a phonogram, is carried by a broadcast which is protected under Article 9.

Article 3. (1) In the cases provided for in Article 2, the performers participating in the performance shall have the right to authorize or prohibit:

- (a) the broadcasting and the communication to the public of their performance, except where the performance used in the broadcasting or the public communication is itself already a broadcast performance or is made from a fixation;
- (b) the fixation of their unfixed performance;
- (c) the reproduction of a fixation of their performance:
 - (i) if the original fixation, other than that referred to in Article 13, was itself made without their consent;
 - (ii) if the reproduction is made for purposes different from those for which the performers gave their consent;
 - (iii) if the original fixation was made in accordance with the provisions of Article 13, and the reproduction is made for purposes different from those referred to in those provisions.

(2) Failing evidence to the contrary, the consent of a performer to the broadcasting of his performance shall be deemed to include his consent to rebroadcasting, fixation for broadcasting purposes and the reproduction of such fixation for broadcasting purposes.

Article 4. (1) Where several performers participate in the same performance, it shall suffice for the consent provided for in Article 3 to be given by the administrative or artistic authority responsible for the group or, failing this, by the leader of the group.

(2) Consent shall in all cases be deemed to have been given if the person receiving it had no reasonable grounds to suspect that it did not originate

* This Law was published in the *Mémorial*, Official Journal of the Grand Duchy of Luxembourg, of September 30, 1975. — WIPO translation.

from the person entitled for giving it under paragraph (1) of this Article.

Article 5. Without prejudice to the implementation of Article 3(2), and failing special agreement between the parties, the contract of service shall lay down the extent to which and the conditions under which the employer may utilize the performance executed by the performer as part of his obligations under the contract.

Article 6. Notwithstanding anything in this Law, Article 3 shall have no further application with regard to a performance which has been incorporated in a visual or audiovisual fixation with the performer's consent.

Section III. Protection of Producers of Phonograms

Article 7. Producers of phonograms shall enjoy protection under this Law in cases where:

- (a) they are Luxembourg nationals or, in the case of legal entities, have their headquarters in the territory of the Grand Duchy;
- (b) the original fixation of the sounds was entirely made in the territory of the Grand Duchy.

Article 8. In the cases provided for in Article 7, producers of phonograms shall have the right to authorize or prohibit:

- (a) the making of duplicates of their phonograms;
- (b) the importation of such duplicates made without their consent, where such importation is for the purpose of distribution to the public;
- (c) the distribution to the public of such duplicates made without their consent.

Section IV. Protection of Broadcasting Organizations

Article 9. Broadcasting organizations shall enjoy protection under this Law in cases where:

- (a) their headquarters are situated in the territory of the Grand Duchy;
- (b) the broadcast is transmitted from a transmitter situated in the said territory;
- (c) the broadcast is transmitted from a ground station, situated in the said territory, or in any other territory, and operating through a communication satellite, at a frequency allocated to the Grand Duchy on the satellite.

Article 10. In the cases provided for in Article 9, broadcasting organizations shall have the right to authorize or prohibit:

- (a) the rebroadcasting of their broadcasts;
- (b) the fixation of their broadcasts, including the fixation of individual images from their television broadcasts;
- (c) the reproduction of a fixation of their broadcasts:
 - (i) if the original fixation, other than that referred to in Article 13, was itself made without their consent;
 - (ii) if the reproduction is made for purposes different from those for which the broadcasting organizations gave their consent;
 - (iii) if the original fixation was made in accordance with the provisions of Article 13, and the reproduction is made for purposes different from those referred to in those provisions.

Section V. General Provisions

Article 11. The protection granted under this Law shall leave intact and shall in no way affect authors' rights in literary and artistic works protected by the Law of March 29, 1972¹. No provision under this Law may therefore be interpreted as prejudicing those rights.

Article 12. (1) The term of protection granted under this Law is twenty years computed from the end of the year in which:

- (a) the original fixation was made, for phonograms and for performances incorporated therein;
- (b) the performance took place, for performances not incorporated in phonograms;
- (c) the broadcast took place, for broadcasts.

(2) Protection having a longer term under other statutory provisions remains unaffected.

Article 13. (1) The protection granted under this Law cannot be invoked as regards:

- (a) private use;
- (b) use, for the purpose of reporting current events, of a performance, a phonogram or a broadcast constituting all or part of the event;
- (c) fixation by a broadcasting organization using its own facilities and for its own broadcasts, and, in the case of a performance, subject to the broadcasting organization having obtained from the performers the authorization to broadcast required under this Law. The fixation and any reproductions thereof shall be destroyed or neutralized within the three

¹ See *Copyright*, 1972, p. 129.

months following the performance thus fixed. The fixation may however be preserved in official archives if it has an exceptional documentary character. The conditions for such preservation will be laid down in administrative regulations;

(d) use solely for the purposes of teaching or scientific research.

(2) Further, the protection granted under this Law cannot be invoked where the use made, if it were to concern a literary or artistic work protected by the Law of March 29, 1972, would be lawful without authorization from the author and without remuneration.

Article 14. The provisions of this Law, subject to the exceptions laid down herein, shall apply to both complete or partial use made of a performance, a phonogram or a broadcast.

Section VI. Penal Provisions

Article 15. Malicious or fraudulent infringements of the rights provided for in this Law shall be liable to punishment by a fine of between five thousand and one hundred thousand francs and imprisonment of between one month and six months, or by one only of these penalties. For subsequent offenses within a period of five years, the penalties shall be double the above.

Those who knowingly import or distribute to the public, hold or exhibit for sale on Luxembourg territory copies of phonograms made without the consent of their producer shall be liable to the same penalties.

Confiscation of the infringing records and of the objects which have served to commit the infringement or were intended for that purpose, even where they are not the property of the infringer, will be ordered against the infringer.

The provisions of Book I of the Penal Code and of the Law of June 18, 1879, as amended by the Law of May 16, 1904, giving the courts discretion to take into account extenuating circumstances, shall apply.

Article 16. Proceedings against infringements of this Law can only be instituted at the request of the person claiming injury.

Withdrawal of the plaintiff, before any judgment is given, will terminate the public proceedings. Withdrawal shall be conditional on the payment of the court costs, including the cost of the judgment declaring the public proceedings to be terminated.

Section VII. Application of International Conventions

Article 17. The rights of performers, producers of phonograms and broadcasting organizations in their

performances, phonograms and broadcasts, not provided for in this Law, shall be governed by the international Conventions to which the Grand Duchy is party.

Section VIII. Final Provisions

Article 18. (1) Any organization exercising, other than in accordance with Article 4, any of the rights provided for in this Law on behalf of more than one performer or more than one producer of phonograms must obtain an authorization. If the organization is established abroad, it shall be required to appoint a general agent domiciled in the Grand Duchy to represent it both in and out of court. The general agent must be approved.

The authorization and the approval are required under penalty of preclusion from proceedings and are given by the member of the Government having responsibility for copyright.

(2) The organization established abroad must produce a copy of the authority given to its general agent. This authority must unequivocally set out his powers which shall include the power to represent the organization in legal proceedings.

All postponements or notifications to be communicated to an organization established abroad may be made to the domicile of the general agent acting as legal assign for all proceedings resulting from this Law, particularly those concerning contracts covering rights provided for in this Law, where the contracts have been concluded in the Grand Duchy with natural persons or legal entities established there and concern either inhabitants of the Grand Duchy or enterprises located therein.

The domicile of the general agent shall also serve to determine the time limits for any postponements or notifications.

(3) For the purposes of this Law, any contract concerning rights provided for herein which is concluded with a user residing or established in the Grand Duchy shall be deemed to be concluded in the Grand Duchy.

(4) Any clauses of such contracts which derogate from the above provisions shall be null and void.

(5) The organizations referred to in paragraph (1) must draw up a list of the owners of rights they represent and keep this list up-to-date.

This list may be consulted by organizers of entertainment, broadcasting organizations and, in a general way, by all users and all those having reason for so doing. In the case of organizations established abroad, the list shall remain in the keeping of the general agent.

The member of the Government having responsibility for copyright may grant exemption from the requirements of the preceding two sub-paragraphs

where lists kept abroad can be consulted by users through Luxembourg organizations or the general agents of organizations established abroad.

(6) Any authorization given by a performer or a producer of phonograms which states that he is still owner of the right covered by the authorization shall be deemed valid unless the recipient of the authorization knew, or should have known, that the

person giving the authorization was no longer entitled to grant the right concerned.

Article 19. (1) This Law shall enter into force three months after its publication in the *Mémorial*.

(2) This Law shall not apply to performances and broadcasts which took place or phonograms which were made prior to the date of its entry into force.

General Studies

Some Reflexions on the Rome Convention

João Frank da COSTA *

Correspondence

Letter from Australia

D. C. PEARCE * and C. B. MARKS **

International Activities

Council of Europe

Legal Committee on Broadcasting and Television

(Strasbourg, February 2 to 6, 1976)

The Legal Committee on Broadcasting and Television met at the headquarters of the Council of Europe in Strasbourg from February 2 to 6, 1976, under the chairmanship of Mr. Torwald Hesser, Justice of the Swedish Supreme Court. Government experts appointed by Austria, Belgium, Cyprus, Denmark, France, Germany (Federal Republic of), Iceland, Italy, Luxembourg, Netherlands, Norway, Sweden, Switzerland, Turkey and the United Kingdom took part in the work of the Committee. WIPO was represented by Mr. Claude Masouyé, Director, Copyright and Public Information Department. A number of international non-governmental organizations sent observers.

The Committee continued its examination of a possible revision of the 1960 European Agreement on the Protection of Television Broadcasts, as completed by its 1965 Protocol and 1974 Additional Protocol, in the twofold context of protecting television broadcasts against wire or cable distribution and also in the case of transmission by means of di-

rect broadcasting satellites. In general, the experts felt that the Contracting States should be given the possibility of excluding protection of television broadcasts against distribution by wire or cable on a part of their territory which could be either the so-called direct reception zone or the so-called service zone. The experts also studied the question of the extent to which the above-mentioned Agreement would be able to provide adequate protection for programs transmitted by means of the direct broadcasting satellites the use of which was technically forecast for the near future. A number of provisions were drawn up with a view to possible revision of the Agreement. They are to be submitted for reflection to the competent authorities of the Member States of the Council of Europe. Further, the Secretariat of the Council of Europe was requested to collect as much data as possible to enable the practical implications of the proposed wordings to be assessed. The Committee decided to hold its next meeting from January 17 to 21, 1977.

Conventions Not Administered by WIPO

European Agreement on the Protection of Television Broadcasts

TURKEY

Ratification of the Agreement, the Protocol to the Agreement and the Additional Protocol to the Protocol

The Secretary-General of the Council of Europe informed the Director General of WIPO, on February 23, 1976, that the Permanent Representative of Turkey to the Council of Europe transmitted to him, by letters of December 19, 1975, the instruments of ratification by the Government of Turkey of the following three treaties:

European Agreement on the Protection of Television Broadcasts, of June 22, 1960;

Protocol to the European Agreement on the Protection of Television Broadcasts, of January 22, 1965; and
Additional Protocol to the Protocol to the European Agreement on the Protection of Television Broadcasts, of January 14, 1974.

In accordance with the provisions of Article 8.2 of the Agreement, Article 4 of the Protocol and Article 3 of the Additional Protocol, the three treaties came into force, with respect to Turkey, on January 20, 1976.

Calendar

WIPO Meetings

1976

- April 26 to 30 (Geneva) — ICIREPAT — Technical Committee for Search Systems (TCSS)
- April 26 to 30 (Geneva) — Paris Union — Committee of Experts on the Deposit of Microorganisms for the Purposes of Patent Procedure
- May 3 to 7 (Geneva) — ICIREPAT — Technical Committee for Standardization (TCST)
- May 10 to 15 (Geneva) — Paris and Berne Unions — Committee of Experts on Scientific Discoveries
- May 17 to 21 (Geneva) — International Patent Classification (IPC) — Working Group V
- May 17 to 21 (Geneva) — Paris Union — Computer Programs — Committee of Non-Governmental Experts
- May 24 to 31 (Geneva) — Nice Union — Temporary Working Group
- June 8 to 15 (Lausanne) — Paris Union — Group of Governmental Experts for the Revision of the Paris Convention
- June 14 to 18 (Geneva) — Permanent Legal-Technical Program — Working Group on the Model Law for Developing Countries on Inventions and Know-How
- June 21 to 25 (Geneva) — Permanent Legal-Technical Program — Working Group on Licensing Guidelines
- June 28 to July 2 (Geneva) — International Classification of the Figurative Elements of Marks — Committee of Experts
- September 6 to 10 (Geneva) — Paris and Madrid Unions — Working Group on the Use of Computers in Trademarks Operations
- September 6 to 17 (Washington) — International Patent Classification (IPC) — Working Group III
- September 21 to 24 (Geneva) — ICIREPAT — Plenary Committee (PLC)
- September 27 to October 5 (Geneva) — WIPO General Assembly, Conference and Coordination Committee; Assemblies of the Paris, Madrid, Hague, Nice, Lisbon, Locarno, IPC and Berne Unions; Conferences of Representatives of the Paris, Hague, Nice and Berne Unions; Executive Committees of the Paris and Berne Unions; Committee of Directors of the Madrid Union; Council of the Lisbon Union — Ordinary Sessions
- September 27 to October 8 (Rijswijk) — International Patent Classification (IPC) — Working Group II
- October 11 to 15 (Geneva) — International Patent Classification (IPC) — Steering Committee
- October 13 to 21 (Geneva) — Nice Union — Temporary Working Group
- October 18 to 22 (Geneva) — ICIREPAT — Technical Committee for Standardization (TCST)
- October 18 to 22 (Geneva) — International Patent Classification (IPC) — Committee of Experts
- October 25 to 29 (Geneva) — ICIREPAT — Technical Committee for Search Systems (TCSS)
- November 1 to 6 (Geneva) — Patent Cooperation Treaty (PCT) — Interim Committees
- November 8 to 19 (Stockholm) — International Patent Classification (IPC) — Working Group IV
- November 22 to 26 [or 30] (Geneva) — Paris Union — Group of Governmental Experts for the Revision of the Paris Convention
- November 29 to December 3 (Geneva) — Permanent Legal-Technical Program — Working Group on the Model Law for Developing Countries on Inventions and Know-How
- November 29 to December 10 (Rijswijk) — International Patent Classification (IPC) — Working Group I
- December 13 to 17 (Geneva) — Nice Union — Committee of Experts

1977

- March 14 to 18 (Geneva) — Permanent Legal-Technical Program — Permanent Committee (4th session)
- September 26 to October 4 (Geneva) — WIPO Coordination Committee; Executive Committees of the Paris and Berne Unions; Assemblies of the Madrid and Hague Unions; Conference of Representatives of the Hague Union; Committee of Directors of the Madrid Union
- November 28 to December 5 (Paris) — Berne Union — Executive Committee — Extraordinary Session
- December 6 to 8 (Geneva) — International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations — Intergovernmental Committee — Ordinary Session (organized jointly with ILO and Unesco)

UPOV Meetings in 1976

Council: October 13 to 15

Consultative Committee: October 12 and 15

Technical Steering Committee: May 6 and 7; November 18 and 19

Working Group on Variety Denominations: in the course of the week from September 14 to 17

Committee of Experts on International Cooperation in Examination: May 5; November 15 to 17

Committee of Experts on the Interpretation and Revision of the Convention: September 14 to 17

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

Technical Working Party for Ornamental Plants: May 12 to 14 (Melle - Belgium)

Technical Working Party for Agricultural Crops: May 24 to 26 (Tystofte - Denmark)

Technical Working Party for Fruit Crops: June 23 to 25 (Hanover - Federal Republic of Germany)

Technical Working Party for Forest Trees: August 17 to 19 (Humlebak - Denmark)

Meetings of Other International Organizations concerned with Intellectual Property

1976

May 3 to 5 (Rijswijk) — International Patent Institute — Administrative Board

May 9 to 13 (Munich) — International League Against Unfair Competition — Congress

May 11 and 12 (Jerusalem) — International Confederation of Societies of Authors and Composers — Legal and Legislative Commission

May 24 to 29 (Athens) — International Literary and Artistic Association — Congress

May 25 to June 1 (Tokyo) — International Publishers Association — Congress

June 22 to 24 (Rijswijk) — International Patent Institute — Administrative Board

July 5 to 9 (Bellagio) — International Broadcast Institute — Conference

August 30 to September 3 (Stockholm) — International Federation of Musicians — Congress

September 6 to 10 (Budapest) — Hungarian Group of AIPPI and Hungarian Association for the Protection of Industrial Property — Conference on the Significance of Protection of Industrial Property in International Industrial Cooperation

September 26 to October 2 (Montreux) — International Association for the Protection of Industrial Property — Executive Committee

September 27 to October 1 (Paris) — International Confederation of Societies of Authors and Composers — Congress

October 11 to 16 (Varna) — International Writers Guild — Congress

1977

November 28 to December 5 (Paris) — United Nations Educational, Scientific and Cultural Organization (UNESCO) — Intergovernmental Copyright Committee established by the Universal Copyright Convention (as revised at Paris in 1971)