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Copyright

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World Intellectual Property Organization

PHILIPPINES

Ratification of the WIPO Convention

The Government of the Republic of the Philippines deposited, on April 14, 1980, its instrument of ratification of the Convention Establishing the World Intellectual Property Organization (WIPO).

The Convention Establishing the World Intellectual Property Organization will enter into force, with

respect to the Republic of the Philippines, three months after the date of deposit of its instrument of ratification, that is, on July 14, 1980.

WIPO Notification No. 111, of April 16, 1980.

Berne Union

PHILIPPINES

Accession to the Paris Act (1971) of the Berne Convention

The Government of the Republic of the Philippines deposited, on April 14, 1980, its instrument of accession to the Berne Convention for the Protection of Literary and Artistic Works of September 9, 1886, as revised at Paris on July 24, 1971, with a declaration to the effect that its accession shall not apply to Articles 1 to 21 and the Appendix.

Articles 22 to 38 of the Paris Act (1971) of the said Convention will enter into force, with respect to the Republic of the Philippines, three months after the date of this notification, that is, on July 16, 1980.

Berne Notification No. 98, of April 16, 1980.

National Legislation

MALI

Ordinance Concerning Literary and Artistic Property

(No. 77-46 CMLN, of July 12, 1977) *

Preliminary Provisions

Article 1. The author of an intellectual work shall, by the mere fact of its creation, enjoy an exclusive incorporeal property right in the work, effective against all persons.

The existence or conclusion, by the author of an intellectual work, of a contract to make a work or of an employment contract shall imply no exception to the enjoyment of the right recognized in the first paragraph.

TITLE I

The Author and the Works

CHAPTER I

Definition of the Author

Article 2. The author is the person who has created the work.

In the absence of proof to the contrary, the person whose name or pseudonym appears on the work shall be considered the author. However, where the work is produced by the employees of a public or private legal entity as part of their functions, subject to Article 10, copyright shall belong to such employees unless otherwise provided in the contract between the legal entity and the employees.

Article 3. Subject to Article 10, where a work is commissioned by a person who is not the employer of the employee and who pays or accepts to pay for the work and where the work is created as a result of such commission, copyright in the work shall originally belong to such employee, unless otherwise stipulated in the contract between them.

However, where a three-dimensional work or a portrait in paints or other medium has been commissioned, the author shall not have the right to exploit his work or portrait by any means or at any time without the explicit authorization of the person having commissioned it.

Where the person having commissioned the three-dimensional work or portrait commits an evident abuse preventing the right of disclosure from being exercised, the competent court may order any suitable measure.

Article 4. Where a work of joint authorship created by two or more co-authors constitutes an indivisible whole, the copyright in such work shall belong indivisibly to all the co-authors.

In the absence of any agreement to the contrary, the share of each co-author shall be determined in proportion to the creation of the work except where their relationship is laid down differently by contract.

Where a work of joint authorship created by two or more co-authors does not constitute an indivisible whole, each co-author shall have copyright in his contribution.

In cases of disagreement, the competent court shall decide.

Article 5. For the purposes of this Ordinance:

- (i) "work of joint authorship" means a work to whose creation two or more natural persons have contributed;
- (ii) "collective work" means a work created on the initiative of a natural person or legal entity who or which discloses it under his or its direction and name, in which the personal contributions of the various authors who participated in its creation merge in the whole for which they were made, in such a way that it is not possible to attribute to each co-author a separate right in the whole thus completed;
- (iii) "composite work" means a new work in which a pre-existing work is incorporated without the collaboration of the author of the latter;
- (iv) "derivative work" means a work resulting from the adaptation, translation or other transformation of an original work in such a way that it constitutes an autonomous work.

On publication, a derivative work shall bear the name or pseudonym of the original author.

* Published in the *Journal officiel de la République du Mali*, No. 525, of August 1, 1977. Coming into force on July 15, 1977. — WIPO translation.

Where the original work forms part of the common cultural heritage, the person who has adapted, translated or transformed the work shall enjoy all the rights under this Ordinance in respect of his version of the work, but may not prevent other persons from using the same original work to produce differing versions;

- (v) "individual work" means a work whose author is a natural person;
- (vi) "anonymous work" means a work not bearing the name of the author, whether because the author so wishes or because the name is not known;
- (vii) "pseudonymous work" means a work whose author dissimulates his identity behind a pseudonym which does not permit him to be identified;
- (viii) "unpublished work" means a work not having been made known to the public;
- (ix) "posthumous work" means a work not having been made public until after the death of its author;
- (x) "work performed publicly" means a work whose performance is heard by the public, irrespective of the place in which the performance is given;
- (xi) a performance "heard" by the public means a performance given, even on private premises, at which a sufficient number of persons are gathered without that forming part of their private lives (factories, cafés, restaurants, hotels, cabarets, shops of various kinds, clubs);
- (xii) "entertainment manager" means any natural or legal person causing, occasionally or on a more or less regular basis, the public to see or hear literary, scientific or artistic works;
- (xiii) "producer of phonograms" means the natural person or legal entity responsible for publishing phonograms;
- (xiv) "phonogram" means the fixation in a material object of the sounds of a performance or of other sounds, and other aural fixations synchronized with images;
- (xv) "broadcasting organization" means the sound or television broadcasting enterprise which transmits programs to the public;
- (xvi) "broadcast" or "transmission" means the diffusion of sounds or images, or synchronized sounds and images, by means of radio waves;
- (xvii) "rebroadcasting" means the broadcasting of one broadcasting organization's transmission by another or a broadcast which one or the other of those two organizations makes subsequently to that transmission;
- (xviii) "publication" means the reproduction of a work in a material form and the making available to the public of copies of the work, which

enable knowledge of it to be gained either visually or aurally.

Article 6. The authors of translations, adaptations, transformations or arrangements of literary, scientific or artistic works shall enjoy the protection provided by this Ordinance, without prejudice to the rights of the author of the original work.

The same shall apply to:

- (a) authors of anthologies or collections of various works which, by reason of the choice and arrangement of their contents, constitute intellectual creations;
- (b) the publication of ancient manuscripts kept in public libraries or in public or private archives, without, however, the author of such publication having the right to object to the same manuscript works being republished on the basis of the original text.

CHAPTER II

The Works

Article 7. "Work" means any original creation, particularly as regards form, which is a manifestation of the author's personality.

The work shall comprise both the work in its original form and any form derived from the original.

The following in particular shall be considered works:

- (i) books, pamphlets and other literary, scientific or artistic writings;
- (ii) lectures;
- (iii) works created for the stage or broadcasting (sound and/or visual), including dramatic and dramatico-musical works as well as choreographic works and pantomimes;
- (iv) musical compositions with or without words;
- (v) works of painting, drawing, lithography, etching, wood engraving and other works of the same nature;
- (vi) sculptures of all kinds;
- (vii) architectural works, including both plans and models and the building itself;
- (viii) tapestries and objects created by artistic professions and by the applied arts, including both sketches and models and the works themselves;
- (ix) maps, drawings, and graphic and three-dimensional reproductions of a scientific or technical nature;
- (x) cinematographic works, to which are assimilated, for the purposes of this Ordinance, works expressed by a process producing visual effects similar to those of cinematography;
- (xi) photographic works, to which are assimilated, for the purposes of this Ordinance, works expressed by a process similar to photography;

- (xii) translations, arrangements or adaptations of the above works;
- (xiii) works derived from folklore.

The title of a work shall be protected under this Ordinance in the same way as the work itself. It shall be unlawful to give to a work a title already used for another work of the mind of the same type if such title is liable to cause confusion as to the authorship of the work.

Works Derived from Folklore

Article 8. Folklore shall form part of the national cultural heritage. With the exception of public legal entities, the direct or indirect fixation of folklore with a view to its exploitation for profit-making purposes shall require an authorization from the Minister responsible for the arts and culture, who may require that the fixation shall be subject to the payment of a fee in accordance with a decree to be issued by the said Minister.

The total or partial assignment of copyright in a work derived from folklore or of an exclusive license in respect of such work shall not be valid without the approval of the Minister responsible for the arts and culture.

For the purposes of this Ordinance, "work derived from folklore" means any work composed on the basis of elements borrowed from the national heritage of the Republic of Mali.

Article 9. Copyright in a work in the public domain shall belong to the State.

For the purposes of this Ordinance, the following shall belong to the common cultural heritage:

- (a) works whose authors are unknown, including the songs, legends, dances and other manifestations of the common cultural heritage;
- (b) works whose owners have waived the protection afforded to them by this Ordinance;
- (c) works by foreign authors not residing in Mali and who are not protected under Article 97 of this Ordinance;
- (d) works of authors without heirs;
- (e) works whose term of protection has expired.

The amount of the fees to be paid by persons using works belonging to the common cultural heritage shall be laid down in a decree issued jointly by the Minister responsible for the arts and culture and the Minister responsible for finance.

Cinematographic or Televised Works and Photographic Works

Article 10. The copyright in cinematographic or televised works shall belong to the producer of the work.

The producer of a cinematographic or televised work shall be the natural person or legal entity who

or which takes the initiative for producing the work and the responsibility for exploiting it.

Article 11. The producer shall be required to conclude prior contracts with all persons whose works are used in making the cinematographic or televised work.

Such contracts, excepting those concluded with the authors of musical compositions with or without words, shall imply, unless otherwise stipulated, the assignment of the exclusive rights of exploitation, i. e., the right to present the work in public, the right to broadcast it by television, the right to reproduce copies, the right to hire out the work, the right to transmit it and the right to modify the works used during cinematographic production in so far as adaptation to that art is necessary.

Article 12. The producer of a cinematographic work shall be required to record on the film his own name or business name in such a way that it appears when the work is presented, together with those of the director and of the authors of the script, the original work, the adaptation, the dialogue, the music and the words of the songs sung by the principal performers.

Article 13. A cinematographic or televised work shall be deemed completed when the first master print has been established by common accord between the director and the producer.

The director of a cinematographic work shall be the natural person who assumes the direction of, and the artistic responsibility for, the transformation into images and sounds and the cutting of the cinematographic work, as well as the final editing.

Article 14. If one of the authors whose works are used to produce the cinematographic work refuses to complete his contribution to the work or is unable to complete such contribution, he may not object to the use of the part of his contribution already in existence for the purpose of the completion of the work.

Article 15. If the producer does not complete the cinematographic work within the period of time agreed with the authors of the works used in the production of the cinematographic work, counted from the time the literary or musical works which are to be used are delivered to him, the owners of rights in those works shall be entitled to terminate the contract. In such case, the author shall notify thereof the producer by notarial act and shall be entitled to make use of his contribution without, however, relinquishing his right to claim damages for the prejudice he has suffered on account of the delay.

Before expiration of the period provided for in the above paragraph, the producer may request the au-

thor to extend the contract, and the request shall be granted if he can produce evidence that the delay is due to reasons of *force majeure* or to unforeseeable circumstances, or to difficulties inherent in the nature of the work.

Article 16. The authors of the works used in the production of the cinematographic work, unless they have agreed to their exclusive use for the cinematographic production, shall retain their right to use their respective contributions separately with a view to their exploitation in a different type of work, on condition that such use does not prejudice the exploitation of the cinematographic work in which they have collaborated.

Article 17. In hire contracts for foreign cinematograph films, it shall be understood in each case that the agreed remuneration includes the value of all royalties occasioned by the cinematographic work and that it shall be at the sole cost of the distributor.

The distributor of a cinematographic work shall be the natural person or legal entity generally receiving authorization from the producer to exploit the various copies of the film by hiring them out to theater managers.

Article 18. Film purchase contracts shall in all cases contain a clause setting out the manner in which royalties shall be paid and to whom they shall be paid. Furthermore, the distribution statements communicated to the copyright office referred to in Article 33 shall show the name of the firm having sold the film, except where otherwise indicated by the firm which, in such case, shall furnish the required detailed statement.

Article 19. As regards photographic works, the photographer shall have an exclusive right to reproduce, publish and sell his photographs, with the exception of those produced under a contract, in which case the right shall belong to the person commissioning the work.

In the event of evident abuse by the latter, preventing the right of disclosure from being exercised, the competent court may order any suitable measure.

Article 20. The assignment of the negative or of a comparable means of producing the photograph shall imply the assignment of the exclusive right recognized under Article 19.

Article 21. In order to enjoy the exclusive right referred to in Article 19, the copies of the photograph must bear the following inscriptions:

- (i) the name of the photographer or of the person having commissioned the work;
- (ii) the year of production of the photograph;
- (iii) the name of the author of the photographic work of art, where appropriate;
- (iv) the notice "reproduction prohibited."

Where the copy of a photograph does not bear such inscriptions, the photograph may be freely reproduced.

Works Produced by or on Behalf of the National Broadcasting Organization, and Broadcast Works

Article 22. Except as otherwise stipulated by the author, the authorization to broadcast a work shall cover all free sound and/or visual communications made by the broadcasting organization holding the authorization, using its own facilities and under its own responsibility.

Such authorization shall not extend to communications made in public places such as cafés, factories, restaurants, hotels, cabarets, shops of various kinds or clubs.

Article 23. It shall be permissible to broadcast works already lawfully made available to the public and to publicly communicate such broadcast works.

Article 24. The author of works protected by this Ordinance or his agent shall authorize by contract, subject to the limits and conditions laid down below, the National Broadcasting Organization of Mali to use all his protected works.

Article 25. Such authorization:

- (i) shall concern, in addition to free communication of such works by the National Broadcasting Organization, their reproduction by that organization using its own facilities and for its own broadcasts.

However, after a period of one year and in those cases where the contract concluded between the author or his agent and the National Broadcasting Organization does not lay down that the rights of exploitation have been assigned to the latter, such reproductions may not be broadcast unless a new authorization is given to the National Broadcasting Organization to that effect.

Reproductions of an exceptional documentary character shall be preserved. A copy of recordings of cultural or historical value shall be preserved in the official archives designated to that end by the Minister responsible for the arts and culture. A list of types of works shall be established by a decree of the Minister responsible for the arts and culture;

- (ii) shall cover the following operations:

- (a) all sound and/or visual broadcasts made by all stations of the National Broadcasting Organization, either live or from recordings made lawfully by third parties, or by rebroadcasting or by relay;
- (b) the making by the National Broadcasting Organization, or on its exclusive behalf, and the exploitation of recordings in-

tended for the other broadcasting organizations, subject to the latter being informed that they may only make one broadcast and that they shall be required to pay the usual royalties for that broadcast;

- (c) free public performance and reception organized by the National Broadcasting Organization or made by the latter at exhibitions or other similar events within the confines of stands or facilities reserved to it, whatever the place of the performance and whether it be live or by means of a recording;
- (d) supplying copies of recordings of broadcasts to third parties for private use, where the third parties are the authors or their successors in title or other persons having made an intellectual contribution to the broadcast.

Article 26. The National Broadcasting Organization shall be entitled to make such adaptations and arrangements as are made necessary by its special technical requirements.

Such arrangements shall not alter the nature of the work, the authors' moral rights being, moreover, explicitly reserved.

Translations, adaptations and other arrangements of original works may only be carried by or on behalf of the National Broadcasting Organization with prior authority from the authors of the original works or their successors in title and under the terms agreed upon with the latter.

Article 27. Any assignment of a recording of protected works or any offer to relay broadcasts of protected works shall be subject to the prior approval of the Minister responsible for the arts and culture.

Article 28. The National Broadcasting Organization shall be required to make a lump-sum payment for the exploitation of protected works, the rate and terms of payment of which shall be laid down in a decree issued jointly by the Ministers responsible for information, finance and the arts and culture.

TITLE II

Exercise of Copyright

CHAPTER I

Nature of the Rights

Article 29. Copyright includes attributes of an intellectual, moral and economic nature.

On the death of the author these rights shall continue to the benefit of his successors in title.

Article 30. Attributes of an intellectual and moral nature.

These consist of the author's right to be recognized and indicated as the author of the work, the right to object to any distortion, mutilation or other modification of the work and the right to oppose any use that would be prejudicial to his honor or reputation.

In accordance with the foregoing any person who publishes, transforms, arranges, performs, translates or records the work of the author, and any other person who uses it in public, shall be obliged to indicate the name or pseudonym of the author whenever his work is used.

The attributes of an intellectual and moral nature are imprescriptible and inalienable.

Article 31. The attributes of an economic nature confer on the author of a work the exclusive right to disclose and exploit his work in any form and at any time and to derive monetary benefit from such exploitation, except in the case of a work of art or of a commissioned portrait, where the express consent of the person having commissioned the work or portrait shall be required; however, in the case of manifest abuse on the part of the latter person preventing the exercise of the right of disclosure, the competent authority may order any appropriate action.

They confer on him also the exclusive right to perform or authorize any one of the following acts:

- (a) reproduction of the work in any material form, including the form of cinematograph films and phonograms;
- (b) communication of the work to the public by performance or sound or visual broadcasting;
- (c) communication of the broadcast work to the public by any means or process for the transmission of signs, sounds or images;
- (d) any translation or adaptation of the work;
- (e) any one of the acts specified in paragraphs (a) to (c) above performed in relation to a translation or adaptation of the work.

Any of these acts performed by a third party without the express written authorization of the author or his successors in title shall be unlawful, and the author may apply to the court for a summary ruling providing for such measures as may be necessary.

Article 32. In order to enjoy the protection hereby established, a work must be entered in the Register of Literary and Artistic Property which shall be opened for the purpose at the office of the Minister responsible for the arts and culture.

Article 33. The administration of the rights of authors and the defense of their moral and material interests shall be entrusted to a copyright office created for the purpose.

CHAPTER II

Limitations on Copyright

Article 34. Where the work has been lawfully made available to the public, the author may not prohibit:

- (i) communication (performance, broadcasting, etc.)
 - (a) if it is private and free of charge;
 - (b) if it is effected free of charge for educational, teaching or religious purposes;
- (ii) reproductions, translations and adaptations intended for strictly personal and private use.

However, in the case of theatrical performances, whether free or subject to an admission charge, the organizers shall inform either the author or his successors in title or his representative in advance.

Article 35. The author of a work of architecture may not prevent any alterations that the owner may decide to make, but he may object to the mentioning of his name as being the author of the project.

Article 36. The following shall be lawful:

- (i) quotations from a work that has already been lawfully made available to the public, provided that this is compatible with fair practice and justified by the scientific, critical, educational or informatory purpose, including quotations and borrowings from articles in periodical publications in the form of press summaries. Such quotations and borrowings may be used in their original form or in translation, and must be accompanied by a mention of the source, and of the name of the author if it appears thereon;
- (ii) reproduction for cinematographic or broadcasting purposes and communication to the public of works of figurative art and of architecture permanently located in a place where they can be viewed by the public and included in the film or broadcast only by way of background or as incidental to the essential matters represented;
- (iii) reproduction and communication to the public, to the extent justified by the informatory purpose, of literary, scientific or artistic works that may be seen or heard in the reporting of current events by means of photography or broadcasting;
- (iv) reproduction for strictly personal and private use of literary, scientific, artistic or any other broadcast works;
- (v) reproduction in the press and publication by broadcasting of articles on current political, social, economic or religious topics, except where the right of reproduction is expressly reserved.

However, the source must always be clearly indicated;

- (vi) the acts specified below when they relate to works already lawfully made available to the public and where the author is not represented by the copyright office:

- (a) lectures;
- (b) works created for the stage or broadcasting, including dramatic and dramatico-musical works as well as choreographic works and pantomimes.

Article 37. The Minister responsible for the arts and culture may, if need be, authorize public libraries, non-commercial documentation centers, scientific institutions, educational establishments, literary centers and any cultural association recognized by the Government to reproduce by a photographic or similar process literary, scientific or artistic works in the amount necessary for the purpose of their activities, subject to the payment of equitable remuneration.

CHAPTER III

Publishing Contracts and Performance Contracts

A. Publishing Contracts

Article 38. A publishing contract is a contract under which the author of the work or his successors in title transfer to the publisher, under specified conditions, the right to manufacture or have manufactured a specified number of copies of the work, on condition that he provides for the publication and dissemination thereof.

The publisher shall not enjoy the rights conferred on him by this Ordinance until the contract has been entered in the Register of Literary and Artistic Property. Failure to comply with this formality shall not deprive the author of the rights that belong to him under this Ordinance or the contract.

Article 39. The contract shall, on pain of nullity, be drawn up in writing and shall provide for the payment to the author of a rate, or of a fixed sum, relating to the net proceeds from the exploitation of the work. That rate or sum shall be fixed by common consent between the publisher and the author.

Article 40. The publishing contract shall indicate the minimum number of copies constituting the first printing.

Article 41. The author shall guarantee the publisher's exercise of the right of publication against hindrances, claims and dispossession of any kind and declare the latter's full control over the work.

He shall undertake not to publish any part of it without the prior consent of the publisher.

Article 42. The publisher shall not add anything to, or remove anything from, the work without the written consent of the author or his successors in title (including notes and prefaces, if any).

He shall place the name, pseudonym or mark of the author on every copy.

Article 43. Transfer to a publisher of the right to publish a number of separate works shall not include the right to publish them together in a single volume, and vice versa.

Article 44. The publisher shall undertake to complete publication within the term fixed by common consent between himself and the author, after signature of the contract.

Article 45. Unless otherwise agreed, promotional literature shall be produced by the publisher.

Article 46. Where copies of the work are not produced within the term referred to in Article 44 of this Ordinance, the author may claim compensation calculated in relation to the fee referred to in Article 39.

This compensation shall be fixed by common consent between the publisher and the author.

Article 47. The publishing contract shall terminate if, when the first edition of the work is out of print, the publisher decides not to print further copies.

Article 48. An edition shall be considered out of print if two orders for the delivery of copies addressed to the publisher have not been complied with after expiration of a period to be fixed by common consent between the publisher and the author.

Article 49. In the case of reprinting:

- (i) if the author wishes to make modifications to the work:
 - (a) the publisher shall have the option of refusing them, in which case the contract shall terminate;
 - (b) the publisher, if he accepts them, shall assume responsibility for the modifications in so far as the expenditure occasioned by them does not exceed a specified proportion of the typesetting costs; that proportion shall be fixed by common consent between the publisher and the author; if the proportion is exceeded, the excess shall be borne by the author;
- (ii) if the publisher wishes to make modifications to the work, with the prior written consent of the author or his successors in title:
 - (a) he must have them made by the author, the typesetting costs being borne by the publisher;
 - (b) where the author is unable to make the modifications, he may authorize the publisher to have the work carried out by a third party, in which case the correction costs shall be borne by the author by deduction from his fees.

However, the author may demand that the fact of correction by a third party be mentioned in the new edition.

Article 50. The publisher shall be required to provide the author with all the documentary evidence necessary for establishing the accuracy of his accounts.

The statement provided shall indicate:

- (a) the number of copies manufactured by the date specified;
- (b) the number of copies in stock;
- (c) the number of copies damaged;
- (d) the selling price charged;
- (e) the number of copies paid for.

Royalties shall be calculated and paid in relation to the number of copies for which the publisher has been paid. These royalties shall not be payable on copies given away for advertising purposes or on author's copies.

Article 51. The author may terminate the contract if, five years after the edition has been put on sale, not more than 30 percent of the copies have been purchased by the public.

In that case the author shall purchase the unsold copies from the publisher at their cost price.

Article 52. In the event of bankruptcy, the contract shall terminate only if the exploitation of the work is not continued and the business transferred on the expiration of the period which shall be fixed, as of the date of the bankruptcy judgment, by common consent between the publisher and the author.

Where the publishing business is operated as a corporation or as a joint enterprise, the fact of entrusting the business to one of the former shareholders or partners as a result of the bankruptcy shall not constitute transfer.

Article 53. Any reassignment on a work-by-work basis shall be prohibited, except where authorized by the author.

Where the publisher sells the whole of his business, the author may request termination of the contract if the sale is liable to prejudice his material and moral interests.

Article 54. No auctioning of copies may take place unless the author has been advised by registered letter two months in advance, except where another period has been agreed upon.

Article 55. The publishing contract shall terminate automatically when the publisher, on account of unsatisfactory sales or for any other reason, destroys all the copies.

Article 56. If the work is not completed on the death of the author, the contract shall terminate with respect to the uncompleted part of the work, unless

otherwise agreed between the publisher and the successors in title of the author.

Article 57. If the work of an unknown author has been published and that author subsequently reveals his identity, the publisher shall be obliged to pay the author a fixed rate relating to the proceeds from the sale to the public of the copies still unsold on the date on which the author revealed his identity; the rate shall be fixed by common consent between the two parties.

The publisher shall retain the right to sell the remainder of the published copies at the price previously charged.

The author shall have an option to purchase the copies remaining in the publisher's possession, after deduction from the purchase price of the discount granted by the publisher to his distributors and agents.

If the publisher has acted in bad faith, the author shall in addition have the right to appropriate indemnification.

Article 58. In the event of a dispute between the publisher and the author, the contracting parties shall have recourse to the competent jurisdiction if they fail to reach an amicable settlement of their dispute.

Article 59. Any person who publishes a protected work within the territory of the Republic of Mali shall be obliged to place the following indications visibly on all the copies:

- (a) the title of the work;
- (b) the name or pseudonym of the author or authors and of the translator or adapter, except where they have decided to remain anonymous;
- (c) the copyright notice, with the indication of the name or pseudonym of the owner of the copyright and the number of the entry in the Register of Literary and Artistic Property;
- (d) the year and place of publication of the respective edition, and of earlier editions, if any;
- (e) the name and address of the publisher and printer;
- (f) the number of copies constituting the edition.

B. Performance Contracts

Article 60. A performance contract is a contract under which the author of an intellectual work, his representative or his successors in title authorize a natural person or legal entity to perform the work under specified conditions.

A contract under which an author, his representative or his successors in title grant an entertainment manager the right to perform, under specified conditions and for the duration of the contract, the existing works constituting the repertoire of the author shall be called a general performance contract.

Article 61. Performance contracts shall be drawn up in writing.

Article 62. The performance contract shall be concluded for a limited period or for a specified number of communications to the public. Except where exclusive rights are expressly provided for, the contract shall not confer any monopoly of exploitation on the entertainment manager.

Article 63. The entertainment manager may not transfer the benefits of his contract without the formal and written consent of the author or his representative.

He is obliged to make known to the author or the copyright office the exact program of public performances and provide them with a documented statement of his receipts. He must pay the agreed amount of royalties at the specified times.

Article 64. The entertainment manager shall cause the work to be performed in public within the period, starting on the date of the contract, fixed by common consent between himself and the author.

If on expiration of that period the work has not been performed, the author may terminate the contract and shall not be obliged to refund any advances received.

Article 65. The entertainment manager may terminate the contract, forfeiting any advances paid to the author, if performances have to be discontinued for any reason or on account of any circumstances beyond his control.

If performances have to be discontinued for a reason attributable to the entertainment manager, the author may terminate the contract, demand compensation for the prejudice suffered and retain any advances he has received.

Article 66. The entertainment manager shall be obliged:

- (i) to cause the work to be performed under the conditions specified in the contract, without making any modifications or transformations that have not been consented to by the author, and to announce it to the public mentioning its title, the name of the author and that of the translator or adapter, if any;
- (ii) to allow the author to watch over the performance of the work;
- (iii) to retain the same actors, conductors and choirs where they have been selected in agreement with the author.

Article 67. If the show is also broadcast, the author shall collect a percentage of the price paid to the broadcasting organization for the publicity broadcast during the program or, failing that, a percentage of the sum received by the producer from the said organization for the broadcasting of the work; these percentages shall be fixed by common consent between the author and the parties.

This remuneration shall be collected without prejudice to any amount paid by the relevant person in relation to the total amount of the net proceeds from each performance.

Article 68. The author's share in the receipts shall be regarded as a deposit in the custody of the entertainment manager, who shall keep it at the disposal of the author; it may not be included in any seizure of the assets of the manager.

If the entertainment manager fails to pay the author, at the latter's request, the share that is in his custody, the competent jurisdiction may, at the request of the author, order the suspension of performances or seizure of the receipts, without prejudice to the author's right to terminate the contract.

Article 69. The performance of works in the public domain shall be subject:

- (a) to the respect of the moral rights;
- (b) to prior declaration;
- (c) to the payment of a fee, the proceeds from which shall be used to cultural and social ends.

The right of performance of works in the public domain shall be administered by the copyright office referred to in Article 33.

Article 70. Any dispute liable to arise between the entertainment manager and the author in the interpretation or implementation of these texts shall be settled by the competent jurisdiction, except where an amicable settlement is reached between the two parties.

CHAPTER IV Transfer of Copyright

Article 71. Copyright shall be movable property; it shall be transferable by succession to the author's heirs or successors in title, in whole or in part.

However, a total assignment of future works shall be null and void.

Article 72. Transfer in whole or in part of copyright on any account shall be entered in the Register of Literary and Artistic Property referred to in Article 32 within two months of the date on which the act or contract is concluded.

Transfer shall be made by means of a notarial act.

The termination of the contract under which the transfer was made shall also be entered within the same period.

Article 73. Assignment of the right to communicate the work to the public shall not imply the right to reproduce it, and assignment of the right to reproduce the work shall not include the right to communicate it to the public.

Article 74. Transfer of the sole copy or of one or more copies of the work shall not imply transfer of the copyright.

Article 75. Notwithstanding any assignment of the original work, authors of graphic or three-dimensional works shall have an inalienable right to share in the proceeds of any sale of the work by auction or through a dealer, whatever the methods used by the latter to carry out the operation.

After the author's death, this *droit de suite* shall subsist to the benefit of his heirs and legatees for the period laid down in Article 82 of this Ordinance.

Article 76. In cases of evident abuse as regards the use or non-use of the right of disclosure by the acquirer of a work, the competent court may, on an application by the Minister responsible for the arts and culture, order all suitable measures.

Article 77. Notwithstanding the assignment of his right of exploitation, the author shall enjoy, even after the publication of the work, the right to disavow or withdraw in relation to the assignee.

He may only exercise this right, however, on condition that he indemnifies the assignee beforehand for any loss that the disavowal or withdrawal may cause him.

When the author decides to have his work published after having exercised the right to disavow or withdraw, he shall be bound to offer priority exploitation rights to the assignee he originally chose, under the conditions originally specified.

Article 78. Assignment by the author of his rights shall confer upon him a proportionate participation in any proceeds from the sale or exploitation of the work.

Article 79. When the exploitation right has been assigned and the author suffers a loss of more than seven-twelfths of the contractual amount as a result of undue injury under the contract or an insufficient advance estimate of the proceeds from the work, the author may demand a revision of the price conditions of the contract.

Such demand may be made only where the work was assigned against a lump-sum payment.

The injury shall be assessed in relation to the overall exploitation by the assignee of the works of the author claiming to have suffered injury.

Article 80. A clause assigning the right to exploit a work in a manner which is unforeseen or unforeseeable at the date of the contract shall be explicit and shall stipulate a corresponding participation in the profits derived from exploitation.

Article 81. In the case of partial assignment, the assignee enters into the rights of the author, as regards the exercise of the assigned rights and under

the conditions, within the limits and for the duration stipulated in the contract, and shall be required to render account.

CHAPTER V

Term of Protection

Article 82. Copyright shall subsist during the lifetime of the author and for fifty years from the date of his death, or from the date fixed in the declaratory judgment of death in the case of a missing person.

Transmission of copyright after the death of the author shall be governed by the law of inheritance in force.

Article 83. In the case of works of joint authorship, the only date taken into consideration for the calculation of the term of protection shall be that of the death of the last surviving co-author, or that fixed in the declaratory judgment of death in the case of a missing person.

If a co-author dies without leaving forced heirs, his rights shall be added to the rights of the remaining co-author or co-authors.

Article 84. Where copyright forms part of the estate of a legal entity, the period of fifty years shall begin on the date at which the legal entity is wound up or deemed, by notarial act, to be wound up.

Article 85. Copyright shall subsist for fifty years from the date on which the work is lawfully made accessible to the public:

- (i) in the case of photographic, cinematographic or televised works;
- (ii) in the case of anonymous or pseudonymous works; if the author reveals his identity beforehand, the provisions of Article 88 shall apply.

Article 86. The term of the exclusive right of exploitation for posthumous works shall be fifty years from the date on which the work is published.

The right of exploitation of posthumous works shall vest in the author's successors in title if the work is disclosed during the above-mentioned period.

If disclosure is made after such period has expired, it shall vest in the owners, by succession or otherwise, of the work who publish the work or have it published.

Posthumous works shall be required to be published separately, except where they constitute simply a fragment of a previously published work. They may not be attached to previously published works by the same author unless the right of exploitation in such works still vests in the author's successors in title.

In cases of evident abuse as regards the use or non-use of the right of disclosure by the representatives of the deceased author, the civil court may

order all suitable measures; the same shall apply in the case of disputes between such representatives where no known successors in title exist or where there are no claimants or heirs.

Such cases may also be brought before the court by the Minister responsible for the arts and culture.

CHAPTER VI

Procedure and Sanctions

Article 87. All disputes arising from the application of this Ordinance shall be submitted to the civil courts, without prejudice to the right of the injured party to institute criminal proceedings under the general rules of law.

Article 88. Disputes arising from the application of this Ordinance shall be governed by the provisions of this Chapter which follow.

Regularly constituted bodies for the protection of copyright are entitled to institute legal proceedings to defend the interests for which they are statutorily responsible.

Article 89. Commissioners of police and, where there are no commissioners of police, justices of the peace shall be required, on a request by any author of a work protected under this Ordinance or by his successors in title, to seize the copies constituting an unlawful reproduction of the work.

If seizure has the effect of delaying or suspending public performances already in progress or announced, a special authorization shall be obtained from the president of the civil court by means of an order issued on request.

The president of the court may, under the same conditions, order:

- the seizure, even at hours not provided for by Article 69 of the Code of Criminal Procedure, of the copies constituting an unlawful reproduction of the work, whether already manufactured or in the process of manufacture, of the proceeds obtained and of the copies unlawfully utilized;
- the seizure of the proceeds from any reproduction, performance or dissemination, by any means whatever, of an intellectual work, made in violation of the author's rights.

In the orders provided for above, the president of the civil court may require the person requesting seizure to furnish suitable prior security.

This Article shall also apply to the unauthorized exploitation of folklore and the performance of works which are in the public domain.

Article 90. The measures laid down in Article 89 may also be ordered by the examining magistrate or the criminal court competent to hear infringement proceedings. Such magistrate or such court may at

any time order the withdrawal of the measures prescribed, on condition, where appropriate, that security be given or a receiver be appointed to resume the manufacture or the public performances and to hold the proceeds from the exploitation of the work pending determination of ownership.

Article 91. The measures ordered by the president of the court shall be withdrawn automatically on the thirtieth day following the decision of the plaintiff to refer the matter to the competent civil court, unless criminal proceedings are in progress. They may be withdrawn at any time by the president of the court in a summary proceeding or by the civil court hearing the main issue, in accordance with the conditions provided for in Article 90, where appropriate.

The president of the civil court, acting in a summary proceeding, may, if he allows the request of the distrainee or garnishee, order the petitioner to deposit a sum as guarantee for the damages to which the author might be entitled.

Article 92. Where the proceeds from exploitation due to the author of an intellectual work are the subject of a seizure, the president of the civil court may order payment to the author, as maintenance, of a specified sum or proportion of the amounts seized.

Article 93. Any publication of writings, musical compositions, drawings, paintings or any other printed or engraved production, in part or in whole, in defiance of the laws and regulations on authors' property shall constitute an infringement, and any infringement shall constitute an offense.

Anyone shall be guilty of the offense of infringement and shall be punished by the penalties contained in Article 85 of the Criminal Code (from 15 days' to 3 months' imprisonment and a fine of between 20 000 and 100 000 francs, or one only of these two penalties) who:

- (a) imports into the territory of Mali any reproduction of a work made in violation of this Ordinance;
- (b) infringes on the territory of Mali works published abroad or sells, exports or imports such infringing works;
- (c) reproduces, performs or disseminates, by any means whatsoever, an intellectual work in violation of the author's rights as defined and governed by this Ordinance.

The penalties shall be doubled if it is established that the offender habitually engaged in the acts referred to in subparagraphs (a), (b) and (c).

In the event of further infringement following a condemnation under the immediately preceding paragraph, the temporary or definitive closure of the establishments operated by the habitual infringer or his accomplices may be ordered.

Where such closure is ordered, the employees shall receive compensation equal to their salaries, together with all benefits in kind, for the duration of closure, up to a maximum of six months.

Where collective or individual agreements provide for greater compensation on dismissal, such compensation shall be due.

Any infringement of the provisions of the two preceding paragraphs shall be subject to the penalties provided for in the first paragraph of this Article, which shall be doubled in the event of a further infringement.

Article 94. In all the cases provided for in Article 93, the offenders shall also be condemned to confiscation of sums equal to their shares in the proceeds from the unlawful reproduction, performance or dissemination and to confiscation of all equipment specially installed for the purposes of the unlawful reproduction and of all the infringing copies and articles.

The equipment or infringing copies and the proceeds or shares in proceeds which have been confiscated shall be handed to the author or his successors in title as compensation for the damages suffered; the residual compensation, or the entire compensation where no equipment, infringing articles or proceeds have been confiscated, shall be paid through the ordinary channels.

Article 95. Evidence of violations of the law on the protection of copyright may be obtained not only from the reports of police officers but also from the statements of sworn agents.

Article 96. In cases of violation of Article 75, the acquirer and the ministerial officials may be jointly condemned to pay damages to the beneficiaries of the *droit de suite*.

TITLE III

Scope of Application

Article 97. This Ordinance shall apply:

- (a) to the works of nationals of Mali;
- (b) to the works of foreign nationals of which the first publication took place in Mali;
- (c) to works of architecture erected on the territory of Mali and any work of art incorporated in a building located on that territory, subject to the international provisions and conventions to which Mali is a party.

Works which do not fall into any of the above-mentioned categories shall only enjoy protection under this Ordinance if the country of which the original owner of the copyright is a national or resi-

dent affords equivalent protection to the works of nationals of Mali. No derogatory action may, however, be undertaken with respect to the integrity or authorship of such works.

The countries for which the reciprocity condition provided for in the second paragraph above are deemed fulfilled shall be decided jointly by the

Minister responsible for the arts and culture and the Minister for foreign affairs.

Article 98. This Ordinance shall repeal all earlier provisions and shall be published in the Official Gazette and executed as a law of the State.

General Studies

Administration of Neighboring Rights: Experience in the Nordic Countries

A. Henry OLSSON *

Correspondence

Letter from Luxembourg

E. EMRINGER *

International Activities

International Confederation of Societies of Authors and Composers (CISAC)

Legal and Legislation Committee

(Budapest, March 19 and 20, 1980)

The Legal and Legislation Committee of CISAC met in Budapest on March 19 and 20, 1980, at the invitation of the Hungarian Bureau for the Protection of Authors' Rights (ARTISJUS). Almost all members of the Committee were present at the session, either as members designated by the societies of authors belonging to CISAC or in a personal capacity, or again with a standing invitation from the Committee. The members came from the following countries: Australia, Austria, Belgium, Brazil, Denmark, France, Germany (Federal Republic of), Greece, Hungary, Italy, Poland, Soviet Union, Spain, Sweden, United Kingdom, United States of America. Officials of the Hungarian Bureau ARTISJUS also participated in the work of the Committee.

The opening meeting took place in the presence of Dr. László Marczali, Deputy Minister of Culture in the Hungarian Government, who welcomed the participants. The session was opened by Mr. Mihály Ficsor, Director-General of ARTISJUS, and presided over by Mr. Walter Dillenz, of the Austrian Society of Authors, Composers and Music Publishers (AKM), Chairman of the Committee. WIPO, which had been invited in an observer capacity, was represented by Mr. Claude Masouyé, Director, Copyright and Public Information Department.

The agenda began with a general survey of legislative, case law and doctrinal developments in copyright in various countries. Information was presented on a number of topics, particularly as regards legislative reforms taking place in the Federal Republic of Germany, Austria, France and Hungary aimed at introducing a compensatory levy on the selling price of unrecorded magnetic tapes or cassettes.

The Committee then heard communications from its respective rapporteurs on the following topics:

- The position on the employee-author in Hungary (Mr. G. Pálos).
- *Droit de suite* in Hungary (Mr. J. Batta).
- The legal and administrative bases for collecting and distributing royalties in the Soviet Union (Mr. Y. Rudakov).

- The protection of economic rights in Poland (Mr. J. Bleszynski).
- Some reflections on the consequences of the remuneration of neighboring rights on that of copyright (Prof. H. L. Christiansen — Denmark).
- Musical performance in the area of *grands droits* or theatrical performing rights (Mr. Daniel Rocha — Brazil).

In addition, the Committee heard of recent developments in international copyright and of the activities conducted by WIPO, in conjunction with Unesco, in that field:

- The Diplomatic Conference held in Madrid from November 26 to December 13, 1979, which adopted the Multilateral Convention for the Avoidance of Double Taxation of Copyright Royalties.
- The Working Group convened in Geneva from January 7 to 9, 1980, on the Intellectual Property Aspects of Folklore Protection.
- The Group of Independent Experts on the Impact of Cable Television in the Sphere of Copyright, which met in Geneva from March 10 to 13, 1980.

After discussion, the Committee gave its opinion on each of these topics for transmission to the organs of CISAC responsible for deciding the position of this international non-governmental organization. An opinion was also given on the guidelines for the implementation by national legislators of the 1974 Brussels Convention Relating to the Distribution of Programme-Carrying Signals Transmitted by Satellite.

Finally, the Committee gave its opinion on the work to be awarded the CISAC Legal Prize for 1980 and on the topics for the next competition.

The date and venue of the 1981 session of the Committee will be decided after the CISAC Congress to be held in Dakar, Senegal, from November 3 to 7, 1980.

Calendar

WIPO Meetings

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

1980

- June 9 to 13 (Paris) — Development Cooperation — Committee of Experts for a Model Statute for Authors' Societies for Developing Countries** (convened jointly with Unesco)
- June 9 to 16 (Geneva) — International Patent Cooperation (PCT) Union — Assembly (Extraordinary Session)**
- June 13 to 19 (Geneva) — Budapest Union (Microorganism) — Interim Committee**
- June 23 to 27 (Geneva) — Permanent Committee for Patent Information (PCPI) — Working Group on Search Information**
- September 8 to 12 (Geneva) — Permanent Committee on Patent Information (PCPI) — Working Group on Planning**
- September 22 to 26 (Geneva) — Governing Bodies (WIPO Coordination Committee; Assemblies of the Paris, PCT, TRT and Budapest Unions; Conference of Representatives of the Paris Union; Executive Committees of the Paris and Berne Unions)**
- October 14 to 17 (Geneva) — Permanent Committee on Patent Information (PCPI) — Working Group on Patent Information for Developing Countries**
- October 20 to 24 (Geneva) — Permanent Committee on Patent Information (PCPI)**
- November 17 to 21 (Geneva) — Berne Union and Universal Copyright Convention — Working Group on the overall problems posed for developing countries concerning access to works protected under copyright conventions** (convened jointly with Unesco)
- December 1 to 3 (Lomé) — Development Cooperation — African Regional Seminar on Copyright** (convened jointly with Unesco)
- December 4 and 5 (Lomé) — Development Cooperation — African Regional Seminar on Neighboring Rights** (convened jointly with ILO and Unesco)
- December 15 to 19 (Paris) — Berne Union and Universal Copyright Convention — Committee of Governmental Experts on Problems Arising from the Use of Computers** (convened jointly with Unesco)

UPOV Meetings

1980

- June 23 to 25 (Geneva) — Subgroups of the Administrative and Legal Committee**
- August 26 to 28 (Hanover) — Technical Working Party for Forest Trees**
- September 16 to 18 (Lund) — Technical Working Party for Ornamental Plants**
- September 23 to 25 (Lund) — Technical Working Party for Vegetables**
- October 14 (Geneva) — Consultative Committee**
- October 15 to 17 (Geneva) — Council**
- November 10 to 12 (Geneva) — Technical Committee**
- November 13 and 14 (Geneva) — Administrative and Legal Committee**

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

Non-Governmental Organizations

1980

International Confederation of Societies of Authors and Composers (CISAC)

Congress — November 3 to 7 (Dakar)

International Federation of Actors (FIA)

Executive Committee — September 22 to 24 (London)

International Federation of Library Associations and Institutions (IFLA)

Congress — August 18 to 23 (Manila)

International Literary and Artistic Association (ALAI)

Study Session — May 26 to 28 (Helsinki)

1981

International Federation of Translators (FIT)

Congress — May 6 to 13 (Warsaw)

Internationale Gesellschaft für Urheberrecht (INTERGU)

Congress — September 21 to 25 (Ottawa)