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# Copyright

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# World Intellectual Property Organization

## PANAMA

### Accession to the WIPO Convention

The Government of the Republic of Panama deposited, on June 17, 1983, its instrument of accession to the Convention Establishing the World Intellectual Property Organization (WIPO).

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

respect to the Republic of Panama, three months after the date of deposit of its instrument of accession, that is, on September 17, 1983.

WIPO Notification No. 122, of June 29, 1983.

## Regional Committee of Experts on Means of Implementation in Africa of Model Provisions on Intellectual Property Aspects of Protection of Expressions of Folklore

(Dakar, February 23 to 25, 1983)

### Report

prepared by the Secretariat and adopted by the Committee

#### I. Introduction

1. In pursuance of Resolution 5/01 adopted by the General Conference of Unesco at its twenty-first session (Belgrade, September-October 1980) and the decisions taken by the Governing Bodies of WIPO at their November 1981 sessions, the Directors General of Unesco and WIPO convened a Regional Committee of Experts on Means of Implementation in Africa of Model Provisions on Intellectual Property Aspects of Protection of Expressions of Folklore (hereinafter referred to as "the Committee"). The Committee met at the Regional Office for Education in Africa in Dakar from February 23 to 25, 1983. The meeting was organized in cooperation with the African Cultural Institute (ACI).

2. The purpose of the meeting was to consider the text of Model Provisions for National Laws on the Protection of Expressions of Folklore against illicit exploitation and other prejudicial actions, adopted by the Committee of Governmental Experts convened by the Directors General of Unesco and WIPO from June 28 to July 2, 1982, in Geneva, and to make suggestions on the possible means of implementation in Africa of the said text.

3. Experts from seven countries of the African region (Cameroon, Cape Verde, Ghana, Kenya, Senegal, Tanzania, Zaire) had been invited to participate, in a personal capacity, in the Committee. Three international non-governmental organizations, International Confederation of Societies of Authors

and Composers (CISAC), International Literary and Artistic Association (ALAI), Union of National Radio and Television Organizations of Africa (URTNA), attended the meeting as observers.

4. The list of participants appears as annex to this report.

## II. Opening of the Meeting

5. On behalf of the Directors General of WIPO and Unesco, Mr. C. Masouyé, Director, Public Information and Copyright Department, WIPO, and Mr. A. Amri, Copyright Division, Unesco, respectively, welcomed the participants at the meeting. Mr. E. Apronti, Deputy Director-General, African Cultural Institute, also welcomed the participants in the name of his organization.

## III. Election of Officers

6. On the proposal of Mr. Lungela, the expert from Zaire, Mr. Ndiaye, the expert from Senegal, and Mr. Athiambo, the expert from Kenya, were elected Chairman and Vice-Chairman of the Committee, respectively.

## IV. General Discussion

7. The Secretariat of the meeting introduced document UNESCO/WIPO/FOLK/AFR/2 containing the text of the model provisions, accompanied by a commentary. It recalled the background of the work which led to the adoption of this text. It also gave explanations about the contents and the scope of the said document.

8. The experts expressed their appreciation at the achievement. This document enables the national legislators to have at their disposal a model law intended to protect expressions of folklore. This is particularly important in view of the fact that such a protection at the legal level is not yet fully set up in Africa.

9. It was recalled that the matter has been dealt with by several African legislations (for instance, the laws of Cameroon, Congo, Guinea, Ivory Coast and Senegal), but mainly in a copyright approach. In this connection, it was noted that the system established in Senegal is based on the principle of a declaration (instead of a prior authorization) and that the amounts collected for the use of works of folklore were put into a fund managed by the Senegalese Copyright Office (BSDA) and used for cultural and social purposes in favor of intellectual creators.

10. It was stressed that legislations are insufficient if there is no implementation machinery allowing for a control in the use of expressions of folklore and for the collection of the appropriate fees. Such machineries already exist in certain African countries; it seems, however, highly desirable that they be set up everywhere.

11. The experts also underlined the scope of the use of the various forms of folklore, as with the development of technical means of reproduction and dissemination folklore is more and more fixed on a material support. The multiplicity of languages and dialects, especially in Africa, increased the richness and variety of folklore which is widely used. Furthermore, the experts emphasized that this utilization mostly goes beyond national frontiers and develops at the international level. The impact of a law being in principle limited to national territory, it is essential to search for means of establishing also protection in the international relations.

12. The Secretariat stated that, subject to the approval of competent bodies, Unesco and WIPO have provided in their future activities the study of means of ensuring an international protection of expressions of folklore. On the other hand, the Secretariat recalled that the model provisions do not offer any definition of the notion of folklore, in order to avoid possible conflict with relevant definitions which are or may be contained in other documents or legal instruments. For this purpose, the model provisions simply define the expressions of folklore and set up a system of protection against their illicit exploitation. Other problems, such as identification, conservation and preservation of folklore, call for a global and interdisciplinary study which is undertaken by Unesco.

13. Finally, the Secretariat reminded the experts that the purpose of model provisions was to provide national authorities with a model, not at all compulsory, leaving national legislators free to adopt the type of provisions which according to them is better adapted to the conditions existing in their own country. In this respect, the experts expressed the view that it is essential to see whether the model provisions are compatible with existing legislations, as well as with the Bangui Agreement of 1977 which constitutes at the African level an attempt to a regional solution.

## V. Discussion Section by Section

14. The general discussion was followed by an examination, section by section, of the model provisions and the relevant commentary, submitted to the Committee. The experts made a number of observations and suggestions, which are summarized as

follows. Before starting to discuss each provision, the Secretariat introduced the text and its commentary and informed the Committee of the results of the previous regional meetings held in Bogotá in October 1981 and in New Delhi in January/February 1983.

#### *Preamble*

15. Some experts stated that it is not in the legal tradition of African countries to have the legislations preceded by preamble; the proposed text may, however, be used to summarize the main reasons of the statutes.

#### *Section 1: Principle of protection*

16. One expert stressed that the expressions of folklore are not only developed and maintained in a given country but may also be created in that country. Consequently, he proposed that the scope of the protection include also the creation. Other experts noted that the notion of expressions of folklore covers both the expressions created in a community and those originating elsewhere but have been adopted, further developed or maintained through generations by that community. What is essential is the development of the expressions as defined in Section 2, the notion of development covering, as the case may be, the notion of original creation and the legislator remaining free to indicate it, expressly or not.

#### *Section 2: Protected expressions of folklore*

17. The experts preferred that the definition of the term "expression of folklore" be focused on the cultural heritage and not limited to the artistic heritage of the nation. It was underlined that the latter is a narrower notion and does not permit to include into the said definition traditional beliefs, scientific traditions and substance of legends, which should also be granted protection.

#### *Section 3: Utilization subject to protection*

18. The experts felt that it was not realistic to give to the community concerned the power of granting authorizations and that the African countries unanimously prefer the system of the competent authority.

#### *Section 4: Exceptions*

19. One expert was of the opinion that exceptions should also be provided for public bodies which utilize expressions of folklore, without making profit, for their own needs, for instance in the case of radio or television broadcasts. It was however remarked that there was no reason why broadcasting organizations should not comply with the regulations established for the protection of expressions of folklore.

Another expert raised the question as to what would be the situation in which expressions of folklore were used in the form of postage stamps, the user being the State itself. Reference was also made to postcards reproducing expressions of folklore. In a general manner, it was considered abnormal that operations of a commercial nature may not fall under the regulations, which is a prejudice to the communities concerned.

#### *Section 5: Acknowledgment of source*

20. The experts noted that the requirement of the acknowledgment of source was conceivable only in the case of identifiable expressions and that in such a case the country from which the expressions utilized are derived could also be mentioned.

#### *Sections 6 to 8: Offenses, seizure and civil remedies*

21. The experts expressed the view that, in the case of seizure and damages, all sums collected should be assigned to the competent authority for cultural or social purposes.

#### *Section 9: Authorities*

22. It was unanimously agreed that it was more wise, economical and efficient to use the existing structures in Africa, in particular, the societies of authors, and to entrust them with the responsibilities provided for the competent authority. Some experts, on the other hand, considered that the cumulation of a competent authority with a supervisory authority would turn out to be complicated and could lead to administrative procedures of a cumbersome nature.

#### *Section 10: Authorization*

23. As a general rule, it was recommended that the fees collected should be used by the societies of authors in the most appropriate manner for the purpose of promoting national culture.

#### *Section 11: Jurisdiction*

24. No comments. The question as to which court is, in any given country, to be appointed, largely depends on the existing court system of that country.

#### *Section 12: Relation to other forms of protection*

25. The wish was expressed that if several means of protection are established under national laws they should be complementary rather than competitive.

#### *Section 13: Interpretation*

26. Some doubts were raised as to the usefulness of inserting this provision into the national legislation.

*Section 14: Protection of expressions of folklore of foreign countries*

27. The experts, referring to the Bangui Agreement adopted under the auspices of the African Intellectual Property Organization (OAPI), expressed the wish that this regulation be extended to the whole African continent. Furthermore, they stressed the need to elaborate an instrument protecting expressions of folklore at the international level.

**VI. Adoption of the Report**

28. The Committee unanimously adopted this report.

**VII. Closing of the Meeting**

29. After the usual thanks, the Chairman declared the meeting closed.

**List of Participants**

**I. Invited Experts**

- Mr. Rautta Athiambo  
Senior Assistant Registrar General, Mombasa, Kenya
- Mme Vera Valentina Duarte  
Juriste, Ministère de la justice, Cabinet d'études, de législation et de documentation, Praia, Cap Vert (absente)
- M. Ndiangani Sibou Lungela  
Directeur général, Société nationale des éditeurs, compositeurs et auteurs (SONECA), Kinshasa, Zaïre
- Mr. E. R. Mukerebe  
Cultural Documentation Officer, Ministry of Information and National Culture, Dar-es-Salaam, Tanzania (absent)
- M. Ndéné Ndiaye  
Directeur général, Bureau sénégalais du droit d'auteur (BSDA), Dakar, Sénégal
- M. Samuel Nelle  
Directeur, Société camerounaise du droit d'auteur (SOCADRA), Douala, Cameroun (absent)
- Mr. Joseph H. Kwabena Nketia  
Former Director, Institute of African Studies, University of Ghana, Accra, Ghana (absent)

**II. Intergovernmental Organization**

**African Cultural Institute (ACI):** E. O. Apronti.

**III. International Non-Governmental Organizations**

**International Confederation of Societies of Authors and Composers (CISAC):** J.-A. Ziegler. **International Literary and Artistic Association (ALAI):** J.-A. Ziegler. **Union of National Radio and Television Organizations of Africa (URTNA):** S. Ngom.

**IV. Secretariat**

**World Intellectual Property Organization (WIPO)**

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

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

A. Amri (*Copyright Division*).

## Seminar on Intellectual Property Rights of Performers — WIPO/FLAIE\*

(Buenos Aires, May 25 to 28, 1983)

Following the decisions taken by their respective governing bodies, the World Intellectual Property Organization (WIPO) and the Latin American Federation of Performers (FLAIE), with the cooperation of the United Nations Educational, Scientific and Cultural Organization (UNESCO), held a Seminar on the Intellectual Property Rights of Performers which took place in the Argentine Republic from May 25 to 28, 1983.

The purpose of the Seminar was to study in more detail all aspects of the intellectual property rights of performers, with particular emphasis on those aspects relating to the legal nature of such rights and the implications of their economic exploitation by other persons.

The participants included performers, administrators of associations of performers, administrators and officials of copyright administration societies, lawyers specializing in intellectual property rights and government officials, who had responded to the comprehensive invitation which the organizers had issued to the experts concerned.

Experts from eight Latin American countries (Argentina, Brazil, Chile, Colombia, Mexico, Peru, Uruguay and Venezuela) participated in the Seminar, including the Copyright Directors of Argentina and Mexico, observers from copyright and neighboring rights societies and specially invited speakers. WIPO invited eight of these experts to attend and bore their respective costs.

The sittings were held at the headquarters of the Argentine Association of Performers (AADI) that had kindly made its premises available.

After the words of welcome by the President of AADI, José Cacopardo, the Seminar was opened by Dr. Raúl Noailles, Under-Secretary of Justice of the Argentine Government, who stressed the importance of the meeting and emphasized the broad protection afforded to performers by the Argentine Intellectual Property Law (whose 50 years of existence was celebrated this year) and the advanced studies of his Government with a view to ratification of the 1961 Rome Convention.

The opening meeting was chaired by Mr. Pascual Naccarati, President of FLAIE, who delivered an address. Speeches were also made by the representatives of the Directors General of WIPO and of Unesco.

Dr. Jaime R. Echavarría, President of ACINPRO, Colombia, was elected Chairman of the Seminar and Dr. Jorge Costa, Director General of SOCINPRO, Brazil, was elected Deputy Chairman. The Secretariat of the Seminar was entrusted to Messrs. Claude Masouyé, Arcadio Plazas and Antonio Millé, representing WIPO, Unesco and FLAIE, respectively.

Representatives of the 12 Latin American societies of performers present at the meeting submitted reports on the status of performers' intellectual property rights in the eight respective countries from which they came.

Mrs. Hilda Retondo and Messrs. Hesiquio Aguilar de la Parra, Luis T. Gentil, Miguel Angel Emery, Claude Masouyé, Antonio Millé, Walter Moraes, Arcadio Plazas and Carlos Alberto Villalba submitted papers on various aspects of the subject, dealing with:

1. the legal nature of the intellectual property rights of performers who fixed their performances on a physical medium;
2. means of exploitation of the artistic work fixed on a physical medium and its specific problems;
3. Communication to the public of performances fixed on a physical medium.

Numerous participants put forward motions on aspects connected with the topics of the Congress, leading to exchanges of ideas and debates on both these motions and on the views expressed by the invited speakers and other participants.

The conclusions drawn from these exchanges of information and subsequent debates, as from the proposals made by the participating specialists, were recorded by the Secretariat, in consultation with the Chairman and Deputy Chairman, in a draft Report and in Recommendations. After having been examined at the closing meeting, on May 28, 1983, the final Recommendations reproduced below were adopted by the participants at the Congress.

### Recommendations

In view of the problems faced by performers in the Latin American region, the participants at the Seminar on Intellectual Property Rights of Performers, jointly organized by the World Intellectual Property Organization (WIPO) and the Latin American Federation of Performers (FLAIE), with the cooperation of the United Nations Educational, Scientific and Cultural Organization (UNESCO), have formulated the following Recommendations:

\* The Spanish title was: *Congreso sobre los derechos intelectuales de los artistas intérpretes y ejecutantes.*

1. The experts in intellectual property rights should be encouraged to pursue and complete their studies on the intellectual property rights of performers as an independent institution within the general family of intellectual property rights. It is important for an improved understanding and application of the law concerning performers to emphasize the independence of such rights as regards their legal origin, although there exists a connexity or parallelism in their exercise.

2. Although the Latin American legal tradition is particularly rich in provisions protecting the economic and moral rights of performers, there are countries in the area in which such principles are as yet absent from positive law. The Congress strongly exhorts the governments of those countries to promote the appropriate studies and reforms to ensure that the performers concerned receive from the law the protection they both deserve and need. In the case of those countries where the existing provisions cannot be applied in the absence of adequate regulations or because of the ineffectiveness of the structures required to apply them, the Seminar exhorts them not to leave unused in practice the guarantees afforded by the legislator for lack of implementing provisions or of the administrative measures essential to give them effective force.

3. The work towards establishing and developing the doctrine undertaken by the federations and societies representing authors, producers of phonograms and performers in Latin America, continually supported by the indispensable collaboration and valuable assistance of WIPO and Unesco, demonstrates the importance and value of joint action in order to obtain more effective protection for all holders of intellectual property rights. As regards, in particular, the rights of communication to the public of phonograms and videograms, collected by a large number of the societies of performers and phonogram producers represented at the Seminar, the "cake theory" has proved an exaggerated concern that has been disproved by the facts.

4. Recognizing the great merit and special importance of the official publications — guides and glossary — of WIPO, which constitute a valuable source of legal interpretation and tend towards the consolidation of a common language linking the experts of the various countries, the Seminar agrees to recommend to WIPO that the future revisions and editions should include a larger number of terms currently used by specialists to refer to the specific problems connected with the intellectual property rights of performers.

5. Concerned by the unemployment resulting from technical progress and victims of the effects of piracy and private copying, the performers attach great importance to obtaining equitable and adequate remuneration for their performances fixed on a physical medium when the sounds and/or the images are exploited by communication to the public by any means whatsoever. The Seminar requests those legislators of the region that have not yet done so to promulgate the necessary provisions to enable the collection of such remuneration to be carried out in an effective and economic way.

6. The right of performers who are cinema or television actors as regards the exploitation of the mediums containing their performances does not enjoy the same level of practical application in the Latin American region as the right of their musician colleagues who have succeeded in instituting the collection of remuneration for communication to the public in a more complete and effective form.

The Seminar appeals to the legislators to take into account this unjust situation and to promulgate corresponding legislation where such is lacking or pertinent regulations where their absence constitutes an obstacle to the full exercise of the rights afforded by the law.

7. Latin American experience shows that it is recommendable for the remuneration for communication to the public of performances fixed on a physical medium to be collected by entities set up and administrated by the performers themselves. It is therefore recommended that overall societies be set up grouping together all performers, actors and musicians. Unified collection with other sectors of owners of neighboring rights (such as the producers of phonograms) has given satisfactory results and has proved to be an advisable procedure for ensuring the full exercise of those rights in the countries in which they remain a dead letter.

8. Phonogram piracy affects not only international artists whose fixed performances are distributed and reproduced in a Latin American country but also turns into a force which stifles the creativity of authors and dries up the source of work for Latin American performers since the reduction in the resources of the phonogram producers of the area seriously restricts the development of new productions in the region. This effect, added to that of loss of sales and royalties in respect of recordings made in the region, constitutes a serious prejudice against which the performers should be protected by specific legislation and by accession of the countries of the region to the relevant international treaties.

9. The greater availability and the fall in prices of household sound and video recorders have led to an enormous increase in private copying for personal use, which the Latin American legislation considers lawful and which the various holders of intellectual property rights concerned are in no position to control or prevent. The Seminar recommends to the governments of the region that provisions be studied similar to those in force in the Federal Republic of Germany, Austria and Hungary, where appliances suitable for copying sounds or television signals and blank tapes intended for use with them bear a surcharge on the sales price, the proceeds of which are intended to compensate authors, performers and producers of phonograms and videograms for losses incurred due to the appropriation of their rights by those who make home copies.

10. Bearing in mind the concern expressed by those affected, it is recommended that the experts carry out an in-depth survey of the situation of those artists known as "musical arrangers" and "orchestrators" in order to define and acknowledge their corresponding rights in such a way that the product of their art may not be unlawfully appropriated or exploited by other persons and that in any event they receive the economic compensation to which they are entitled by law.

11. The 1961 Rome Convention has proved an effective instrument for guaranteeing at international level a minimum level of protection for the rights of performers. Ratification of this Treaty by 11 States of Latin America and the Caribbean has made its application particularly effective at regional level. For this reason, the Seminar appeals most strongly to the governments of the Latin American countries that have not yet done so to ratify or accede to this Treaty and to promulgate without delay the legislation which may prove necessary to harmonize national laws with its provisions.

## Conventions Administered by WIPO

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

#### BARBADOS

##### Accession to the Convention

The Secretary-General of the United Nations has informed the Director General of the World Intellectual Property Organization that the Government of Barbados deposited, on June 18, 1983, its instrument of accession to the International Convention for the Protection of Performers, Producers

of Phonograms and Broadcasting Organizations, done at Rome on October 26, 1961.

Pursuant to Article 25(2), the Convention will enter into force, for Barbados, three months after the date of deposit of the instrument of accession, that is, on September 18, 1983.

#### PANAMA

##### Accession to the Convention

The Secretary-General of the United Nations has informed the Director General of the World Intellectual Property Organization that the Government of the Republic of Panama deposited, on June 2, 1983, its instrument of accession to the International Convention for the Protection of Performers, Produc-

ers of Phonograms and Broadcasting Organizations, done at Rome on October 26, 1961.

Pursuant to Article 25(2), the Convention will enter into force, for the Republic of Panama, three months after the date of deposit of the instrument of accession, that is, on September 2, 1983.

## National Legislation

CONGO

### Law on Copyright and Neighboring Rights

(No. 24/82 of July 7, 1982) \*

(Articles 49 to 107)

#### CHAPTER 8

##### Authors' Contracts

*Article 49.* Contracts by which an author or his successors in title authorize the performance or publication of his works shall be drawn up in writing, failing which they shall be void. The same shall apply to gratuitous authorizations to perform. Such contracts must state the type of exploitation and the mode of remuneration laid down by the author or his successors in title. They shall be subject to the law of civil and commercial contract. Transfer of authors' rights shall be subject to separate mention being made of each of the assigned rights in the instrument of assignment and to the field of exploitation of the rights being specified as to its scope, its purpose, the place and the duration.

*Article 50.* A publishing contract is a contract under which the author of a work or his successors in title assign to the publisher, under specified conditions, the right to manufacture or have manufactured sufficient number of copies of the work, on condition that the latter ensures publication and dissemination thereof.

*Article 51.* A publishing contract must be in writing. The form and mode of expression, the terms of execution, of publication and, where applicable, of the termination clauses shall be specified in the contract.

*Article 52.* The author shall be required to:

- guarantee the publisher the undisturbed and, except as otherwise agreed, exclusive exercise of the assigned right;

- have that right respected and defend it against any infringement;
- permit the publisher to fulfill his obligations and, in particular, deliver to him within the period of time stipulated in the contract the subject matter of the publication in a form permitting normal manufacture.

*Article 53.* The publisher shall be required to carry out or have carried out the manufacture of the work in accordance with the conditions stipulated in the contract, to effect no modification of the work without written authorization from the author, to have, unless otherwise agreed, the name, pseudonym or symbol of the author appear on each of the copies, to effect publication, unless agreed otherwise, within the period of time that is usual in the trade and to ensure permanent and sustained exploitation of the work and commercial distribution in accordance with the practices of the trade.

*Article 54.* The publisher shall also be required to provide accounts and appropriate proof to establish the accuracy of his accounts. Failing this, he shall be compelled to do so by the competent court.

*Article 55.* Notwithstanding Article 44, it shall be unlawful for the author to give a publisher a right of preference for the publication of his future works of a given kind in excess of five new works for each kind as from the date of signature of the publishing contract concluded for the first work, or within a period of five years from that same date for the completed production.

*Article 56.* A publishing contract shall end, independently of the cases set out in general legal pro-

visions or in the preceding articles, when the publisher carries out the complete destruction of the copies.

Termination shall take place automatically when, upon formal notice by the author fixing a suitable period, the publisher has not effected publication of the work or, should the work be out of print, its republication.

A work shall be deemed out of print if two orders for the delivery of copies addressed to the publisher have not been met within six months.

If, in the event of the author's death, the work is incomplete, the contract shall be rescinded as regards the unfinished part of the work, except where otherwise agreed between the publisher and the author's successors in title.

*Article 57.* The following shall not constitute publishing contracts within the meaning of Article 50:

- a contract for publication at the author's expense ("*à compte d'auteur*"). Under such contract, the author or his successors in title pay to the publisher an agreed remuneration against which the latter manufactures copies of the work in the quantity, form and according to the modes of expression specified in the contract, and ensures its publication and dissemination. Such a contract shall constitute an agreement for work by contract;
- a shares contract ("*de compte à demi*"). Under such a contract, the author or his successors in title commission a publisher to manufacture, at his expense and in quantity, copies of the work in the form and according to the modes of expression specified in the contract, and to ensure their publication and dissemination in accordance with the agreement reciprocally contracted to share the profits and losses of exploitation in the agreed proportion. Such contract shall constitute a joint undertaking.

*Article 58.* A stage performance contract is a contract under which the author of a work or his successors in title authorize a natural or legal person to perform such work under the conditions they stipulate.

*Article 59.* A general performance contract is a contract under which the professional body of authors referred to in Article 68 grants to an entertainment promoter the right to perform, for the duration of the contract, the existing or future works constituting the repertoire of such body under the conditions stipulated by the author or his successors in title. In the case referred to above, the requirements of Article 44 may be waived.

*Article 60.* An entertainment promoter who performs or has performed works protected under this Law shall be required to obtain prior authorization under Article 58 and to settle the corresponding royalties.

The contract shall be concluded for a limited duration or for a specified number of communications to the public.

Save where exclusive rights are expressly stipulated, the contract shall not afford to the entertainment promoter any exploitation monopoly. The entertainment promoter may not transfer the benefit of his contract without the formal consent in writing of the author or his representative.

The entertainment promoter must ensure that the public performance takes place under technical conditions which guarantee respect for the author's intellectual and moral rights.

The validity of the exclusive rights afforded by a playwright may not exceed five years. The interruption of performances for two consecutive years shall automatically terminate those rights.

The entertainment promoter shall be required to inform the author, his successors in title, or the professional body of authors referred to in Article 68, of the exact program of public performances and to supply a documented statement of receipts and to pay to them, at the agreed times, the amount of the stipulated royalties.

## CHAPTER 9

### Duration of Economic Rights

*Article 61.* The rights referred to in Article 28 shall be protected for the lifetime of the author and for 50 years after his death.

*Article 62.* In the case of a work of joint authorship, the rights referred to in Article 28 shall be protected for the lifetime of the last surviving joint author and for 50 years after his death.

*Article 63.* In the case of a work published anonymously or under a pseudonym, the rights referred to in Article 28 shall be protected until expiry of a period of 50 years as from the date on which such work has been lawfully published for the first time. However, Article 61 shall apply where the identity of the author has been revealed or leaves no doubt prior to the expiry of such period.

*Article 64.* In the case of a cinematographic work, the rights referred to in Article 21 shall be protected until expiry of a period of 50 years as from the making of the work or, if the work is made available to the public with the consent of the author

during such period, 50 years from its communication to the public.

*Article 65.* In the case of a photographic work or a work of applied art, the rights referred to in Article 28 shall be protected for 25 years as from the making of the work.

*Article 66.* In the case of posthumous works, the rights referred to in Article 28 shall belong to the author's successors in title for the period laid down in Article 61 if the work is disclosed during the period provided for in that Article. If the work is disclosed after the expiry of that period, the rights shall belong to the owners of the manuscripts or originals relating to the work, who effect publication or have it effected.

Posthumous works must be published separately except where they constitute only a fragment of a work previously published. They may not be combined with works by the same author that have been previously published unless the author's successors in title still enjoy the economic rights therein.

*Article 67.* In all cases, such periods shall run until the end of the year during which they would otherwise expire.

## CHAPTER 10

### Body of Authors

*Article 68.* The administration of the rights referred to in Article 28 and the defense of the moral interests referred to in Article 31 shall be entrusted to a professional body of authors of which the tasks and operation shall be laid down by decree issued by the Council of Ministers.

*Article 69.* This body shall be empowered, to the exclusion of any other natural or legal person, to act as an intermediary between the author or his successors in title and the users of literary and artistic works as regards the grant of authorizations and the collection of the relevant royalties.

This body shall administer on the national territory the interests of the various foreign societies of authors under treaties or agreements it shall be required to conclude with them. This body shall be answerable to the Ministry responsible for culture.

## CHAPTER 11

### Procedure and Sanctions

*Article 70.* Any dispute arising from the application of this Law shall be subject to the following provisions of this Chapter.

The professional body of authors referred to in Article 68 shall be empowered to take legal action to defend the interests that are its statutory responsibility, particularly as regards any litigation directly or indirectly concerning the reproduction or communication to the public of works covered by this Law.

*Article 71.* At the request of any author of a work protected by this Law, of his successors in title or of the professional body of authors, the examining magistrate taking cognizance of the infringement or the presiding judge of the *Tribunal de Grande Instance* (First Instance Court) shall be empowered in all cases, including where the author's rights are in imminent danger of infringement, to order seizure, at any place and even at times other than those specified in the Code of Civil Procedure, of the copies that constitute an unlawful reproduction of the work, already manufactured or being manufactured, and of the revenue from any unlawful reproduction, performance or dissemination of the work. He may also order suspension of any manufacture, reproduction or public performance, in progress or announced, that constitutes infringement or preparation for an infringement.

*Article 72.* Article 71 shall apply in the case of improper exploitation of national folklore or of a work in the public domain.

*Article 73.* The presiding judge of the *Tribunal de Grande Instance* may order, as part of the above acts, the prior deposit by the distrainer of an appropriate guarantee.

*Article 74.* Within 30 days of the making of the report of the seizure under Article 71, or of the date of the order referred to in that same Article, the distrainee or the garnishee may request the presiding judge of the *Tribunal de Grande Instance* to end the seizure or to limit its effects, or to authorize resumption of manufacture or of exploitation.

The presiding judge of the *Tribunal de Grande Instance*, acting in summary procedure, may, if he allows the petition of the distrainee or garnishee, order the petitioner to deposit a sum to be used as a guarantee for damages to which the author might be entitled.

*Article 75.* If the distrainer fails to submit the matter to the competent court within 30 days of the seizure, the ending of the seizure may be ordered by the presiding judge of the *Tribunal de Grande Instance*, acting in summary procedure, upon the demand of the distrainee or the garnishee, except where criminal proceedings have been instituted.

*Article 76.* Where the proceeds of an exploitation which are due to the author of an intellectual work

have been the subject of a seizure, the presiding judge of the *Tribunal de Grande Instance* may order payment to the author, as an allowance for maintenance, of a certain sum or of a specified proportion of the amounts seized.

*Article 77.* Unlawful reproduction on Congolese territory of works published in the Congo or abroad shall be punishable by a fine of between 100,000 and 250,000 CFA francs. The exportation and importation of unlawful copies shall be subject to the same penalty.

*Article 78.* The natural or legal person who fails to obtain prior authorization from the professional body of authors shall be deemed responsible for the unlawful reproduction or communication to the public and shall be liable to a fine of twice the due fees.

*Article 79.* Any reproduction, performance or dissemination by any means whatsoever of an intellectual work that infringes the rights of the author, as defined and governed by the law, shall also be deemed an infringing offense.

*Article 80.* The penalty shall be of between three months and two years imprisonment and between 250,000 and 500,000 CFA francs if it is proved that the guilty party has undertaken the acts referred to in the preceding article in an habitual manner. In the event of a further offense following a sentence given under the preceding sentence, the temporary or permanent closure of the establishments operated by the habitual infringer or his accomplices may be ordered.

*Article 81.* The guilty parties shall be further sentenced to confiscation of amounts equal to that portion of the receipts deriving from the reproduction, performance or unlawful dissemination, and to the confiscation of any equipment specifically installed for the unlawful reproduction and of all infringing copies or objects.

*Article 82.* The equipment or the infringing copies, as well as the receipts or the portion of the receipts subject to confiscation, shall be handed over to the author or his successors in title in order to indemnify them proportionately for the damages they have suffered. The remaining indemnity shall be settled by the ordinary channels where there has been no confiscation of equipment, infringing objects or receipts.

*Article 83.* In addition to the reports of the judicial police officials or policemen, the proof of the existence of a performance, or dissemination of any kind, or of any offense against Article 60, may be furnished by the statement of an agent designated by the professional body of authors referred to in Article 68.

## CHAPTER 12

### Public Domain

*Article 84.* On the expiry of the terms of protection laid down by this Law, the authors' works shall fall into the public domain. The right of exploitation of works in the public domain shall be administered by the professional body of authors referred to in Article 68.

*Article 85.* The public performance and reproduction of such works shall require authorization from that body. The authorization shall be granted, in the case of a profit-making event, against payment of a royalty calculated on the gross revenue from exploitation. The rate of such royalty shall be equal to one-half that normally applied for works in the same category in the private domain. The provisions of Article 54 shall apply. The product of such royalties shall be devoted to cultural and social ends for the benefit of Congolese authors.

## TITLE IV

### Neighboring Rights

#### CHAPTER 1

##### Authorization of Performers

*Article 86.* Without the authorization of the performers, no person shall do any of the following acts:

- the broadcasting of their performance, except where the broadcast is made from a fixation under Article 99 or is a rebroadcast authorized by the organization initially broadcasting the performance;
- the communication to the public of their performance, except where the communication is made from a fixation of the performance;
- the fixation of their unfixed performance;
- the reproduction of a fixation of their performance, in any of the following cases:
  - (i) where the performance was initially fixed without their authorization;
  - (ii) where the reproduction is made for purposes different from those for which the performers have their authorization;
  - (iii) where the performance was initially fixed in accordance with Articles 97 to 99, but the reproduction alone is made for purposes different from those referred to in the said Articles.

*Article 87.* In the absence of any contractual agreement to the contrary or of circumstances of

employment from which the contrary would normally be inferred, the authorization to broadcast does not imply the right to permit other broadcasting organizations to broadcast or fix the performance, or to reproduce the fixation thereof.

The authorization to fix the performance and to reproduce the fixation does not imply the right to broadcast the performance from the fixation or any reproduction thereof.

*Article 88.* Once the performers have authorized the incorporation of their performance in an audiovisual fixation, Articles 86 and 87 shall have no further application.

*Article 89.* The protection under this Law shall subsist for 20 years computed from the end of the year during which the performance took place.

*Article 90.* The authorizations required by Article 86 may be given by the performer or by a duly appointed representative to whom he has granted in writing the right to give such authorization.

*Article 91.* Any authorization given by a performer claiming that he has retained the relevant rights or by a person claiming to be the duly appointed representative of a performer shall be considered valid unless the recipient knew or had good reason to believe that the delegation of powers was not valid.

*Article 92.* Any person who gives authorizations on behalf of performers without being a duly appointed representative, or any person who knowingly proceeds under such unlawful authorization, shall be guilty of a criminal offense punishable by a fine of between 100,000 and 150,000 CFA francs.

## CHAPTER 2

### Authorization of Producers of Phonograms

*Article 93.* Without the authorization of the producer of the phonogram, no person shall do any of the following acts:

- the direct or indirect reproduction of copies of his phonogram;
- the importation of such copies for the purpose of distribution to the public or the distribution to the public of such copies.

The protection under this Law shall subsist for 20 years computed from the end of the year during which the phonogram was published for the first time or, failing that, was initially made.

*Article 94.* As a condition of protecting phonograms under Articles 86 and 93, all copies in com-

merce of the published phonogram or of its container shall bear a notice consisting of the symbol  $\text{P}$  (the letter "P" within a circle), accompanied by the year date of the first publication, placed in such a manner as to give reasonable notice of claim of protection. If the copies or their containers do not identify the producer or the licensee of the producer by carrying his name, trademark or other appropriate designation, the notice shall also include the name of the owner of the rights of the producer. If the copies or their containers do not identify the principal performers, the notice shall also include the name of the person who, in the country in which the fixation was made, owns the rights of such performers.

## CHAPTER 3

### Authorization of the Broadcasting Organizations

*Article 95.* Without the authorization of the broadcasting organization, no person shall do any of the following acts:

- the rebroadcasting of its broadcasts;
- the fixation of its broadcasts;
- the reproduction of a fixation of its broadcasts where the fixation, from which the reproduction is made, was done without authorization, or where the broadcast was initially fixed in accordance with Articles 97 to 99, but the reproduction was made for purposes different from those referred to in that Article.

*Article 96.* The protection under this Law shall subsist for 20 years computed from the end of the year in which the broadcast took place.

## CHAPTER 4

### Limitation of Protection

*Article 97.* The articles relating to neighboring rights shall not apply in the following cases:

- private use;
- the reporting of current events, provided that no more than short excerpts of a performance, of a phonogram or of a broadcast are used;
- use solely for the purposes of teaching or scientific research, subject to Article 98;
- quotations in the form of short excerpts of a performance, of a phonogram or of a broadcast, provided that such quotations are compatible with fair practice and are justified by the informative purpose of such quotations;
- such other purposes as constitute exceptions in respect of works protected by copyright under this Law.

*Article 98.* However, licenses shall be issued by the Ministry responsible for culture for the reproduction of copies of phonograms where such reproduction is for the sole purpose of teaching or of scientific research, is made and distributed on the territory of the Congo, excluding any exportation of copies, and implies for the producer of the phonograms an equitable remuneration laid down by the Ministry, taking into account, in particular, the number of copies to be made and distributed.

*Article 99.* The requirements for authorization under Articles 86, 93 and 95 for making fixations of performances and broadcasts, for reproducing such fixations and for reproducing phonograms published for commercial purposes shall not apply where the fixation or reproduction is made by a broadcasting organization by means of its own facilities and for its own broadcasts, provided that:

- in respect of each broadcast of a fixation of a performance or of a reproduction thereof made under this Article, the broadcasting organization has the right to broadcast the particular performance;
- in respect of each broadcast of a fixation of a broadcast, and each broadcast of a reproduction of such fixation, made under this Article, the broadcasting organization has the right to broadcast the particular broadcast;
- in respect of any fixation made under this Article or any reproduction thereof, the fixation and any reproductions thereof are destroyed within the same period as applies to fixations and reproductions of works protected by copyright under Article 34 of this Law, except for a single copy which may be preserved exclusively for archival purposes.

## CHAPTER 5

### Procedure and Sanctions

*Article 100.* In a civil action brought by any natural or legal person whose rights under this Law are threatened with infringement or have been infringed, the following remedies shall be available:

- an injunction, upon such terms as the court may deem reasonable, to restrain infringement;
- compensation for any damages suffered as a result of the infringement, including any profits obtained by the infringer that are attributable to the infringement. If the infringement is found to

have been malicious, the court may, at its discretion, award exemplary damages.

*Article 101.* Without prejudice to the remedies available under Article 100, any person who knowingly infringes, or causes to be infringed, the rights protected under this Law shall be liable to a fine of not more than 60,000 CFA francs for the first offense, and shall be liable to a fine of not more than 100,000 CFA francs or to imprisonment for not more than three months, or both, for each subsequent offense.

## CHAPTER 6

### Miscellaneous Provisions

*Article 102.* Nothing in this Law shall prejudice the right of natural or legal persons to use, in accordance with the conditions stipulated above, fixations or reproductions made in good faith before the date of its coming into force.

The preceding provisions on the protection of performers, producers of phonograms and broadcasting organizations shall in no way be interpreted as limiting or prejudicing the protection afforded to authors or to any natural or legal person under this Law or under any international copyright agreement to which the Congo is a party.

*Article 103.* All earlier provisions contrary to this Law, in particular Law No. 57-298, of March 11, 1957, and Ordinance 30-70, of August 18, 1970, shall be repealed.

*Article 104.* Subsequent instruments will set out the conditions for implementing this Law, particularly as regards Articles 28 and 70.

*Article 105.* Until a date to be set by the instruments relating to Article 68, the professional bodies of authors that are properly constituted shall provisionally exercise, within the framework of this Law, the activities entrusted to the professional body of authors referred to in Article 68.

*Article 106.* Contracts concluded prior to the entry into force of this Law shall automatically continue to be valid until their expiry and shall be governed by this Law.

*Article 107.* This Law shall be implemented as a law of the State and shall be published in the Official Journal of the People's Republic of the Congo.

## SOVIET UNION

**Decree of the Presidium of the Supreme Soviet of the USSR****Amendments and Additions to the Fundamentals of Civil Legislation  
of the USSR and the Union Republics**

(of October 30, 1981)\*

29. In the third paragraph of Article 97, delete the words "or international agreements to which the USSR is a party" [and replace them with the words "entered into by the USSR"].

30. In the second paragraph of Article 101, replace the words "publishing [contract]" by the words "publishing [contract, contract] for the deposit of a manuscript."

31. In the second paragraph of Article 102, delete the words "or international agreements to which the USSR is a party" [and replace them with the words "entered into by the USSR"].

32. In indent (4) of Article 104, add after the words "utilization of" the word "published."

\* This Decree was published in *Vedomosti Verhovnogo Soveta* of the USSR of November 4, 1981, No. 44 (2118), text 1184. — WIPO translation.

**General Studies****Copyright and the Architect**

Hildebrando PONTES NETO \*











## Correspondence

### Letter from Italy

Mario FABIANI \*

















## International Activities

### International Confederation of Societies of Authors and Composers (CISAC)

#### Legal and Legislation Committee

(Washington, May 2 to 4, 1983)

The Legal and Legislation Committee of CISAC met in Washington from May 2 to 4, 1983, at the invitation of the American Society of Composers and Publishers (ASCAP) and the society Broadcast Music Incorporated (BMI). The members participating in the meeting came from the following countries: Austria, Australia, Belgium, Czechoslovakia, Denmark, France, Germany (Federal Republic of), Greece, Hungary, Israel, Italy, Mexico, Netherlands, Poland, Spain, Sweden, Switzerland, United Kingdom, United States of America. WIPO was represented by Mr. György Boytha, Head of the Copyright Law Division. Unesco and two interested international non-governmental organizations (ALAI and INTERGU) were also represented. Mr. David Ladd, Register of Copyrights and Assistant Librarian of Congress, and several officials of the Copyright Office, Library of Congress (USA), likewise participated in the work of the Committee.

Professor Jan Corbet (Belgium) was unanimously elected Chairman for the 1983-1984 period.

After the adoption of the report on the meeting held in Vienna from May 10 to 12, 1982, national surveys of legislative, case law, doctrinal and also practical developments in copyright were presented by a number of participants. In particular, information was given regarding the impact on copyright of new technological forms of use of authors' works, such as "home taping," distribution by cable and transmission via satellite. Attention was called to the further spread of video piracy in several countries.

Mr. J.-A. Ziegler, Secretary General of CISAC, reported on developments in the international search

for copyright protection against distribution by cable of broadcast works, with special regard to the efforts made in that direction by WIPO, ILO and Unesco; he also gave an account of the Report of the Working Group convened by WIPO and Unesco in Paris in October 1982 on copyright questions connected with the use of works by persons with defective hearing or sight, and of the Draft Model Statutes for authors' organizations administering authors' rights in developing countries, elaborated by a Committee of Experts convened by WIPO and Unesco in Paris in June 1980.

The Committee also heard addresses by its members on the following subjects:

- problems arising from the use of computers and, in particular, the protection of data bases (Mrs. M. del Corral, Spain);
- protection of computer software (Mr. D. de Freitas, United Kingdom);
- video games and copyright (Prof. J. M. Kernochan, United States of America);
- domaine public payant (Mr. W. Dillenz, Austria);
- copyright and the protection of the right to privacy and social identity (Prof. M. Fabiani, Italy).

Each of the above communications was followed by a lively discussion, in the course of which the Committee was also informed of recent developments in the related activities conducted by WIPO, in some cases jointly with Unesco, in the field of copyright and neighboring rights.

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## Calendar

### WIPO Meetings

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

#### 1983

- 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, Bndapest, 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 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

- September 20 to 23 (Rome) — 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**

**1984**

**March 15 to 17 (La Minière) — Technical Working Party on Automation and Computer Programs**

**June 11 to 15 (Bet Dagan) — Technical Working Party for Vegetables**

**June 26 to 29 (Lund) — Technical Working Party for Agricultural Crops**

**August 21 to 23 (Hanover) — Technical Working Party for Ornamental Plants and Forest Trees**

**Other Meetings in the Field of Copyright and/or Neighboring Rights****Non-Governmental Organizations****1983****International Copyright Society (INTERGU)**

Congress — October 31 to November 4 (Santiago de Chile)

**International Federation of Library Associations and Institutions (IFLA)**

Congress — August 21 to 28 (Munich)

**International Federation of Musicians (FIM)**

Congress — September 19 to 23 (Budapest)

**International Literary and Artistic Association (ALAI)**

Executive Committee — September 12 (Paris)

**1984****Council of the Professional Photographers of Europe (EUROPHOT)**

Congress — March 17 to 21 (Darmstadt)

**International Confederation of Societies of Authors and Composers (CISAC)**

Congress — November 12 to 17 (Tokyo)

**International Council on Archives (ICA)**

Congress — September 17 to 21 (Bonn)

**International Publishers Association (IPA)**

Congress — March 11 to 16 (Mexico)