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Copyright

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Monthly Review of the
World Intellectual Property Organization (WIPO)

Contents

World Intellectual Property Organization

Member States of the World Intellectual Property Organization

as on January 1, 1978

State			Date on which membership in WIPO took effect
Algeria	P *		April 16, 1975
Australia	P	B **	August 10, 1972
Austria	P	B	August 11, 1973
Bahamas	P	B	January 4, 1977
Belgium	P	B	January 31, 1975
Benin	P	B	March 9, 1975
Brazil	P	B	March 20, 1975
Bulgaria	P	B	May 19, 1970
Burundi	P		March 30, 1977
Byelorussian SSR			April 26, 1970
Cameroon	P	B	November 3, 1973
Canada	P	B	June 26, 1970
Chad	P	B	September 26, 1970
Chile		B	June 25, 1975
Congo	P	B	December 2, 1975
Cuba	P		March 27, 1975
Czechoslovakia	P		December 22, 1970
Democratic People's Republic of Korea			August 17, 1974
Denmark	P	B	April 26, 1970
Egypt	P	B	April 21, 1975
Fiji		B	March 11, 1972
Finland	P	B	September 8, 1970
France	P	B	October 18, 1974
Gabon	P	B	June 6, 1975
German Democratic Republic	P	B	April 26, 1970
Germany, Federal Republic of	P	B	September 19, 1970
Ghana	P		June 12, 1976
Greece	P	B	March 4, 1976
Holy See	P	B	April 20, 1975
Hungary	P	B	April 26, 1970
India		B	May 1, 1975
Iraq	P		January 21, 1976
Ireland	P	B	April 26, 1970
Israel	P	B	April 26, 1970
Italy	P		April 20, 1977
Ivory Coast	P	B	May 1, 1974
Japan	P	B	April 20, 1975
Jordan	P		July 12, 1972
Kenya	P		October 5, 1971
Libyan Arab Jamahiriya	P	B	September 28, 1976
Liechtenstein	P	B	May 21, 1972

* "P" means that the State has ratified or acceded to at least the administrative provisions of the Stockholm Act (1967) of the *Paris* Convention for the Protection of Industrial Property.

** "B" means that the State has ratified or acceded to at least the administrative provisions of the Stockholm Act (1967) or the Paris Act (1971) of the *Berne* Convention for the Protection of Literary and Artistic Works.

State			Date on which membership in WIPO took effect
Luxembourg	P	B	March 19, 1975
Malawi	P		June 11, 1970
Malta	P	B	December 7, 1977
Mauritania	P	B	September 17, 1976
Mauritius	P		September 21, 1976
Mexico	P	B	June 14, 1975
Monaco	P	B	March 3, 1975
Morocco	P	B	July 27, 1971
Netherlands	P	B	January 9, 1975
Niger	P	B	May 18, 1975
Norway	P	B	June 8, 1974
Pakistan		B	January 6, 1977
Poland	P		March 23, 1975
Portugal	P		April 27, 1975
Qatar			September 3, 1976
Romania	P	B	April 26, 1970
Senegal	P	B	April 26, 1970
South Africa	P	B	March 23, 1975
Soviet Union	P		April 26, 1970
Spain	P	B	April 26, 1970
Sudan			February 15, 1974
Surinam	P	B	November 25, 1975
Sweden	P	B	April 26, 1970
Switzerland	P	B	April 26, 1970
Togo	P	B	April 28, 1975
Tunisia	P	B	November 28, 1975
Turkey	P		May 12, 1976
Uganda	P		October 18, 1973
Ukrainian SSR			April 26, 1970
United Arab Emirates			September 24, 1974
United Kingdom	P	B	April 26, 1970
United States of America	P		August 25, 1970
Upper Volta	P	B	August 23, 1975
Viet Nam [1]	P		April 30, 1975
Yugoslavia	P	B	October 11, 1973
Zaire	P	B	January 28, 1975
Zambia	P		May 14, 1977

(Total: 78 States) [1]

[1] The situation of Viet Nam in respect of the Convention Establishing the World Intellectual Property Organization is under examination.

Membership of the Governing Bodies and other Organs of WIPO

On January 1, 1978, the membership of the Governing Bodies and other Organs of the World Intellectual Property Organization was as follows:

General Assembly: Algeria, Australia, Austria, Bahamas, Belgium, Benin, Brazil, Bulgaria, Burundi, Cameroon, Canada, Chad, Chile, Congo, Cuba, Czechoslovakia, Denmark, Egypt, Fiji, Finland, France, Gabon, German Democratic Republic, Germany (Federal Republic of), Ghana, Greece, Holy See, Hungary, India, Iraq, Ireland, Israel, Italy, Ivory Coast, Japan, Jordan, Kenya, Libyan Arab Jamahiriya, Liechtenstein, Luxembourg, Malawi, Malta, Mauritania, Mauritius, Mexico, Monaco, Morocco, Netherlands, Niger, Norway, Pakistan, Poland, Portugal, Romania, Senegal, South Africa,[1] Soviet Union, Spain, Surinam, Sweden, Switzerland, Togo, Tunisia, Turkey, Uganda, United Kingdom, United States of America, Upper Volta, Viet Nam, Yugoslavia, Zaire, Zambia (72).

Conference: The same States as above, with Byelorussian SSR, Democratic People's Republic of Korea, Qatar, Sudan, Ukrainian SSR, United Arab Emirates (78).

Coordination Committee: Argentina, Australia, Austria, Belgium, Brazil, Bulgaria, Canada, Central African Empire, Cuba, Czechoslovakia, France, German Democratic Republic, Germany (Federal Republic of), Ghana, Hungary, India, Iraq, Ireland, Italy, Ivory Coast, Japan, Libyan Arab Jamahiriya, Mexico, Morocco, Nigeria, Philippines, Poland, Romania, Soviet Union, Spain, Sri Lanka, Sudan, Sweden, Switzerland, Syria, Tunisia, United Kingdom, United States of America, Zambia (39).

Budget Committee: Brazil, Cameroon, Canada, Cuba, Czechoslovakia, Egypt, France, Germany (Federal Republic of), India, Iraq, Japan, Soviet Union, Switzerland, United States of America (14).

WIPO Headquarters Building Subcommittee: Argentina, Cameroon, France, Germany (Federal Republic of), Italy, Japan, Netherlands, Switzerland, Soviet Union, United States of America (10).

Permanent Committee for Development Cooperation Related to Industrial Property: Algeria, Australia, Austria, Brazil, Bulgaria, Cameroon, Canada, Chile, Congo, Cuba, Czechoslovakia, Denmark, Egypt, Finland, France, Gabon, German Democratic Republic, Germany (Federal Republic of), Ghana, Hungary, Iraq, Israel, Italy, Ivory Coast, Japan, Jordan, Kenya, Libyan Arab Jamahiriya, Mauritania, Mauritius, Mexico, Morocco, Netherland, Norway, Pakistan, Poland, Portugal, Romania, Senegal, Soviet Union, Spain, Sudan, Surinam, Sweden, Switzerland, Togo, Tunisia, Turkey, Uganda, United Arab Emirates, United Kingdom, United States of America, Yugoslavia, Zaire, Zambia (55).

Permanent Committee for Development Cooperation Related to Copyright and Neighboring Rights: Australia, Austria, Brazil, Bulgaria, Cameroon, Canada, Chile, Congo, Czechoslovakia, Denmark, Egypt, Finland, France, German Democratic Republic, Germany (Federal Republic of), Ghana, Hungary, India, Israel, Ivory Coast, Kenya, Mauritius, Mexico, Morocco, Netherlands, Niger, Norway, Pakistan, Poland, Portugal, Romania, Senegal, Spain, Surinam, Sweden, Switzerland, United Kingdom, United States of America, Upper Volta (39).

Permanent Committee on Patent Information: Australia, Austria, Belgium, Brazil, Canada, Cuba, Czechoslovakia, Denmark, Egypt, Finland, France, German Democratic Republic, Germany (Federal Republic of), Hungary, Ireland, Israel, Japan, Kenya, Luxembourg, Monaco, Netherlands, Norway, Philippines, Romania, Soviet Union, Spain, Surinam, Sweden, Switzerland, United Kingdom, United States of America (31).

[1] According to a decision of the WIPO Coordination Committee, not to be invited " to any meeting of WIPO and its Bodies and Unions " (see *Copyright*, 1977, p. 296).

Copyright Symposium for Trainees

(Geneva, November 21 to 25, 1977)

Under the WIPO Program of Legal-Technical Assistance to Developing Countries for 1977, 12 fellowships were granted in the field of copyright and neighboring rights to nationals of Bolivia, Costa Rica, Ghana, India, Mali, Mexico, Morocco, Rwanda, Senegal, Syria and Zaire, as also to a trainee from the Palestine Liberation Organization.

Within the framework of the training courses that took place in November and December 1977, a symposium on copyright matters for the benefit of the trainees was organized by the International Bureau of WIPO at the Palais des Nations in Geneva from November 21 to 25, 1977. Nationals from Ghana, India, Mali, Mexico, Morocco, Rwanda, Senegal and Zaire attended the Symposium. The list of participants in the Symposium is reproduced below. The nationals of Bolivia and Costa Rica separately attended a course organized in the Copyright Office in Mexico through the kind cooperation of the Mexican Governmcnt.

The purpose of the Symposium was to provide the trainees with general information on the international legal instruments existing in the field of copyright and neighboring rights, as well as to give them an outline of some important questions in that field.

The program of the Symposium included lectures delivered by WIPO officers on the following subjects:

(i) the World Intellectual Property Organization;

(ii) the Berne Convention for the Protection of Literary and Artistic Works;

(iii) the international conventions in the field of neighboring rights: the Rome Convention (1961), the Phonograms Convention (Geneva, 1971) and the Satellites Convention (Brussels, 1974);

(iv) WIPO activities in the field of legal-technical assistance to developing countries.

Other lectures, arranged with their kind cooperation, were given by representatives of the following international non-governmental organizations: the International Confederation of Societies of Authors and Composers (CISAC) (Role of Societies of Authors and Functions of CISAC in this Domain), the International Publishers Association (IPA) (Publishing, Creativeness and Copyright), the European Broadcasting Union (EBU) (Brussels Convention on Distribution of Programme-Carrying Signals Transmitted by Satellite) and the International Federation of Producers of Phonograms and Videograms (IFPI) (Protection of Producers of Phonograms).

Each of the lectures was followed by a number of questions from the trainees which were duly answered.

Almost immediately following the Symposium, the trainees (except for those from Senegal and Morocco) had the opportunity of attending the sessions of the Executive Committee of the Berne Union and the Intergovernmental Copyright Committee of the Universal Copyright Convention, which took place in Paris from November 28 to December 6, 1977. The trainee from Senegal had, immediately preceding the Symposium, spent a month on a course in the Copyright Office in Budapest, while the trainee from Morocco was seconded, at the specific request of his Government, for training arranged through the auspices of CISAC, in Paris. After the Paris meetings of the Copyright Committees, the trainees were seconded to various Copyright Offices and Societies of Authors and Composers until December 16, 1977.

List of Participants

Trainees

GHANA

George Kwabena Abankwah
Assistant Copyright Administrator, Ministry of Information, Accra

INDIA

Narinder Nath Maggu
Export Promotion Officer (Books), Ministry of Education, New Delhi

MALI

Batio Touré
Chef adjoint de la Division des arts et des lettres, Bamako

MEXICO

Nicolas Pizarro Macias
Jefe del Departamento técnico consultivo de la Dirección General del Derecho de Autor, Secretaria de Educación Pública, México D. F.

MOROCCO

Badr Eddine Chalh
Chef de service du contrôle de la perception, Bureau marocain du droit d'auteur, Rabat

RWANDA

Maniragaba Balibutsa
Chef du Bureau de la promotion culturelle,
Direction générale de la culture et des beaux-arts, Kigali

SENEGAL

Marie Mody Sagna (Mlle)
Secrétaire général, Bureau sénégalais du droit d'auteur, Dakar

ZAIRE

Mulombo Wa Biuma,
Attaché de bureau de 1re classe, Direction générale du Département de la culture et des arts, Kinshasa

International Non-Governmental Organizations

European Broadcasting Union (EBU): W. Rumphorst. **International Confederation of Societies of Authors and Composers (CISAC):** J.-A. Ziegler. **International Federation of Producers of Phonograms and Videograms (IFPI):** E. Thompson. **International Publishers Association (IPA):** J. A. Koutchoumow.

World Intellectual Property Organization

K.-L. Liguer-Laubhouet (Mrs.) *(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 *(Head, Copyright Development Cooperation Section, Copyright Division).*

Model Provisions on the Protection of Computer Software

INTRODUCTION

History of the Model Provisions

1. The Model Provisions on the Protection of Computer Software contained hereunder (referred to as "the model provisions") are the result of six years' work carried out by the International Bureau of WIPO with the assistance of experts.

2. In 1971, an Advisory Group of Governmental Experts on the Protection of Computer Programs met to advise the International Bureau on the steps to be taken in order to prepare a study, requested by the United Nations,[1] on the appropriate form of legal protection for computer programs and on the possibilities in the field of international arrangements, with a view to facilitating the access of developing countries to information on computer software. This study was continued by the International Bureau with the help of an Advisory Group of Non-Governmental Experts on the Protection of Computer Programs, which met in 1974, 1975, 1976 and 1977.

3. Before and during the elaboration of the model provisions, the following questions were also discussed by the Advisory Group:

(a) the *need for special legal protection* for computer programs and their related documentation (such programs and documentation are covered by the term "computer software"); and

(b) the desirability that any system of legal protection should incorporate a system for the *registration or deposit of computer software* or for the compliance with other formalities.

The results of the discussions on these two questions are outlined below (see paragraphs 5 to 8 and 9 to 21, respectively).

4. Moreover, the Advisory Group considered, in its 1976 session, the question of an international treaty for the protection of computer software. Such a treaty could provide for a minimum level of protection for computer software and a system of recognition of the effects of an international registration or deposit of computer software by the Contracting States. Whereas the latter aspect of a possible treaty would depend on the establishment of registration or deposit systems on the national level (see hereinafter paragraphs 9 to 21), an obligation to provide for minimum protection presupposes that legal decisions on the protection to be granted on the national level have stabilized to some extent, an effect which could be achieved through the adoption of the present model provisions.

Need for Special Legal Protection

5. Before adopting or amending its legislation so as to provide special protection for proprietors and users of computer software, each country will almost certainly consider two basic questions: Is computer software in need of legal protection? Are the various forms of protection that are already available under its law insufficient?

[1] See the Report of the United Nations Secretary-General on the Application of Computer Technology for Development (UN document E/4800 of May 20, 1970), paragraph 202 in particular.

6. Legal protection of computer software is desirable for the following reasons:

(a) *Investment and time required.* The investment in computer software is large: under a recent estimate, based on the number of computers currently in use, and the past and expected increase in that number, together with estimates of the staff employed on programming activities and the cost of software, it is possible that a sum of the order of 13 billion US dollars is spent annually on the creation and maintenance of software systems.[2] Although this must vary considerably, the time required for the planning and preparation of computer programs is long, often amounting to many man-months of total effort. The need for legal protection of computer programs should be seen not only in terms of the large-scale investment in computer software but also from the viewpoint of the small software enterprise or individual creator of software. The existence of strong legal protection would encourage the dissemination of their creations and enable such creators to avoid duplication of work. Without such dissemination, numerous programmers may spend considerable time and effort in order to accomplish, in parallel work, the same objective; although the programs created by them may be different, any one of those programs would probably fully accomplish the said objective. In any case, legal protection will encourage exploitation of software for purposes other than internal use.

(b) *Likely future developments.* Already, software is estimated to account for by far the greater part of the total cost of computer systems. The proportions of 70% and 30% representing the expenditure on software and hardware, respectively, would seem to be a reasonable estimate. In any case it can be expected that the software elements will, in the future, account for a substantial, if not a predominant, proportion of the expenditure and that the total expenditure on computer software will constantly increase. At present, the largest amount of expenditure on computer software seems to be devoted to the creation and maintenance of specific purpose user programs, not of general applicability; since such programs are not of direct interest to third parties, their misappropriation is relatively unlikely in view of the adaptation required. However, there is a trend towards the creation of computer programs that are of interest to more than one user or even of general and widespread utility and thus can help to save expenditures; such a trend towards standardized user software is likely to increase as computers become more accessible to the public and easier to operate and as the proportion of the cost of the hardware components in computer operations decreases. In the context of the increasing accessibility of computer software, reference should be made to two important developments: the creation of computer networks among nations aided by sophisticated telecommunications systems (a trend which highlights the need for *international* protection), and the move towards new programming techniques facilitating the use of computers by persons other than trained programmers.

(c) *Protection as an incentive to disclosure.* The importance of ensuring the ready accessibility of the important form of modern technology represented by computer software has been referred to on many occasions, particularly in the context of the needs of developing countries (see, for example, the Report of the UN Secretary-General mentioned in footnote 1, above). Although some computer programs would not be made publicly available in any event (for example, programs revealing a trade secret of an enterprise or those designed to complement computer hardware and transferred only with the corresponding computer), it is reasonable to suppose that many proprietors of the rights in other programs would at present rely primarily on secrecy either in order to exclude all others from using the software or to permit only selected persons to use it under a confidential disclosure contract. Where effective legal protection is available, the proprietors of rights could instead rely on that protection and disclose the software.

(d) *Protection as a basis for trade.* The lack of legal protection may be particularly harmful in the context of trade. Both the seller and the buyer of computer software are interested in legal protection because it increases the legal security of their relationship. A system of protection would also be of advantage to developing countries; such a system would encourage dissemination of software to those countries, not only because the publication of the software would not defeat protection but also the protection would eliminate the uncertainty of enforcing a confidential disclosure contract. Also, legal protection would enable dissemination on favorable terms in some cases; for example, the proprietor of the rights in computer software might be encouraged to license it in a developing country at an especially low royalty if he could be sure of being able to take action against users in other countries if his software were accidentally disclosed by the licensee in the developing country. Moreover, the greater disclosure in the advertisement of software which, it is hoped, will result from legal protection may help such countries to evaluate the alternatives on the international market.

(e) *Vulnerability of computer software.* Consideration should also be given to the vulnerability of some forms of computer software; for instance, a "computer software package," consisting of a computer program and related descriptive and explanatory

[2] Estimate quoted in the (United Kingdom) Report of the Whitford Committee on Copyright and Designs Law (1977—London, Her Majesty's Stationery Office, Cmnd 6732), paragraph 477.

documentation, is expensive to prepare and easy to copy as soon as the prototype is available.

7. It may be that computer software can, in a few countries, be adequately protected without any change in existing laws. But, due to the newness of computer technology and the consequent scarcity of judicial decisions, and to disagreement among legal experts, there is a considerable state of uncertainty in this field. Two forms of legal protection may be specifically directed to the results of the intellectual creativity in computer software: they are *patent protection* and *copyright protection*. In addition, there are *other branches of law* which can provide means for protecting computer software, especially where it constitutes a trade secret.

(a) *Patent protection.* The patent would seem to be an appropriate form of legal protection of computer software since it covers new and inventive technical solutions. It can thus apply to programs embodying the same concept as a patented program, but in a completely different form; it can also be relied on to prevent others using the same program in a computer. However, in many countries computer programs and other items of computer software, in particular algorithms, cannot be regarded as patentable inventions; the European Patent Convention, for example, contains an express provision to that effect (Article 52(2)(c)). In some countries, a computer program would seem to be at least *indirectly* protectable by, for example, a patent granted for a computer programmed in a new way or for a process relating to the use of a program as a means of operating a computer in a new manner or as a means of control in the manufacture of articles. In most countries the question of patentability cannot be answered with any degree of certainty. Moreover, even if patent protection were generally available, it would probably cover only a minute proportion of computer programs since it is considered that only in very few cases (perhaps 1%) would a program have sufficient inventiveness to satisfy the requirements of patent law, although a large amount of time, effort and resources may have been devoted to its creation. There are also serious practical difficulties to be taken into account: difficulties in conducting the examination relating to the novelty and inventiveness of a computer program, in establishing the documentation on the prior art and in finding qualified examiners. One further difficulty is that, under patent procedures, any person has access to a full disclosure of the invention enabling a person skilled in the art to make the patented product or use the patented process; in view of the relative difficulty of detecting misappropriations of a computer program, it could be argued that such an unrestricted disclosure to the public is not desirable; and yet, to make an exception in the case of computer programs might prejudice a fundamental principle of patent law: disclosure to the public.

(b) *Copyright protection.* Whereas patent law protects the technical idea underlying an invention, copyright law focusses on protecting the form in which ideas are expressed, although protection is not limited to that form. Thus, copyright protection would seem to be particularly appropriate for computer software as a whole (and not merely computer programs) since a large amount of computer software consists of descriptive or explanatory matter; even a computer program (consisting, for example, of magnetic tape) is a form of expression—of the ideas contained in the software leading up to the program. In most cases the intellectual creativity in computer software resides in the skill and effort used to make those ideas "understandable" to a computer, as economically and as effectively as possible. However, although some kinds of computer software (especially those in verbal form) are clearly protectable under copyright laws, experts disagree on whether other kinds (particularly a computer program, on magnetic tape for example) can be considered a literary, artistic or scientific work, which are the traditional subjects of copyright protection. Moreover, such protection may be of very limited value since it essentially covers only copying (or related acts such as translation or adaptation); thus, in itself, the use of a program to operate a computer cannot be prevented by copyright law (just as the making of a cake cannot be an infringement of the copyright in the recipe). It is essential that use in a computer should be covered by the rights in computer software; it is, in fact, possible that copyright law can provide a remedy in this case since it is probable that the use of a program always involves its copying in the computer memory, but the courts may not regard such internal reproduction as sufficient for the purposes of copyright law. The model provisions essentially adopt a copyright law approach which takes account of their subject matter's affinity with copyright protection and overcomes the possible limitations indicated above.

(c) *Other forms of protection.* The laws of certain countries provide a number of means of preventing the unauthorized disclosure or use of secret information. There are a number of laws which directly penalize or provide civil law remedies against the misappropriation of a trade secret or of information obtained in breach of confidence. A common means of protecting information concerning computer software, which is provided by all laws, is by contract. Even in the absence of an express term in a contract, persons in a fiduciary relationship with a computer enterprise, such as its employees, can be prevented from disclosing secret information. Secret information can also be indirectly protected by certain provisions in criminal law, by general provisions in civil codes or by certain actions in the law of torts. Even in the absence of secrecy, the misappropriation of computer

programs may, in certain circumstances, be actionable in the context of unfair competition law. However, even in countries where trade secrets can be protected directly, there is uncertainty or differences as to the scope of protection and as to the conditions (for example, whether disclosure to a licensee or to a restricted number of other third parties would prejudice the secrecy of the know-how protected). The disadvantage of protection under contract law is that in most cases it will be difficult to prevent persons outside the contractual relationship from disclosing or using a program. Moreover, one of the advantages of the establishment of clear and adequate legal protection for computer software is to encourage greater disclosure of information on computer software which would otherwise be vulnerable to misappropriation. The aim of such protection is therefore precisely to avoid any necessity to rely on secrecy and on laws and legal measures safeguarding secrecy.

8. *In conclusion,* it can be said that computers are becoming more and more important in the fields of science, technology and commerce and other spheres of human activity; computer software accounts for the greater part of investment in computer technology and its creation requires a high degree of intellectual effort. It would therefore seem to need and deserve a guarantee of legal protection, which should encourage investment and trade in computer software and promote its wider accessibility. However, there is at present a state of uncertainty as to the protection of computer software under various legal systems. The purpose of the model provisions is to eliminate that uncertainty.

Deposit of Computer Software

9. The model provisions do not make the protection of computer software dependent upon its deposit or registration with a national authority or upon compliance with other formalities, such as the marking of the computer software. Countries interested in the model provisions might like to consider the desirability of including in their laws a mandatory provision of the kind indicated or of at least providing for an optional system for the deposit or registration of computer software. The arguments for and against such a mandatory system are outlined below, followed by those for and against an optional system.

10. The basic argument in favor of a *mandatory system of deposit* is that, in return for the special protection accorded, the proprietor of the rights in computer software should be obliged to deposit the software. Such a requirement would ensure the eventual disclosure of the software to the public with the consequent advancement of the art. It would also enable third parties to direct their efforts to creating computer software in new fields. Moreover, the deposit would promote the dissemination of computer software, facilitate its sale or licensing and increase certainty concerning the object of protection in each case, which would otherwise be difficult to define. These arguments apply to some extent also to the less strict requirement for the *registration of computer software,* under which the proprietor would simply have to provide particulars of the computer software, together with an abstract of it, which would be disclosed to the public.

11. A further argument in favor of a mandatory system of *deposit* or *registration* is that the proprietor should give notice to the public that a certain item of software is protected as well as an indication of when the term of protection expires, a date that is not easily ascertainable due to the fact that computer software is not normally published. In this connection, a number of experts feel that computer software, including additions updating a computer program, should at least be *marked* with an indication of the name of the proprietor of the rights and the date of their expiration.

12. The requirement of adequate disclosure to the public in return for the rights granted by the State is a fundamental obligation under patent law. Supporters of the basic argument, outlined in the first sentence of paragraph 10, above, are thus adopting a *patent law approach.* If such an approach is adopted, it is reasonable that it should apply to the system of legal protection of computer software as a whole, in particular to the rights granted under the law. However, for the reasons indicated in paragraph 7(a) and (b), above, the model provisions are essentially based on a *copyright law approach*; the rights granted are consequently less extensive than those of a patentee: they do not protect the concepts underlying computer software and cannot prevent a person from independently creating the same computer software and using it. The primary purpose of the protection granted is not to allow proprietors to profit from a period of exclusive rights as a reward for the creation and disclosure of computer software, but simply to encourage creation and dissemination of computer software and to prevent the misappropriation of the results of another's valuable work, thus introducing legal security which should both facilitate trade in computer software and encourage proprietors to make it more generally available.

13. The advantages of a mandatory deposit system have also been questioned. Countries adopting it would have the difficult task of devising and administering a system for the classification and indexing of computer software; otherwise, in view of the vast amount of computer software created each year, the advantages of disclosure and notice to the

public would be nugatory. Such a system would be facilitated if it were established at the international level. Furthermore, in order to fully achieve its purposes, a deposit system would have to provide for a time limit after which the depositor could no longer prevent disclosure of the software to the public. The fixing of such a time limit may, however, give rise to problems: if, taking into account the vulnerability of the proprietor's position in the case of complete disclosure, the time limit is fixed in a way that allows for a period of substantial secrecy, the advantages of disclosure for the public would be reduced or even eliminated.

14. With regard to a requirement for compliance with formalities in general, a number of disadvantages have been referred to. It has been stated that compulsory formalities would not be in the interest of the small software enterprises or individual users, who might be unaware of the need to comply with them; they might also render the system of protection unattractive since some people would seem to be in favor of such a system but opposed to deposit. A mandatory deposit might even have a discouraging effect on creators if they have to make a full disclosure of their creations. In view of the copyright law approach that has been adopted, it is above all logical that the protection provided by the model provisions should not be made dependent in any way (as far as either the existence or its enforcement before the courts is concerned) upon compliance with formalities, since there is no such requirement under the copyright laws of the majority of countries. On the other hand, if the copyright law of a country adopting the model provisions does contain a requirement for the deposit and/or marking of protected works, such a country would presumably include the same requirement in any law based on the model provisions. Moreover, any formalities would create problems in view of the fact that computer programs—and even commercialized standard software—are frequently updated.

15. *In conclusion,* it is suggested that countries considering the question discussed above should first decide the basic approach to the system of protection to be established. If a patent law approach were adopted, it would be logical for a requirement for compliance with formalities to be included in legislation based on the model provisions, which, as a whole, would have to be examined in the light of such an approach. If the principle of the model provisions (copyright law approach) were adopted: countries whose copyright law contains no requirement for compliance with formalities would have to consider, on the balance of convenience, whether and to what extent such a requirement should be introduced for forms of computer software that are not protected by copyright; other countries would presumably adopt the same solution as that contained in their copyright law.

16. Some of the arguments outlined above also apply to the question whether a system of *optional deposit of computer software* should be adopted. Under one possible system that has been discussed, the proprietor of the rights in computer software would be able to deposit with a national authority a computer program and/or any or all the documentation constituting software and relating to the program. Within that optional deposit system there would be a registration system which would be mandatory in the sense that, if a deposit were made, a certain amount of information would have to be furnished for the purpose of publication; one of the most important requirements in this connection would be the furnishing of an abstract of the computer program which had been deposited or, if it had not been deposited, to which the deposited software related. To the extent that they had not been subjected to secrecy by the depositor, the contents of deposits would be accessible to the public. The deposit would not confer any legal rights but merely certain presumptions as to the time of the creation of the software.

17. An optional deposit system of the kind referred to would have three main purposes:

(1) to enable the public to have direct access to non-secret computer software;

(2) to provide the depositor with evidence of the prior existence of this computer software;

(3) through publication of an abstract of the computer software, to enable the public to know the kind of software available.

18. Doubts have been expressed, however, as to whether the first-mentioned purpose could be achieved through a deposit system of the kind indicated. It might be impracticable to require the deposit of computer programs in machine-readable form, and would be impossible for a depositary authority to provide copies of such programs unless it had a wide range of machinery for doing so, and it might not, in any event, be desirable that the public should be given copies of programs in machine-readable form (even if they are not secret) owing to the danger of infringement of the rights in the program; the deposit would be of limited value if only hard copies of the program or its related software were available to the public. Moreover, the public could never be sure that a computer program had not been updated since its deposit; thus, potential users would in any event have an interest in directly establishing contact with the depositor. Doubts have also been expressed concerning the second purpose mentioned in the preceding paragraph; the same evidential advantages could perhaps be achieved through the deposit of the computer software elsewhere, with a

notary public for instance. If all that remains is the third purpose mentioned, this could be achieved through the simpler registration system (see paragraph 20, below).

19. It has been suggested that a full deposit system could be more meaningful if it were made more attractive to potential depositors by the enhancement of advantages to them, for example by the grant of a longer term of protection to deposited software. In addition, the question could be considered of providing for an international priority right to be based on deposit. However, it should be borne in mind that too great incentives for deposit would have the same effect as making deposit compulsory, a question that has been discussed above.

20. Some of the advantages mentioned above could be obtained through an *optional registration system* without any legal effects; the information registered could include an abstract of the computer program, the machines on which it could be used and the languages, possibly the price and other terms for the use of the software and possibly also the date of expiration of the protection.

21. The usefulness of an optional deposit or registration system would have to be examined in the context of the needs of software producers and users, and of the services already existing in that field. Any such system having no legal effects would probably have to be considered outside the framework of a system of legal protection of computer software.

Purpose and Structure of the Model Provisions

22. The purpose of the model provisions is to assist countries in complementing, or introducing certainty into, their laws applicable to the protection of computer software. They endeavor to regulate their subject matter in as complete a way as possible so that they could form the basis of a special law on the protection of computer software; they would of course have to be adapted to the legal system of the country adopting them and supplemented with the usual provisions in its legislation (transitional provisions and entry into force, for example).

23. At the same time, the model provisions should not be understood as necessarily requiring adoption in a separate law on the protection of computer software. In many countries, the principles contained in the model provisions may simply amount to clarifications or extensions of existing legal rules and could be incorporated—in so far as they are not already included—in existing laws, for example partly in the copyright law and partly in the law on trade secrets or unfair competition. Even in such a case, the complete presentation in the model provisions has the advantage that it draws attention to the various problems which may exist under particular national systems and indicates possible solutions to those problems.

24. The structure of the model provisions is as follows:

Section 1 defines the protected subject matter ("computer program," "program description," "supporting material" and "computer software," the latter consisting of one or more of the first-mentioned items) and the term "proprietor."

Section 2 deals with the question to whom the rights in respect of computer software belong, in particular in the case where computer software has been created by an employee; moreover, Section 2 regulates the transfer and devolution of rights in respect of computer software.

Section 3 defines the requirement of originality of computer software.

Section 4 makes clear that concepts (as opposed to the form in which they are expressed) are outside the protection of the Law.

Section 5 lists the acts covered by the rights of the proprietor; the list can be divided into two parts: items (i) and (ii) deal with the unauthorized disclosure of, and the unauthorized access to, computer software, while items (iii) to (viii) relate to acts of unauthorized copying, use, sale, etc., of computer software.

Section 6 defines infringement and specifies two cases that are not to be considered infringement (the independent creation of computer software and the particular situation of foreign vessels, aircraft, spacecraft or land vehicles entering the territory of the country).

Section 7 regulates the duration of the rights under the Law.

Section 8 establishes the relief available in the case of infringement.

Section 9 makes clear that protection on the basis of other provisions is not excluded.

25. The establishment of effective protection for computer software in as many countries as possible is desirable, not only from the point of view of each country but also from the point of view of the international community. The use of computer software frequently concerns more than one country; in particular, in view of the fact that modern technology enables the operation of a machine having information-processing capabilities to be controlled by signals transmitted from a distant place, it may well happen that the user of software is in one country while the machine which performs certain functions under control of the software is in another country. If, under such circumstances, effective protection of computer software existed only in one of those countries, it

might happen that no protection whatsoever is granted since, in the country with the effective protection, it may not be possible to prove that the unauthorized act was committed on its territory and not in the other country. To fill those gaps and to achieve international harmonization of national laws is another important purpose of the model provisions for the protection of computer software.

MODEL PROVISIONS

Section 1

Definitions

For the purposes of this Law:

(i) "computer program" means a set of instructions capable, when incorporated in a machine-readable medium, of causing a machine having information-processing capabilities to indicate, perform or achieve a particular function, task or result;

(ii) "program description" means a complete procedural presentation in verbal, schematic or other form, in sufficient detail to determine a set of instructions constituting a corresponding computer program;

(iii) "supporting material" means any material, other than a computer program or a program description, created for aiding the understanding or application of a computer program, for example problem descriptions and user instructions;

(iv) "computer software" means any or several of the items referred to in (i) to (iii);

(v) "proprietor" means the person, including a legal entity, to whom the rights under this Law belong according to Section 2(1), or his successor in title according to Section 2(2).

Section 2

Proprietorship; Transfer and Devolution of Rights in Respect of Computer Software

(1) The rights under this Law in respect of computer software shall belong to the person who created such software; however, where the software was created by an employee in the course of performing his duties as employee, the said rights shall, unless otherwise agreed, belong to the employer.

(2) The rights under this Law in respect of computer software may be transferred, in whole or in part, by contract. Upon the death of the proprietor, the said rights shall devolve according to the law of testamentary or intestate succession, as the case may be.

Section 3

Originality

This Law applies only to computer software which is original in the sense that it is the result of its creator's own intellectual effort.

Section 4

Concepts

The rights under this Law shall not extend to the concepts on which the computer software is based.

Section 5

Rights of the Proprietor

The proprietor shall have the right to prevent any person from:

(i) disclosing the computer software or facilitating its disclosure to any person before it is made accessible to the public with the consent of the proprietor;

(ii) allowing or facilitating access by any person to any object storing or reproducing the computer software, before the computer software is made accessible to the public with the consent of the proprietor;

(iii) copying by any means or in any form the computer software;

(iv) using the computer program to produce the same or a substantially similar computer program or a program description of the computer program or of a substantially similar computer program;

(v) using the program description to produce the same or a substantially similar program description or to produce a corresponding computer program;

(vi) using the computer program or a computer program produced as described in (iii), (iv) or (v) to control the operation of a machine having information-processing capabilities, or storing it in such a machine;

(vii) offering or stocking for the purpose of sale, hire or license, selling, importing, exporting, leasing or licensing the computer software or computer software produced as described in (iii), (iv) or (v);

(viii) doing any of the acts described in (vii) in respect of objects storing or reproducing the computer software or computer software produced as described in (iii), (iv) or (v).

Section 6

Infringements

(1) Any act referred to in Section 5(i) to (viii) shall, unless authorized by the proprietor, be an infringement of the proprietor's rights.

(2) The independent creation by any person of computer software which is the same as, or substantially similar to, the computer software of another person, or the doing of any act referred to in Section 5(i) to (viii) in respect of such independently created computer software, shall not be an infringement of the rights of the latter under this Law.

(3) Any presence of the computer software on foreign vessels, aircraft, spacecraft or land vehicles, temporarily or accidentally entering the waters, airspace or land of this country, and any use of computer software during such entry, shall not be considered an infringement of the rights under this Law.

Section 7

Duration of Rights

(1) The rights under this Law shall begin at the time when the computer software was created.

(2)(a) Subject to paragraph (b), the rights under this Law shall expire at the end of a period of 20 years calculated from the earlier of the following dates:

(i) the date when the computer program is, for purposes other than study, trial or research, first used in any country in controlling the operation of a machine having information-processing capabilities, by or with the consent of the proprietor;

(ii) the date when the computer software is first sold, leased or licensed in any country or offered for those purposes.

(b) The rights under this Law shall in no case extend beyond 25 years from the time when the computer software was created.

Section 8

Relief

(1) Where any of the proprietor's rights have been, or are likely to be, infringed, he shall be entitled to an injunction, unless the grant of an injunction would be unreasonable having regard to the circumstances of the case.

(2) Where any of the proprietor's rights have been infringed, he shall be entitled to damages or such compensation as may be appropriate having regard to the circumstances of the case.

Section 9

Application of Other Laws

This Law shall not preclude, in respect of the protection of computer software, the application of the general principles of law or the application of any other law, such as the Patent Law, the Copyright Law or the Law on Unfair Competition.

COMMENTS

Comments on Section 1

a. Section 1 (items (i) to (iv)) explains what the Law means by the term "computer software" and places the various kinds of computer software into three different categories (items (i) to (iii)), which, under Section 5, benefit from different levels of protection. Item (v) provides for a single word to denote the beneficiary of the rights under the Law.

b. The term "computer software" covers both a program for making a computer carry out a particular task and the related documentation. A large amount of documentation may be prepared before a computer program takes its final form—consisting (in the case of a digital computer) of particles in successive groups on, for example, magnetic tape. In the present normal practice of a computer working with binary data elements, each performs one of two different functions and is usually expressed by a "1" or a "0" in the system of binary numbers.

c. When designing a particular computer program, first the problem to be solved by the computer has to be analyzed. Then a general method for solving the problem must be adopted or devised in order to give an idea of the main stages in the running of the program. Each of these stages must then be broken down into more and more detail, until finally the instructions are developed which will enable a computer for which the program is designed to perform all the operations necessary for the execution of the program. These instructions will normally first be expressed in one or more "programming languages," which are understandable both to the computer and to the user of the program. They are then translated (possibly in several steps and usually by means of a program already in the computer) into the lowest level of expression, which causes the computer to perform its tasks. In the process outlined above, one may first prepare a problem description and then, progressively, descriptions—or schemes in the form of flow charts, for example—of the method adopted, of the main stages of the program and of the steps to be taken in the implementation of those stages. Each item of such documentation, in addition to the set of instructions developed from it, is covered by the term "computer software" in the Law.

d. *Item (i)* defines a "computer program," which (under Section 5) is eligible for protection covering not only unauthorized disclosure and copying but also certain forms of use of the program.

e. A computer program must, under item (i), be a set of instructions which is capable of causing a "machine having information-processing capabilities" to operate in a specified way. The term "machine" has been preferred to "computer." The former has a more precise and wider meaning in the computer art and would be understood by persons skilled in that art as covering, in addition to "computers," any other special purpose machine, such as an automatic telephone exchange or an "intelligent" terminal or component thereof having information-processing capabilities. In this connection, the expression "machine having information-processing capabilities" would seem to be a little wider than the more normal "information-processing machine" and has thus been preferred to the latter expression. It would be more usual to speak of "*data*-processing" capabilities, but such an expression might not cover a machine for automatically processing *text* in, for instance, the production of a newspaper.

f. A further requirement under item (i) is that the "set of instructions" constituting a computer program must be capable of causing a computer to perform a particular task. The program must therefore contain *all* the instructions necessary to enable the computer to perform each of the successive operations leading to the desired result. This does not mean that the program has to be error-free before it can be considered as such; most programs have to be tested and corrected before they become operational or are commercialized. Item (i), moreover, implies that, in order to be recognized as such, the computer program must be ready for incorporation in a "machine-readable medium." This condition is obviously fulfilled if the program is already on magnetic or punched tape for inputting in the computer; it is, however, also fulfilled if the set of instructions is in a humanly readable language capable, when directly copied by suitable means (for example, by means of the keyboard on the computer terminal), of being accepted by the computer; the instructions must thus at least be expressed in one of the many programming languages referred to in point c, above. It should be noted that programming languages are becoming increasingly higher in level, so that it is not inconceivable that a computer might one day accept instructions written in a human language, and such instructions would thus constitute a "computer program" within the meaning of the Law.

g. Finally, under item (i), a computer program must cause a computer "to indicate, perform or achieve a particular function, task or result." The latter expression could perhaps be replaced simply by "to perform a particular task"; the three verbs and nouns in the expression are, however, descriptive of the various purposes for which a computer program may be used. "Result" gives the idea of the output of the computer; a "task," the problem that it has to solve; a "function," an action performed by part of the program in the execution of its task; the word "function" covers switching operations of hardware components according to a particular program and would also seem appropriate to describe the action of programs which translate other programs expressed in a programming language into their final form, as well as the many other kinds of programs complementing the hardware in a computer so as to facilitate the execution of new programs. The verb "to indicate" is normally associated with the "result" displayed after the task has been completed, but during the running of the program, a particular function may be indicated. Moreover, a result is not always *indicated* by the computer; it may be *achieved,* in the case, for example, of a computer which directly controls the flight of an aircraft.

h. As stated in the preceding point, a *part* of a computer program, such as a subroutine or modular unit, may cause a computer to carry out an intermediate function in the performance of the overall task. Such a part may thus itself constitute a computer program as defined in item (i).

i. *Item (ii)* defines a form of computer software which is not strictly speaking a "computer program" but from which a computer program can be developed in a relatively straightforward manner. This form of software is called a "program description," a term to which the Law gives a much narrower meaning than that normally understood. Under Section 5, program descriptions are eligible for protection similar to that given to computer programs defined in Section 1(i).

j. For the purposes of item (ii), a program description must first of all be a "complete procedural presentation"; in other words, it must describe the whole procedure—namely, *all* the steps to be taken in the execution of a computer program. Moreover, a general description is not sufficient; the description must be "in sufficient detail to determine a set of instructions constituting a corresponding computer program." This requirement is clearly fulfilled if the program description sets out all the instructions to be followed by the computer, so that the only thing that remains to be done is to convert them into a form that is acceptable to a computer. However, for the purpose of the definition, the set of instructions need not be set out but merely "determined"; a program description might thus be constituted by a flow chart (a procedural presentation "in schematic form") which is in such detail that each block contained in it could be easily transformed into a corresponding set of machine-readable instructions. It should furthermore be noted that a program description does not have to be capable of transformation into only a single set of instructions; a number of different but similar

sets of instructions could in most cases be directly developed from the same program description however detailed, especially if those sets of instructions are being designed in a manner which is independent of a particular kind of computer. Provided that each set of instructions referred to would constitute a "corresponding computer program"—in other words, provided that there would always be a recognizable link between the possible sets of instructions and the steps indicated in the program description—the requirement of item (ii) is fulfilled.

k. *Item (iii)* defines the third category of computer software: "supporting material." This term covers software which is typically supplied to users, in addition to the computer program and program description, in a "software package" and facilitates the use and possible adaptation of the program. "Supporting material" covers the problem description and other descriptive documentation relating to a computer program (see point c, above), other than the documentation which is at such an advanced stage that it constitutes a program description under item (ii). It also covers explanatory documentation, such as user instructions, which are often indispensable and which, inter alia, explain how the program is to be used and how the data is to be prepared and indicate the kinds of computers in which it can be used.

l. The extent of protection given to supporting material is very limited—merely trade secret protection (Section 5(i) and (ii)) and copyright protection (Section 5(iii), (vii) and (viii)). Although such protection is already available in many countries, it has been provided for in the present model provisions since not all countries have laws protecting trade secrets or recognize all kinds of supporting material (especially software that is not in verbal form) as "literary" or "scientific works" for the purposes of copyright protection.

m. *Item (iv):* In order to lighten the text of the provisions, the term "computer software" has been used in provisions which are applicable to each of the three categories defined in items (i) to (iii).

n. *Item (v):* The words "including a legal entity" may already be understood in the word person."

o. The word "proprietor" is intended to cover joint proprietors, where computer software is created jointly or where the rights in it are owned jointly by more than one successor in title.

Comments on Section 2

a. This Section determines who is entitled to the rights provided for by the Law (referred to as "the proprietor"—see Section 1(v)) and permits the transfer and devolution of those rights. Section 2 is concerned only with the rights under the Law and does not affect any other rights in computer software.

b. *Subsection (1):* In principle, the rights under the Law belong to the creator of the computer software. There may, of course, be several creators since it is quite common for different parts of a computer program to be written by different persons. Such persons will not necessarily be considered joint creators of the complete software; where, for instance, the different parts of the program themselves constitute computer programs (see the comments on Section 1, point h), each creator would, in principle, have the sole rights in the part of the computer program, and in the related software, created by him. Normally, however, such teamwork will be performed in the context of an employment relationship so that, unless agreed otherwise, all the rights in the software will belong to the employer in accordance with the second sentence of subsection (1). In other cases, the different creators would normally have established their rights beforehand by contract.

c. A question that might be asked is whether the creator of a computer program which generates another computer program can be considered the creator of that other program. What typically happens in this kind of situation is that the creator devises a "parent" program designed to have a wide range of applications and making provision for a variety of different functions. A generating program selects appropriate parts of the parent program, adjusts them to the needs of the new program, links those parts together and produces the new program, all of whose parts are thus contained in the parent program. This is a question that would have to be decided case by case. In the situation outlined above, the creator of the parent program would probably be considered also to have created the new program; but even if he were not, his rights would extend to any new program which is substantially similar to the parent program from which it was produced (see Section 5, subsections (vi) to (viii), in conjunction with (iv)). The question of generated programs is also referred to below in the context of originality (see the comments on Section 3, point d).

d. Concerning software created by employees, subsection (1) adopts the kind of regulation to be found in many laws with respect to inventions or literary and artistic works created by employees. Normally, the rights belong to the employer. The parties may, however, agree on a different solution. Moreover, the rights belong to the employee if the software was created otherwise than in the course of performing his duties as employee. For example, a person employed solely as a keyboard operator who creates software useful to his employer would probably be considered

its proprietor; such a solution would appear just since such an employee's salary would be lower than that of a programmer, whose salary would normally take account of the creativity expected of him.

e. Subsection (1) does not provide any solution in the case where software is created pursuant to a commission. There are in fact a large number of specialized "software houses" producing "tailor-made" programs for clients. Such work is also performed by manufacturers of computer hardware for their clients. The reason for this omission in the Law is that, in practice, contracts relating to such commissioned work always contain provisions governing the ownership of the rights in the software. Moreover, there would seem to be no uniform practice concerning the ownership of rights in software created under a commission.

f. *Subsection (2):* This provision relates only to the transfer and devolution of the rights in computer software; it does not refer to the licensing of such rights. Such a reference would seem unnecessary in view of Section 6(1) which makes clear that the proprietor may authorize—or, to use different terminology, license—others to make use of computer software in which he holds the rights under the Law.

g. It should be noted that subsection (2) concerns the transfer of the *rights* in respect of computer software. A person who merely transfers the software by, for example, programming the transferee's computer does not thereby transfer the rights in the software.

Comments on Section 3

a. This Section lays down the basic requirement which must be fulfilled by computer software in order to benefit from the protection of the Law. It adopts the idea of "originality," contained in the copyright laws of most countries.

b. The requirement of originality would seem to be the most appropriate since, as explained earlier (paragraph 7(b) of the Introduction), the model provisions have essentially adopted a copyright approach; like copyright law, they essentially protect the form in which ideas are expressed and cannot be invoked against anyone who has independently created computer software which is the same as the protected software (see Sections 4 and 6(2)); both the model provisions and copyright law can thus be contrasted with patent law, which protects the idea underlying an invention and may be enforced even against persons who subsequently devise the same invention independently of the owner of the patent.

c. The requirement of originality under copyright law is, however, given different meanings in different countries. In some countries, a protectable work must simply *originate* with the person claiming copyright in it; in others, it must in addition be of a certain *qualitative* standard. In order to promote a desirable uniformity of protection in the various countries that may adopt the model provisions, Section 3 does not simply provide that protectable computer software must be original, or that it must be original within the meaning of the copyright law of the country concerned; it explains—in very general terms, allowing each country freedom of interpretation—what is meant by originality in the context of computer software: the software must be "the result of its creator's own intellectual effort."

d. In the phrase just quoted, the word "own" emphasizes the idea that the computer software must originate with its creator; the words "intellectual effort" could, for example, be understood as excluding trivial computer programs consisting of few instructions. Other programs with few instructions may involve a high degree of intellectual effort where, for example, a programmer devises a shortcut to the solution of a problem that had hitherto required many instructions taking up expensive computer time. The word "effort" would seem particularly appropriate since computer programs may take many man-months to prepare and it would be unjust if the result of such work could be appropriated by another person. The question also arises as to whether a person who generates a computer program from its parent program (see the comments on Section 2, point c) is exercising his "own" intellectual effort; the answer would probably be in the affirmative but might vary from case to case. It should be noted that "own" does not mean "independent" in the sense that the creator did not make use of other computer software in devising his own program. The mere fact that a person creates software on the basis of another person's software, or even generates a computer program from another's parent program, does not in itself mean that the new software is not original; originality must be examined in each case. It should also be borne in mind that computer software may be only partly original; in such a case, the rights under the Law would extend only to the aspects of the software that are original.

Comments on Section 4

a. This Section reflects the fundamental purpose of the model provisions, which is to protect the form in which the concepts, or methods used, in the creation of computer software are expressed, and not the concepts themselves.

b. As far as the Law is concerned, therefore, no person can be prevented from using the concepts underlying another person's software, provided that, if reference is made to that other person's software, he develops a different form of expression and provided also that the new form of expression is not substantially similar to that contained in the other software (see Section 5(iv) and (v)). The words "form

of expression" in the preceding sentence should be understood in a wide sense: a person who uses a different form of expression with respect to each concept individually, but slavishly copies the structure of another person's software may well be held to have infringed that person's rights; in such a case, the Law would not be protecting the concepts themselves but merely the arrangement of those concepts.

c. It should be stressed that Section 4 only relates to the rights under the Law. In countries which allow computer programs (or certain computer programs) to be directly or indirectly protected by patents, a computer program embodying a new and inventive concept may be patentable, and the concept thus protected.

Comments on Section 5

a. This Section defines the "rights under this Law," referred to in other provisions. The effect of those rights is to allow the proprietor to prevent certain acts committed in direct or indirect relation to the computer software actually owned by him. This is what is meant by "*the* computer software." The rights do not extend to computer software, however similar, having no connection with the proprietor's. The three categories of computer software defined in Section 1 are not accorded the same degree of protection: computer programs (Section 1(i)) are protected by Section 5(i) to (iv) and (vi) to (viii); program descriptions (Section 1(ii)) by Section 5(i) to (iii) and (v) to (viii); supporting material (Section 1(iii)) by Section 5(i) to (iii) and (vii) and (viii).

b. Although this is not expressly stated in Section 5, it is intended that the rights under the Law should cover not only the commission of the acts listed in items (i) to (viii), but also the causing or procurement of their commission; if this does not follow from the general principles of law of a country adopting the model provisions, it could be expressly stated in an additional provision.

c. *Items (i) and (ii)* relate to all three categories of computer software. They prevent the unauthorized disclosure or making available of computer software before it has becn made accessible to the public with the consent of the proprietor. They overlap to some extent; for example, a person who hands over software documentation to an unauthorized person would be infringing both items (i) and (ii). However, an employee, for instance, who orally discloses computer software owned by his employer would only be infringing item (i), and a person who hands over magnetic tape embodying a computer program might only be covered by item (ii).

d. Items (i) and (ii) are designed to protect undisclosed computer software; the protection they provide may already be available in a country adopting the model provisions, under its law on trade secrets, breach of confidence or data trespass. Provisions of this kind would be useful for countries whose laws do not provide sufficient protection against the acts covered; computer software is in particular need of such protection because of its vulnerability and the difficulty of detecting its use after misappropriation.

e. *Item (iii)* also relates to all three categories of computer software. In view of the descriptive and explanatory nature of many forms of computer software, the protection against copying that is provided by this provision may already be available under copyright law. The inclusion of item (iii) is, however, necessary since many countries would not consider software that is not in verbal form as "literary" or "scientific works" for the purposes of copyright law.

f. The word "copying" is reinforced by the phrase "by any means or in any form." It should thus be given a wide interpretation covering, for example, reproduction on magnetic tape, or altering the form of data and then reinstating it in its original form.

g. Whether the unauthorized copying of only part of computer software infringes item (iii) will have to be decided on the facts of each case, presumably on the same principles as those applied under the copyright law in the case of partial copying of protected works. It should be noted that no protection extends to parts of computer software that are not original (see comments on Section 3, point d) and that a part of a computer program may itself be protected as a complete computer program (see the comments on Section 1, point h).

h. *Item (iv)* covers a variety of acts in relation to a computer program only: in particular, its translation into another programming language; its adaptation in some other way, so as to correspond to the needs of the infringer, for example; its alteration not amounting to copying but resulting in a substantially similar computer program; and its transformation back into a program description or into a program, for the purposes of sale, for example. As stated earlier (in the comments on Section 2, point c), the generation of a new computer program may be an infringement of the rights in the parent program.

i. *Item (v)*, relating solely to program descriptions, also covers a variety of acts. Its main purpose is to prevent a person from developing another person's program description into a corresponding computer program or developing a computer program corresponding to a substantially similar program description. It seems only fair that the rights in a program description should extend to a computer program which can be developed from it in a relatively straightforward manner (see the comments on Section 1, points i and j). The Law, however, is very cautious in

according special protection to anything other than the end product of computer software, namely the computer program as defined in Section 1(i); an item of computer software may, for example, have played a decisive role in the creation of a computer program by another person, but if that software was not in sufficient detail to determine the set of instructions constituting the computer program, it cannot be protected as a program description within the meaning of Section 1(ii).

j. *Item (vi)* directly covers the use of a computer program in a computer; it thus grants an essential form of protection of computer programs, which is not, as such, provided by copyright law (although indirect protection under copyright law may be available in some countries since it would seem that, during the running of a computer program in the computer, each instruction will at some moment necessarily be copied). The rights under item (vi) extend not only to the proprietor's computer program, but also to computer programs produced by copying or use referred to in the three preceding items. A program description can thus be indirectly protected under item (vi).

k. *Item (vii)* covers commercial and similar acts performed in relation to any of the three categories of computer software. Under this provision, a proprietor who transfers computer software by, for example, programming the transferee's computer, still retains the right to prevent him from licensing others to use the software (see the comments on Section 2, point g). It should be noted that the acts include the exporting of computer software; this is important in the context of the establishment of computer networks covering different countries: for example, a computer program might be transmitted from a terminal in country A, which grants protection against use, and processed by a computer in country B, which grants no such protection. It is possible that the courts of country A might refuse protection under Section 5(vi), holding the use of the program to have taken place abroad; because of the word "exporting," protection would be available in country A under item (vii). Consideration could be given to including the "transmitting" of computer software among the acts in item (vii), but such inclusion might lead to unforeseen results; for instance, the telecommunications enterprises would have to be exempted from any liability. In this context, it is to be noted that patent and copyright protection normally do not cover the transportation or transmission of the protected matter.

l. *Item (viii)* is complementary to item (vii); it is included in order to make clear that the rights under the Law extend to acts committed in relation to items of computer hardware with software stored in them.

Comments on Section 6

a. This Section explains what is meant by infringement (referred to in Section 8) and specifies two situations which are not to be considered to involve infringement.

b. *Subsection (1):* Any act referred to in Section 5(i) to (viii) constitutes infringement unless it has been "authorized by the proprietor" of the computer software. Such authorization need not be given expressly. It will probably be implied, for example, that a person who receives computer software confidentially for the purposes of trial is authorized to disclose it to certain of his employees (but not to other employees) or that a person who purchases magnetic tape containing computer software is entitled to use it (but not to sell it). The extent of such implied authorization will depend upon the facts of each case and upon the practices in the trade.

c. *Subsection (2):* This provision has been included as a safeguard against any possible interpretation of the Law incompatible with the fundamental principle that the proprietor's rights do not extend to computer software created independently.

d. *Subsection (3):* This provision is based on the principles laid down in Article 5*ter* of the Paris Convention for the Protection of Industrial Property. The full application of the Law with respect to foreign aircraft, etc., temporarily or accidentally entering the country's territory might be harmful to international relations. The provision refers only to the presence and use of computer software; it does not prevent the proprietor from taking action against the unauthorized disclosure or sale, etc., of the computer software concerned.

Comments on Section 7

a. This Section on duration seeks to encourage proprietors of the rights in computer software to make the software accessible to the public by giving them a reasonable period during which they can rely on the protection of the Law. Once the rights have expired, everyone will be free to copy or use the computer software, subject to any continuing rights under other laws.

b. A problem that this Section seeks to overcome is how to find a point in time from which the period of duration can be calculated. The obvious reference point is the date when the rights begin, namely the date of the creation of the computer software (subsection (1)). But such a date is sometimes imprecise and often difficult to prove by third parties wishing to have some degree of certainty as to when the rights will expire.

c. The model provisions specify (subsection (2)(a)) two dates, the earlier of the two being used as the

normal reference point for the purpose of calculation—namely, the date of the first use in a computer of an operational computer program and the date of first commercialization (which is easier to establish). With regard to the latter date, the relevant provision (subsection (2)(a)(ii)) refers to the first sale, lease or license or first offer for those purposes; by this is meant the first sale, etc., of computer software that is already in existence; it can happen, for instance, that computer software is licensed before it is actually created; it is not intended that such a license should be taken into account in the calculation of the duration.

d. With regard to the length of the period, the model provisions propose a period which is a little longer than the term normally accorded to patents (which give more extensive protection, enforceable even against independently made inventions) but which is much shorter than the normal copyright period (in view of the essentially industrial nature of computer software). Consideration must also be given to the fact that computer software can have a very long life; computer programs which had formerly become obsolete as soon as a new generation of computer hardware was developed can now, by means of another program, be adapted for use in subsequent computers. Furthermore, it can take several years for computer software to become ready for commercialization, especially in foreign countries. The model provisions thus propose that the rights under the Law should begin at the time of creation of the computer software and end 20 years after the earlier of the dates specified in items (i) and (ii) of subsection (2)(a). However, in order that the expiration of the rights should not be unduly delayed (they would indeed be of indefinite duration if neither of the events referred to in subsection (2)(a) occurred), there is an absolute limit of 25 years (subsection (2)(b)).

e. Account has also been taken of the desirability that the rights in a particular item of computer software should expire at the same time in all the countries that may adopt the model provisions. The period of duration is thus counted from the first industrial or commercial use "in any country" (subsection (2)(a)(i) and (ii)) or from the date of creation (subsection (2)(b)).

Comments on Section 8

a. This Section on relief in the case of infringement has been worded in very general terms in view of the very different rules in the various countries that may adopt the model provisions. It will therefore probably be more useful as a guideline than as a model provision.

b. *Subsection (1):* One important situation where the grant of an injunction might be "unreasonable having regard to the circumstances of the case" is where a person in good faith purchases computer software from a person pretending to be the proprietor. The purchaser may have spent a large amount of money in adapting his enterprise to take account of the software. It might be desirable in such a case that the court should have power to grant a compulsory license to the purchaser if the proprietor were unwilling to grant a license himself. The situation of the innocent infringer is particularly difficult in the case of computer software, since there may be no means of checking ownership. Even a requirement that all software should be marked (see paragraph 11 of the Introduction) would be of little use since the false proprietor would be likely to have replaced the marking before the sale.

c. *Subsection (2):* The expression "such compensation as may be appropriate having regard to the circumstances of the case" could cover delivery-up of the profits made by the infringer if these were greater than the amount of damage sustained by the proprietor. It would also allow the court to take account of the innocence of infringement referred to above by, for example, merely ordering, if it is just for some payment to be made, that a reasonable royalty be paid for the use of the computer software.

Comments on Section 9

a. This Section is primarily designed as a reminder that the purpose of the model provisions, even if they are adopted in the form of a separate law, is to *complement* existing law on computer software. For example, a proprietor whose rights under the Law have expired under Section 7 may nevertheless, at least in respect of certain forms of computer software, be able to take action in reliance upon the copyright law of the country concerned unless computer software has been removed in its entirety from the copyright law when introducing the model provisions; similarly, a patentee of an invention involving computer software is not prevented by Section 6(2) from bringing an action under the country's patent law with respect to computer software created independently.

b. It should however be pointed out that, in some countries, in spite of Section 9, the proprietor might be required to elect one of the remedies available as the basis of legal proceedings. If Section 9 is adopted in its present form, care will have to be taken to ensure that the rights under the model provisions do in fact complement—and not conflict with—rights provided for under other laws; for instance, if the solution proposed in Section 2(1) were adopted and a different solution relating to works created by employees were provided for in the country's copyright law, an employer and his employee might each have the right to prevent the other from dealing with the same item of computer software.

Berne Union

Members of the International Union for the Protection of Literary and Artistic Works (Berne Union)

founded by the Berne Convention (1886), completed at Paris (1896), revised at Berlin (1908), completed at Berne (1914), revised at Rome (1928), Brussels (1948), Stockholm (1967) and Paris (1971)

as on January 1, 1978

State	Class	Date on which membership in the Union took effect	Latest Act by which the State is bound and date on which the ratification of or accession to such Act became effective
Argentina	IV	June 10, 1967	Brussels: June 10, 1967
Australia	III	**April 14, 1928** [1]	**Paris: March 1, 1978**
Austria	VI	October 1, 1920 . . Substance:	Brussels: October 14, 1953
		Administration:	Stockholm: August 18, 1973 [7]
Bahamas	VII	July 10, 1973 [1] . . Substance:	Brussels: July 10, 1973 [5]
		Administration:	**Paris: January 8, 1977** [6, 14]
Belgium	III	December 5, 1887 . . Substance:	Brussels: August 1, 1951
		Administration:	Stockholm: February 12, 1975 [7]
Benin	VI	**January 3, 1961** [1, 4]	**Paris: March 12, 1975**
Brazil	III	**February 9, 1922**	**Paris: April 20, 1975**
Bulgaria	VI	**December 5, 1921**	**Paris: December 4, 1974** [3, 6]
Cameroon	VI	**September 21, 1964** [1, 4] Substance:	**Paris: October 10, 1974**
		Administration:	**Paris: November 10, 1973**
Canada	II	*April 10, 1928* [1] . . Substance:	*Rome: August 1, 1931*
		Administration:	*Stockholm: July 7, 1970* [7]
Central African Empire	VII	**September 3, 1977** [1]	**Paris: September 3, 1977**
Chad	VII	November 25, 1971 [1] . Substance:	Brussels: November 25, 1971 [5, 10, 13]
		Administration:	Stockholm: November 25, 1971 [10]
Chile	VI	**June 5, 1970**	**Paris: July 10, 1975**
Congo	VII	**May 8, 1962** [1, 4]	**Paris: December 5, 1975**
Cyprus	VI	*February 24, 1964* [1, 4]	*Rome: February 24, 1964* [4, 8]
Czechoslovakia	IV	*February 22, 1921*	*Rome: November 30, 1936*
Denmark	IV	July 1, 1903 . . . Substance:	Brussels: February 19, 1962
		Administration:	Stockholm: May 4, 1970 [7]
Egypt	VII	**June 7, 1977**	**Paris: June 7, 1977** [6]
Fiji	VII	December 1, 1971 [1, 4] . Substance:	Brussels: December 1, 1971 [4, 5]
		Administration:	Stockholm: March 15, 1972 [7]
Finland	IV	April 1, 1928 . . . Substance:	Brussels: January 28, 1963
		Administration:	Stockholm: September 15, 1970 [7]
France	I	**December 5, 1887** . . Substance:	**Paris: October 10, 1974**
		Administration:	**Paris: December 15, 1972**
Gabon	VII	**March 26, 1962** [1]	**Paris: June 10, 1975**
German Democratic Republic	IV	**December 5, 1887** [9]	**Paris: February 18, 1978** [6]
Germany, Federal Republic of	I	**December 5, 1887** [9] . Substance:	**Paris: October 10, 1974** [2]
		Administration:	**Paris: January 22, 1974**
Greece	VI	**November 9, 1920**	**Paris: March 8, 1976**
Holy See	VI	**September 12, 1935**	**Paris: April 24, 1975**
Hungary	VI	**February 14, 1922** . . Substance:	**Paris: October 10, 1974**
		Administration:	**Paris: December 15, 1972** [6]
Iceland [11]	VI	*September 7, 1947*	*Rome: September 7, 1947*
India	IV	April 1, 1928 [1] . . . Substance:	Brussels: October 21, 1958
		Administration:	**Paris: January 10, 1975** [6, 14]
Ireland	IV	October 5, 1927 [1] . . Substance:	Brussels: July 5, 1959
		Administration:	Stockholm: December 21, 1970 [7]

State	Class	Date on which membership in the Union took effect	Latest Act by which the State is bound and date on which the ratification of or accession to such Act became effective
Israel	VI	March 24, 1950 [1] . . Substance:	Brussels: August 1, 1951
		Administration:	Stockholm: January 29 or February 26, 1970 [7, 15]
Italy	III	December 5, 1887	Brussels: July 12, 1953
Ivory Coast	VI	**January 1, 1962** [1] . . Substance:	**Paris: October 10, 1974**
		Administration:	**Paris: May 4, 1974**
Japan [11]	II	**July 15, 1899**	**Paris: April 24, 1975**
Lebanon	VI	*September 30, 1947* [1]	*Rome: September 30, 1947* [8]
Libyan Arab Jamahiriya	VI	**September 28, 1976**	**Paris: September 28, 1976** [6]
Liechtenstein	VII	July 30, 1931 . . . Substance:	Brussels: August 1, 1951
		Administration:	Stockholm: May 25, 1972 [7]
Luxembourg	VII	**June 20, 1888**	**Paris: April 20, 1975**
Madagascar	VI	January 1, 1966 [1]	Brussels: January 1, 1966 [5]
Mali	VII	**March 19, 1962** [1, 4]	**Paris: December 5, 1977**
Malta	VII	*September 21, 1964* [1] . Substance:	*Rome: September 21, 1964* [8]
		Administration:	**Paris: December 12, 1977** [6, 14]
Mauritania	VII	**February 6, 1973** [1]	**Paris: September 21, 1976**
Mexico	IV	**June 11, 1967**	**Paris: December 17, 1974** [17]
Monaco	VII	**May 30, 1889**	**Paris: November 23, 1974**
Morocco	VI	June 16, 1917 . . . Substance:	Brussels: May 22, 1952
		Administration:	Stockholm: August 6, 1971 [7]
Netherlands	III	November 1, 1912 . . Substance:	Brussels: January 7, 1973
		Administration:	**Paris: January 10, 1975** [14]
New Zealand	V	*April 24, 1928* [1]	*Rome: December 4, 1947*
Niger	VII	**May 2, 1962** [1, 4]	**Paris: May 21, 1975**
Norway	IV	April 13, 1896 . . . Substance:	Brussels: January 28, 1963 [2]
		Administration:	**Paris: June 13, 1974** [14]
Pakistan	VI	*July 5, 1948* [1] . . . Substance:	*Rome: July 5, 1948* [3, 8, 10]
		Administration:	*Stockholm: January 29 or February 26, 1970* [10, 15]
Philippines	VI	August 1, 1951	Brussels: August 1, 1951
Poland	V	*January 28, 1920*	*Rome: November 21, 1935*
Portugal	V	March 29, 1911	Brussels: August 1, 1951
Romania	V	*January 1, 1927* . . Substance:	*Rome: August 6, 1936* [10]
		Administration:	*Stockholm: January 29 or February 26, 1970* [6, 10, 15]
Senegal	VI	**August 25, 1962** [1]	**Paris: August 12, 1975** [3]
South Africa	IV	October 3, 1928 [1] . . Substance:	Brussels: August 1, 1951
		Administration:	**Paris: March 24, 1975** [6, 14]
Spain	II	**December 5, 1887** . . Substance:	**Paris: October 10, 1974**
		Administration:	**Paris: February 19, 1974**
Sri Lanka	VI	*July 20, 1959* [1, 4]	*Rome: July 20, 1959* [4, 8]
Surinam	VII	**February 23, 1977** [1]	**Paris: February 23, 1977** [17]
Sweden	III	**August 1, 1904** . . . Substance:	**Paris: October 10, 1974** [3]
		Administration:	**Paris: September 20, 1973**
Switzerland	III	December 5, 1887 . . Substance:	Brussels: January 2, 1956
		Administration:	Stockholm: May 4, 1970 [7]
Thailand [12]	VI	July 17, 1931	Berlin: July 17, 1931
Togo	VII	**April 30, 1975** [1]	**Paris: April 30, 1975**
Tunisia	VI	**December 5, 1887**	**Paris: August 16, 1975** [6, 17]
Turkey [11]	VI	January 1, 1952	Brussels: January 1, 1952
United Kingdom	I	December 5, 1887 . . Substance:	Brussels: December 15, 1957 [2]
		Administration:	Stockholm: January 29 or February 26, 1970 [7, 15]
Upper Volta	VII	**August 19, 1963** [1, 16]	**Paris: January 24, 1976**
Uruguay	VI	July 10, 1967	Brussels: July 10, 1967
Yugoslavia [11]	IV	**June 17, 1930**	**Paris: September 2, 1975**
Zaire	VI	**October 8, 1963** [1, 4]	**Paris: January 31, 1975**

(Total: 70 States)

[1] The Convention had also been applied, by virtue of the provisions concerning dependent territories, to the territories of the States listed hereafter before their accession to independence as from the following dates: December 5, 1887 (Australia, Bahamas, Benin, Cameroon, Canada, Central African Empire, Chad, Congo, Fiji, Gabon, India, Ireland, Ivory Coast, Madagascar, Mali, Malta, Mauritania, New Zealand, Niger, Pakistan, Senegal, South Africa, Upper Volta); April 1, 1913 (Surinam); March 21, 1924 (Israel); August 1, 1924 (Lebanon); October 1, 1931 (Cyprus, Sri Lanka); December 20, 1948 (Zaire); May 22, 1952 (Togo).

[2] This country has declared that it admits the application of the Appendix to the Paris Act to works of which it is the country of origin by countries which have made a declaration under Article VI(1)(i) of the Appendix or a notification under Article I of the Appendix. The declarations took effect on October 18, 1973, for Germany (Federal Republic of), on March 8, 1974, for Norway, and on September 27, 1971, for the United Kingdom.

[3] This country has made a declaration under Article 5(1) of the Protocol Regarding Developing Countries of the Stockholm Act. The text of that paragraph reads as follows:

"(1) Any country of the Union may declare, as from the signature of this Convention, and at any time before becoming bound by Articles 1 to 21 of this Convention and by this Protocol,

(a) in the case of a country referred to in Article 1 of this Protocol, that it intends to apply the provisions of this Protocol to works whose country of origin is a country of the Union which admits the application of the reservations under the Protocol, or

(b) that it admits the application of the provisions of the Protocol to works of which it is the country of origin by countries which, on becoming bound by Articles 1 to 21 of this Convention and by this Protocol, or on making a declaration of application of this Protocol by virtue of the provision of sub-paragraph *(a)*, have made reservations permitted under this Protocol."

The declaration became effective on the day of its deposit, namely: on November 14, 1967, for Senegal (sub-paragraph *(a)*); on January 11, 1968, for Bulgaria (sub-paragraph *(b)*); on August 12, 1969, for Sweden (sub-paragraph *(b)*); on November 26, 1969, for Pakistan (sub-paragraph *(a)*).

[4] Date on which the declaration of continued adherence was sent, after the accession of the country to independence.

[5] The Brussels Act had also been applied, by virtue of its Article 26, to the territories of the following States before their accession to independence as from the dates indicated: Bahamas (August 19, 1963); Chad (May 22, 1952); Fiji (March 6, 1962); Madagascar (May 22, 1952).

[6] Accession or ratification with the declaration provided for in Article 33(2).

[7] In ratifying (or acceding to) the Stockholm Act, this country made a declaration to the effect that its ratification (or accession) did not apply to Articles 1 to 21 and to the Protocol Regarding Developing Countries (see Article 28(1)*(b)*(i) of the Stockholm Act). Accordingly, this country is bound by the said Act only as far as the administrative provisions (Articles 22 to 26) and the final clauses (Articles 27 to 38) are concerned.

[8] The Rome Act had also been applied, by virtue of its Article 26, to the territories of the following States before their accession to independence as from the dates indicated: Cyprus (October 1, 1931); Lebanon (December 24, 1933); Malta (October 1, 1931); Pakistan (August 1, 1931); Sri Lanka (October 1, 1931).

[9] Date on which the accession by the German Empire became effective.

[10] This country deposited its instrument of ratification of (or of accession to) the Stockholm Act in its entirety; however, Articles 1 to 21 (substantive clauses) of the said Act have not entered into force.

[11] Accession or ratification subject to the reservation concerning the right of translation (for Japan, until December 31, 1980).

[12] Accession subject to reservations concerning works of applied art, conditions and formalities required for protection, the right of translation, the right of reproduction of articles published in newspapers or periodicals, the right of performance, and the application of the Convention to works not yet in the public domain at the date of its coming into force.

[13] In accordance with the provisions of Article 29 of the Stockholm Act applicable to the countries outside the Union which accede to the said Act, this country is bound by Articles 1 to 20 of the Brussels Act.

[14] In ratifying (or acceding to) the Paris Act, this country made a declaration to the effect that its ratification (or accession) did not apply to Articles 1 to 21 and to the Appendix (see Article 28(1)*(b)* of the Paris Act). Accordingly, this country is bound by the said Act only as far as the administrative provisions (Articles 22 to 26) and the final clauses (Articles 27 to 38) are concerned.

[15] These are the alternative dates of entry into force which the Director General of WIPO communicated to the States concerned.

[16] Upper Volta, which had acceded to the Berne Convention (Brussels Act) as from August 19, 1963, denounced the said Convention as from September 20, 1970. Later on, Upper Volta acceded again to the Berne Convention (Paris Act); this accession took effect on January 24, 1976.

[17] Pursuant to Article I of the Appendix to the Paris Act, this country availed itself of the faculties provided for in Articles II and III of the said Appendix.

Explanation of type: *Italics:* States bound by the Rome Act (1928). Roman type: States bound by the Brussels Act (1948). **Heavy type**: States bound by the Paris Act (1971). Thailand: State bound by the Berlin Act (1908).

Membership of the Governing Bodies of the Berne Union

On January 1, 1978, the membership of the Governing Bodies of the Berne Union was as follows:

Assembly: Australia, Austria, Bahamas, Belgium, Benin, Brazil, Bulgaria, Cameroon, Canada, Central African Empire, Chad, Chile, Congo, Denmark, Egypt, Fiji, Finland, France, Gabon, German Democratic Republic, Germany (Federal Republic of), Greece, Holy See, Hungary, India, Ireland, Israel, Ivory Coast, Japan, Libyan Arab Jamahiriya, Liechtenstein, Luxembourg, Mali, Malta, Mauritania, Mexico, Monaco, Morocco, Netherlands, Niger, Norway, Pakistan, Romania, Senegal, South Africa,* Spain, Surinam, Sweden, Switzerland, Togo, Tunisia, United Kingdom, Upper Volta, Yugoslavia, Zaire (55).

Conference of Representatives: Argentina, Cyprus, Czechoslovakia, Iceland, Italy, Lebanon, Madagascar, New Zealand, Philippines, Poland, Portugal, Sri Lanka, Thailand, Turkey, Uruguay (15).

Executive Committee: Argentina, Australia, Austria, Belgium, Bulgaria, Canada, Hungary, India, Italy, Ivory Coast, Mexico, Morocco, Poland, Spain, Sri Lanka, Switzerland, Tunisia (17).

* According to a decision of the WIPO Coordination Committee, not to be invited "to any meeting of WIPO and its Bodies and Unions" (see *Copyright*, 1977, p. 296).

Conventions Administered by WIPO

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

(Rome, October 26, 1961)

State of Ratifications or Accessions as on January 1, 1978

Contracting State	Entry into force	Contracting State	Entry into force
Austria *	June 9, 1973	Germany, Federal Republic of *	October 21, 1966
Brazil	September 29, 1965	Guatemala	January 14, 1977
Chile	September 5, 1974	Italy *	April 8, 1975
Colombia	September 17, 1976	Luxembourg *	February 25, 1976
Congo *	May 18, 1964	Mexico	May 18, 1964
Costa Rica	September 9, 1971	Niger *	May 18, 1964
Czechoslovakia *	August 14, 1964	Paraguay	February 26, 1970
Denmark *	September 23, 1965	Sweden *	May 18, 1964
Ecuador	May 18, 1964	United Kingdom *	May 18, 1964
Fiji *	April 11, 1972	Uruguay	July 4, 1977

(Total: 20 States)

Note: The secretarial tasks relating to this Convention are performed jointly with the International Labour Office and Unesco.

* The instruments of ratification or accession deposited with the Secretary-General of the United Nations contain declarations made under the Articles mentioned hereafter: for Austria, Article 16(1)*(a)*(iii) and (iv) and (1)*(b)* [*Copyright*, 1973, p. 67]; for Congo, Articles 5(3) (concerning Article 5(1)*(c)*) and 16(1)*(a)*(i) [*Le Droit d'Auteur (Copyright)*, 1964, p. 127]; for Czechoslovakia, Article 16(1)*(a)*(iii) and (iv) [*ibid.*, 1964, p. 110]; for Denmark, Articles 6(2), 16(1)*(a)*(ii) and (iv) and 17 [*Copyright*, 1965, p. 214]; for Fiji, Articles 5(3) (concerning Article 5(1)*(b)*), 6(2) and 16(1)*(a)*(i) [*ibid.*, 1972, pp. 88 and 178]; for Germany (Federal Republic of), Articles 5(3) (concerning Article 5(1)*(b)*) and 16(1)*(a)*(iv) [*ibid.*, 1966, p. 237]; for Italy, Articles 6(2), 16(1)*(a)*(ii), (iii) and (iv), 16(1)*(b)* and 17 [*ibid.*, 1975, p. 44]; for Luxembourg, Articles 5(3) (concerning Article 5(1)*(c)*), 16(1)*(a)*(i) and 16(1)*(b)* [*ibid.*, 1976, p. 24]; for Niger, Articles 5(3) (concerning Article 5(1)*(c)*) and 16(1)*(a)*(i) [*Le Droit d'Auteur (Copyright)*, 1963, p. 155]; for Sweden, Articles 6(2), 16(1)*(a)*(ii) and (iv), 16(1)*(b)* and 17 [*ibid.*, 1962, p. 138]; for the United Kingdom, Articles 5(3) (concerning Article 5(1)*(b)*), 6(2) and 16(1)*(a)*(ii), (iii) and (iv) [*ibid.*, 1963, p. 244]; the same declarations were made for Gibraltar and Bermuda [*Copyright*, 1967, p. 36, and 1970, p. 108].

Membership of the Intergovernmental Committee

On January 1, 1978, the membership of the Intergovernmental Committee established under Article 32 of the Rome Convention was as follows: Austria, Brazil, Colombia, Czechoslovakia, Denmark, Ecuador, Fiji, Mexico, Niger, Paraguay, Sweden, United Kingdom (12).

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

(Geneva, October 29, 1971)

State of Ratifications or Accessions as on January 1, 1978

Contracting State	Entry into force	Contracting State	Entry into force
Argentina	June 30, 1973	India	February 12, 1975
Australia	June 22, 1974	Italy *	March 24, 1977
Brazil	November 28, 1975	Kenya	April 21, 1976
Chile	March 24, 1977	Luxembourg	March 8, 1976
Denmark	March 24, 1977	Mexico	December 21, 1973
Ecuador	September 14, 1974	Monaco	December 2, 1974
Fiji	April 18, 1973	New Zealand	August 13, 1976
Finland *	April 18, 1973	Panama	June 29, 1974
France	April 18, 1973	Spain	August 24, 1974
Germany, Federal Republic of	May 18, 1974	Sweden *	April 18, 1973
Guatemala	February 1, 1977	United Kingdom	April 18, 1973
Holy See	July 18, 1977	United States of America	March 10, 1974
Hungary	May 28, 1975	Zaire	November 29, 1977

(Total: 26 States)

* This country has declared, in accordance with Article 7(4) of the Convention, that it will apply the criterion according to which it affords protection to producers of phonograms solely on the basis of the place of first fixation instead of the criterion of the nationality of the producer (*Copyright*, 1973, pp. 25 and 35, and 1977, p. 45).

Convention Relating to the Distribution of Programme-Carrying Signals Transmitted by Satellite *

(Brussels, May 21, 1974)

Signatory States

Argentina
Austria
Belgium
Brazil
Cyprus
France
Germany (Federal Republic of)
Israel
Italy
Ivory Coast
Kenya
Lebanon
Mexico
Morocco
Senegal
Spain
Switzerland
United States of America
Yugoslavia

(Total: 19 States)

State of Ratifications or Accessions as on January 1, 1978

Kenya
Mexico
Nicaragua
Yugoslavia

(Total: 4 States)

* The Convention has not yet entered into force.

General Studies

The Three Subjects Protected by the Rome Convention

Victor BLANCO LABRA *

Conventions Not Administered by WIPO

Universal Copyright Convention

State of Ratifications or Accessions as on January 1, 1978 *

Contracting State	Entry into force	
	Text of 1952	Text of 1971
Algeria	August 28, 1973	July 10, 1974
Andorra	September 16, 1955	
Argentina	February 13, 1958	
Australia	May 1, 1969	February 28, 1978
Austria	July 2, 1957	
Bahamas [1]	December 27, 1976	December 27, 1976
Bangladesh	August 5, 1975	August 5, 1975
Belgium	August 31, 1960	
Brazil	January 13, 1960	December 11, 1975
Bulgaria	June 7, 1975	June 7, 1975
Cameroon	May 1, 1973	July 10, 1974
Canada	August 10, 1962	
Chile	September 16, 1955	
Colombia	June 18, 1976	June 18, 1976
Costa Rica	September 16, 1955	
Cuba	June 18, 1957	
Czechoslovakia	January 6, 1960	
Democratic Kampuchea	September 16, 1955	
Denmark	February 9, 1962	
Ecuador	June 5, 1957	
Fiji [2]	October 10, 1970	
Finland	April 16, 1963	
France	January 14, 1956	July 10, 1974
German Democratic Republic	October 5, 1973	
Germany, Federal Republic of	September 16, 1955	July 10, 1974
Ghana	August 22, 1962	
Greece	August 24, 1963	
Guatemala	October 28, 1964	
Haiti	September 16, 1955	
Holy See	October 5, 1955	
Hungary	January 23, 1971	July 10, 1974
Iceland	December 18, 1956	
India	January 21, 1958	
Ireland	January 20, 1959	
Israel	September 16, 1955	
Italy	January 24, 1957	
Japan	April 28, 1956	October 21, 1977
Kenya	September 7, 1966	July 10, 1974
Laos	September 16, 1955	
Lebanon	October 17, 1959	
Liberia	July 27, 1956	
Liechtenstein	January 22, 1959	
Luxembourg	October 15, 1955	
Malawi	October 26, 1965	
Malta	November 19, 1968	
Mauritius [3]	March 12, 1968	
Mexico	May 12, 1957	October 31, 1975
Monaco	September 16, 1955	December 13, 1974
Morocco	May 8, 1972	January 28, 1976
Netherlands	June 22, 1967	
New Zealand	September 11, 1964	
Nicaragua	August 16, 1961	
Nigeria	February 14, 1962	
Norway	January 23, 1963	August 7, 1974
Pakistan	September 16, 1955	
Panama	October 17, 1962	
Paraguay	March 11, 1962	
Peru	October 16, 1963	
Philippines	November 19, 1955	
Poland	March 9, 1977	March 9, 1977
Portugal	December 25, 1956	
Senegal	July 9, 1974	July 10, 1974
Soviet Union	May 27, 1973	
Spain	September 16, 1955	July 10, 1974
Sweden	July 1, 1961	July 10, 1974
Switzerland	March 30, 1956	
Tunisia	June 19, 1969	June 10, 1975
United Kingdom	September 27, 1957	July 10, 1974
United States of America	September 16, 1955	July 10, 1974
Venezuela	September 30, 1966	
Yugoslavia	May 11, 1966	July 10, 1974
Zambia	June 1, 1965	

* According to the information received by the International Bureau.

[1] In accordance with the provisions of Article XIII, the Universal Convention was already applicable, as from July 26, 1963, to the territory of this State before its independence.

[2] In accordance with the provisions of Article XIII, the Universal Convention was already applicable, as from March 1, 1962, to the territory of this State before its independence.

[3] In accordance with the provisions of Article XIII, the Universal Convention was already applicable, as from January 6, 1965, to the territory of this State before its independence.

Editor's Note: The three Protocols annexed to the Convention were ratified, accepted or acceded to separately; they concern: (1) the application of the Convention to the works of stateless persons and refugees, (2) the application of the Convention to the works of certain international organizations, and (3) the effective date of instruments of ratification or acceptance of or accession to the Convention. For detailed information in this respect, and as to notifications made by governments of certain Contracting States concerning the territorial application of the Convention and the Protocols, see the *Copyright Bulletin*, quarterly review published by Unesco.

European Agreements

State of Ratifications or Accessions as on January 1, 1978 [1]

European Agreement concerning Programme Exchanges by means of Television Films

(Paris, December 15, 1958)

Contracting State	Entry into force
Belgium	April 8, 1962
Cyprus	February 20, 1970
Denmark	November 25, 1961
France	July 1, 1961
Greece	February 9, 1962
Ireland	April 4, 1965
Luxembourg	October 31, 1963
Netherlands	March 5, 1967
Norway	March 15, 1963
Spain	January 4, 1974
Sweden	July 1, 1961
Tunisia	February 22, 1969
Turkey	March 28, 1964
United Kingdom	July 1, 1961

European Agreement for the Prevention of Broadcasts transmitted from Stations outside National Territories

(Strasbourg, January 22, 1965)

Contracting State	Entry into force
Belgium	October 19, 1967
Cyprus	October 1, 1971
Denmark	October 19, 1967
France	April 6, 1968
Germany, Federal Republic of	March 1, 1970
Ireland	February 23, 1969
Liechtenstein	February 13, 1977
Netherlands	September 27, 1974
Norway	October 16, 1971
Portugal	September 6, 1969
Sweden	October 19, 1967
United Kingdom	December 2, 1967
Switzerland	September 18, 1976

European Agreement on the Protection of Television Broadcasts

Agreement

(Strasbourg, June 22, 1960)

Contracting State	Entry into force
Belgium *	March 8, 1968
Cyprus	February 22, 1970
Denmark *	November 27, 1961
France	July 1, 1961
Germany, Federal Republic of *	October 9, 1967
Norway *	August 10, 1968
Spain	October 23, 1971
Sweden **	July 1, 1961
United Kingdom *	July 1, 1961

Protocol

(Strasbourg, January 22, 1965)

Contracting State	Entry into force
Belgium	March 8, 1968
Cyprus	February 22, 1970
Denmark	March 24, 1965
France	March 24, 1965
Germany, Federal Republic of	October 9, 1967
Norway	August 10, 1968
Spain	October 23, 1971
Sweden	March 24, 1965
United Kingdom	March 24, 1965

* The instruments of ratification were accompanied by reservations in accordance with Article 3, paragraph 1, of the Agreement. As to Belgium, see *Copyright*, 1968, p. 147; as to Denmark, see *Le Droit d'Auteur*, 1961, p. 360; as to Germany (Federal Republic of), see *Copyright*, 1967, p. 217; as to Norway, see *ibid.*, 1968, p. 191; as to the United Kingdom, see *ibid.*, 1961, p. 152.

** Sweden availed itself of the reservations contained in subparagraphs *(b)*, *(c)* and *(f)* of paragraph 1 of Article 3 of the Agreement.

Additional Protocol

(Strasbourg, January 14, 1974)

The Additional Protocol entered into force on December 31, 1974, with respect to all States party to the European Agreement on the Protection of Television Broadcasts and the Protocol to the said Agreement.

[1] According to the information received by the International Bureau.

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[1] See *Copyright*, 1973, p. 193.

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Calendar

WIPO Meetings

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

1978

February 6 to 10 (Geneva) — Patent Cooperation Treaty (PCT) — Preparatory Committee

February 21 to 24 (Geneva) — Trademark Registration Treaty (TRT) — Interim Committee

February 27 to March 7 (Geneva) — Diplomatic Conference for the Adoption of a Treaty Instituting an International Recording System of Scientific Discoveries

February 27 to March 13 (10) (Vienna) — International Patent Classification (IPC) — Working Group I

March 6 to 10 (Geneva) — Nice Union — Temporary Working Group on the Alphabetical List of Goods and Services

March 6 to 10 (Geneva) — Development Cooperation (Industrial Property) — Working Group on Technological Information derived from Patent Documentation

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

March 14 to 17 (13 to 16) (Vienna) — International Patent Classification (IPC) — Ad Hoc Working Group on the Revision of the Guide

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

April 3 to 7 (Geneva) — Patent Cooperation Treaty (PCT) — Preparatory Committee

April 3 to 7 (Geneva) — Satellites Convention — Working Group on Model Provisions for the Implementation of the Convention (convened jointly with Unesco)

April 3 to 17 (14) (London) — International Patent Classification (IPC) — Working Group II

April 10 to 14 (Geneva) — Patent Cooperation Treaty (PCT) — Assembly

April 10 to 14 (Geneva) — ICIREPAT — Technical Committee for Standardization (TCST)

April 17 to 21 (Geneva) — ICIREPAT — Technical Committee for Search Systems (TCSS)

April 17 to 24 (21) (Rijswijk) — International Patent Classification (IPC) — Working Group III

April 24 to 28 (Geneva) — International Patent Classification (IPC) — Working Group V

April 25 to 28 (Geneva) — Budapest Union (Microorganisms) — Interim Committee

May 3 to 5 (Geneva) — WIPO — Budget Committee

May 7 to 10 (Cairo) — Development Cooperation (Industrial Property) — Meeting of Arab States on Tecbnical Information

May 22 to 26 (Geneva) — Locarno Union — Committee of Experts

May 22 to 26 (Geneva) — Development Cooperation (Industrial Property) — Working Group on the Model Law for Developing Countries on Inventions and Know-How

June 5 to 7 (Geneva) — Berne Union — Group of Consultants on New Copyrigbt Laws

June 5 to 9 (Geneva) — Patent Cooperation Treaty (PCT) — Working Group

June 12 to 16 (Geneva) — Development Cooperation (Industrial Property) — Working Group on the Model Law for Developing Countries on Marks and Trade Names

June 19 to 30 (Paris) — Berne Union — Committee of Governmental Experts on Double Taxation of Copyright Royalties (convened jointly with Unesco)

June 19 to 23 (Geneva) — Revision of the Paris Convention — Working Group on Questions of Special Interest to Developing Countries

June 19 to 23 (Geneva) — Revision of the Paris Convention — Working Group on Inventors' Certificates

June 26 to 30 (Geneva) — Revision of the Paris Convention — Preparatory Intergovernmental Committee

June 26 to July 7 (Tokyo) — International Patent Classification (IPC) — Steering Committee

July 3 to 6 (Geneva) — Paris Union — Working Group on Industrial Property Aspects of Consumer Protection

July 3 to 11 (Geneva) — Berne Union, Universal Convention and Rome Convention — Subcommittees of the Intergovernmental Committees on Cable Television (convened jointly with ILO and Unesco)

July 19 to 21 (Geneva) — Development Cooperation (Industrial Property) — Working Group on Promotion of Domestic Inventive and Innovative Capacity

September 4 to 8 (Geneva) — International Patent Classification (IPC) — Committee of Experts

September 13 to 15 (Geneva) — Patent Cooperation Treaty (PCT) — Working Group

September 13 to 22 (Paris) — Berne Union, Universal Convention and Rome Convention — Subcommittees of the Intergovernmental Committees on Videocassettes (convened jointly with ILO and Unesco)

September 18 and 19 (Geneva) — ICIREPAT — Plenary Committee

September 19 to 22 (Geneva) — Permanent Committee on Patent Information (PCPI) and PCT Committee for Tecbnical Cooperation

September 25 to October 3 (Geneva) — Governing Bodies (WIPO Coordination Committee and Executive Committees of tbe Paris and Berne Unions)

September 27 to 29 (Geneva) — International Patent Classification (IPC) — Ad Hoc Working Group on tbe Revision of the Guide

October 2 to 6 (Geneva) — International Patent Classification (IPC) — Working Group I

October 16 to 20 (Geneva) — ICIREPAT — Tecbnical Committee for Searcb Systems (TCSS)

October 23 to 27 (Hull, Canada) — ICIREPAT — Tecbnical Committee for Standardization (TCST)

October 23 to 27 (Geneva) — Nice Union — Preparatory Working Group on International Classification

October 23 to 27 (Geneva) — International Patent Classification (IPC) — Working Group IV

November 13 to 17 (Geneva) — International Patent Classification (IPC) — Working Group II

November 27 to December 1 (Geneva) — Development Cooperation (Industrial Property) — Working Group on the Model Law for Developing Countries on Marks and Trade Names

December 4 to 8 (Geneva) — Paris and Madrid Unions — Committee of Experts on the Use of Computers in Trademark Operations

December 4 to 8 (Geneva) — International Patent Classification (IPC) — Working Group III

December 4 to 8 (Paris) — Berne Union and Universal Convention — Working Group on questions concerning access to protected works for developing countries, including the implementation of the 1971 revised texts of the Berne Convention and of tbe Universal Convention (tentative title) (convened jointly with Unesco)

December 18 to 22 (?) (New Delbi) — Development Cooperation (Copyright) — Copyrigbt Seminar (convened jointly with Unesco)

1979

January 8 to 12 (?) (Geneva) — International Patent Classification (IPC) — Committee of Experts

September 24 to October 2 (Geneva) — Governing Bodies (WIPO General Assembly, Conference and Coordination Committee; Assemblies of tbe Paris, Madrid, Hague, Nice, Lisbon, Locarno, IPC, PCT and Berne Unions; Conferences of Representatives of the Paris, Hague, Nice and Berne Unions; Executive Committees of tbe Paris and Berne Unions; Committee of Directors of tbe Madrid Union; Council of the Lisbon Union)

UPOV Meetings

1978

Jannary or February (3 days) (Geneva) — Administrative and Legal Committee

April 17 to 19 (Geneva) — Administrative and Legal Committee and/or Technical Committee

April 20 and 21 (Geneva) — Consultative Committee

May 23 to 25 (Zurich-Reckenholz) — Technical Working Party for Agricultural Crops

June 6 to 8 (Hanover) — Technical Working Party for Vegetables

June 20 to 22 (Paris) — Technical Working Party for Ornamental Plants

September 5 to 7 (Florence) — Technical Working Party for Fruit Crops

September 11 to 15 (Geneva) — Ad Hoc Committee on the Revision of the UPOV Convention

September 19 to 21 (Melle, Belginm) — Technical Working Party for Forest Trees

October 9 to 23 (Geneva) — Diplomatic Conference on the Revision of the UPOV Convention

November 13 to 15 (Geneva) — Technical Committee

November 15 to 17 (Geneva) — Administrative and Legal Committee

December 5 and 8 (Geneva) — Consultative Committee

December 6 to 8 (Geneva) — Council

Other Meetings in the Field of Copyright and/or Neighboring Rights

1978

Intergovernmental Organizations

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

Non-Governmental Organizations

International Confederation of Societies of Anthors and Composers (CISAC)
Congress — Septembre 25 to 29 (Toronto and Montreal)

International Copyright Society (INTERGU)
Congress — May 16 to 19 (Athens)

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

International Writers Guild (IWG)
Congress — October 10 to 13 (Mannheim)

Union of National Radio and Television Organizations of Africa (URTNA)
General Assembly — February 2 to 4 (Lomé)