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## Berne Union

### Subcommittees of the Executive Committee of the Berne Union and of the Intergovernmental Copyright Committee on Television by Cable

(Geneva, July 3, 4 and 7, 1978)

#### Report

submitted by the Secretariats and adopted by the Subcommittees

#### I. Introduction and Participation

1. The Subcommittee of the Executive Committee of the International Union for the Protection of Literary and Artistic Works (Berne Union) and the Subcommittee of the Intergovernmental Copyright Committee of the Universal Copyright Convention on the copyright problems raised by the transmission of television programmes by cable (hereinafter referred to as "the Subcommittees") met at Geneva from July 3 to 7, 1978.

2. The meetings of the Subcommittees were convened pursuant to the decisions taken by the Executive Committee of the Berne Union and the Intergovernmental Copyright Committee, at their sessions held in Paris in November/December 1977, in order to look into solutions which might be offered to national legislators on the basis of legislative solutions adopted or planned in different countries, as well as current practice in respect of contractual relationships between the different interests concerned.

3. Eight States members of the Executive Committee of the Berne Union (Austria, Belgium, Canada, India, Ivory Coast, Mexico, Spain, Switzerland) and eight States members of the Intergovernmental Copyright Committee (France, Germany (Federal Republic of), India, Japan, Mexico, Netherlands, United Kingdom, United States of America) were represented at the meetings. One State member of the Intergovernmental Committee of the Rome Convention (Denmark) was represented by an observer.

4. Three intergovernmental organizations (International Labour Organisation (ILO), Arab Educational, Cultural and Scientific Organization (ALECSO), Council of Europe) and 15 international non-governmental organizations (European Broadcasting Union (EBU), International Alliance for Diffusion by Wire (AID), International Bureau of Societies Administering the Rights of Mechanical Recording and Repro-

duction (BIEM), International Confederation of Professional and Intellectual Workers (CITI), International Confederation of Societies of Authors and Composers (CISAC), International Copyright Society (INTERGU), International Federation of Actors (FIA), International Federation of Associations of Film Distributors (FIAD), International Federation of Film Producers Associations (FIAPF), International Federation of Musicians (FIM), International Federation of Producers of Phonograms and Videograms (IFPI), International Literary and Artistic Association (ALAI), International Music Council (IMC), International Union of Cinematograph Exhibitors (UIEC), International Writers Guild (IWG)) were represented by observers.

5. The list of participants is annexed to this report.

#### II. Opening of the Meeting

6. The meeting was opened by Dr. Arpad Bogsch, Director General of WIPO, who extended a warm welcome to the delegates and observers. The representative of the Director-General of Unesco, speaking on behalf of the Director-General of Unesco, also welcomed the participants at the meeting.

#### III. Election of Officers

7. On a proposal by the delegation of Switzerland, supported by the delegations of the Federal Republic of Germany and the United Kingdom, Mr. André Kerever, Head of the delegation of France, was elected Chairman, and Ms. Barbara Ringer, Head of the delegation of the United States of America, was elected Vice-Chairman by acclamation.

#### IV. Adoption of the Agenda

8. The Subcommittees adopted their agendas as contained in document B/EC/SC.1/CTV/1-IGC/SC.1/CTV/1.

## V. Introduction of Documentation

9. The Secretariats recalled that, since the 1975 sessions of the Executive Committee of the Berne Union and the Intergovernmental Copyright Committee of the Universal Copyright Convention, States and Organizations had both been consulted in connection with their experience concerning problems related to distribution of television programmes by cable. The Secretariats had, with the help of consultants, prepared a report which was examined by the Working Group on the Problems in the Field of Copyright and Neighbouring Rights Raised by the Distribution of Television Programmes by Cable (hereinafter referred to as "the 1977 Working Group"), which had met in Paris (June 13 to 17, 1977). Thereafter the report of the 1977 Working Group was presented to the Executive Committee of the Berne Union and the Intergovernmental Copyright Committee at their sessions held in November/December 1977. These Committees decided to constitute Subcommittees and, in order to prepare the documentation for the present meetings, the Secretariats had invited comments from States and Organizations on the basis of the report of the 1977 Working Group. These comments, as also an analysis thereof by Mr. M. Walter, Lawyer in Vienna, in his capacity of consultant to the Secretariats, had already been circulated together with some personal reflections submitted by him, to the delegates attending the present meetings for their consideration.

## VI. General Debate

10. The Subcommittees first held a general discussion on the basis of replies received from States and Organizations to stress the points they considered important. The Subcommittees generally endorsed the final conclusions of the 1977 Working Group, namely, that a study of the legal problems raised by cable distribution had revealed the necessity and usefulness of identifying the problems which should, if appropriate, be taken into account by legislators at the national level. The Chairman felt that a catalogue of points should be prepared to indicate where the Conventions would apply and where national laws should be relied upon.

11. The delegation of the Federal Republic of Germany felt that the debate should be structured on legal study of the Conventions and the manner in which rights could be administered if the examination indicated that there were rights. It referred to the notion of *programme propre*, which had raised some difficulties, and suggested separate consideration of the different possible cases, namely, original or first transmission of a programme by the cable system and, secondly, the retransmission of captured programmes already broadcast earlier, and in the latter case consideration of: (i) non-simultaneous transmis-

sion, and (ii) simultaneous transmissions of certain programme-units of one broadcaster or of his whole programmes. Furthermore, one had to consider variations of the programme, for instance, shortening of the programme advertisements, etc.

12. The delegation of the United States of America felt that the case of simultaneous retransmissions was not only the more difficult but also the more complex of the two, and that it gave rise to situations that were difficult to anticipate in an abstract manner. It therefore suggested that the Subcommittees might consider setting up a smaller group to identify certain problems and discuss them in depth before presenting them to the plenary for consideration.

13. The Chairman, referring to the remark of the delegation of the Federal Republic of Germany, pointed out that, in paragraphs 8 and 9 of the report of the 1977 Working Group, the definition of the cable distributor's "own programmes" was broad and perhaps would call for discussion and clarity.

## VII. Inventory of Problems to be Considered by National Legislations

14. At the end of the general debate, the Chairman, summarizing the interventions as a whole, observed that the Subcommittees confirmed the conclusions reached by the 1977 Working Group, namely, that the solution of the problems at issue did not call for revision of either the Berne Convention or the Universal Copyright Convention, since the provisions written into those instruments covered the various situations that could arise in the field concerned. Moreover, in view of the latitude left to national legislations by those provisions and the fact that every country had its own special legal concepts, it did not seem possible for a uniform solution to be worked out and proposed to legislators as a model. Under those circumstances, the Subcommittees considered that their role consisted in drawing up a list of the problems raised by cable distribution and that each State would have to settle those problems by legal provisions or judicial decisions. In doing so, the Subcommittees considered it useful to study in greater depth the considerations presented by the 1977 Working Group, and draw up a list of typical concrete situations with their legal implications.

15. To that end, the Subcommittees set up a Working Group consisting of the delegations of the following States: Austria, Canada, Germany (Federal Republic of), Netherlands, United Kingdom, United States of America; the Chairman of the Subcommittees was also a member *ex officio*. It was understood that the delegations of the other participating States and the representatives of intergovernmental and international non-governmental organizations might attend the meetings of the Working Group in an ob-

server capacity, in order that the members of the Group might consult them if necessary. The discussions of the Working Group were presided over by the Chairman of the Subcommittees.

16. The Working Group based its discussions on document B/EC/SC.1/CTV/5-IGC/SC.1/CTV/5, which had been submitted by the delegation of the Federal Republic of Germany and contained a list of possible situations. The list makes a distinction between two areas to be considered: on the one hand, the legal analysis of the situations where authors' rights are involved and, on the other hand, the administration of those rights. The conclusions reached by the Working Group were adopted by the Subcommittees and are recorded below.

#### A. Legal Analysis

17. Two cases have to be distinguished: that of original transmissions and that of retransmissions of captured transmissions.

##### *Original Transmissions*

18. This situation had been considered by the 1977 Working Group to relate to the distribution by cable of the distributing body's own programmes. It was felt necessary to amend that terminology by distinguishing on the one hand the programme-unit, in other words a sequence of images, sounds or both constituting a unit as such, and on the other hand the whole programme itself, in other words a body of programme-units consisting of programming by the same broadcasting organization and capable of being retransmitted in whole or in part.

19. On the subject of original transmissions, a secondary distinction was made between those *made by a cable system* and those *made by the broadcaster himself via cable*.

20. With reference to the *first category*, it was considered that such an operation was not covered by broadcasting rights within the meaning of Article 11<sup>bis</sup>(1)(ii) of the Berne Convention (1948 Brussels Act, 1967 Stockholm Act and 1971 Paris Act), but rather came under Articles 11, 11<sup>ter</sup>, 14 and 14<sup>bis</sup> and was therefore subject to the exclusive right of the author. It was pointed out that the latter provisions were incompatible with a system of compulsory licenses, and that the exercise of the exclusive right could be individual and did not necessarily presuppose a system of collective administration.

21. As for *original transmissions made by the broadcaster himself via cable*, they were broadcasting operations within the meaning of the above-mentioned Article 11<sup>bis</sup>. Some delegations considered those operations as falling under Articles 11, 11<sup>ter</sup>, 14 and 14<sup>bis</sup>. The Subcommittee felt that it was for national

legislation to determine whether or not or in what cases the authorization given by the author to broadcast his work by Hertzian waves constituted authorization to transmit it by cable, in view of the fact that there was no difference in the originating organization. In this connection the contents of paragraph 35 below are also relevant.

##### *Retransmissions of Captured Transmissions*

22. Here, too, a secondary distinction was made, depending on whether or not the retransmissions were simultaneous with the original broadcast.

23. After it had been made clear that, in the case of *non-simultaneous retransmission*, the making of a recording was necessary, which involved the right of reproduction, it was observed that there were two conceptions to be taken into consideration. According to the one, the operation was subject to Article 11<sup>bis</sup>, which defines the common right of secondary retransmission of broadcasts. The exercise of that right, which required the authorization of the author, did not necessarily call for collective administration since in those cases only the rights for a programme-unit and not the large number of rights for a whole programme were involved. According to the other, the absence of simultaneity between the original transmission and the retransmission by cable, and the necessity of having recourse to a material support, were sufficient for the operation to be accepted for inclusion in the category of original transmissions and therefore subject to the application of Articles 11, 11<sup>ter</sup>, 14 and 14<sup>bis</sup>. It was pointed out that the treatment of a right under one provision or another had an effect on the administration of that right because, if the above-mentioned articles applied, the right had an exclusive character, whereas, if Article 11<sup>bis</sup> applied, compulsory licenses were possible.

24. With regard to the three situations analyzed above, that is, original transmissions made by a cable system or by the broadcaster himself via cable and non-simultaneous retransmissions of captured transmissions, attention was drawn to the case of countries that were party only to the Universal Copyright Convention and those that were party to the Berne Convention but still bound by Acts prior to the Brussels Act (1948). It was considered that the legislators of those countries had more flexible means at their disposal for regulating the operations concerned. However, according to the general principles of copyright, the non-simultaneous retransmission of captured transmissions was a new activity distinct from broadcasting and one that required the authorization of the author.

25. With respect to *retransmissions by cable made simultaneously with the original transmission*, there

were three factors that had to be taken into consideration, and they were, first, the fact that the programme-unit or the whole programme had been retransmitted with or without changes, second, the fact that the programmes were national or foreign and, third, the fact that small or bigger cable systems were resorted to.

26. It was mentioned, as a preliminary consideration, that it was a matter for each legislator to interpret as deemed appropriate the concepts contained in Article 11<sup>bis</sup>(1) (ii) of the Berne Convention, namely, that of the organization other than the original one, that of the public and that of communication to the public. On the latter point, a whole range of situations existed, from the simple cable installation of a single building to the cable network covering the entire territory of a given country, and it was for national law to draw the line between what was considered mere reception and what was communication to the public. In that respect the Subcommittees endorsed the observation made by the 1977 Working Group in paragraph 12 of its report (document UNESCO/WIPO/WG/CTV/I/6).

27. When a programme-unit or whole programme was retransmitted simultaneously by cable *without change*, and where that retransmission was effected by an organization other than the original one, that gave rise to an author's right in terms of the above-mentioned Article 11<sup>bis</sup>, subject to the interpretation given by the national legislator to the concepts of the organization other than the original one and of communication to the public.

28. *Where changes were made*, they could consist of the addition or deletion of advertising material, but they could also take other forms such as that of a direct dialogue between the cable distributor and the user. It was thought that it was for national legislation to specify the legal and economic implications of those alterations. In this respect, it was pointed out in particular that any modification, by the distributor, of the publicity material surrounding the broadcast programme or incorporated in it could change the economic impact of the broadcast by disturbing market conditions for the broadcaster. Any removal of advertising material could in fact diminish the economic value of the broadcast and, conversely, any addition could increase it. In the latter case, the distributor might be benefiting from unjustified enrichment, whereas the originator of the vector, the broadcaster, would be deriving no benefit at all, and would moreover be faced with competition detrimental to his interests. However, such a situation in relations between the distributor and the original broadcasting organization should be taken into consideration in the field of copyright only to the extent that the organization is recognized as a copyright owner, which could be the case under certain legislations.

29. The Subcommittees considered that the principles stated below could inspire legislators in the settlement of the problems that arose when changes were made, on the understanding that the place where the change was made (at the beginning or end of the whole programme or in the course of the broadcast of the programme) would have no effect on the rules to which the programme or programme-unit, thus modified, would be subject.

30. The first of those principles was that, in the case of the simultaneous retransmissions of programmes as such, there would be collective administration of authors' rights, either by means of collective management or by application of a system of non-voluntary licenses. Under a system of collective management, it would be for the parties to the contracts to provide for the legal consequences of the changes made. Such provision would be the responsibility of the legislator where a system of non-voluntary licenses was applied.

31. The second principle concerned the relations between the distributor and the author and, more specifically, the moral rights of the author, which might be prejudiced by advertising material. Any alteration to a programme-unit or a whole programme that might result from an addition or deletion at the beginning or end of it or during it made it into an original programme. It was nevertheless pointed out that that was only one of a number of interpretative rules which might be resorted to but only in the absence of express provisions on the subject in the contract or in the law, as the case might be.

32. It was also pointed out that, even if the insertion of advertising material were not such as would affect the author's reputation, it was liable to alter the aim pursued by the original broadcast. Moreover, where such insertion would increase the economic value of the programme, the principle of proportional remuneration would justify giving the author a share in the value increase.

33. It was understood that the considerations on moral rights could also be applied to countries that did not recognize such rights within the general context of the rights of the personality.

34. The third principle was that according to which the simultaneous retransmission of a programme-unit did not, in general, call for any special administration of rights. One exception was considered, however, where the distributor cuts on his own initiative or is obliged to cut certain parts of a programme, replacing them with a contribution that has nothing to do with the original programming. For certain delegations it seemed difficult to make such a thing subject to application of the exclusive right. Consequently,

the situation should be dealt with according to the rules applicable to programmes as a whole, in other words made subject to collective administration or a system of non-voluntary licenses.

35. The factors to be considered that were referred to in paragraph 25 above include the *distinction between national and foreign programmes*. With regard to the *first category*, it was indicated that the broadcasting organization could be made subject, in certain countries, to a legal obligation to make its programmes available to all the nationals or residents of the country concerned, and that, if that was done, distribution by cable was no more than a means of complying with that obligation and achieving that aim. In such cases, the act of distributing by cable could not be dissociated from the act of broadcasting, even if the cable connections were made by another organization, which would apply at least where the national territory was *small in area*. As the broadcasting organization was regarded as covering the total area of the country, either by itself or by the grant of concessions to other organizations, the question arose whether or not the authorization to broadcast for the benefit of a public located on that territory constituted authorization to transmit by cable within the country. If the programme was a national programme, in other words designed for the country as a whole, and if the owner of the copyright had authorized the broadcasting organization to broadcast the programme for reception in that country, it was thought that the legislator was free to decide whether that authorization covered the right to transmit by cable within the boundaries of the country, because there would be no new transmission. In the absence of legislation or court decisions to that effect, the matter would have to be settled by contract between the parties concerned. Some delegations were also of the opinion that, where the users pay remuneration to broadcasters and to authors, transmission by cable could be considered under the national legislation as a mere support for reception and not as a communication to the public where only the transmission of a national programme is concerned.

36. On the other hand, in the case of *countries that covered a large area*, a distinction had to be made depending on whether the range of the transmitter was such that part only or all of the territory was covered. In the former case the carrying of signals by cable to areas outside the range of the transmitter required authorization, in accordance with Article 11<sup>bis</sup>(1). In the latter case the same question arose as with distribution by cable in countries covering a small area. The principle according to which the authorization given for broadcasting constituted authorization to transmit by cable could only be invoked if the originating organization carried out both operations itself or if another organization was mere-

ly acting on behalf of the originating organization. Therefore, in the interpretation of Article 11<sup>bis</sup>, the possibility of the organization to which a concession was granted being different had to be considered in relation to the originating organization's ability to cover the entire national territory itself. In any event, it became apparent that the royalty paid to authors could not be the same where the broadcast was received in part of the territory only as it would be if the territory were completely covered.

37. The attention of the Subcommittees was also drawn to the new legislation of the United States of America which, although adopting a different approach to the problem, had arrived at solutions similar to those being discussed under the Berne Convention. That legislation placed cable distribution in the category of secondary transmissions, for which remuneration was due to the author with the following four exceptions: (i) relaying signals to the private lodgings of guests in hotels, apartment houses, and similar establishments; (ii) retransmission for purposes of systematic instructional activities; (iii) retransmission of signals merely as a common carrier, without control over the content or selection of programming; and (iv) retransmission by a governmental body or other non-profit organization (e. g., to an army post). The new legislation establishes full copyright liability for the unauthorized retransmission of signals that are being transmitted to a controlled group rather than the public at large. In all other cases retransmissions by cable systems are subject to a form of non-voluntary licensing: every cable system in the United States must make detailed reports of the signals it carries and pay copyright royalties in accordance with a detailed formula. Smaller cable systems pay a minimum royalty or a specified percentage of gross receipts from subscribers. Larger systems compute a copyright royalty based generally upon the amount of distant, non-network programming they are retransmitting to their subscribers. Only those signals that a cable system is legally authorized to retransmit under governmental communications regulations are subject to compulsory licensing: if a cable operator retransmits any broadcast signals in violation of Federal Communications Commission regulations, it is fully liable for copyright infringement. It was also pointed out that radio, as well as television, signals are involved in cable operations, and that the copyright problems for purely aural signals are somewhat different from those raised by audiovisual broadcasts.

38. As regards *foreign programmes*, it was stressed that, as a rule, any retransmission of a programme of a foreign broadcaster constituted a communication to the public within the meaning of Article 11<sup>bis</sup> of the Berne Convention and Article IV<sup>bis</sup> of the Universal Copyright Convention, provided, however, that the

concepts of public communication and of the public required defining according to the rules accepted in the country of distribution.

39. In that respect, one had to consider the interpretation to be given to those concepts according to whether the equipment was simple receiving equipment (e.g., collective aerials) or a transmission installation.

40. It was further pointed out that in certain special and limited cases where a number of adjacent territories were served they could be regarded as a whole for the purposes of the authorization to be given by the author to the broadcasting organization. That would be the case particularly where a satellite was used jointly by a number of countries or where retransmissions were made to a group of neighboring countries using the same language. In such cases, it would be conceivable to adopt the solution of a special agreement under Article 20 of the Berne Convention in order to achieve a standardized application of the right of distribution.

41. The situation of transnational distribution by cable led a number of delegations to mention the concept of a direct reception zone for transmissions. Various of the delegations thought that such a concept should be rejected. Others, again, considered that opinion too extreme. This concept could nevertheless be taken into consideration in the contract negotiations between the cable distributors and copyright owners. In that connection, reference was made to the situation in the United States of America with respect to certain Canadian or Mexican signals received in areas along the northern and southern borders of the country. The delegation of the United States of America viewed with great concern the arguments put forward that would protect national programming in some manner (as by payment of equitable remuneration from a fund of royalties paid by cable systems in the country) but would leave foreign signals without any protection against, or remuneration for, retransmission by cable within the country. Following those arguments would lead to discrimination not compatible with the principle of national treatment contained in the multilateral copyright conventions.

#### B. Administration of Rights

42. A distinction was made between a collective administration system and non-voluntary licensing.

43. The Subcommittees confirmed the conclusions which were reached by the 1977 Working Group and which are reflected in paragraphs 18 and 19 of the latter's report, and acknowledged that cable systems transmitting whole programmes needed authorization of all right holders involved, and therefore, as a general rule, in the case of simultaneous retransmissions of

whole programmes only *collective administration* made cable distribution feasible since the exercise of the exclusive right on an individual basis would paralyze or impede it.

44. Some problems arising from that type of administration were pointed out, however. The first of these was the case of authors outside the system because they did not belong to any collective body. It did not appear, however, that the problem would be insurmountable since the legislator could take measures to encourage those concerned to join together to exercise their rights. Mention was also made of the case of the owners of foreign copyrights who, although organized within their own country, needed to be able to assert their rights in respect of retransmissions made outside their country. It was pointed out that the reciprocal representation contracts concluded between bodies such as societies of authors enabled that situation to be coped with.

45. In view of the multiplicity of rights involved, a number of doubts were also expressed as to the effectiveness of a collective administration system since the cable distributors would be required to negotiate with the various categories of owners of rights even where the latter were organized. The question was therefore what arrangements had to be made to enable the distribution bodies to obtain the necessary authorizations. Since it appeared difficult for the groups concerned to form a pool, it was recommended that the representatives of those concerned should come together at the international level in order to facilitate discussions and the conclusion of general agreements.

46. In any event, it was felt that the system of collective administration remained the normal method of asserting rights and that recourse to non-voluntary licensing should only be of an accessory or subsidiary nature and should only take place in exceptional situations (e. g., a blackout necessitating the unexpected use of a different contribution to the programme). Some delegations felt that it might, however, be necessary to complete the system of collective administration by a system of non-voluntary licenses in respect of holders of rights who would not form part of the collective administration system. It was, moreover, a matter for the legislator to remedy the problems which could arise from collective administration by laying down the legal framework and conditions of such a system.

47. As regards *non-voluntary licensing*, it proved necessary to make a further distinction between statutory licenses and compulsory licenses.

48. A *statutory license* was defined as a license under which the protected works could be freely used on condition that the user paid a fee, fixed by the

competent authority, to the body designated by that authority and distributed in accordance with the rules established by the latter.

49. A *compulsory license* was defined as a license requiring the copyright owner to grant the necessary authorization without, however, depriving him of his right to negotiate the terms of the authorization, with the proviso that the administrative or judicial authorities (civil courts or special jurisdictions) would fix the amount of remuneration where no amicable agreement could be reached.

50. It was felt that both statutory licensing and compulsory licensing were compatible with the Universal Copyright Convention. As regards the Berne Convention, a number of delegations considered that Article 11<sup>bis</sup>(2) only permitted recourse to compulsory licenses and excluded statutory licensing. Referring to the very broad formulation (conditions under which the rights . . . may be exercised) used in that paragraph, other delegations were of the opinion that such arrangements were not excluded by the said provision once fair remuneration was provided for and the moral rights were not violated.

51. Finally, it was observed that compulsory licensing could be used in conjunction with a collective administration system. Certain delegations felt that compulsory licensing should remain an exceptional measure. Statutory licensing appeared to apply only in the case of authors acting individually and not belonging to a collective body. Some delegations felt it necessary that the national legislations should determine remuneration for owners of rights who did not form part of a system of collective administration and were outsiders, and that the amount of such remuneration should be identical with that of owners of rights not belonging to such system.

### VIII. Comments

52. At the time of adopting the considerations set out above, a number of *comments* were formulated both as regards the legal analysis and the administration of rights.

53. The delegation of Denmark stated that in its opinion compulsory licensing might be inevitable within certain areas, but that generally speaking it felt that a system of collective administration constituted the best solution in so far as the legislator took the necessary precautions to assure the working of the collective administration of rights and the system was made compulsory. An alternative could be for users to obtain prior authorization from the appropriate societies and, once that authorization was obtained, no owner of rights could prevent the activities covered by the authorization, whether he belonged or

not to such a society, and remuneration for the use of the work could only be claimed from the appropriate society.

54. The delegation of France questioned whether the interpretation according to which the cable distribution organization could be considered an agent or a representative of the originating organization complied with the letter or the spirit of Article 11<sup>bis</sup> of the Berne Convention. The delegation felt that paragraph (1) of that Article should be restrictively interpreted when exceptions were being made to exclusive rights. It drew attention, in that connection, to the cautious wording of paragraph (3) of that same Article in relation to ephemeral recordings.

55. The delegation of the Federal Republic of Germany wished it clarified that there was a certain difference of opinion; when some of the participants of the Working Group spoke of interpreting Article 11<sup>bis</sup>, with respect to nationwide broadcasting, they referred to serving of the whole territory; that was not a question, at least in its opinion, of the so-called direct reception zone which covered regions outside that territory; only where a nationwide broadcast was transmitted by cable in the same State could one interpret Article 11<sup>bis</sup> in the sense that it was not a new transmission. It felt that one should be cautious in using the notion of direct reception zone since that notion was unclear and not exactly determinable.

56. The observer from the International Writers Guild (IWG) reiterated his satisfaction at the conclusions reached by the 1977 Working Group and welcomed the outcome of the Subcommittees' debates, which had confirmed and expounded those conclusions. He emphasized that the system of collective administration of rights was not only the best solution but the only possible one for the exercise of the author's exclusive right in the context of present-day technology. That was why it seemed logical to encourage authors to join together in collective bodies. Referring to the case of those who remained outside such bodies, he expressed the view that the most appropriate solution would be that of collective agreements which would be automatically applicable to them.

57. The observer from the International Confederation of Societies of Authors and Composers (CISAC) fully supported the view expressed by the preceding observer and stressed that the search for ways and means of solving the problems involved should be based on the considerations set out by the 1977 Working Group, particularly in paragraph 18 of its report. He further expressed his concern as regards the retransmission of captured transmissions simultaneously transmitted of whole programmings of national programmes. He cited the situation where a copyright owner has authorized a national broadcast-

er for the purpose of national programming to include his work in that programming, and a cable system picks up that programming, including the work which the copyright owner has given his permission to broadcast; the permission to broadcast might be treated as covering simultaneous cable transmission. And linked to that proposition was the notion that the audience was identical, since, in fact, no new audience was reached by the cable transmission of the national programme. He feared that the implication of this seemed to be that the copyright owner was entitled to no further remuneration for that cable transmission. If that inference was intended, he would question whether it was in conformity either with Article 11<sup>bis</sup> of the Berne Convention, or indeed with the principles of justice. In his view, when the copyright owner has authorized a broadcaster, then the authority can also be extended to the cable company retransmitting that broadcast simultaneously, but paragraph (2) of Article 11<sup>bis</sup> of the Berne Convention sets conditions on those requirements in the sense that equitable remuneration must be paid and a free licence is not equitable remuneration. Therefore, while it may be reasonable for a simultaneous cable transmission of a national broadcast to be covered by some appropriate formula incorporated in national legislation by the authority given to the original broadcaster, it does not follow that some equitable remuneration must not be paid when that takes place.

58. The delegations of Austria and Germany (Federal Republic of) did not share the view of the observer from CISAC. They felt that, even if there was a simultaneous transmission on two channels by two different broadcasters, a choice was offered to the recipient as to which broadcaster to take, but, in the case of the cable transmission, there is only one real transmission and there is no choice offered, since some get it by cable while others get it only by an antenna system. In particular, in those cases where all possible recipients of the programme paid the same remuneration to the broadcaster, a remuneration in which the authors participate, those recipients getting the programme via cable had also contributed their share to the remuneration of the copyright owners for the broadcast programme. They also felt that there were not many cases where two broadcasters simultaneously broadcast the same programme; besides, States were free, in their view, under Article 11<sup>bis</sup>, to rule that, where there was a nationwide broadcast and the broadcasters only transmitted by cable to the audience within the nation, there was only one transmission.

59. The observer from the European Broadcasting Union (EBU) shared the views expressed by the representatives of the authors but emphasized the extent to which the situation could vary from one coun-

try to another since some of them did not have either of the variants of the non-voluntary licensing systems as defined. In addition, collective administration bodies did not exist everywhere and, where they did exist, their sphere of action varied in its scope. In his view, account should also be taken of the fact that in some cases there existed not only a publicly-owned broadcasting organization but, in addition, a certain number of private stations, generally of a commercial nature. A third element was the fact that small countries might not view favorably the cable distribution of foreign programmes which might be prejudicial to their national culture. Larger countries, on the other hand, could well judge such distribution to be a factor in the interpenetration of cultures. It therefore seemed necessary not to lose sight of the specific nature of the various situations, including those resulting from the technically inevitable spillover in the reception of broadcasts. In any event, it was important to leave as much room as possible for contractual negotiations between the groups concerned. Referring to the distinction made in the discussions between the programme-unit and the whole programme, he felt that the term programme-unit was too vague. He would prefer to speak of an individual programme as opposed to an entire channel programme. He felt that, if cable distribution were included in the original contract, it was dangerous for broadcasters. Broadcasters would then be confronted with demands from authors to the effect that cable distribution constituted a new use of the work, but was considered to be paid for under the original agreement with the broadcaster; therefore, they would like to have a cable supplement. And in order to avoid this he would suggest that the solution mentioned by the delegation of Austria should be followed, namely, that in that event the cable distribution was considered to serve as a reception aid. The observer from the EBU felt that one should by no means forget radio. He also referred to the possibility of having a direct broadcast satellite that would serve various countries, and said that there might, therefore, be certain legal consequences. He explained that, under the ITU Geneva Plan, this was impossible. The only exception that had been made was really for the Scandinavian countries, and in that case there were certain plans to establish what is called Nordsat, but otherwise it would be excluded under the ITU Geneva Plan to have a satellite that would serve more than one country at a time. Of course, there would be spillover and the spillover zones would be, in certain cases at least, somewhat larger than they were now, but the principle would be the same national distribution. The observer from the EBU felt that, if the view of the observer from CISAC was accepted, it would lead to a double payment for one and the same thing, that is, the author would receive payment from the broadcast and from the cable distributor; that would not

be correct because the audience at home received the programme either from the broadcaster or from the cable distributor, and therefore should pay only once, be it to the broadcaster, or be it to the cable distributor. Finally, he mentioned that his organization was strongly opposed to the replacement of a programme-unit by another taken from a channel different from the one that had produced the first programme-unit, which could occur either in the case of blacking out or under other circumstances.

60. The observers from the international non-governmental organizations representing the cinematographic industry (International Federation of Film Producers' Associations (FIAPF), International Federation of Associations of Film Distributors (FIAD), International Union of Cinematograph Exhibitors (UIEC)) drew attention to the competition that existed, in the broadcasting of cinematographic works, between the cable distribution systems and projection in cinemas, and the considerable harm it could cause the cinematographic industry as a whole. They also regretted that references had occasionally been made, during the discussions, to direct reception areas and service areas, technical terms which in their opinion were extremely vague. In that connection, they mentioned the case of films which, while they were being shown in the cinemas of a given country, had been distributed by cable in a neighboring country and had been captured in certain parts of the first country, thereby ruining the latter's cinematographic market. They therefore expressed the hope that the solutions adopted in the field concerned would make it possible to put a stop to such harmful practices and ensure priority for exploitation in cinemas. They also pointed out that, since the contracts entered into with broadcasting organizations were limited to the national territory, any spillover was unlawful in relation to those contracts and distribution by cable was bound to make the situation worse. They said that they were willing to participate in collective administration systems, in view of the specific character of films and the interest in having negotiations at the international level. Finally, they considered it essential that the collective administration body had the possibility of demanding the blacking out of the retransmission of certain films, on a case-by-case basis, in order to guarantee their normal exploitation.

61. The delegation of the Federal Republic of Germany stated that it hoped that the film producers and exhibitors could adapt their methods of exploitation of films to the changed circumstances and thereby ensure that blackouts would not be necessary or at least diminished.

#### IX. Closing of the Meeting

62. A large number of delegations and several observers voiced their great appreciation of the contri-

bution that the delegation of the Federal Republic of Germany had made in submitting the document containing the list of possible situations, which had greatly facilitated the discussions of the Subcommittees.

63. All the delegations and observers commended the Chairman for the authority and great skill with which he had conducted the work of the Subcommittees.

64. At the time of the adoption of this report it was regarded as desirable, when the consideration of certain questions, such as that of the transmission by cable of television programmes or that of the use of videocassettes and audiovisual discs, was of interest both to subcommittees of the Committees of the Copyright Convention and to subcommittees of the Rome Convention on neighboring rights, that participants in the former be allowed to attend as observers the discussions of the latter, and vice versa, in so far as they were not already members.

65. Sitting as their respective Committees in the plenary, the Subcommittees decided that such a procedure should be adopted for the convocation of the Subcommittees on videocassettes and audiovisual discs. Consequently they requested their respective Secretariats to invite to the Subcommittees of the Copyright Conventions that were to consider the question from the copyright angle in Paris in September 1978 those States that would be invited to the corresponding Subcommittee of the Intergovernmental Committee of the Rome Convention to consider the same question from the neighboring rights angle.

66. In the absence of the Chairman of the Subcommittees, this report was adopted under the chairmanship of the Vice-Chairman, Ms. Barbara Ringer, who, after a unanimous tribute had been paid to her, declared the meeting closed.

### List of Participants

#### I. States Members of the Subcommittees \*

**Austria** <sup>1</sup>: R. Dittrich. **Belgium** <sup>1</sup>: F. Van Isacker. **Canada** <sup>1</sup>: B. Torno. **France** <sup>2</sup>: A. Kerever; A. Françon; J. Buffin; G. Ridoux; H. Barbarin; G. Delaume; C. Joubert. **Germany (Federal Republic of)** <sup>2</sup>: E. Steup. **India** <sup>1, 2</sup>: G. S. Edwin; S. Sabharwal. **Ivory Coast** <sup>1</sup>: A. Ouattara. **Japan** <sup>2</sup>: H. Hayashida. **Mexico** <sup>1, 2</sup>: J. M. Teran Contreras; F. Riva Palacio; V. Blanco Labra; M. F. Ize de Charrin. **Netherlands** <sup>2</sup>: E. Lukacs; M. Reinsma; M. B. van Meerten; J. Felkers. **Spain** <sup>1</sup>: R. Perez de Acosta. **Switzerland** <sup>1</sup>: J.-L. Marro; A. Schmid; R. Grossenbacher. **United Kingdom** <sup>2</sup>: A. J. Needs; A. Holt. **United States of America** <sup>2</sup>: B. Ringer; P. A. Lyons.

\* <sup>1</sup> State member of the Subcommittee of the Executive Committee of the Berne Union.

<sup>2</sup> State member of the Subcommittee of the Intergovernmental Copyright Committee.

## II. Observer State

Denmark: W. Weincke.

## III. Intergovernmental Organizations (Observers)

International Labour Organisation (ILO): G. Bohère; S. C. Cornwell. Arab Educational, Cultural and Scientific Organization (ALECSO): M. Ben Amor. Council of Europe: H. J. Bartsch.

## IV. International Non-Governmental Organizations (Observers)

European Broadcasting Union (EBU): W. Rumphorst. International Alliance for Diffusion by Wire (AID): G. Klemperer; W. H. Metz. International Bureau of the Societies Administering the Rights of Mechanical Recording and Reproduction (BIEM): J.-A. Ziegler. International Confederation of Professional and Intellectual Workers (CITI): A. L. Dupont-Willemin. International Confederation of Societies of Authors and Composers (CISAC): D. de Freitas; J.-A. Ziegler. International Copyright Society (INTERGU): G. Halla. International Federation of Actors

(FIA): G. Croasdell. International Federation of Associations of Film Distributors (FIAD): G. J. Grégoire. International Federation of Film Producers Association (FIAPF): A. Brisson; M. Ferrara Santamaria; R. Hadl. International Federation of Musicians (FIM): J. Morton; R. Leuzinger. International Federation of Producers of Phonograms and Videograms (IFPI): G. Davies; C. de Souza Amaral; E. Thompson. International Literary and Artistic Association (ALAI): R. Fernay; J.-A. Ziegler. International Music Council (IMC): J. Morton. International Union of Cinematograph Exhibitors (UIEC): J. Handl. International Writers Guild (IWG): R. Fernay.

## V. Secretariat

### World Intellectual Property Organization (WIPO)

A. Bogsch (*Director General*); C. Masouyé (*Director, Copyright and Public Information Department*); S. Alikhan (*Director, Copyright Division*).

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

M.-C. Dock (*Director, Copyright Division*); A. M. N. Alam (*Legal Officer, Copyright Division*).

# Conventions Administered by WIPO

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

JAPAN

### Acceptance of the Convention

The Director General of the World Intellectual Property Organization (WIPO) has informed the Governments of the States invited to the Diplomatic Conference on the Protection of Phonograms\* that, according to the notification received from the Secretary-General of the United Nations, the Government of Japan deposited, on June 19, 1978, its instrument of acceptance of the Convention for the Protection

of Producers of Phonograms Against Unauthorized Duplication of Their Phonograms.

The Convention will enter into force, with respect to Japan, three months after the date of the notification given by the Director General of WIPO, that is, on October 14, 1978.

\* Phonograms Notification No. 35, of July 14, 1978.

## Law Survey

### Introduction

The program adopted for 1978 by the Governing Bodies of the World Intellectual Property Organization (WIPO) includes the drafting and publication of analytical summaries of national copyright legislation. To carry out this task, the International Bureau of WIPO has prepared a total of 71 summaries of the current legislation of States having international copyright relations, either as members of the Berne Union or as party to the Universal Copyright Convention, and in so far as national legislation exists in each of those States. Publication is beginning, as planned, in the September issue of this review and will continue in subsequent issues.

The summaries have been prepared on the basis of the main copyright laws, and in certain cases on other provisions in the copyright or neighboring rights field, in order to provide the fullest information possible. In the drafting of the summaries, the wording was in general based on that of the legislative provisions themselves. Where the original is not in English, the translations published in this review or

in the collection of "Copyright Laws and Treaties of the World" were used as the basis.

The summaries follow a uniform pattern confined to certain selected elements of the legislation of each country. However, certain aspects of copyright protection, for instance, those relating to contracts, procedure and civil or penal sanctions, and details in respect of implementation, have not been taken into account.

As far as possible, the summaries have been finalized after consultation with experts from the country concerned. This made it possible, in particular, to obtain additional information on matters under certain headings such as that of the agencies set up under the law and their function, and that of bilateral agreements. However, information on judicial decisions or other interpretations of the law has in principle not been included.

The texts are published in the English alphabetical order.

\* \* \*

### Algeria

#### 1. Official title and date of current legislation

Copyright Ordinance, No. 73-14, of April 3, 1973.

Ordinance establishing the *Office national du droit d'auteur* (ONDA) [National Copyright Office], No. 73-46, of July 25, 1973.

#### 2. Works eligible for protection

##### *General eligibility criteria*

The Ordinance affords protection to the creation of any intellectual work, whatever its type, mode or the form of its expression, its merit or its purpose (Art. 1).

The Ordinance applies to all intellectual works of which the copyright owner is a national of Algeria or a legal entity subject to Algerian jurisdiction. Works of foreign authors published for the first time in Algeria enjoy the same protection (Art. 79).

No formalities are required.

##### *Special categories of works*

The works to which protection extends include cinematographic works, photographic works and works of applied art (Art. 2).

Derived works (translations, adaptations, other alterations and musical arrangements) are protected in the same way as original works without prejudice to the copyright in the original work (Art. 3). Anthologies and collections are likewise protected (Art. 4). Choreographic works and entertainments in dumb show are protected if their production is fixed in writing or otherwise (Art. 2(iv)).

Works of folklore enjoy protection against their direct or indirect fixation with a view to exploitation for profit-making purposes. The necessary authorization is given by the Ministry of Information and Culture. The assignment of copyright in a work inspired by folklore, or an exclusive license relating to such a work, is not valid unless approved by that Ministry (Arts. 2(xi) and 14). In accordance with Article 4(8) of Ordinance No. 73-46 establishing ONDA, that Office acts on behalf of the Ministry.

##### *Works not protected*

News of the day and miscellaneous facts having the character of mere items of press information may be used freely (Art. 25).

#### 3. Beneficiaries of protection (copyright owners)

Copyright vests in the author of the work (Art. 6). The person, whose name or pseudonym, in so far as it leaves no doubt as to his identity, appears on the

work in the customary manner, is deemed, in the absence of proof to the contrary, to be the author (Art. 7). The publisher of a pseudonymous or anonymous work is deemed, in the absence of other proof, to represent the author (Art. 8).

Copyright in a work created by agents of a legal entity as part of their duties, or under a contract to make a work or an employment contract, is considered assigned to the legal entity, to the employer or to the person commissioning the work, unless otherwise stipulated (Art. 7).

Copyright in a work of joint authorship (i.e., a work in which two or more co-authors have collaborated in such a way that their contributions are inseparable) belongs jointly to the co-authors (Art. 9).

In the absence of proof to the contrary, the co-authors of a cinematographic work are deemed to be the authors of the script, the adaptation, the dialogue and the musical compositions specially composed for the work, as well as the director and, in the case of an animated cartoon, the chief cartoonist. The author of a pre-existing work from which the cinematographic work is adapted is assimilated to the authors of the new work (Art. 15). The relationship between the co-authors and the maker of the cinematographic work are to be determined by written contract (Art. 16). Detailed provisions on the relationship are contained in Articles 16 to 20.

#### 4. Rights granted

The author enjoys a right to respect for his name, his authorship and his work (moral rights) (Art. 22).

The economic rights (i.e., the exclusive right to exploit his work in any form whatever and to derive economic benefit therefrom) include reproduction in any material form, communication to the public by performance, recitation, or broadcasting, communication of the broadcast work to the public by wire, loudspeaker or the like, translation, adaptation or any other alteration or arrangement of the work (Art. 23).

Authors of works belonging to the graphic and plastic arts retain an inalienable right to a share in the proceeds of any sale or resale of the original (*droit de suite*), fixed at 5 percent of the amount of the transaction (Art. 69).

#### 5. Limitations on copyright

##### *Uses permitted without payment*

The following are lawful without either the authorization of the author or remuneration: private performances and reproductions, translations and adaptations intended strictly for personal and private use; communication of broadcast works for school or university purposes or in vocational training; borrowings and quotations (Art. 24); reproduction by the press or broadcasting of articles on current topics published in newspapers or periodicals, unless expressly prohibited (Art. 25), and of speeches, ser-

mons and statements made at public events, for informative purposes (Art. 26). Works of graphic and plastic art, architecture, photography and the applied arts which are permanently located in a public place may be reproduced and made accessible to the public by cinematography or television; such works may be included in a cinematographic or television work if the inclusion is only of an accessory or incidental nature (Art. 27).

In most of the cases mentioned above, the source and the name of the author must be indicated.

Public libraries, non-commercial documentation centers, scientific institutions and educational establishments may be authorized, by order of the Minister for Information and Culture, to reproduce works by a photographic or analogous process in a quantity required for the purpose of their activities (Art. 28).

##### *Compulsory licenses*

A non-exclusive license to translate and publish or broadcast a foreign work, or to reproduce and publish it, may be obtained from the Ministry of Information and Culture, subject to conditions based on the relevant provisions of the international conventions (Arts. 30 to 34).

##### *Other limitations*

In the event of an author's heirs refusing without valid reason to disclose a work, or of disagreement between two or more of the author's successors in title, the court may order any appropriate measure (Art. 67).

#### 6. Term of protection

Economic rights are protected for 25 years after the death of the author (Art. 60), pseudonymous and collective works for 25 years after publication (Art. 62 et 63) and posthumous works for 25 years after communication to the public (Art. 66). Photographic works and works of the applied arts are protected for 10 years after publication (Art. 64). All the above-mentioned periods are computed from the beginning of the calendar year following the death of the author or publication or communication to the public.

The right relating to cinematographic works expires 25 years after the work has been lawfully made accessible to the public (Art. 65).

The moral rights are perpetual (Art. 22).

#### 7. Transfer of rights

The exclusive right to exploit a work (economic right) is transferable, free of charge or for a consideration, in whole or in part (Art. 35).

Assignment must be evidenced in writing (Art. 36). Chapter VI of the Ordinance contains detailed rules on assignment contracts in general (Arts. 35 to 43) and special rules on publishing contracts (Arts. 44 to

54) and authorizations for public communication (Arts. 55 and 56) and broadcasting (Arts. 57 to 59).

The moral rights are inalienable (Art. 22).

#### 8. **Domaine public payant**

No provisions in Ordinance No. 73-14. However, under Ordinance No. 73-46 establishing ONDA, that Office ensures the protection of works of nationals which are in the public domain (Art. 4(8)) and collects the relevant fees (Art. 25(2)).

#### 9. **Neighboring rights**

The Ordinance contains no provisions on the protection of performers, producers of phonograms or broadcasting organizations.

#### 10. **Agencies set up under law and their function**

The administration of copyright and the defense of the moral and economic interests of authors are entrusted, by Ordinance No. 73-46, of July 25, 1973, to the *Office national du droit d'auteur* (ONDA), responsible to the Ministry of Information and Culture. This Office has, in particular, authority to institute legal proceedings and to act, to the exclusion of any other natural or legal person, as the agent for issuing authorizations and collecting royalties relating thereto (Arts. 71 and 72).

Article 73 provides for the setting up of a commission to rule on disputes arising between ONDA and persons wishing to obtain authorizations.

#### 11. **Relevant multilateral conventions**

Universal Copyright Convention, as revised in 1971, as from July 10, 1974.

#### 12. **Bilateral agreements**

No information available..

#### 13. **Applicability to foreigners not covered by conventions or agreements**

Works of foreign nationals not published for the first time in Algeria enjoy protection on the basis of *de facto* reciprocity (Art. 79).

## **Argentina**

#### 1. **Official title and date of current legislation**

Law No. 11723 on Copyright, of September 28, 1933, as amended up to June 25, 1976.

#### 2. **Works eligible for protection**

##### *General eligibility criteria*

Works protected by the Law include every scientific, literary, artistic or educational production, whatever its process of reproduction (Art. 1).

Works must be published with an imprint consisting of the date, place, edition and the name of the publisher (Art. 63). The date and place of publication and the name or mark of the author or publisher must be inscribed on the photographic work or film (Art. 34).

The publisher of works must deposit, within three months of publication, at the National Copyright Registry, as a rule, three copies of every published work. For works of art, a sketch or photograph of the original has to be deposited, together with supplementary particulars. For cinematographic works, the deposit of an account of the plot, the dialogues and photographs and descriptions of the principal scenes are requested (Art. 57).

The deposit of the work by the publisher fully secures the rights of the author in his work and those of the publisher in his edition. In the case of unpublished works, the author or his successors in title may deposit a copy of the manuscript (Art. 62).

Works are submitted for registration to the *Registro Nacional de Propiedad Intelectual* [National Copyright Registry], which publishes daily a list thereof in the *Boletín Oficial*. If no opposition has been lodged within one month from such publication, the Registry registers the published work with appropriate imprint and grants to the authors, if they so request, the title of final property (Arts. 58 and 59).

Failure to register results in the suspension of the rights of the author until such registration is accomplished (Art. 63).

The provisions of Article 57, concerning deposit of published works, do not apply to works published in foreign countries (Art. 13).

Copyright in translation is subject to registration of the translation agreement in the National Copyright Registry within one year of the publication of the translated work. Failure to register the translation agreement involves suspension of the rights of the author until such registration is accomplished, without prejudice to the validity of the translations made during the time the agreement was not registered (Art. 23).

##### *Special categories of works*

Scientific, literary and artistic works include every scientific, literary, artistic or educational production, and particularly cinematographic works, works of architecture, models and works of art or science applied to commerce or industry, printed matter, photographs and phonographic records (Art. 1).

Regarding the formalities prescribed for special categories of works, see above.

The Law contains no special provisions on type faces, typographical arrangement or works of folklore.

#### 3. **Beneficiaries of protection (copyright owners)**

Copyright owners are: (a) the author of the work; (b) his heirs or successors in title; (c) anyone who

with the author's permission translates, adapts or modifies the work, as far as the copyright in the new intellectual work resulting from such acts is concerned (Art. 4). The rights in anonymous or pseudonymous works belong to the publisher thereof, unless the author claims them for himself. Authors using pseudonyms may register them, thus acquiring copyright ownership (Art. 3).

Collaborators in a work enjoy equal rights, unless otherwise agreed; anonymous collaborators do not hold copyright in the contributions commissioned from them for a collective compilation, and the publisher of the work is their legal representative (Art. 16). Plurality of authors does not of itself constitute collaboration, unless copyright cannot be divided without altering the nature of the work. The music and the text in a musical composition are to be considered as distinct works (Art. 17). The author of any text set to music has the exclusive right to use his literary work separately and the composer may do the same in respect of his musical work (Art. 18). If two or more authors have collaborated in a dramatic or musical work, the authorization granted by one of them suffices for its public performance (Art. 19).

In the absence of special agreements, collaborators in a cinematographic work have equal rights; the author of the plot and the producer of the film, as well as the composer in the case of a musical cinematographic work in which he has collaborated, are considered as collaborators (Art. 20). However, in the absence of special agreements, the producer has the right to show the work even without the consent of the author of the plot or of the composer, without prejudice to the rights flowing from their collaboration (Art. 21).

Any person who adapts or modifies a work with the authorization of the author has, as regards his adaptation or other modification, the rights of a co-author, unless otherwise agreed (Art. 25).

Unsigned articles, feature stories, drawings, engravings or news in general having an original and peculiar character, published by a newspaper or other periodical publication, which has acquired such material as exclusive features directly or through a news agency, is the property of the periodical publication or of the agency (Art. 28).

#### 4. Rights granted

##### *Economic rights*

Copyright in a work entitles the author to dispose of, publish, publicly perform and exhibit, alienate, translate or adapt it, or authorize its translation, as well as to reproduce it in any form (Art. 2).

The authors of literary, dramatic and musical works enjoy the exclusive right to authorize the recitation, presentation and public performance of their works and the public diffusion of them by any means of such uses (Art. 36).

##### *Moral rights*

The author has an inalienable right to require the mention of his name or pseudonym, as author; no assignee of copyright is entitled to alter the title, form or contents of the work (Arts. 51 and 52).

##### *Droit de suite*

No provisions.

#### 5. Limitations on copyright

##### *Uses permitted without payment*

Any person may incorporate into commentaries, criticism or notes relating to intellectual works for educational or scientific purposes not more than one thousand words from literary or scientific works or not more than eight bars from musical works if such parts are indispensable for the aforesaid purposes (Art. 10).

Parliamentary speeches may be published without authorization, if the publication is not made for profit (Art. 27).

News items of general interest may be published in their original version with the indication of their source (Art. 28).

The publication of a portrait is free in connection with scientific, educational or general cultural purposes, with matters or events of public interest (Art. 31).

The presentation, performance and recitation of literary or artistic works already published is lawful at public functions organized by teaching establishments in the fulfillment of their educational objectives, if such spectacle is not diffused beyond the place in which it is realized and no payment is made for admission or for the services of the performers (Art. 36).

Musical compositions can be performed in public freely by any musical means belonging to national State institutions, the provinces or municipalities, if the attendance is free of charge (Art. 36).

##### *Other limitations*

The heirs or successors in title are not entitled to oppose republication or translation of the work if they have allowed more than 10 years to elapse without their arranging for publication or translation thereof. In such cases, if there is no agreement, the conditions of printing or the remuneration shall be decided by arbitration (Art. 6).

When inclusions from other works constitute the main part of a new work, the courts may fix the proportionate amount to which the holders of copyright in the works included are entitled (Art. 10).

The photographic portrait of a person must not be used for commercial purposes without the consent of the person concerned or within 20 years following his death, without the consent of the spouse or direct descendants or, if none of them exist, of his parents (Arts. 31 and 35).

## 6. Term of protection

The term of copyright is the life of the author and 50 years after the date of his death. The same applies to posthumous works (Art. 5). Regarding copyright in anonymous works belonging to legal entities, the term of protection is computed from the publication of the work (Art. 8).

For photographic works, the term of copyright is 20 years from first publication.

For cinematographic works, the term is 30 years from the date of first publication (Art. 34).

## 7. Transfer of rights

The author or his successors in title may alienate or assign the work totally or partially. This alienation confers upon the assignee the right to the economic exploitation of the work only for the term fixed by the Law (Arts. 51 and 52). The alienation or assignment must be registered in the National Copyright Registry; otherwise it is not valid (Art. 53). The alienation of plans and similar works gives the assignee only the right to execute the work for which they were designed (Art. 55).

The Law contains detailed rules on the contracts of publication (Arts. 37 to 44) and on performance contracts (Arts. 45 to 50). For the purpose of the Law, radiotelephonic transmission or any other method of mechanical reproduction of any work is considered a public performance (Art. 50).

After the author's death, copyright belongs to his heirs or successors in title. In the event of an author dying without heirs and his estate being declared in abeyance, the rights belonging to the author in his works pass to the State for the full legal term (Art. 5). Letters of the deceased author can be published within 20 years only with the consent of his spouse or direct descendants, or, if none of them exist, of his parents (Arts. 32 and 35).

## 8. *Domaine public payant*

Decree Law No. 1224, of February 3, 1958 (as amended by Decree Law No. 6066, of April 25, 1958), established the *Fondo Nacional de las Artes* [National Fund for the Arts], the object of which is, among others, to authorize credits for developing literary and artistic activities within the Republic and their diffusion abroad (Arts. 1 and 2). The activities of this Fund are financed, *inter alia*, by royalties in respect of works which have fallen into the public domain, but which domain, for the purposes of this Law, is to be regarded as the *domaine public payant* (Art. 6(c)). Regulations concerning the National Fund for the Arts are contained in Decree No. 6255, of April 28, 1958.

## 9. Neighboring rights

### *Performers*

The performer of a work has the right to demand remuneration for his performance broadcast or retransmitted by means of radiotelephony or tele-

vision, or recorded or printed on a disc, film, tape, wire or any other medium suitable for sound or visual reproduction; if no agreement can be reached, the amount of the remuneration shall be established by the competent judicial authority. The performer — or, in the case of a choir or orchestra, the conductor — can oppose the dissemination of the performance if the form of reproduction is such as to produce serious or unjust prejudice to his artistic interests. A work performed publicly may be broadcast or retransmitted by means of radiotelephony or television, subject to the consent of the organizing manager and without prejudice to the copyright of the author (Art. 56).

Decree No. 746 enumerates the different sorts of performers and the suitable means for transmitting their performances (Arts. 1 and 2).

### *Producers of phonograms*

Phonographic records are protected as scientific, literary or artistic works (Art. 1).

### *Broadcasting organizations*

No provisions.

## 10. Agencies set up under law and their function

The Law provides for the *Registro Nacional de Propiedad Intelectual* [National Copyright Register] for the registration of works and of contracts relating to copyright (Arts. 65 to 68). Detailed rules are provided for in the Regulation of the National Copyright Registry (Decree No. 41233 of the President of the Argentinian Nation, as amended up to December 2, 1974). Registration fees and deposit are regulated by Decrees No. 31636 (1933) and No. 71321 (1935). The *Sociedad General de Autores de la Argentina* (ARGENTORES) [General Society of Authors of Argentina for Reciprocal Protection] is recognized, by Law No. 20115 of January 23, 1973, as a civil, cultural and cooperative association of private character representing national and foreign creators of various categories of works. Detailed provisions on its organization and functioning are contained in Decree No. 461 of January 31, 1973.

Another society of authors and composers, SADAIC (*Sociedad Argentina de Autores y Compositores de Musica*), was created by Law No. 17648 of 1967.

## 11. Relevant multilateral conventions

Berne Convention: Brussels Act, 1948, as from June 10, 1967.

Universal Copyright Convention, 1952, as from February 13, 1958.

Montevideo Copyright Convention, 1889, since 1894; Argentina accepted the accession of France (1896), Spain (1900), Italy (1900), Belgium (1903), Austria (1923), Germany (1927), Hungary (1931).

Buenos Aires Copyright Convention, 1910, since 1950.

Washington Copyright Convention, 1946, since 1953.

Convention for the Protection of Producers of Phonograms Against Unauthorized Duplication of Their Phonograms, 1971, as from June 30, 1973.

## 12. Bilateral agreements

No information available.

## 13. Applicability to foreigners not covered by conventions or agreements

The Law is also applicable, with the exception of the rules on registration of works, to works published in foreign countries, whatever may be the nationality of their authors, provided they belong to countries which recognize copyright. In order to secure the protection of Argentinian Law, they only need to prove the fulfillment of the formalities required in the country in which publication took place, except as regards the requirements concerning registration of translation agreements (Arts. 13 and 14).

The term of protection granted to foreign authors cannot exceed that granted by the country where the work was published, and can never be longer than that fixed by the Argentinian Law (Art. 15).

## Australia

### 1. Official title and date of current legislation

The Copyright Act, 1968, No. 63, of June 27, 1968. Entry into force: May 1, 1969.

### 2. Works eligible for protection

#### *General eligibility criteria*

Copyright protection subsists in respect of original literary, dramatic, musical or artistic works, if:

- (a) in the case of a published work, the work was first published in Australia, or the author was a citizen of or resident in Australia at the time of the first publication or, if the author is dead, immediately before his death;
- (b) in the case of an unpublished work, the author was a citizen of or resident in Australia at the time of making of the work;
- (c) in the case of an original artistic work, it is situated in Australia (Sec. 32).

The term "dramatic work" includes choreographic work or entertainment in dumb show, if the form of presentation is reduced to writing (Sec. 10).

No formalities are required.

#### *Special categories of works*

Separate but similar provisions have been made in respect of cinematographic works, sound recordings and broadcasts (Part IV).

Sections 74 to 77 contain detailed provisions on the protection of industrial designs.

Adaptations of works are protected as original works, and the term "adaptation" is defined in the Act as including translation in the case of a literary or dramatic work (Secs. 10 and 31(1)).

Publishers of published editions of literary, dramatic, musical or artistic works have been given the exclusive right to reproduce the edition by means that include a photographic process (Sec. 88).

Protection of works of folklore is provided for along the lines of Article 15(4) of the Berne Convention (Paris Act, 1971) (Sec. 184(4)).

The Act contains no provisions on type faces.

#### *Works not protected*

No specific provisions, but see under 5 below.

### 3. Beneficiaries of protection (copyright owners)

As a general rule, the author of the work is the first owner of the copyright therein.

However, in the absence of any agreement to the contrary:

- (a) in the case of a literary, dramatic or artistic work made by the author in the course of his employment by a proprietor of a newspaper or other periodical under a contract of service or apprenticeship, such proprietor is the owner of the copyright to the extent it relates to publication in any newspaper or periodical, broadcasting or reproduction, but in all other respects the author shall be the owner;
- (b) in the case of a work made in the course of the author's employment under a contract of service or apprenticeship, the employer is the owner (Sec. 35);
- (c) where a work is made by, or first published under the direction or control of, the Commonwealth or a State, or any international organization recognized by the Government, the Government or the international organization, as the case may be, is the owner (Secs. 176, 177 and 187).

### 4. Rights granted

Copyright in relation to a literary, dramatic or musical work includes the right to reproduce, perform or publish any work, or any translation or adaptation thereof, or to use it for making a record or cinematograph film, to broadcast or to transmit to subscribers to a diffusion service; in respect of an artistic work it includes the right to reproduce, publish or broadcast it in television through diffusion service (Sec. 31).

In the case of cinematograph films, copyright includes the right to make a copy of the film or to broadcast the film or cause it to be heard or seen in public or transmitted to subscribers to a diffusion service (Sec. 86).

The rights of producers of records are given protection on the lines similar to those of authors in re-

spect of literary, dramatic or musical works. These rights include the right to reproduce a record, to broadcast it, or to cause it to be heard in public (Sec. 85).

In the case of broadcasts, the rights include the right to rebroadcast the broadcast, to make a sound recording of it and, in the case of a television broadcast, to make a cinematograph film of the broadcast, or a copy of such a film (Sec. 87).

The Act contains no provisions on moral rights or *droit de suite*.

## 5. Limitations on copyright

Sections 40 to 73 set out the cases in which, the circumstances under which, and the conditions subject to which various acts do not constitute infringement. Some of the more important of these are the following: fair dealing for the purpose of private study, research, criticism or review or for reporting current events in a newspaper or other periodical or in a broadcast; reproduction by way of painting, drawing, engraving or photography of sculptures or other works of artistic craftsmanship permanently situated in a public place; publication of reasonable extracts from or collection of passages from published works, if intended for educational or scientific purposes, and reproduction for purposes of judicial proceedings, instruction in educational institutions, etc.; publication in newspapers of reports of any lecture, address or sermon delivered in public; taking of copies by a librarian for the use of a library, for supply of material to research students, for private study or for performing certain public duties; unpublished works in libraries can also be copied for research purposes; public performance of works to a limited audience in educational institutions; compulsory license to record musical works, subject to payment of royalties; certain exceptions in regard to cable transmission of broadcasts to subscribers of a service have been recognized (Sec. 25).

## 6. Term of protection

If, in the lifetime of the author, the work has been published or performed in public or included in a broadcast, or records of the work have been offered for sale to the public, copyright subsists for a period extending up to 50 years from the end of the calendar year in which the author died.

If, in the lifetime of the author, none of the acts referred to above had taken place, copyright shall, if any such act is done after such death, subsist for a period of 50 years from the end of the calendar year in which any such act was done (Sec. 33).

The period will be 50 years from the end of the calendar year in which the work was first published in the case of an anonymous or pseudonymous work (Sec. 34).

The period of protection for sound recordings and broadcasts is 50 years from the end of the calendar year in which the record was first published or the first broadcast was made (Secs. 93 and 95).

Copyright subsisting in published editions (see under 2 above) continues to subsist until the expiration of 25 years after the end of the calendar year in which the edition was first published (Sec. 96).

## 7. Transfer of rights

Copyright is transmissible by assignment, by will and by devolution by operation of law. It can be assigned in whole or in part, but no assignment is valid unless it is in writing signed by or on behalf of the assignor (Sec. 196).

## 8. Domaine public payant

No provisions.

## 9. Neighboring rights

The Act contains no provisions on the protection of the rights of performers as such.

For sound recordings and broadcasts, see above.

## 10. Agencies set up under law and their function

A Copyright Tribunal has been set up under the Act (Part VI, Secs. 136 to 175) to deal with various questions arising under the Act, including determination of:

- (a) the royalties to be paid in respect of a record (Sec. 58);
- (b) the remuneration to the owner of the copyright by makers of records or cinematograph films (Secs. 47, 70, 107 and 108);
- (c) the amount payable by a broadcaster to the owner of copyright;
- (d) apportionment of royalties between owner of copyright in a musical work and that in a literary or dramatic work (Sec. 59);
- (e) matters relating to license schemes (Secs. 154 to 157).

## 11. Relevant multilateral conventions

Berne Convention: Paris Act 1971, as from March 1, 1978.

Universal Copyright Convention, as revised in 1971, as from February 28, 1978.

Convention for the Protection of Producers of Phonograms Against Unauthorized Duplication of Their Phonograms, 1971, as from June 22, 1974.

## 12. Bilateral agreements

There are no agreements concerning copyright protection as such. A number of bilateral cultural agreements, however, contain clauses providing for acceptance in principle of the benefits of copyright protection.

## 13. Applicability to foreigners not covered by conventions or agreements

Works from countries not party to the Conventions to which Australia is a party may enjoy protection

by virtue of a notification under the Act. Such protection can be given under the Regulations on the basis of reciprocity (Sec. 184). Copyright in works originating from a country can be denied if that country does not adequately protect works of Australian authors (Sec. 185).

## Austria

### 1. Official title and date of current legislation

Federal Act on Copyright in Works of Literature and Art and on Related Rights (Copyright Act), of April 9, 1936, as amended up to December 29, 1972.

### 2. Works eligible for protection

#### *General eligibility criteria*

Works within the meaning of the Act are original intellectual productions in the fields of literature, music, art and cinematography (Art. 1(1)). A work enjoys copyright protection regardless of whether or where it has been published, provided the author or a co-author is an Austrian citizen (Art. 94). Protection is also extended to all works not protected under Article 94 which have been published in Austria (Art. 95).

No formalities are required, but the Act provides for optional registration with the Ministry of Education (Art. 61(2) to (4) and the Ministry's Order effective as from July 1, 1963). Upon such registration, the term of protection for anonymous or pseudonymous works is computed pursuant to the general rules, i.e., 70 years after the death of the author (see under 6 below).

#### *Special categories of works*

Works of cinematography include motion pictures (images and sounds or images only), irrespective of the process employed for the production or the performance of the work (Art. 4).

Photographs, which are images produced by a photographic process, may be either works of photography (works of art) and enjoy protection as such (Art. 3), or simply photographs which are protected by a right related to copyright (Arts. 73 to 75).

Works of art include works of industrial art (Art. 3(1)).

Derivative works (translations and other adaptations) are protected as new works, provided they are original intellectual creations and without prejudice to any copyright subsisting in the adapted work (Art. 5). Similarly, compilations enjoy protection as collective works (Art. 6).

The Act contains no specific provisions on designs and models, type faces, typographical arrangement or works of folklore.

#### *Works not protected*

Laws, orders, official decrees, public notices and decisions or official works produced exclusively or mainly for official use do not enjoy protection (Art. 7(1)).

### 3. Beneficiaries of protection (copyright owners)

The exclusive right to exploit the work is vested in the author, i.e., the person who has created the work (Arts. 14(1) and 10(1)). In the absence of proof to the contrary, the person who is designated in the usual manner as author on the copies of a published work, or when the work is publicly performed, broadcast, etc., or on the original of a work of art, is presumed to be the author thereof (Art. 12).

Where several persons have jointly created a work in such a manner that their productions represent an inseparable unit, the copyright belongs jointly to co-authors (Art. 11(1)).

### 4. Rights granted

#### *Economic rights*

The rights of exploitation include the rights of multiplication, distribution, broadcasting, delivery, performance and exhibition (Arts. 15 to 18). The recording of a delivery or a performance of a work is considered a multiplication (Art. 15(2)). The right of distribution does not extend to copies of the work which, with the authorization of the person entitled thereto, have been put into circulation by transfer of the property rights in such copies (Art. 16(3)). Where a work is publicly performed, the communication to the public of such performance by means of broadcast over wires is considered radio broadcasting (Art. 17(2)). For the rights of delivery and performance it is immaterial whether the delivery or performance is made directly or by means of recordings. Public delivery, performance and exhibition include the public rendition of a broadcast by means of loudspeakers or other technical contrivance (Art. 18(2) and (3)).

The right of exploitation in cinematographic works belongs to the film producer, subject to the authors' moral rights being respected (Art. 38). The authorization of the authors is, however, also required for the exploitation of adaptations and translations of the cinematographic work (Art. 39(4)).

#### *Moral rights*

The moral rights include the right to claim the authorship of the work and to determine whether the work should bear a designation of the author (Arts. 19 and 20), the right to prevent any abridgments, additions or other alterations made without the consent of the author, and the author's right to oppose distortions, mutilations or other alterations of the work which seriously violate his moral interests therein (Art. 21).

#### *Droit de suite*

No provisions.

## 5. Limitations on copyright

### *Uses permitted without payment*

Free uses of literary works include: their use in the interest of the administration of justice and public administration (Art. 41); multiplication for personal use (Art. 42); multiplication, distribution, public delivery and broadcast of public addresses for the purpose of reporting (the distribution of recordings thereof and the multiplication in compilations being reserved to the author) (Art. 43); multiplication and distribution in newspaper and periodicals, as well as public delivery and broadcast, of single newspaper articles dealing with economic, political or religious questions of the day, unless the multiplication is expressly prohibited (Art. 44); multiplication of single works in compilations destined for use in churches, schools or for instruction, and in school broadcasts, under specified conditions (Art. 45); quotations (Art. 46); use of small portions of works, or of brief works, after they have been made public, as the text of and in connection with a musical work, under specified conditions (Art. 47); various uses of such small portions of works, or brief works, which have been set to music (Art. 48); use in news reports (Art. 49); public non-profit delivery of published works, under specified conditions (Art. 50).

Free uses of musical works include: multiplication and distribution of single published songs in compilations destined for teaching in schools (Art. 51); use of single passages of published musical works, or single works, under specified conditions (Art. 52); the public performance of published musical works by means of hand organs, music boxes, etc., and on various other occasions without any commercial purpose (Art. 53).

Free uses of works of art include multiplication and distribution of such works: if they are permanently in a public collection, in catalogues issued to visitors; in catalogues and other advertisements for auctions; for educational purposes, under specified conditions; and if they are permanently located in a public place. Reproductions of works of art may in this latter case also be publicly exhibited by optical devices and broadcast. Published works of art may be publicly exhibited by optical devices in a scientific or educational address (Art. 54). The person ordering a portrait or the person portrayed, and his heirs, may — unless otherwise agreed — make copies thereof under specified conditions (Art. 55).

In all the above-mentioned cases, the moral interests of authors are protected (Art. 57).

### *Compulsory licenses*

A system of compulsory licenses for sound recordings, applicable to domestic manufacturers and to those having their principal place of business in a country which grants reciprocal protection, is provided for in Article 58.

Broadcasts of literary and musical works may be used for public delivery and performance of such

works by means of loudspeakers, provided the necessary permission is obtained from the competent performing rights society (Art. 59).

## 6. Term of protection

The general term of protection is 70 years after the death of the author (Art. 60). Copyright in anonymous and pseudonymous works terminates 70 years after the work has been made public (Art. 61); see also under 2 above, second paragraph.

Copyright in cinematographic works terminates 50 years after filming or, if they are made public before the expiration of that term, 50 years after they are first made public (Art. 62).

The protection of photographs terminates 30 years after they have been taken or, if they are made public before the expiration of that term, 30 years after they are first made public (Art. 74(6)).

In computing the terms of protection, the year in which the determining fact for the commencement of the term has occurred is not counted (Art. 64).

The author has the right to claim authorship, and to oppose alterations that seriously violate his moral interests in the work, during his lifetime, even though the term of protection has expired (Art. 65).

## 7. Transfer of rights

Copyright is transferable by inheritance; otherwise, it is inalienable (Art. 23).

The author may authorize other persons to use the work and may grant them the exclusive right to do so (Art. 24). The right to use a work is subject to inheritance and alienation (Art. 27(1)). Detailed provisions on the transfer of such right are contained in Articles 26 to 37.

## 8. Domaine public payant

No provisions.

## 9. Neighboring rights

The *performers* have the exclusive right to record their performances (including broadcasts thereof) on devices recording images or sounds, and to multiply and distribute such devices (Art. 66(1)). Their authorization is also required for the broadcasting of performances (Art. 70(1)) and for their public rendition by loudspeakers or other technical contrivances outside the place where they occur (Art. 71(1)).

The exploitation rights terminate 50 years after the expiration of the year in which the performance took place (Art. 67(1)). The moral interests of performers are also protected during the same period; in any case they do not terminate before the death of the performer (Art. 68).

The *producers of phonograms* have the exclusive right to multiply and distribute their sound recordings (Art. 76(1)). The Act provides for an appropriate remuneration, payable to the producer, in the case of use of a sound recording for broadcast or public rendition; the performers have a claim to a share of such remuneration which, in the absence of agreement, amounts to one half of the remuneration after deduction of the costs of collection (Art. 76(3)). The rights in sound recordings terminate 50 years from the year of their production or, if they are made public before the expiration of that term, 50 years from the year in which they are first made public (Art. 76(5)).

The *broadcasters* have the exclusive right to broadcast the transmission simultaneously on another transmitter, to record it and to reproduce and distribute such recordings. This right terminates 30 years after the year of transmission (Art. 76a).

All the above rights are subject to the limitations imposed by the Act, and a number of provisions concerning copyright in literary and artistic works apply accordingly.

The Act also contains, in the part dealing with related rights, provisions on the protection of letters (Art. 77), portraits (Art. 78), news (Art. 79) and titles (Art. 80).

#### 10. Agencies set up under law and their function

The performing rights societies (as referred to in Article 59) are governed by a special law promulgated in 1936.

#### 11. Relevant multilateral conventions

Berne Convention: Brussels Act, 1948 (substantive provisions), as from October 14, 1953; Stockholm Act, 1967 (administrative provisions), as from August 18, 1973.

Universal Copyright Convention, 1952, as from July 2, 1957.

Montevideo Copyright Convention, 1889, in relation to Argentina (since 1923), Bolivia (since 1930) and Paraguay (since 1928).

International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations (Rome Convention), 1961, with declarations made under Article 16(1)(a)(iii) and (iv) and (1)(b), as from June 9, 1973.

#### 12. Bilateral agreements

Copyright provisions in treaty with Germany, 1930 (applicable anew between Austria and the Federal Republic of Germany, as from January 1, 1952).

Exchange of notes concerning the extension of the term of protection, with Norway (1956), Spain (1959), France (1964), Brazil (1965), the Federal Republic of Germany (1967) and Italy (1969).

#### 13. Applicability to foreigners not covered by conventions or agreements

Works and photographs of foreign authors which are published abroad, performances of foreigners which take place abroad and sound recordings made by foreign producers and issued abroad are protected subject to reciprocity (Arts. 96 to 99). A similar rule applies to the protection of news and titles (Art. 100).

## Bangladesh

### 1. Official title and date of current legislation

The Copyright Ordinance (Pakistan), 1962. Entry into force: February 27, 1967.

The Copyright (Amendment) Act, 1974. Entry into force: July 25, 1974.

### 2. Works eligible for protection

#### *General eligibility criteria*

Copyright protection is available in respect of original literary, dramatic, musical and artistic works, if,

- (a) in the case of a published work, the work is first published in Bangladesh or where the work is published outside Bangladesh, if the author is a citizen of, or is domiciled in, Bangladesh at the date of publication or where the author is dead, at the date of his death;
- (b) in the case of an unpublished work other than an architectural work of art, the author is a citizen of, or domiciled in, Bangladesh at the date of the making of the work;
- (c) in the case of an architectural work of art, the work is located in Bangladesh;
- (d) in the case of a record, it is made in Bangladesh and, in the case of a broadcast, it is transmitted from within Bangladesh (Sec. 10(2)).

No formalities are required for the enjoyment of copyright, but registration is required for the enforcement of civil remedies (Sec. 60).

#### *Special categories of works*

Cinematographic works, photographs, works of artistic craftsmanship, records and broadcasts (which include cable transmissions) are included in the category of protected works (Sec. 2) and are protected in the same way as literary, artistic or musical works, except where the work or a substantial part thereof is an infringement of the copyright in any other work (Sec. 10). Choreographic works and entertainments in dumb show the acting form of which is fixed in writing are protected as dramatic works.

Translations and adaptations of works are protected as original works (Sec. 3(1)(a)).

Publishers of any published edition of a work enjoy, for a period of 25 years, the right to authorize the making of copies of typographical arrangements by a photographic or similar process (Secs. 28 to 30).

The Law contains no provisions on type faces or works of folklore.

#### *Works not protected*

Matters published in any official gazette, reports of commissions and judgments of courts or other judicial authority may be reproduced or published, unless prohibited by the authority (Sec. 57(q)) (see also under 5 below).

### 3. Beneficiaries of protection (copyright owners)

As a general rule, the author of a work is the first owner of the copyright therein (Sec. 13). The term "author" is defined in Section 2(1)(d), with reference to each category of works, including records but not broadcasts.

However, in the absence of any agreement to the contrary,

- (a) in the case of a literary, dramatic or artistic work made by the author in the course of his employment by the proprietor of a newspaper or other periodical under a contract of service or apprenticeship, such proprietor is the first owner of the copyright to the extent it relates to the publication or reproduction in any newspaper or periodical; but in all other respects the author is the first owner;
- (b) where the work was made in the course of the author's employment under a contract of service or apprenticeship, the employer is the first owner;
- (c) in the case of a photograph, painting, portrait, engraving or cinematographic work made for valuable consideration at the instance of a person, such person is the first owner;
- (d) where the work is a Government work or is made or published by or under the direction or control of any international organization recognized by the Government in this behalf, the Government or, as the case may be, the international organization is the first owner (Sec. 13).

### 4. Rights granted

Section 3 sets out the scope and content of copyright in relation to each category of works. In relation to literary, dramatic or musical works, it includes the right to produce, reproduce, perform or publish any work or any translation or adaptation thereof or to use it for making a record or cinematographic work or for communication to the public by broadcast or otherwise. It also sets out appropriate rights in respect of artistic works, cinematographic works, records and broadcasts.

Producers of phonograms are protected in respect of records in the same way as authors in respect of their works.

Broadcasting organizations enjoy the right to authorize the rebroadcasting and fixation of their broadcasts, and the copying of such fixations (Sec. 24).

Moral rights of the author, including the right to claim authorship and to restrain any distortion, mutilation or other modification of the work or any other action prejudicial to his reputation or honor, are recognized (Sec. 62).

The Law contains no provisions on *droit de suite*.

### 5. Limitations on copyright

Section 57 sets out the cases in which certain acts do not constitute infringement. Among the more important of these are: fair dealing for purposes of private study, research, criticism or review, or for reporting current events in a newspaper or other periodical or in a broadcast, photograph or cinematographic work; reproduction by way of painting, drawing, engraving or photography of works of sculpture or other artistic works permanently situated in a public place or of an architectural work of art; publication in any collection intended for educational institutions of short passages, or recitation in public of reasonable extracts from published works, or reproduction or performance or adaptation of works in connection with the activities of such institutions; reproduction for the purposes of judicial proceedings, etc.; publication in newspapers of reports of any lecture, etc., delivered in public and reproduction of an article on current economic, political, social or religious topics, except when expressly prohibited by the author; making of limited number of copies of any work in a public library by the librarian for the use of a library; and reproduction, for the purposes of research or private study, of any unpublished work kept in a public library, museum or other institution to which the public has access, if it is made more than 50 years after the death of the author; causing of records to be heard in public as part of the amenities provided exclusively or mainly for residents therein or the public performance to a non-paying audience, or to a religious, charitable or educational institution.

If the owner of the right of translation does not publish a translation in a language in use in Bangladesh, within a period of 7 years from the first publication of the work, a compulsory license to translate the work in that language can be issued to any other person, subject to the conditions set out in Section 37. Similar licenses can also be issued for the publication of works unreasonably withheld from the public (Sec. 36).

### 6. Term of protection

In the case of works published within the lifetime of the author, copyright subsists 50 years from the beginning of the calendar year next following the year in which the author died (Sec. 18). The term is 50 years from the beginning of the calendar year next following the date of publication of the work in the cases of a cinematographic work, a record, a

photograph, an anonymous or pseudonymous work, a posthumous work (if published within 50 years after the death of the author (Sec. 23)), or a work of Government or international organization (Secs. 19 to 22). In the case of a broadcast the term is 25 years from the end of the year of broadcast (Sec. 20A).

#### 7. Transfer of rights

Copyright is transferable and can be assigned in whole or in part, for the whole term of the copyright or for any part thereof; but every such assignment should be in writing and signed by the assignor. Copyright in an unpublished registered work, if assigned by the author, will revert to the author if not published within 3 years.

No assignment of a copyright by the author (except where it is in favor of the Government or a religious or charitable or educational institution) is effective after 10 years from the beginning of the calendar year next following the year of assignment (Secs. 14 and 15).

#### 8. *Domaine public payant*

No provisions.

#### 9. Neighboring rights

The Law contains no provisions on the protection of the rights of performers as such.

For phonograms and broadcasts, see above.

#### 10. Agencies set up under law and their function

A Copyright Board has been set up under the Law to which disputes relating to copyright are referred for adjudication. The Board also deals with applications under Sections 36 and 37 for grant of compulsory licenses for translations, etc., or for publication of works unreasonably withheld from the public (Secs. 45, 46 and 78).

The Law provides for the establishing of the Copyright Office, which is under the immediate control of the Registrar of Copyrights (Sec. 43). The Registrar signs all certificates of registration, acts as Secretary of the Copyright Board and performs other duties imposed upon him under the Law (Sec. 44).

#### 11. Relevant multilateral conventions

Universal Copyright Convention, as revised in 1971, as from August 5, 1975.

#### 12. Bilateral agreements

No information available.

#### 13. Applicability to foreigners not covered by conventions or agreements

The provisions of the Law can be made applicable to foreign works by means of a notification of Government if the country in question provides for the

protection of works entitled to copyright under the Bangladesh Law, and it is a work of certain specified international organizations (Secs. 53 and 54).

The Government has the power to restrict the rights in respect of works of foreign authors first published in Bangladesh, if the foreign country concerned does not give adequate protection to works of Bangladesh authors (Sec. 55).

## Belgium

### 1. Official title and date of current legislation

Law on Copyright, of March 22, 1886, as amended up to March 11, 1958.

### 2. Works eligible for protection

#### *General eligibility criteria*

Copyright applies to literary and artistic works, including writings of all kinds and any other oral manifestation of thought (Art. 10), musical works (Art. 16) and works of plastic art (Arts. 19 to 21).

No formality is required (see, however, under 3 below).

#### *Special categories of works*

Works of art reproduced by an industrial process or applied to an industrial product remain subject to the Law on Copyright (Art. 21).

The Law contains no special provisions on the protection of other special categories of works.

#### *Works not protected*

Official documents of public authorities do not give rise to copyright (Art. 11).

### 3. Beneficiaries of protection (copyright owners)

Copyright belongs to the author of a literary or artistic work (Art. 1). The publisher of an anonymous or pseudonymous work is regarded as the author of the work in so far as third parties are concerned (Art. 7).

Where a work is the result of collaboration, copyright subsists for the benefit of all successors in title (Art. 5). Where such copyright is undivided, its exercise is regulated by agreement. In the absence of agreement, no single co-proprietor may exercise the copyright by himself (the courts decide in the event of disagreement). Each co-proprietor is free to take action, in his own name and without the intervention of the other co-proprietors, in respect of any infringement of his copyright (Art. 6).

Publications made by the State or by public administrations (other than official documents of public authorities) are protected on behalf of either the author or the State or such administrations on condi-

tion that the publications have been registered in accordance with the Royal Decree of March 27, 1886 (Art. 11).

#### 4. Rights granted

The author of a literary or artistic work has the exclusive right to reproduce it (or authorize its reproduction) in any manner or form (Art. 1). The author of a literary work enjoys an exclusive right of translation (Art. 12). The author of a literary or musical work enjoys an exclusive right of performance (Arts. 15 and 16). Copyright in musical works includes the exclusive right of making arrangements (Art. 17).

A special Law (of June 25, 1921) affords artists an inalienable right in respect of their works which are put up for public sale. The same right belongs to heirs and successors in title for the term of protection. The applicable rate ranges from 2 percent to 6 percent of the selling price. *Droit de suite* is afforded to foreign authors only on the basis of reciprocity. Reciprocal protection has been recognized by Royal Decree of September 5, 1973, as regards France, and by Royal Decree of May 26, 1977, as regards the Federal Republic of Germany.

#### 5. Limitations on copyright

Speeches made in deliberative assemblies, at public court proceedings or at political gatherings may be freely published but only the author has the right to print them separately (Art. 10). Quotations for the purposes of criticism, polemics or teaching are also permitted (Art. 13). An article published in a newspaper may be reproduced in another newspaper, provided the source is stated and in the absence of any special notice forbidding reproduction (Art. 14). The authorization of the author is not required for the reproduction, recording or public communication of short extracts from literary or artistic works for the purpose of reporting current events by means of photography, cinematography, sound broadcasting or television (Art. 21<sup>bis</sup>).

The author of a portrait does not have the right to reproduce it or exhibit it in public without the consent of the person portrayed or his successors in title for a period of 20 years following the death of the person portrayed (Art. 20).

#### 6. Term of protection

Copyright continues for 50 years after the death of the author (Art. 2). For posthumous works, the term begins on the day the work is published, performed or exhibited (Art. 4).

Where the author of a publication of the State or of a public administration has assigned copyright to such bodies, the term of protection begins on the day of publication (Art. 11).

Under the Law of June 25, 1921, works published before August 4, 1924, enjoy a ten-year extension of the term of protection (wartime prolongation).

#### 7. Transfer of rights

Copyright is assignable and transmissible in whole or in part (Art. 3). In the case of works consisting of words or libretti and music, neither the composer nor the author may combine his work with that of another collaborator, but does have the right to exploit the work independently by way of publication, translation or public performance (Art. 18).

On the death of the author, his rights pass to his heirs or successors in title (Art. 2).

#### 8. Domaine public payant

No provisions.

#### 9. Neighboring rights

The Law contains no provisions on the protection of the rights of performers, producers of phonograms or broadcasting organizations.

#### 10. Agencies set up under law and their function

No provisions.

#### 11. Relevant multilateral conventions

Berne Convention: Brussels Act, 1948, as from August 1, 1951 (substantive provisions); Stockholm Act, 1967, as from February 12, 1975 (administrative provisions).

Universal Copyright Convention, 1952, as from August 31, 1960.

Montevideo Copyright Convention, 1889, since 1903, as regards Argentina and Paraguay.

European Agreement concerning Programme Exchanges by means of Television Films, 1958, as from April 8, 1962.

European Agreement on the Protection of Television Broadcasts, 1960 (with the 1965 Protocol and the 1974 Additional Protocol), as from March 8, 1968 with reservations under Article 3(1).

European Agreement for the Prevention of Broadcasts transmitted from Stations outside National Territories, 1965, as from October 19, 1967.

#### 12. Bilateral agreements

No information available.

#### 13. Applicability to foreigners not covered by conventions or agreements

Foreigners enjoy the rights afforded by the Copyright Law, subject to the rule of comparison of terms of protection. Moreover, if Belgian authors enjoy less extensive protection in a foreign country, the nationals of that country may only enjoy, in respect of their works published abroad, the provisions of the Law to the same extent (Art. 38).

See also under 4 above, last paragraph.

## Brazil

### 1. Official title and date of current legislation

Law on the Rights of Authors and Other Provisions, No. 5988, of December 14, 1973.

### 2. Works eligible for protection

#### *General eligibility criteria*

Intellectual creations enjoy protection under the Law regardless of the form of expression. The main categories of such works are listed in Article 6 which includes oral works like lectures, written works like books, dramatic works and musical works.

The Law applies to works of authors who are nationals of or domiciled in Brazil. Stateless persons are regarded as nationals of the country in which they are domiciled (Art. 1).

The Law provides for optional registration of works. In the absence of proof to the contrary, the person in whose name the registration is effected is considered to be the author (Arts. 17 to 20). Total or partial assignment of copyright must be registered in order to be binding on third parties (Art. 53).

#### *Special categories of works*

The Law protects also cinematographic works, adaptations, translations, etc., to the extent they are new intellectual creations, works of applied art the artistic value of which may be dissociated from the industrial character of the object to which they are applied, photographic works to the extent they are artistic creations, collections and compilations including those of law reports, if by reason of their selection they constitute intellectual creations. Choreographic works and entertainment in dumb show, the acting form of which has been fixed in writing or otherwise, are also protected as intellectual works. Oral works are also protected (Arts. 6 and 7).

Works of folklore (i. e., works of unknown authors handed down by oral tradition) are not protected; they are declared to be in the public domain (Art. 48). See, however, under 8 below.

The Law contains no provisions on type faces or typographical arrangement.

#### *Works not protected*

The provisions of the Law do not apply to the texts of treaties or conventions, laws, regulations, court decisions and other official documents (Art. 11).

### 3. Beneficiaries of protection (copyright owners)

The person who indicates or declares his authorship in any work or the person in whose name the work is registered is presumed to be the author, in the absence of proof to the contrary (Arts. 13 and 20).

In the case of works created in compliance with an official duty or under an employment contract, or a

contract for services, copyright belongs to both parties in the absence of any agreement to the contrary. The author of a commissioned work can recover his right if the work is not published within one year. He can also incorporate it in a book after one year (Art. 36). Authors of translations or adaptations which have fallen into the public domain and which represent new intellectual creations have copyright therein, but they cannot object to another translation or adaptation which is not a copy of their own (Art. 8). In the case of cinematographic works, the author of the scenario or of the literary, musical or dramatico-musical subjects, the director and the producer are the co-authors (Art. 16). Unless otherwise agreed, the economic rights in a cinematographic work belong to the producer (Art. 37).

In the case of anonymous or pseudonymous works, the publisher can exercise the right unless and until the author reveals his identity (Art. 41).

The right of commercial exploitation of writings published in newspapers or periodicals belongs to the publisher, with the exception of those which are signed or include a copyright notice (Art. 92).

### 4. Rights granted

#### *Economic rights*

The economic rights of the author, which are dealt with in Articles 29 to 47, include any form of use, such as publication, translation, adaptation, incorporation in a phonogram or cinematograph film or communication to the public in any manner, by means of broadcast, or by wire or by performance and video-phonography. If the work has been fixed, it cannot be publicly performed without the author's consent (Arts. 29 and 30). No person can, without the permission of the author, reproduce a work even with commentaries (Art. 32).

The author of a photographic work has the right to reproduce it, disseminate it and put it on sale, subject to restrictions as to display, reproduction and sale of portraits (Art. 82).

#### *Moral rights*

The moral rights of the author are explicitly set out in Articles 25 to 28 and they include the rights to claim authorship, to ensure the integrity of the work and to object to any modifications in the work prejudicial to his reputation or honor, to modify the work and to withdraw it from circulation.

#### *Droit de suite*

The Law makes provision for *droit de suite*. When the author transfers his artistic work or manuscript, he has a right to receive a share of 20 percent of any increase in the price realized by any subsequent sale, except when such increase is the result of monetary depreciation. This right cannot be renounced or transferred (Art. 39).

## 5. Limitations on copyright

The acts which do not constitute infringement include: (a) reproduction (i) which is of educational, scientific or religious character, of extracts from published works, (ii) in the daily or periodical press, of news or information articles devoid of literary character; (iii) in newspapers or periodicals, of speeches delivered in public, (iv) of works of art located in public places, (v) of a single copy for no profit, (vi) of theatrical or musical performances within the family circle or for teaching purposes; (b) quoting from works for study, discussion or criticism; (c) pastiches or parodies; and (d) use of works for judicial or administrative proof (Arts. 49 to 51).

## 6. Term of protection

Moral rights are untransferable (Art. 28). On the death of the author, they pass on to his heirs; the State safeguards the identity or authenticity of works which have fallen into the public domain (Art. 25(1) and (2)).

Economic rights can be enjoyed by the author for his life and by the author's children, parents or spouse, if passed on to them by inheritance. The other successors of the author enjoy the rights which he has transferred to them for a period of 60 years from January 1 of the year following the death of the author, or of the last surviving author in the case of a joint work (Arts. 42 and 43).

In the case of an anonymous or pseudonymous work, the term is 60 years from January 1 of the year following that of first publication, unless and until the author reveals his identity (Art. 44).

In the case of cinematograph films, phonograms and works of applied art, the period of protection is 60 years from January 1 of the year following that of their completion (Art. 45).

Works commissioned by the Government enjoy protection for 15 years from their publication or re-issue (Art. 46).

## 7. Transfer of rights

Moral rights are not transferable (Art. 28).

The economic rights (copyright) may be transferred or assigned in whole or in part (Art. 52) and the transfer must be made in writing which should specify the actual rights transferred. Total or partial assignment is deemed to be for valuable consideration but should be registered if it is to bind third parties (Art. 53). Future works may also be transferred, provided the term of assignment does not exceed 5 years (Art. 54). Detailed provisions to regulate the conditions of publishing contracts and the rights of parties thereto are set out in Articles 57 to 72; those relating to performance are contained in Articles 73 to 79, and those relating to use of artistic works in Articles 80 and 81. The contracts for cinematographic production are dealt with in Articles 84 to 91.

## 8. *Domaine public payant*

The following categories of works belong to the public domain under Article 48: works of authors who have no successors after their death, works of unknown authors handed down by oral tradition and works published in foreign countries not party to conventions to which Brazil is a party and which do not grant to the authors of works published in Brazil the same treatment as to those under their jurisdiction. The use of any work in the public domain requires authorization by the National Copyright Council and, if used for profit, 50 percent of the amount which would have accrued to the author thereof has to be paid to the Council; this amount is reduced to 10 percent if the work is intended for educational purposes (Art. 93).

## 9. Neighboring rights

The Law deals also with what it calls related rights, which include the so-called neighboring rights and certain other rights as well.

The *performers* and their successors have the right to prevent the recording, reproduction, transmission or retransmission by a broadcasting organization, or the use of their performance in any form of communication to the public. Where various performers take part in a performance, the leader of the group exercises the right (Art. 95).

The *producers of phonograms* have the right to authorize or prohibit direct or indirect reproduction, transmission or retransmission by a broadcasting organization and public performance by any means (Art. 98).

The *broadcasting organizations* have the right to authorize or prohibit retransmission, fixation or reproduction of their broadcasts and the communication to the public of the transmissions by television to gatherings where fee is charged (Art. 99).

The Law makes provision for what are called stadium rights, whereby the organizations of athletes have the right to prohibit fixation, transmission or retransmission by any means of sporting events for which a fee is charged (Art. 100). It also provides for distribution of collections to the athletes.

The term of protection for related rights is 60 years (Art. 102).

There is also a separate law, No. 4944, of April 6, 1966, which deals with protection of performers, producers of phonograms and broadcasting organizations.

## 10. Agencies set up under law and their function

The Law establishes the National Copyright Council which is responsible for supervision, advice and assistance with respect to copyright and related rights, including the distribution of royalties, the right to supervise measures necessary for implementing international conventions ratified by Brazil, the administration of the Copyright Fund, etc. (Arts. 116 to 120).

Detailed provisions have been made in Articles 103 to 115 to regulate the constitution of, and control over, associations of owners of copyright and related rights.

### 11. Relevant multilateral conventions

Berne Convention: Paris Act, 1971, as from April 20, 1975.

Universal Copyright Convention, as revised in 1971, as from December 11, 1975.

Rio de Janeiro Copyright Convention, 1906, since 1911.

Buenos Aires Copyright Convention, 1910, since 1915.

Washington Copyright Convention, 1946, since 1949.

International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations (Rome Convention), 1961, as from September 29, 1965.

Convention for the Protection of Producers of Phonograms Against Unauthorized Duplication of Their Phonograms, 1971, as from November 28, 1975.

### 12. Bilateral agreements

Copyright Treaty with Portugal (1922).

Agreement with Italy concerning the extension of the term of copyright protection (1963); exchange of notes to the same effect with Norway (1956) and Austria (1965).

### 13. Applicability to foreigners not covered by conventions or agreements

Works published in countries which are not party to treaties to which Brazil is party, and which do not grant to the authors of works published in Brazil the same treatment as to those under their jurisdiction, belong to the public domain (Art. 48(iii)).

## Bulgaria

### 1. Official title and date of current legislation

Law on Copyright, of November 16, 1951, as amended up to April 28, 1972.

### 2. Works eligible for protection

#### *General eligibility criteria*

Any literary, artistic or scientific work which is the product of creative effort, and is published or expressed in any tangible form, may be the subject of copyright (Art. 2).

Copyright is recognized in any work published or located in the territory of Bulgaria. Nationals of

Bulgaria and their successors in title also enjoy protection in its territory for works published or located in another State (Art. 10).

Generally, no formalities are required (for photographs, see below).

#### *Special categories of works*

Copyright is also explicitly recognized in letters, works of applied art, phonograms, broadcasts and derivative works (translations, collections, etc.) (Arts. 13, 17 and 18).

Copyright in works of artistic photography or works expressed by a process analogous to photography is protected under the Law only if the name of the author and the place and year of publication are indicated on each copy (Art. 18).

The Law contains no provisions on designs and models, type faces, typographical arrangement or works of folklore.

### 3. Beneficiaries of protection (copyright owners)

Copyright is recognized for authors and their successors in title (Art. 10). Legal entities may only be owners of copyright in the cases and under the conditions provided for in the Law. Organizations publishing collections, encyclopedias or periodicals enjoy copyright in them as a whole. Broadcasting organizations have copyright in the programs broadcast by them (Art. 19).

Copyright in a work created by two or more authors belongs to all the co-authors as a whole; each co-author of a collective work retains his copyright in respect of his own contribution if that contribution is separable, unless otherwise agreed (Art. 11).

Copyright in a collection belongs to the compiler, provided the collection is independently compiled and edited, and without prejudice to the rights in the works compiled, if such works are protected (Art. 14).

Copyright in a cinematograph or television film belongs to the enterprise which has produced the film. The author of the scenario, the composer, the director, the principal operator, the artist responsible for the stage setting and authors of other works embodied in the film enjoy copyright in their own works (Art. 16).

Authors of works created in the execution of official duties have copyright in such works according to the general rules (Art. 15). The agency in the service of which such a work has been created, however, is entitled to free use of the work for purposes related to its functions (Art. 15(a)). The agency also has the right to publish the work within two years following receipt of the work, against appropriate remuneration to the author. Another public organization may, within this period, on the basis of a contract concluded with the author, publish the work only with the written authorization of the said agency (Art. 15(b)).

The Press Committee attached to the Council of Ministers is entitled to unlimited free use of photographic works created by its employees executing their official duties (Note to Art. 15).

#### 4. Rights granted

##### *Economic rights*

The author has the right to receive payment for publication and other utilization of his work (Art. 4). Publication, delivery, performance or any other use of a work during the existence of copyright are permissible only when specifically stipulated by law (Art. 5).

##### *Moral rights*

The author has an inalienable right to claim authorship in his work; any person who uses the work shall, except where the work is anonymous, indicate the name or pseudonym of the author (Art. 3). The author has the right to decide whether his work is ready for publication or any other use permitted by law; he also has the right to demand protection against any alteration of his work and to authorize its translation (Art. 4).

##### *Droit de suite*

No provisions.

#### 5. Limitations on copyright

##### *Uses permitted without payment*

Cases of free use include: (a) the use of the work of another person in the creation of a new independent work, except for the adaptation of works of literature, dramatic works or scenarios into the genre of each other; (b) the use of quotations from published works, subject to mentioning the source and the name of the author; (c) the insertion in newspapers and other periodicals of data and excerpts of public speeches; (d) the reprinting in periodicals of articles other than literary and scientific works and of reports other than those written by special correspondents, when originally published in newspapers and subject to mentioning the source and the author's name if indicated; (e) the reproduction of works of graphic art by means of sculpture and vice versa; (f) the public performance by amateur groups or other organizations having a cultural or educational character, if there is no admission charge; (g) the reproduction of artistic works placed in streets or public squares, if not mechanically copied by contact; (h) the public exhibition of a work, unless prohibited by the author; (i) the broadcasting or recording of published works by State organizations for the purpose of public reports on current events, to the extent justified by the informatory purpose; (j) the duplication and publication for informatory purposes, by any organization engaged in scientific information, documentation or bibliography, of summaries,

notes and references relating to written works, separate illustrations and tables clarifying the text (Art. 6).

A film producing organization can freely use parts of a film, to the extent justified by the purpose, for the production of other films in its own studios (Art. 16).

##### *Uses permitted against payment (legal license)*

Legal licenses are granted concerning: (a) the insertion of excerpts from works, or of the whole of works of insignificant size, as well as of photographs, drawings, etc., if insignificant in number, into newspapers, periodicals and other works, provided that the author and the source are indicated; (b) the use by the composer of the literary text of another person; (c) the use of artistic and photographic works in products of industry and crafts (Art. 7). Short musical literary works already published or excerpts from larger works of such kind may be performed on appropriate payment, except in cases of free use referred to under (f) above (Art. 8). Published works may be broadcast without change against remuneration, provided that the author has not prohibited the broadcasting of the work; in the case of broadcasting dramatic, dramatico-musical and choreographic works or dumb-show entertainments in their entirety, the author must be informed in advance (Art. 9).

##### *Other limitations*

Subsequent use of a work of great public significance already published or used in another manner may be authorized by court — subject to payment of adequate remuneration — if the owner of the copyright opposes such use without a valid reason and this opposition is detrimental to the public interest (Art. 23).

#### 6. Term of protection

The term of copyright is the life of the author and 50 years following the year of his death.

The term of copyright in a film is 50 years following the year of the first public showing.

The term of copyright in works of applied art, artistic photography, in collections, encyclopedias, and periodicals as a whole, in phonograms and in broadcasts is 25 years from the year of their first publication (Art. 18).

#### 7. Transfer of rights

The author may transfer particular rights deriving from his copyright to users under contracts of different types. Such transfer shall not be effective for more than 5 years (Art. 20). (The conditions of the contracts for publishing, for public performance and for a scenario are regulated by Articles 270 to 279 of the Code of Contracts and Obligations, promulgated by Decree No. 63, of November 14, 1950.)

The rates of remuneration of authors are determined by a decision of the Council of Ministers (Art. 30).

The composer and other authors whose works are embodied in a film are not entitled to separate remuneration for the public showing of the film, except where the law provides otherwise (Art. 16).

On the death of the author, the copyright devolves upon his descendants, his spouse and his parents according to the law of succession. In the absence of such heirs, the copyright devolves upon the State. Testamentary dispositions of the author likewise apply in accordance with the law of succession (Art. 18).

#### 8. **Domaine public payant**

No provisions.

#### 9. **Neighboring rights**

No detailed provisions. See, however, under 3 above (copyright in broadcasts) and 6 above (the term of copyright in phonograms and broadcasts).

#### 10. **Agencies set up under law and their function**

The Law creates a Copyright Office within the Press Committee attached to the Council of Ministers; its organization and functions shall be determined by rules to be approved by the President of the Press Committee (Art. 29).

#### 11. **Relevant multilateral conventions**

Berne Convention: Paris Act, 1971, as from December 4, 1974, with declaration under Article 33(2).

Universal Copyright Convention, as revised in 1971, as from June 7, 1975.

#### 12. **Bilateral agreements**

Agreement on the Reciprocal Protection of Copyrights with the Union of Soviet Socialist Republics. Date of signature: October 8, 1971. Date of entry into force: January 1, 1972. Expired on December 31, 1974, New Agreement signed on January 16, 1975. Date of entry into force: January 1, 1975.

#### 13. **Applicability to foreigners not covered by conventions or agreements**

Copyright in works published or located in the territory of Bulgaria is recognized for all authors and their successors in title, irrespective of their nationality (Art. 10).

## Canada

### 1. **Official title and date of current legislation**

Act Respecting Copyright, of June 4, 1921, as amended up to December 23, 1971.

### 2. **Works eligible for protection**

#### *General eligibility criteria*

Copyright subsists in every original literary, dramatic, musical and artistic work, if the author was at the date of the making of the work a British subject, or resident "within Her Majesty's Realms and Territories," or national of a foreign country bound by an international convention to which Canada is a party; and, in the case of a published work, if the work was published in the said countries or territories (Sec. 4(1)). The term "every original literary, dramatic, musical and artistic work" includes every original production in the literary, scientific or artistic domain, whatever may be the mode or form of its expression (Sec. 2). A work is not deemed to be published if it is published without the consent of the author, his executors, administrators or assigns (Sec. 3(3)).

The names or titles of works and the names and addresses of authors may be entered in the Registers of Copyrights, which are kept at the Copyright Office (Sec. 37(1)). A certificate of registration of copyright in a work is *prima facie* evidence that copyright subsists in the work and that the person registered is the owner of such copyright (Sec. 36(2)).

#### *Special categories of works*

Artistic works include works of artistic craftsmanship (Sec. 2).

The Act does not apply to designs capable of being registered under the Industrial Design and Union Label Act, except designs that are not used or intended to be used as models or patterns to be multiplied by any industrial process (Sec. 46).

Copyright in records, perforated rolls and other contrivances by means of which sounds may be mechanically reproduced means the sole right to reproduce any such contrivance, or any substantial part thereof, in any material form (Sec. 4(3) and (4)).

The Act contains no specific provisions on cinematographic, photographic or derivative works.

The Act contains no provisions on type faces, typographical arrangement or works of folklore.

### 3. **Beneficiaries of protection (copyright owners)**

The author of a work is the first owner of the copyright therein (Sec. 12(1)).

Where a work is made under a contract of service or apprenticeship and in the course of the author's

employment, the employer is, in the absence of any agreement to the contrary, the first owner of the copyright (Sec. 12(3)).

In the case of an engraving, photograph or portrait, if the plate or other original is ordered by some other person and is made for valuable consideration, the person who ordered it is, in the absence of any agreement to the contrary, the first owner of the copyright (Sec. 12(2)).

Where a work is prepared or published by or under the direction or control of the Government, the copyright in such work belongs to the Crown (Sec. 11).

#### 4. Rights granted

##### *Economic rights*

Copyright means the sole right to produce or reproduce a work (or any substantial part thereof) in any material form, to perform it, to deliver it and to publish it. It includes these rights with respect to any translation of the work, as well as the right to convert a dramatic work into a non-dramatic one, and vice versa, to make any record, perforated roll, cinematograph film or other contrivance by means of which a literary, dramatic or musical work may be mechanically performed or delivered and to communicate any work by radio; and to authorize all such acts (Sec. 3(1)).

##### *Moral rights*

Independently of the author's copyright, and even after its assignment, the author has the right to claim authorship of the work and to restrain any distortion, mutilation or other modification of the work which would be prejudicial to his honor or reputation (Sec. 12(7)).

##### *Droit de suite*

No provisions.

#### 5. Limitations on copyright

##### *Uses permitted without payment*

The acts which do not constitute an infringement of copyright include: any fair dealing for the purposes of private study, research, criticism, review or newspaper summary; the publication in a collection of passages from literary works intended for the use of schools, under specified conditions; the publication in a newspaper of a report of a lecture delivered in public, unless the report is prohibited, or of an address of a political nature; the reading or recitation in public of any reasonable extract from a published work; the performance of musical works without motive of gain, or in furtherance of a religious, educational or charitable object, in the conditions specified in the Act; the making or publishing of artistic works permanently situated in a public place (Secs. 17(2), (3) and 18).

##### *Uses permitted against payment (legal license)*

After the expiration of 25 years from the death of the author of a published work, reproduction of the work is allowed if the person reproducing it gives the prescribed notice in writing of his intention to reproduce the work and pays royalties as prescribed (Sec. 7).

The making of records or other similar contrivances is not deemed to be an infringement of copyright in any musical, literary or dramatic work if such contrivances have previously been made by, or with the consent of, the owner of the copyright and if the person making them has given the prescribed notice of his intention and has paid the prescribed royalties (Sec. 19).

##### *Compulsory licenses*

Where the owner of the copyright in the work of a deceased author has refused to republish or to allow the performance in public of the work, he may be ordered by the Governor in Council to grant a license on such terms and subject to such conditions as the latter may think fit (Sec. 13).

Any person may, under the conditions prescribed in the Act, apply for a license to print and publish in Canada any book wherein copyright subsists, if the owner of the copyright fails to print it or cause it to be printed in Canada, or to supply the reasonable demands of the Canadian market for such book. The licensee must pay a royalty at a rate determined by the competent Minister (Sec. 14). Similar licenses may be granted for serial publication (Sec. 15).

All moneys paid or payable for a license under Sections 13, 14 and 15 have to be paid to the competent Minister (Sec. 16(5)).

#### 6. Term of protection

The general term of protection is the life of the author and 50 years after his death (Sec. 5). In regard to authors who are nationals of the countries that grant a shorter term of protection, the "comparison of terms" rule is applicable, limited apparently to works of joint authorship (Sec. 8(2)).

The term of protection for photographs and for records and similar contrivances is 50 years from the making of the original (Secs. 9 and 10).

In the case of Crown copyright, the term of protection is 50 years from the date of the first publication (Sec. 11).

#### 7. Transfer of rights

The owner of the copyright in any work may assign the right, either wholly or partially, either generally or subject to territorial limitations, and either for the whole term of the copyright or for any part thereof; any interest in the right may also be granted by license. Such assignment or grant must be in writing. No assignment or grant is operative

beyond the expiration of 25 years from the death of the author, saving contrary testamentary disposition (Sec. 12(4) and (5)).

#### 8. **Domaine public payant**

No provisions.

#### 9. **Neighboring rights**

The Act does not contain any specific provisions on the protection of rights of performers, producers of phonograms (apart from those noted), or broadcasting organizations.

#### 10. **Agencies set up under law and their function**

The Copyright Office is attached to the Patent Office, and the Commissioner of Patents exercises the powers conferred on him under the Act. The Registrar of Copyrights signs all entries made in the registers, as well as all certificates and certified copies; he also performs such other duties as may be assigned to him by the Commissioner of Patents. Detailed provisions relating to administration and registration are contained in Sections 29 to 43.

Detailed provisions on performing rights societies (i.e., societies, associations or companies that carry on the business of acquiring copyrights of dramatico-musical or musical works, or of performing rights therein) and the regulatory Copyright Appeal Board are contained in Sections 48 to 51.

#### 11. **Relevant multilateral conventions**

Berne Convention: Rome Act, 1928, as from August 1, 1931 (substantive provisions); Stockholm Act, 1967, as from July 7, 1970 (administrative provisions).

Universal Copyright Convention, 1952, as from August 10, 1962.

#### 12. **Bilateral agreements**

No information available.

#### 13. **Applicability to foreigners not covered by conventions or agreements**

Reciprocal treatment may be applied with respect to countries that grant to citizens of Canada the benefit of copyright on substantially the same basis as to its own citizens (Sec. 4(2)).

## Chile

### 1. **Official title and date of current legislation**

Law on Intellectual Property, No. 17336, of August 28, 1970.

Regulations under Law No. 17336 on Intellectual Property, No. 1122, of May 17, 1971.

### 2. **Works eligible for protection**

#### *General eligibility criteria*

The Law protects the moral and pecuniary rights of authors of literary, artistic or scientific works acquired by the sole fact of creation, irrespective of the form of expression (Art. 1). Article 3 sets out the main categories of protected works.

The protection is available to authors who are Chilean nationals or foreigners domiciled in Chile. Other foreign authors enjoy protection accruing to them under the international conventions ratified by Chile (Art. 2).

The author's rights and related rights, as well as any transfer thereof, must be inscribed in the *Registro de la Propiedad Intelectual* [Register of Intellectual Property] (Arts. 72 and 73). Failure to comply with such formalities will deprive the publisher of his rights, but it will not deprive the author of his rights under the Law or the contract (Art. 74).

#### *Special categories of works*

The Law also protects translations or adaptations authorized by the author; cinematographic works; choreographic works and pantomimes, the acting form of which is fixed in writing or otherwise; works of figurative art even if applied to industry, provided that their artistic value can be considered independently of the industrial character of the object (Art. 3); anthologies and other collections, and newspapers (Art. 24).

The Law contains no specific provisions on type faces or typographical arrangement.

#### *Works not protected*

No specific provisions.

### 3. **Beneficiaries of protection (copyright owners)**

The original owner of copyright is the author, who is presumed to be the person whose name or pseudonym is mentioned on the copy which is registered (Arts. 7 and 8). Copyright in derivative works (i.e., adaptations, translations or transformations made with the authorization of the owner) vests in the person who makes them. However, if the original work belongs to the common cultural heritage, such owner cannot prevent other persons from producing different versions (Art. 9).

In the case of a cinematographic work, natural persons who carry out the intellectual creation have the legal status of author thereof. If such work has been

taken from a protected work or script, the authors of the earlier work are also deemed to be authors of the new work (Art. 27). The contract between the authors and the producer implies the assignment to the latter of all rights therein (Art. 29) and the producer owns copyright in the cinematographic work (Art. 25).

The State and municipal authorities and autonomous institutions hold the copyright in works produced by their employees as part of their duties (Art. 88).

#### 4. Rights granted

##### *Economic rights*

The pecuniary rights include the right: to communicate the work to the public by any medium, including publication, recording, broadcasting, exhibition, performance, reading or recitation; to reproduce the work by any process; to adapt it in any manner; and to perform it in public by any means, including cinematograph films or broadcasting (Art. 18).

The rights of the producer and the authors of a cinematographic work are set out in Articles 25 to 33 (see also under 3 above).

The photographer has the exclusive right to reproduce, publish or exhibit his photographs (Art. 34).

##### *Moral rights*

The author is the exclusive owner of the moral rights, which include the right to claim authorship and to object to any distortion, mutilation or other modification and to exercise other prerogatives set out in Article 14.

##### *Droit de suite*

Provision has been made for a scheme of *droit de suite* in Article 36 whereby a Chilean author of a painting, sculpture, drawing or sketch has the inalienable right to claim 5 percent of the increase in value obtained by the person who acquired it, on the subsequent sales by public auction or through an established trader. This right is available to a Chilean author exclusively and not even to his heirs, legatees or assignees.

#### 5. Limitations on copyright

The exceptions to the exercise of the rights are listed in Articles 38 to 47. They include: the reproduction of extracts from works in works of a cultural, scientific or educational character, and of photographs in anthologies intended for educational use; the publication of lectures for information (but not collections thereof); the use of recorded music, etc., in commercial establishments for demonstration purposes; the reproduction or publication by means of photography, cinema, television, etc., of artistic works situated in public places; the non-profit-making use of works in a private house or for educational, charitable or other similar institutions.

Broadcasting organizations may make ephemeral fixations of performances under usual conditions (Art. 69).

#### 6. Term of protection

The term of protection is the life of the author and 30 years after the date of his death. If the right passes to the surviving spouse, the protection extends for the life of the said spouse (Art. 10). In the case of works of joint authorship, the period of 30 years runs from the date of death of the last surviving author (Art. 12), while in the case of anonymous or pseudonymous works it runs from the date of first publication (Art. 13).

#### 7. Transfer of rights

The pecuniary rights can be transferred by the owner in full or in part (Art. 17). The authorization to use the work must be granted in a contractual form specifying the actual right granted and providing for payment of remuneration to the author (Art. 20). Moral rights are inalienable, but they are transmissible to the surviving spouse and the author's heirs *ab intestat* (Arts. 15 and 16). Some patrimonial rights are also inalienable (Art. 86).

Articles 48 to 55 set out certain regulations governing contracts between publishers and authors, and Articles 56 to 64 those governing stage performance contracts.

#### 8. Domaine public payant

According to Article 11, the following belong to the common cultural heritage: works in respect of which the term of protection has expired; works by unknown authors, including folklore; works whose owners renounced the protection; works of foreign authors not protected by Law; works expropriated by the State without a beneficiary.

All funds derived from works belonging to the common cultural heritage and royalties collected in respect of works not registered or of unknown authors shall be paid over to a fund earmarked for adoption of measures conducive to the protection, encouragement and promotion of the work of Chilean authors in the field of artistic creation and research (Art. 97).

#### 9. Neighboring rights

*Performers* of literary or artistic works have the right to authorize or prohibit the communication of their performances to the public and to receive remuneration for public use of such performances, which cannot be recorded, reproduced, broadcast, rebroadcast, or used for any other commercial purpose without authorization from the performer (Arts. 65 and 66).

*Producers of phonograms* have the right to authorize or prohibit reproduction of their phonograms (Art. 68). Commercial use of phonograms for

broadcast or other means of communication to the public requires payment of fees to performers as prescribed by Regulations. Chilean performers will be given preferential treatment in this regard (Art. 67).

*Broadcasting organizations* have the right to authorize or prohibit fixation and reproduction of their broadcasts (Art. 69).

The term of protection in respect of all these neighboring rights is 30 years from the beginning of the calendar year following the performance, the making of the record or the broadcasting, as the case may be. The rights are alienable and transmissible in case of death (Arts. 70 and 71).

#### 10. Agencies set up under law and their function

The Law establishes the *Corporación Cultural Chilena* [Chilean Cultural Corporation] with duties as spelt out in Article 99 and the Standing Committee of the Small Rights Department of the University with duties defined in Article 93. These duties are generally to administer, control and organize matters relating to copyright, payment and distribution of royalties, formulation of cultural policies and administration of funds established under the Law.

#### 11. Relevant multilateral conventions

Berne Convention: Paris Act, 1971, as from July 10, 1975.

Universal Copyright Convention, 1952, as from September 16, 1955.

Rio de Janeiro Copyright Convention, 1906, since 1910.

Buenos Aires Copyright Convention, 1910, since 1955.

Washington Copyright Convention, 1946, since 1955.

International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations (Rome Convention), 1961, as from September 5, 1974.

Convention for the Protection of Producers of Phonograms Against Unauthorized Duplication of Their Phonograms, 1971, as from March 24, 1977.

#### 12. Bilateral agreements

No information available.

#### 13. Applicability to foreigners not covered by conventions or agreements

No provisions.

## Colombia

### 1. Official title and date of current legislation

Law No. 86 on Copyright, of December 26, 1946.

Decree No. 410, of May 27, 1971 (Regulations concerning publishing contracts).

### 2. Works eligible for protection

#### *General eligibility criteria*

Copyright protection is conferred under the Law in respect of any intellectual creation in the nature of scientific, literary or artistic works which can be reproduced or represented by printing or other forms of reproduction or by any other means, either known or to be discovered. The main categories of projected works are listed in Article 2.

All works and contracts relating to copyright are subject to registration (Art. 73). Any work not registered is not protected until such time as it is registered (Art. 88).

For works published in foreign Spanish-speaking countries, the formalities for the protection of copyright are only those required in the law of the country of publication (Art. 44).

#### *Special categories of works*

Cinematographic works and works of photography are protected as original works (Arts. 2 and 12).

Translations and adaptations are protected similarly (Art. 3).

The Law contains no specific provisions on designs and models, type faces, typographical arrangement or works of folklore.

#### *Works not protected*

The texts of laws, decrees, departmental orders and other public acts may be reproduced in accordance with the official edition. Collections of such laws may be published with commentaries (Art. 17).

Publications which are obscene, or which are opposed to public morality, are not protected except in the case of works for purely scientific, educational or artistic purposes (Arts. 94 and 95).

News and miscellaneous items of informative nature do not enjoy protection (Art. 21).

### 3. Beneficiaries of protection (copyright owners)

Generally the author is the owner of the copyright; failing proof to the contrary, the person whose name appears in the work as the author shall be deemed to be the author (Art. 3).

A person making a compilation owns the copyright therein, subject to contractual obligations with collaborators (Art. 28). In the case of anonymous or pseudonymous publications, the publisher is deemed to own the copyright (Art. 5). In respect of cinema-

tographic works, the producer and other collaborators have their rights respectively determined under Articles 30 to 32; in the absence of special agreement, the author of the plot and the producer have equal rights in a cinematographic work (Art. 30).

For posthumous works the owners, by inheritance or otherwise, can publish the work; but successors in title cannot oppose the republication or translation of the work if they have allowed 10 years to elapse without themselves arranging for publication or translation (Arts. 8 and 10).

#### 4. Rights granted

The owners of copyright have the exclusive right to dispose of it and to exploit it by printing, photography, cinematography, phonograph record, performance, translation, adaptation, or broadcast, or by any other means (Arts. 6 and 11 to 14).

Indirect unauthorized reproduction which does not have originality, or reproduction of a work with commentaries purporting to be scientific, literary or artistic criticism of the work, is prohibited under Article 14.

The rights of joint collaborators are defined under Article 28.

The Law contains no provisions on *droit de suite*.

The moral rights of the author to claim authorship and to preserve the integrity of the works are recognized (Art. 49).

#### 5. Limitations on copyright

The following acts do not constitute infringement: reproduction of reasonable extracts from works for educational or other purposes (Arts. 15 and 16); reproduction of speeches delivered in deliberative assemblies, courts or public meetings (except when reserved) (Art. 20); reproduction of topical articles from reviews and periodicals, if not expressly prohibited (Art. 21).

See also under 3 above, last paragraph.

#### 6. Term of protection

The author enjoys protection for his lifetime, and thereafter those who have lawfully acquired it for 80 years after his death, or after the death of the last surviving co-author in the case of joint works. If there are no heirs or successors in title, the person who publishes the work has copyright therein for 20 years (Art. 90). If copyright is transferred during the lifetime of the author to another person, the transferee will enjoy the right during the life of the author and for 80 years thereafter. But if there is any heir who inherits as of right, the rights of the transferee end 25 years after the death of the author and the heirs will enjoy the right for the remaining 55 years, in the absence of an agreement to the contrary (Art. 91).

#### 7. Transfer of rights

Authors may transfer their rights in whole or in part, but only the rights of exploitation and reproduction are transferred thereby. Moral rights are inalienable (Arts. 48 and 49). Transfers should be made by an authenticated deed and should be registered (Art. 52).

Detailed provisions have been made in Articles 53 to 64 and in Decree No. 410, of May 27, 1971, to regulate the conditions of contracts for performance and publication.

#### 8. Domaine public payant

No provisions.

#### 9. Neighboring rights

The performer of a theatrical, musical or literary work has the right to receive remuneration from anyone who transmits by radio or television, or makes a recording of, his performance and to oppose the dissemination of his performance if the reproduction thereof causes serious or unjust prejudice to his artistic interests (Art. 43).

The Law contains no provisions on the protection of the rights of producers of phonograms or broadcasting organizations.

#### 10. Agencies set up under law and their function

No provisions.

#### 11. Relevant multilateral conventions

Universal Copyright Convention, as revised in 1971, as from June 18, 1976.

Buenos Aires Copyright Convention, 1910, since 1936.

Washington Copyright Convention, 1946, since 1972.

International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations (Rome Convention), 1961, as from September 17, 1976.

#### 12. Bilateral agreements

Copyright treaties with Spain (1885), France (1953) and the Federal Republic of Germany (1959).

Copyright provisions in treaties with Switzerland (1908) and Ecuador (1958).

#### 13. Applicability to foreigners not covered by conventions or agreements

Article 44 provides that, except in regard to some provisions relating to the deposit of copies and registration (Arts. 76 to 80), the provisions of the Law apply to works published in foreign Spanish-speaking countries even without any international agreements, provided that the country in question recognizes the principle of reciprocity in its legislation.

Foreign authors enjoy in Colombia the protection under the Law, but the term of protection cannot exceed that obtaining in the country of publication. If such term in that country is longer, the term fixed by the Law will apply (Art. 47).

## Costa Rica

### 1. Official title and date of current legislation

Decree No. 40, of June 27, 1896 (Law of Intellectual Property), as amended up to May 25, 1948.

### 2. Works eligible for protection

#### *General eligibility criteria*

The Law protects scientific, literary, artistic, dramatic or musical works, whatever be the manner of their manifestation (Art. 2).

Registration and deposit of copies are compulsory formalities for eligibility for protection (Arts. 53 and 63).

#### *Special categories of works*

Translators of works enjoy, in respect of their translations, the same protection as authors; but they cannot oppose the making of further translations of the same work (Art. 18).

The Law contains no specific provisions on cinematographic or photographic works, works of applied art, type faces, typographical arrangement or works of folklore.

#### *Works not protected*

Public documents emanating from Government (other than collections of speeches in the Congress) can be published in newspapers, etc. (Arts. 14 and 15).

### 3. Beneficiaries of protection (copyright owners)

The author is the owner of copyright (Art. 7).

In respect of anonymous and pseudonymous publications, the publisher may exercise the rights of the author; but if the identity of the author is legally established, he shall enjoy the rights (Arts. 21 and 22).

### 4. Rights granted

Copyright in scientific and literary works includes the right to publish, translate or reproduce them, including by means of recording (Arts. 7, 9 and 11).

In respect of dramatic and musical works, the right includes the right of public performance, the right to claim remuneration in respect of performances and to exercise the other rights set out in Articles 26 to 37.

The moral right of the author to object to alteration (Arts. 19 and 28) is recognized.

In respect of artistic works, the author enjoys the right of reproduction, and the other provisions relating to copyright also apply (Arts. 38 to 40).

### 5. Limitations on copyright

The following acts are permitted: publication of commentaries or criticisms of literary or scientific works to the extent necessary for the purposes (Art. 10); publication of extracts from lectures or recorded performances (Art. 13); reproduction in periodicals of matter published in other periodicals of the same nature, in the absence of a stipulation to the contrary (Art. 16).

### 6. Term of protection

The author enjoys the right for his lifetime, and thereafter his heirs and legatees enjoy it for 50 years (Art. 3). In the case of transfer the assignee enjoys the right for his lifetime and his successors in title for 20 years after his death. Thereafter it reverts to the author, if living, or his heirs, for a further period of 30 years (Art. 4).

Works which have not been registered within the time limit required by Law pass into the public domain, but the owner can recover the right if, ten years after that time limit terminates, he makes the required registration within one year (Art. 63).

Scientific, artistic or literary works not reprinted for 25 years and musical or dramatic works not published within 30 years from their registration shall lapse into public domain (Arts. 64 and 65).

Works belonging to the State or corporations, etc., enjoy protection only for 25 years (Art. 6).

### 7. Transfer of rights

Intellectual property has the same character as a movable property (Art. 1). Transfer is limited in time (see under 6 above).

If the author dies without leaving any heir or successor or estate, the State does not become the owner of copyright; copyright goes to the public domain (Art. 5).

### 8. Domaine public payant

No provisions.

### 9. Neighboring rights

No provisions.

### 10. Agencies set up under law and their function

Articles 49 to 62 contain provisions on the establishing and functioning of the register of copyrights at the Directorate General of Public Libraries.

### 11. Relevant multilateral conventions

Berne Convention: Paris Act, 1971, as from June 10, 1978.

Universal Copyright Convention, 1952, as from September 16, 1955.

Rio de Janeiro Copyright Convention, 1906, since 1908.

Buenos Aires Copyright Convention, 1910, since 1916.

Havana Copyright Convention, 1928, since 1933.

Washington Copyright Convention, 1946, since 1950.

International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations (Rome Convention), 1961, as from September 9, 1971.

## 12. Bilateral agreements

Copyright treaties with Spain (1893, with Protocol of 1896) and France (1896).

## 13. Applicability to foreigners not covered by conventions or agreements

Foreigners residing abroad enjoy in Costa Rica the same rights which the Law grants to nationals and to foreigners residing in Costa Rica, provided that the laws of their State grant equal privileges to the nationals of Costa Rica (Final Article). (Decree No. 6, of August 26, 1899, provided for such protection with respect to the United States of America.)

# Cuba

## 1. Official title and date of current legislation

Law on Copyright, No. 14, of December 28, 1977.  
Entry into force: December 30, 1977.

## 2. Works eligible for protection

### *General eligibility criteria*

Copyright refers to scientific, artistic, literary and educational works of an original character involving creative activity, which have been or may be brought to public knowledge by any lawful means, whatever their form of expression, their contents, their value or purpose (Arts. 2 and 7).

A work shall be considered to be publicly known when, for the first time, it has been published, performed or interpreted in public, broadcast or made publicly known by any other means (Art. 10).

The protection established by the Law is subordinated to the superior interest imposed by the social necessity for the most ample diffusion of science, technology, education and culture, in general; the exercise of copyright must not affect these interests (Art. 3).

### *Special categories of works*

Copyright refers, among other sorts of works, also to cinematographic works, televised works and audiovisual works in general, radiophonic works, works of architecture, lithography, scenography, design and other similar works; to photographic works and works of similar character; works of applied art, equally if they are of artisanal character, and works produced for industrial purposes, etc. (Art. 7).

Copyright in a photographic or analogous work is only recognized if every copy is duly identified in accordance with established regulations (Art. 22).

Derivative works, such as translations, versions, adaptations, musical arrangements and other transformations of a creative character, as also anthologies, encyclopedias and other compilations which constitute independent creation by the selection or arrangement of material are protected as original works, without prejudice to the rights in the pre-existing ones (Arts. 8 and 9).

Works of folklore transmitted from generation to generation are protected (Art. 26). Any person who assembles and compiles dances, songs, melodies, proverbs, fables, stories and other manifestations of national folklore, enjoys copyright, provided that his selection or arrangement of the materials constitutes authentic and specific works (Art. 27).

The Law contains no provisions on type faces or typographical arrangement.

## 3. Beneficiaries of protection (copyright owners)

In the absence of proof to the contrary, the person under whose name or pseudonym the work has been publicly made known shall be considered to be the author (Art. 11).

Authors of derived works enjoy copyright in respect thereof, provided that such works have been created and made public with the consent of the authors of the pre-existing work or of persons deriving title from them and subject to due payment being made to such persons (Art. 15).

Copyright in respect of a work of an unknown author is exercised by the person who first brought the work to the knowledge of the public (Art. 16). The publisher represents the author in respect of works published anonymously or pseudonymously (Art. 17).

Copyright in respect of works published posthumously belongs to the heirs of the author (Art. 18).

Co-authors of a work created in collaboration are co-owners of the copyright therein; this right can be divisible when some elements or parts of the work are capable of constituting an independent work. In the absence of agreement to the contrary, the copyright belongs to such authors jointly and any moneys collected should be divided equally between them. The co-author of a divisible work conserves copyright in respect of the part created by him and may dispose of it without prejudice to the utilization of the common work (Arts. 12 to 14).

Legal entities which publish scientific collections, dictionaries, magazines, newspapers and other publications, enjoy copyright in the whole of such a publication, without prejudice to the copyright in respect of each contribution to it (Art. 25).

Copyright in a cinematographic work belongs to the entity that produced it. The director or producer and other persons whose collaboration in the creation of the cinematographic work was particularly relevant, may exercise copyright in respect of their contributions in accordance with their contracts which they may have concluded with the producing entity (Art. 23).

Copyright in respect of radio or television emissions, or in films produced expressly for television, belongs to the broadcasting entity which produces them without prejudice to the copyrights in different works included in such emissions or films which may be exercised according to contracts concluded for this purpose (Art. 24).

Copyright is recognized in respect of works created in the course of employment by any State entity or undertaking, or social or people's organization; the form in which authors may exercise this right is determined by regulatory provisions made by the Council of Ministers. The remuneration for a work created in the exercise of the functions and duties of such employees is included in the salary received by the author. Specific cases of additional remuneration may only be established by the Council of Ministers (Arts. 19 and 20).

#### 4. Rights granted

##### *Economic rights*

The author has the right to receive remuneration when his work is utilized, within the limits and conditions set by any relevant legal provisions (Art. 4(d)).

The Ministry of Culture, in consultation with directly interested State or social organizations, establishes rules and tariffs concerning remuneration in relation to works created or made public for the first time within the country. The remuneration of authors of works created and made public outside Cuba shall be adjusted in accordance with agreements and conventions concluded for this purpose; they may be concluded only if they do not affect overriding interests of scientific, technical and educational development of the country and the need for fullest diffusion of culture (Arts. 5 and 6).

##### *Moral rights*

The author has the right to require recognition of the authorship of the work, to defend the integrity of his work and to realize or authorize any lawful publication, reproduction or communication to the public of the work, the translation, adaptation, arrangement, or any other transformation thereof (Art. 4(a) to (c)).

##### *Droit de suite*

No provisions.

#### 5. Limitations on copyright

##### *Uses permitted without payment*

It is lawful without authorization and without payment of remuneration, but with obligation to indicate the name of the author and the source, provided that the work is publicly known and respected for its specific values, to reproduce quotations in any form for purposes of teaching, information, criticism, illustration or explanation, to the extent justified by the objective in question; to utilize even entire works, if justified by their briefness or character, for the purpose of teaching, in publications, broadcasting or sound or visual recordings; to reproduce by any means other than contact copying works of art permanently exposed in a public site, other than exhibitions or museums; to perform a work not for purposes of profit; to reproduce a work by a photographic or analogous process in a library, documentation center, scientific or teaching institution, provided that the reproduction is not for purposes of profit and the number of the reproduced copies is strictly limited to the requirements of the specific activity; to reproduce or communicate to the public by any means any political speech, information, lecture, legal discussion or other work of like character, except for the inclusion of such material in any collection (Art. 38). Free use in the form of translation into Spanish language is assimilated to uses in the original language of the work (Art. 39).

For reasons of social interest, the competent authority may grant a license to publish in printed or analogous form works published in the same form, or to diffuse them by radio or other sonorous or visual means, without authorization by the author and remuneration to him, for the development of science, technology, education or professional advancement, provided that the distribution or diffusion is realized exclusively within Cuba and without charge or, in the case of selling printed matter, without seeking profit (Art. 37).

The competent authority may also grant a free license to official institutions and undertakings, or social or people's organizations of a country which is not in a position to acquire a specific right of utilization of a scientific, technical, artistic, literary or educational work of a Cuban citizen, to utilize the work in any form provided by the Law, within the territory of the State of the licensee; no such license can be subject to assignment (Art. 36).

##### *Uses permitted against payment (legal license)*

It is lawful, regarding a work publicly known, to perform it in public, to utilize it as the text of a musical work if it is a literary one, to record or perform and to diffuse it in the case of musical works with or without words, to record and diffuse or perform fragments of a musical work exclusively as the musical basis or presentation of a radio or television program, of broadcast or cinematographic announcements and artistic presentations, without

the consent of the author but subject to remuneration; author and title of the work must be mentioned, unless for technical reasons or customary practice in diffusion this is not suitable (Art. 40).

#### 6. Term of protection

Copyright subsists for the life of the author and 25 years following the year of his death; in the case of a work of collaboration, this term is calculated for each author separately (Art. 43). In the case of an unknown, anonymous or pseudonymous author, copyright continues for 25 years following the publication of the work (Art. 45).

The period of protection of copyright belonging to legal entities is of unlimited duration (Art. 46).

Copyright in photographic works or in works of applied art continues for 10 years from the utilization of the work (Art. 47).

#### 7. Transfer of rights

The author or his successor in title may grant the right by means of contract, to an entity authorized for this purpose, to utilize the work in accordance with the contract and the provisions of current legislation. The Minister for Culture may establish model contracts (Art. 28). Every contract for the utilization of a work must stipulate fundamentally — among other items required by the Law — also the period of the grant, the form and extent of utilization of the work, the amounts and dates of relevant payments, the cases in which the author may or may not grant rights in respect of the work to third parties during the currency of the contract (Art. 29). Every contract for the utilization of the work must be drawn up in writing, except for publication in newspapers and periodicals, or cases expressly indicated by the Minister for Culture (Art. 30).

The assignment on the part of a Cuban author of any right of utilization of any of his works abroad can only be effected through the intermediary of the Cuban organization authorized for these purposes (Art. 42).

The Law contains special provisions concerning the publication contracts (Arts. 31 and 32), the contract for public performance (Art. 33), the contract for cinematographic utilization (Art. 34), the contract for the creation of a commissioned work (Art. 35).

Copyright is inheritable in accordance with the legislation in force. The right to require recognition of the authorship of a work and to defend its integrity belongs equally to the heirs or executors of the author (Art. 44). The works of deceased Cuban authors whose copyright is exercised by persons permanently located abroad may be declared to be within the patrimony of the State and at the disposal of the Council of Ministers (Art. 41). Upon expiration of the copyright protection, any work can likewise be declared by a decision of the Council of Ministers to belong to the State (Art. 48).

#### 8. *Domaine public payant*

When the period of protection of copyright in a work has expired and the work has not been declared to belong to the State, it may be freely utilized, provided that the name of the author is mentioned, the integrity of the work is respected and a special contribution is paid to be used for the development of science, education and culture of the country, according to tariffs and rules fixed by the Ministry of Culture (Art. 49).

#### 9. Neighboring rights

Article 24 recognizes copyright in respect of radio or television emissions.

The Law contains no special provisions on the protection of the rights of performers and producers of phonograms.

#### 10. Agencies set up under law and their function

By Law No. 860 dated August 8, 1960, the Cuban Institute of Musical Rights has been set up to watch over the rights of authors and composers, to improve their economic position and to maintain their highest moral and ethical status (Art. 1). The main functions of the Institute, which are set out in Article 2, include the collection and distribution of all royalties due to authors and composers, both national and foreign, to fix tariffs, to ensure coordination of associations of authors, to publish musical works, etc. It also has general superintendence and control over performances. Detailed provisions have been made in the Law to regulate the working of the Institute.

Every contract of publication, performance or diffusion requires the prior approval of the Institute which is expected to ensure to authors or composers fair treatment. For this purpose, the Law stipulates certain stringent conditions for contracts.

#### 11. Relevant multilateral conventions

Universal Copyright Convention, 1952, as from June 18, 1957.

Washington Copyright Convention, 1946, since 1955.

#### 12. Bilateral agreements

Copyright provisions in treaty with Italy, 1903.

#### 13. Applicability to foreigners not covered by conventions or agreements

No provisions.

## Cyprus

### 1. Official title and date of current legislation

The Copyright Law No. 59, of December 3, 1976, as amended on October 29, 1977. Entry into force: June 1, 1978.

### 2. Works eligible for protection

#### *General eligibility criteria*

A literary, musical or artistic work is not eligible for copyright unless it is of an original character and has been reduced to writing, recorded or otherwise reduced to some material form (Sec. 3(2)).

Copyright is conferred on every work eligible for copyright of which the author is a citizen of, or has his habitual residence in, Cyprus (in the case of a body corporate, if it is incorporated under the laws of Cyprus) (Sec. 4(1)). Copyright also subsists in a scientific, literary, musical or artistic work, or a cinematograph film, first published in Cyprus and a sound recording made in Cyprus (Sec. 5(1)).

No formalities are required.

#### *Special categories of works*

Copyright protection includes cinematograph films, photographs, sound recordings, broadcasts (which include diffusion by wire) and derivative works (translations, adaptations, collections, etc.) which present an original character. Works of artistic craftsmanship are protected as artistic works (Secs. 2(1) and 3(1)).

If a scientific or artistic work is intended to be used as a model or pattern to be multiplied by any industrial process, it does not enjoy protection (Sec. 3(3)).

As for the works of folklore, they are protected under Section 11(4) drafted along the lines of Article 15(4) of the Berne Convention (Paris Act, 1971).

The Law contains no specific provisions on type faces or typographical arrangement.

#### *Works not protected*

No provisions.

### 3. Beneficiaries of protection (copyright owners)

Copyright vests initially in the author. Where, however, a work is made in the course of the author's employment, or is commissioned by a person who is not the author's employer, the copyright is deemed to be transferred to the employer or the person who commissioned the work, as the case may be, subject to any agreement between the parties excluding or limiting such a transfer (Sec. 11(1)). Copyright also subsists in works made by or under the direction or control of the Government and some international bodies (Sec. 6(1)).

In the case of a cinematograph film or sound recording, the term "author" means the person by

whom the arrangements for the making of the film or recording were undertaken. Similarly, in the case of a broadcast transmitted from within any country, the term "author" means the person by whom the arrangements for the making of the transmission were undertaken. The owner of the material on which a photograph is taken is deemed to be the author thereof (Sec. 2(1)).

### 4. Rights granted

#### *Economic rights*

Copyright in a scientific, literary, musical or artistic work, a cinematograph film or a photograph is the exclusive right to control the reproduction in any form, the communication to the public, the broadcasting, the translation, adaptation and other arrangement of the whole work or a substantial part thereof (Sec. 7(1)). Copyright in a sound recording is the exclusive right to control the direct or indirect reproduction of the whole or a substantial part of the recording (Sec. 9). Copyright in a broadcast is the exclusive right to control the recording and the rebroadcasting of the whole or a substantial part of the broadcast and, in the case of a television broadcast, also its communication to the public, in places where an admission fee is charged, and the taking of still photographs from it (Sec. 10).

#### *Moral rights*

Moral rights include the right of the author to claim authorship of the work and to object to any distortion, mutilation or other alteration thereof which would be prejudicial to his honor or reputation (Sec. 7(4)).

#### *Droit de suite*

No provisions.

### 5. Limitations on copyright

Exceptions from the copyright control, listed in the proviso to Section 7, include fair dealing for purposes of research, private use, criticism or review, or the reporting of current events, educational broadcasting and other educational use, various kinds of non-commercial use in the public interest, ephemeral recording under specified conditions, use in judicial proceedings, use of works by public libraries, scientific institutions or non-commercial documentation centers, if no fee is charged, the inclusion in a film or broadcast of an artistic work situated in a public place, etc. These exceptions, provided for in respect of literary, musical or artistic works and cinematograph films, are in some cases also applicable to sound recordings or broadcasts (Secs. 9 and 10).

The Law also provides for a compulsory license for the making or importing of sound recordings of literary or artistic works (Sec. 7(1)(h)) and for the broadcasting of works published with which no licensing body is concerned (Sec. 7(1)(l)).

## 6. Term of protection

The term of copyright for literary, musical and artistic works (other than photographs) is 50 years after the death of the author, or of the last surviving author in the case of joint authorship (in the case of anonymous or pseudonymous works or works of Government or international organizations, this period is calculated from the date of publication). The same term is counted for cinematograph films and photographs after their being first published. For sound recordings, the term of protection is 20 years after their making, and for broadcasts after they took place. All terms are calculated as from the end of the year in which each of the events took place (Secs. 4, 5(2) and 6(2) and (3)).

Moral rights are enjoyed during the author's lifetime (Sec. 7(4)).

## 7. Transfer of rights

Copyright is transmissible by assignment, by testamentary disposition or by operation of law, as movable property. An assignment or testamentary disposition may be limited to some only of the exclusive rights, or to a part of the period of the copyright, or to a specified country or other geographical area. No assignment or exclusive license is effective unless it is in writing (Sec. 12).

## 8. Domaine public payant

No provisions.

## 9. Neighboring rights

The Law contains no provisions on the rights of performers as such. Producers of phonograms and broadcasting organizations are protected as owners of the relevant copyrights; see above.

## 10. Agencies set up under law and their function

The Law provides for the appointment of a competent authority. If the competent authority is satisfied that a licensing body is unreasonably refusing to grant licenses or is imposing unreasonable terms and conditions, it may direct that a license shall be deemed to have been granted at the time the act in relation to a work with which the licensing body is concerned is done, provided the appropriate fees are paid (Sec. 15).

## 11. Relevant multilateral conventions

Berne Convention: Rome Act, 1928, as from February 24, 1964.

European Agreement concerning Programme Exchanges by means of Television Films, 1958, as from February 20, 1970.

European Agreement on the Protection of Television Broadcasts, 1960 (with the 1965 Protocol and the 1974 Additional Protocol), as from February 22, 1970.

European Agreement for the Prevention of Broadcasts transmitted from Stations outside National Territories, 1965, as from October 1, 1971.

## 12. Bilateral agreements

No information available.

## 13. Applicability to foreigners not covered by conventions or agreements

No provisions.

# Czechoslovakia

## 1. Official title and date of current legislation

Copyright Law concerning Literary, Scientific and Artistic Works, No. 35, of March 25, 1965. Entry into force: July 1, 1965.

## 2. Works eligible for protection

### *General eligibility criteria*

The subject matters of copyright are literary, scientific and artistic works resulting from the creative activity of an author (Art. 2(1)). Copyright in a work originates as soon as the work is expressed in any form perceivable by senses (Art. 9(1)).

The Law applies to the works or performances of authors and performers who are Czechoslovak nationals or enjoy the right of asylum in Czechoslovakia, or have their domicile therein; it further applies to all works and performances first made public in Czechoslovakia (Art. 50). A work is considered as having been made public when it was first lawfully performed or exhibited in public, or published by lawfully putting copies thereof into public circulation, or made public in any other way (Art. 10).

No formalities are required.

### *Special categories of works*

The subject matters of copyright are, particularly, literary, theatrical and musical works, including works of architecture, of applied art, and also cinematographic, photographic and cartographic works (Art. 2(1)); new original works resulting from creative adaptation; translations (Art. 3); collected works, such as collections, periodicals, anthologies or exhibitions, if their arrangement is the result of creative activity (Art. 4(1)).

### *Works not protected*

Statutory provisions, legal decisions, public documents, official records and news of the day are not protected; speeches delivered in connection with public matters are only protected against publication in collections or compilations (Art. 2(2)).

### 3. Beneficiaries of protection (copyright owners)

Copyright in a work belongs to the author thereof. As long as the author does not disclose his identity to the public, copyright in his work may be exercised by the person who first lawfully makes it public (Art. 8(2)).

Works may be joined together only with the consent of their authors, who can dispose of such composite work in common, without prejudice to their rights in the works forming a part thereof. For the performance of a musical work with a text, however, the consent of the composer is sufficient (Art. 5). Copyright in a compilation belongs to the compiler, without prejudice to the rights in the works compiled; copyright in a published collection, cartographic work or periodical is exercised by its publisher (Art. 4). Copyright in works of joint authorship belongs to all co-authors jointly and severally (Art. 7). Authors of components of a cinematographic work grant, by contract, their consent to the maker to use the work; copyright in the work as a whole is exercised by the maker (Art. 6).

By a contract for the creation of a work, the author grants, in consideration of payment, to the ordering party, the right to use the work for the purpose stipulated (Art. 27(1)).

For the purpose of fulfilling its tasks, a socialist organization may, without further consent of the author, use a scientific or artistic work created by its employee in the performance of his duties resulting from an employment contract. It may make it public, however, only with the consent of the author; if the author unreasonably refuses to grant his consent, the organization may obtain authorization in court. The same applies to the author, *mutatis mutandis*. Unless an employment contract provides otherwise, the organization may request an adequate contribution from the fee received by the author to cover expenses incurred by the organization in the creation of the work (Art. 17).

### 4. Rights granted

#### *Economic rights*

The author is entitled to remuneration in each case of the use of his work. The rates of authors' fees may be determined by the Ministry of Education and Culture\* (Arts. 12(1)(c) and 13).

#### *Moral rights*

The author has the right to the protection of authorship, and especially to the inviolability of his work and to request that the use thereof should not be prejudicial to its value. This right is not transferable (Art. 12(1)(a) and (2)). It is not permissible to reveal, without the author's consent, the identity of an author whose work was published anonymously or under pseudonym (Art. 8(1)). The author also has

the right to decide upon making the work public and to grant his consent to its use (Arts. 12(1)(b) and 14(1)).

#### *Droit de suite*

An author who has transferred the original of his work for valuable consideration may claim a fair share from any transferee, if the latter obtains a socially unjustified profit from a further transfer of ownership of the work (Art. 31).

The author's rights resulting from the Law may not be waived or restricted by any agreement (Art. 14(3)).

### 5. Limitations on copyright

#### *Uses permitted without payment (free use)*

Free use is granted to a person who: (a) makes, for his own personal use, a copy of a work already made public — subject to indication, in the case of works of fine arts, that the reproduction or copy is not the original; (b) quotes excerpts of a published work; includes in a scientific work or in textbooks, to the extent necessary or reasonable, parts of published works or even short published works; uses a published work in his lecture for educational purposes; reprints in a periodical articles of current interest on economic or political matters already published in other periodicals, provided that the reprint has not been expressly forbidden; provided that, in all such cases, the author, the title and the source of the work are indicated; (c) adapts to another field of fine arts or disseminates the photographs of a work of fine arts located in public places; (d) reprints in the catalogue of an exhibition, or a public collection, a picture of a work of fine arts included therein; (e) exhibits works of fine arts or photographs transferred by the author to a socialist organization or into personal ownership (in this latter case, however, only if the work is exhibited free or lent free of charge to be exhibited by a socialist organization); (f) reproduces for gratuitous distribution a commissioned photographic portrait of himself (Art. 15(2)). Reasonable use can be made freely of a work performed or exhibited on the occasion of reporting current events by means of photography, film or broadcasting (Art. 15(3)).

#### *Uses permitted against payment (legal license)*

Broadcasting organizations may, without the author's consent, transmit works already made public, provided that the author and the work are indicated and remuneration is paid for each transmission (Art. 16).

#### *Compulsory licenses*

The Minister for Education and Culture\* may replace by his decision the consent of a Czechoslovak national to the use of his work already made public,

\* From January 1, 1969, Ministry of Culture of the Czech/Slovak Socialist Republic.

\* From January 1, 1969, Minister for Culture of the Czech/Slovak Socialist Republic.

if it is not possible to obtain the author's consent through reasonable efforts, or if the author unreasonably refuses to grant his consent, subject to remuneration. The consent of foreign authors to a translation into the languages of the nationalities of Czechoslovakia can only be so replaced if international agreements so permit and under conditions stipulated therein (Art. 18).

## 6. Term of protection

The general term of copyright is the life of the author and 50 years following the year of his death. In the case of posthumous works, the term should not be less than 10 years following the year of first publication. Where the author's identity is not known, the term of copyright expires 50 years after the year of the publication of the work.

The term of copyright expires: in cinematographic works, 25 years following the year in which the work was made public; in collections and periodicals published by organizations, 10 years after the year of publication; in photographic works, 10 years following the year of the death of the author.

The right to the protection of authorship is not limited in time (Arts. 33 and 34).

## 7. Transfer of rights

The author may only transfer the right to use the work (Art. 19(1)). The Ministry of Education and Culture \* may, by ordinance, issue forms of model contracts for different modes of the use of the work (Art. 14(2)). The right to introduce the work to the public may only be transferred to an organization authorized to make works available to the public in its particular manner (Art. 19(3)). The right to use the work in foreign countries is transferred through the socialist organization authorized therefor (Art. 20).

The Law contains general provisions on the conditions of contracts for dissemination of a work (Arts. 22 and 23), and special provisions on publishing contracts (Arts. 24 and 25), contracts for public performance of a work (Art. 26) and contracts for creation of a work (Art. 27).

Copyright devolves upon the heirs of the author. The share of a co-author accrues, if he leaves no heirs, to the shares of the other co-authors (Art. 29).

## 8. Domaine public payant

For the use of a work in the public domain, a special contribution is to be paid. The amount thereof, methods of payment and the principles guiding the allocation of funds thus obtained are determined by the Government (Art. 35(3)). \*\*

\* From January 1, 1969, Ministry of Culture of the Czech/Slovak Socialist Republic.

\*\* Government Order of the ČSR No. 159/1969 of the Collection of Laws with the amendment by the Government Order No. 20/1973; Government Order of the SSR No. 180/1969 of the Collection of Laws with the amendment by the Government Order No. 170/1973.

## 9. Neighboring rights

### *Performers*

Rights are granted to performers in any sort of performance by them of literary or artistic works. Use of their performances is subject to their consent and to remuneration in the following cases: fixation made for the manufacture of copies intended for public sale, or for the making of films to be shown in public; making copies of fixations for public sale or the use of fixations or copies thereof for a purpose different from that already consented to, except for uses allowed by the Law (see below); sound or visual broadcasts; projecting in public or otherwise disseminating a performance, if it is conveyed to another person (Art. 36).

Subject to remuneration, the following uses are allowed without the consent of the performer (legal license): fixation of the performance given to a broadcasting organization, made by means of the organization's own facilities and for its own broadcasts; broadcasting by means of a fixation, if its copy is made with the consent of the performer; communication to the public of a performance by means of an authorized fixation or copy thereof, or by broadcast (Art. 37(a), (b) and (c)).

Free use of a performance is allowed for personal purposes of the user and for exclusively scientific or educational purposes by means of a fixation or its copy (Art. 37(d) and (e)).

The term of the rights of performers is 25 years following the year of the fixation of the performance (Art. 38).

The Ministry of Education and Culture \* may provide for the manner of claiming the rights if several performers participate in the same performance.

Some other provisions of the Law apply to performers respectively (Art. 39).

### *Producers of phonograms*

Producers of phonograms are granted rights in their phonograms of performances or of other sounds. Their consent is necessary and subject to remuneration for the broadcasting of their phonograms and copies thereof; the reproduction of a phonogram or its copy for other than personal use, or exclusive use for reporting current events, or for scientific or educational purposes; the communication to the public of the phonogram.

The term of the rights of producers of phonograms is 25 years following the year in which the phonogram is made (Arts. 45 and 47)).

### *Broadcasting organizations*

Broadcasting organizations are granted rights in their own broadcasts, which may be transmitted, fixed for other than personal use, or reproduced or otherwise disseminated in public, only with the consent of the organization which made the broadcast;

\* From January 1, 1969, Ministry of Culture of the Czech/Slovak Socialist Republic.

the organization may also demand compensation for its consent (Art. 46). Free use is allowed in the case of making a fixation or its copy and of its exclusive use for reporting current events or for scientific or educational purposes (Art. 47).

The term of the rights of broadcasting organizations is 25 years following the year in which the broadcast first took place (Art. 46(3)).

#### 10. Agencies set up under law and their function

Safeguarding of social interests is primarily entrusted to Art Unions and Cultural Funds and to socialist organizations representing authors and performers (Arts. 40 and 41); those who receive authors' and performers' remuneration are obliged to pay contributions to Cultural Funds. Any organization using a work has also to pay contributions to Cultural Funds (Art. 42). Socialist organizations representing authors or performers may be given, by the Minister for Education and Culture,\* the exclusive right to grant the right to the use of works and performances and to collect the remuneration therefor; to act as an intermediary in the case of the transfer of rights if one of the parties concerned is a foreigner; to disseminate works of authors; and to collect contributions to the credit of Cultural Funds (Art. 44).

#### 11. Relevant multilateral conventions

Berne Convention: Rome Act, 1928, as from November 30, 1936.

Universal Copyright Convention, 1952, as from January 6, 1960.

International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations (Rome Convention), 1961, with declarations made under Article 16(1)(a)(iii) and (iv), as from August 14, 1964.

#### 12. Bilateral agreements

Agreement with the Union of Soviet Socialist Republics concerning the reciprocal protection of copyrights in literary and artistic works. Date of signature: March 18, 1975; date of entry into force: September 23, 1975.

Government Proclamation on Copyright in relation to the United States of America. (Proclamation of the President of the USA with effect from March 1, 1927; and with effect from April 27, 1927, in respect of copyright controlling parts of instruments serving to reproduce mechanically musical works. Proclamation of the Government of the Czechoslovak Republic, with effect from the same dates.)

#### 13. Applicability to foreigners not covered by conventions or agreements

The Law also applies to works and performances of foreigners when reciprocity is assured (Art. 50(2) and (5)).

\* From January 1, 1969, Minister for Culture of the Czech/Slovak Socialist Republic.

## Denmark

### 1. Official title and date of current legislation

Act No. 158 on Copyright in Literary and Artistic Works, of May 31, 1961, as amended on March 21, 1973 (Act No. 174) and June 8, 1977 (Act No. 246).

Act No. 157 on Rights in Photographic Pictures, of May 31, 1961, as amended on March 21, 1973 (Act No. 175) and June 8, 1977 (Act No. 239).

### 2. Works eligible for protection

#### *General eligibility criteria*

A person who has created a literary or artistic work has copyright therein (Art. 1). The provisions of the Act apply to works of Danish nationals or persons who are domiciled or have their habitual residence in Denmark, and to works first published in Denmark (Art. 58).

No formalities are required.

#### *Special categories of works*

The protection of photographs is provided for in a special law (see under 1 above), which contains detailed provisions on the rights granted and their limitation.

Translations and adaptations are protected, subject to the copyright in the original work (Art. 4). Similarly, composite works are protected without restricting the rights in combined individual works (Art. 5).

Cinematographic works and works of applied art are protected according to the general rules (Art. 1).

Protection under the Act on Designs does not preclude copyright (Art. 10).

Catalogues, tables and similar compilations may not be reproduced without the consent of the producer during 10 years from the year of their publication (Art. 49).

The Law contains no specific provisions on type faces or works of folklore.

#### *Works not protected*

Acts, administrative orders, legal decisions and other official documents are not subject to copyright (Art. 9).

### 3. Beneficiaries of protection (copyright owners)

Copyright belongs to the person who has created a literary or artistic work (Art. 1). The person whose name or generally known pseudonym or signature is stated in the usual manner is, unless stated otherwise, deemed to be the author (Art. 7).

If a work has two or more authors whose contributions do not constitute independent works, the copyright belongs to the authors jointly (Art. 6).

Unless otherwise agreed, the right in a photographic picture made on commission belongs to the person who commissioned it (Phot.: Art. 12).

#### 4. Rights granted

##### *Economic rights*

The economic rights include the exclusive right to control a work by producing copies thereof (including the recording of the work) and by making it available to the public. A work is made available to the public by public performance or by having copies thereof offered for sale, lease or loan, or otherwise distributed or publicly exhibited (Art. 2).

A person who produces a photographic picture has the exclusive right to make copies thereof by photography, printing, drawing, or other process, or to exhibit it publicly (Phot.: Art. 1). The photographer enjoys also moral rights (Phot.: Art. 2).

##### *Moral rights*

The moral rights include, in addition to the right to claim authorship, the right to oppose any change or any making available to the public in a manner or context prejudicial to the author's literary or artistic reputation, or to his individuality (Art. 3).

##### *Droit de suite*

No provisions.

#### 5. Limitations on copyright

##### *Uses permitted without payment*

A disseminated work may be reproduced in single copies for private use (Art. 11) or quoted, in accordance with proper usage, to the extent necessary for the purpose (Art. 14). It is also permitted to reproduce disseminated works of art in connection with the reporting of a news event (Art. 15), to make, by educational institutions, recordings of broadcast school programs for temporary use in education (Art. 17), to reproduce published works in braille (Art. 18), to perform publicly published works (other than dramatic or cinematographic ones) at divine services and in connection with education and in certain other cases, mainly when no admission charge is paid and the performers receive no payment for their services (Art. 20), and to include in a broadcast or film excerpts of works performed or exhibited in connection with a news event (Art. 21). Similar limitations are provided for with regard to various uses of photographic pictures (Phot.: Arts. 5 to 10, 13 and 14). Archives, libraries and museums may make photographic copies of works for use in their activities, under the conditions stated in the Royal Decree of July 21, 1962 (Art. 12; Phot.: Art. 6). Ephemeral recordings are permitted under the usual conditions (Art. 22; Phot.: Art. 11).

##### *Uses permitted against payment (legal license)*

The radio or television organization, if it is entitled, under an agreement with an organization comprising a considerable proportion of Danish authors, to broadcast works of the authors so represented, may also, against payment, broadcast published works of authors not represented by such organization; this,

however, does not apply to dramatic works nor to works for which the author has prohibited broadcast (Art. 22).

Disseminated works of art may be reproduced in connection with the text of a critical or learned treatise (Art. 14), and minor parts of a literary or musical work may be reproduced in a composite work (Art. 16); in both cases authors are entitled to remuneration under specified conditions.

Works incorporated in radio or television programs may be recorded by educational institutions for use in education; authors and performers are entitled to remuneration (except with regard to recordings from school programs, see above).

According to Article 19 of Law No. 171 on Public Libraries, of May 27, 1964, as amended by Law No. 314 of June 26, 1975, the State pays — under certain conditions laid down in administrative provisions — a fixed amount to Danish authors (and their surviving spouses or minor children) for each copy of their books included in the stock of the libraries covered by the Law.

#### 6. Term of protection

The general term of protection is 50 years after the year of the author's death (Art. 43). Photographic pictures are protected 25 years after the year of their production (Phot.: Art. 15).

#### 7. Transfer of rights

The right of disposal in a work may, subject to the author's moral rights, be transferred entirely or partially (Art. 27). The Act contains detailed provisions on public performance contracts (Art. 32), publishing contracts (Arts. 33 to 40) and film contracts (Arts. 41 and 42).

After the author's death, the usual rules of the inheritance laws apply to copyright (Art. 30).

#### 8. Domaine public payant

No provisions.

#### 9. Neighboring rights

Performances of literary or artistic works may not be recorded, broadcast directly or communicated to the public by other means without the consent of the performing artist (Art. 45). Sound recordings may not be copied without the consent of the producer (Art. 46). If a sound recording is used in a radio or television broadcast, a remuneration is payable both to the producer of the recording and to the performer whose performance is reproduced (Art. 47). Radio or television broadcasts may not be rebroadcast, recorded or made available to the public for commercial purposes without the consent of the radio or television organization (Art. 48).

The term of protection for the 3 categories is 25 years. Limitations similar to those referred to under 5 above are applicable.

## 10. Agencies set up under law and their function

According to Article 54, a tribunal has been set up, which decides on the payment in all compulsory (or legal) license situations, in which the parties do not reach an agreement on the amount of remuneration.

According to Article 47, the Ministry of Cultural Affairs has authorized a joint organization of performers and phonogram producers, GRAMEX, to collect remuneration for the public use of phonograms.

According to Law No. 40, of February 15, 1935, the same Ministry has authorized an organization of composers, KODA, to collect fees for the public performance of musical works.

## 11. Relevant multilateral conventions

Berne Convention: Brussels Act, 1948, as from February 19, 1962 (substantive provisions); Stockholm Act, 1967, as from May 4, 1970 (administrative provisions).

Universal Copyright Convention, 1952, as from February 9, 1962.

European Agreement concerning Programme Exchanges by means of Television Films, 1958, as from November 25, 1961.

International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations (Rome Convention), 1961, with declarations made under Articles 6(2), 16(1)(a)(ii) and (iv), and 17, as from September 23, 1965.

Convention for the Protection of Producers of Phonograms Against Unauthorized Duplication of Their Phonograms, 1971, as from March 24, 1977.

European Agreement on the Protection of Television Broadcasts, 1960 (with the 1965 Protocol and the 1974 Additional Protocol), with reservations under Article 3(1), as from November 27, 1961.

## 12. Bilateral agreements

Copyright treaty with Mexico (1954).

Copyright provisions in treaty with Thailand, 1937.

## 13. Applicability to foreigners not covered by conventions or agreements

On condition of reciprocity, the application of the Act may be extended, by Royal Decree, to other countries or to works of international organizations (Art. 60; Phot.: Art. 20).

The provisions relating to the use of a title, pseudonym or signature which may be confused with that of another work or author or the public performance or reproduction which violates cultural interests (Arts. 51 to 53) apply to all works regardless of their origin (Art. 58).

## Ecuador

### 1. Official title and date of current legislation

Law on Copyright, No. 610, of August 13, 1976.

### 2. Works eligible for protection

#### *General eligibility criteria*

The Law protects the rights of authors in their scientific, literary and artistic productions, whatever may be the mode or form of expression used, and such other works as are considered creative in character and may be communicated to the public (Art. 7).

Copyright arises out of the creation of the work without any registration, deposit or other formality (Art. 2). However, provision is made for registration of works, contracts, etc. (Arts. 110 to 115). Registration establishes the presumption that the facts and acts recorded are true (Art. 112).

#### *Special categories of works*

Translations and other transformations of works are protected in respect of those of their characteristics that are original (Art. 16).

The Law contains no specific provisions on photographic works, works of applied art, designs and models, type faces, typographical arrangement or works of folklore.

#### *Works not protected*

See under 5 below.

### 3. Beneficiaries of protection (copyright owners)

Only natural persons can be authors (Art. 10). In the absence of proof to the contrary, the person whose name, pseudonym, etc., is indicated or announced as such is presumed to be the author (Art. 11).

Works of joint authorship may be divisible or indivisible. Unless otherwise agreed, each co-author, in the first case, owns the rights in the part of which he is the author, and, in the second case, the rights belong jointly and inseparably to the co-authors (Art. 12).

In the case of collective works, the person (or legal entity) that has organized, coordinated, edited or published the work under his (or its) responsibility is regarded as having derived title to exercise economic rights and such moral rights as may be delegated to that person or legal entity (Art. 14).

Commissioned works and works produced under an employment contract are governed by the general provisions on contracts for the use of works. The user who has commissioned the work or requested its production under an employment contract has the exclusive right to use that work within the limits of the means of dissemination for which it was created. The right to exploit the work by other means belongs to the author (Art. 37).

The authors of a cinematographic work are: the director or maker, the author of the script or scenario, and the composer of the music (Art. 71). The owner of the moral rights in the cinematographic work is the director or maker, without prejudice to the rights of various authors and performers in their contributions (Art. 75). Similarly, the economic rights of the producer are without prejudice to the rights of authors (Art. 77).

#### 4. Rights granted

##### *Economic rights*

The author has the exclusive right to make economic use of his work in any manner or form (Art. 19). The economic rights include the right of reproduction by any means (Art. 20), the right of disclosure (Art. 21), the right of exhibition (Art. 22), the right of transformation (Art. 23), the right of translation (Art. 24) and the right of transcription (including transformation of an oral work into a written work) (Art. 25).

##### *Moral rights*

The moral rights of the author include the rights: to claim authorship; to publish, continue, amend or complete the work; to keep the work anonymous; to oppose any distortion, mutilation, alteration or other transformation, or any other action discrediting his work or diminishing his honor, standing or reputation; to withdraw the work (Art. 17). These rights are perpetual, inalienable, imprescriptible and unrenounceable (Art. 18).

##### *Droit de suite*

The Law provides for an unrenounceable and inalienable *droit de suite* in the case of originals of artistic works when sold through an art dealer or auctioneer (Art. 86).

#### 5. Limitations on copyright

Subject to the mention of the name of the author, the title of the work and the source, the following uses are not protected: publication of short fragments for non-commercial cultural, scientific or educational purposes; performance or similar use for students in educational establishments; reproduction of articles, etc., on current events; publication of lectures, speeches and other similar works; reproduction, by photography or drawing, of monuments located in public places (Art. 92). The written or oral productions of civil servants or similar employees may be reproduced in so far as their moral rights are respected (Art. 95). The right to reproduce press articles may not be reserved by their authors, except in the case of independent publication (Art. 97).

The Law provides for a legal license with respect to works of deceased authors (see Art. 89 under 7 below).

#### 6. Term of protection

The general term of protection is the life of the author plus 50 years. For posthumous works, this term begins on the date of the author's death, provided that they are communicated to the public within 20 years from that date. Anonymous works are protected for 50 years after the date of their first publication (Art. 88).

#### 7. Transfer of rights

Contracts for the use of works, which have to be made in writing (Art. 32), can be either simple or exclusive (Art. 35). The Law contains detailed provisions on contracts in general (Arts. 32 to 42), publishing contracts (Art. 43 to 56), contracts for phonomechanical fixation (Arts. 57 to 64), broadcasting contracts (Arts. 65 to 69), contracts for cinematographic fixation (Arts. 70 to 80) and performing contracts (Arts. 81 to 85).

After the author's death, protection is granted for the benefit of his heirs and legatees (Art. 88(a)). The successors may not oppose republication or translation if, after the expiration of 15 years from the death of the author, they have not taken steps accordingly (Art. 89).

#### 8. Domaine public payant

No provisions.

#### 9. Neighboring rights

The Law provides for the rights of performers (Arts. 138 to 147), which, however, are subject to the rights of authors (Art. 138). The rights granted to performers include those of broadcasting, fixation and reproduction under specified conditions; some moral rights (integrity of performance, mention of name) are also protected (Art. 142). The term of protection is 25 years from the fixation of the performance (Art. 146).

The Law contains no specific provisions on the protection of the rights of producers of phonograms or broadcasting organizations.

#### 10. Agencies set up under law and their function

The Law contains provisions (Chapter IV, Arts. 99 to 109) on authors' societies, which are legal entities under private law (Art. 99). Their statutes are approved by the Ministry of Public Education (Art. 101). The functions of authors' societies include representation of their members before the judicial and administrative authorities, collection of all authors' fees, negotiating and entering into agreements on behalf of their members, authentication of contracts entered into by authors, etc. (Art. 106).

#### 11. Relevant multilateral conventions

Universal Copyright Convention, 1952, as from June 5, 1957.

Rio de Janeiro Copyright Convention, 1906, since 1909.

Buenos Aires Copyright Convention, 1910, since 1914.

Caracas Copyright Agreement, 1911, since 1914.

Havana Copyright Convention, 1928, since 1936.

Washington Copyright Convention, 1946, since 1947.

International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations (Rome Convention), 1961, as from May 18, 1964.

Convention for the Protection of Producers of Phonograms Against Unauthorized Duplication of Their Phonograms, 1971, as from September 14, 1974.

## 12. Bilateral agreements

Copyright treaties or copyright provisions in treaties with Mexico (1888), France (1898, with Additional Protocols of 1905 and 1952), Spain (1900 and 1953), Bolivia (1911), Colombia (1958).

## 13. Applicability to foreigners not covered by conventions or agreements

Works of authors not domiciled in Ecuador enjoy protection on the basis of reciprocity (Art. 5).

# Egypt

## 1. Official title and date of current legislation

Law relating to the Protection of Copyright, No. 354, of June 24, 1954.

## 2. Works eligible for protection

### *General eligibility criteria*

The authors of original works within the field of literature, art and science, whatever their type, mode of expression, extent or purpose, enjoy the protection granted by the Law (Art. 1).

The Law applies to works published, performed or exhibited for the first time in Egypt, irrespective of the nationality of their authors, as well as to works of Egyptian authors published, performed or exhibited for the first time in a foreign country (Art. 49).

Publishers must, within one month from the date of publication, deposit 5 copies of works published separately with the National Library; failure to deposit does not, however, prejudice the copyright provided for by the Law (Art. 48).

### *Special categories of works*

The protection extends among others, to oral works, photographic and cinematographic works, works specially prepared for broadcasting, plastic works relating to geography, topography or science,

choreographic works and pantomimes, the acting form of which is physically fixed, works of applied art; translations, transformations from one kind of literary, artistic or scientific work into some other kind, abridgments, arrangements, modifications of, and comments on, another work in such a manner as to present it under a new form are protected, without prejudice to the rights of the author of the basic work (Arts. 2 and 3). Protection extends to the title only if it is distinguished by its original character (Art. 2).

The Law contains no special provisions on type faces, typographical arrangement or works of folklore.

### *Works not protected*

News of the day or miscellaneous facts having the character of mere information are not protected (Art. 14).

Without prejudice to the right of their authors to decide on publication, collections uniting several works, collection of works already fallen into the public domain and collections of official documents are protected only if they are distinguishable by their originality, coordination or any other personal effort justifying protection (Art. 4).

## 3. Beneficiaries of protection (copyright owners)

When several persons have collaborated in the creation of a work in such a manner that it is not possible to distinguish their individual contributions, they are considered as proprietors in equal parts of the work as a whole, unless otherwise agreed. Each of the co-authors has the right to take proceedings against infringers of copyright (Art. 25). If the contributions constitute distinct parts of the work by reason of the difference in their respective arts, each co-author may separately exploit his part, provided this does not prejudice the exploitation of the joint work (Art. 26).

A collective work is a work in which the contributions of the participants in its elaboration are united upon the basis conceived by the physical person who, or legal entity which, publishes it under his or its direction and name, without it being possible to distinguish each personal contribution; such person or entity is alone considered as the author of the work and is alone entitled to exercise the copyright (Art. 27).

In the case of anonymous or pseudonymous works, the publisher is presumed to have been authorized to exercise the copyright (Art. 28).

In respect of vocal musical works, the composer alone is entitled to authorize the public performance, production and publication thereof, without prejudice to the rights of the author of the text. The latter has the exclusive right to publish his own contribution, but may not, in the absence of agreement to the contrary, allow it to be used for another musical work (Art. 29). In pantomimes accom-

panied by music, it is the author of the non-musical portion who has the right to authorize the public performance or the publication of the entire work; the composer can dispose of the music alone, provided, in the absence of agreement to the contrary, it is not used in a work similar to the joint work (Art. 30).

Co-authors of cinematographic and broadcast works are: the authors of the scenario or of the plot, of the cinematographic adaptation of an existing literary work, of the dialogue, of the music, if composed specially for the cinematographic work; the director, if he has exercised effective control over the intellectual production. The author of a pre-existing work is to be considered as author of a cinematographic or broadcast work if the latter has been merely derived from the earlier one (Art. 31).

The producer of a cinematographic work is deemed to be the person who assumes responsibility for making it and places at the disposal of the authors the material and financial means necessary for its production. He is entitled to exercise all rights of a publisher in respect of the film. For the period agreed for the exploitation thereof he is, in the absence of agreement to the contrary, to be considered as the representative of the authors and their successors in title, as far as expenses for the showing and exploitation of the film are concerned, but without prejudice to the rights of the authors of adapted works (Art. 34).

#### 4. Rights granted

##### *Economic rights*

The author has the exclusive right to the pecuniary exploitation of his work in any form (Art. 5). This right includes: the right to communicate the work directly to the public in any form, and particularly by public recitation, musical performance, theatrical performance, public showing, broadcasting, projection, transmission of broadcasts by means of loudspeaker or of a television screen set up in a public place; the right to communicate the work indirectly to the public by means of the reproduction of copies made available to the public, especially by printing, drawing, engraving, photography, moulding or casting, and any process of graphic or plastic art, or phonographic or cinematographic means (Art. 6).

##### *Moral rights*

The author alone has the right to decide upon the publication of his work and the method of its publication (Art. 5). He alone has the right to modify his work, to translate it into another language, to claim the authorship of his work and to oppose any mutilation or modification thereof (Arts. 7 and 9). If, however, mutilation or modification takes place during translation and mention of it is made, the author may oppose it only if the place of mutilation or modification is not indicated or if the translation is injurious to his reputation (Art. 9).

For serious reasons, the author has the right to request the Court of First Instance to issue an order permitting him to withdraw his work or modify it essentially, notwithstanding the assignment of the rights of exploitation of the work; however, in such a case the author is required to pay an equitable indemnity to the assignee (Art. 42).

##### *Droit de suite*

No provisions.

#### 5. Limitations on copyright

##### *Uses permitted without payment*

The author has no right to forbid performance or recitation within family circles, within the circle of an association or a private club, or a school, of works already published, provided no payment or like consideration is required for admission (Art. 11).

Military bands and State or public companies of musicians are entitled to perform musical works without payment, provided no admission fee is required (Art. 11).

Reproduction of a single copy of a published work for strictly personal use is allowed (Art. 12).

Analysis of, or brief quotations from, published works are free for the purpose of criticism, discussion or information, provided the work and the author's name, if known, are mentioned (Art. 13).

Newspapers and periodicals may publish extracts or summaries of works; they may also reproduce articles dealing with political, economic, scientific or religious topics of interest to public opinion, provided that their reproduction is not expressly reserved. The source must always be clearly indicated, together with the name of the author if he has signed his work (Art. 14).

Speeches, lectures and discussions occurring in public sessions of legislative and administrative organizations or in scientific, literary, artistic, political, social and religious meetings may be freely published or diffused by way of information (Art. 15). The author, however, reserves the right to publish them in the form of a collection (Art. 16).

In books of instructional literary, scientific, historic or artistic character, brief extracts of published works, and published works of graphic, plastic or photographic art, can be reproduced to the extent necessary to explain the text; the source and the names of the authors must be clearly indicated (Art. 17).

##### *Uses permitted against payment (legal license)*

Official broadcasting organizations are entitled to diffuse works publicly performed, but they must mention the name of the author and the title of the work, as well as to pay equitable compensation to the author or his successor in title, and, if the circumstances so require, to the person operating the establishment from which the work is transmitted (Art. 35).

*Other limitations*

In cases where the successors in title of the author do not exercise the rights of pecuniary exploitation, and the Minister for Education considers that the public interest requires publication, he may instruct them by registered letter to proceed to publication. If the successors in title fail to comply with this instruction within 6 months, the Minister is entitled to exercise such rights, against an equitable payment to the said successors, after having obtained an order to this effect from the President of the Cairo Court of First Instance (Art. 23).

In the absence of agreement to the contrary, the person portrayed may authorize the reproduction of his portrait in newspapers, magazines or similar publications, even when the author does not so permit (Art. 36).

**6. Term of protection**

The rights of pecuniary exploitation terminate 50 years after the death of the author. Where the owner is a legal entity, the term runs from the date of first publication (Arts. 20 and 24). The same applies to rights in anonymous works (Art. 21).

Rights in photographic and cinematographic works having no original character terminate upon the expiration of 15 years from the first publication (Art. 20).

If the right to translate a work into Arabic has not been exercised within 5 years from the date of first publication of the original work or its translation into a foreign language, this right terminates by the lapse of this period (Art. 8).

**7. Transfer of rights**

The author may assign to other persons the rights of exploitation of his work. The act of assignment must be in writing, expressly specifying each of the rights assigned, defining its scope, purpose, duration and place of exploitation (Art. 37). Any assignment of the moral rights (see under 4 above, first paragraph) is void (Art. 38). Total or partial assignment of rights may be effected upon the basis of royalties or for a lump sum (Art. 39). Any general assignment of future works is void (Art. 40).

After the death of the author, his heirs have the exclusive right to exercise the rights of pecuniary exploitation. In the case of a work produced in collaboration, the share of an author who dies without

heirs devolves upon the other collaborators, unless otherwise agreed. The author has the right to nominate persons, whether heirs or otherwise, who may benefit from the rights of pecuniary exploitation, whereby he may exceed the share which he is entitled to dispose of by will (Art. 18). The right to decide upon publication of a work also passes to his successors in title. However, if the author had, by will, indicated his wish that the work should not be published, or had fixed a date or other term for its publication, these provisions must be respected (Art. 19).

**8. Domaine public payant**

No provisions.

**9. Neighboring rights**

The Law does not contain any provisions on the protection of rights of performers, producers of phonograms or broadcasting organizations.

**10. Agencies set up under law and their function**

No provisions.

**11. Relevant multilateral conventions**

Berne Convention: Paris Act, 1971, with declaration under Article 33(2), as from June 7, 1977.

Convention for the Protection of Producers of Phonograms Against Unauthorized Duplication of Their Phonograms, 1971, as from April 23, 1978.

**12. Bilateral agreements**

Copyright provisions in the treaty with the Federal Republic of Germany, 1951.

**13. Applicability to foreigners not covered by conventions or agreements**

Works of foreign authors published for the first time in a foreign country benefit from the provisions of the Law if they are protected in such country and provided that the country from which they originate grants similar protection to Egyptian nationals, in respect of their works published, performed or exhibited for the first time in Egypt, and provided this protection extends to countries placed under the authority of such foreign country (Art. 49).

## National Legislation

POLAND

### Ordinance of the Council of Ministers

**relating to the rules and rates of remuneration for creators of three-dimensional works of art and to contracts for the making or exploitation of such works**

(No. 158, of November 11, 1977) \*

Pursuant to Article 33(1) of the Law of July 10, 1952, on copyright (Official Journal, 1952, No. 34, text No. 234, and 1975, No. 34, text No. 184), the following order is issued:

*Article 1.* This Ordinance shall apply for determining remuneration for three-dimensional works of art in contracts for the making or exploitation of such works and for the conclusion and making of such contracts.

*Article 2.* There shall be established:

- (i) general rules for the conclusion of contracts for the making or exploitation of three-dimensional works of art (Annex No. 1 to this Ordinance);
- (ii) schedules of authors' remuneration for the making or exploitation of three-dimensional works of art (Annex No. 2 \*\* to this Ordinance);
- (iii) a model contract for the making or exploitation of three-dimensional works of art (Annex No. 3 \*\* to this Ordinance).

*Article 3.* The Minister for Culture and the Arts shall be authorized:

- (i) to establish — acting in agreement with the Minister for Labor, Salaries and Social Affairs — guidelines and remuneration rates for consultants in the field of three-dimensional works of art;
- (ii) to introduce — acting in agreement with the Minister for Labor, Salaries and Social Affairs — supplements to the schedules of authors' remuneration;
- (iii) to grant, in individual cases, authorization to apply remuneration other than that provided for in the schedules;
- (iv) to issue directives on details of the application of this Ordinance.

*Article 4.* This Ordinance shall enter into force on the day of its publication and shall be binding as from December 1, 1977.

\* This Ordinance was published in *Dziennik Ustaw*, No. 36, of December 14, 1977. — WIPO translation.

\*\* Annexes Nos. 2 and 3 are not reproduced here.

#### *Annex No. 1*

##### **General rules for the conclusion of contracts for the making or exploitation of three-dimensional works of art**

1. (1) Contracts for the making or exploitation of a three-dimensional work — hereinafter "work" — shall be in writing.
- (2) Contracts shall conform to the Ordinance and the model contract, and any conflicting provision shall be null and void.
- (3) Subject to subsection (2), contracts may contain provisions on matters not regulated by the model contract.
2. (1) The parties shall conclude a contract for the making of a work if the subject of the service is a work in its definitive form.
- (2) The parties shall conclude a contract for the making and exploitation of a work if the subject of the service is a work in the form of a project.
- (3) The parties shall conclude a contract for the exploitation of a work if it relates to an already existing work.
- (4) In those cases referred to in subsections (1) and (2), the parties may conclude a separate contract for the execution of a preliminary project.
3. (1) The creator who concludes a contract for the making of a work shall be required to furnish his services; this shall not apply to the ancillary work of a craft nature which the creator may entrust to third parties.
- (2) Subject to subsection (3), the creator shall make the work using his own tools and material.
- (3) Where the subject of the contract so requires, the person placing the order shall be required:
  - (a) to submit the principles of the project and to supply the materials and ancillary services;
  - (b) to make available to the creator the background documentation and any specialized consultations;

- (c) to make possible the procurement of not readily accessible materials;
  - (d) to make available to the creator the appropriate premises and facilities.
- (4) The person placing the order shall supply the services referred to in subsection (3) at his own cost and within the time limits laid down in the contract, in those cases where the creator's remuneration in accordance with the schedules (Annex No. 2) does not include the cost of materials and ancillary services; non-compliance with these time limits shall give the creator the right to require an extension of the period for executing the contract by at least a period equal to the delay.
  - (5) The execution of the services referred to in subsection (3)(a) may be entrusted to the creator by the person placing the order, against reimbursement of his costs.
  - (6) The person placing the order shall have the right and — at the request of the creator — the duty to examine the progress of the execution of the work and to verify that it complies with the objective of the contract.
4. (1) Where it is established by common accord that it is necessary for the creator to fulfill his obligations under the contract away from his place of residence, the creator shall be entitled to the allowances and other payments\* to which employees of State organization units are entitled in respect of duty travel.
  - (2) Subsection (1) shall not apply where the creator receives, in respect of the execution of a work away from his place of residence, additional remuneration in accordance with Annex No. 2.
  5. Up to the time the work is delivered to the person placing the order, the creator may withdraw from the contract for the making of the work where circumstances have arisen justifying such withdrawal in the interests of the creator or for other major reasons.
  6. (1) Where the work is not delivered within the agreed time to the person placing the order, that person shall be entitled to allow an appropriate additional period, subject to withdrawal from the contract, and, on expiry of that period without result, to withdraw from the contract.
  - (2) Where the creator can foresee that he will not be in a position to meet the agreed time limit, he shall advise the person placing the order at least 14 days before the expiry of the time limit; the person who has placed the order may then allow the creator a suitable extension of time.
- (3) Where the exploitation of the work after the agreed period of time would not comply with the purpose of the contract, the parties may insert in the contract a reservation under which failure by the creator to meet the agreed time limit shall give the person placing the order the right to withdraw immediately from the contract.
  - (4) In the case of withdrawal from the contract as a result of the non-delivery of the work within the agreed time limit, the creator shall be required to pay back the advance received from the person placing the order.
7. (1) Delivery of the work shall be at the cost of the person placing the order when required by the nature of the work.
  - (2) The time limit laid down for the acceptance of the work by the person placing the order or for entering reservations, or for requesting modifications or additions to be made, shall be 14 days computed from the date of delivery; in special cases this period of time may be extended by the contract up to a maximum of 60 days.
  - (3) On expiry of the time limit laid down in subsection (2), the work shall be deemed accepted without reservation.
  - (4) The person placing the order may not make acceptance of the work subject to the execution of modifications or additions referred to in subsection (2) if the work has been made in compliance with the contract.
  - (5) The creator shall be entitled to additional remuneration for modifications to a work that has been accepted, undertaken at the request of the person placing the order, the amount of which shall be appropriate to the extent of the modifications.
8. (1) Where a work is not accepted, the person placing the order may withdraw from the contract by setting out in writing the reasons for his decision.
  - (2) In the event of withdrawal from the contract for the reason set out in subsection (1), the creator shall be entitled to 25 percent of the remuneration laid down in the contract and, in special cases where considerable costs are incurred in the execution of the work, up to 50 percent of such remuneration.
  - (3) The provision of subsection (2) concerning the effects of withdrawal from the contract shall also apply to the creator if he refuses to carry out modifications or additions requested or if he does not carry them out within the appointed time limit.

9. (1) The fact of the creator not fulfilling the contract shall entitle the person placing the order to require reimbursement of everything the creator has received under the contract. In the event of non-fulfillment of the contract by the fault of the creator, the person placing the order may, furthermore, ask for damages.  
(2) The person placing the order may not require fulfillment of the contract.
10. (1) If the person placing the order does not undertake the necessary steps for the exploitation of the work within the period laid down in the contract, the creator may allow him an appropriate additional period of time, under threat of withdrawal from the contract, and may, after such period of time has expired without result, withdraw from the contract.  
(2) The creator may not require fulfillment of the contract in respect of the exploitation of the work.
11. (1) The person placing the order may, in the contract, reserve his right not to exploit the work.  
(2) Where it is decided not to exploit the work, the creator shall be entitled to the remuneration laid down in the contract.
12. (1) The creator's remuneration shall be paid as follows:
  - (a) 25 percent within 14 days from the date the contract is signed;
  - (b) the remainder within 14 days from the date the work is accepted.  
(2) The contract may provide for advance payments other than those referred in subsection (1)(a), subject to the total amount of advances not exceeding 75 percent of the agreed remuneration.  
(3) The creator may waive his right to an advance.
13. (1) After the acceptance of the work, the person placing the order shall be entitled to increase the remuneration laid down in the contract in view of the estimated value of the work, its social usefulness or the creative effort required by the making of the work.  
(2) The increase referred to in subsection (1) may not exceed 50 percent of the original remuneration or of that provided for in the relevant schedules of remuneration.
14. (1) The creator shall be entitled to personally supervise all forms of exploitation of the work.
  - (2) The creator shall be entitled to separate remuneration for carrying out the author's supervision, of between 10 and 25 percent of the remuneration for the work, laid down in the contract.
  - (3) The scope of the author's supervision and the amount and method of payment of the remuneration under this heading shall be determined by the parties to the contract.
  - (4) In the case of repeated use of the work, the creator shall be entitled to separate remuneration for the supervision carried out each time.
  - (5) The person placing the order shall be required to ensure that the creator enjoys appropriate conditions for carrying out author's supervision.
  - (6) The person placing the order may, with the consent of the creator, have the supervision carried out by a third party; the person carrying out the supervision on behalf of the creator shall be entitled to the remuneration laid down in subsection (2).
15. The remuneration for the right of reproduction of the work for the purposes of publishing shall be determined in accordance with Schedule G II as appropriate to the intended purpose of the reproduction. In such cases, the work shall be considered a basic project.
16. The parties may provide for forfeits in the contract:
  - (1) for infringement of the author's personal property and economic rights:
    - (a) extensive damage to the work belonging to the creator — 50 percent of the remuneration laid down by the contract;
    - (b) destruction or loss of the work belonging to the creator — between 100 and 300 percent of the remuneration laid down by the contract;
  - (2) for non-compliance with the time limit for delivering the work to the person placing the order or for the execution of modifications or additions — 0.2 percent of the remuneration laid down by the contract for each day of delay, to a maximum, however, of 20 percent of such remuneration.
17. When concluding the contract and in all cases related to its reciprocal execution, the parties shall request the opinion of the competent Commission of Experts, in accordance with the directives of the Minister for Culture and the Arts.

## **General Studies**

### **The International Copyright Conventions**

Valerio De SANCTIS \*















## Correspondence

### Letter from Israel

Victor HAZAN \*





## Book Reviews

**Précis du droit de la propriété immatérielle**, by Alois Troller. One volume of 211 pages. Helbing & Lichtenhahn, Basel and Stuttgart, 1978. French translation by Kamen Troller and Vladimir J. Vesely of the *Kurzlehrbuch des Immaterialgüterrechts*, issued by the same publisher in 1973 (188 pages).

Those of our readers who are familiar with the German language are certainly acquainted with Professor Alois Troller's work, *Immaterialgüterrecht*, the two volumes of which were published in 1959 and 1962, and again in 1968 and 1971. As the author recognizes in the foreword to the book being reviewed here, *Immaterialgüterrecht* cannot be used as a study guide because of its magnitude and price; for that reason, and yielding to the requests of his colleagues and numerous students, Professor Troller wrote *Kurzlehrbuch*, which is a summary of the larger work. In addition, since no general French-language work on intellectual property existed previously in Switzerland, the French translation of *Kurzlehrbuch*, which has just been published under the title of *Précis du droit de la propriété immatérielle*, is doubly welcome.

This work conserves exactly the same structure as *Immaterialgüterrecht* but compresses its substance, particularly by eliminating theoretical references and by only mentioning the most recent judgments of the Federal Tribunal (these, as a general rule, refer to preceding judgments). It consists of seven parts, which may be summarized as follows:

a general part, which deals with the source of law (Swiss and international), the development (Swiss, foreign and international) of intellectual property law, and the general theoretical considerations concerning the subject matter of the law, exclusive rights, the possession of intangible property, the inclusion of this right in the system of private law, the origin of this law and its temporal and spacial limitations;

a second part, which is devoted to the material bases of exclusive rights in intangible property and which successively treats inventions, trademarks (indications of source), literary and artistic works, industrial designs, "imperfect exclusive rights" and the interpenetration of the material bases of industrial property law;

a third part, whose object is the formal requirements of the law and which treats, in particular, the deposit and registration;

a fourth part, which is devoted to the various subjective rights in the different fields of intellectual property;

a fifth part, dealing with the transfer of intellectual property rights (such as publishing contracts, copyright administration by authors' societies, the different types of licenses, etc.);

a sixth part, which is devoted to industrial property disputes; and

a seventh part, which contains remarks on international intellectual property law.

For Professor Troller, as our readers who have studied *Immaterialgüterrecht* well know, although intellectual property law is dogmatically divided into different fields (patent law, trademark law and related areas, industrial design law, copyright, repression of unfair competition), it possesses a fundamental unity due to the fact that the different fields all concern intellectual creations. As in *Immaterialgüterrecht*, therefore, the structure of the *Kurzlehrbuch* should not make us think that it merely unites the different fields of the law under the same title; in reality, Professor Troller's purpose throughout this work is to demonstrate the fundamental unity of intellectual property law in order to facilitate its connection with the other facets of the legal order.

GRW

## Calendar

### WIPO Meetings

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

#### 1978

- September 25 to October 3 (Geneva) — Governing Bodies (WIPO Coordination Committee, Executive Committees of the Paris and Berne Unions, Assembly and Conference of Representatives of the Hague Union and Assembly of the International Union PCT)
- October 2 to 6 (Geneva) — International Patent Classification (IPC) — Working Group I
- October 9 to 13 (Geneva) — International Patent Classification (IPC) — Ad Hoc Working Group on the Revision of the Guide
- October 23 to 27 (Hull, Canada) — ICIREPAT — Technical 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 20 to 24 (Geneva) — Revision of the Paris Convention — Working Group on Conflict Between an Appellation of Origin and a Trademark
- November 27 to December 1 (Geneva) — Revision of the Paris Convention — Working Group on Inventors' Certificates
- November 28 to December 6 (Geneva) — Revision of the Paris Convention — Preparatory Intergovernmental Committee
- 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 the Universal Convention (tentative title) (convened jointly with Unesco)
- December 18 to 22 (New Delhi) — Development Cooperation Copyright — Regional Seminar on Copyright and Neighboring Rights for Asian and Pacific States and territories (convened jointly with Unesco)

#### 1979

- January 8 to 12 (Geneva) — International Patent Classification (IPC) — Committee of Experts
- January 29 to February 2 (Geneva) — Rome Convention — Subcommittee of the Intergovernmental Committee on the Administration of Rights under the Rome Convention (convened jointly with ILO and Unesco)
- March 12 to 16 (Dakar) — Permanent Committees for Development Cooperation (Industrial Property and Copyright)
- September 24 to October 2 (Geneva) — Governing Bodies (WIPO General Assembly, Conference and Coordination Committee; Assemblies of the 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 the Paris and Berne Unions; Committee of Directors of the Madrid Union; Council of the Lisbon Union)

### UPOV Meetings

#### 1978

- 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

#### 1979

- International Federation of Musicians (FIM)  
Symposium on the International Protection of Performers and of their Rights — January 10 to 12 (Geneva)



