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# Copyright

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## World Intellectual Property Organization

### WIPO Permanent Program for Development Cooperation Related to Copyright and Neighboring Rights

#### Permanent Committee

##### First Session

(Geneva, March 17 to 21, 1977)

#### **Note\***

The WIPO Permanent Committee for Development Cooperation Related to Copyright and Neighboring Rights (hereinafter referred to as the Permanent Committee) held its first session in Geneva from March 17 to 21, 1977. The list of participants appears at the end of this Note.

At the time of its first session the Permanent Committee had 34 member States: Australia, Austria, Brazil, Bulgaria, Cameroon, Canada, Chile, Congo, Denmark, Finland, France, Germany (Federal Republic of), Ghana, Hungary, India, Israel, Ivory Coast, Kenya, Mauritius, Mexico, Morocco, Niger, Norway, Poland, Portugal, Romania, Senegal, Spain, Surinam, Sweden, Switzerland, United Kingdom, United States of America, Upper Volta.

The session was opened by the Director General of WIPO, who welcomed the participants and, referring to the resolution adopted by the WIPO Conference at its third session (Geneva, 1976), emphasized the importance of the setting up of the Permanent Committee which was to contribute, in the field of copyright and neighboring rights, to the promotion of development cooperation activities, as had been done for some time by a similar body set up in the field of industrial property.

The following questions were contained in the agenda of the Permanent Committee and were examined successively on the basis of documents prepared by the International Bureau.

#### **Establishment, Role and Membership of the Permanent Committee**

Before commencing discussion on the main points of the agenda, the Permanent Committee noted its

\* This Note has been prepared by the International Bureau.

role in accordance with its Organizational Rules in order to become the intergovernmental forum for reviewing and planning the WIPO Permanent Program for Development Cooperation Related to Copyright and Neighboring Rights, and for advising the Director General on the management of the program.

#### **State of Accessions to and Ratifications of the Conventions on Copyright and Neighboring Rights**

The Permanent Committee noted that, as on the date of its meeting, 69 States were party to the Berne Convention, Egypt having recently acceded to its Paris Act. Of these, more than half are developing countries.

The Permanent Committee noted that a number of countries were actively considering acceding to the said Act and that, in some countries, amending legislations were already under way for the purpose. The Permanent Committee also noted with particular interest that the new Copyright Law promulgated in the United States of America which, with certain exceptions, will enter into force on January 1, 1978, had introduced "life plus 50 years" as the principal measure of copyright duration, and with this the major obstacle to the adherence by the United States to the Berne Convention had been removed. However, there were a few other questions that still remained to be explored. The Permanent Committee felt that these questions could be studied further to see how the respective organs of the Berne Union could assist in the matter.

As regards the International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations (Rome Convention), the Permanent Committee noted that 19 States were party to the Convention of whom more than half are developing countries. The Permanent Committee considered that the model law concerning protection of

performers, producers of phonograms and broadcasting organizations, prepared jointly by the International Labour Organisation, Unesco and WIPO with the assistance of interested parties and approved by the Intergovernmental Committee of the Rome Convention, constitutes an appropriate basis for national legislation in this field, and hence for the ratification of the Rome Convention itself.

As for the Convention for the Protection of Producers of Phonograms Against Unauthorized Duplication of Their Phonograms (Phonograms Convention), the Permanent Committee noted with satisfaction its increasing membership, and that 24 States were party to this Convention of whom almost half are developing countries.

Finally, in regard to the Convention Relating to the Distribution of Programme-Carrying Signals Transmitted by Satellite (Satellites Convention), the Permanent Committee noted the current acceptance by four States of this Convention which, however, has not yet entered into force.

#### **Implementation of the Special Provisions for Developing Countries Contained in the Paris Act of the Berne Convention**

The Permanent Committee took note of the comments sent by a certain number of States and organizations on the practical implementation of the preferential systems in favor of developing countries introduced in the Paris 1971 texts of the international copyright conventions, and of the fact that a study was in progress jointly with Unesco, on this matter, which would be submitted to the Executive Committee of the Berne Union and the Intergovernmental Committee of the Universal Copyright Convention at their next joint sessions to be held at Paris in December 1977.

#### **Assistance to States in Drafting New Legislation and Organizing Copyright Administration**

The Permanent Committee noted that the current Permanent Program of WIPO provided for preparation of a commentary of the Berne Convention, a copyright glossary for developing countries, a survey of the various types of copyright administrations, particularly in developing countries and, in the case of the Satellites Convention, a catalogue of the main types of possible solutions at the national level. It also took note of a suggestion that the model statutes for societies of authors, drawn up initially in 1969 to meet the needs of African countries, might be updated and broadbased so as to provide a more universal model. The Permanent Committee also emphasized the utility of the Tunis Model Law on Copyright, expressed the wish that it be circulated as widely as

possible and in this context approved, in cooperation with Unesco and with assistance offered by the Portuguese authorities, the publishing of a Portuguese translation of the text of this model law.

#### **Training in Copyright and Neighboring Rights**

The Permanent Committee took note of the suggestions and the different training possibilities offered by various delegations and observers. The Director General of WIPO declared that future training would be planned individually with each country interested in assistance extended over a number of years, to be able to respond to its special requirements. In addition to such advance planning, the existing arrangements would continue through organization of courses for persons needing general knowledge in copyright. He mentioned that WIPO had already established contacts with Unesco in this field, more particularly in order to avoid duplication. He welcomed the suggestion that seminars organized in connection with important cultural events should contain items on copyright as well.

The Permanent Committee emphasized the importance of organizing visits of trainees coming from developing countries to other developing countries as well. The Director General of WIPO confirmed the importance of the fact that trainees of developing countries should visit well-functioning copyright organizations in other developing countries and mentioned that WIPO had sent trainees to Mexico in 1976, and would explore in the future further possibilities of this kind.

In connection with the fellowships program, the Permanent Committee finally agreed on the desirability of organizing copyright and neighboring rights courses in universities of developing countries. It noted that such courses already existed in the law faculties of a few universities, and that senior fellows would be deputed to study the course and curriculum content in some universities and institutions in the more advanced countries to enable strengthening and/or introducing special courses in universities in developing countries on patent and copyright laws.

#### **Regional Meetings and Seminars**

The Permanent Committee expressed its satisfaction that the triennial program of WIPO for the period from 1977 to 1979 included the convening of at least four meetings, seminars or training courses in developing countries, among them the Seminar on Copyright intended for Arab States and convened by WIPO jointly with Unesco and with the cooperation of the Arab Educational, Cultural and Scientific Organization (ALECSO) at Rabat in May 1977. The

Permanent Committee also took note of the wish expressed that a seminar be organized in Africa by WIPO jointly with Unesco in collaboration with the Union of National Radio and Television Organizations of Africa (URTNA), and of the suggestion that such a seminar could also discuss neighboring rights problems, and, in that event, it could be organized in cooperation with the International Labour Office (ILO).

#### Promotion and Protection of Indigenous Intellectual Creativity

Most of the delegations at the meeting supported the view expressed in the document presented by the International Bureau, i. e., that, in order to achieve the necessary complementarity and to coordinate the activities in respect of copyright with the interests and activities of national authors and national publishers, various steps could be envisaged, including:

- (a) obtaining information, through international machinery, such as the Permanent Committee, on the present situation in the various countries;
- (b) in order to afford the necessary stimulus and impetus that one's own national authors require, a study of the usefulness and, to the extent deemed desirable, consideration of the writing into the national law, of an enabling provision for the setting up of a national copyright consultative body or, alternatively, of creation of such a body by an executive measure. Through a broadbased composition of such a national consultative body from amongst, for example, authors, performers, artists, broadcasters, booksellers, librarians and publishers, it could be possible for the responsible Minister, or his nominee, to help coordinate the wide variety of interests involved in the process of intellectual creativity, of its protection, as also of its dissemination;
- (c) encouragement, in order to provide the necessary impetus to intellectual creativity, particularly to production of school and college textbooks written by local national authors, ensuring at the same time that such books are sold at prices within the easy reach of the masses of those who need them; encouragement of original writing by national professors with the assistance of younger scholars who might have just obtained their postgraduate degrees; and, for this purpose, ensuring the payment of attractive copyright royalties, and advances thereagainst to authors, as also ensuring suitable protection for the national publishers against unauthorized copying of works published by them;

- (d) initiating and supporting a program for translating into the lingua franca of the area or region concerned the best of intellectual creations written in one of the several dialects or local languages used in various parts of the country so as to assure dissemination of these works.

The Permanent Committee also noted that WIPO was only concerned with the copyright and neighboring rights aspects of these matters, and that it was ready to coordinate its activities in those aspects with Unesco and the International Labour Organisation (ILO). The Permanent Committee also took note of the fact that ALECSO was setting up an Arabic Copyright Office which would, inter alia, assist and advise the Arab States in establishing national copyright offices that would help in studies, in drafting of laws and regulations and in exchange of information in the field of copyright.

Finally, the Permanent Committee noted that, because of the predominance of the problems of easier access to foreign works in the earlier discussions on this matter, sometimes the functions of copyright as a stimulus to indigenous creativity and development depended, to a considerable extent, on effective copyright law and its implementation, and noted with satisfaction that the proposals in this connection had been executed in close cooperation with Unesco and, as far as performers were concerned, with the International Labour Organisation (ILO).

### List of Participants

#### I. Member States

**Austria:** R. Dittrich. **Brazil:** A. G. Bahadian. **Cameroon:** B. Yaya Garga. **Canada:** A. A. Keyes. **Chile:** J. Lagos. **Finland:** R. Meinander; A. Kurittu. **France:** P. Faure; A. Kerever; J. Buffin; S. Balous. **Germany (Federal Republic of):** E. Steup. **Hungary:** I. Timár; A. Benárd. **India:** D. N. Misra. **Israel:** Y. Tsur. **Ivory Coast:** L. Ouattara. **Kenya:** D. J. Coward; J. N. King' Arui. **Mexico:** O. Reyes-Retana. **Norway:** B. S. Lassen. **Poland:** E. M. Szelchaz. **Portugal:** A. M. Pereira. **Romania:** V. Tudor. **Senegal:** N. Ndiaye; D. Diene. **Spain:** I. Fonseca-Ruiz. **Surinam:** P. J. Boerleider. **Sweden:** H. Olsson. **Switzerland:** J.-L. Marro; J.-M. Salamolard. **United Kingdom:** A. J. Needs. **United States of America:** H. J. Winter; E. J. Chesky. **Upper Volta:** P. Minoungou.

#### II. Observer States

**Argentina:** C. A. Passalacqua. **Barbados:** L. S. Hunte. **Bolivia:** O. Rivera Rodas; V. Banzer. **Colombia:** A. Morales. **German Democratic Republic:** B. Haid; K. Goetz. **Honduras:** J. Cueva-Membreño. **Italy:** G. Catalini. **Jamaica:** J. Webster. **Libya:** M. S. E. Alshaly. **Netherlands:** J. Verhoeve; M. Reinsma; J. Heidsma. **Panama:** D. Chevalier de Villamonte. **Philippines:** C. V. Espejo. **Soviet Union:** N. Voschinin. **Thailand:** S. Kouptaromya. **Togo:** A. Bruce. **Trinidad and Tobago:** T. Baden-Semper. **Tunisia:** A. Abdallah. **Uganda:** J. H. Ntabgoba. **United Arab Emirates:** J. Al-Fardan. **Zaire:** L. Elebe.

### III. Intergovernmental Organizations

**International Labour Organisation (ILO):** S. C. Cornwell. **United Nations Educational, Scientific and Cultural Organization (UNESCO):** M.-C. Dock; A. Amri. **International Telecommunication Union (ITU):** R. Macheret. **African Intellectual Property Organization (OAPI):** D. Ekani. **Arab Educational, Cultural and Scientific Organization (ALECSO):** B. Aboughazi. **Organization of American States (OAS):** F. E. Hurtado de Mendoza.

### IV. International Non-Governmental Organizations

**European Broadcasting Union (EBU):** M. Cazé. **International Confederation of Professional and Intellectual Workers (CITI):** A. L. Dupont-Willemin. **International Confederation of Societies of Authors and Composers (CISAC):** J.-L. Tournier; D. de Freitas; J.-A. Ziegler. **International Federation of Actors (FIA):** R. Leuzinger. **International Federation of Musicians (FIM):** R. Leuzinger. **International Federation of Producers of Phonograms and Videograms (IFPI):** E. Thompson.

**International Literary and Artistic Association (ALAI):** R. Fernay; J.-A. Ziegler. **International Publishers Association (IPA):** J. A. Koutchoumow. **International Secretariat of Entertainment Trade Unions (ISETU):** K. Rössel-Majdan. **International Writers Guild (IWG):** R. Fernay. **Union of National Radio and Television Organizations of Africa (URTNA):** R. Hamimi.

### V. Officers

*Chairman:* N. Ndiaye (Senegal). *Vice-Chairmen:* A. A. Keyes (Canada); I. Timár (Hungary). *Secretary:* S. Alikhan (WIPO).

### VI. International Bureau of WIPO

A. Bogsch (*Director General*); K.-L. Liguier-Laubhouet (*Deputy Director General*); C. Masouyé (*Director, Copyright and Public Information Department*); S. Alikhan (*Director, Copyright Division*); M. Stojanović (*Head, Legislation and Periodicals Section, Copyright Division*); G. Boytha (*Consultant*).

## **Conventions Administered by WIPO**

### **International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations (Rome Convention)**

URUGUAY

#### **Accession to the Convention**

The Secretary-General of the United Nations, in a letter dated April 22, 1977, informed the Director General of the World Intellectual Property Organization that the Government of Uruguay deposited, on April 4, 1977, its instrument of accession to the International Convention for the Protection of Per-

formers, Producers of Phonograms and Broadcasting Organizations, done at Rome on October 26, 1961.

Pursuant to Article 25(2), the Convention will enter into force, for Uruguay, three months after the date of deposit of the instrument of accession, that is, on July 4, 1977.

### **Convention for the Protection of Producers of Phonograms Against Unauthorized Duplication of Their Phonograms**

HOLY SEE

#### **Ratification of the Convention**

The Director General of the World Intellectual Property Organization (WIPO) has informed the Governments of the States invited to the Diplomatic Conference on the Protection of Phonograms \* that, according to the notification received from the Secretary-General of the United Nations, the Holy See deposited, on April 4, 1977, its instrument of ratification of the Convention for the Protection of Producers of Phonograms Against Unauthorized Duplication of Their Phonograms.

Pursuant to the provisions of Article 11(2), the Convention will enter into force, with respect to the Holy See, three months after the date of the notification given by the Director General of WIPO, that is, on July 18, 1977.

\* Phonograms Notification No. 30, of April 18, 1977.

## National Legislation

ECUADOR

### Law on Copyright

(No. 610 of 1976) \*

#### PART I

#### Scope of the Law

##### CHAPTER I

##### General Principles

*Article 1.* The provisions of this Law shall govern the system of protection of the rights of authors of literary, artistic and scientific works.

*Article 2.* Original copyright shall arise out of the creation of the work without any registration, deposit or other formality being necessary to obtain the protection recognized by this Law.

*Article 3.* Copyright shall be independent of the material ownership of the work.

*Article 4.* This Law shall protect the works of Ecuadorian authors and those of foreign authors domiciled in Ecuador.

*Article 5.* The works of authors not domiciled in Ecuador shall enjoy the protection afforded them by such international conventions as have been incorporated in national legislation; otherwise, by virtue of the principle of reciprocity, those works shall, insofar as that is not contrary to this Law, have protection equal to that afforded by the foreign State in which the respective authors are domiciled to the works of Ecuadorian authors domiciled in that country.

*Article 6.* The works of authors regarded as being stateless, refugees or of disputed nationality shall be treated as works of nationals of the country in which they have an established domicile.

##### CHAPTER II

##### Subject Matter of Copyright

*Article 7.* This Law shall protect the rights of authors in their scientific, literary and artistic productions, whatever may be the mode or form of expression used, such as educational works and

monographs, novels, poems, short stories, reviews and essays; dramatic or dramatico-musical works, purely musical works, works for the theater or for cinema, radio or television; lectures, addresses, sermons; speeches delivered in the course of legal proceedings; choreographic works, entertainments in dumb show, three-dimensional and architectural works, and such other works as are considered creative in character and may be communicated to the public.

*Article 8.* With respect to scientific works, this Law protects only their literary or graphic form and not their ideological or technological content or their industrial or commercial application.

*Article 9.* Transformations, translations, adaptations and arrangements of intellectual works, and also compilations and anthologies, shall be protected by this Law insofar as they contain personal and original creations, but they may not be communicated to the public without the express authorization of the owner of the rights in the original work.

##### CHAPTER III

##### Ownership of Rights

*Article 10.* Only a natural person can be an author. Legal entities may only exercise copyright by derived ownership in accordance with the rules laid down in this Law.

*Article 11.* In the absence of proof to the contrary, the person whose name, pseudonym, initials, abbreviated name or any other accustomed sign is indicated in a work or in reproductions of it, or is announced as such at any performance or public presentation, shall be presumed to be the author of the work.

*Article 12.* In the case of a work of divisible joint authorship, each co-author shall, unless otherwise agreed, own the rights in the part of the work of which he is the author.

In the case of a work of indivisible joint authorship, the rights shall, unless otherwise agreed, belong jointly and inseparably to the co-authors.

\* This Law was published in the *Registro Oficial* of August 13, 1976. — WIPO translation.

*Article 13.* Copyright in a work with music and words shall belong half to the author of the literary part and half to the author of the musical part. Each of them may freely publish, reproduce and exploit the part for which he is responsible, provided that in such a case he shall inform the co-author, mention the latter's name in the edition and give him credit for the part for which he was responsible.

*Article 14.* In the case of a collective work, a natural person or legal entity who has organized, coordinated, edited or published that work under his own responsibility shall be regarded as having derived title to the exercise of the economic rights and such moral rights as may be delegated to him, without prejudice to the rights of the authors of each of the component parts.

*Article 15.* In the case of a disclosed anonymous work, the impresario or the publisher shall be regarded, for the purposes of this Law, as having derived title to the exercise of the copyright in that work.

*Article 16.* Translations and other transformations of a work that have been expressly authorized by the author of the original work and which constitute personal intellectual creations on the part of the translator or transformer, as the case may be, shall be protected in respect of those of their characteristics that are original, without prejudice to the rights of the author of the original work translated or transformed.

## PART II

### Content of Copyright

#### CHAPTER I

##### Moral Rights

*Article 17.* The moral rights of the author shall be the following:

- (a) to claim authorship of his work;
- (b) to publish, continue, amend and complete his work himself, or expressly authorize third parties to do so;
- (c) to keep the work unpublished;
- (d) to keep the work anonymous or require that his name or pseudonym be mentioned every time the work is used;
- (e) to oppose any distortion, mutilation, alteration or any other transformation made without his express authorization, and any other action discrediting his work or diminishing the honor, standing or reputation of its author;

- (f) to withdraw his work, even after having authorized its use, from the control of the impresario or user, subject to the provisions of this Law.

*Article 18.* The rights conferred on the author by the preceding Article shall be considered to relate to his person and shall be perpetual, inalienable, imprescriptible and unrenounceable.

On the death of the author, the exercise of these rights shall pass on to his lawful heirs or, if he has none, to any interested party, whether public or private.

## CHAPTER II

### Economic Rights

#### TITLE I

##### General Provisions

*Article 19.* The author shall have the exclusive right to make economic use of his work himself or to authorize its use by third parties, subject to the conditions laid down in this Law, in any manner or form, and in particular to exercise the exclusive rights specified in the following Articles of this Chapter.

*Article 20.* The right of reproduction shall consist in the multiplication of the work by any process such as printing, photography, engraving, lithography, cinematography, recording on magnetic tape of sounds, pictures or sounds and pictures, videotape, videocassette or any other means of reproduction that is or may be known.

*Article 21.* The right of disclosure consists in the communication of the work to the public by any method, whether by words, by sounds or by pictures.

*Article 22.* The right of exhibition consists in the presentation to the public of the original or reproductions of artistic or photographic works.

*Article 23.* The right of transformation comprises all forms of alteration of the work.

*Article 24.* The right of translation consists in turning the work into another language or dialect.

*Article 25.* The subject matter of the right of transcription shall be the use of processes to transform an oral work into a written work or to adapt for one musical instrument music written for another or others.

*Article 26.* Any public use of a work shall generate economic rights accruing to the author, which rights shall be unrenounceable.

These economic rights shall be specified in the respective contract, but the amount they represent

may not be lower than the legal minimum. The minimum for collection by authors, both for simple and for exclusive contracts, shall be fixed every two years by the Ministry of Public Education on the advice of the respective authors' society. The decision thus taken shall be binding, and its observance shall be compulsory on the entire national territory.

*Article 27.* For such purposes of the preceding Article as are relevant, the legal representatives, managers, impresarios, sponsors, administrators, organizers and, generally, all such natural persons or legal entities as may order or allow the use of a work in public shall be jointly responsible for that use.

The responsible persons specified in the preceding paragraph shall keep on deposit, to the order of the respective authors' society or, failing this, to the order of the author himself, the amounts corresponding to the economic rights referred to in the preceding Article. These rights shall be unattachable except for the payment of legal alimony.

Performers commissioned by one of the responsible persons referred to in this Article to perform musical works shall not be answerable for the performance of the work, and shall be obliged only to submit performance schedules which shall be supplied by the authors' society.

*Article 28.* Use of a work within the ordinary family circle, or for educational or social welfare purposes, shall not be considered public insofar as it is not made for profit-making purposes.

*Article 29.* Any natural person or legal entity that habitually or occasionally uses works protected by this Law in public shall send a monthly list to the appropriate authors' society which shall contain the name of the work or of its author, adapter, translator or performer and the number of performances, broadcasts and presentations of the work.

## TITLE II

### Transfer by Succession

*Article 30.* The economic rights of the author shall pass on to his heirs and legatees in accordance with the provisions of the Civil Code.

*Article 31.* For the authorization of any communication of the work to the public, by any means, the consent of the majority of the heirs shall be sought. Dissenters shall not be obliged to share in the distribution of the costs, subject to deduction of the corresponding amount from their share in any profits that are realized.

Where the majority makes use of or exploits the work, it shall deduct the costs incurred from the overall economic yield and shall remit to the dissenters the share to which they are entitled.

## TITLE III

### Contracts for the Use of Works

#### Section 1. Contracts in General

*Article 32.* Contracts for the authorization of the use of works shall always be made in writing, for a valuable consideration and for a period not exceeding ten years.

The economic rights of the author may be freely agreed upon by the parties, subject to the provisions of the second paragraph of Article 26.

*Article 33.* The contracts entered into by authors for the public use of their works shall come into effect on being entered in the National Copyright Register of the Ministry of Public Education.

Prior to such registration, the impresario or user, as the case may be, shall send a copy of the contract to the appropriate authors' society for authentication by virtue of the principle of the protection of the general interests of authors.

*Article 34.* The various forms of use of a work shall be independent of each other, and therefore an express contract shall be entered into for each of them.

*Article 35.* Contracts for the authorization of the public use of a work shall be either simple or exclusive. The former are those whereby the impresario or user, as the case may be, uses the work in public concurrently with the author or authorized third parties. The latter are those that confer on the impresario or user the right to use the work to the exclusion of all other persons, including the author.

The authorization of exclusive use of a work may establish limitations as to the place, time and form of use.

*Article 36.* The right to use a work may only be assigned by the impresario or user with the written consent of the author or of the authors' society that represents him.

*Article 37.* Commissioned works or works produced under an employment contract shall be governed by the provisions of this Title. Without prejudice to the remuneration received by the author for the production of the work, he shall retain all the moral rights and shall have the unrenounceable right to the economic participation established by Article 26.

The impresario or user who has commissioned the work or requested its production under an employment contract shall have the exclusive right to use that work within the limits of the means of dissemination for which it was created.

The right to exploit the work by other means of dissemination shall belong to the author.

*Article 38.* In the event of the author's death or permanent inability to complete the work, the other contracting party may consider the contract terminated, or fulfilled with respect to the part of the work that has been completed, subject to appropriate proportional payment.

*Article 39.* The benefits granted by this Law to authors shall be unrenounceable, and any stipulation contrary to them, especially the following, shall be null and void and without any effect:

- (a) provisions contrary to Articles 26, 32 and 33;
- (b) global provisions for future production, except where the agreement is for the production of works up to a maximum of five, of a specified kind, during a period of five years from the date of registration of the contract;
- (c) provisions involving a commitment not to produce, even for a limited time;
- (d) provisions relating to translation, adaptation or any other transformation effected without the consent of the author of the original work;
- (e) provisions that in any way hamper or restrict the authors' freedom to control or perform their own works.

*Article 40.* Dramatic, musical, dramatico-musical and cinematographic works, and generally all those that are capable of being disseminated by any medium, must be made available to the public within two years following the date of registration of the contract; if this should not occur, the author, or the society that represents him, shall have the right to consider the contract terminated, subject to notice given in writing, and any amounts that he may have received by virtue of the contract shall remain to his credit, independently of any claim that he may make for damages and injury.

The period referred to in the preceding paragraph shall be reduced by half in the case of the publication of books and musical works of popular character.

*Article 41.* If an author who by contract has authorized the public use of his work considers that a given use has violated or would violate the provision contained in Article 17(e), he shall have the right to terminate the contract.

In such a case, the user who has acted in bad faith shall be obliged to pay the author, in addition to what the latter has already collected by virtue of his rights, compensation corresponding to ten percent of the amount of copyright fees agreed upon. If there has been no bad faith on the part of the impresario or user, the latter shall not be obliged to pay compensation.

*Article 42.* Where the author avails himself of the right provided for in Article 17(f), he shall be obliged to pass on to the impresario or user the amounts that

he has collected in agreed royalties, and pay all the justified costs that have been incurred for the use of the work, with additional compensation of ten percent of the agreed total amount of royalties.

#### *Section 2. Publishing Contracts*

*Article 43.* A publishing contract is a contract under which the author of a work undertakes to hand the work over to the publisher, and the publisher undertakes to publish, distribute and sell it for his own account, paying to the author such amounts as shall have been agreed upon.

*Article 44.* A publishing contract shall be subject to the following conditions:

- (a) it shall specify the number of copies of the respective edition;
- (b) where the quality of the edition is not specified, it shall be understood that it is to be of medium quality;
- (c) the cost of publication, distribution, advertising or any other item shall be borne by the publisher;
- (d) each edition shall be the subject of an express agreement. The publisher who made the previous edition shall have a preferential right, all other things being equal, to make the following one, for which purpose the author, or whoever represents him, shall examine the terms of the offers received, in order that the rights of the publisher entitled to preference may be respected. The Ministry of Education shall inform the publisher that he may exercise his preferential right within a period of 15 days, advising him that, if he does not do so, he will be presumed to have renounced his right.

*Article 45.* Where the author has entered into a publishing contract for the same work at an earlier date, or the work has been published with his consent or knowledge, he shall bring these circumstances to the publisher's notice before the contract is entered into. By not doing so he makes himself responsible for any damages and injury he may cause.

*Article 46.* The publisher may not publish the work with abridgments, additions, deletions or any other modifications without the written consent of the author or of the authors' society that represents him.

*Article 47.* The author shall retain the right to make such corrections, amendments, additions or improvements to his work as he considers necessary before it goes to press.

Where the modifications make the edition more costly, the author shall, unless otherwise agreed, be obliged to make compensation for the costs arising therefrom.

*Article 48.* Where there is no agreement as to the price at which each copy is to be sold, whether to the public or to booksellers, the publisher shall be entitled to set it without there being such a disproportion between the quality of the edition and the price that this makes the sale of the work difficult.

*Article 49.* Where the publishing contract has a fixed period of validity and, on expiration of that period, the publisher still has unsold copies of the work, the author, or whoever represents him, may buy them at their cost price increased by ten percent. This right may be exercised within 30 days following the expiration of the period of validity, after which the publisher may continue to sell them under the same conditions.

*Article 50.* The publishing contract shall end, irrespective of the period specified for its duration, if the edition is out of print, without prejudice to any actions to which it may have given rise according to the provisions of the contract.

An edition shall be considered out of print when the publisher lacks sufficient copies of it to meet public demand.

*Article 51.* The right to publish one or more works by the same author separately shall not give the publisher the right to publish them together. Likewise, the right to publish the works of an author together shall not give the publisher the right to publish them separately.

*Article 52.* Any person who publishes a work shall be obliged to indicate, in a prominent place on all copies, including such as may be intended for free distribution, at least the following particulars:

- (a) the title of the work and the name or pseudonym of the author, the name of the translator, compiler, adapter or author of the version, if any;
- (b) if the work is anonymous, that fact;
- (c) the copyright notice, with a mention of the copyright owner and, whenever the latter requires it, the abbreviated name of the authors' society that represents him and the year and place of first publication;
- (d) the name and address of the publisher and of the printer;
- (e) the serial number of the respective copy.

*Article 53.* The author, like the publisher, shall have the right to take legal action against any unlawful publication.

The author shall have the possibility, without prejudice to the civil and criminal actions provided for in this Law, to bring action against the publisher for payment of the full price of the greatest number of copies to have been published.

*Article 54.* Any persons who publish, distribute or sell printed works shall present to the author, or to the society that represents him, the corresponding quarterly statements. In any case, the author or the authors' society that represents him shall have the right to inspect the books and supporting documents relating to sales that publishers, distributors and sellers are obliged to maintain.

*Article 55.* Bankruptcy on the part of the publisher shall not cause termination of the contract. The rights of the bankrupt publisher may not be assigned if this would cause a prejudice to the author or to the dissemination of his work.

If the printing of the work has not begun, the contract shall lapse.

*Article 56.* The provisions of this Section shall be applicable to music publishing contracts.

### *Section 3. Contracts for Phonomechanical Fixation*

*Article 57.* A contract for phonomechanical fixation is a contract under which the author grants authorization to another person, against remuneration, to record or otherwise fix his musical work on a phonographic disc, on tape, by wire, on paper rolls for automatic pianos or on any other device or machine, and to reproduce, distribute and sell it.

This authorization shall not include public performance. Producers of phonograms shall mention this fact on the labels affixed to the devices or machines.

*Article 58.* The remuneration of the author shall be fixed in accordance with the provisions of Articles 26 and 32.

*Article 59.* The natural person or legal entity who, relying on the authorization of the author or the authors' society that represents him, fixes the sounds of a performance or other sounds on any of the devices or machines mentioned in Article 57 shall be considered a manufacturer or producer of phonograms.

*Article 60.* Manufacturers or producers of phonograms shall be under the following obligations:

- (1) they must mention the following on the disc or equivalent device:
  - (a) the title of the work, the name of the author and the performers, followed by the abbreviated name of the authors' society to which they belong, and the fact that their rights are reserved. Choirs and ensembles shall be designated by their proper name, if they have one, and the name of their director, if any, shall also be indicated;

- (b) the year in which the original matrix was cut, this being the requirement constituting the exclusive right of physical reproduction of the copies; the name, corporate name or distinguishing mark of the manufacturer, and the fact that the rights legally accruing to him are reserved;
- (2) they must enter the reproduced work, if this has not already been done, in the National Copyright Register in the name of the author or his successors in title, or register, in the same way, the fact of reproduction, giving the following particulars:
- (a) the authorization of the author or the authors' society that represents him, if the work is in the private domain;
- (b) the name or corporate name of the manufacturer, the distinguishing mark on the copies, and the copyright notice;
- (c) the names of the performers;
- (d) the total number of copies manufactured with the corresponding date, series and numbering.

Registration shall be requested within a period of not more than 30 days from the time of the reproduced copies being put on the market.

Failure to indicate on the copies the year of the cutting of the original matrix shall deprive the manufacturer or reproducer of the phonograms of the exclusive right of physical reproduction of those copies. Other omissions shall be subject only to the sanctions provided for in the relevant chapter of this Law. No sanctions shall be imposed in the case of omissions due to insuperable difficulty, supported by proof, in obtaining or providing specific information.

*Article 61.* The use of phonographic discs and other devices and machines referred to in Article 57 of this Law in public performance by means of broadcasting, cinematography, jukeboxes or similar apparatus, or in any public place, whether open or closed, shall give rise to royalties in favor of the authors or performers.

The amount of these royalties shall be fixed in accordance with the provisions of Articles 26 and 32.

*Article 62.* Manufacturers or producers of phonograms shall, by virtue of the exclusive rights granted by the author or the authors' society that represents him, be entitled to authorize or prohibit the direct or indirect reproduction of their phonograms.

The author or the authors' society that represents him, and the manufacturer or producer of phonograms, may take legal action against unlawful reproduction or use of the phonogram or other devices or machines on which the work is fixed.

*Article 63.* The authorization granted by the author, or whoever represents him, by virtue of the foregoing provisions shall be effective only within the territorial area of application of this Law and for exportation to countries in which the work is not protected against recording on phonograms.

*Article 64.* The provisions of this Section shall be applicable, to the extent that they are relevant, to a literary work that is used as the text of a musical work, provided that the author of the literary work has granted to a manufacturer or producer of phonograms the right to use it for the recording of the work with the musical work as accompaniment and for the purpose of the reproduction and distribution of the respective phonograms.

#### *Section 4. Broadcasting Contracts*

*Article 65.* A broadcasting contract is a contract under which the author grants a broadcasting organization the exclusive right to broadcast and retransmit his work, as the case may be, under the terms and conditions laid down in this Section.

*Article 66.* The authorization to broadcast a protected work by television, radio or any other similar medium shall not, unless otherwise agreed, include the right to rebroadcast it or exploit it in public.

*Article 67.* In cases where the radio or television broadcasting stations, for technical or timetable reasons and for the purposes of a single subsequent broadcast, have to record or fix beforehand, in their studios, the sound and the picture of any work that is suitable for broadcasting, they may carry out that recording subject to compliance with the following conditions:

- (a) the broadcast must take place within the period agreed upon for the purpose;
- (b) the recording must not be used as a reason for making any parallel or simultaneous broadcast or transmission;
- (c) the recording gives the right to one single broadcast only.

The provisions of this Article shall not apply where the authors' society to which the author belongs has entered into an agreement in terms of Articles 26 and 32 that authorizes subsequent broadcasts.

*Article 68.* When a recording of a radio or television broadcast is made at the same time as the broadcast itself, the prior consent of the author or the authors' society that represents him shall be sought in order that it may be reproduced at a later date than that of the public broadcasting.

*Article 69.* The authorization granted by the author, or whoever represents him, in accordance with the foregoing provisions shall be effective only within the territorial area of application of this Law. For the exportation of radio and television programs fixed on a material support, an express agreement shall be entered into with the author or the authors' society that represents him on the basis of the provisions of Articles 26 and 32.

#### *Section 5. Contracts for Cinematographic Fixation*

*Article 70.* A contract for cinematographic fixation is a contract under which the authors of a cinematographic work grant the producer of the same the exclusive right to fix it, reproduce it and publicly exploit it, either himself or through third parties.

*Article 71.* The authors of the cinematographic work are:

- (a) the director or maker;
- (b) the author of the script or scenario;
- (c) the composer of the music.

*Article 72.* If one of the authors refuses to complete his contribution to the cinematographic work, or is prevented from doing so by circumstances beyond his control, he may not oppose the use of the part of his contribution that has already been completed for the purpose of the completion of the work, provided that this shall not prevent him from enjoying authorship of his contribution and the rights deriving therefrom.

*Article 73.* Each of the authors of a cinematographic work may dispose freely of the part of the work that constitutes his personal contribution with a view to using it for dissemination through a different medium.

*Article 74.* A cinematographic producer is the natural person or legal entity who finances and enters into contracts with all the persons and elements involved in the making of the cinematographic work.

*Article 75.* The owner of the moral rights in the cinematographic work shall be the director or maker, without prejudice to the rights accruing to the various authors or performers who have had a part in its making, in respect of their contributions.

*Article 76.* The producer of a cinematographic work shall have the following exclusive rights:

- (a) the right to fix the cinematographic work;
- (b) the right to reproduce this visual or sound and visual fixation with a view to distributing it and showing it in cinemas or places that serve the same purpose, and to derive economic benefit therefrom;

- (c) the right to sell or hire copies of the cinematographic work, or enlarge or reduce its size, for the purpose of showing it in cinemas or places that serve the same purpose;
- (d) the right to bring action, by common consent with the authors, against any unauthorized reproduction or showing of the cinematographic work.

These rights may be transferred by any legal means.

*Article 77.* The economic rights of the producer, as specified in the preceding Article, shall be without prejudice to the rights accruing to the authors of the cinematographic work for each showing, in accordance with the provisions of Articles 26 and 32.

*Article 78.* Negotiations may not be entered into for the distribution or showing of the cinematographic work unless a prior agreement has been made with the authors' and performers' societies that guarantees fully the payment of the royalties accruing to them for each showing.

*Article 79.* The producer may not transform, translate or modify any or all of the parts constituting the cinematographic work without the consent of the authors or performers, as the case may be.

*Article 80.* For the exploitation of the cinematographic work on videocassettes, by broadcasting or in any other medium, prior agreement shall be required with the authors and performers, each as far as he is concerned, which agreement shall be entered into through the intermediary of the corresponding authors' societies.

#### *Section 6. Performing Contracts*

*Article 81.* Performing contracts are contracts under which the author of a dramatic, dramatico-musical, choreographic or any other work intended for performance authorizes an impresario to cause the work to be performed in public in exchange for remuneration, which shall be fixed in accordance with the provisions of Articles 26 and 32.

This right may not be transferred by the impresario, unless otherwise agreed.

*Article 82.* Where the share accruing to the author has not been laid down by contract, he shall be granted a minimum of ten percent of the total value of the tickets sold for each performance, and twenty percent in the case of a first performance.

*Article 83.* If the impresario fails to pay the share to which the author is entitled, after having been called upon to do so by the latter, the appropriate jurisdictional authority shall, at the request of

the interested party or of the authors' society that represents him, order the suspension of performances of the work or the withholding of the receipts from ticket sales.

Where other works by different authors are also being performed under the management of the same impresario, the authority shall order the withholding of the amounts that remain after the copyright of those authors and the costs arising out of the works have been paid until the total amount due to the unpaid author has been covered. In any event, the author shall have the right to terminate the contract and to withdraw the work from the impresario's control, and to take any other action that may be appropriate.

*Article 84.* In the absence of contractual provisions, the impresario shall be presumed to acquire the exclusive right of performance of the work during six months from the first performance, and without exclusivity for a further six months.

*Article 85.* The impresario may terminate the contract, thereby forfeiting any advance payments that he may have made to the author, if performances of the work cease owing to rejection by the public during the first three performances, or owing to unforeseen occurrence, *force majeure* or any other circumstances beyond the control of the impresario.

#### TITLE IV

##### The Right of Authors of Artistic Works to Special Share

*Article 86.* If the original of an artistic work is resold, and if an art dealer or auctioneer is involved in that resale in the capacity of buyer, seller or agent, the seller shall pay to the author of the artistic work or to his lawful heirs, as the case may be, a share corresponding to five percent of the sale price.

This right shall be unrenounceable and inalienable.

*Article 87.* The preceding provisions shall not apply to architectural works or to works of applied art.

#### CHAPTER III

##### Limitations on the Economic Rights of the Author

#### TITLE I

##### Term of Protection

*Article 88.* The protection shall be granted by this Law for the terms specified in the following provisions:

- (a) the whole life of the author, and, after his death, a period of 50 years for the benefit of his heirs and legatees.

Where the work belongs to more than one author, the period of 50 years shall begin on the death of the last surviving author;

- (b) where one of the authors of a work of joint authorship dies without leaving heirs by legal succession, his rights shall be added to the rights of the others;
- (c) in the case of posthumous works, the period of 50 years shall begin on the date of the author's death, provided that the works are communicated to the public within 20 years from that date;
- (d) an anonymous work whose author does not make himself known during the period of 50 years from the date of first publication shall fall into the public domain. If during this period the name of the author is revealed, the provisions of paragraph (a) shall apply;
- (e) in the case of a pseudonymous work that leaves no doubt as to the identity of the author, the ordinary protection period shall apply;
- (f) where a collective work is communicated to the public in instalments or parts, or in separate years, the protection period shall begin on the date on which each instalment, part or volume is communicated to the public.

Where disclosure is completed within a period of 20 years from the appearance of the first instalment, part or volume, the protection of the whole work shall end 50 years from the date of first publication of the last instalment, part or volume.

*Article 89.* The successors of the author may not oppose the republication or translation by third parties of the works of the author if, on expiration of a period of more than 15 years from the death of the author, they have not taken steps accordingly. In such a case the publisher or user, as the case may be, shall pay them the appropriate royalties.

*Article 90.* Posthumous works shall be those that have not been disclosed during the life of the author or those that, having been disclosed on his death, have been modified or corrected in such a manner that they may be considered new works.

#### TITLE II

##### The Public Domain

*Article 91.* On expiration of the terms of protection provided for in this Law, or before if the author dies without leaving heirs by legal succession, the works shall fall into the public domain and, consequently, may be used by any person, subject to respect for the corresponding moral rights.

TITLE III  
Special Provisions

*Article 92.* This Law does not protect:

- (a) the publication, reproduction and dissemination of short fragments of a protected work for non-commercial cultural, scientific or educational purposes which does not constitute unfair competition for the author with respect to his economic rights, and the publication, in anthologies representative of the country or of the work of an author, of not more than two poems, prose fragments, works of art or musical works;
- (b) the performance of musical works, the recitation or performance of dramatic works, and in general the use of works intended for education without any profit-making purpose, provided that such use is made for the students inside the respective educational establishments;
- (c) the reproduction of articles, photographs, illustrations and commentaries on current events of common interest that have been published in the press or broadcast by radio or television, except where such reproduction has been expressly prohibited;
- (d) lectures, speeches and other similar works, which may be published for information purposes and free of charge, but may not be published in a separate collection, either in full or in part, without the express prior consent of the author;
- (e) lectures given at universities, colleges and schools, which may be annotated and collected by those to whom they are given, but no one may publish or reproduce them, either in full or in part, without the written consent of their authors;
- (f) monuments, including artistic works in public museums, and in general artistic works located in squares, avenues and public places, which may be freely reproduced by photography, drawing or any other similar method, and the publication and sale of copies shall be lawful. On the reproduction of a work that may be found in public museums there shall be an indication that it is a copy, together with the mention of the name of the author of the original and of the museum in which that original is to be found.

In all the cases provided for in this Article, the name of the author, the title of the work and the source from which it was taken shall be unmistakably indicated.

*Article 93.* For the publication of legal documents that have not been reproduced in the Judicial

Gazette, the authorization of the respective judge or court shall be sought, who may or may not grant it, in full or in part, provided that the documents are not prejudicial to the honor of the persons concerned.

*Article 94.* The publication of studies, pleadings and other legal writings of attorneys taking part in legal proceedings shall require their express authorization.

*Article 95.* The written or oral productions of civil servants or employees of public institutions or institutions under private law serving social or public purposes, communicated to the public in the course of their duties, may be reproduced insofar as the corresponding moral rights are respected. However, independent reproduction of collections of such productions shall be the exclusive privilege of their authors.

*Article 96.* Letters shall belong, as far as material ownership is concerned, to the persons to whom they have been addressed. The right to communicate them to the public or to authorize their publication shall belong to the author.

The persons to whom they have been addressed may, in the event of the death or prohibition of the author, cause them to be published after obtaining a court order where such publication is necessary to preserve his personal honor or is permitted by law.

*Article 97.* Authors under contract to write articles for the press may not, for the purpose of preventing reproduction, reserve the copyright in these journalistic works, which belongs to the newspaper firm. However, the author shall retain his rights with respect to the independent publication of his productions.

*Article 98.* The addition of music to a literary work, or vice versa, shall require prior authorization of the other author and, where economic benefit is derived therefrom, he shall be granted the share accruing to him.

CHAPTER IV  
Authors' Societies

*Article 99.* Authors' societies established under this Law shall be legal entities under private law and shall pursue the aims specified in this Chapter.

*Article 100.* As many authors' societies may be established as there are types of creation specified in Article 7 of this Law.

In no event may two or more authors' societies be established for one type of creation, but the society that has been established may have agencies within the Republic, according to its needs.

*Article 101.* The only authors' societies that may be considered as such and may exercise the rights

specified in this Law shall be those whose statutes have been approved by the Ministry of Public Education and entered in the National Copyright Register.

*Article 102.* Authors' societies shall be composed solely of Ecuadorians or foreigners domiciled in Ecuador.

The legitimate heirs of authors may also be members of authors' societies, provided that the works in which they own rights are being used in accordance with this Law.

*Article 103.* Persons who are members of the managing or supervisory body of an authors' society may not be members of the equivalent bodies in another authors' society.

*Article 104.* Authors may belong to a number of authors' societies, depending on the type of creation represented by their works.

*Article 105.* Authors' societies shall pursue the following aims:

- (a) to promote and defend national culture and encourage intellectual creation on the part of their members;
- (b) to disseminate by all the means available to them the works of their members;
- (c) to obtain the greatest economic and social advantages for their members;
- (d) to protect the moral rights and administer the economic rights of their members in terms of the mandate conferred on them by the latter; and
- (e) to ensure the strict application of this Law and the achievement of its aims.

*Article 106.* The functions of authors' societies shall be the following:

- (a) to represent their members before the judicial and administrative authorities in all matters relating to authors' interests;
- (b) to collect all monetary remittances corresponding to the authors' rights and deriving from the public use of the works of national and foreign authors;
- (c) to engage in negotiations on behalf of their members on matters of general interest. Solidarity and mutual assistance agreements may be entered into with other societies of corporate bodies;
- (d) to enter into agreements with foreign authors' societies on the basis of reciprocity;
- (e) to authenticate contractual dealings entered into by the authors, in accordance with the provisions of the second paragraph of Article 33;
- (f) to represent foreign authors' societies within the country;

- (g) to safeguard national intellectual and artistic traditions; and
- (h) such other functions as this Law, their statutes and regulations entrust to them.

*Article 107.* Authors' societies shall be organized and shall operate according to the following provisions:

- (a) they shall admit as members authors who apply for membership and who provide evidence of their authorship and the fact that their works are used according to the provisions of this Law;
- (b) sanctions may be imposed on members; the statutes of each society shall specify the causes and effects of such sanctions.

In no event shall these sanctions entail forfeiture or withholding of economic rights or royalties.

*Article 108.* The agreements entered into by authors' societies shall be binding on their members when the subject matter thereof is of common interest.

*Article 109.* Monies that are in the possession of authors' societies and have not been claimed within ten years by those who are entitled to them shall be used to increase the economic benefits and the social protection of their members.

## CHAPTER V

### The Copyright Register

*Article 110.* The National Copyright Register is hereby established as a subsidiary body of, and under the management and responsibility of, the Ministry of Public Education.

Registration offices shall operate at provincial education authorities for the purposes of this Law.

*Article 111.* The following shall be entered in the National Copyright Register:

- (a) works submitted for protection by their authors;
- (b) contracts in any way concerned with copyrights;
- (c) the statutes of the various authors' or performers' societies, and any amendments thereto;
- (d) agreements entered into by Ecuadorian authors' or performers' societies with similar foreign societies;
- (e) mandates given for the collection of authors' and performers' copyright royalties;
- (f) the emblems or distinguishing marks of publishing houses, and the names or corporate names and addresses of the natural persons and legal entities regarded as impresarios or users in terms of this Law.

The public official who is in charge of the National Copyright Register, and the public officials of the provincial education authorities, shall refuse registration of deeds and documents that violate or are contrary to the provisions of this Law, with respect to either their content or their form.

*Article 112.* In the absence of proof to the contrary, entries in the Register shall establish the presumption that the facts and acts so recorded are true. Any entry shall be without prejudice to the rights of third parties.

*Article 113.* The recording of works in the National Copyright Register shall be free of charge; the recording of contracts for use and contracts assigning rights, however, shall be subject to payment of the fees provided for in the Stamp Law.

*Article 114.* The persons in charge of the Register shall have the following obligations:

- (a) to record, where appropriate, such works and other documents as are submitted to them;
- (b) to allow such persons as so request to inspect the entries and documents recorded in the Register;
- (c) to issue, to such persons as so request, certified copies of the documents in their charge;
- (d) to issue certificates attesting that there is no definite record or proof;
- (e) such other obligations as are imposed on it by the Regulations.

*Article 115.* The registration requirements that have to be met by applicants, as well as the standards, conditions and other formalities for the operation of the National Copyright Register and the provincial registers, shall be specified in Regulations issued for the purpose by the Ministry of Public Education.

### PART III

#### Infringements and Procedure

##### CHAPTER I

##### Institution of Proceedings

*Article 116.* The right to bring action against acts contrary to this Law shall belong to the author, his successors or the authors' society that represents him, as the case may be.

*Article 117.* The following shall be acts infringing copyright:

- (a) the registration of another's work as being one's own;

- (b) the publication, reproduction or sale of a work without the express authorization of the author or whoever represents him;
- (c) the dramatic, dramatico-musical or poetic performance, or public performance of a musical work, without the permission of the copyright owners, effected in a theater or other open or closed place, or by radio, television or any other means of dissemination or performance;
- (d) the unauthorized reproduction of works of art;
- (e) the reproduction or sale of a greater number of copies of a work than has been authorized by the author;
- (f) the reservation, made by the printer or publisher for himself, of a number of copies greater than that agreed upon with the author;
- (g) the publication, reproduction, performance or dramatization, or sale of copies in which the name of the author or the title of the work has been deleted, altered or changed;
- (h) plagiarism;
- (i) the alteration or mutilation of an intellectual creation;
- (j) any other act that is prejudicial to the rights of the author as provided for in this Law.

*Article 118.* Plagiarism shall be the reproduction of the whole, or a substantial part, of another's intellectual production as if it were one's own.

*Article 119.* Judicial action shall be brought against those who appear to be responsible for the infringements, such as authors, publishers, printers, organizers, importers, exporters, announcers or sellers, or managers of radio or television broadcasting stations, impresarios or owners of theaters or halls, managers of phonographic enterprises and of societies for the representation and administration of musical rights.

### CHAPTER II

#### Civil Sanctions

*Article 120.* In the event of infringement of one or more of the rights provided for in this Law, the author or the person representing his rights may apply for:

- (a) the cessation of the acts infringing such rights, which shall be ordered in the initial ruling by the judge, provided that the application is accompanied by proof substantiating the claim;
- (b) the seizure of the infringing copies and the total restitution of the value of the copies sold, all of which shall remain to the credit of the author; and
- (c) compensation for damages and injury.

*Article 121.* Without prejudice to such criminal proceedings as may be instituted for the infringements specified in Article 117 under (a), (b), (e), (g), (h) and (i), the application shall be brought before the civil judge of the place in which the infringement was committed, who shall deliver a summary verbal ruling. The only appeal that shall lie from that decision shall be in its devolving effects.

The Higher Court of the District shall rule on the merits of the case, and its ruling shall have executive force.

If the work has been printed or published abroad, the judge of the domicile of the owner of the copyright shall be competent.

*Article 122.* Those responsible for one of the infringements specified in this Chapter shall be sentenced to pay a fine of five thousand to twenty thousand sucres.

*Article 123.* At the request of the owner of the copyright, provided that such request is accompanied by proof substantiating it, the judge shall order the sequestration of all copies of the work, which shall be placed in the custody of a judicial depository until such time as the judgment has been rendered.

*Article 124.* When the public performance of a legally protected work has been announced, the author or whoever represents him may, subject to the provision of justifying evidence, request in his application that the holding of the performance be prohibited, which prohibition shall be ordered by the judge in his initial ruling unless the organizer, impresario or user presents the requisite authorization.

*Article 125.* When, in a publication, especially if it is of educational character, information or errors, including typographical errors, are found that constitute a violation of the territorial integrity, the history or the sovereignty of the Republic, the Ministry of Public Education shall order its immediate withdrawal from circulation.

The author shall be notified of the action taken, and his work may not reappear until the relevant correction has been made.

### CHAPTER III Criminal Sanctions

*Article 126.* The registration or publication of another's work as being one's own shall be punished by imprisonment for two to five years and a fine of 5000 to 20 000 sucres.

*Article 127.* Alteration or mutilation of an intellectual work shall be punished by imprisonment for one to three years and a fine of 5000 to 20 000 sucres.

*Article 128.* Plagiarism shall be punished by imprisonment for six months to two years and a fine of 5000 to 20 000 sucres.

*Article 129.* Publication, reproduction or sale of a work without the authorization of the owner of the copyright, and the reproduction or sale of a greater number of copies than has been authorized by the author, shall be punished by imprisonment for six months to two years and a fine of 5000 to 20 000 sucres.

*Article 130.* Cases of infringement as specified in the preceding Articles of this Chapter shall be heard by the criminal judge of the place in which the infringement was committed.

*Article 131.* The criminal judge shall base the proceedings, in accordance with such provisions of the Code of Criminal Procedure as are applicable to the judgment of offenses against property, solely on the specific accusations made by the persons indicated in Article 116.

*Article 132.* In the case of plagiarism the judge shall, in his initial ruling, order ex officio that a commission, which he shall appoint for the purpose, issue an opinion on the offending act. On the merit of the opinion, the judge shall proceed to indictment.

The Commission shall be composed of three delegates, of whom one shall be from the Ministry of Public Education, one from the House of Ecuadorian Culture and one from the authors' society, if there is one; if there is not, the third delegate shall be an author of the corresponding type of creation.

*Article 133.* Sentences shall order the payment of costs, and also of the damages and injury caused, which shall be evaluated verbally and summarily before the judge.

*Article 134.* For the application and modification of the penalties provided for in this Law, the judge shall take the general provisions of the Criminal Code and the Code of Criminal Procedure into consideration.

*Article 135.* Civil and criminal actions arising out of the violation of this Law shall lapse after three years from the date on which the infringement was committed.

In the absence of proof to the contrary, the date of the infringement shall be that of the publication, republication, recording or use of a work protected by this Law.

*Article 136.* Decisions in both civil and criminal proceedings shall be independent and shall not have any effect on each other. Only evidentiary documents, confessions, expert opinions and other declarations may be introduced.

*Article 137.* The proceeds from the fines that are imposed in accordance with the provisions of this Part shall be used by the Ministry of Public Education to the encouragement of activities for the furtherance of cultural activities and the relief of authors.

The judge who imposes the fine shall refer the matter to the Ministry of Public Education in order that it may be given binding force by means of the coercive procedure.

#### PART IV Performers' Rights

*Article 138.* The rights of the authors shall take precedence over the rights of the performers of a work. In the event of conflict, the conditions more favorable to the author shall prevail.

*Article 139.* The status of performer shall be attributed to actors, performers, reciters, narrators, speaking or silent pantomimists, conductors or directors of musical groups such as symphonic, orchestral, chamber, musical comedy, opera and operetta ensembles, conductors or directors of choral, ballet and folk-dance groups, and generally to all those who perform an existing artistic creation in order to communicate it to the public.

*Article 140.* Performers shall have the right to remuneration when their performance is fixed on a material support for retransmission or rebroadcasting by radio, conventional or cable television or video-cassette, or when it is printed or recorded on a phonographic disc, tape, wire, film or any other similar medium.

Articles 26 and 32 of this Law shall be complied with, insofar as they are applicable, to the establishment of the amount of remuneration payable to performers.

*Article 141.* After having obtained the authorization of the author of the intellectual creation that is to be performed, the performers shall freely stipulate the economic rights due to them for their performance. These rights shall belong to them in equal parts if they are two or more in number, unless otherwise agreed and subject to the provisions of the following paragraph.

The contract shall specify the manner in which the director and other members of choral, orchestral or other groups share in the economic rights. If there is no such specification, the director shall be entitled to twenty-five percent of the total of the agreed amount payable to the group, and the other members shall share the remaining seventy-five percent equally.

*Article 142.* The protection provided for in this Law in favor of performers shall include the right to prevent:

- (a) the broadcasting of their performances to the public without their consent;
- (b) the fixation on a material support, without their consent, of their performances when they are broadcast direct by broadcasting organizations;
- (c) the reproduction, without their consent, of the fixation of their performances when such reproduction is for purposes other than those authorized;
- (d) the integrity of their performances from being affected, their names from being omitted or the performance itself from being used unlawfully.

*Article 143.* Performers shall have the right to perform under their own names or under a stage name. In the latter case they shall apply for the recording of the respective name in the National Copyright Register.

*Article 144.* Contracts dealing with performers' rights as provided for in this Law shall be made in writing and shall be exempt of all taxes.

The contracts shall indicate expressly the number of performances that the performers undertake to make, the remuneration payable for those performances, and whether they authorize or prohibit the broadcasting, fixation or reproduction of the performances.

Contracts with producers of phonograms shall also specify the number of phonograms that are to be made available to the public.

A person for whom the performers are performing under contract or to whom their rights have been assigned may not enforce the obligations undertaken by the performers when the respective contracts have not been made in writing, but the performers may assert their rights under such contracts. In general, any ground for the invalidation of a contract may only be alleged by the performers.

*Article 145.* In the implementation of this Law, no distinction whatever shall be made for reasons of race, sex, ideology, religion or nationality; nevertheless, performers who are nationals of States under whose legislation Ecuadorian performers have to meet special requirements for their performances by reason of their foreign status shall be subject to the same restrictions with respect to their performances in Ecuador.

In any event this Law recognizes the principle of reciprocity, which shall be regulated by the Ministry of Public Education.

*Article 146.* The term of the protection afforded to performers shall be 25 years from the fixation of

their performance in any of the forms or media specified in this Law.

*Article 147.* Where provision has not been made under this Title, the provisions on authors' rights that are not contrary to the nature of performers' rights, including those concerning authors' societies, shall be applicable to performers' rights.

### **Transitional Provisions**

**I.** All contracts for the assignment of authors' rights are hereby terminated, and, to recover their validity, they have to be renewed in accordance with the provisions of this Law. Authorizations and powers of representation or powers of attorney that have been granted to natural persons and legal entities for the exercise of one or more of the authors' rights are also declared void.

**II.** In order that the continuity of the dissemination of musical works may be ensured, and until such time as authors and composers have organized the administration of rights in their works, the public performance of musical works shall be lawful and not subject to the obligation to pay royalties during the ninety days following the date of enactment of this Law.

**III.** During the ninety days following the entry into force of this Law, authors' societies that have a legal existence shall convene extraordinary meetings of their members in order that their statutes may, in a single session, be revised in accordance with the provisions of this Law. The revised statutes shall be submitted to the Ministry of Public Education for approval, together with the minutes of the meeting that approved the revision, which shall be signed by all the members who were present.

If, on expiration of the period mentioned above, action has not been taken in accordance with the preceding paragraph, the association that has not complied with this provision shall forfeit its legal status, and its assets shall be used for the purposes specified in Article 137.

**IV.** The Ministry of Public Education shall issue Regulations under this Law within one hundred and twenty days following its entry into force.

### **Final Provisions**

**I.** The provisions of this Law shall apply to intellectual works produced prior to its promulgation insofar as they are within the term of protection specified in Article 88.

**II.** The provisions of the Inter-American Convention on the Rights of Authors, ratified by the instrument published in the *Registro Oficial* No. 10, of September 27, 1947, and those of the Universal Copyright Convention, approved by the National Congress on November 5, 1956, and published in the *Registro Oficial* No. 194, of April 24, 1957, shall remain in force.

**III.** Article 30(e) of the Law on Culture, published in the *Registro Oficial* No. 647, of September 26, 1974, is amended in accordance with this Law.

**IV.** The Law on Intellectual Property, codified by the Legislative Commission on November 25, 1959, and promulgated in the Supplement to the *Registro Oficial* No. 1202, of August 20, 1960, is repealed, as are all laws, decrees and regulations that contradict this Law, which shall enter into force on the date of its publication in the *Registro Oficial*.

## UNITED KINGDOM

**The Copyright (International Conventions) (Amendment) Order 1977**

(No. 56, of January 17, 1977, coming into force on February 23, 1977)

1. — (1) This Order may be cited as the Copyright (International Conventions) (Amendment) Order 1977, and shall come into operation on 23<sup>rd</sup> February 1977.

(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 1972<sup>1</sup>, as amended<sup>2</sup>, shall be further amended by the inclusion in Schedule 1 (which names the countries of the Berne Copyright Union) of a reference to Surinam.

3. — This Order shall extend to all the countries mentioned in the Schedule hereto.

<sup>1</sup> See *Copyright*, 1972, p. 180.

<sup>2</sup> *Ibid.*, 1973, pp. 78, 109, 110, 218 and 250; 1974, p. 235; 1975, p. 177; 1976, pp. 56, 96 and 128; 1977, pp. 47 and 69.

## SCHEDULE

*Countries to which this Order extends*

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

## EXPLANATORY NOTE

*(This Note is not part of the Order)*

This Order further amends the Copyright (International Conventions) Order 1972. It takes account of the accession of the Republic of Surinam to the Berne Copyright Convention.

The Order extends to dependent countries of the Commonwealth to which the 1972 Order extends.

## **General Studies**

### **Current Legislative Trends in the Field of Copyright and Neighboring Rights in Latin America**

Miguel Angel EMERY \*



















## Book Reviews

**East Asian-Pacific Copyright Seminar—Papers and Proceedings.** One volume of VI-126 pages. Attorney-General's Department. Canberra (Australia).

The readers of this review will probably remember that an East Asian-Pacific Copyright Seminar, organized jointly by the Australian Government and certain non-governmental organizations from the authors' and publishers' circles of Australia, with the cooperation of WIPO and Unesco, was held in Sydney, from August 15 to 20, 1976 (see *Copyright*, 1976, p. 245).

The Attorney-General's Department, Canberra, has now issued a publication containing papers and proceedings, with a foreword and the opening address by the Hon. R. J. Elli-

cott, Q. C., M. P., Attorney-General of Australia, and the closing address delivered by Mr. Lindsay Curtis, leader of the Australian delegation. In addition to the lectures already mentioned in the note on the Seminar which appeared in this review, the publication contains the text of the addresses delivered by the representatives of WIPO and Unesco and the 14 country reports submitted to the Seminar. A full list of participants is reproduced in an appendix.

There is no doubt that this book will be useful not only for the participants in the Seminar but also for all the copyright specialists, and that it will permit a better understanding of the problems and the recent copyright developments in the East Asian-Pacific region.

## Calendar

### WIPO Meetings

(Not all WIPO meetings are listed. Dates are subject to possible changes.)

#### 1977

**June 1 to 3 (Geneva) — Paris Union — Advisory Group on Computer Software**

**June 6 to 17 (Paris) — International Patent Classification (IPC) — Working Group I**

**June 13 to 17 (Paris) — Berne Union — Working Group on Cable Television**

*Note:* Meeting convened jointly with Unesco

**June 20 to 24 (Geneva) — Development Cooperation — Working Group on the Model Law for Developing Countries on Inventions and Know-How**

**June 20 to July 1 (Washington) — International Patent Classification (IPC) — Working Group II**

**June 27 to July 1 (Geneva) — Nice Union — Preparatory Working Group on the Revision of the Classification**

**June 29 to July 8 (Geneva) — Paris Union — Preparatory Intergovernmental Committee on the Revision of the Paris Convention**

**September 21 to 23 (Geneva) — ICIREPAT — Plenary Committee**

**September 26 to October 4 (Geneva) — WIPO Coordination Committee; Executive Committees of the Paris and Berne Unions; Assembly and Committee of Directors of the Madrid Union**

**October 10 to 18 (Geneva) — Patent Cooperation Treaty (PCT) — Interim Committees**

**October 17 to 28 (London) — International Patent Classification (IPC) — Working Group III**

**October 24 to 28 (Geneva) — ICIREPAT — Technical Committee for Search Systems (TCSS)**

**October 24 to November 2 (Geneva) — Nice Union — Temporary Working Group on the Alphabetical List of Goods and Services**

**November 7 to 11 (Geneva) — Development Cooperation — Working Group on the Model Law for Developing Countries on Trademarks**

**November 7 to 11 (Paris) — ICIREPAT — Technical Committee for Standardization (TCST)**

**November 14 to 21 (Geneva) — International Patent Classification (IPC) — Steering Committee**

**November 14 to 25 (Geneva) — Paris Union — Preparatory Intergovernmental Committee on the Revision of the Paris Convention**

**November 22 to 25 (Geneva) — International Patent Classification (IPC) — Committee of Experts**

**November 28 to December 6 (Paris) — Berne Union — Executive Committee — Extraordinary Session**

**December 7 to 9 (Geneva) — International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations — Intergovernmental Committee — Ordinary Session (organized jointly with ILO and Unesco)**

**December 8 and 9 (Geneva) — Berne Union — Working Group on the Rationalization of the Publication of Laws and Treaties in the Fields of Copyright and Neighboring Rights**

#### 1978

**February 15 to 24 (Paris) Berne Union — Committee of Governmental Experts on Double Taxation of Copyright Royalties**  
*Note:* Meeting convened jointly with Unesco

**March 6 to 10 (Geneva) — Permanent Program — Working Group on Technological Information derived from Patent Documentation**

**March 13 to 15 and 17 (Geneva) — Permanent Program — Permanent Committee for Development Cooperation Related to Industrial Property**

**March 16, 17 and 20 (Geneva) — Permanent Program — Permanent Committee for Development Cooperation Related to Copyright and Neighboring Rights**

**September 26 to October 2 (Geneva) — WIPO Coordination Committee; Executive Committees of the Paris and Berne Unions**

#### 1979

**September 24 to October 2 (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**

## UPOV Meetings in 1977

**Council:** December 6 to 9

**Consultative Committee:** December 5 and 9

**Technical Steering Committee:** November 15 to 17

**Committee of Experts on the Interpretation and Revision of the Convention:** September 20 to 23

**Working Group on Variety Denominations:** in the time between September 20 to 23

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

**Technical Working Party for Ornamental Plants:** June 7 to 9 (Wageningen - Netherlands)

**Technical Working Party for Forest Trees:** June 14 to 16 (Orleans - France)

**Technical Working Party for Vegetables:** September 6 to 8 (Aarslev - Denmark)

## Meetings of Other International Organizations Concerned with Intellectual Property

### 1977

**September 8 and 9 (Antwerp) — International Literary and Artistic Association — Working Session and Executive Committee**

**September 18 to 21 (Edinburgh) — International League Against Unfair Competition — Working Session**

**October 25 to 27 (Belgrade) — Council of the Professional Photographers of Europe (EUROPHOT) — Congress**

**November 28 to December 6 (Paris) — United Nations Educational, Scientific and Cultural Organization (UNESCO) — Intergovernmental Copyright Committee established by the Universal Copyright Convention (as revised at Paris in 1971)**

### 1978

**May 8 to 12 (Strasbourg) — Council of Europe — Legal Committee on Broadcasting and Television**

**May 12 to 20 (Munich) — International Association for the Protection of Industrial Property — Congress**

**May 29 to June 3 (Paris) — International Literary and Artistic Association — Congress**

**October 1 to 7 (Santiago de Compostela) — International Federation of Patent Agents — Congress**

