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World Intellectual Property Organization

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

Permanent Committee

Fifth Session

(New Delhi, January 25 to 29, 1983)

Report

prepared by the International Bureau and adopted by the Permanent Committee

1. The WIPO Permanent Committee for Development Cooperation Related to Copyright and Neighboring Rights (hereinafter referred to as the "Permanent Committee") held its fifth session from January 25 to 29, 1983, in New Delhi at the kind invitation of the Government of India.

2. The following States members of the Permanent Committee were represented at the session: Australia, Cameroon, Central African Republic, Chile, Congo, Czechoslovakia, Egypt, France, German Democratic Republic, Germany (Federal Republic of), Guinea, Hungary, India, Israel, Italy, Japan, Malawi, Mali, Mexico, Morocco, Netherlands, Norway, Pakistan, Peru, Philippines, Somalia, Soviet Union, Sudan, Sweden, Switzerland, United Kingdom, United States of America, Upper Volta, Yemen (34).

3. The following States were represented by observers: Algeria, Greece, Indonesia, Qatar, Republic of Korea, Saudi Arabia, Sri Lanka, Thailand, United Arab Emirates (9).

4. The following organizations were represented by observers:

(i) United Nations Organizations: United Nations Educational, Scientific and Cultural Organization (UNESCO);

(ii) international non-governmental organizations: Asia-Pacific Broadcasting Union (ABU), International Bureau of Societies Administering the Rights of Mechanical Recording and Reproduction (BIEM), International Confederation of Free Trade Unions (ICFTU), International Literary and Artistic Association (ALAI), International Confederation of So-

cieties of Authors and Composers (CISAC), International Copyright Society (INTERGU), International Council of Archives (ICA), International Federation of Phonogram and Videogram Producers (IFPI), International Publishers Association (IPA) (9).

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

Opening of the Session

6. The Secretary to the Government of India in the Ministry of Education and Culture, Mrs. Serla Grewal, welcomed the holding of the session of the Permanent Committee in New Delhi, and expressed appreciation of WIPO's Program of Development Cooperation in the fields of copyright and neighboring rights.

7. The Director General of WIPO, Dr. Arpad Bogsch, recalling that India has always taken an active part in the various meetings and activities of WIPO in the fields of copyright and neighboring rights and that its positive role in these fields has been greatly valued, expressed his gratitude to the Government of India for hosting this session of the Permanent Committee, and for the excellent arrangements provided. He mentioned that the International Bureau of WIPO can do no greater service, in the long term, for the respect of intellectual property than to try to introduce and, where it already exists, maintain such a respect also in developing countries; this is especially so since the role of those countries in international relations is so important that their cooperation is a *conditio sine qua non* of the survival of the aims for which WIPO was founded and for

which it stands. He expressed the hope that the deliberations will serve the purpose of mutual information in the strengthening of efforts for the benefit of developing countries. He informed the participants that, since the last session, seven States (Belgium, Fiji, Mali, Peru, Philippines, Somalia, Turkey) had become members of the Permanent Committee, of which the total membership was now 58 States.

8. In her inaugural address, Mrs. Sheila Kaul, Minister for Education and Culture, expressed, on behalf of the Government of India, her satisfaction at the representation at the meeting of a large number of States as well as observers from international organizations. She noted with appreciation the various Development Cooperation Programs of WIPO particularly as regards improvement of the copyright systems, training of specialists, facilitation of access to copyright works, the convening of Worldwide Forums on Piracy, and the efforts to protect expressions of folklore. She declared the willingness of India to continue its cooperation in these fields at the international level and, in this connection, announced the adherence by India to the Madrid Convention for the Avoidance of Double Taxation of Copyright Royalties. She welcomed the participants and expressed her best wishes to them for a fruitful discussion and a pleasant stay in New Delhi.

Election of Officers

9. The Permanent Committee unanimously elected the following officers: Dr. (Mrs.) Kapila Vatsyayan (India), Chairman; Mr. Agne Henry Olsson (Sweden) and Mr. Robert Sanding Beng (Cameroon), Vice-Chairmen. Mr. Shahid Alikhan, Director, Developing Countries Division (Copyright) of WIPO, acted as Secretary.

Adoption of the Agenda

10. The provisional agenda contained in document CP/DA/V/1 Rev. was adopted by the Permanent Committee.

WIPO's Development Cooperation Program in 1981 and 1982:

Evaluation and Planning

Development of Human Resources:

Fellowship Program and Training

11. Discussions were based on document CP/DA/V/2.

12. A number of delegations expressed considerable appreciation of and full support for WIPO's activities in training of developing country personnel in the fields of copyright and of neighboring rights. They felt that these training courses were most useful and desired that this program be strengthened and continued.

13. The delegation of India extended the facilities available in its country to provide practical training to the officials sponsored by WIPO under this program and declared that it will be prepared to continue this assistance.

14. The delegation of the United Kingdom, stressing the value of these courses and the importance of the selection process, felt that it might be extended also to officials from the concerned organizations.

15. The delegation of Sweden commended WIPO for improvement in the organization of training courses and for the efficient evaluation of these courses. It suggested advance medium-term planning to help host countries in the structuring and financing of such courses, and declared that consideration was being given to continuing its cooperation with WIPO in the organization of specialized courses in the future.

16. The delegation of the Federal Republic of Germany announced its willingness to host this year, for the second time, a general introductory training course organized by WIPO.

17. The delegation of Israel reiterated the willingness of its country to continue its cooperation with WIPO in the field of copyright and neighboring rights, and sought WIPO's assistance in this connection.

18. The delegation of France stated that its country wished to increase its support for developing countries, and announced its decision to contribute not only within the bilateral framework but also on a multilateral basis in extending its assistance to WIPO in organizing a training course in Paris in 1983.

19. The delegations of Algeria and Mali felt that candidates should be so chosen as to give greater relevance to the program and should be drawn from those directly dealing with copyright in their countries.

20. The delegations of Algeria and Italy also offered to continue acceptance of WIPO trainees.

21. The delegation of Congo declared that, because of training of their concerned personnel by WIPO, they had been able to enact a Copyright Law in 1982; it requested further fellowships to enable setting up of relevant infrastructure.

22. The delegation of Pakistan felt that, to overcome resource constraints for this program, assistance should also be sought from the private sector such as publishers, producers, etc.

23. The delegation of Philippines, supported by the delegation of Australia, suggested holding of special courses at the regional level for the ASEAN countries and for countries of the South Pacific; if this were not feasible a roving team of lecturers might be organized for the purpose. The delegation of Australia added that it was hoped that its Government could participate in appropriate development cooperation programs of WIPO in both the sub-regions.

24. The delegation of Egypt suggested increasing the size of the training program to fulfill the demands for it and to meet the needs of developing countries; also drawing up of a medium-term plan and specialized training of personnel for setting up of copyright infrastructures.

25. The delegation of Peru wished to participate in the WIPO training and fellowship program in order to help in setting up its infrastructural facilities.

26. The delegation of the Soviet Union underlined the need for taking into account the social, political and economic conditions in the countries concerned while selecting candidates and organizing training courses.

27. The delegation of the United States of America announced that it was considering holding of a general introductory course and would have preliminary discussions with the International Bureau of WIPO in this connection.

28. The delegation of Japan also offered to cooperate in WIPO's program of training developing country officials and to accept WIPO trainees in the field of copyright.

29. The delegation of Somalia, commending WIPO's efforts in the development of human resources and training, requested further assistance in this field to be extended to its country.

30. The observer from the International Federation of Phonogram and Videogram Producers (IFPI) offered to welcome WIPO trainees at their headquarters for specialized training in neighboring rights.

31. The Director General of WIPO expressed his sincere thanks to the delegations and observers which had announced the hosting of training courses and accepting of WIPO trainees, and stated that all the suggestions made during the discussions would be duly taken into account in planning future training programs.

32. The Permanent Committee noted with satisfaction and approved the activities of the International Bureau as indicated in document CP/DA/V/2 and also took note of the statement of the Director General.

National Legislative and Administrative Infrastructures

33. Discussions were based on document CP/DA/V/3.

34. Several delegations expressed their satisfaction at the advice and assistance given by WIPO in the preparation and updating of their copyright legislation, as well as in the setting up and/or modernization of their institutions and national administrative infrastructures. They expressed their appreciation of the fact that since the last session of the Permanent Committee several developing countries had enacted copyright legislations in their countries and in some of them legislations on neighboring rights had also been enacted. These countries felicitated WIPO for the useful task undertaken in this connection.

35. Delegations of Algeria, Cameroon, Germany (Federal Republic of), Israel, Peru and Sweden underlined the usefulness of WIPO's publications including the Guides to the Conventions (Berne, Rome and Phonograms) and the Copyright Law Survey which contained specialized information in these fields and which need to be made available on a wider basis.

36. A number of delegations, while referring to the problems raised by piracy of sound and audiovisual recordings, emphasized the necessity of taking better measures in countering it, in particular by making penal sanctions more severe.

37. The delegation of Sweden expressed its satisfaction at the setting up of the International Association for the Advancement of Teaching and Research in Intellectual Property (ATRIP), whose activities will be useful for developing countries.

38. The delegations of Algeria and Somalia expressed the hope that WIPO will avail of the services of consultants who could be sent to developing countries to cooperate with them in the practical implementation of copyright laws; this could be done in collaboration with specialized organizations such as the International Confederation of Societies of Authors and Composers (CISAC).

39. The delegation of Mali expressed the wish that the assistance given by WIPO be extended, where feasible, to the material arrangements in order to permit the authors' organizations to improve their infrastructure.

40. The delegation of Peru announced the adoption of a new law on December 25, 1982, which prohibits illicit reproduction of works, whatever be the means of fixation, in order to enable better protection of authors and producers of phonograms and videograms. The delegation also declared that Peru was

examining the possibility of acceding to the Berne, Rome, Phonograms, Satellites and Madrid Conventions.

41. The delegation of Israel pointed out that a new legislation for protecting performing artists was being drafted in his country and received the approval of a ministerial committee. It would be submitted soon to the Parliament. Furthermore, a public committee had been set up to review the Copyright Law. This was in addition to recent amendments to the Copyright Law which are in effect and include the concept of moral rights and the strengthening of penal provisions against piracy.

42. The delegation of Philippines, supported by the delegation of Australia, underlined the importance of the problems of protecting folklore and countering piracy in the Asia-Pacific region and expressed the hope that further efforts would be made to keep the countries of the region better informed as to the necessity of enacting legislation in this field.

43. The delegation of India referred to the grave prejudice caused to intellectual creators by acts of piracy, and proposed that WIPO undertakes surveys to see if legislations are adequate to ensure the necessary penal sanctions against the theft of intellectual property.

44. The delegations of Hungary and Sweden underlined the necessity of having long-term planning for WIPO programs concerning legislative and administrative infrastructures.

45. The delegation of Malawi requested WIPO to assist in the setting up of a suitable copyright infrastructure in its country.

46. The observer from Unesco referred to the program of his Organization concerning fellowships, training activities and advice to States in legislation, as well as to the various publications produced by Unesco in the field of copyright.

47. The observer from the International Confederation of Free Trade Unions (ICFTU) suggested that, in drafting legislation, the situation of employed authors may be given due consideration.

48. The observer from the International Confederation of Societies of Authors and Composers (CISAC) referred to an agreement concluded in Lomé (Togo) with WIPO and Unesco and stated that his organization will continue to work closely with WIPO and Unesco in setting up of administrative infrastructures in the field of copyright.

49. The Permanent Committee noted with satisfaction the contents of document CP/DA/V/3 as well as information given by the various delegations.

Information Meetings and Seminars: Regional and National

50. Discussions were based on document CP/DA/V/4.

51. Several delegations expressed appreciation of WIPO's efforts in the organization of regional and national seminars and wished this activity to be continued as such seminars were found most useful in dissemination of knowledge in the fields of copyright and neighboring rights.

52. The delegations of Algeria, Malawi, Peru, Sweden and the United Kingdom stressed the importance of regional seminars in filling the information gap and wanted these organized on a regular basis.

53. The delegation of Israel suggested holding of seminars and workshops for countries using languages other than those in general use.

54. The observer from Unesco indicated the willingness of his Organization to continue its cooperation with WIPO in the future in jointly convening seminars on a regional basis.

55. The observer from the International Copyright Society (INTERGU) reported on the plans of his organization and reiterated its cooperation with WIPO.

56. The Permanent Committee noted with satisfaction the information contained in document CP/DA/V/4 as well as the information given and statements made at the meeting.

Cooperation Among Developing Countries

57. Discussions were based on document CP/DA/V/5.

58. The delegation of India, referring to the cooperation among developing countries in the field of training programs, suggested the convening of some general introductory courses in developing countries and association of developing country specialists, already available, in the programs for such courses. It also suggested that some centers in each region be identified where facilities and expertise were available and which could be treated as Regional Training Centers for copyright, and sought WIPO's cooperation in the training programs organized by publishers' associations.

59. The delegations of Algeria, Peru and Somalia stressed the need for using expertise available in certain developing countries in order to help in the setting up of administrative infrastructures on a regional or sub-regional basis, in particular for collection and distribution of copyright royalties.

60. The delegations of the United Kingdom and the United States of America expressed the view that in certain areas collective administration of copyright might be considered for being set up on a regional or sub-regional basis, in order to benefit by economies of scale. The delegation of the United States of America further suggested that a "demonstration site" be selected where a Chamber of Copyright could be set up.

61. The observer from the Asia-Pacific Broadcasting Union (ABU), referring to the need of cooperation among the developing countries of the region served by his organization, stated that WIPO might consider the possibility of organizing a seminar in this region on the rights of broadcasters and extended ABU's assistance in the convening of such a seminar.

62. The Director General of WIPO welcomed the suggestions made by the various delegations, including that made by the observer of the ABU.

63. The Permanent Committee noted with satisfaction the activities and projects concerning cooperation among developing countries within the framework of the Permanent Program as indicated in document CP/DA/V/5 as well as the statement of the Director General.

Role of Copyright in Development:

Promotion of Indigenous Intellectual Creativity

64. Discussions were based on document CP/DA/V/6.

65. Several delegations fully supported the views expressed in the document, and commended WIPO for the quality of the documentation submitted to this session.

66. The delegation of India felt that one of the urgent problems was the lending or rental of books, phonograms and videograms which affected all categories of copyright owners; it suggested that attention be paid to this problem in the programs of WIPO.

67. The delegation of the Federal Republic of Germany stressed the need for protection of the cultural industry, since this industry suffers through piracy in the same manner as authors; it emphasized the role of performers and the need to protect them nationally as also internationally through acceptance of the Rome Convention.

68. The delegation of Australia suggested the setting up of Copyright Information Centers to provide all necessary information in order to avoid any pretext for not respecting copyright.

69. The delegation of Upper Volta felt that copyright should be applied to protect the national cultural heritage in order to stimulate creativity.

70. The Permanent Committee noted the information contained, and endorsed the suggestions made, in document CP/DA/V/6.

Protection of Expressions of Folklore

71. Discussions were based on document CP/DA/V/7.

72. The delegation of Chile, supported by the delegations of Cameroon, Mali and Mexico, expressed their satisfaction at the model provisions drafted for national legislators but felt that this effort should also be followed up at the international level, and therefore the delegation proposed that studies may be undertaken to set up an international instrument to which could be annexed bilateral models that could provide a framework for inter-state relations. In this connection, the delegation of Cameroon underlined the fact that national laws alone could not resolve the problem of protecting expressions of folklore and that a consensus at the international level had to be worked out.

73. The delegation of Mexico was of the opinion that laws for the protection of expressions of folklore should be based on the copyright approach and that the community of creators should be the holders of the rights involved.

74. The delegation of Australia informed the Permanent Committee that recently, after a series of studies, its Government had published a report on the protection of folklore and stated that this document could be made available to the participants.

75. The delegation of Mali, referring to the current preparation of a copyright legislation in its country, stated that the draft bill included also the protection of expressions of folklore and requested the cooperation of WIPO in order to finalize this bill.

76. The delegation of the United States of America expressed its appreciation of the results reached up to now, in particular with the drafting of model provisions on the protection of expressions of folklore against their illicit exploitation. It stated that the United States of America intended to participate fully in any activity designed to safeguard the integrity of folklore. Stressing the need to thoroughly study at the international level the problems involved, it suggested that the Intergovernmental Committees (Berne Convention and Universal Convention) constitute themselves into subcommittees in order to discuss these problems.

77. The observer from Unesco informed the participants that a Committee of Governmental Experts on the Safeguarding of Folklore on an interdisciplinary basis was convened by Unesco in February 1982. The said Committee formulated recommendations both to Unesco and member States with regard to various aspects of safeguarding of folklore. The Committee also recommended that Unesco continue its studies aimed at formulating an international recommendation on the preservation and safeguarding of folklore and traditional culture.

78. The Permanent Committee noted the information contained in document CP/DA/V/7 and expressed its satisfaction that model provisions are now at the disposal of national legislators to protect expressions of folklore. It also noted the statement of the Director General of WIPO to the effect that the various suggestions made in the course of this session, including the possibility of an international treaty, would be taken into consideration in preparing the next biennial program of WIPO for 1984-1985; as regards the proposal of constituting itself into a sub-committee, this will be for the Executive Committee, as far as the Berne Union is concerned, to discuss and to take a decision on this matter at its extraordinary session scheduled at the end of 1983.

Application and Practical Administration of Laws on Copyright and Neighboring Rights: Regional Survey

79. Discussions were based on document CP/DA/V/8.

80. The delegation of India, noting the proposal for a similar survey during the biennium 1984-1985 in respect of countries in Asia, indicated the salient points in its own legislation relevant to such a survey.

81. The delegation of Israel felt that it would be useful to establish a list of the main points that needed revision in the concerned national legislations to make them compatible with the latest Paris (1971) Act of the Berne Convention.

82. The observer from the International Confederation of Free Trade Unions (ICFTU) suggested that, in conducting the proposed survey, any questionnaire should be sent also to his organization so as to enable interested trade unions to give any information they might wish to furnish.

83. The Permanent Committee noted the information contained in document CP/DA/V/8 and the above-mentioned statements.

State of Accessions to or Ratifications of Treaties on Copyright and Neighboring Rights

84. Discussions were based on document CP/DA/V/9. The International Bureau of WIPO indicated

that, since the preparation of this document, it has been informed of the impending deposit, by Finland, of its instrument of ratification of the Rome Convention.

85. The delegation of Switzerland stated that the Swiss legislation on copyright was in the process of a revision in order to enable its country to ratify the latest text (1971) of the Berne Convention, probably in 1986. It mentioned that the accession of Switzerland to conventions in the field of neighboring rights would be dealt with later, with the exception, however, of the Phonograms Convention if a protection against unfair competition is introduced into the legislation soon.

86. The delegation of India, after having commended WIPO for its efforts aiming to increase the number of States party to the various conventions, stated that a bill amending the Copyright Act had been submitted to Parliament, in order, *inter alia*, also to make their copyright legislation compatible with the latest revised Act (1971) of the Berne Convention and then adhere to that Act. As regards the possibility of India's accession to the Rome Convention, it indicated that it was necessary first to legislate for the protection of the rights of performers and that this question was receiving the attention of the competent authorities. On the other hand, the delegation of India suggested that information campaigns be undertaken to promote a wider acceptance of the Madrid Convention for the Avoidance of Double Taxation of Copyright Royalties. Referring to the remarks made by certain delegations about the present position of the Soviet Union and of the United States of America vis-à-vis the Berne Convention, it expressed the wish that efforts be made to persuade these countries to join the Berne Union.

87. The delegation of Japan, stating that the number of States of the Asia-Pacific region which are party to the Berne Convention was comparatively small, requested WIPO to accelerate its information activities such as seminars, training courses in this region in order to promote accessions to the Berne Convention.

88. The delegation of Sweden fully supported the earlier intervention of the delegation of the Federal Republic of Germany about the need to protect, at the international level, the performers, in particular through accession to the Rome Convention. Furthermore, it expressed its appreciation of the initiative taken by WIPO to convene forums on piracy and, welcoming the Resolution adopted by the Worldwide Forum that met in March 1981 on the piracy of sound and audiovisual recordings, it expressed the hope that the deliberations at the next Forum on piracy of broadcasts and the printed word will also

result in conclusions that would be relevant and useful.

89. The delegation of Sudan requested WIPO to cooperate with the League of Arab States in order to elaborate a common strategy for the Arab countries in the protection of copyright.

90. The delegation of Chile, referring to the Resolution adopted by the Worldwide Forum convened by WIPO in March 1981, proposed that WIPO undertake surveys on the various forms of piracy, on their incidence and on the ways and means of combating them.

91. The delegation of the Soviet Union stated that prior to adherence to any convention a country has to examine, in the light of its own political, economic, social and cultural situation, whether it is ready to fulfill the obligations towards other contracting States. It indicated that, after a thorough study of the differences between the Berne Convention and the Universal Convention, the Soviet experts gave their preference to accession to the latter, in view of the country's existing legislation and needs. For nearly 10 years, the participation of the Soviet Union in an international copyright system has positively influenced the cultural exchanges with other countries. The delegation of the Soviet Union added that the Soviet copyright legislation was, however, in the process of development and, therefore, it seemed quite possible that in due time the development of the internal situation will introduce into the legislation such changes which could make it possible for the Soviet Union to become a member of the Berne Union. The Soviet Union, however, is prepared to cooperate with any developing country in the sphere of copyright on a bilateral basis, be it a member of the Berne Union or not.

92. The Permanent Committee noted the information contained in document CP/DA/V/9 and commended WIPO for its initiatives to promote the acceptance of the various international instruments in the fields of copyright and neighboring rights. It invited the governments of States not yet party to one or the other of the conventions mentioned in this document to consider the possibility of adherence to the said conventions.

Proposals for New Activities within the Framework of the Permanent Program

93. Discussions were based on document CP/DA/V/10.

94. Several delegations supported the Program of WIPO in the field of Development Cooperation Related to Copyright and Neighboring Rights envisaged for the next biennium 1984-1985.

95. The delegation of Sweden suggested that copyright in the context of development should take into account the expansion of the mass media and that infrastructures should meet the needs of the country concerned. Referring to the conclusions of the Working Group convened by WIPO on the Support of National Authors and Performers, it expressed the view that the program for the next biennium might include, in some manner, the possibility for a follow-up of those conclusions; it further suggested that the requirements for protection of copyright in developing countries in the light of new technologies should also be taken into consideration. Furthermore it felt that, if for budgetary constraints additional staff needed could not be provided for, necessary help of consultants could be sought.

96. The delegations of Algeria and the German Democratic Republic, while supporting the program of WIPO, offered their continued assistance in respect of the training program. The delegation of Algeria added that in its opinion priority should be given to the establishment of copyright infrastructure in countries having already adopted a copyright law.

97. The Director General of WIPO stated that the Secretariat had noted the comments made by the various delegations in the course of the discussion of this item of the agenda.

98. The Permanent Committee noted the contents of document CP/DA/V/10 and the statement of the Director General.

Need for "National Chambers of Copyright" in Developing Countries

99. Discussions were based on document CP/DA/V/11.

100. The Permanent Committee considered the proposals contained in that document concerning a possible study of the desirability and feasibility of National Chambers of Copyright.

101. Several delegations have warned that such chambers may, at least in some countries, unnecessarily duplicate existing organizations and agencies and that, in any case, the financing of such chambers would pose grave problems since authors could hardly be expected to finance them whereas financing from outside sources could put in danger the freedom and independence that any such chamber would have to have.

102. The majority of the delegations, however, found the idea worthwhile further exploration, particularly if its activities would be mainly advisory, since a National Chamber of Copyright could — in

countries in which the legislator's attention needs to be drawn to the role of copyright in fostering creativity or in which infrastructures for the administration of authors' rights were in need of improvements or were inexistent in certain fields of creativity — perform a useful if not decisive role in making authors' legitimate aspirations for effective protection a reality. In any case the structure of such copyright chambers should respect the balance between the various rights owners.

103. The observer from Unesco stated that, if in future a working group to study the matter is convened by WIPO, he would like to reserve the position of his Organization with respect to joining in this activity.

104. The International Bureau noted the various suggestions made, including one for calling the Chambers "Councils," one for examining the possibility of creating regional copyright agencies by WIPO, and one for drawing up a questionnaire to be addressed to potentially interested governments.

105. In conclusion, the Permanent Committee noted with approval the plan of the International Bureau of WIPO to submit to the Assembly of the Berne Union a proposal for a detailed study of the said questions, and that such study should take into account all the advice and views given in the present session of the Permanent Committee by the members and observers.

Adoption of the Report

106. The Permanent Committee unanimously adopted this report.

Closing of the Session

107. After a number of delegations and observers thanked the Government of India for the excellent arrangements made and for its gracious hospitality, the Chairman declared the session closed.

List of Participants

I. Member States

Australia: R. Bell. **Cameroon:** R. Sanding Beng. **Central African Republic:** E. Kota-Gueneyora. **Chile:** G. Echeñique. **Congo:** F. Bassarila; A. Tsalaka. **Czechoslovakia:** J. Prievoznik. **Egypt:** M. Zahran; H. Derar. **France:** F. Descoueyte. **German Democratic Republic:** J. Toedter. **Germany (Federal Republic of):** M. Möller. **Guinea:** F. Moussa Camara. **Hungary:** G. Palós. **India:** K. Vatsyayan; S. Ramaiah; V. K. Pandit; J. K. Bhattacharya; S. Kunadi; K. H. Patel;

K. Thairani; D. N. Malhotra; N. Kumar; G. D. Khosla; A. V. Luther; J. Chaudhury; O. P. Ghai; M. B. Srinivasan; S. Sachdev; D. R. Mankekar; H. L. Luthra; C. R. Ramaswamy; J. C. Batra; N. Singh; D. Verma; N. Ali; K. C. Dasarathi; P. Kaur. **Israel:** M. Gabay. **Italy:** A. C. Grassi. **Japan:** T. Hashimoto. **Malawi:** H. R. Chirwa. **Mali:** M. Coulibaly. **Mexico:** I. Rios Navarro. **Morocco:** A. Guessous. **Netherlands:** H. N. Buisman. **Norway:** T. Ibsen; B. H. Eriksen. **Pakistan:** M. H. Askari; M. Saleem. **Peru:** P. Ontaneda; M. Brenner. **Philippines:** S. Quiason. **Somalia:** F. Eno-Hassan. **Soviet Union:** M. Voronkova; S. S. Fedotov. **Sudan:** O. Gamar El Anbia. **Sweden:** H. Olsson. **Switzerland:** H. Borner. **United Kingdom:** D. de Freitas; M. Rowland; M. Allen; M. P. Saikia. **United States of America:** D. L. Ladd; J. H. Williamson. **Upper Volta:** P. Kompaore. **Yemen:** A. S. Alhakimi.

II. Observer States

Algeria: B. A. M. Badie; S. Abada; N. Gaouaou. **Greece:** G. Koutroumboussis. **Indonesia:** W. Simandjuntak. **Qatar:** H. Abdull Rahman. **Republic of Korea:** J.-H. Suh. **Saudi Arabia:** F. Al-Hajri; N. S. Kanan. **Sri Lanka:** D. Wijesekera. **Thailand:** T. Koopirom. **United Arab Emirates:** J. Al Fardan; Z. A. Siddiqi; K. A. K. El Kilani.

III. Intergovernmental Organization

United Nations Educational, Scientific and Cultural Organization (UNESCO): E. Guerassimov; M. Derkach.

IV. International Non-Governmental Organizations

Asia-Pacific Broadcasting Union (ABU): C. R. Ramaswamy. **International Bureau of Societies Administering the Rights of Mechanical Recording and Reproduction (BIEM):** J. Sturman; M. B. Srinivasan; D. de Freitas. **International Confederation of Free Trade Unions (ICFTU):** N. Vijayasingham. **International Confederation of Societies of Authors and Composers (CISAC):** J. Sturman; M. B. Srinivasan; D. de Freitas. **International Copyright Society (INTERGU):** G. Halla. **International Council of Archives (ICA):** R. K. Perti. **International Federation of Phonogram and Videogram Producers (IFPI):** G. Davies; A. Sud. **International Literary and Artistic Association (ALAI):** D. de Freitas. **International Publishers Association (IPA):** N. Kumar; B. Subramanian.

V. Officers

Chairman: K. Vatsyayan (India). *Vice-Chairmen:* A. H. Olsson (Sweden); R. Sanding Beng (Cameroon). *Secretary:* S. Alikhan (WIPO).

VI. Secretariat

A. Bogsch (*Director General*); C. Masouyé (*Director, Public Information and Copyright Department*); S. Alikhan (*Director, Developing Countries Division (Copyright)*); H. Rossier (*Head, Mail and Documents Section*).

Berne Union

Working Group on the Formulation of Guidelines on the System of Translation and Reproduction Licenses for Developing Countries under the Copyright Conventions

(Paris, December 6 to 10, 1982)

Report

Introduction

1. In accordance with the decisions taken by the Intergovernmental Committee of the Universal Copyright Convention and the Executive Committee of the Berne Union, at their sessions held from November 30 to December 6, 1981, the Secretariat of Unesco and the International Bureau of WIPO convened a Working Group consisting of experts from 14 countries, invited to take part in their personal capacity, who had already — in 1979 and 1980 — studied the whole range of problems confronting the developing countries in connection with access to works protected under copyright conventions. Twelve of the 14 experts who had been invited took part in the meeting.

2. Representatives of a regional book promotion center and six international non-governmental organizations also attended the meeting as observers. The list of participants is appended to this report (Annex II).

3. The terms of reference of the Working Group, as defined by the above-mentioned Committees, were to clarify certain aspects further and to finalize the text of the "Guidelines on the system of translation and reproduction licenses for developing countries under the copyright conventions," adopted by the Working Group at its meeting in 1980.

4. The Working Group had before it documents containing, on the one hand, the guidelines (UNESCO/WIPO/WG.III/CWA/2) and, on the other, the observations received from governments and intergovernmental and international non-governmental organizations regarding those guidelines (UNESCO/WIPO/WG.III/CWA/3). An analysis of those observations was contained in a third document (UNESCO/WIPO/WG.III/CWA/4).

Opening of the Meeting

5. The meeting was opened on behalf of the Director-General of Unesco by Ms. M. C. Dock, Director

of the Division of Copyright, and on behalf of the Director General of WIPO by Mr. Claude Masouyé, Director of the Public Information and Copyright Department, who welcomed the participants.

Election of the Chairman

6. The Working Group unanimously elected as its Chairman Mr. Mihály Ficsor, Director General of the Hungarian Bureau for the Protection of Authors' Rights.

Examination of the Document on the System of Translation and Reproduction Licenses

7. Before opening the discussion, the Chairman briefly retraced the background to the holding of the meeting. Referring to the Working Group's terms of reference, he drew particular attention to the fact that its discussions were to be directed to further clarifying the text of the guidelines, with a view to facilitating their use by developing countries. He also pointed out that it was not within the competence of the Working Group to make any judgments whatever, or even to propose specific amendments to the texts of the international copyright conventions, as that task, for which a specified procedure had to be followed, was the responsibility of the Intergovernmental Copyright Committee in the case of the Universal Copyright Convention, and of the Assembly of the Berne Union in the case of the Berne Convention.

8. The discussion was based on the comments on the guidelines received from governments and from international non-governmental organizations (documents UNESCO/WIPO/WG.III/CWA/3, 3 Add. and 4) and on various suggestions made by members of the Working Group.

Title of the Document

9. Three States had pointed out in their comments that the title of the document, as proposed, appeared

to give it a certain binding force, which did not accurately reflect the end in view.

10. Most of the participants pointed out that the purpose of the preparation of the document was to help developing States to work out practical procedures and take adequate measures for putting into effect the system of translation and reproduction licenses under the copyright conventions as revised in 1971. The title of the document should therefore be appropriate to that purpose while yet remaining sufficiently neutral in tone to avoid giving the impression that the document was to be regarded as an official interpretation of those conventions. Various suggestions were put forward, and unanimous agreement was finally reached on the following title: 'Advisory notes on the implementation of the system of translation and reproduction licenses for developing countries under the copyright conventions.'

Paragraphs 1 to 4

11. On the basis of an observation made by one State, in the comments it had communicated to the Secretariat, concerning the reference to the persons and bodies for whom the advisory notes were intended, the Working Group decided that it would not be advisable to give an exhaustive list of such prospective users in the introduction to the document. Conversely, the Group felt it would be well to specify that the advisory notes, which had been established to facilitate the implementation of the relevant provisions of the conventions, were not to be regarded as an 'official' interpretation of those provisions.

Paragraphs 5 and 6

12. No change.

Paragraph 7

13. As one State considered the wording of the provision contained in this paragraph to be inappropriate to its purpose, a new version was adopted.

Paragraphs 8 and 9

14. No change.

Paragraph 10

15. Two States having expressed some misgivings about the wording of the choice open to States under the so-called 'ten-year regime' provided for by the Berne Convention, the Working Group felt it would be well to replace the last sentence in this paragraph by the text relating to this point in the Guide to the Berne Convention.

Paragraphs 11 to 16

16. No change.

Paragraph 17

17. One State expressed a reservation regarding the provision of information to the interested parties by the competent authority about the possibilities of appeal and the scope of such an appeal, on the ground that this created an obligation which was not contained in the conventions. That State accordingly considered that the clause concerned should be deleted.

18. After discussing the matter at length, the Working Group took the view that, while such an obligation admittedly did not result from the texts of the conventions, it would nevertheless be desirable to inform all the interested parties about the possibilities of appealing against the granting or refusal of the license, albeit without specifying the scope of such appeals. For that purpose, a new wording of the last sentence of paragraph 17 was adopted.

Paragraph 18

19. No change.

Paragraph 19

20. Two States proposed amendments to this paragraph.

21. The Working Group did not see fit to adopt them, on the ground that the text initially proposed is based on the terms used in the two conventions. The Working Group felt, however, appropriate to copy exactly the text of the conventions and to insert the words 'under these provisions.'

Paragraph 20

22. No change.

Paragraph 21

23. In connection with this paragraph, one State wished the benefits of such licenses to be extended to research even when undertaken for commercial purposes. Such an extension having already been examined, and rejected, at the time of the revision of the conventions, in 1971, as mentioned in the reports of the two conferences for their revision, the Working Group observed that the matter was not within its terms of reference.

24. On the proposal of one State, the Working Group drew a distinction between specialized works used for research and those used for teaching proper.

Paragraph 22

25. A more concise wording of this paragraph proposed by one State was adopted by the Working Group.

Paragraph 23

26. No change.

Paragraph 24

27. With regard to this paragraph, which deals with the scope of the term 'writings' in the Universal Convention, a clearer wording of the passage concerning the application of the provisions of the convention to dramatic works, proposed by one State, was accepted. Furthermore, the second sentence of the draft has been deleted, the Working Group considering it as superfluous.

Paragraph 25

28. No change.

Paragraph 26

29. In the English version, the word 'mainly' has been substituted to the word 'principally,' in order to strictly follow the wording of the conventions.

Paragraphs 27 and 28

30. No change.

Paragraphs 29 and 30

31. These paragraphs gave rise to an exchange of views on the requirements specified for the granting of the license and those concerning the use of the license in the two conventions. It was pointed out that there was no fundamental divergence on the substance of the matter and that compliance with the regulations governing the exchange of programs between broadcasting organizations, regarded in the Universal Convention as a requirement for the granting of the license, was also provided for in the Berne Convention, though listed under the conditions for use of such a license. Paragraphs 29 and 30 were therefore slightly amended to take account of that situation.

Paragraph 31

32. One State requested that the text make more specific reference to the place where no translation had been published, but the Working Group was unable to reach agreement on that point. After citing the relevant articles of the conventions, some participants considered that the terms 'Contracting State' in the Universal Convention and 'country' in the Berne Convention meant the State or the country in which the language of the translation was used, while other participants were of the opinion that those terms referred both to the language of the translation and to the place of publication. The Working Group consequently deemed it preferable to keep strictly to the terminology of the two conventions, thereby leaving it to each State to interpret the scope of the provisions concerned.

Paragraphs 32 to 45

33. No change.

Paragraph 46

34. At the request of one State, minor amendments, designed to improve its wording, were made to paragraph 46.

Paragraph 47

35. Also at the request of one State and in order to make the text easier to read, the presentation of the paragraph was changed.

Paragraphs 48 to 52

36. No change.

Paragraph 53

37. On the basis of observations made by two States and of suggestions put forward by several participants, the Working Group considered it desirable to specify that it was for the authority competent to issue the license to fix a reasonable term beyond which no reply from the owner of the right was tantamount to a refusal, in order not to keep the applicant waiting indefinitely.

Paragraphs 54 to 57

38. No change.

Paragraph 58

39. One State having drawn attention to the need to speed up the granting of licenses upon expiry of the periods prescribed under the conventions, it was decided to include a new provision inviting the competent authorities to ensure that the license was effectively granted on the expiry of the periods in question. It was nevertheless specified that there was nothing to prevent applicants from initiating any procedure prior to such expiry.

Paragraph 59

40. The Working Group took note of the written statement submitted by the Government of the United Kingdom, that 'With regard to the three possible interpretations given in paragraph 59 of the Guidelines, only alternative (i) is acceptable to the United Kingdom. The other alternatives would penalize a publisher who has brought out a translation before the expiry of the three years or one year, and could deter publishers from producing such publications in the future.'

Paragraphs 60 to 85

41. No change.

Paragraph 86

42. At the request of one State, the Working Group added a subparagraph specifying the measures to be taken to facilitate the flow of information, with particular reference to the identification of the competent authority entitled to issue licenses in the developing States availing themselves of the provisions of the conventions in their favor, and to establish relations between the interested parties. This coordinating activity was entrusted to the Joint International Unesco-WIPO Service for Facilitating Access by Developing Countries to Works Protected by Copyright.

ANNEX I

**Advisory Notes on the Implementation of the System of Translation
and Reproduction Licenses for Developing Countries under the Copyright Conventions**

I. Introduction

(1) These advisory notes concern the system of translation and reproduction licenses as established in favor of developing countries and provided for in the Appendix to the Berne Convention for the Protection of Literary and Artistic Works (Paris Act, 1971) and in Articles V^{bis}, V^{ter} and V^{quater} of the Universal Copyright Convention as revised at Paris in 1971.

(2) They have been established to facilitate the implementation of the relevant provisions of the Conventions. They do not constitute an official interpretation of these provisions.

(3) For the purpose of these advisory notes, the 1971 revised texts of the said Conventions are referred to as "the Appendix to the Berne Convention" and "the revised Universal Convention," respectively. Furthermore, "licenses" for the purpose of these advisory notes mean any license granted in application of such system.

(4) The resort to compulsory licensing will, however, take place in accordance with the provisions of the 1971 texts (if the applicant could not have obtained authorization from the owner of the right or if, after due diligence on his part, he was unable to find him); but the copyright owners of developed countries should as a general rule grant the rights of translation or reproduction to the applicants from developing countries and give them these rights at preferential rates fixed with due regard to the economic situation prevailing in the developing country concerned.

II. Translation and Reproduction Licenses**1. Licensing arrangements***(a) States qualified to institute licenses*

(5) Under Article V^{bis}.1 of the revised Universal Convention and Article 1 of the Appendix to the Berne

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43. No change.

Conclusion

44. The text as amended will be found in Annex I to this report.

Adoption of the Report and Closing of the Meeting

45. This report has been unanimously adopted. After the usual thanks, the Chairman declared the meeting closed.

Convention, the States that may avail themselves of the faculties offered by the system of translation and reproduction licenses are the Contracting States of either of these two instruments that are considered developing countries in conformity with the established practice of the General Assembly of the United Nations.

(6) Under the Berne Convention, this criterion is complemented by an elucidation according to which the subject faculties are intended for any developing country which "having regard to its economic situation and its social or cultural needs, does not consider itself immediately in a position to make provisions for the protection of all the rights as provided for in this Act." At the 1971 revision of the Berne Convention it was understood that the expression "country regarded as a developing country in conformity with the established practice of the General Assembly of the United Nations" did not allow for the drawing up of a list of such countries which would not be susceptible to changes in the future, not only because the stage of development of particular countries may change, but also because the criteria on which such practice of the General Assembly is based may alter. Whether any country is, at any given time, a developing country for the purpose of these licensing arrangements, has to be decided on the basis of the practice of the General Assembly prevailing at the time relevant for deciding the question.

(7) The use of the system of licenses by developing countries is a possibility which these countries are free to avail themselves of as they see fit. It is not an obligation.

(8) Paragraph 3 of Article V^{bis} of the revised Universal Convention and paragraph 3 of Article I of the Appendix to the Berne Convention stipulate that any Contracting State which ceases to be regarded as a developing country is no longer entitled to renew the ten-year notification nor to avail itself of the exceptions as from either the end of the current ten-year period or three

years after it has ceased to be regarded as a developing country, whichever period expires later.

(b) Procedure to be complied with by States to avail themselves of the licensing system

(9) Under Articles I(1) and V^{bis}.1 of the Appendix to the Berne Convention and of the revised Universal Convention, respectively, any Contracting State meeting the criteria laid down by those Articles and wishing to enjoy the preferential arrangements must, at the time it becomes party to one of those instruments or at a subsequent date, notify the Director-General of Unesco, as regards the Universal Copyright Convention, or the Director General of WIPO, as regards the Berne Convention, they being the respective depositories of these two Conventions, that it will avail itself in part or in whole of the faculties provided for. The country concerned must state in the notification it files for that purpose which faculty — translation license and/or reproduction license — it wishes to enjoy.

(10) In the case of the Berne Convention, account has to be taken, however, of Article V(1)(a) of the Appendix under which a State regarded as a developing country has the faculty of choosing, at the time it becomes a party of the Convention, the so-called ten-year regime provided for by the Paris Additional Act of 1896, under which, if on expiry of ten years from the first publication of the original work, a translation has not been published in the country that has availed itself of the reservation, the author's exclusive right in the translation into the language concerned ceases to exist in that country on expiry of that period. This choice is irrevocable: a country choosing the ten-year regime cannot later change its mind and institute a system of compulsory licenses. Conversely, having chosen a licensing system, it cannot subsequently revert to the 1896 provisions. This irrevocable choice must be made at the moment of ratifying or acceding to the Paris Act (1971).

(c) Term of applicability of the licensing system

(11) Pursuant to paragraph 2 of Article V^{bis} of the revised Universal Convention and paragraph 2 of Article I of the Appendix to the Berne Convention, the notification filed with the Director-General of Unesco or the Director General of WIPO, as the case may be, automatically lapses on expiry of a ten-year period starting from July 10, 1974, the date of entry into force of the revised Universal Copyright Convention, or from October 10, 1974, the date of entry into force of the Berne Convention as revised at Paris in 1971.

(12) The notification may also lapse at a date stated beforehand in the declaration filed by the government with the Director-General of Unesco or the Director General of WIPO, as the case may be. The notification may also be suspended at any time by the government that has filed it.

(13) Article V^{bis}.4 of the revised Universal Convention and Article I(4) of the Appendix to the Berne Convention stipulate that copies produced under translation or reproduction licenses may continue to be dis-

tributed until their stock is exhausted even where the exceptions have ceased to apply.

(14) Any developing country may renew, in part or in whole, the notification filed, as the case may be, with the Director-General of Unesco or the Director General of WIPO. However, the possibility of renewing the notification is accompanied by a procedural condition to ensure that a sufficient period of time elapses between notification and expiry in order to enable other Contracting States to have sufficient notice in advance. The filing of the notification has therefore to be effected in accordance with Article V^{bis}.2 of the revised Universal Convention or Article I(2) of the Appendix to the Berne Convention within a period running from the fifteenth to the third month prior to expiry of the current ten-year period. This means that any renewal must be made for the first ten-year period between April 10, 1983, and April 10, 1984, in the case of the countries party to the revised Universal Copyright Convention and between July 10, 1983, and July 10, 1984, for the countries party to the Berne Convention.

(d) Individual beneficiaries of licenses

(15) Any national of a State satisfying the earlier mentioned conditions may request a translation or reproduction license. The most frequent case will be a request submitted either by a publisher wishing to bring onto the market copies of a work in its original language or in the form of a translation or by a broadcasting organization whose headquarters are located in a Contracting State satisfying the definition of a developing country, on condition that it respects the criteria laid down for obtaining a translation license for texts incorporated in audiovisual fixations prepared and published for the sole purpose of being used in connection with systematic instructional activities.

(16) It should be noted that licenses can only be granted to "nationals" and therefore a foreigner, even if residing in the State concerned, cannot enjoy that advantage unless the domestic legislation of the State assimilates persons domiciled on its territory to its own nationals. It was agreed during the 1971 revision of the Berne Convention that the term 'national,' in this context, also covered legal entities including the State itself, its national or local authorities, and enterprises owned by the State or such authorities. The 1971 Revision Conference of the Universal Copyright Convention agreed that there was no need to define the term explicitly in the text of the Convention; it was recalled that under Article II the report of the 1952 Conference reads as follows: "... it was a matter for each Contracting State to interpret the word 'nationals' according to its own rule of law."

2. Determination and responsibility of the authority competent to issue licenses

(17) The Conventions stipulate that either the State (Universal Copyright Convention: translation license) or the competent authority (Universal Copyright Convention: reproduction license; Berne Convention: translation

license and reproduction license) grant licenses.

It is for the State in which the request for the license is made to designate the body competent to issue such license. The competent authority should be at an appropriately high national level to assure both technical expertise in the subject matter and uniformity in the application of the law. Such authority could be equally a governmental authority (Ministry of Education, Culture, Information, as the case may be), judicial authority (civil or commercial court), administrative authority (at national level) or a nationally constituted authors' organization depending on the requirements of the constitutional or legal system in force in the country concerned. It is desirable that when granting or refusing the license the competent authority inform the interested parties about the possibilities of appealing its decision.

(18) The competent authority concerned should, *inter alia*, be able to ensure that any such license granted to translate and/or reproduce works protected by copyright shall carry a just compensation for the copyright owner and that steps are taken to ensure payment; should national currency regulations intervene, the competent authority shall make efforts to ensure transmittal in internationally convertible currency or its equivalent. It should be ensured that the translation or reproduction, as the case may be, is accurate, and the responsibility for this could devolve on the competent authority.

3. Conditions under which licenses are granted

A. Translation licenses

(a) Uses for which licenses may be granted

(19) The translation license provided for in Article V^{ter} of the revised Universal Convention and in Article II of the Appendix to the Berne Convention shall under these provisions be granted only for the purpose of teaching, scholarship or research.

(20) Teaching and Scholarship are to be understood, according to the interpretation of the 1971 Revision Conferences, as referring to the teaching given at all levels in teaching establishments, primary and secondary schools, colleges and universities and equally in a wide range of educational activities organized on behalf of persons of all ages and in respect of all disciplines.

(21) Research also benefits from such licenses. In that case, it concerns specialized works which are a priori different from those used for teaching proper. The 1971 Revision Conferences wished to restrict translation licenses in such cases by excluding from their scope industrial research institutes and private undertakings if they conduct research for commercial purposes.

(22) It should be noted that, in practice, translation licenses are problematic since one and the same collection of chosen pieces may, for example, serve both teaching and recreational purposes. However, since translations, under such licenses, are not meant for the public at large, it is necessary for the national legislations to take appropriate measures that would ensure that the

copies produced under such a license are put to the approved use.

(b) Works to which licensing is applicable

(i) The principle

(23) As long as the objective pursued is of a pedagogical nature or for the purposes of research, any type of work may be covered by a translation license.

(24) In the case of the revised Universal Convention, however, Articles V, V^{ter} and VI, read in conjunction, mean that only writings can be covered by a license, whereby this term has to be interpreted with reference to the relevant articles of the Convention. The most generally accepted interpretation is that the term "writings" includes literary works but does not comprise "musical, dramatic and cinematographic works, and paintings, engravings and sculptures." Save where a text is incorporated in art books and audiovisual fixations covered by paragraphs 7 and 8(b) of Article V^{ter}, this Article applies only to non-dramatic texts. The applicability of this Article to dramatic works is questioned as it has been pointed out that such works are often fixed in written form and are consequently protected both as reproductions of written works and as works performed on the stage. In any case, the Conference expressly stipulated that the terms, librettos or texts of musical compositions were not covered by the translations referred to in Article V^{ter}.

(25) Article II(1) of the Appendix to the Berne Convention limits the scope of translation licenses to works published in printed or analogous forms of reproduction. The important point is the purpose of the translation namely, teaching, scholarship or research.

(ii) Special cases

1. Works composed principally of illustrations

(26) In the case of works composed principally of illustrations, a license for the translation of the words and for the reproduction of illustrations can only be granted if the requirements for a reproduction license are also met. In such cases the right of translation and the right of reproduction are equally concerned.

2. Works withdrawn from circulation

(27) Where the author has withdrawn all copies of a work from circulation, no license may be granted. A new edition does not in itself mean a withdrawal of a previous one.

3. Translation licenses for broadcasting

(28) Since sound and television broadcasting play a most important part in education in the developing countries, the 1971 Revision Conferences felt that a system of translation licenses should also be set up in respect of works published in printed or analogous form of reproduction for use in broadcasts intended exclusively for teaching or dissemination of the results of specialized technical or scientific research to experts in a particular profession.

(29) However, such a license may be granted to broadcasting organizations having their headquarters in a Contracting State satisfying the definition of developing country under the following conditions:

- (a) the translation must be made from a copy made and acquired in accordance with the laws of the State that has granted the license, meaning that the copy in question must be a lawful copy under the legislation of that country;
- (b) the sole purpose of the translation must be its use in broadcasts intended exclusively for "teaching" or for "the dissemination of the results of specialized technical or scientific research to experts in a particular profession";
- (c) the translation must be used exclusively for the purposes set out above, through broadcasts lawfully made which are intended for recipients on the territory of the Contracting State that has granted the license. Broadcasts may be "live" or made through "the medium of sound or visual recordings" lawfully and exclusively made for the purposes quoted;
- (d) sound and visual recordings used for broadcasts may only be exchanged between broadcasting organizations having their headquarters in the Contracting State that has granted the license. On no account may such recordings cross the boundaries of the country or be the subject of sale, hire or arrangements for the grant of a license within the country;
- (e) all uses made of the translation must be without "any commercial purpose," meaning that the broadcasting organization may not be a private firm operating for gain and that no commercial advertising may appear within the broadcast in which the translation is used. It was not, however, intended to preclude the organization from broadcasting commercial advertising at other times, or to exclude the common situation in which the owners of receiving sets are charged a license fee.

(30) Under the same conditions, license may also be granted to the national broadcasting organization of a country to translate any text incorporated in audiovisual fixations made and published solely for systematic instructional activities. This refers exclusively to published teaching materials such as, for example, films and video-cassettes, stills and slides in conjunction with a text which may be part of a sound track or a background recording.

(c) *Periods of time after which a license may be granted*

(i) The principle

(31) Any national of a Contracting State of the revised Universal Convention or the Paris Act of the Berne Convention regarded as a developing country in conformity with the established practice of the General Assembly of the United Nations, which has availed itself of the relevant faculty, may obtain a translation license upon expiry of three years or of any longer period laid

down by his national legislation as from first publication of the work where no translation has been published ["in a language in general use in the Contracting State" (according to the Universal Convention)] ["in a language in general use in that country" (according to the Berne Convention)] by the owner of the right of translation or with his authorization.

(32) In the case of the Universal Convention, it should be mentioned that this possibility is additional to the common system of law provided for by Article V under which a translation license may be granted on expiry of a seven-year period. Furthermore, paragraph 9 of Article V^{ter} deals with the case of a license granted under this Article seven years after the first publication of the work although any national of a developed or developing Contracting State may obtain a compulsory license under Article V on conditions more liberal than those set out in Article V^{ter}. A licensee in a developing country has then two possibilities. He may simply maintain in force the license obtained under Article V^{ter} or, if he wishes, he may obtain a new license under Article V in accordance with the procedures laid down by the latter Article.

(33) A license may be granted if all editions of a translation published in the language concerned by the owner of the right of translation or with his authorization, before the expiry of the periods referred to in paragraphs 31 and 35, are out of print. It is for the national legislation to determine as to when copies of an edition are to be considered as being out of print. An edition published under a compulsory license becoming out of print does not affect the validity of the license.

(34) It should also be remembered that under Article V(1)(c) of the Appendix to the Berne Convention, a State regarded as a developing country which has chosen the ten-year arrangements referred to in paragraph 10 above, at the time of ratifying or acceding to the 1971 Paris Act, may not subsequently avail itself of the faculty provided for in Article II of the Appendix even if it forgoes that choice.

(ii) Exceptions

1. *Languages not in general use*

(35) Where the translation is into a language not in general use in one or more developed countries, the license may be obtained on expiry of a one-year period counted from the first publication of the work.

(36) The meaning of the term "general use" has given rise to controversy. Various delegations at the 1971 revisions proposed that "any language officially recognized as one of the national languages of a country" be considered in general use. It was agreed, however, that only the English, Spanish and French languages would be considered in this context to be "in general use in one or more developed countries" and that such countries would be defined by a *contrario* reference to Article V^{bis} of the revised Universal Convention and Article I of the Appendix to the Berne Convention.

2. *The case of the same language being in general use in both a developing country and a developed country*

(37) Pursuant to Article V^{ter}.1(b) of the revised Universal Convention and Article II(3)(b) of the Appendix to the Berne Convention, a developing country may, with the unanimous agreement of the developed countries which are party to the Universal Copyright Convention and/or the Berne Convention and in which the same language is in general use, substitute for a period of three years referred to in paragraph 31 above a shorter period of not less than one year. This faculty may not be exercised, however, where the language concerned is English, Spanish or French.

B. *Reproduction licenses*

(a) *Uses for which a license may be granted*

(38) The reproduction license provided for by Article V^{quater} of the revised Universal Convention and Article III of the Appendix to the Berne Convention is limited to use in connection with systematic instructional activities. (It is noteworthy that, contrary to translation licenses, no mention is made of use for the purpose of research in the case of reproduction licenses.)

(39) The term "systematic instructional activities" is to be understood in accordance with the interpretation given by the 1971 Revision Conferences as covering not only activities linked to curricular and extra-curricular activities of a teaching establishment but also all organized forms of extra-curricular education. It was generally accepted during the debates in 1971 that it was for the competent authority of the developing country concerned to ascertain whether the requested license corresponded or not to the needs of such education.

(b) *Works to which reproduction licenses are applicable*

(i) *The principle*

(40) A license under Article V^{quater} of the revised Universal Convention or Article III of the Appendix to the Berne Convention relates to works published in printed or analogous forms of reproduction.

(ii) *Works that have been translated*

(41) Where a translated work has been published, a reproduction license may not be granted under Article V^{quater}.1(h) of the revised Universal Copyright Convention or Article III(5) of the Appendix to the Paris Act of the Berne Convention,

- (i) if the translation was published without the authorization of the owner of the right of translation or
- (ii) if the translation is not in a language in general use in the country whose competent authority receives the request for a license.

(42) It was recalled that the 1971 Revision Conferences felt that under the first of these conditions, a State would be precluded from granting a license to

reproduce a translation that itself had been made and published under the special licensing provisions provided for in the Copyright Conventions. A license to reproduce and publish a translation of a work may be granted only if it does not prejudice the right of the author in the original work. Nevertheless the opinion was advanced that the purpose of these provisions was mainly to prevent reproduction of illegal translations. However, there is no unanimity amongst the experts on this point.

(43) Apart from these two cases, licenses may be granted subject to compliance with various conditions applicable to the reproduction license.

(iii) *Audiovisual works*

(44) Licenses granted under Article V^{quater} of the revised Universal Convention or Article III of the Appendix to the Berne Convention relate, in principle, to literary, scientific and artistic works published in printed or analogous forms of reproduction.

(45) However, in view of the importance assumed by the use of educational films and videograms for instructional purposes, Article V^{quater}.3(b) of the revised Universal Convention and Article III(7)(b) of the Appendix to the Berne Convention extend their coverage to include the audiovisual field.

(46) Reproduction licenses thus also apply to the reproduction in audiovisual form of lawfully made audiovisual fixations which constitute or incorporate protected works. They also apply to the translation of any accompanying text into a language in general use in the State that grants the license. However, these audiovisual fixations must have been prepared and published for the sole purpose of being used in connection with systematic instructional activities.

(c) *Periods of time after which a reproduction license may be granted*

(i) *The principle*

(47) The principle is laid down in Article V^{quater}.1 of the revised Universal Convention and Article III of the Appendix to the Berne Convention.

The period upon expiry of which a compulsory reproduction license may be obtained is five years as a general rule, except where a longer period is determined by national legislation. This period is counted from the date of first publication of the edition of the original work.

This license may be granted only in the following cases:

- (i) when copies of a particular edition of a work have not been put on sale in the country concerned by the owner of the reproduction right (or with his authorization) at a price reasonably related to that normally charged in the country for comparable works;
- (ii) when authorized copies of a particular edition have no longer been on sale in the country concerned for a period of six months from the date of expiry of the above-mentioned term.

(ii) Exceptions

1. *Scientific and technical works*

(48) In the case of works dealing with natural and physical sciences, including mathematics, and with technology, the waiting period of five years is reduced to three in view of the current speed of progress in science and technology and the resultant rapid obsolescence of such works.

2. *Works of the imagination and art books*

(49) It is generally considered that where the work belongs to the field of the imagination, such as novels, poetic, dramatic and musical works, or constitutes an art book, such categories of works do not as a rule become obsolete as quickly as scientific and technical works and hence the minimum waiting period could be longer. That period was therefore extended to seven years.

(50) In view of the distinction made between the three categories of works referred to in paragraphs 47, 48 and 49 above being based on the nature of the work, the experts' attention at the preparatory meetings for the revision of the Universal Copyright Convention and the Berne Convention was drawn to the fact that there existed marginal cases where it was difficult to classify a work in one or the other category.

(51) In any event, as already mentioned in paragraph 39 above, it is for the competent authority of the developing country concerned to ascertain whether the requested license corresponds to the needs of systematic instructional activities and to refuse to grant a license if the application does not meet this requirement.

III. Procedures for Granting of Translation and Reproduction Licenses(a) *Prior formalities*

(52) When the conditions laid down in Articles V^{ter} and V^{quater} of the revised Universal Convention and in Articles II and III of the Appendix to the Berne Convention, respectively, for obtaining a translation or reproduction license have been met, the applicant must fulfill certain prior formalities consisting of an attempt to contact the owner of the right and to obtain his authorization.

(i) Attempts to reach the owner of the translation or reproduction right

(53) In order to obtain a license, the applicant must prove that he has made all efforts to reach the owner of the right and to obtain his authorization, either to make and publish the translation of the work or to reproduce it and publish the edition. At the same time, he must inform any national or international copyright information center of his request under the terms of Article IV(2) of the Appendix to the Berne Convention. Articles V^{ter}.1(c) and V^{quater}.1(a) of the revised Universal Convention require him to inform either the International Copyright Information Center set up by Unesco or any national or regional center. A license is only obtainable if the search has remained in vain or where the owner of

the right has refused his consent. It is for the competent authority to fix a reasonable term which no reply from the owner of the right is tantamount to a refusal.

(54) Although the 1971 texts do not explicitly say so, it was understood at the revisions that the request for authorization addressed to the owner of the right should state that, in the case of authorization being refused, refusal could constitute a basis, depending on the case, for an application for a compulsory translation or reproduction license. It was also understood that before granting such license, the competent authorities would generally take measures to inform the owner of the right of the request and to enable him to act in consequence.

(ii) Official notification of failure to reach the owner of the translation or reproduction right

(55) If the owner of the right cannot be found, the applicant for a license is required to send, by registered airmail, copies of his application for a license (i) to the publisher whose name appears on the work and (ii) to any national or regional information center identified as such by the States in which the publisher is believed to have his principal place of business or, in the absence of such national or regional center, to Unesco's International Copyright Information Center (Article V^{ter}.1(d) and V^{quater}.1(d) of the revised Universal Convention); to any national or international information center which may have been designated by the government of the country in which the publisher is believed to have his principal place of business (Article VI(2) of the Appendix to the Berne Convention).

(b) *Periods of time required for granting translation and reproduction licenses*

(i) Translation licenses

(56) According to Article V^{ter}.2(a) and II.4(a) of the revised Universal Convention and of the Appendix to the Berne Convention, respectively, a compulsory translation license cannot be granted before expiry of an additional period of six months in cases where it may be obtained on expiry of the three-year period and of nine months in cases where it may be obtained on expiry of a one-year period.

(57) This additional period, which begins with the filing of the request for authorization to translate or, where the identity or address of the owner of the translation right is not known, with the dispatch to the publisher and to the information centers of copies of the request for the grant of a compulsory translation license, was introduced to enable the author or the assignee of the translation right, to himself publish a translation of the work.

(58) It should also be noted that these six or nine-month periods cannot be concurrent with the three or one-year periods referred to in paragraphs 31, 32, 34 to 37 above, since no request for a translation license may be validly submitted until those periods have expired and because the purpose of the word "further" used in both Conventions is to show clearly that these six-month or nine-month periods are necessarily subsequent to the three and one-year periods. It is desirable that the com-

petent authority take all appropriate measures in order that the license be effectively granted at the expiry of these various periods.

(59) As regards the case where translation licenses can be granted on the ground that all the editions of the translation published in the language concerned are out of print, three interpretations appear to be possible:

- (i) the going out of print of an edition renders the application for a translation license admissible under the condition that the three-year or one-year periods as the case may be were respected and similarly as a consequence, the period of six and nine months, respectively;
- (ii) going out of print of an edition renders the application in each case immediately admissible and the further periods of six or nine months cannot be considered since they are only conceivable with the application of the periods of three years and one year, respectively;
- (iii) going out of print of an edition rules out every condition of admissibility of the application (that is to say that the periods of three years or one year as the case may be should not be taken into consideration) but this has no influence whatsoever on the rules of procedure concerning the granting of the licenses and the periods of six months and nine months should be respected if the waiting periods would have normally been three years and one year, respectively.

As far as the faculty granted to States is concerned according to which they may conclude an agreement stipulating among themselves a period between three years and one year, it seems that such an agreement could likewise govern the duration of the applicable further period.

(ii) Reproduction licenses

(60) As in the case of translation licenses, the 1971 revised texts provide not only for five, three and seven-year periods, referred to in paragraphs 47, 48 and 49 above, but also for an additional period for the purpose of giving amicable negotiations a chance to lead to a reasonable contractual solution.

(61) Where the basic period is five or seven years and where it has not been possible to reach the owner of the reproduction right, a license may be granted, in compliance with Article V^{quater}.1(d) of the revised Universal Convention or Article III(4)(b) of the Appendix to the Berne Convention, only on expiry of three months counted from the date on which the applicant sent copies of his request to the publisher of the work and to any information centers designated under the procedure set out in paragraph 55 above.

(62) Where the basic period is three years, a license may be granted under Article V^{quater}.1(e) of the revised Universal Convention or Article III(4)(a) of the Appendix to the Berne Convention only on expiry of six months from the date which varies depending on whether it has been possible to reach the owner of the reproduction right or not; (i) in the first case, the license may not be granted until six months have elapsed after

the date on which the request for authorization was sent to the owner of the reproduction right and no reply has been received or where negotiations have not led to a contractual solution; (ii) in cases where the identity or address of the owner of the reproduction right is not known, a license may only be granted after six months have elapsed from the date of sending, under the procedure referred to in paragraph 55 above, the copies of the request for the granting of a license.

(63) In respect of reproduction licenses, it should be noted that, contrary to what has been said in paragraph 58 above in relation to translation licenses, Article V^{quater} of the revised Universal Convention and Article III of the Appendix to the Berne Convention do not use the word "further" to qualify this new period of time which may therefore start running before the basic periods have expired.

(c) Applications for licenses

(64) As far as the form and content of the actual applications for licenses are concerned, that is to say the document submitted to the competent authorities, no details are given by the 1971 revised texts.

(65) This part of the advisory notes, therefore, aims only at giving merely an indication of the particulars which may be needed by the competent authorities and which may be grouped together, as an example, in the following way:

- (i) particulars of the original work:
 - name of the author or authors
 - title of the work
 - name of the publisher or producer
 - date of the first publication
 - edition to be used . . . ; volume
 - international standard book number (ISBN)
 - selling price in the developing country
 - concerned passages to be used: the whole work
or extracts
. . . page
references
- (ii) particulars of the use:
 - name of the publisher or producer requesting authorization to use
 - address
 - type of exploitation envisaged:
 - translation . . . ; language, name, address and affiliation of the translator
 - reproduction:
 - paper reproduction
 - recording
 - adaptation:
 - type of adaptation: dramatic
cinematographic
television
 - envisaged date of publication or production
 - envisaged selling price
 - type of edition: bound, paper-back, club
edition, pocket edition . . .
 - numbers to be printed
 - territorial scope of the requested authorization

IV. Arrangements for Translation and Reproduction Licenses

(a) *Non-exclusiveness of licenses*

(66) Under Articles V^{ter}.9 and V^{quater}.1(a) of the revised Universal Convention and Articles II(1) and III(1) of the Appendix to the Berne Convention the grant by a State of a compulsory license to one of its nationals cannot be exclusive. Thus, any national eligible under the law of his country to engage in the activities which are the subject matter of the license, and who meets the conditions laid down by the said Conventions may request a license to translate or reproduce a work for which a license has already been granted, subject to the relevant economic regulations prevailing in the country concerned.

The non-exclusiveness referred to above does not mean that any person may avail himself of that license to translate or reproduce the work covered by the license without first having requested and obtained an individual license from the competent authorities.

(b) *Non-transferability of licenses*

(67) In conformity with Articles V.2(a), V^{ter}.9 and V^{quater}.1(f) of the revised Universal Convention and Articles II(1) and III(1) of the Appendix to the Berne Convention, the beneficiary of a license is not permitted to transfer it to third parties.

(c) *Prohibition to export*

(i) The principle

(68) Whether in respect of a translation license or of a reproduction license, Articles V^{ter}.4(a) and (b), V^{quater}.1(f) and 2(a) of the revised Universal Convention and Article IV(4)(a) and (5) of the Appendix to the Berne Convention stipulate that such licenses are valid only for publication within the territory of the Contracting State in which the license has been applied for and that any export of copies of the translated or reproduced work is strictly forbidden. In addition, each copy produced must bear a notice in the appropriate language stating that copies are available for distribution only in the State which has granted the license.

(ii) Provisions on printing

(a) *Translation and reproduction licenses*

(69) As stated in the reports of the 1971 Revision Conferences, the printing could take place outside the national territory in cases where the following circumstances held:

(a) the Contracting State granting the license did not possess within its territory the means to print or reproduce or, where such means did exist, they were not able for economic or practical reasons to deal with the reproduction of the copies;

(b) the country in which the reproduction work was carried out was also a member of the Berne Union or was party to the Universal Copyright Convention;

(c) all reproduced copies were sent to the owner of the license in one or more batches to be distributed exclusively in the country of that owner; in addition, the contract between the licensee and the establishment carrying out the reproduction work must lay down and provide moreover, that the establishment gave its guarantee that the reproduction work was authorized under the law of the country in which it was carried out;

(d) the owner of the license did not entrust reproduction work to an establishment specially set up to reproduce copies of works for which a license had been granted under Article V^{ter} or Article V^{quater} of the revised Universal Convention or Articles II and III of the Appendix to the Berne Convention.

(b) *Translation licenses*

(70) Under Article V^{ter}.4(c) of the revised Universal Convention and Article IV(4)(c) of the Appendix to the Berne Convention, the prohibition on exportation is removed in the case of a translation license where the government body or any other State public body which has granted a license, sends copies of the translation to another country, but only (i) if the translation is not in English, Spanish or French, (ii) if the recipients are nationals of the Contracting State that has granted the license, or organizations grouping such individuals, (iii) if the copies are to be used only for the purpose of teaching, scholarship or research and if their distribution is without any commercial purpose and, finally, distribution, or both, and if the Director-General of Unesco or the Director General of WIPO have been notified of such agreement.

(c) *Respect of moral rights*

(71) The licenses granted by the competent authorities, subject to the conditions laid down in the 1971 revised texts, replace the author's exclusive rights but do not, however, prejudice the inherent moral prerogatives deriving from the fact that the work constitutes the reflection of the author's personality. Thus, these texts themselves laid down that the domestic legislation of the country granting a license shall adopt the necessary measures to ensure that the author's moral prerogatives are respected.

(i) Translation licenses

(72) Both the revised Universal Convention (Article V^{ter}.9, in conjunction with Article V.2(d), and the Appendix to the Berne Convention (Article IV(6)) affirm the necessity of a correct translation of the work.

(73) In addition, all published copies must state the original title and the name of the author of the work. Moreover, in the case of a State party to the revised Universal Copyright Convention, where the translated work has been published with a notice that copyright is reserved, the same notice is to be reproduced on the work published under the license.

(ii) Reproduction licenses

(74) Article V^{quater}.1(g) of the revised Universal Convention and Article IV(6)(b) of the Appendix to the

Berne Convention require the national legislation of the State granting the license to make due provision to ensure an accurate reproduction of the particular edition.

(75) Moreover, all copies published must show the title and name of the author of the work. In addition, in the case of a State party to the revised Universal Copyright Convention, if the edition reproduced bears a notice that copyright is reserved, the same notice is to be repeated on the work reproduced under the license.

(iii) Works withdrawn from circulation

(76) When the author has withdrawn all copies of his work from circulation, no licenses may be granted under Articles V^{ter}.9 (read in conjunction with Article V.2(f)) and V^{quater}.2(d) of the revised Universal Convention and Articles II(8) and III(4)(d) of the Appendix to the Berne Convention.

(77) The aim of this provision is to respect a prerogative generally considered as forming part of the author's moral rights namely the "right to reconsider."

(d) *Remuneration of the owner of the translation or reproduction right*

(i) Fixing the amount of royalties

(78) Under Article V^{ter}.5(a) and V^{quater}.2(d)(i) of the revised Universal Convention and Article IV(6)(a)(i) of the Appendix to the Berne Convention, a license provides, in favor of the owner of the right of translation or of reproduction, for just compensation that is consistent with "standards of royalties normally operating on licenses freely negotiated." Thus, the 1971 revised texts do no more than lay down general principles and leave it to the developing country concerned to take such measures (legislative, administrative, regulatory or other) as it seems necessary for the purpose to ensure that the compensation paid to the owner of the translation or reproduction right corresponds to the royalties paid under negotiated contracts.

(79) The pertinent measures taken at the national level may define the method of calculating royalties, which may comprise, for example:

- (i) a percentage of the manufacturing price of the copies published under license;
- (ii) a percentage of the gross selling price or of the net selling price of the copies published under license; or again
- (iii) a lump sum paid once only or by instalments.

The amount of the royalties may also be covered by general agreements negotiated between authors' societies or publishers in third countries. Finally, general scales may also be issued.

(ii) Fixing of a currency and determination of the rate of exchange

(80) These matters should be governed by the relevant legislation of each country concerned.

(iii) Transfer of funds

(81) Under Articles V^{ter}.5(b) and V^{quater}.2(b)(ii) of the revised Universal Convention and Article IV(6)(a)(ii) of the Appendix to the Berne Convention, provisions should be made at the national level to ensure transfer of the compensation due to the owner of the right. Where, due to exchange regulations, the licensee is not able to transfer the compensation to the owner of the translation or reproduction right, the competent authorities are required to spare no effort, by the use of international machinery, to ensure transmittal of the compensation in internationally convertible currency or its equivalent.

V. Entry into Force and Expiry of Licenses

(a) *Entry into force*

(82) The competent authorities are required, when granting the license, to state the date of its entry into force. That date may correspond, e.g. to the date of the granting of the license or may be set at a later date (for example, on expiry of a given period of time following issue of the license).

(b) *Expiry*

(83) Under the 1971 revised texts, the owner of the translation or reproduction right may, if he meets certain conditions, terminate a license already granted.

1. *Translation licenses*

(84) Under Article V^{ter}.6 of the revised Universal Convention and Article II(6) of the Appendix to the Berne Convention, any license granted by a Contracting State shall terminate if a translation of the work in the same language and having substantially the same content as the edition for which a license was granted is published in that State by the owner of the translation right or with his authorization at a price reasonably related to that normally charged in that same State for comparable works. Copies already made before the license expires may nevertheless continue to be distributed until they are exhausted.

2. *Reproduction licenses*

(85) Under Article V^{quater}.2(c) of the revised Universal Convention and Article III(6) of the Appendix to the Berne Convention, any reproduction license will terminate if the owner of the right of reproduction, or a third party with his authorization, puts on sale in the developing country concerned, to meet the requirements of the general public or of systematic instructional activities, at a price comparable with that normally charged in the country for similar works, copies of an edition of a work if that edition is in the same language and its content is substantially the same as that of the edition published under license. The distribution of any copies already made prior to expiry of the license may nevertheless continue until they are exhausted.

VI. Practical Aspects

(86) These advisory notes concern the systems of licenses established by the multilateral copyright Conventions as revised in 1971.

Practical questions concerning the access of developing countries to works protected by copyright were dealt with between the Revision Conferences and December 31, 1980, by the International Copyright Information Center set up at Unesco.

With a view to mobilizing all the resources available, a Joint International Unesco-WIPO Service for

Facilitating the Access by Developing Countries to Works Protected by Copyright has been established to start on January 1, 1981. Within this Service the efforts made by the two Organizations will be harmonized, and activities in this field will be continued and intensified.

It is desirable that the governments of developing countries availing themselves of the system of licenses notify the said Service of all necessary information to enable the identification of the competent authority entitled to issue licenses and the establishment of efficient working relations between the interested parties.

ANNEX II

List of Participants

I. Members of the Working Group

- M. Salah Abada
Directeur général, Office national du droit d'auteur, Alger
- Mr. Ezzeldine Ismaïl Abdelghany
Chairman, General Egyptian Book Organization, Cairo
- Mr. Esteban B. Bautista
Head, Division of Research and Law Reform, University of the Philippines Law Center, Manila
- Mr. Derrick F. Carter
Superintending Examiner, Department of Trade, Industrial Property and Copyright Department, London
- M. Mihály Ficsor
Director General, Hungarian Bureau for the Protection of Authors' Rights (ARTISJUS), Budapest
- Mr. Lewis I. Flacks
International Copyright Officer, Copyright Office, US Library of Congress, Washington, D.C.
- M. André Kerever
Conseiller d'Etat, Paris
- M. Ndéné Ndiaye
Directeur général, Bureau sénégalais du droit d'auteur, Dakar
- Mr. Kwadwo Odoi Anim
Copyright Administrator, Ministry of Information, Accra
- Ms. Kala Thairani
Deputy Educational Adviser, Ministry of Education and Culture, New Delhi

Mr. Nikolai Voschinine
Vice-Chairman of the Board, Copyright Agency of the USSR (VAAP), Moscow

Mr. Anderson R. Zikonda
Registrar, Patents, Trade Marks and Designs Office, Lusaka

II. Observers

(a) Regional Center for Book Promotion

Regional Centre for Book Promotion in Africa South of the Sahara (CREPLA): H. Tondut.

(b) International Non-Governmental Organizations

International Association for the Advancement of Teaching and Research in Intellectual Property (ATRIP): A. Françon. **International Bureau of Societies Administering Recording and Mechanical Reproduction Rights (BIEM):** M. Pickering. **International Confederation of Societies of Authors and Composers (CISAC):** M. Pickering. **International Copyright Society (INTERGU):** G. Halla. **International Literary and Artistic Association (ALAI):** A. Françon. **International Publishers Association (IPA):** J.-A. Koutchoumow.

III. Secretariat

World Intellectual Property Organization (WIPO)

C. Masouyé (*Director, Public Information and Copyright Department*).

United Nations Educational, Scientific and Cultural Organization (UNESCO)

M.-C. Dock (*Director, Copyright Division*); A. Amri (*Copyright Division*).

Conventions Administered by WIPO

Multilateral Convention for the Avoidance of Double Taxation of Copyright Royalties

INDIA

Accession to the Convention

The Secretary-General of the United Nations notified the Director General of the World Intellectual Property Organization that the Government of India deposited, on January 31, 1983, its instrument of accession to the Multilateral Convention for the Avoidance of Double Taxation of Copyright Royalties, adopted at Madrid on December 13, 1979.

The said instrument is accompanied by a reservation to the effect that the Government of India does not consider itself bound by Articles 1 to 4 and 17 of the Convention.

A separate notification will be made on the entry into force of the Convention when the required number of ratifications or accessions is reached.

National Legislation

CHINA

Provisional Regulations on Remunerations for Book-Writing

(formulated by the National Publishing Administration in April 1980)

Article 1. With a view to implement the socialist principle of "to each according to his or her work," to safeguard the legitimate interests of authors and translators, to encourage more writings and translations, and to raise the level of their works, the Regulations are formulated as follows.

Article 2. Upon publication of their writings or translations, authors or translators will be paid according to the quality and required skill of the works. For the first printing authors or translators will receive the basic remunerations on the basis of the number of words of the works as well as print remunerations on the basis of the printing run. On the second and further editions only the print remunerations but no basic remunerations will be paid.

Article 3. (1) The basic remunerations for writings will be 3-10 yuan per thousand words according to the quality of the manuscripts. Works of higher scientific or artistic value but with smaller printings may be paid at higher rates; however, 13 yuan per thousand words is the maximum. If a scientific work is of exceptional academic value and should be paid at a higher rate than the set limit of the Regulations, it must be approved by the next higher competent authorities, and the maximum rate in this case is 20 yuan per thousand words.

(2) The basic remunerations of translations from a foreign language into Chinese depend on the quality and required skill of the works. It will be paid 2-7 yuan per thousand words. If the translation is unusually difficult and well done, it may be paid at a higher rate, but 9 yuan is the maximum.

(3) In the case of translations from Chinese into national minority languages or foreign languages, no remunerations will be paid to the original authors. In the case of translations from national minority languages into Chinese, the original authors will be paid

60 % of the basic remuneration rates provided in this Article (1); the translators will be paid in accordance with the provisions of this Article (2). In the case of translations from Chinese into foreign languages, the translators will be paid in accordance with the rates provided in this Article (1).

(4) Book adaptation or condensation will be paid 20-50 % of the basic remuneration rates for writings.

(5) A work in modern Chinese translated from classical Chinese will be paid according to the basic remuneration rates for translations.

Article 4. The print remunerations are paid in a percentage of the total basic remunerations as follows:

<i>Accumulated Sales</i>	<i>Writings (per 10,000 copies)</i>	<i>Translations (per 10,000 copies)</i>
1-50,000 copies	3 %	2 %
50,001-100,000 copies	2 %	1 %
100,001-200,000 copies	1 %	0.5 %
200,001-500,000 copies	0.5 %	0.3 %
500,001-1,000,000 copies	0.4 %	0.2 %
Over 1,000,001 copies	0.2 %	0.1 %

Article 5. During the two years after their first publication, educational books and provisional teaching materials as well as works having a massive circulation on account of some objective circumstances will be paid according to the above table, if the printing is less than two hundred thousand copies; they will be paid 20-50 % of the rates listed in the above table according to circumstances if the printing is above two hundred thousand copies.

Article 6. The basic and print remunerations will be paid to an individual collection of writings and translations which were already published in newspapers or magazines. In the case of a collection of newspaper and magazine articles by more than one author or translator, compiled by a publishing house, such articles will be paid a lump sum which may not exceed the maximum rates set by Article 3,

Note: English translation received from the Publishing Administration, Ministry of Culture.

and will be paid no print remunerations. The publishing house will have no exclusive copyright to such articles.

The basic remunerations will be paid in full or in part for reprints or revised editions of writings or translations published before liberation. The writings or translations published after liberation will be paid print remunerations when reissued by another publishing house, but will be paid no basic remunerations. In general, no basic remunerations will be paid for revised editions. However, if the author or translator made substantial revisions and thus improved considerably the quality of the work, it will be paid the basic remunerations in full or in part according to circumstances. In both cases, print remunerations will be paid according to accumulated printings.

Article 7. The basic remunerations will be paid by units of one thousand words. If a unit is less than a thousand words, it will be paid as a full unit. Twenty lines of poetry are counted as one thousand words (the lines of dramatic balladry rhymes are counted in the same way as poetry). Remunerations of classical poetry may be paid at a slightly higher rate. Remunerations for songs, dramas, dramatic balladries or paintings will be set by appropriate organizations with these standard rates as references.

Remunerations will be paid according to the actual number of words of the text, i. e. by the actual lines of each page times the words of each line. Every last line that is short of a few words or every heading is counted as one line.

When punctuating does not occupy spaces in the line, an allowance of 10% of the actual number of words will be made in determining the length of the text.

There will be no remunerations for introductory remarks, notes, annotations, tables of contents, indices and other addendum made by the editorial departments of publishing houses, center and top margins, and page numbers set by the printer, charts and tables of translated works, and documents and materials in appendix. But if the reproduction of the charts and tables involves some translation work, this part of work will be paid.

Article 8. The print remunerations are counted by units of ten thousand copies. If a unit is short of ten thousand copies, it will be counted as ten thousand. Print remunerations will be counted by adding the printings of all past editions to the new ones. In the case of one book being published in several formats and designs, or in new formats and designs, or in another title, their printings should be added together.

In the case of a title printed in different localities or republished by local publishers through renting of matrices, all these printings should be added together in paying print remunerations which will be paid by publishers supplying the matrices.

Article 9. Collected works, anthologies, source books, and reference books produced by collective effort, compilation of indices and foreign-Chinese bilingual tables of terms, punctuating and textual criticism of Chinese classics, design of covers and charts, checking translations against the original texts, and reviewing of manuscripts — if done by someone specially employed for these purposes — will be paid at each publisher's own discretion. But they will be paid a lump sum regardless of printings.

Article 10. In the case of a publisher publishing a periodical prepared by another organization and at the request of that organization, a separate cost accounting should be kept for the periodical, and appropriate editorial fee may be paid to the organization when the project is profitable.

Article 11. Publishers may conclude a publishing contract with an author or a translator who will be paid in full basic remunerations according to the actual number of words and the print remunerations for the first edition after the publication of the book. Print remunerations will be paid after the publication of each new edition.

Article 12. Writings or translations by compatriots in Taiwan, Hongkong and Macao, and foreign citizens of Chinese origin will be paid at the standard rates provided in the Regulations and will be paid in RMB.

Article 13. Each publisher may formulate on the basis of the Regulations its own rules on remunerations appropriate to its particular conditions and report them to the higher publishing administrative organ for the record. The remuneration rates may not be higher than those provided in the Regulations.

Article 14. The Regulations will come into effect on July 1, 1980. The application of the Regulations will be based on the date of the manuscript going to press. After coming into effect of the Regulations all reprints and the second and further editions will be paid print remunerations provided in the Regulations. Printings will be counted anew, disregarding all previous printings. Unpaid previous print remunerations will not be paid.

PERU

Law No. 23 535 *

(amending Title IV of the Penal Code)

TITLE IV

Swindles and Other Fraudulent Acts

Article 244. Whosoever by means of an assumed name, an adopted capacity, a false title, pretended influence, abuse of confidence or feigned property, credit, mandate, intention or transaction, or making use of any other artifice, trick or deceit, obtains for himself or for others unlawful advantage to the prejudice of a third party, shall be liable to imprisonment or custody of not more than six years and not less than one month.

Article 245. Notwithstanding the general provision contained in the preceding article, the following shall be deemed special cases of fraud and shall be liable to the penalties stated:

1. Whosoever defrauds another person as to the substance, quality or quantity of the articles supplied under a contract or compulsory title;
2. Whosoever defrauds by means of having signed with deceit any document;
3. Whosoever commits any fraudulent act by misusing a blank signature, extending by such means any document to the prejudice of the person that gave it or of a third person;

4. Whosoever furnishes, to the prejudice of others, a simulated contract or false receipts;
5. Any agent, ship's captain or other representative who commits a fraudulent act by changing in his accounts prices or conditions of contracts, adding expenses or exaggerating those he has incurred;
6. Whosoever commits a fraudulent act by substituting, concealing or mutilating any process, records, document or other important paper;
7. Whosoever sells or mortgages as free goods such as are subject to litigation or have been sequestered or mortgaged; whosoever sells, mortgages or leases, as his own, goods belonging to others; and whosoever copies or reproduces, directly or indirectly, by any manner of printing, recording or fixation, a literary, artistic or scientific work without the written authorization of the author or of the publisher or of the producer of phonograms or videograms or of cinematographic works, or of other successors in title, and whosoever in any way whatsoever distributes to the public unlawful copies, sells them, hires them, keeps them concealed or in deposit or introduces them into the country, notwithstanding their previous seizure, or that of the elements used for their reproduction;
8. Whosoever commits a fraudulent act with the pretense of remuneration for judges or other public employees.

* Published in *Diario Oficial El Peruano* of December 25, 1982. — WIPO translation.

General Studies

**The Canadian Copyright Problem
in the Face of the New Communication Techniques**

Claude BRUNET *

Correspondence

Letter from Brazil

The Reorganization of the National Copyright Council

José Carlos COSTA NETTO *

Calendar

WIPO Meetings

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

1983

- 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 Questions and Working Group on Planning**
- June 6 to 17 (Geneva) — Permanent Committee on Patent Information (PCPI) — Working Group on Search Information**
- June 13 to 17 (Geneva) — Committee of Experts on the Legal Protection of Computer Software**
- 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 20 (Geneva) — International Patent Classification (IPC) Union — Committee of Experts**
- September 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 (Geneva) — Paris Union — Celebration of the Centenary of the Paris Convention for the Protection of Industrial Property**
- September 26 to October 4 (Geneva) — Governing Bodies (WIPO General Assembly, 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 17 to 21 (Geneva) — Committee of Governmental Experts on Model Statutes for Institutions Administering Authors' Rights in Developing Countries (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 5 to 7 (Geneva) — 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, on Cable Television (convened jointly with ILO and Unesco)**
- December 8 and 9 (Geneva, ILO Headquarters) — Rome Convention — Intergovernmental Committee (convened jointly with ILO and Unesco)**
- December 12 to 16 (Geneva) — Berne Union — Executive Committee — Extraordinary Session (sitting together, for the discussion of certain items, with the Intergovernmental Committee of the Universal Copyright Convention)**

1984

- February 27 to March 24 (Geneva) — Revision of the Paris Convention — Diplomatic Conference**

UPOV Meetings

1983

- May 17 to 19 (Cambridge) — Technical Working Party on Automation and Computer Programs**
May 30 to June 2 (Saragossa) — Subgroup and Technical Working Party for Vegetables
June 7 to 10 (Tystofte, Skaelskør) — Subgroups and Technical Working Party for Agricultural Crops
September 20 to 23 (Rome) — Subgroup and Technical Working Party for Fruit Crops
September 27 to 29 (Conthey) — 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

Non-Governmental Organizations

1983

- Council of the Professional Photographers of Europe (EUROPHOT)**
 Congress — October 6 to 13 (Munich)
- Federación Latinoamericana de Artistas Intérpretes y Ejecutantes (FLAIE)**
 Congress — May 26 to 28 (Buenos Aires)
- International Confederation of Free Trade Unions (ICFTU)**
 Congress — June 23 to 30 (Oslo)
- International Confederation of Societies of Authors and Composers (CISAC)**
 Legal and Legislation Committee — May 2 to 5 (Washington)
- International Copyright Society (INTERGU)**
 Congress — October 31 to November 4 (Buenos Aires)
- International Federation of Library Associations and Institutions (IFLA)**
 Congress — August 21 to 28 (Munich)
- International Federation of Musicians (FIM)**
 Executive Committee — June 27 to 30 (Amsterdam)
 Congress — September 19 to 23 (Budapest)
- International Federation of Phonogram and Videogram Producers (IFPI)**
 Council — June 1 and 2 (Venice)

1984

- International Council on Archives (ICA)**
 Congress — September 17 to 21 (Bonn)
- International Publishers Association (IPA)**
 Congress — March 11 to 16 (Mexico)

