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Copyright

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Contents

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Berne Union

VENEZUELA

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

The Government of the Republic of Venezuela deposited, on September 20, 1982, 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.

The Paris Act of the Convention will enter into force, with respect to the Republic of Venezuela, three months after the date of this notification, that is, on December 30, 1982.

Berne Notification No. 104, of September 30, 1982.

Consultation Meeting on the Question of Copyright Ownership and its Consequences for the Relations between Employers and Employed or Salaried Authors

(Geneva, September 1 to 3, 1982)

The International Labour Office (ILO), the Secretariat of Unesco and the International Bureau of WIPO (hereinafter referred to as "the Joint Secretariat"), pursuant to decisions of their governing bodies, convened a consultation meeting in Geneva from September 1 to 3, 1982, between international non-governmental organizations representing interested circles on the subject of copyright ownership and its consequences for the relations between employers and employed or salaried authors.

Sixteen of those international non-governmental organizations were represented at the meeting. The three consultants who had been invited by the Joint Secretariat to present studies on the subject were also present. The list of participants is given below.

The central issue on which the participants expressed their views was the following: what are the particular problems arising out of the status of an employed or salaried author as far as copyright ownership and related questions are concerned?

The discussion focused on the following items, which were considered in the light of applicable laws, court decisions and collective agreements, and the need to protect equitably the interests of the parties concerned.

1. Conceptual framework:
   - *(a)* notion of an "employed or salaried author" (types of employment relationship);
   - *(b)* main categories of works concerned: literary, scientific or artistic works;
   - *(c)* degree of connection with employment: works produced within the employee's normal duties and within the employer's field of activity;
   - *(d)* differences in legal situation of employee-authors and authors of commissioned works.

2. Who is or should be considered to be the author or the original copyright owner of the work?

3. Moral rights: how may the exercise of the moral rights of the author be affected by the contract of employment?

   (a) right to claim authorship;
   (b) right to object to modifications;
   (c) right of disclosure and of withdrawal.

4. Pecuniary rights:

   (a) which rights remain or may remain with the employee, irrespective of who is to be considered the original copyright owner?
   (b) right to dispose of the work if it is produced outside the employee's normal duties or the employer's field of activity.

5. Remuneration:

   (a) right to equitable remuneration:
      (i) with regard to the value of the work;
      (ii) with regard to different kinds of utilization of the work by the employer;
   (b) methods of remuneration: lump payment, regular salaries plus special premiums, proportional remuneration, etc.

6. Problems arising on termination of employment.

The exchange of views that took place made it possible to clarify the problems that arise in relations between employers and employed or salaried authors in connection with copyright ownership, and to identify a number of considerations that should determine the direction of future work in this area. The Joint Secretariat noted the opinions expressed on the various items mentioned above. As far as WIPO is concerned, a report on the meeting will be submitted to the Executive Committee of the Berne Union at its session scheduled for December 1983.

List of Participants

European Broadcasting Union: A. Grassi; W. Rumphorst; J. van Santbrink. **Independent Film Producers International Association:** R. Thévenet. **International Confederation of Societies of Authors and Composers:** U. Uchtenhagen; M. Fabiani. **International Copyright Society:** G. Halla. **International Federation of Actors:** G. Croasdell. **International Federation of Commercial, Clerical, Professional and Technical Employees:** D. Cockroft. **International Federation of Journalists:** S.O. Gronsund. **International Federation of Musicians:** R. Leuzinger. **International Federation of Phonogram and Videogram Producers:** E. Thompson. **International Federation of Unions of Audio-visual Workers:** R. Jannelle. **International Literary and Artistic Association:** M. Fabiani. **International Group of Scientific, Technical and Medical Publishers:** P. Nijhoff Asser. **International Organisation of Employers:** R.J. Chacko. **International Publishers Association:** J.A. Koutchoumow. **International Union of Architects:** M. Huet. **World Confederation of Labour:** B. Robel.

Consultants

Mrs. J. Lindgard
Professor
Institute of Private Law, University of Arhus, Copenhagen

Mr. G. Pálos
Director
Legal Department, Hungarian Bureau for the Protection of Authors Rights (ARTISJUS), Budapest

Ms. D. Schrader
Associate Register for Legal Affairs, Copyright Office, Library of Congress, Washington, D.C.

Secretariat

International Labour Organisation (ILO)

G. Bohère *(Chief, Salaried Employees and Professional Workers Branch)*; J. Perret *(Salaried Employees and Professional Workers Branch).*

United Nations Educational, Scientific and Cultural Organization (UNESCO)

E. Guerassimov *(Lawyer, Copyright Division).*

World Intellectual Property Organization (WIPO)

C. Masouyé *(Director, Public Information and Copyright Department)*; G. Boytha *(Head, Copyright Law Division).*

Conventions Administered by WIPO

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

URUGUAY

Ratification of the Convention

The Director General of the World Intellectual Property Organization (WIPO) has informed the Governments of the States invited to the Diplomatic Conference on the Protection of Phonograms * that, according to the notification received from the Secretary-General of the United Nations, the Government of the Eastern Republic of Uruguay deposited, on October 6, 1982, its instrument of ratification 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 Uruguay, three months after the date of the notification given by the Director General of WIPO, that is, on January 18, 1983.

* Phonograms Notification No. 41, of October 18, 1982.

National Legislation

COLOMBIA

Law on Copyright

(No. 23, of January 28, 1982) *

(Articles 72 to 150)

CHAPTER V

Economic Rights

(Development and situations that may arise)

Article 72. The economic rights of the author shall operate as from the moment at which the work or production susceptible of economic valuation, whatever its purpose, is disclosed in any form or by any mode of expression.

Article 73. Whenever authors or associations of authors enter into contracts with users or with the organizations representing them concerning the copyright in the performance, showing and in general the use or exploitation of the works protected by this Law, the tariffs agreed upon in those contracts shall be applicable in so far as they are not contrary to the principles embodied in the Law.

* Published in *Diario Oficial* of February 19, 1982. — WIPO translation.

Paragraph. Where there is no contract, or where the contract has ceased to have legal effect, the tariffs shall be those specified by the competent body, which shall take into account, among other factors, the category of establishment in which the work is to be performed, and the purpose and duration of the show; such tariffs may not be higher than those already agreed upon by the associations for similar cases.

Article 74. Only by way of a prior contract may a phonogram producer record works protected by this Law, which contract shall in no case constitute assignment of the right of public performance, the economic rights in which shall accrue exclusively to the author or performer.

Article 75. For the purposes of copyright, no type of mandate shall have a duration in excess of three years. The parties may prolong this duration by periods that may not exceed the same number of years. This provision shall apply without prejudice to the provisions of Article 216.3.

Article 76. The authors of scientific, literary or artistic works and their successors in title shall have the exclusive right to authorize or prohibit:

(a) publication, or any other form of reproduction;
(b) translation, arrangement or any other form of adaptation;
(c) incorporation on cinematograph film, videogram, videotape, phonogram or any other medium of fixation;
(d) communication to the public by any process or means, including:
  (i) performance, recitation or declamation;
  (ii) sound or audiovisual broadcasting;
  (iii) dissemination by loudspeakers or wire or wireless telephony, or by means of phonographs, sound or recording equipment and comparable apparatus;
  (iv) public use by any other known or future medium of communication or reproduction.

Article 77. The different forms of use of the work shall be independent of each other; authorization by the author of one form of use shall not extend to other forms.

Article 78. The interpretation of legal transactions concerning copyright shall always be restrictive. The recognition of rights broader than those expressly granted by the author in the instrument concerned shall not be allowed.

Article 79. When there are two or more successors to the author and they disagree between themselves, either on the publication of the work or on the way of publishing, distributing or selling it, the court shall decide after having heard all the parties concerned in an oral proceeding.

Article 80. Before the term of protection has expired, the economic rights in a work that is regarded as being of great value to the country and of social interest to the general public may be expropriated, subject to equitable prior indemnification of the copyright owner. Expropriation shall be valid only where the work has been published and where the stock of copies of the work is exhausted, and a period of at least three years has elapsed following the last or only publication with little probability of the owner of the copyright publishing a new edition.

CHAPTER VI

Special Provisions on Certain Works

Article 81. The contract between the other contributors and the producer shall, unless expressly provided otherwise, imply assignment and transfer to the latter of all the economic rights in the cinematographic work, the producer being empowered to exploit it in all forms and by all processes, including reproduction, hiring and sale.

Article 82. There shall be joint authorship if the requirements of Article 18 are met.

Article 83. The editor of a collective work shall be the owner of the copyright in it when the conditions of Article 19 of this Law are met.

Article 84. Letters and other correspondence shall be the property of the person to whom they are sent, but not for the purposes of publication. That right shall belong to the author of the correspondence, except where any letter has to serve as proof of a legal or administrative transaction, and its publication is authorized by the competent official.

Article 85. The letters of deceased persons may not be published during the 80 years following death without the express permission of the surviving spouse and their children or descendants or, in the absence of such persons, that of the father or mother of the author of the correspondence. In the absence of spouse, children, father, mother or descendants of children, publication of the letters shall be free.

When the consent of two or more persons is necessary for the publication of letters and correspondence, and there is disagreement between them, the competent authority shall decide.

Article 86. Where the title of a work is not generic but individual and characteristic, it may not,

without the appropriate permission of the author, be adapted for another comparable work.

Article 87. Any person shall have the right to prevent, subject to the limitations specified in Article 36 of this Law, his bust or portrait from being exhibited or displayed commercially without his express consent or, in the event of his death, that of the persons mentioned in Article 85 of this Law. The person who has given his consent may revoke that consent, subject to appropriate indemnification for prejudice.

Article 88. When the consent of two or more persons is necessary for the commercialization or display of the bust or portrait of an individual, and there is disagreement between them, the competent authority shall decide.

Article 89. The author of a photographic work that has sufficient artistic merit to be protected by this Law shall have the right to reproduce, distribute and display it and place it on sale, subject to the limitations of the foregoing Articles and without prejudice to the copyright in the case of photographs of other works of figurative art. Any print or reproduction of the photograph shall bear, visibly printed on it, the name of the author and the year in which it was made.

Article 90. The publication of photographs or cinematograph films of surgical operations, or other fixations of scientific character, shall be authorized by the patient or his heirs or by the surgeon or head of the medical team concerned.

Article 91. The copyright in works created by public employees or officials in the exercise of the constitutional and legal obligations incumbent on them shall be the property of the public body concerned.

This provision shall not apply to lectures or talks given by professors.

Moral rights shall be exercised by authors in so far as such exercise is not incompatible with the rights and obligations of the public bodies concerned.

Article 92. The owner of the copyright in collective works created under an employment contract or a contract for services, in which it is impossible to distinguish the individual contribution of each of the natural persons who contributed to it, shall be the publisher or the legal entity or natural person for whose account and at whose risk the contributions are made.

Article 93. The provisions contained in the foregoing Articles shall not affect the exercise of the moral rights of authors as specified by this Law.

CHAPTER VII

Cinematographic Works

Article 94. Without prejudice to the rights of the authors of the works adapted for or included in it, a cinematographic work shall be protected as an original work.

Article 95. The authors of a cinematographic work are:

(a) the director;
(b) the author of the scenario or script;
(c) the composer of the music;
(d) the cartoonist or cartoonists in the case of a cartoon film.

Article 96. Cinematographic works shall be protected for 80 years calculated from the date of their completion, except where the producer is a legal entity and the economic rights belong to it, in which case protection shall be for 30 years, in accordance with Artice 27.

Article 97. The cinematographic producer is the natural person or legal entity legally and economically responsible for the contracts with all the persons and bodies involved in the making of the cinematographic work.

Article 98. The economic rights in a cinematographic work shall, unless otherwise stipulated, accrue to the producer.

Article 99. The director of the cinematographic work shall be the owner of the moral rights in that work, without prejudice to those that accrue to the various authors or performers who have participated in the work in respect of their own contributions.

Article 100. A contract for cinematographic fixation is a contract under which the author or authors of the script or scenario grant the producer the exclusive right to fix the work, reproduce it or publicly exploit it, either himself or through third parties. Such contract shall stipulate:

(a) the authorization of the exclusive right;
(b) the remuneration owed by the producer to the other co-authors of the work and to the performers who take part in it, and also the time, place and mode of payment of that remuneration;
(c) the period set for the completion of the work;
(d) the responsibility of the producer towards the other authors or performers in the case of joint production of the cinematographic work.

Article 101. Each of the co-authors of a cinematographic work may dispose freely of the part of the work that constitutes his personal contribution

with a view to using it for dissemination in a different medium, unless otherwise specified. If the producer does not complete the cinematographic work within the agreed period, or does not show it during the three years following its completion, the right of use referred to in this Article shall remain free.

Article 102. If one of the co-authors refuses to complete his contribution to the cinematographic work, or is prevented from doing so by circumstances beyond his control, he may not oppose the use of the part of his contribution that has already been completed for the purpose of the completion of the work, provided that he shall not lose his authorship or the rights accruing to him in respect of his contribution.

Article 103. The producer of the cinematographic work shall have the following exclusive rights:

(a) the right to fix and reproduce the cinematographic work for distribution and showing by any means available to him in cinemas or places that serve the same purpose, or in any other medium for showing or dissemination that may become known, and to derive economic benefit therefrom;

(b) the right to sell or hire copies of the cinematographic work, or enlarge or reduce its size for the purposes of showing;

(c) the right to authorize translations or other cinematographic adaptations or transformations of the work, and to exploit them to the extent required for the best economic advantage to be taken of the work, and to bring action before the competent courts and judges against any unauthorized reproduction or showing of the cinematographic work, which right shall also belong to the authors, who may act individually or jointly.

Article 104. Exploitation of the cinematographic work in any medium not agreed upon in the original contract shall require prior authorization from the authors and performers, either individually or through the societies that represent them.

CHAPTER VIII

Publishing Contracts

Article 105. Under a publishing contract the owner of the copyright in a literary, artistic or scientific work undertakes to hand the work over to the publisher, and the publisher undertakes to publish it in printed form or disseminate it and distribute it for his own account and at his own risk.

This contract shall be governed by the rules laid down in the following Articles.

Article 106. Every publishing contract shall specify an agreed fee or royalty payable to the author or owner of rights in the work. Failing such specification, it shall be assumed that the author or owner is entitled to 20 % of the public selling price of the copies published.

Article 107. Without prejudice to the provisions of the foregoing Article or to such additional stipulations as the parties may consider appropriate, the contract shall specify the following:

(a) whether or not the work is unpublished;

(b) whether or not the authorization is exclusive;

(c) the period within which and the conditions under which the original is to be handed over;

(d) the agreed period for placing the edition on sale;

(e) the duration or term of the contract where the grant is made for a period of time;

(f) the number of editions or reprints authorized;

(g) the number of copies constituting each edition;

(h) the manner in which the public selling price of each copy is to be fixed.

In the absence of one or more of the foregoing stipulations, the supplemental provisions of this Law shall apply.

Article 108. In the absence of express provision, it shall be understood that the publisher may only produce a single edition.

Article 109. The publisher shall publish the number of copies agreed for each edition.

The edition or editions authorized by the contract shall be started and completed during the period specified therein. If no period is specified, the edition shall be started within two months following the handing over of the originals, in the case of the first edition authorized, or within two months following the date on which the previous edition went out of print, where the contract authorizes more than one edition.

Each edition shall be completed within the period strictly necessary for making it under the conditions provided for in the contract.

If the publisher delays publication of any of the agreed editions without full justification, he shall provide indemnification for the prejudice caused to the author, who may publish the work himself or have it published by a third party if the contract so provides.

Article 110. The copyright fees or royalties shall be paid on the date and in the form and place agreed in the contract. If the remuneration consists of a fixed sum, regardless of the results achieved with the sale of the copies published, and no other provision is made, it shall be understood that it is

payable as from the time at which the work in question is ready for distribution or sale.

Where remuneration has been agreed upon in proportion to the copies sold, it shall be understood that it must be paid in six-monthly installments starting on the said date, by way of accounts that shall be rendered to the author by the publisher and which may be verified by the former as provided in Article 123 of this Law.

Article 111. The author shall have the right to make such corrections, additions or improvements as he considers appropriate before the work goes to press.

Similarly, the publisher may not make a new edition that has not been agreed upon without the author having authorized it and without having given him the opportunity of making whatever changes and corrections may be appropriate.

If the additions or improvements are made when the work is already at the stage of corrected proofs, the author shall allow the publisher the higher cost of printing. This rule shall apply also when the changes, corrections or additions are substantial and make the printing more costly, except in the case of works kept up to date by means of periodical supplements.

Article 112. Where the author has entered into a publishing contract for the same work at an earlier date, or the work has been published with his consent or knowledge, he shall bring these circumstances to the publisher's notice before the contract is entered into. By not doing so he makes himself responsible for any damages and injury he may cause the publisher.

Article 113. The originals shall be handed over to the publisher within the period and under the conditions agreed. In the absence of stipulation on the subject, it shall be understood that, in the case of an unpublished work, they shall be handed over in the form of typescript, double-spaced, duly corrected and suitable for reproduction by any method of composition, without insertions or additions. In the case of a printed work, the originals may be handed over in the form of a copy of that work in a suitable state of legibility, with insertions or additions made separate from the text on typescript, duly corrected and suitable for reproduction. In the same case it shall be understood that the originals have to be handed over to the publisher on the date of signature of the contract concerned. If the originals are to contain illustrations, the illustrations shall be presented in the form of drawings or photographs suitable for reproduction by the usual method associated with the type of publication concerned.

Article 114. Failure on the part of the author regarding the date and manner of handing over the originals shall give the publisher the option of rescinding the contract and returning the originals to the author so that their submission may be adjusted to the terms agreed, or of making the necessary corrections on his own account. In the case of the return of the originals, the period or periods allowed the publisher for starting and completing publication shall be prolonged by the period that elapses before the author hands over the duly corrected original.

Article 115. Unless otherwise provided, in the case of works that have to be brought up to date by periodical supplements, the publisher shall give preference to the author for the making of the updating supplements; if the author does not agree to do so, the publisher may commission a suitable person to make the supplements.

Article 116. Where the work, after having been handed over to the publisher, is destroyed through the latter's fault, he shall be obliged to pay the fees or royalties. Where the owner or author possesses a copy of the originals that have been destroyed, he shall place them at the publisher's disposal.

Article 117. Where the work is totally or partially destroyed while still in the hands of the publisher following printing, the author shall be entitled to the fees or royalties where the latter consist of a specific sum without regard to the number of copies sold.

Where the fees or royalties have been calculated according to copies sold, the author shall be entitled to those fees or royalties where the destruction or loss of the copies occurred for reasons attributable to the publisher.

Article 118. Where not specified, the public selling price shall be set by the publisher.

Article 119. The publishing contract alone shall at no time constitute transfer of the copyright; consequently, it shall be presumed that the publisher may only publish the agreed editions or, where not specified, only one edition.

Article 120. If the publishing contract has been concluded for a set period and the period expires before all the copies published have been sold, the author or his successors in title shall be entitled to purchase the unsold copies at the fixed public selling price with 30 % discount. This right may be exercised within a period of 60 days following the expiration of the contract. If it is not exercised, the publisher may continue to sell the remaining copies under the conditions of the contract, which shall remain in force until the stock of copies is exhausted.

Article 121. Whatever the agreed term for a publishing contract, if the number of copies authorized

by it have been sold before the contract expires, the term of the contract shall be deemed to have expired.

Article 122. The publisher may not publish a greater or lesser number of copies than that agreed for each edition; if no such number has been fixed, it shall be understood that 3,000 copies are to be made of each edition authorized. However, the publisher may print an additional number of each proof sheet, not exceeding 5 % of the number authorized, to cover the risk of damage or loss during the printing or binding process. The additional copies resulting over and above the specified quantity shall be taken into consideration in the remuneration of the author where such remuneration has been agreed upon according to the number of copies sold.

Article 123. The author or right owner, his heirs or successors in title may verify the accuracy of the number of editions and copies printed, sales, subscriptions, complimentary copies, and generally all income attributable to the work, by supervising the print run in the workshops of the publisher or printer and by inspecting the publisher's storerooms and warehouses, which control may be exercised by themselves or through a person authorized in writing.

Article 124. The publisher shall have the following obligations in addition to those specified in this Law:

(i) to advertise the work widely in the most suitable form to ensure its rapid dissemination;
(ii) to supply the author or his successors in title free of charge with 50 copies of the current edition of the work if that edition is not less than 1,000 copies and not more than 5,000, with 80 copies if it is more than 5,000 and less than 10,000, and with 100 copies if it is more than 10,000. The copies received by the author under this provision shall remain outside the market and shall not be regarded as copies sold for the purposes of the payment of fees or royalties;
(iii) to submit accounts or reports to the author at appropriate times, and to permit inspection by him or by his delegate, in accordance with the provisions of Articles 110 and 123 of this Law;
(iv) to comply with the requirement of legal deposit, if the author has not done so, and
(v) any other obligations expressly specified in the contract.

Article 125. Any person who publishes a work within the national territory shall be obliged to state the following particulars in a prominent place on all copies:

(a) the title of the work;
(b) the name or pseudonym of the author or authors and of the translator, except where those persons have decided to remain anonymous;
(c) the copyright notice and the year of first publication. This notice shall be preceded by the symbol ©;
(d) the year and place of the edition and of earlier editions, if any, and
(e) the name and address of the publisher and printer.

Article 126. The publisher may not alter the originals by making abridgments, additions or modifications without the express authorization of the author.

Unless otherwise provided, in the case of works that have by their nature to be brought up to date, the preparation of the new originals shall be done by the author, but, if the author cannot or will not do so, the publisher may commission a suitable person to do the work, mentioning him as such in the edition concerned, and identifying with type of a different size or style the parts of the text that have been added or modified, without prejudice to the remuneration of the author under the contract.

Article 127. The publisher may not start a new edition authorized under the contract without the appropriate notification of the author, who shall be entitled to make such corrections and additions as he may consider necessary, subject to the obligation to acknowledge any additional cost that the publisher might thereby incur in the case provided for in Article 111 of this Law.

Article 128. During the term of the publishing contract, the publisher shall have the right to demand by judicial means the withdrawal from circulation of fraudulently published copies of the same work, without prejudice to the right of the author and his successors in title to bring the same actions, which they may do jointly with the publisher or independently.

Article 129. Future intellectual production may not be the subject of a contract within the meaning of this Chapter, except in the case of one or more specific works, the characteristics of which must be precisely laid down in the contract.

Any provision shall be null and void under which the author either commits his future production in a general or indeterminate way, or undertakes to restrict his intellectual production or to abstain from such production.

Article 130. The right to publish one or more works by the same author separately shall not give

the publisher the right to publish them together. Similarly, the right to publish the works of an author together shall not give the publisher the right to publish them separately.

Article 131. The publishing contract shall not extend to other means of reproducing or using the work.

Article 132. Unless a shorter period is agreed upon, the publisher shall be obliged to settle and remit to the author at six-monthly intervals the amounts accruing to him as fees or royalties, where they have been fixed in proportion to the number of copies sold. Any agreement shall be null and void that increases the six-monthly period, and failure to meet such obligations shall entitle the author to seek rescission of the contract. This shall be without prejudice to the award of any damages that might have been caused him.

Article 133. If, before completing the drafting of the originals of a work and handing them over, the author dies or is otherwise prevented from completing the work through no fault of his own, the publisher may consider the contract terminated, without prejudice to any rights that may have accrued to the author. If he decides to publish the part of the original actually received, he may reduce the agreed remuneration proportionately. If the character of the work so permits, and with the authorization of the author, his heirs or his successors in title, he may entrust the completion of the work to a third party, mentioning the fact in the edition, in which the added text shall be clearly distinguished typographically.

Article 134. Bankruptcy of the publisher or the liquidation of his assets when the work has not been printed shall cause the contract to terminate. In the case of total or partial printing, the contract shall subsist up to the number of copies printed. The contract shall continue to its term if, at the time of the bankruptcy, printing has started and the publisher or the receiver so request, subject to the provision of sufficient guarantees, at the court's discretion, for the execution of the contract up to its term.

Termination of the contract for this reason shall give a right of preference equal to that granted by the law in respect of the claims of employees for the payment of the author's fees or royalties.

Article 135. Where, after the work has been on sale to the public for five years, not more than 30 % of the copies published have been sold, the publisher may consider the contract terminated and may dispose of the remaining copies at a price lower than that agreed or initially fixed by himself, reducing the author's remuneration in proportion to the new price, if that remuneration was not agreed in proportion to the copies sold. In that case the author shall have an option to purchase the unsold copies at the public selling price less 40 % discount, for which purpose he shall have a period of 60 days from the date on which the publisher informed him of his decision to dispose of the copies. If the author exercises this option, he may not collect fees or royalties for those copies if the remuneration agreed upon was proportionate to sales.

Article 136. The publisher shall be entitled to seek registration of the copyright in the work in the author's name, if the latter has not done so.

Article 137. Any disputes that may arise between the publisher and the author or his successors in title in respect of a publishing contract shall be settled by means of the oral procedure provided for in the Code of Civil Procedure, except where the parties have agreed in the contract to submit such disputes to arbitration.

Article 138. The provisions of this Chapter shall be applicable, as appropriate, to contracts for the publication of musical works. Nevertheless, if the publisher has acquired from the author a temporary or permanent share in all or any of the latter's economic rights, the contract shall be rescinded as of right in any of the following cases:

(a) if the publisher does not place on sale a sufficient number of copies for the work to be disseminated, at the latest three months following signature of the contract;

(b) if, in spite of the author's request, the publisher does not place on sale further copies of the work where stocks of the original printing are exhausted.

The author may seek rescission of the contract if the musical work has not generated royalties within three years and if the publisher does not show that he has taken definite action to effect its dissemination.

CHAPTER IX

Performing Contracts for Stage Performance

Article 139. Performing contracts are contracts under which the author of a dramatic, dramatico-musical, choreographic or any other similar work authorizes an impresario to cause the work to be performed in public in exchange for remuneration.

Article 140. For the purposes of this Law, public performance of a work shall be understood to mean any performance that occurs outside a private resi-

dence and even inside such a residence if it is projected or shown outside. The performance of a theatrical, dramatico-musical, choreographic or similar work by mechanical reproduction processes such as radio and television broadcasting shall be considered public.

Article 141. The impresario, who may be a natural person or a legal entity, shall be obliged to perform the work within the period set by the parties, which may not exceed one year. If the period has not been set or if a period longer than that provided for is specified, the legal period of one year shall be considered agreed upon, without prejudice to the validity of other contractual obligations. The period shall be calculated from the time at which the work is handed over to the impresario by the author.

Article 142. The impresario shall announce the title of the work to the public, always accompanied by the name or pseudonym of the author, and those of the producer and adapter as appropriate, with an indication of the characteristics of the adaptation.

Article 143. Where the author's remuneration has not been fixed by contract, he shall be entitled to a minimum of 10 % of the total value of the tickets sold for each performance, and 15 % thereof in the case of a first performance.

Article 144. Where the main performers of the work and the orchestra conductor or choirmaster have been chosen by common consent between the author and the impresario, the latter may not replace them without the former's prior agreement, except in chance circumstances where no delay can be allowed.

Article 145. If the impresario fails to pay the share to which the author is entitled, after having been called upon to do so by the latter or by the latter's representatives, the competent authority shall, at the request of any of those parties, order the suspension of performances of the work and the withholding of the receipts from ticket sales, without prejudice to any other legal actions that the author may be entitled to bring.

Article 146. Where the contract does not set a date for the end of performances, the impresario shall continue to put them on for as many times as is economically justified by audience levels. The authorization given in the contract shall lapse when the work ceases to be performed for want of audiences.

Article 147. Where the work is not performed within the period specified in the contract, the impresario shall return to the author the original or copy of the work received by him, and shall indemnify him for the damages and prejudice caused by his failure to comply.

Article 148. The performing contract may not be assigned by the impresario without prior or express permission from the author or his successors in title.

Article 149. It shall not be considered public performance of the works referred to in this Chapter when such performance is given for educational purposes within the premises or buildings of the public or private educational establishments concerned, provided that no admission charge whatever is made.

Article 150. Any disputes that may arise between the impresario and the author or his representatives in connection with a performing contract shall be settled by the oral procedure provided for in the Code of Civil Procedure, except where the parties have agreed in the contract to submit such disputes to arbitration.

(To be continued)

Views of NGOs

Views of International Non-Governmental Organizations on Private Reproduction of Printed Matter

At an informal meeting called by the Director General of the World Intellectual Property Organization (WIPO) in Geneva in December 1981, an exchange of views was held with the international non-governmental organizations essentially concerned with copyright and neighboring rights on current topics in this field. To reply to the concern expressed by the interested circles on two such topics, the Director General of WIPO decided to devote to each of them a special issue of the WIPO monthly reviews *Copyright* and *Le Droit d'auteur*, and he invited a number of international non-governmental organizations to present their points of view on the subject.

The first topic was that of private copying, that is to say the making of copies of phonograms and audiovisual tapes and the recording of radio and television broadcasts by private persons in their homes for their own use. The views expressed thereon were reproduced in the July-August 1982 issue of this review.

The second topic was that of the making of copies, by photographic or analogous means, by private persons for their own use, of the whole or part of books, magazines, journals, newspapers and other printed matter, such "home copying" being done either from the original copies or on the basis of electronic signs that transmit the contents of the relevant pages. The views expressed on this question are reproduced below. *

* The International Copyright Society (INTERGU) has indicated that this question was already dealt with in its contribution to the preceding special issue. Therefore, no new elements can be added as long as the draft bill referred to has not become law.

International Federation for Documentation (FID)

Helmut ARNTZ *

The fine arts, belles lettres and schoolbooks are outside the sphere of FID's activities. These categories are, therefore, not considered in this paper.

According to its Statutes, the aim of FID is to promote, through international cooperation, research in and development of documentation, which includes *inter alia* the organization, storage, retrieval, dissemination and evaluation of information, however recorded, in the fields of science, technology, social sciences, arts and humanities.

To fulfil these tasks the free flow of information must be given the highest priority. Conflicts may result from the fact that, on the one hand, the actual copyright originated in a situation which differed basically from today's realities, whereas, on the other, information has grown in importance to such an extent that the human community as a whole is dependent on timely, reliable and well-selected information. Both these aspects are determining factors in FID's efforts to adjust the traditional copyright notion to present requirements.

FID has always recognized that an author who creates a work thereby acquires intellectual ownership in it and, in principle, also the right to obtain equitable remuneration for the use of his work by third parties. Yet this intellectual ownership is not unlimited. Like all other rights, it is based on social norms and subject to certain restrictions in the interest of the public. There may even be cases where the author's right to prohibit reproductions of his work is ruled out. Much more frequently, the author of a work cannot demand remuneration for reproduction either because he does not suffer any damage as a result of duplication or because duplication is in the public interest which takes precedence over the interests of the individual. FID is trying to establish cri-

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teria determining the conditions under which this may be the case.

FID has always advocated payment of equitable remuneration to the author. Ever since the organization was founded in 1895 under its original name of *Institut international de bibliographie*, FID has vigorously supported the free flow of information; the word "free" in this context had the meaning "unimpeded" and not "free of charge."

But it is also true that the transition from copying by hand, which always used to be free of charge for personal use, to means of photographic reproduction (like photostats) does not automatically establish a claim by the author for remuneration. When the copyright conventions came into force, individual copying by mechanical means was not yet possible. The main purpose of the conventions was to prevent criminal acts like literary piracy and plagiarism, whereas copying by hand for personal use and other than gainful purposes was considered immaterial.

During the past two decades the progress in copying techniques, to which FID contributed a great deal, has led to a radical change. Photomechanical copying has increased to such an extent that it can fairly be said to have created a new type of use of works protected by copyright. Reprography has so greatly facilitated individual duplication that its former restriction to few cases of internal use no longer exists. It has created the means of expanding duplication on a scale involving the risk of a real infringement of authors' rights. It is also true that modern copying methods have created a new market and that the author must be given an opportunity to participate in it just as he participated in the traditional form of utilization and exploitation of his creation.

In extreme cases like continuous reproduction of entire periodicals without the consent of the holder of rights (i. e. the author or the publisher in his capacity as licensee), the interference with the latter's copying and distribution rights would be such as to cause damage not only to him but possibly also to the primary publications which are indispensable for the dissemination of information.

For that reason alone FID is alarmed at the fact that it is cheaper today to copy an expensive book by means of a copying machine than to buy it in a bookshop. This causes damage not only to the publisher (by reducing sales) and to the author (by curtailing his remuneration), but it is also likely to dissuade a publisher who for this reason has fared badly with an author from publishing another work by him. Reproduction serves the spiritual enrichment of only a few, but the public at large will suffer if the works of good authors cease to be published.

This situation is greatly aggravated by anonymity. Whereas those committing piracy and plagiarism could be identified, there is no way of proving who is copying which works and to what extent. FID therefore advocates a radical change from the traditional method of collecting fees. This change cannot consist in adding a certain amount to the purchase price, as in the case of cassette recorders, or in raising the price of copying paper. Ninety per cent of all machines used (*inter alia*) for copying purposes probably never serve to duplicate copyright material, and the percentage is likely to be even higher for copying paper, including that used in office duplicators.

Even for copyright material, however, FID would not be able to agree on equal treatment in all cases. In the field of science in the broadest sense even the use of copies for the creation of a new work does not constitute commercial use, establishing a liability for remuneration, if it represents an independent intellectual achievement. Each scientist can contribute to progress only if he proceeds in his work from what has already been explored, discovered, invented or proved by experiment. The researcher exploits the intellectual property of others with a view to making the results of his work available to others for exploitation. The only relevant question in this permanent give-and-take is whether the free flow of information is ensured; reimbursement is immaterial.

The constitutions of many countries attribute a key function to science both for the self-realization of the individual and for the development of society as a whole. The sponsoring of science and of the liberal framework of scientific institutions by the State embodies the assurance of a free flow of information. These institutions include as auxiliary services libraries, documentation centers and archives. In so far as the exploitation of copyright works constitutes a prerequisite for the fulfilment of scientific tasks, this is considered to restrict the copyright. The legislator is under no obligation to demand remuneration for each reproduction which is made exclusively for scientific purposes.

The same applies to the entire public sphere: politics, administration, the judicial system, education, the social and cultural field. In all these sectors information is being exploited for the common weal, and the fulfilment of government functions in the domestic sphere and in international cooperation depends on the unimpeded flow of information which is essential to progress.

In the opinion of FID, public interests in the social, cultural and educational sphere are at least equivalent to copyright interests. FID is not arguing against remuneration as a matter of principle, but this issue has lost the importance attached to it in many discussions as though remuneration and not the protection of intellectual property were the essential objective.

FID recognizes the liability for remuneration as a matter of course in other areas where (contrary to

science) there is no question of either an adequate *quid pro quo* or an immediate benefit to the public at large (as distinct from the public sectors mentioned above). This holds true not only for all economic sectors, particularly industrial duplication, but also for students who accumulate entire private libraries by duplicating copyright works.

Against this background, FID considers the legislator to be not only entitled but also obligated to differentiate regarding the question of remuneration — the only counterargument being that it is impossible in many cases to do so and that the growing improvement in copying techniques will eventually exclude all forms of control.

FID therefore participated in all efforts to safeguard the interests of authors and publishers in a manner which does not impede the free flow of information. This means that equal treatment of unequal forms of use has to be accepted. It will not be possible in future any more than in the past to identify which author's works are being copied in the hundreds and whose works are not copied at all. The only equitable method seems to be for exploitation companies to distribute the funds received according to a specific ratio. For practical purposes, i. e. in order to make remuneration possible at all, authors are grouped according to the volume of their scientific production and not according to the degree of use of their works, which cannot be identified.

In many countries adequate remuneration protecting the interests of authors, publishers and users alike is collected in the form of a copying fee from libraries, universities, etc., and transmitted to the exploitation company. This fee is paid by the public authorities, in other words, the public has to meet the entire cost of remuneration for works protected by copyright. This serves to prevent that those who copy material for scientific or other purposes benefiting the public are unduly burdened and to ensure the free flow of information.

This is a solution which is obviously deemed appropriate in some, though not all, Western countries but which may not be operable or appropriate in the circumstances of other countries. For them alternative solutions are needed which meet the requirements both of fair treatment of the author and of ensuring the ready flow of information and freedom to make fair use of it. To convert the principle into a single, universally operable system is, however, probably impracticable.

In a short paper such as this, we have concentrated entirely on matters of copying from books and journals. We recognize that there are many and more difficult problems concerning copyright, namely that in films and microforms, in audio and audiovisual materials, in computer programs and computer stored materials, in electronic publications and in broadcast data. Each requires an article itself but our view is that the same basic principles apply, namely that the originator and those who bear the cost of dissemination should be protected from unfair exploitation of their work while, at the same time, the public should have a right of access to the information and a right to apply it fairly.

International Federation of Library Associations and Institutions (IFLA)

It should be noted that no statement from IFLA is likely to reflect the views of all librarians, or indeed of all countries, since their requirements and problems vary substantially. In particular, the situation in developed countries, which have considerable publishing activities and where there is a heavy demand for scientific and technical information, differs greatly from that in most developing countries. The following observations nevertheless aim to express some general views and concerns of librarians on copyright.

It should be said first that the question of document supply is one for all parties involved, to be solved if possible by common agreement. Publishers and librarians must endeavor to ensure that between them they are able to achieve swift and easy transmission of information from author to reader, and in pursuit of this common objective they should work together. Authors and readers, who are often the same in scholarly publishing, and for that matter booksellers and other intermediaries, are also part of the system, and it is essential that their views are sought and taken into account.

Most librarians consider that it is undesirable and in many cases illegal that books in entirety or large portions thereof are copied without taking into account the existing copyright laws. This also applies to multiple copying of journal articles, although the definition of "multiple" is far from identical in the various countries. Librarians would probably be

willing to take any reasonable steps to ensure tighter observance of the present laws in operation in many countries that prohibit such copying or require payment for it. At the same time it should however be recognized that effective control of any system is very difficult.

What is held to be very important not only by librarians but by users is the right (often called "fair dealing" or "fair use") to make single copies of individual articles from journals (or from conference proceedings, or from collections of papers published as books) for particular users for the purposes of research or study, without permission and without payment. Such a right is encompassed in the laws of most developed countries. Without the ability to make copies in this way the flow of information would be seriously restricted and scientific and technical development would suffer.

In recent years the number of journals has increased considerably. Every year hundreds of new journals are launched. At the same time the budgets of libraries have not been increased sufficiently to subscribe to new journals and consequently subscriptions to existing journals (especially multiple subscriptions) must be reviewed. Cutbacks in these multiple subscriptions are inevitable, particularly as libraries have been hit hard by the economic recession and inflation.

Because it would be reasonable to expect libraries to purchase any journal from which more than 5 or 6 articles a year were wanted — and indeed it would in general be economic for libraries to acquire such journals — compromises may be worth exploring, by which payment would be made to publishers for copies over a certain limit. Unless very carefully designed, however, such schemes can be very expensive to administer, and simple and cheap operation is therefore vital. Interpretation of guidelines can also lead to dispute and confusion.

It has been suggested that copying fees, if imposed, would be passed by libraries to users. However, most institutions that make use of journals accept a responsibility for supporting the research and study carried out by their members and staff, and would be most reluctant to pass on to them the costs of obtaining material their own libraries did not possess. If the institution itself bore the costs, as is most probable, it might be unwilling to obtain the documents in question, or it might be obliged to pay for them by savings in other areas of the library, quite probably by cancelling subscriptions to less used journals.

Interlibrary photocopying may in aggregate appear to be large, but if it is broken down among the very large number of journals in existence it is evident that the great majority are copied very little, and the minority that are copied more extensively are nearly all well-established journals and tend to have large or medium circulations.

In almost all countries authors of articles of a kind normally wanted on interlibrary loan are very rarely interested in payment for use of their articles. Many of them expect and receive no payment from the publishers; indeed, in the case of some journals they have to pay to have their articles published. They are concerned with the recording and dissemination of their work. They would not in fact gain if payment had to be made for copies of articles by other authors that they used to produce their own work.

The development of computerized data bases will undoubtedly result in a larger and wider dissemination of references to documents. In some countries existing access to machine-readable data bases may already have its full effect on demand for documents. Where it has not, a growth in demand can be expected, but it is unrealistic to suppose that libraries would be able to purchase any more journals.

The future of document supply and access can be considered in the short, medium and long term. In the short term, photocopying of individual articles as at present permitted seems to be a minor and narrow issue, which is in no way fundamental to the publishing of learned journals and which, insofar as it is a problem at all, could be readily solved. It is important that no changes are made in the present system before a study is made of the likely effect on authors (who want their papers widely read), publishers (who want to make a profit), librarians (who want to serve their users to the fullest extent possible within their limited budgets), and users (who want ready and inexpensive access to documents).

In the medium term, synopsis journals with on-demand supply of full text raise issues that should be resolved jointly by publishers and librarians, in consultation with authors and readers; at least one mutually advantageous solution suggests itself.

In the longer term in large libraries direct access by users to machine-readable or optical disc storage text of certain types of library materials may become common. This would have a considerable impact on the nature of publishing and of libraries. Finally, IFLA wants to draw the attention to a specific problem: copyright of library materials for the handicapped reader, i. e. library users who are unable to read print because of handicaps. IFLA feels that it is vital that copyright legislation should be enacted which is favorable to the provision and dissemination of library materials for the handicapped.

International Group of Scientific, Technical and Medical Publishers (STM)

International Publishers Association (IPA)

Jon A. BAUMGARTEN and Charles H. LIEB

The question of "home copying" has received its greatest attention in connection with the reproduction of works from television screens, from radio receivers, and by duplication of prerecorded discs and tapes embodying musical works and sound recordings based thereon.[1] It has received increasing attention as a result of the decision of a federal Court of Appeals in the United States that home video recording by an individual from free television is an infringement of copyright, and that the manufacturers, advertisers, and retailers of such equipment are "contributorily liable" for such infringement — a decision that will be reviewed by the Supreme Court in that country.[2] The United States Register of Copyrights has stated that this so-called "Betamax" decision "exploded over the entertainment world,"[3] a conclusion equally apt to its impact on the international scene.

For logical and apparent reasons, previous discussions of "home copying" have ignored — by implication, or by express exclusion in some cases[4] — the interests of print publishers in this matter. We believe this is understandable, but that it must not continue. The purpose of this article is to discuss those interests. Although we do not at this point pretend to have all the answers, we do hope to initiate full consideration of *all* pertinent interests as the "home copying" debate continues its course.

In referring to "home copying" we use that phrase in its commonly understood meaning: the reproduction, in the privacy of one's own home, and for the personal enjoyment of the copier or family members, of protected works without any purpose of direct commercial advantage; although (as will be seen below) we believe the concept to have somewhat a broader connotation.

The "Direct" Interests of Print Publishers

Earlier discussions of home copying center on the duplication of musical and cinematographic works, and sound recordings based on musical works. These are, of course, the types of works most notably transmitted through the media (television, radio, and disc or tape) that are subject of home copying today. Yet it is not difficult to conceive of home copying, even today (and increasingly in the future), of essentially "print" material. Thus, for example, poems, dramas, texts, novels, and journal materials are not infrequently disseminated in audio record and audio cassette form[5] and may well be subjected to "home copying" from a disc or tape borrowed from a library, friend or colleague. And with the continuing development of "electronic publishing" —the dissemination of data and text into private homes by telephonic or television communication links — it is apparent that "home copying" of print material will assume increased significance.[6]

Additionally, even where the works copied offscreen are cinematographic in nature, the economic interests of the owners of underlying works — commonly authors or publishers of books — in the detrimental effect of home copying on their subsidiary markets cannot legitimately be overlooked.

And finally, under this heading, we must not ignore that attitudes are now being shaped, among the public and in legislative councils, that will unquestionably affect the future and will be difficult to undo. And that future clearly includes both *(a)* the dissemination of print material into the home market in electronic or "audiovisual" forms (such as video and optical discs, and microcircuit computer chips)[7]

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[1] See, e.g., Ficsor, "The Home Taping of Protected Works: An Acid Test for Copyright," *Copyright*, 1981, pp. 59-64; Patrick Masouyé, "Private Copying: A New Exploitation Mode for Works," *Copyright*, 1982, pp. 81-90.

[2] *Universal City Studios et ano.* v. *Sony Corporation of America, et al.* 659 F. 2d. 963 (1981).

[3] Remarks by David Ladd, Register of Copyrights, before the National Council of Patent Law Associations, Washington, D.C., October 31, 1981.

[4] E.g., Masouyé, *supra* note 1 p. 82.

[5] Medical journals, for example, are commonly distributed to doctors in audiocassette format.

[6] There have been frequent reports of cameras specifically designed to reproduce teletext and videotext images from television screens.

[7] See generally, e.g., the Remarks of Townsend Hoopes, President, Association of American Publishers on *Book Publishing: The Electronic Revolution and the Future of the Book*, at New York University, January 22, 1982.

that will be fully susceptible to unauthorized home copying by devices akin to today's home audio and video recorders; and *(b)* the development of photomechanical devices that will bring the photocopying phenomenon [8] and its disastrous impact on print markets from library, school and industry into the private home. Our general concern is well put by the Legal Adviser to IFPI in speaking of home taping:

> Yesterday it was cassettes, today it is videocassettes, tomorrow it will be some other medium.[9]

The "Analogous" Interests of Print Publishers

Discussions of "home copying" have generally excluded consideration of "reprography," or "photocopying." [10] This is understandable also, since the home "Xerox" photocopier (or other like machine) does not yet appear to have taken hold for purposes of private enjoyment.[11] But we urge that future consideration of this subject not ignore two simple facts:

(a) The home photocopying machine, as indicated above, is clearly within today's technical capacities, and will appear when the economics and prices of publishing — already injuriously affected by reprography outside the home — conjoin to attract consumers.

(b) There is much reprographic copying already taking place outside the home by private persons for private enjoyment and without direct commercial purpose for "home" *use*.[12] Thus, the only definitional distinction between this activity and "home copying" is that the private "home" becomes the focal point of use rather than copying. This is a fine distinction for philosophic debate; it is relatively meaningless for the healthy survival of the international copyright system and the principle of economic incentive to creativity thereby served.

Print Publishers' Interests of "Principle"

At bottom, and clearly related to the foregoing, our interests are those of principle which all proponents of a healthy copyright system and vigorous publishing community, contributing to the freedom of thought and expression, must share. The phenomenon of "home copying," viewed in historical context, is not new. It is but one aspect of technology's impact on copyright, presaged by other developments and to be succeeded by still more.[13] It is characterized by a number of common elements that mark the overall issue of copyright and new technology and are apparent in its various manifestations.[14] The resolution and treatment of these "elements" in connection with home copying will have impact far beyond the confines of the definition we have given earlier, in affecting public attitudes toward copyright.

The forces and devices of technology have made it quite simple for members of the public to use the intellectual property of others "for free" and users rapidly become "in practical possession of what they think of as a *legitimate* right to free use." [15] And this attitude, or a disinclination to oppose it, quickly spreads to courts and legislatures.[16] It is not difficult "to convince [judges and legislators] that the public interest is always served when someone else's property can be had for free." [17] The real task, one to be faced in the home recording debate, is to avoid such superficiality. One can hope that the following words of a United States Senator spoken in connection with home audio and video recording will be heeded by all national and international legislators[18]:

> ...failing to protect [rights of copyright owners] is not excused by the fact that new technologies have made the protection of those rights more difficult. *The very ingenuity of our age that has produced these remarkable technologies should be able to devise the laws to accommodate them.*

But one cannot be sure, nor ignore the lessons to be drawn from legislative responses to the problem of home copying.

Among the "elements" of home copying common to other areas of technological impact on copyright, we wish to particularly note two:

The role of "privacy": Technology has "changed the focus of infringement, moving it from public activity to private ... contexts and raising practical pro-

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[8] See, e.g., Report of King Research, Inc., *Libraries, Publishers, and Photocopying*, May 1982.

[9] Masouyé, *supra* note 1 p. 90.

[10] E. g., Masouyé, *supra* note 1 p. 82.

[11] We exclude from this statement, of course, photocopying machines in "home offices." But the use of such devices in that context could have no claim to "private use."

[12] We do not include, in this description, copying in educational institutions or companies, or in libraries for use by teachers, researchers, or the like. Such copying can make no claim to "private use."

[13] See generally Ficsor, "Disquieting Report from the Maginot Line of Authors: Technological Progress and Crisis Tendencies in Copyright, *"Copyright*, 1982, pp. 104-115.

[14] Several of these "elements" are catalogued in the remarks of J. Baumgarten in *Confronting the Communications Revolution* (Transcript of McGraw-Hill/Business Week Conference, June 8-9, 1982, New York City) (unpaginated).

[15] Ficsor, *supra* note 1 p. 59 (emphasis added).

[16] Id.

[17] Ladd, *supra* note 3, concluding: "The more difficult task is to balance such impulses against the rights of our creative minority 'to advance public welfare through the talents of authors' ... in 'Science and Useful Arts' and to fashion an 'acceptable cost [for] ... access to published works ...' "

[18] Senator Charles McC. Mathias, Congressional Record, December 16, 1981 at S. 15723 (emphasis added).

blems of detection and enforcement as well as concerns over [governmental] intrusion" into the home.[19] It is our firm belief that the role of "privacy" in the home copying debate has been misstated in some quarters. One cannot truly subscribe to the notion, as some have suggested, that because unlawful activity is difficult to detect or enforce, it is thereby legitimatized. And this is true whether it is appropriation of services (such as manipulation of telephonic or utility-metering devices in the home) or intellectual property (such as by the pirating of sound recordings in one's garage, or home recording) that is involved.

In seeking to protect *valid* societal interests in privacy from unwarranted intrusion, it is not necessary to thereby abdicate the equally important interests of society in intellectual creativity that are served by respect for copyright. "Privacy" may call for judicial or legislative *balancing* of interests and innovation in fashioning a remedy for difficult problems in particular cases[20]; it does not call for *abdication* of either interest.

We note that the authorities who have studied the history of the Berne Convention have agreed that the treaty does not condone an exemption from copyright simply because an act of reproduction occurs "in private."[21] (To this we must briefly add our insistence that any concession to the "privacy" of the home not spill over into other "semi-private" contexts where copyright violations are equally difficult to detect but cannot thereby be accepted. We have specific reference, for example, to the unauthorized photocopying of STM journal articles in the "privacy" and security of the research and development departments of major industrial corporations.[22]

Cumulative effect: Technology has also "decentralized unauthorized duplication, and generated forms of infringement that assume significance principally when viewed on a cumultative or aggregate basis."[23] Our concern with home copying, with reprography, and with other forms of use still to come, is not really with the single act of an individual; it is with the cumulative effect of all such activity.[24] As was concisely stated in the 1975 Report of the Committee on the Judiciary of the United States Senate[25]:

> Isolated instances of minor infringements, when multiplied many times, become in the aggregate a major inroad on copyright that must be prevented.

Our concern was aptly summed up by the Trial Judge in the Williams & Wilkins case who quoting from a Report prepared for a government agency analogized that "Babies are still born one at a time, but the world is rapidly being overpopulated."[26] A failure to recognize this in the area of home copying will have severely detrimental impact in other areas.

Print Publishers' Interests in Solutions to Home Recording

The "solutions" to home copying that have been so far discussed involve "indirect" compulsory or legal licensing[27]; "indirect" because not imposed directly on the user but rather on the distributors of recording devices and/or media.

The dangers of involuntary licensing — whether "compulsory" (in the sense of permitting negotiation) or "legal" have been well described by Mihály Ficsor,[28] Mario Fabiani,[29] and Barbara Ringer.[30] It is a concern we share. We must assure that pleas for involuntary licensing as a palliative to *all* areas of copyright threatened by new technology be avoided, and that the merits of such solutions be carefully examined with detailed attention to the *specifics of each case* else, before we know what is happening, "we will be in the vicious downward screw: rates will be fixed first, then publishing programmes; after that, control will be established over whether or not to publish; and the end will be totalitarian in that even the creation of works will be subject to approval of the 'competent authority.'"[31]

It may be that, in connection with home recording within the tight limits of the definition we have given above, involuntary licensing may be the only

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[19] Baumgarten, *supra* note 14.

[20] E. g. "The fact that the 'infringing' activity takes place in the homes does not warrant a blanket exemption from any *liability*. It seems more appropriate to address the privacy concerns raised by the district court in fashioning the appropriate relief." *Universal City Studios et ano.* v. *Sony Corporation of America* p. 972. (emphasis in original).

[21] Du Bois, "Eigen oefening, studie of gebruik," *Auteursrecht*, April 1981; Masouyé, *supra* note 1; Ficsor, *supra* note 1.

[22] This kind of photocopying is the subject of an infringement action pending in the United States District Court for the Southern District of New York, *Harper & Row Publishers, Inc. et al.* v. *Squibb Corporation et ano.* 82 Civ. 2363, filed April 14, 1982.

[23] Baumgarten, *supra* note 14.

[24] Stating it in a different way, the appellate court in the Betamax case said that "mass copying" of the sort involved in that case precluded an application of fair use, *supra*, 972.

[25] U.S. Senate Report 94-473 (1975), 65.

[26] *Williams & Wilkins Company* v. *U.S.* 172 USPQ 671, 678, revd. 487 F. 2d 1345, 1973.

[27] Ficsor, *supra* note 1 p. 63; Ficsor, *supra* note 13 p. 107.

[28] Ficsor, *supra* note 13 p. 115.

[29] Fabiani, "A Profile of Copyright in Today's Society," *Copyright*, 1982, pp. 152, 155-156.

[30] Ringer, "Copyright and the Future of Authorship," *Copyright*, 1976, p. 158.

[31] From letter from Paul Nijhoff Asser, Secretary, International Group of Scientific, Technical & Medical Publishers, to the authors, June 24, 1982. See also, e.g., Fernay, "Grandeur, misère et contradictions du droit d'auteur," *Il Diritto di Autore*, 1979, 273.

appropriate solution to the unique characteristics of this problem.[32] As indicated throughout, we think it imperative that some solution to "home copying" which recognizes the interests of copyright owners must be reached. But any recourse to an involuntary licensing solution must be carefully limited to its generating circumstances. There is no need, for example, to extend such solutions to other instances of reproduction by new technological devices, such as single or multiple photocopying by corporate, institutional, or governmental entities. In instances of that sort, at the very least, advance permission mechanisms similar to those used by the Copyright Clearance Center in the United States should be availed of. The whittling away of the "exclusive right" of copyright or "Verbotsrecht" into a right only to compensation may have to be accepted in *limited* circumstances; but if adopted in non-discriminating fashion, or even simply in the context of poor draftsmanship, we shall very soon have only "a very vague memory of something which once upon a time was called copyright." [33]

This is of grave concern not only to authors and their publishers, but to society as well.

[32] See, e.g., Du Bois, *supra*, note 21.

[33] Ficsor, *supra*, note 13 p. 115.

International Literary and Artistic Association (ALAI)

International Confederation of Societies of Authors and Composers (CISAC)

Mario FABIANI *

The problems of copyright protection connected with the making of copies of protected works by private individuals for their own use have for some years been a major concern of the International Literary and Artistic Association and the International Confederation of Societies of Authors and Composers.

The practice of making unauthorized reproductions of works by means of photocopying or comparable process has developed throughout recent years not only because of the activities of private individuals but also because private and public institutions (such as libraries and research and information centers) make use of the ever-improving reprographic facilities and thus obtain results equivalent to the originals reproduced, both for their internal services and for distribution of copies to readers. In addition to this activity, there is also that of private undertakings that, for their own use, make available to their employees and others working for them complete or partial copies of books, magazines, periodicals, newspapers and other printed matter.

ALAI and CISAC consider that such use of reprographic reproduction unreasonably prejudices the interests of the authors whose works are used in this way.

If account is taken of the very essence of the author's economic rights, particularly the right of reproduction, the author's protected economic interest can only be that of reserving exclusively to him any economic use of his work. The cultural, aesthetic and non-economic enjoyment of the work of course remains reserved to third persons. This means, however, that the third persons have an obligation to forego any other use which, independently of any direct profit-making purpose, may be considered prejudicial to the author's economic interests, that is to say they must forego any activity which may have implications for the economic existence of the work.

Such a concept of protection of the author's rights appears obvious when reading the provisions that govern the right of reproduction in the various national laws.

The right of reproduction has, moreover, received explicit recognition under the international copyright conventions when these were last revised: the revision of the Berne Convention at Stockholm and Paris

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(1967 and 1971), Article 9, and the revision of the Universal Copyright Convention (Paris, 1971), Article IV^{bis}. This late recognition was accompanied by the introduction of exceptions or limitations that, however, do not affect the essential content of the right of reproduction.

It is sufficient to recall Article 9(2) of the Berne Convention (Stockholm and Paris Acts) which permits derogations to the right of reproduction in certain special cases only and on condition "that such reproduction does not conflict with a normal exploitation of the work and does not unreasonably prejudice the legitimate interests of the author."

It would seem indisputable that the practice of photographic or comparable reproduction that has developed in all countries is in conflict with normal exploitation of works and unreasonably prejudices the interests of authors. The continuing growth to be observed in the field of reprographic reproduction makes it ever more difficult for the author to exercise his right of reproduction and runs the risk of compromising the very principle of this right (see ALAI resolution on the right of reproduction and technological progress, Centenary Congress of ALAI, Paris, 1978; see also the reports and resolutions of CISAC, particularly at the 1975 Hamburg Congress and *Interauteurs*, 1981, pp. 41 *et seq.*).

"Normal" exploitation of a work by its author becomes illusory once the enormous effect of the activities of users of reprographic facilities deprives the author of any possibility of exercising his right and receiving remuneration for the unauthorized reproduction of his work.

ALAI and CISAC are justifiably concerned at this problem and at the loss of earnings suffered by authors as a result of reprographic activities by private persons, both natural and legal. It is not a question of "stopping evolution nor placing obstacles in the way of the free movement of works of the mind, which moreover is of interest above all to the producers of works of the mind and to those who are responsible for reproducing and distributing them, the authors and publishers. The concern is, on the contrary, to place technology at the service of law, of justice and of freedom of thought: the possibility of making reproductions should go hand in hand with the possibility of effective controls enabling the principle of the author's exclusive right to be maintained intact" (Report by Professor G. Koumantos on the right of reproduction to the Paris Congress of ALAI, in 1978).

ALAI and CISAC take the opportunity offered to them to express their point of view in WIPO's reviews *Le Droit d'auteur* and *Copyright* in order to restate their own opinions, which may be resumed in the following propositions.

1. Reprographic reproduction of works protected by copyright is subject to the right of reproduction and may not be generally in free use and free of charge. The absence of a profit-making purpose on the part of the user, who nevertheless benefits from his reproduction activities, does not exclude the author's exclusive right in his work.

2. Derogations to protection of this exclusive right can only be accepted within the limits set out by the provisions of the Berne Convention for the Protection of Literary and Artistic Works (Article 9 quoted) and the Universal Copyright Convention (Article IV^{bis}.2 of the Paris text, 1971) (see in this respect the resolution on reprographic reproduction adopted at the Athens Congress of ALAI, in 1976).

3. It would appear desirable that domestic legislations should contain suitable measures to facilitate the conclusion of collective contracts that provide for both the needs of users of reprographic reproductions and the effective exercise of the right of reproduction, without distinction between national and foreign authors, while respecting the principle of national treatment (see CISAC Congress, Hamburg, 1975).

4. Efforts should still be continued at international level to find uniform solutions (see resolution on the right of reproduction adopted by the Centenary Congress of ALAI, Paris, 1978).

(WIPO translation)

General Studies

Unlawful Reproduction by Means of Home Tape and Video Recordings: A New Idea

Victor HAZAN *

Correspondence

Letter from Japan

Yoshio NOMURA *

International Activities

Round Table on Copyright

(Yaoundé, September 6 to 10, 1982)

A Round Table on Copyright took place in Yaoundé (Cameroon) from September 6 to 10, 1982. It had been organized by the African Intellectual Property Organization (OAPI), in cooperation with the World Intellectual Property Organization (WIPO), the United Nations Educational, Scientific and Cultural Organization (UNESCO) and the African Cultural Institute (ACI).

African experts from the following countries had been invited to take part in the work: Algeria, Cameroon, Egypt, Ghana, Guinea, Kenya, Mali, Senegal, Tunisia.

The aim of the Round Table on Copyright was to work out guidelines on the role and activities of OAPI in the fields of copyright and of the protection of the cultural heritage in Africa. The meeting was convened by the Director General of OAPI following the entry into force of the Bangui Agreement of March 2, 1977, which revised the Libreville Agreement of September 13, 1962, and among other things widened the terms of reference of OAPI to cover those fields. *

WIPO was represented by Mr. Claude Masouyé, Director, Public Information and Copyright Department, who presented two communications on the situation of copyright laws and conventions in Africa and on the administration of authors' rights in Africa.

After a profitable and interesting exchange of views, the African experts adopted a certain number of recommendations addressed to the Director General of OAPI. These centered on three main objectives.

1. Information and documentation: OAPI should strive
   (a) to make States and competent national authorities aware of the role that copyright plays in development, to make the authors of intellectual works aware of the content of their rights and of the need to set up a collective body to administer those rights, and to make the users of intellectual works aware of the cultural and social role of copyright;
   (b) to act as a regional copyright information center;
   (c) to act as a documentation center, notably for the identification of African copyright owners and for the listing of African works, which might lead to the creation of a central body for the distribution of royalties collected in African States;
   (d) to provide African States with any information in connection with copyright laws and conventions.

2. Training: OAPI should strive
   (a) to ensure endogenous training;
   (b) to grant fellowships and receive trainees, and also to encourage copyright administration agencies to do the same;
   (c) to set up a research and training institute to cooperate closely with WIPO and Unesco in the area concerned.

3. Cooperation: OAPI should
   (a) periodically bring together those in charge of African national structures;
   (b) act as a forum for meetings and consultations;
   (c) ensure its representation at international meetings;
   (d) assist in the implementation of pilot projects for the production and dissemination of works at the regional level;
   (e) promote new accessions to the Bangui Agreement.

* See *Copyright*, 1982, p. 121.

Calendar

WIPO Meetings

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

1982

December 6 to 10 (Geneva) — International Patent Classification (IPC) — Committee of Experts

December 6 to 10 (Paris) — Berne Union and Universal Copyright Convention — Working Gronp on the Formulation of Gniding Principles Covering the Problems Posed by the Practical Implementation of the Licensing Procedures for Translation and Reprodnction under the Copyright Conventions (convened jointly with Unesco)

December 13 to 17 (Paris) — Berne Union, Universal Copyright Convention and Rome Convention — Subcommittees of the Executive Committee of the Berne Union, of the Intergovernmental Copyright Committee and of the Intergovernmental Committee of the Rome Convention, respectively, on Copyright and Neighhoring Rights Problems in the Field of Cable Television (convened jontly with ILO and Unesco)

1983

Jannary 17 to 28 (Geneva) — Permanent Committee on Patent Information (PCPI) — Working Group on Search Information

January 25 to 29 (New Delhi) — Permanent Committee for Development Cooperation Related to Copyright and Neighboring Rights

January 31 to February 2 (New Delhi) — Regional Committee of Experts on the Modalities of Implementation in Asia of the Model Provisions for National Laws on Intellectual Property Aspects of the Protection of Expressions of Folklore (convened jointly with Unesco)

March 16 to 18 (Geneva) — WIPO Worldwide Forum on the Piracy of Books and Magazines and of Radio and Television Broadcasts

April 18 to 23 (Geneva) — Permanent Committee on Patent Information (PCPI) — Working Group on General Information

April 25 to 29 (Geneva) — International Patent Cooperation (PCT) Union — Committee for Administrative and Legal Matters

May 2 to 6 (Geneva) — Committee of Experts Concerning Joint Inventive Activity

May 26 to June 3 (Geneva) — Permanent Committee on Patent Information (PCPI) — Working Group on Special Qnestions and Working Group on Planning

June 6 to 10 (Geneva) — Expert Group on the Legal Protection of Computer Software

June 6 to 17 (Geneva) — Permanent Committee on Patent Information (PCPI) — Working Group on Search Information

June 20 to 24 (Geneva) — Permanent Committee on Patent Information (PCPI) — Ad Hoc Working Group on the Revision of the Guide to the IPC

July 4 to 8 (Geneva) — Joint Unesco-WIPO Consultative Committee on the Access by Developing Countries to Works Protected by Copyright (convened jointly with Unesco)

September 12 to 16 (Geneva) — International Patent Classification (IPC) Union — Committee of Experts

Septemher 14 to 16 (Paris) — Forum of International Non-Governmental Organizations on Double Taxation of Copyright Royalties (convened jointly with Unesco)

September 19 to 23 (Geneva) — Permanent Committee on Patent Information (PCPI) and PCT Committee for Technical Cooperation (PCT/CTC)

September 26 to October 4 (Geneva) — Governing Bodies (WIPO General Assemhly, Conference and Coordination Committee; Assemblies of the Paris, Madrid, Hague, Nice, Lisbon, Locarno, IPC, PCT, Budapest, TRT 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)

October 12 to 14 (Geneva, ILO Headquarters) — Rome Convention — Intergovernmental Committee (convened jointly with ILO and Unesco)

October 17 to 21 (Geneva) — Committee of Governmental Experts on Model Statutes for Institutions Administering Authors' Rights in Developing Conntries (convened jointly with Unesco)

November 21 to 25 (Geneva) — Permanent Committee on Patent Information (PCPI) — Working Group on General Information

November 28 to December 2 (Geneva) — Permanent Committee on Patent Information (PCPI) — Working Group on Special Questions and Working Group on Planning

December 8 to 16 (Paris) — Berne Union — Executive Committee — Extraordinary Session (sitting together, for the discussion of certain items, with the Intergovernmental Committee of the Universal Copyright Convention)

UPOV Meetings

1983

April 26 and 27 (Geneva) — Administrative and Legal Committee

April 28 (Geneva) — Consultative Committee

May 30 to June 2 (Saragossa) — Subgroup and Technical Working Party for Vegetables

June 7 to 10 (Tystofte, Skaelskør) — Subgroups and Tecbnical Working Party for Agricultural Crops

September 20 to 23 (Rome or Santa Cruz, Tenerife) — Subgroup and Technical Working Party for Fruit Crops

September 27 to 29 (Conthey or Wädenswil) — Technical Working Party for Ornamental Plants and Forest Trees

October 3 and 4 (Geneva) — Technical Committee

October 11 (Geneva) — Consultative Committee

October 12 to 14 (Geneva) — Council

November 7 and 8 (Geneva) — Administrative and Legal Committee

November 9 and 10 (Geneva) — Hearing of International Non-Governmental Organizations

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

1983

Non-Governmental Organizations

Council of the Professional Photographers of Europe (EUROPHOT)
Congress — October 6 to 13 (Munich)

International Confederation of Societies of Authors and Composers (CISAC)
Legal and Legislation Committee — May 1 to 4 (Washington)

International Federation of Musicians (FIM)
Executive Committee — June 27 to 30 (Amsterdam)
Congress — September 19 to 23 (Budapest)

International Literary and Artistic Association (ALAI)
Congress — April 13 to 20 (Athens)

Union of National Radio and Television Organizations of Africa (URTNA)
General Assembly — January 23 to 25 (Algiers)