Published monthly
Annual subscription:
fr.s. 125.—
Each monthly issue:
fr.s. 12.—

Copyright

19th year - No. 10
October 1983

Monthly Review of the
World Intellectual Property Organization (WIPO)

Contents

ISSN 0010-8626

World Intellectual Property Organization

HONDURAS

Accession to the WIPO Convention

The Government of the Republic of Honduras deposited, on August 15, 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 Honduras, three months after the date of deposit of its instrument of accession, that is, on November 15, 1983.

WIPO Notification No. 124, of August 16, 1983.

Conventions Administered by WIPO

Nairobi Treaty on the Protection of the Olympic Symbol

Signatory States, Ratifications and Accessions

The Director General of the World Intellectual Property Organization (WIPO) has notified the Governments of the States which, according to Article 5, can become party to the Nairobi Treaty for the Protection of the Olympic Symbol, adopted at Nairobi on September 26, 1981, that, during the period in which the said Treaty was open for signature, it had been signed by the following 37 States:

Argentina, Austria, Benin, Brazil, Chile, Colombia, Congo, Czechoslovakia, Democratic People's Republic of Korea, Ghana, Greece, Hungary, India, Indonesia, Israel, Italy, Ivory Coast, Kenya, Madagascar, Mexico, Morocco, New Zealand, Peru, Poland, Portugal, Qatar, Romania, Senegal, Soviet Union, Spain, Sri Lanka, Switzerland, Togo, Trinidad and Tobago, Tunisia, Uruguay, Zambia.

In that notification it has been recalled that the following States had already deposited, on the dates hereinafter indicated, either an instrument of ratification (R) or of accession (A) and that the Nairobi Treaty had entered into force, in their respect, on the dates hereinafter indicated:

State	*Date of Deposit of Instrument*	*Date of Entry into Force*
Kenya (R)	November 18, 1981	September 25, 1982
Ethiopia (A)	February 17, 1982	September 25, 1982
Equatorial Guinea (A)	August 25, 1982	September 25, 1982
Egypt (A)	September 1, 1982	October 1, 1982
Guatemala (A)	January 21, 1983	February 21, 1983
Congo (R)	February 8, 1983	March 8, 1983
Tunisia (R)	April 21, 1983	May 21, 1983
Qatar (R)	June 23, 1983	July 23, 1983
Greece (R)	July 29, 1983	August 29, 1983

Nairobi Notification No. 13, of August 29, 1983.

Bilateral Treaties

AUSTRIA — USSR

Agreement Between the Republic of Austria and the Union of Soviet Socialist Republics on the Reciprocal Protection of Copyrights

The Federal President of the Republic of Austria and the Presidium of the Supreme Soviet of the Union of Soviet Socialist Republics,

Resolved to implement fully the provisions of the Final Act of the Conference on Security and Cooperation in Europe, signed in Helsinki on August 1, 1975,

Convinced that cooperation in the field of culture and cultural exchanges promote better mutual understanding between peoples and contribute to the strengthening of bonds between States,

Considering the provisions of the Agreement of March 22, 1968, on Cultural and Scientific Cooperation between the Republic of Austria and the Union of Soviet Socialist Republics, and in particular Article 1 thereof,

In the endeavor to extend cooperation further in the mutual exchange of cultural values through the use of works of literature, science and art,

Moved by the desire to complement the Universal Copyright Convention of September 6, 1952, to which both Contracting Parties have acceded, by the regulation of the reciprocal protection of rights of authors,

Have agreed to conclude the following Agreement, for which purpose they have appointed the plenipotentiaries named below:

The Federal President of the Republic of Austria —

Dr. Gerald Hinteregger,
General Secretary for Foreign Affairs,

The Presidium of the Supreme Soviet of the Union of Soviet Socialist Republics —

Mr. Boris Pankin,
Chairman of the Board of the All-Union Copyright Agency of the Union of Soviet Socialist Republics,

who, after the exchange of credentials, which have been found to be in good and due form, have agreed as follows:

Article 1

Each Contracting Party shall:

(a) encourage the publication and other use on its territory of works of literature, science and art created by nationals of the other Contracting Party;

(b) encourage the inclusion of dramatic, dramatico-musical, musical and choreographic works created by nationals of the other Contracting Party in the repertoires of the theaters and in the programs of the music ensembles and soloists of its country.

Article 2

Each Contracting Party shall extend its application of the Universal Copyright Convention of September 6, 1952, to the works or to the rights in works of nationals of the other Contracting Party, in so far as they have been created prior to May 27, 1973, but have not been published prior to that date either on the territory of one of the two Contracting Parties or elsewhere. However, should any such works that prior to the entry into force of this Agreement were unprotected have been published on the territory of the other Contracting Party between May 27, 1973, and the entry into force of this Agreement, they shall remain unprotected. For these purposes the term "publication" shall be interpreted in the sense of Article VI of the Universal Copyright Convention of September 6, 1952.

Article 3

The Contracting Parties agree that the protection accorded under the Universal Copyright Convention of September 6, 1952, or under this Agreement shall extend to the moral rights of authors.

Note: The instruments of ratification of this Agreement were exchanged on July 25, 1983. The Agreement entered into force on October 1, 1983 — WIPO translation.

Article 4

This Agreement shall be applicable to such use as is made of the works specified in Article 2 from the time of its entry into force, in so far as the relevant terms of copyright protection of those works have not yet expired.

Article 5

All payments and settlements arising out of the application of the Universal Copyright Convention of September 6, 1952, or out of the application of Article 2 of this Agreement shall be effected in freely convertible currency, in conformity with the currency legislation applicable in the Contracting Party concerned, provided that, according to the wish of the owner of the rights concerned, payments and settlements may be effected in the national currency of the Contracting Party that makes the payment.

Article 6

Each Contracting Party shall be entitled to appoint organizations, hereinafter referred to as "organizations," which may be made responsible — without prejudice to the permissibility of direct negotiations with the author or his successor in title, if he is the owner of the right in question — for acting as intermediaries in the conclusion of contracts for the grant or acquisition of rights in the works protected under the Universal Copyright Convention of September 6, 1952, or under Article 2 of this Agreement, and likewise for the collection of royalties for the use of such works and reciprocal settlements.

In so far as these organizations are responsible, by virtue of either the legislation of the Contracting Party or an obligation undertaken by them, to protect the moral rights of authors, they shall in so doing exercise particular care, especially where under that legislation the use of the work is allowed without the consent of the author and without payment of a remuneration.

Article 7

The organizations of the Contracting Parties undertake:

(a) to communicate to each other particulars of such works of the nationals of the Contracting Party concerned as enjoy copyright protection under the Universal Copyright Convention of September 6, 1952, or under Article 2 of this Agreement, and of the owners of rights in such works;

(b) to supply to each other any further information and make available to each other any documentary material that may be necessary for the practical application of the Universal Copyright Convention of September 6, 1952, or of this Agreement.

The organizations of the Contracting Parties shall agree between themselves on settlement periods and shall set the amount of their charges.

Article 8

The Contracting Parties or the organizations shall inform each other on the laws and regulations of their countries, in so far as they have a bearing on the practical application of the Universal Copyright Convention of September 6, 1952, or of this Agreement.

Article 9

The coming into beeing, content and lapse of copyrights shall be determined by the law of the State in which an act of use or infringement occurs.

Article 10

Meetings between the competent organizations shall take place at regular intervals to be agreed upon by common consent, for the purpose of discussing questions concerning the practical application of this Agreement.

Article 11

This Agreement shall be without prejudice to such rights and obligations of the Contracting Parties as arise out of other international treaties, in particular those arising out of the Universal Copyright Convention of September 6, 1952.

Article 12

This Agreement shall be subject to ratification. Instruments of ratification shall be exchanged in Moscow as soon as possible.

This Agreement shall enter into force on the first day of the third month following the exchange of instruments of ratification.

Article 13

This Agreement may be terminated at any time by either Contracting Party, in writing and through diplomatic channels. Termination shall come into effect six months following receipt of notification thereof.

In witness whereof, the plenipotentiaries of the two Contracting Parties have signed this Agreement and affixed their seals thereon.

Done in Vienna, on December 16, 1981, in two copies, each in German and Russian, both texts being equally authentic.

National Legislation

COSTA RICA

Law on Copyright and Related Rights

(No. 6683, of September 24, 1981) *

(Articles 77 to 162)

TITLE II

Related Rights

CHAPTER I

Performers

Article 77. For the purposes of this Law,

(a) "performer" means any actor, speaker, narrator, reciter, singer, dancer, musician or any other person who performs a literary or artistic work;

(b) "fixation" means the embodiment of sounds, images, or sounds and images, in a permanent physical carrier that permits them to be reproduced or communicated to the public.

Article 78. Performers or their agents, heirs, successors or assignees, having acquired their status either free or for a consideration, shall have the right to authorize or prohibit the fixation, reproduction, communication to the public, transmission or retransmission by radio or television or any other form of use of their performances.

Article 79. The performer may object to the broadcasting of his performances where such broadcasting would cause a serious and unjust prejudice to his artistic or economic interests. He shall also have the right to demand that his name be mentioned when his performance is communicated to the public by means of public performance or broadcasting.

Article 80. For the exercise of the rights recognized by this Law, orchestras and vocal instrumental groups shall be represented by their conductors or leaders, who shall be regarded as the performers of the instrumental recordings for the purposes of Article 84*(a)*.

CHAPTER II

Producers of Phonograms or Videograms

Article 81. For the purposes of this Law,

(a) "producer of phonograms" means the recording enterprise that fixes the sounds of a performance or other sounds for the first time;

(b) "phonogram" means any sound fixation of the sounds of a performance or other sounds;

(c) "videogram" means the first fixation of sequences of images, with or without sound, that can be reproduced on film, videodisc, videocassette or any other physical carrier.

Article 82. Producers of phonograms or videograms shall have the exclusive right to authorize or prohibit the direct or indirect reproduction, transmission and retransmission by radio and television, public performance, by any means or in any form of use, of their phonograms or videograms.

Article 83. When a phonogram or videogram published for commercial purposes, or a reproduction of such phonogram or videogram, is used directly for broadcasting or for any form of communication in places frequented by the public (such as those specified in Article 49), the user shall obtain prior authorization from the producer and shall pay a single equitable remuneration to the said producer, which shall be intended as payment to him and to the performers.

Article 84. In the absence of an agreement between the performers and the producer, one-half of the sum received by the producer, less the expenses incurred in collection and administration, shall be paid by the producer to the performers, who, unless they have entered into a special agreement between themselves, shall share the amount between themselves in the following manner:

(a) fifty percent shall accrue to the performer, understood as being the singer or vocal group

* Published in *La Gaceta, diario oficial,* No. 212, of November 4, 1982. — WIPO translation.

or other performer who appears most prominently on the phonogram label;

(b) fifty percent shall accrue to the accompanists and to the members of the chorus or choir who take part in the recording, to be divided equally between all of them. If the latter do not lay claim to these sums within twelve months, the producer shall transfer the whole amount to the association or union of the professional category concerned.

CHAPTER III

Broadcasting Organizations

Article 85. For the purposes of this Law,

(a) "broadcasting organization" means the radio or television enterprise that transmits programs to the public;

(b) "broadcast" or "transmission" means the distribution by means of electromagnetic waves of sounds, or sounds synchronized with images, for reception by the public;

(c) "retransmission" means the simultaneous or deferred transmission of a broadcasting organization's broadcast, effected by another broadcasting organization.

Article 86. Broadcasting organizations shall have the right to authorize or prohibit the retransmission, fixation and reproduction of their broadcasts, and also the communication to the public of their television broadcasts in premises frequented by the public.

CHAPTER IV

Periods of Protection

Article 87. The protection granted by this Law in respect of related rights shall be fifty years, counted from December 31 of the year of publication for phonograms, the year of transmission for radio and television broadcasts and the year of the show for performances not recorded or broadcast.

TITLE III

Transfer and Succession

CHAPTER I

Transfer

Article 88. The owner of copyright or related rights may transfer his economic rights, either wholly or in part.

Article 89. Any act of transfer of a literary or artistic work or of a related right, either full or partial, shall be evidenced by a public or private deed executed before two witnesses.

Article 90. The transfer of plans, drawings and similar works shall give the acquirer the right only to make the work so represented, and not to reproduce or dispose of them or use them for the making of other works. All such rights shall remain vested in the author, unless otherwise agreed.

Article 91. Unless otherwise agreed, the transfer of pictorial works, sculptures and three-dimensional artistic works in general shall not confer on the acquirer the right of reproduction, which shall remain vested in the author.

Article 92. Transfer of the photographic negative shall create a presumption of assignment of the copyright in the photograph.

Article 93. Any contract for the sale of the future production of an author or performer may not exceed five years, and shall lapse on expiry of that period even if a longer time has been specified.

CHAPTER II

Succession

Article 94. For legal purposes, literary or artistic works and related production shall be considered movable property, and shall be subject to the currently applicable provisions of the Civil Code relating to successional law, whithout prejudice to the specific provisions of this Law.

TITLE IV

CHAPTER I

National Registry of Copyrights and Related Rights

Article 95. An office shall be established in the capital of the Republic which shall have the name of National Registry of Copyrights and Related Rights, attached to the Public Registry of Property. This office shall be under the responsibility of a director, called the National Registrar of Copyrights and Related Rights, and shall be composed of such staff as activity and circumstances dictate. It shall be an essential requirement for accession to the post of Registrar to hold a degree in law.

Article 96. In the manual for the classification of posts of the General Civil Service Directorate, a new code shall be introduced with the title of National Registrar of Copyrights and Related Rights. In cases of temporary absence, the National Registrar of Copyrights and Related Rights shall be replaced by

the employee who, in decreasing order of seniority, occupies the next post in the hierarchy of the office.

Article 97. The National Registry of Copyrights and Related Rights shall keep the following registers separately: general register of incoming material; general index; register of literary works; register of cinematograph films; register of musical, choreographic and mimed works; register of paintings, drawings, photographs and designs; register of publishers, printed matter and periodicals; register of translations; register of authors' representatives; register of pseudonyms; register of phonograms; register of radio and television programs; register of other works; register of publishing contracts; register of performing contracts; register of deeds of transfer, and register of other contracts associated with intellectual property. Each of the above registers shall have the corresponding separate indexes.

Article 98. The author who uses a pseudonym may register it at the National Registry of Copyrights and Related Rights.

Article 99. The registers at the National Registry of Copyrights and Related Rights shall meet the same requirements as those used by other registries, pursuant to the laws applicable.

Article 100. The opening and closing of these registers shall be evidenced by an entry signed by the Registrar, such entry stating its purpose and the hour, day and date of opening and closing, the number of the register, the number of folios and any other particulars that the Registrar sees fit to place on record.

Article 101. The protection provided for in this Law originates with the mere fact of creation, independently of any procedure of formality.

Article 102. For greater security, the owners of copyright and related rights may register their productions at the National Registry of Copyrights and Related Rights, such registration having merely declaratory effect. Deeds or documents concerning legal negotiations on copyrights and related rights may also be registered.

Article 103. In order to register a production, the person concerned shall submit a written request to the Registrar with the following particulars:

(i) the surname, given names and address of the requester, a statement as to whether he is acting on his own behalf or as the representative of another person, in which case certification of that fact shall be filed, and the surname, given names and address of the party represented shall be stated;

(ii) the surnames, given names and addresses of the author, publisher and printer, and their capacities;

(iii) the title of the work, its genre, the place and date of its publication and any other characteristics that enable it to be identified clearly;

(iv) in the case of phonograms, the name of the performer and the catalogue number shall also be stated.

Article 104. When the work is cinematographic, the following particulars shall be given for the purposes of registration:

(a) everything specified in the preceding Article;

(b) a detailed account of the script, dialogue, scenery and music;

(c) the surnames and given names of the scriptwriter, composer, director and main performers;

(ch) the footage of the film.

In addition, as many photographs shall be submitted as there are main scenes in the film, whereby it may be determined, by comparison, whether the work is an original work.

Article 105. The registration of deeds and documents at the National Registry of Copyrights and Related Rights shall be made by means of a request, which shall be authenticated by a law licentiate. When the file has been accepted for registration and entered in the appropriate register or registers at the Registry, the person concerned shall sign it.

Article 106. If the work is printed, six copies of it shall be deposited in the following places:

The National Library, the Library of the University of Costa Rica, the Library of the National University, the Library of the Legislative Assembly and the Library of the *La Reforma* Penitentiary Center; the sixth copy, accompanied by the receipts for the other copies, shall be deposited with the National Registry of Copyrights and Related Rights.

It shall be an essential requirement, before registration of the work may proceed, to have effected the deposit of copies as provided in this Article.

Article 107. In the case of an unpublished work, it shall be sufficient to deposit a single copy of it in typewritten form, without alterations, deletions or interlineations, with the signature of the author authenticated by an attorney. If the unpublished work is a theatrical or musical work, it shall be sufficient to submit a handwritten copy with the signature of the author authenticated by an attorney.

Article 108. In the case of a unique artistic work, such as a canvas or bust, portrait, painting, drawing or other three-dimensional work, deposit shall be effected by the submission of a description of its characteristics, together with photographs showing front and side views, as appropriate.

For the registration of plans, sketches, maps, photographs and phonograms, a reproduction or

copy thereof shall be deposited at the National Registry of Copyrights and Related Rights.

Article 109. Registration shall be effected in the appropriate register or registers kept by the Registry in favor of the persons indicated in the work as being its author, co-authors, adapters or compilers, as laid down by this Law. In the case of anonymous or pseudonymous works, the rights shall be registered in the name of the publisher, except where the pseudonym is registered. If the work is posthumous, the rights shall be registered in the name of the author's successors in title, after their qualification has been verified. A phonogram shall be registered in the name of its producer. A radio or television program shall be registered in the name of the broadcasting organization concerned.

Article 110. For the registration of deeds of transfer and also translation, publishing and participation contracts, and any other deed or contract associated with copyright or related rights, it shall be necessary to show the deed or title concerned, with the signature of the assignor authenticated by an attorney, to the Registrar.

Article 111. The representatives or administrators of theatrical or musical works may request registration of their powers of attorney or contracts at the Registry, which latter shall issue a certificate, such certificate being sufficient in itself for the exercise of the rights conferred by this Law. Collecting societies entrusted with the representation and administration of copyrights and related rights on behalf of their members and those whom they represent shall provide the Registrar with evidence that they are authorized to represent and administer the rights of the persons concerned.

Article 112. When registration has taken place, the Registrar shall immediately make out a certificate and issue it to the person who effected the registration of the work.

The certificate shall specify the volume in which and the folio and date on which the registration was effected, the title of the registered work, the surnames, given names and addresses of the author, co-authors, translator, adapter, compiler, publisher and successors in title, in whose name the rights concerned have been registered, and also any other characteristic that contributes to the identification of the work, as well as the seal and signature of the Registrar.

Article 113. When the request for registration has been accepted as being in order, the Registrar shall order the publication of a summarized proclamation in *La Gaceta.* On expiry of thirty working days without opposition, registration of the work in favor of the requesting party shall take place.

Article 114. When the Registrar refuses registration, the requesting party shall have the right to file an administrative appeal for revocation before the Ministry of Culture, Youth and Sport.

Article 115. If the Ministry of Culture, Youth and Sport upholds the decision of the Registrar to refuse registration, the requesting party shall have the right to initiate proceedings in court to contest the ruling.

Article 116. The certification issued by the Registrar shall constitute full proof that the work is registered in the name of the person mentioned in it, except where an irreversible judicial decision declares the registration fraudulent.

TITLE V

Criminal and Civil Sanctions and Procedures

CHAPTER I

Criminal Sanctions and Procedures

Article 117. The following shall be punished by imprisonment for one to three months:

(a) the person responsible for the public performance or audition, or the transmission of a protected literary or artistic work without the consent of its author;

(b) the person responsible for the public transmission or playing of protected phonograms without the consent of their producer;

(c) the person who violates any provision of this Law, where such offense is not punished by another specific penalty.

Article 118. The following shall be punished by imprisonment for three to eight months:

(a) the person who in his own work reproduces sections of another protected work, in a proportion greater than the number of words or measures provided for in Article 70;

(b) the person who appropriates the protected original title of another work or periodical.

Article 119. The following shall be punished by imprisonment from eight to twelve months:

(a) the person who registers at the National Registry of Copyrights and Related Rights as being his own a literary or artistic work, phonogram or performance, either recorded or not, or transmission, belonging to a third party and protected;

(b) the person who reproduces a protected literary or artistic work without the consent of its author;

(c) the person who reproduces a protected phonogram without the authorization of its producer;

(ch) the person who fixes and reproduces or transmits a protected performance without the authorization of the performer concerned;

(d) the person who fixes and reproduces or retransmits a protected broadcast without the authorization of the broadcasting organization;

(e) the publisher or printer who reproduces a greater number of copies than that agreed with the author of the work;

(f) the person who adapts, transposes, translates, amends, summarizes or recasts the protected work of another person without the consent of its author;

(g) the person who, with intent to defraud, by changing or deleting the title and by altering the text, publishes the protected work of another person, as if it were his own or that of another author;

(h) the person who sells, distributes, stores, imports or exports fraudulently reproduced copies, or who in another manner contributes to the defrauding of the author, performer, producer of phonograms or broadcasting organization.

Article 120. The authorization of the owner of copyright and related rights shall always be express and in writing, and any reproduction or use made by a person not having such authorization shall be presumed unlawful.

Article 121. The person who, without being the author or publisher or the successor in title, or representative of either of them, falsely ascribes any of those titles to himself and, by way of action in that capacity pursuant to this Law, causes the appropriate authority to suspend the lawful public performance of a work, shall be punished by a fine of ten to thirty daily units, without prejudice to the economic damages caused by his fraudulent action.

Article 122. The sanctions provided for in the preceding Articles shall be increased by one-third if the persons to whom they apply are specific second offenders.

Article 123. At the request of the plaintiff, second offenses of unauthorized public performance or recitation may be punished by the temporary or permanent withdrawal of the authorization granted for the operation of the theater or concert or festival hall, cinema, dance hall, radio or television station or other place in which literary or artistic works or phonograms are performed, recited or shown.

Article 124. The proceedings to which infringements of this Law give rise shall be within the jurisdiction of the ordinary criminal courts, in accordance with the general rules on competence and jurisdiction specified in the Organic Law Organizing the Judiciary, and summary judgment shall be based on the provisions laid down in the Code of Criminal Procedure.

Article 125. Any unlawful publication shall be confiscated and awarded, in the condemnatory sentence passed, to the person whose copyright has been violated by it.

Article 126. The criminal action resulting from infringement of this Law shall be public and may be initiated by denunciation or accusation.

Article 127. On expiry of three years from the event that gave rise to the bringing of the criminal actions provided for in this Law, those actions shall be statute-barred and no criminal proceedings may be instituted against the infringers concerned.

CHAPTER II

Civil Sanctions and Procedures

Article 128. Civil action to obtain redress for damages caused by infringement of this Law may be incorporated in the criminal procedure or may constitute a separate action before the competent court. If the injured party has recourse to the civil courts, the two judgments shall be independent, and the final ruling handed down by one court shall not have any *res judicata* effect on the proceedings before the other.

Article 129. Questions arising in connection with this Law, whether concerning the application of its provisions or as a consequence of legal acts and facts connected with copyright and related rights, shall be heard by the civil courts, in accordance with the Organic Law Organizing the Judiciary with respect to jurisdiction and competence.

Article 130. The author, performer or phonogram producer and the persons who represent them by law or contract may apply to the judicial authority for the preventive confiscation of:

(i) any fraudulently reproduced work, publication and copies and the machinery and equipment used for such fraudulent action;

(ii) any proceeds that may have been realized through the transfer or hiring of such works, publications or copies;

(iii) the proceeds from theatrical, cinematographic, philharmonic or any other shows.

Article 131. The persons mentioned in the preceding Article may apply to the corresponding judicial authority for the prevention, prohibition or suspension of the public performance, audition or showing of a theatrical, musical or cinematographic work, phonogram, or any other similar work, effected without due authorization from the owner of the copyright or related rights.

Article 132. National or foreign societies legally constituted for the defense of the owners of copyrights and related rights shall be regarded as the agents of their members and those whose rights they represent for all legal purposes, by the mere fact of membership of them, except where expressly provided otherwise, such societies being entitled to act at administrative or judicial level in defense of the moral and economic interests of their members.

Article 133. In order to bring the action specified in the preceding Articles, it shall be necessary:

(i) that the person who applies for confiscation or for the prevention, prohibition or suspension of the act concerned affirm that he has filed or is going to file a claim against the enterprise or person who is violating or threatens to violate his rights;

(ii) that the person provide sufficient guarantees to insure against possible prejudice that the defendant might be caused by his action. When the action is brought on the initiative of a copyright or related rights collecting society as the agent of its members, the judge shall exempt it from the provision of the said guarantee.

Article 134. The measures provided for in the preceding Articles shall be ordered immediately, subject to the necessary guarantee for possible prejudices that the action might cause the impresario or entertainment organization. The action may be ordered as a mere preventive measure by the judicial police agency or the commissioner of the *Guardia de Asistencia Rural* of the place in which the show is held, although the bodies concerned are not competent to hear the case. The files shall subsequently be transmitted to the corresponding judicial authority. When all the requirements have been met, the show shall be stopped without any appeal being allowed.

Article 135. Chapter VI of the Code of Civil Procedure on preventive seizure shall be applied, as appropriate, to the confiscation referred to in the preceding Article.

Article 136. The creditors of a theatrical or any other similar enterprise may not confiscate the part of the proceeds from the shows that accrues to the author or performers, neither shall such part be considered included in the seizure order issued by the judicial authority.

Article 137. The petition filed shall comply with all the conditions required by Article 208 of the Code of Civil Procedure.

Article 138. When the petition has been filed and accepted, the judicial authority shall notify thereof the defendant for a period of ten working days, which period shall be common to all the parties, in order that he may file a rebuttal. When there is more than one defendant, the period shall start on the day following the last notification.

Article 139. When the rebuttal of the petition has been filed or when the period has expired, the judicial authority shall set a date and time for the parties to attend an oral hearing, at which time they shall file all the written, oral and expert evidence that they consider relevant. Examination and cross-examination shall start immediately, and a report shall be made thereon. If the hearing lasts for more than three hours and the judge considers a second hearing necessary, he may summon the parties to such a hearing at his discretion. The judge shall have the power to order that other evidence be provided within a judicious time. The parties shall be given the right to file, within three working days following the day on which the hearing ended, a summarized written statement of the conclusions reached by them after they had heard the evidence and the questions and cross-questions at the hearing. On expiry of all periods, the judge shall have fifteen working days within which to pass judgment. Notwithstanding the provisions of the preceding Articles, as in all civil matters, the parties may extend the period by common consent.

Article 140. As in any case of economic dispute between individuals, the parties may submit to a binding decision by independent or judicial arbitrators, even while the case is pending before the law courts.

Article 141. Where the parties decide to settle their differences by arbitral means, they shall be subject to the provisions of Title V of the Code of Civil Procedure.

Article 142. The ruling shall be subject to appeal with staying effect, and, if the amount concerned is above ten thousand colons, a further, extraordinary appeal for annulment shall be available.

Article 143. The final judgment handed down in this type of dispute may be reviewed by the ordinary procedure; as long as it has not been reviewed, however, it shall have binding force.

Article 144. All the civil actions provided for in this Law in favor of the owners of copyrights may be exercised during the three years following knowledge of the infringement.

TITLE VI

General and Transitional Provisions

CHAPTER I

General Provisions

Article 145. This Law declares the following acts essentially contrary to public morality and

devoid of legal protection: to cause to be reproduced or to possess writings, photographs, canvases, drawings, paintings, lithographs, posters, emblems, figures, cinematograph films or other sound, visual or audiovisual fixations of obscene character, or to do business in showing, lending or hiring them.

Article 146. The preceding provision shall not include publications, images, drawings and objects intended for exclusively and verifiably scientific, educational and artistic purposes, being thus devoid of any licentious intent.

Article 147. When the author dies without completing his work, the publisher or user may agree with the spouse and consanguineous heirs of the author to entrust another person with its completion, deducting in favor of that person remuneration in proportion to his work, and mentioning his name in the publication.

Article 148. Any person shall have the right to prohibit his bust or portrait from being exhibited or placed on the market without his express consent, or, if he has died, without the consent of the persons mentioned in Article 15 of this Law. The person who has given his consent may revoke it, subject to indemnification for the prejudice caused by his changed decision.

Article 149. When the consent of two or more persons is necessary for the publication of letters, or for the placing on the market or exhibiting of the bust or portrait of an individual, and when there is disagreement between them, the matter shall be settled by judicial means.

Article 150. Where there are two or more successors to the author and where they do not agree on the publication of the work or on the means of publishing, distributing or selling it, the judge shall settle the matter in a summary ruling after having heard all the parties.

Article 151. In any resale of an original work of art or of original manuscripts of writers and composers, the author shall enjoy the inalienable and unrenounceable right to collect from the seller five percent of the resale price. On the death of the author this *droit de suite* shall pass, for a period of fifty years, to his spouse and thereafter to his consanguineous heirs.

Article 152. The protection provided for in Articles 78 and 79 shall also be enjoyed by variety artists, such as acrobats, magicians, clowns, trapeze artists, animal tamers and others who do not perform works but participate professionally in public shows.

Article 153. The protection provided for in Article 78 shall also be enjoyed by amateur and professional athletes who perform in public. The exercise of the right shall belong to the club or sports entity to which they belong; however, when the latter collects remuneration from users for the transmission, fixation or reproduction of the game or athletic event, half of the net amount collected shall be distributed in equal shares to the participating athletes.

Article 154. The various forms of use shall be independent of each other, so that authorization to record the work or production shall not constitute authorization to perform or transmit it, or vice versa.

Article 155. In the absence of evidence to the contrary, the individual whose name or known pseudonym is specified on a protected work in the customary manner shall be considered the author of the work.

Article 156. All acts rectricted to authors, performers, phonogram producers or broadcasting organizations may be performed by their duly authorized representatives and by assignees and successors in title, or by the collecting society that lawfully represents them.

Article 157. When the title of a review or periodical is characteristic, it may not be used for another without the appropriate permission of the owner of the former periodical. The protection conferred on such titles shall continue for five years following the appearance of the last issue.

CHAPTER II

Transitional Provisions

Article 158. Until such time as the office of the National Registry of Copyrights and Related Rights has been established, the duties of the Registrar shall continue to be performed by the Director of the National Library, in strict compliance with the principles laid down by this Law.

Article 159. Works which, on the entry into force of this Law, are registered at the National Library and belong to the private domain shall retain all acquired rights without any formality having to be complied with.

Article 160. The provisions of mercantile law and civil law shall apply in a manner subsidiary to the provisions of this Law.

Article 161. This Law shall where appropriate repeal Law No. 40 of June 27, 1896, in so far as it refers to intellectual property, Law No. 1568 of 1953, Decree No. 32 of May 25, 1948, and Law No. 2834 of 1961, as well as Chapter 9, Section 6, of Title I of the second volume of the Commercial Code, and also any other enactment that is at variance with it.

Article 162. This Law shall come into operation as from its publication.

Reflections on the Future Development of Copyright

This article, commissioned by WIPO from a distinguished copyright scholar, Mr. David Ladd, the Register of Copyrights of the United States of America, begins a series of articles under the general title "Reflections on the Future Development of Copyright."

The series of articles will examine, from various points of view, fundamental concepts of copyright and thoughts about its future development in the light of the changing social, economic and technological environment. All the articles, as in the case of this one, will reflect the views of their authors, rather than any policy of the International Bureau of WIPO.

On the eve of the centenary of the Berne Convention in 1986, it seems necessary that the elements should be furnished for a basic appraisal of whether the copyright system in general and the Berne Convention in particular serve their purpose as fully as they could and should.

To Cope with the World Upheaval in Copyright

David LADD *

Summary

I. Introduction

A. The Stress on Authors' Rights and Copyright

This paper has been prepared to identify the major challenges confronting the present and future development of authors' rights and copyright,[1] and to recommend approaches towards more effectively engaging international organizations in meeting these challenges.

It does not purport to represent official views, either in WIPO or in the United States. The United States experience may, however, be instructive, because the early application of commercially significant technologies there compels groups interested in copyright — copyright users and copyright owners — to come to grips with these trends in their early stages. One may examine in these efforts both successes and failures, and thereby inform discussions and decision-making on similar problems elsewhere.

So successful have been these technologies in disseminating protected works that this very success has given rise to objections against *any* perceived obstacle to a work's enjoyment. Such objections are both economic and philosophical: they focus on payment for authors' rights and copyright; and, on philosophical and ideological grounds, those payments are increasingly called into question.[2] The focus in this paper is

* Register of Copyrights of the United States of America.

[1] The terms *authors' rights* and *copyright*, often used synonymously, are here frequently employed to emphasize that rights of authors and publishers are, while usually allied, nevertheless distinct.

[2] See, *e.g.*, M. Ficsor, "Disquieting Report from the Maginot Line of Authors," *Copyright*, 1982, p. 104; S. Stewart, "International Copyright in the 1980's" (18th J. Geiringer Memorial Lecture), 28 *Bulletin of the Copyright Society of the USA*, 1981, p. 351.

not upon any particular technology, although particular examples are used for illustration, but upon the cumulative and general impact of various technologies on copyright and ideas about the role of copyright.

B. The International Character of the Strains

The strains upon copyright are becoming increasingly international in character. And even in countries where they have not yet appeared, they are likely to do so soon, and in force. Photocopying, for example, is a copyright issue everywhere; and photocopying creates stubborn problems of reconciling the interests of authors and publishers with the growing non-commercial sectors of advanced societies. Such reconciliation often requires domestic accommodations to be made in copyright laws. But, more profoundly, the interaction of several technologies — broadcast and satellite transmissions, computer and computer-controlled optical disk storage and retrieval, and the technology for large-scale pirating and trafficking in pirated copies — presents problems of a different order. Purely domestic approaches cannot hope to contain them, because they are international problems often involving international commerce or transmissions, and thus requiring international solutions.

C. Need for International Solutions

In the hurly-burly of change, policy-makers must continuously and carefully not only watch and assess how various countries try to cope, but also search for *new* international solutions to increasingly international problems. This is easy to say, but hard to do. The international copyright positions taken by various States rarely proceed far in advance of domestic positions on the same questions. In a sense, the development of international law for new technologies requires us to search for solutions which permit variations at the state level, while moving steadily toward a substantial degree of international harmonization.

There is accordingly a renewed need for effective international cooperation through formal treaties and existing international organizations. In addition, we now need something in the nature of less formalized arrangements seeking to rationalize trade practices in the new technological and global environment. It is inevitable that change will cause the reexamination of not only conventional legal norms and familiar commercial practices, but also of the theoretical and doctrinal underpinnings of copyright as well. The future is uncertain — troublingly so, not only because events are fast-breaking and the problems are numerous, but because the once-shared vision and aspiration for a world community for authorship and authors' interests has faded. As we face an uncertain future, we must take care to ensure that the protection afforded by copyright is real as well as formal. However salutary the language of a treaty, the critical test is whether authors' rights and copyright are, in fact, protected and appropriate payments for the use of those rights are actually made.

D. The Essential Role of Non-Governmental Organizations

For decades, especially after the formation of the International Copyright Union, international cooperation extended the reach of authors' rights. As new forms of expression — the cinema, radio, television — appeared, domestic law-making served as a precursor of gradual elaboration of the Berne Convention. The *spirit* which gave birth to the Berne Union was so closely identified with the aspirations of artists and authors — and with their idealistic, and perhaps romantic, vision of a universal law guaranteeing equality and independence to all authors — that the modernization of Berne was made both more deeply urgent and easier. This is an historical point, but worth keeping before us: international copyright treaties and organizations were the legal expressions of a vision which originated with authors themselves. The direct precedents of the first international copyright convention — and later the newer Universal Copyright Convention — lay in the efforts of *non-governmental* organizations. The Congress of Authors and Artists (Brussels, 1858), its successors in Antwerp in 1861 and 1877, and the 1878 Congresses of Artists and of Authors in Paris, were meetings at which authors, artists, journalists, educators and political figures hammered out a consensus over what broad principles should protect authors' rights on a multinational basis.

Common international legislation on copyright and allied rights thus served the overall aims of creative persons: to advance the welfare of authors and their disseminators; to reduce national barriers to international cultural discourse and to let this discourse, ideally, lead to a better educated citizenry and greater international harmony. In any event, it is necessary that, in addressing the problems here presented, full recourse be had to those most directly affected — the authors and their organizations. No proxy, no government, no official, can represent their interests better than they can themselves.

E. Causes of the Diminished International Vision

The notions of a harmonious international copyright community just recited can be seen, in retrospect, to have been over-optimistic. Several factors may account for this.

First, the theory of authors' rights has inevitably become entwined with matters of international trade in copyrightable "objects" and has therefore been subject to powerful political pressures for protectionism. Fundamentally, this has permitted the re-

introduction of reciprocity into practical copyright matters, to the detriment of an important principle for which international copyright stands: national treatment.

Second, to the extent that the dream of a universal copyright regime looked toward deeper integration of States into an international system of broader cooperation, two world wars in less than 30 years blighted those aspirations.

Third, the notion of international harmonization of copyright in 1886 did not encompass large sections of the world as we know it today; it was, in the main, a European vision reflecting the deepest feelings of Europe's leading cultural personages.

Fourth, in recent years international organizations have been timid in their extension, elaboration and perfection of protection for intellectual property. For decades, especially after the Berne Convention, international cooperation was extended to new forms of expression as they appeared. But in recent years the whole range of political and economic issues involved in today's international geopolitics have cast their shadow upon WIPO and Unesco. They have therefore become less and less able fully to adapt and perfect modes of protecting authors, and more and more preoccupied with political strivings of political groups. The results have been inevitable: either "consensus" positions so muted in compromise and vague in direction that decisive action in the service of authorship became virtually impossible; or a shift in focus away from protecting authors toward serving users.

None of this, however, detracts from the essential lessons to be drawn from the formative history of international copyright up to the development of the Universal Copyright Convention. First, recognition of authors' rights should be an essential part of the jurisprudence of all civilized countries; second, any effective international consensus on copyright must be based upon meeting the reasonable needs of *authors* and *copyright owners*, and therefore international initiatives in copyright must involve their support and commitment at all stages; third, while the principle of national treatment may thwart attempts to impose discriminatory rules upon foreign creations, this is not enough: international law on copyright should gradually raise the overall quality of authors' rights and adapt standards of protection to changing circumstances. Those changing circumstances are usually changes in technology and related alterations in markets for copyrighted works; but it must be conceded that, together with increased facilities for unauthorized uses, there has come a diminished appreciation of the central importance to our lives of authorship and copyright, and a growth in resistance to payment for use and enjoyment of protected works.

Perhaps ironically, the broadest international consensus in support of copyright and authors' rights flowered during the industrial age, when international cultural discourse and trade were not so extensive as they are today. The fact is that precisely at the time when telecommunications and related technologies are bringing the world closer together, many are uncertain about the proper role of copyright in this environment.

F. The Need for Reaffirmation of Goals and Ideals

What is needed now is a strong reaffirmation that it is in the common interest — the public interest — to support authorship everywhere; and that the recognition of the property rights of authors, within and among nations, is of inestimable importance to all persons. What is also needed is an effort to relate the elevated principles declared in international meetings and documents more directly to the *real* world of authorship and commerce. And, finally, the extension of authors' rights and copyright to new kinds of works must be examined against accepted philosophical and doctrinal principles so that the historical domain of authors' rights and copyright not be endangered, and that new species of creative works be effectively encouraged.

The means available to the international organizations to require or encourage compliance with internationally set norms in copyright are several:

1. affirmation or reaffirmation of principles to be effected within particular countries in accordance with local requirements;
2. declarations that specified conduct should be considered legal or illegal, to the end of establishing in a more positive way that such conduct is approved or disapproved, leaving to particular countries the modes of execution and enforcement;
3. establishment of model laws for national legislation;
4. alteration of existing treaties, or creation of new ones.

Intergovernmental organizations are composed, of course, of member States. The reference here to means available to them, and the several references later in this paper to what WIPO could do or should do, are meant as references to how governments could or should use the international organizations they have created.

II. The Rationale of Authors' Rights and Copyright

The rationale for authors' rights and copyright has been so exhaustively and philosophically explored time and time again that one may wonder why it is necessary to restate it here. There are several reasons: first, because in a period when the

value of authors' rights and copyright are repeatedly challenged, time-honored and time-tested truths cannot be too frequently repeated.[3] Second, the term *copyright* is sometimes used to include in a shorthand way both authors' rights and copyright (the distinction between the two, and their separate roles, become relevant later in this paper). There is a third value, in addition to moral rights and economic rights, served by authors' rights and economic rights, which is not frequently articulated: the creation of a culture, an infrastructure, in which authors and artists may — to the extent the public supports their works — thrive. And fourth, it is important to assess these premises against the various ideological challenges to copyright now arising.

A. The Purpose of Copyright

Throughout history, human improvement has flowed from those gifted in "the exercise of the intellect." That surely was Tocqueville's meaning: "From the time when the exercise of the intellect became a source of strength and of wealth, we see that every addition to science, every fresh truth and every new idea became a germ of power placed within the reach of the people." [4]

Societies have usually, therefore, been concerned with encouraging those gifted "in the exercise of the intellect" — not merely the power of thought, but of creative imagination as well. Or, to use Tocqueville's words: "Poetry, eloquence and memory, the graces of the mind, the fire of imagination, depth of thought . . ." [5] The creative works of previous generations are among the richest treasures of our common heritage and are cherished as a grand collective human achievement.

These works have long been honored, and special care has been taken to nurture and protect the gifted who can open our eyes to a vision of life otherwise impossible. For scholars, priests, astrologers, shamans, poets, teachers, musicians and authors, means have been provided to foster them so that they might experience, reveal and teach.

The ways in which particular ages and societies have fostered authorship are many and varied: protected status or exemption from other work; royal, ecclesiastical or state patronage; academic posts and tenure; government commissions, appointments, honors or subsidies. This support has extended both to creators and to organizations which bring creative works to wider and wider preservation, understanding, appreciation and enjoyment — schools, libraries, orchestras, learned academies, museums, broadcast enterprises, and even publishers and printers.

For the most part, until the 16th century, this support was largely a matter of the favor and largesse of the powerful. But at that time appeared a new and miraculous engine through which we might directly acknowledge, support, and pay tribute to the gifted to create and support traditions and cultures in which they may create, and thus enable their work in our behalf: copyright.

The central idea of copyright is to establish an instrument of property for which the public, in paying for its use, provides the resources to reward, and thus sustain and motivate, authors to create works with which people everywhere can inform, enlighten and enlarge themselves. At the same time, copyright, providing exclusivity, protects the publisher [6] for the values — production skills, business acumen, investment, and risk — he contributes in realizing the work and bringing it to the public for enjoyment and enrichment. These points are well understood and have been frequently stated. The argument for copyright is one of both justice and utility.

Moreover — and this is less frequently stated — collectively considered, authors' revenues from their audiences support subcultures, or communities of interest, technique, and tradition both within a given society and internationally. These subcultures foster an environment in which the author can be stimulated and inspired, and which, as a totality, at once carries a philosophical and esthetic tradition, collective knowledge of techniques and skills, and voluntary associations to honor and extend knowledge and experience. Individual artists and creators will appear in every society. But every society must strive to facilitate the growth of a culture which recognizes and sustains those who do appear, moves their works to realization, use, understanding and criticism, and thus cumulatively creates a legacy so that works of authorship can survive, together with the further works they inspire, for transmission to later generations. This consideration is of particular importance to developing nations — as it was historically in America — as they seek to strengthen and enlarge their own traditions, commerce and creative milieu.

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[3] ". . . [the argument for copyright] is not as obvious as the popularist argument of cheap access to copyright works by the general public. Therefore the copyright argument needs to be put again and again in differing forms and in all countries. Once this is acknowledged the task of constantly arguing for the maintenance and development of copyright, which may at times appear repetitive or even tedious, becomes a necessary, even a noble pursuit, humanist in the best sense of the word." S. Stewart, "International Copyright in the 1980's — Part 2: Crisis in the 1980's," IFPI *News* No. 14, 1982, pp. 18-22, at 20.

[4] Comte Alexis de Tocqueville, 1 *Democracy in America* (New York), 1945, author's introduction at 5.

[5] *Ibid.*

[6] The term *publisher*, along with words derived therefrom, is used as a term of art in a broad sense in this paper to refer to any entrepreneur whose efforts lead to the public dissemination, performance, or display of works of authorship. In this extended definition, recording enterprises and motion picture producers, for example, are also "publishers."

As three American sociologists have reminded us, Gustave Flaubert once said that is was time to abandon the illusion that "books dropped like meteorites from the sky." That illusion still persists; the inspiration of authorship is confused with the drudgery of production. We must realize that:

> Ideas are the brain children of individuals; but books, in which ideas are given concrete shape so as to be conveyed to their intended audience, are the products of the collective work of members of publishing firms that specialize in the production and distribution of books. Thus, publishing houses are indispensable intermediary points in the diffusion of ideas. If the marketplace of ideas is to allow the blooming of many flowers, it is of the essence that there exist a publishing industry capable of fostering diverse intellectual and literary products that can compete for the attention of the public.[7]

Copyright, then, rewards and sustains not only authors, but their publishers as well.

B. The Different Interests of Author and Disseminator

The contributions of both the author and the publisher are necessary and, although their interests differ, they are allied. The author requires reward for his gift and effort; the publisher, compensation both for his technical skills and entrepreneurial contribution. Both those interests are frequently comprised in the term *copyright*. And indeed the publisher, by assignment or license, is often a surrogate for the author.

Even when rights are acknowledged and payment occurs, there are screens or baffles between royalties or payments collected and authors' hands: in nearly all cases authors do not themselves directly sell copies, nor do they authorize performance. Instead, they are represented by collecting societies or other intermediaries. With the spread of statutory and compulsory licenses, collecting societies grow ever more important. And in cases where distribution under such licenses is made by government organizations, the problem of equitable distribution may be even more acute.

We come now to the point whose brevity of statement here must not be allowed to belie its importance: copyright laws and organizations are more concerned with the definition and enforcement of rights against unauthorized use, and less about the relations between authors and publishers. It is essential, as a matter of justice, that the rewards of *copyright* penetrate through the bureaucratic layers of official or private societies to authors. Put bluntly, appropriate parts of the money which the public pays to use and enjoy protected works must truly reach the authors' hands. In this respect, both within nations and within the international organizations, increased attention must be given to how payments for the use of protected works are distributed as well as how they are collected. WIPO can, in a scholarly way, canvass and classify the various ways in which national regimes seek to safeguard authors' rights throughout the term of protection — as in the United States, where the law contains the termination right and limitations on the concept of "works made for hire" and, elsewhere, where *droit de suite* is in force. The very effort will focus attention upon the problem as well as suggest practical possibilities for national legislation.

The distinction between authors' rights and publishers' rights has become important in another respect. Copyright has been sought — often successfully — for new kinds of works less and less resembling the historical works of the imagination in which copyright finds its roots: computer programs, data bases and, in certain respects, industrial designs, including semiconductor chips. In these works, the character and quality of the creative faculty is so different from that of a novel, a film or a painting, so more nearly approaching inventorship as to raise the question of whether they should not be protected by some form of a neighboring right rather than copyright. The uncritical extension of copyright to such new kinds of works also arguably makes more vulnerable the protection of traditional works of authorship. For example, the term of 50 years *post mortem* has emerged out of a concern for the livelihood of an author and his family, but that purpose has less force for industrial-like works and, inadvertently and unwisely, may invite the calling into question of protracted terms of protection for *all* works.

International organizations should continue examining questions concerning computer-related and similar issues but they should do so without being so dazzled by technological progress that they lose sight of traditional authors and their works. In general, in considering the extension of copyright from its historic base in belles lettres to new technology-enabled or technology-containing works, questions should repeatedly be asked about the effects upon traditional copyright of extending copyright to new kinds of works and about the alternatives of new kinds of copyright-like protection outside copyright itself.

III. The Challenges to Copyright Analyzed

The sources of stress on copyright are various and rooted in change — in technology, in markets and other commercial practices, in shifts in public expenditure, and in international relations. Each stress is serious; together they are truly formidable. In sum, they have produced upheaval in the copy-

[7] Coser, *et al., Books, the Culture and Commerce of Publishing* (1982), p. 3.

right world. It is useful to identify them and analyze them separately.

A. Technological and Market Changes

The first source of strain is technological change. Although technologies ultimately create new markets, their immediate effects are the disruption of customary and established channels for distributing copyrighted works. Even if these strains are transitional in nature, optimism for the long term should be guarded. Inequities built up during transitions can become vested. Shorter term accommodations may ultimately serve neither authors', publishers', nor users' interests. Many new technologies are widely diffused, creating difficulty in discovering or controlling essentially private uses which have public consequences. It is futile to try to impose, in traditional contract fashion, charges for such uses on a transactional basis. Authors' societies, copyright proprietors and a growing body of non-commercial users of copyrighted works now see the necessity of devising and legalizing indirect methods of monitoring such uses, charging for them and distributing the monies collected to the copyright owners whose works are used.

These general statements are readily grasped by a concrete illustration. For decades, copyrighted cinematic works were secure against unauthorized copying. This security arose, of course, from the nature of the necessary equipment and its expense. Motion pictures were released only for theatrical exhibition; the copyright owner did not part with ownership of the distributed prints; exhibition occured only in theaters; and no one dreamed of copying the films for personal use.

Together with television broadcasting, the videocassette recorder has changed all that: everyone can copy films in his own home, even if they were licensed only for broadcast; videocassette sales (authorized and piratical) constitute a new market; and videocassette rental shops spring up, constituting yet another market. The result: theatrical display, and its inherent controls available to the copyright owner, is being displaced. The application of copyright law to new technological uses is often doubtful and usually delayed; and in the period of doubt public and non-creative commercial interests exploit the ambiguities by occupying the new zone and resisting payment. If "windfall" profits are large enough, then these interests become powerful enough to extend the delay almost perpetually.

If one surveys, in addition to videotaping, the other new technologies, including photocopying, cable television, satellite transmissions and computers, certain common characteristics are discerned:

1. a trend toward the increased importance of display and performance rights for the dissemination of "traditional" works;

2. widespread consumer ownership of instruments for display, performance and copying[8];

3. the frequent occurrence, with the appearance of new technologies (*e.g.*, cable and videorecording), of doubt or ambiguity about the very applicability of copyright control and, until the doubt is resolved, by legal interpretation or statutory change, the spread of unauthorized use which because of its large scope is difficult to bring within legal control; and

4. the practical unenforceability of traditional copyright rights by traditional means against uses which are increasingly private, not readily detectable, and yet enormous in scale.

The greatest danger thus presented is that copyright becomes irrelevant in actual practice. If one approaches new technology questions from a point of view which asks what the present law *is*, the chances are rather good that one's answer will reflect 19th-century assumptions about "good copyright policy," rather than late-20th-century reality. There is a substantial danger that exemptions reflecting earlier copyright laws, which focused upon the rights to publish and distribute copies of works to ultimate consumers, can be inadvertently and unwisely extended, thus creating an environment, unimaginable in earlier times, where their effects are far greater and less incidental to the broad commercial freedom copyright owners need to survive. Copyright principles are eternal — or should be to those who care at all about human progress and freedom — but the precise rules by which we achieve copyright's objectives must vary and may need substantial changes to meet substantially changed circumstances. In the ultimate analysis, the question is not whether a certain activity *is*, for example, a "fair use," but whether, in an emerging social and economic order, it *ought* to be within the control of authors so that they can maintain independent creativity.

To meet this need, two responses are possible: first, the clear formulation of national laws in broad prospective terms so as to encompass all significant uses of a protected work; and second, the fostering of usable licensing mechanisms where direct control by the author or the copyright owner is not possible, or greatly inefficient or inconvenient.

On the first point, the marvels of technology simply cannot be predicted beyond a near horizon and, therefore, statutes should never be drawn with exclusive rights tied firmly to any particular technol-

[8] To this list might be added technical capabilities to *adapt* protected work. Rather sophisticated features in home and institutional audio equipment permit the literal creation of personal musical anthologies, mixing broadcast performances with album cuts. The integration of word processing technologies with electronic publishing will eventually pose problems in sorting out adaptation rights in traditional literary works.

ogy. It is imperative to frame laws which declare in broad terms the various rights of which copyright is composed — reproduction, distribution, display and performance — so as to comprehend later unanticipated uses and to make this purpose an explicit objective of such laws. In this scheme, the protection founded by such a general declaration should be presumed to apply to each new technological use as it appears, with exceptions or exemptions to be permitted only when specifically provided.

If rights turn out to be unworkable, or too sweeping, or otherwise demonstrably against the public interest, they can be altered in response to the general will. It is far more difficult to do the reverse — to retrieve that which, with the passage of time, is seen to have been lost.

The usefulness and effectiveness of this technique has recently been demonstrated in the United States. There, home taping has been held — subject to review in our Supreme Court (and Congress) — to be an infringement of the generally stated exclusive right under copyright to control copying.[9]

WIPO should encourage, by whatever means at its disposal, the adoption of domestic laws which contain such general statements of the rights of copyright as to encompass the predictable future uses of protected works made possible by technology.

In the case of home taping, as in others, it is neither practical nor possible to control uses of protected works by assertion of these rights directly against the user. With respect to videorecording, therefore, indirect measurement of sales of tapes and machines used for recording, however imperfect, has been resorted to and is proposed in the United States. Where it is impossible to control and restrain use directly, it may be possible to make only an indirect measurement of actual uses and, under the mechanism of a blanket licensing scheme, to collect for them. The increased use of such non-voluntary licenses is likely inevitable. Since a compulsory license is a severe limit on the right of the author to control the exploitation of his works, it is essential that the international copyright community, under WIPO's leadership, develop clear principles about when such licenses are proper in order to protect authors, what their essential features should be, how they should be structured and managed once adopted, and under what conditions they should be abandoned.

Historically, there have been at least four reasons advanced for adoption of compulsory licenses:

(a) to overcome unacceptably high transaction costs, including the costs of finding the contracting partners for separate transactions, negotiating and settling the bargain, and completing arrangements for performance of private contracts;

(b) to provide a feasible means of legitimizing and collecting payment for the use of copyrighted works, when no present mechanism is found to exist (*e.g.*, the compulsory licenses, in place in Austria and West Germany and proposed in the United States, which require payments from manufacturers of videorecorders and/or tape as a part of recognizing the right of private videorecording);

(c) to correct a particular abuse of dominant bargaining position (as in the case of the original regime in the United States governing mechanical reproduction of music); and

(d) to subsidize, at least temporarily, a particular use to benefit the user industry, or the public which buys its service (*e.g.*, the original US cable license, which provided statutory rates constituting an income redistribution from copyright owners to cable operators by setting a royalty at a value substantially sub-market).

At the outset, one should note that the problems posed in *(a)* and *(b)* above can effectively be dealt with by voluntary systems. Significantly, some of the most important practical justifications for compulsory licensing go to the issue of comprehensive, *blanket* licensing, not to the need for *compulsion.*

One should keep those four justifications for mandatory licenses in mind when reviewing today's copyright/technologies-of-use issues. One sees, for example, in the case of photocopying and home taping, that the instruments for copying are widespread. Not only is ownership of videocassette recorders fast proliferating, but small photocopying machines suitable for home use have been on the market for some time. In any case, the copying is not visible to the copyright owner and the user has no notion how to acquire a license. The only way for the user to avoid violating the law, and for the copyright owner to be compensated, is by a mandatory license, with some indirect measurement or metering of use.

Compulsory licensing must, in some cases, be admitted. It is never the best, nor preferred, nor even welcome way of compensating authors, but sometimes, the only way. Every such licensing scheme should provide mechanisms for (1) setting the rates or fees, (2) collecting the royalties, and (3) dividing and distributing the collections. Fixing rates in a statute, or vesting the rate-setting power in a government tribunal, should be avoided whenever possible. The reason is straightforward: in such cases, the legislature itself, or the bureaucratic tribunal, will be too susceptible to popular and political forces who find it all too easy to take from the comparatively and numerically weaker creative minority and give to the numerically stronger.

[9] *Universal City Studios, Inc.* v. *Sony Corp. of America*, 659 F. 2d 963 (9th Cir. 1981).

The cable television compulsory license in the United States provides an interesting case study. Since 1978, the rates have been set in the copyright statute and adjusted by our Copyright Royalty Tribunal (CRT). Under the early — and low — adjustments, no one, not even the cable operators, contended that the rates resembled fair market values. A recent rate-making by the CRT, in which it raised the rates by a factor of roughly four in an attempt to approximate a fair market rate, has caused the cable industry to become as disenchanted with the CRT as were copyright owners when the rates were lower.

The broad disenchantment with the cable license, and its administration by the CRT, has shown itself in the debate on the home taping controversy. Some members of Congress, determined not to entrust to the CRT the administration of the compulsory license proposed for home taping, have sought an alternative: a period of voluntary good faith negotiations among the interested parties, followed, if that proves unsuccessful, by compulsory arbitration. This is a preferred mode: it retains some aspects of voluntary bargaining conduct and it reduces the opportunity for politically, and unfairly, reducing authors' compensation.

In the case of the compulsory licenses for cable and home taping, the use of a scheme more favorable to authors than a government-administered compulsory license was prejudiced for the simple reason that no organization existed to manage the collection and distribution of royalties.

This suggests an important initiative for WIPO: the preparation of models for collecting society schemes geared to new and foreseeable uses of protected works. In this work, WIPO could either take the lead, or encourage the work of present collection societies. But the purpose should be to develop a "science," to prepare models containing various alternatives, to the end that legislatures, confronted with a choice of kinds of administrative systems for compulsory licenses, could act with confidence that a licensing mechanism could be chosen and implemented on the basis of expertise and experience.

The fact that, at a given time, transaction costs are high and a compulsory license necessary must not prevent the reexamination of transaction costs and other market indicia after time has passed, industries have matured, and government intervention may have lost its utility. The need for reexamination may be seen in the cable-copyright experience in the United States. Partial copyright liability together with the compulsory license for cable was adopted in 1976, when it was probably necessary. Yet, as the technology and the industry developed, the supplying of copyrighted programming under contract (not under compulsory license) became possible. Several "pay television" services and cable networks now thrive. (Only over-the-air, or hertzian, transmissions are subject to the compulsory license in the United States.) Because of these new services, over-the-air programming did not remain the only, and therefore indispensable, source of programs for cable; the pay television and cable networks acted as the focal point for acquiring, and paying for, copyrighted programs; and the possibility thus appeared of discontinuing the compulsory license and relying on contract, just as the broadcast services had always done.

In such cases it should be asserted and established, as a matter of principle, that when contract becomes a viable and workable alternative, compulsory licenses should be discontinued. In the United States, because the compulsory license has not been discontinued, cable, alone among all the program delivery services to the public — direct broadcast satellite, broadcast, videocassettes and the like — enjoys a privileged position that skews competition in favor of cable.

The copyright community should consider, and consider asserting, the following principles:

1. the exclusive right to authorize the dissemination of his works is a fundamental right of the author;

2. the right to fair compensation for the use of his work is an important component of his whole right, but not co-extensive with it;

3. voluntary contractual arrangements are the norm and should be compromised only in the face of the most compelling need;

4. if mandatory licenses are adopted, the author must be fairly compensated;

5. authors' compensation should not be less than would likely obtain under free contractual arrangements, were they possible; *(i.e.*, authors should not be required to subsidize the uses of their works);

6. comprehensive licensing schemes and arrangements should be managed privately rather than by the government;

7. development of blanket licensing organizations, and of principles for their formulation and administration, should be a principal goal of international organizations concerned with copyright;

8. when conditions of technology, markets, or industrial organization permit, compulsory licenses should be discontinued.

B. Ideological Stresses

In many societies, "technology" refers to objects and processes which are tools one brings to meeting life's tasks. For calculating payrolls, the abacus and the high speed computer may be seen as essentially the same thing — though we may quibble about which is "better," and argue long about why. But

"technology" is more than tools; it is itself an ideology, held by many to be the central theme of human history. The idea of "technology," underlying the value-laden goals of modernity, advancement — development — is more powerful and pervasive than any particular machine.

For this reason, we are inclined to view technologic growth as a generally positive thing, liberating us from pre-industrial and industrial age drudgeries and inhibitions. "Technology" is pressed, by its claque, into the service of freedom and inevitably becomes confused with freedom itself.

The encounter with technology reveals philosophical differences in and among societies, many of which have important consequences for authors' rights and copyright. The gravity of copyright-technology problems is exacerbated by the extent to which — just at the time copying technology is becoming greatly dispersed — ideological objection to payments to authors (or to anyone) are being voiced even more loudly.

The argument is that creative works — in these debates often regarded as a species of "information" — are so essential to education, informed public discussion and the enjoyment of life that they must be considered invested with a social obligation not applicable to other forms of property. Therefore, the curious argument runs, these works should not only *not* be specially rewarded because of their special value; instead, authors and copyright owners must be limited to the bare minimum necessary to evoke the work and sustain its dissemination. It must be owned that in many cases this rigorous demand flows not from necessity, but from a lack of appreciation of authors and their works and even a distrust for those who work with their spirit and mind.

The case is sometimes stated in terms of the need for "access." The authors' interests must yield, it is declared, to this need; and the means employed to compel the author to yield are various — exemptions, compulsory licenses with low rates, or refusals to extend copyright protection to new uses. Such arguments are frequently urged most enthusiastically, expansively and (in truth) expensively, by those who themselves reap large commercial profit from the unpaid-for uses.

In conjunction with the argument of the need for access has appeared the companion argument that protection should be accorded the author and the copyright owner, either in formulating legislation or enforcing rights, only upon a proof that economic "harm" or losses which would otherwise result. Thus, in the United States, both on the photocopying and home taping issues, advocates have argued that absent a showing of harm which is causally related to a particular activity, that activity should not be made subject to proprietary controls under copyright. Otherwise, it is asserted, the public's need for "access" — by copying or performance, for example — should prevail over the rights of the author and the copyright owner. Accommodating technologies of use to authors' rights has raised the fear that proprietary exclusivity can (and therefore *will*) be used to limit "access" to works, thereby thwarting the goal of achieving widest circulation of cultural and informational works.

In the United States, the battle for a comprehensive exemption to legitimize unauthorized home taping has involved enormous expenditure, and vast lobbying and propaganda efforts. It seems fair to ask whether the limitations on copyright which opponents of copyright liability are seeking will enhance public access to protected works. First, the problem is not proprietary restraints inhibiting access. The public already has paid for authorized access to cinematic works on television for *viewing*; thanks to the new technology of home videotaping, we are confronting access for *copying*, which is neither authorized nor paid for. When advocates plead access in order to curtail copyright, they frequently do not truly *mean* access. Access, they have — in sale or rental, or borrowing from libraries, or in authorized copies, or through transmissions. What is meant, however, is *convenience* in use, by acquiring actual ownership of unauthorized and unpaid-for copies.

These notions, in the context of accommodating copyright to new technology, appeared and were rejected recently in the United States — at least by the judiciary. In *Universal City Studios, Inc.* v. *Sony Corp. of America*, 659 F.2d 963 (9th Cir. 1981), the court rejected the idea that access, in the sense of convenience, can justify curtailment of copyright, or trigger fair or private use exemptions.

The case of *Encyclopaedia Britannica* v. *Crooks*, 542 F. Supp. 1156 (W.D.N.Y. 1982), raises another crucial aspect of contemporary copyright conflicts: copyrighted works are increasingly used on a wide, systematic and commercially significant way by large non-commercial user organizations. In *Encyclopaedia Britannica*, the user class was schools: a centralized media center videotaped broadcast transmissions for classroom use in many of the area's public schools. The scale of the operation, conflicting directly with copyright owners' sale, rental and broadcast markets, was held to be a copyright infringement.

The claims of non-profit user interests are difficult to resist because they often evoke universally approved social obligations such as education. In the United States the central value of publicly financed education cannot be overestimated. It has been the path to position and power for generations of impoverished immigrants and natives, and has represented the epitome of opportunity and social mobility. In a period of contracting economic growth, with sharply

rising costs of education, all costs are scrutizined; and that includes the costs of teaching materials, including protected works, which include in turn not only books, but films and transmissions.

The *Encyclopaedia Britannica* case did not arise under the current US Copyright Act, but that law takes a view of how the demands of non-commercial users should be accommodated to copyright at least as strong as that of this case. In the revision of the law in the United States in 1976, the Congress rejected several general not-for-profit exemptions, providing instead, in the context of the sweeping, prospective exclusive rights of which copyright is composed, numerous specific and limited exemptions, many of which are in support of curricular educational use.

All this raises a general and difficult problem: granting that education is a paramount social obligation and acknowledging that its costs are high and rising rapidly, that alone does not solve the problem of attaining the social goals underlying protection of authors. Is it necessary to reach the goal of publicly supported education without giving reasonable compensation to authors for use of their works in educational missions? If not, are we defraying some educational costs by imposing upon authors an undue limitation on their rights and consequently their earnings?

This question is difficult in market-economy societies. It is even more severe in societies which distrust special rights for intellectuals, believe the work of the gifted to be heavily freighted with social obligation, and regard egalitarian imperatives as at least as important as individual reward.

Upon reflection, however, such arguments may not be admitted. Education is a general social obligation and should be generally supported. If works of authorship are required in education, then the fair response is to pay for their use with public funds. Otherwise such uses become, ironically, a special tax or penalty upon authors.

The problem will arise wherever governments — in schools, broadcast services, or elsewhere — require the use of protected works, and will be aggravated if the proportion of such government uses in relation to private uses rises.

WIPO should accordingly seek to establish the principles that

1. unauthorized general or mass use, whether all together or one-at-a-time by many, should not be allowed merely upon arguments of need for access, and

2. government uses should be paid for on a par with private payments for such use.

By the same token the idea of harm as a basis for protection must be rejected. The first and most important answer to that argument is that authors and publishers should be rewarded, and rewarded greatly, if the public expresses its favorable judgment on their works.

Nowhere is it stated that an individual author must be confined to the minimum incentive to put pen to paper or brush to canvas. Life is, in any event, rarely susceptible to such "fine tuning" — least of all, artistic and intellectual creation. Some few authors, moved by strong feeling or possessed of divine madness, might well create compulsively without regard to what reward might come, but that does not detract from the value of what they have created. Nor does it solve the problem of paying for the actual production and distribution of creative works. Others — no doubt the large majority — create not only to satisfy themselves, but to feed themselves and their families, and to acquire the creature and psychological comforts which everyone desires.

The point is that an author does not dedicate his life and talents to authorship, nor even decide whether he will create another, and yet another, work upon a precise prospective calculation of what each individual exertion will yield him. The overall level of economic and moral protection of creators is decisive to authors: does it *permit* (not guarantee) economic independence? Does it favor intellectual independence?

Beyond that, however, there are practical difficulties in defining and applying the concept of harm as a condition of copyright and reward. There is, in this context, no satisfactory consensus about the meaning of *harm;* and indeed those who urge this argument have failed to offer general definitions for it.

The unsatisfactory quality of this approach appears when one asks these questions in relation to the important copyright issues of the day:

1. What is the meaning of the term *harm?*

2. What kind or degree of harm will, by the use of the test, require permission or payment for use?

3. In the courts or in the legislature, who should bear the burden of proof — the creators and the copyright owners, or those who wish to use them, often to their own commercial advantage, without payment or permission?

No author, nor any copyright owner, can infallibly predict how a work will be accepted and rewarded by the public. No one can assess, *ex ante*, failure or success. All efforts, therefore, to forecast or divine what "harm" (or reward) will occur will fail and it is unjust to impose such a burden on the author or copyright owner at any point.

The "harm" motif is related to yet another argument to limit rewards to authorship and copyright — the argument of "double payment." In its crudest form, the argument is that once an author has

realized income from the exercise of *one* of his rights, he has forfeited his right to income from other copyright rights. Under this argument, revenues from publication extinguish the right to revenues from performance or from recording.

These ideological inroads must be resisted; and WIPO should put forward the following principles:

1. authors and copyright owners should not be confined to the bare minimum reward necessary to sustain their efforts, but should be entitled to rewards proportioned to the value of the use made of protected works;
2. accordingly, just compensation for use, not harm to the authors, however defined, should be the principle of copyright protection;
3. likewise, the author should be justly compensated for *all* uses of his works and not confined, by ideas of "exhaustion" or "double payment," to payment for only one, or a few, of such uses.

C. International Transactions and Payments

International organizations have been and are primarily concerned with the definition of rights. They are little concerned with the enforcement of rights or with international remissions of payments to authors and copyright owners. Because of important changes and developments, international organizations must come to grips with practical copyright enforcement problems and, in particular, the equity and effectiveness of international copyright royalty remittances.

That copyright problems are increasingly international in character has earlier been stated. Technological innovations sharply increase the possibilities of trans-border infringements and trans-border opportunities for income for authors and copyright owners. In both these areas, there is a need for expanded activities of WIPO.

In the case of trans-border uses of copyrighted works, problems have arisen with the reception of broadcast signals for retransmission by cable. For present purposes an even more startling illustration may be used. In some parts of the world, the satellite transmissions of cinematic works are being intercepted and, without authorization, rebroadcast, in at least one case on a government-owned broadcast service. In addition, in some cases, videocassettes of such cinematic works are being used for such broadcasts. And such practices are likely to spread.

In these cases, where international agreements do not clearly apply, or where their development would be too slow, WIPO should sponsor international fora where such problems may be exposed and discussed to the end that informed opinion may correct some abuses and foundations be laid for negotiated settlements or ultimately appropriate international agreements.

There is another tendency which WIPO should move to correct. There is a practice whereby monies collected by authors' societies and like institutions (whether on the basis of contract or compulsory licenses) are distributed not in proportion to the estimated volume of the use of the works of each author, but by giving preference to domestic authors. In other cases, such monies are dedicated to social or cultural purposes in the country of collection.

This trend should be denounced as an abuse of copyright. The monies for the use of protected works should flow to authors and copyright owners, whether domestic or foreign; and the social and cultural purposes to which monies are increasingly devoted should be served instead by public appropriated funds.

WIPO should therefore study the possibilities of persuading governments to see to it that the societies' international distributions are proper. This effort could consist of recommendations by the Berne Union Assembly and of international reporting sessions convened by WIPO in which governments could report on the experience of their nationals.

IV. WIPO/Unesco Initiatives

To try to deal with emerging foreseeable problems before they become insurmountable, international organizations should devote as much attention as possible to two important near-term issues: satellites and "electronic" libraries.

A. Satellites

An item of great concern to rights holders throughout the world is the rapidly changing and constantly expanding use of satellites in the distribution of copyrighted works.

In the United States alone, several important litigations have concerned the copyright ramifications of:

(a) individuals' private reception of non-broadcast satellite signals intended for reception only by cable systems;

(b) commercial cable systems' similar reception and retransmission without payment or authorization; and

(c) the scope of the compulsory license intended for cable systems and its applicability to certain satellite transactions.

Other problems will soon be thrust into full view, particularly those concerning direct broadcast satellite transmissions, in which individuals, rather than cable systems or similar entities, will be the intended recipients of signals relayed from satellites.

In retrospect it appears that the United States' "new" copyright law (now seven years old) was not

written with recent satellite developments in mind. As entrepreneurs, courts and legislatures now try to resolve domestic conflicts, one should note that international disputes loom large. Even now, copyright owners in the United States are complaining about the uncompensated and unauthorized receipt and retransmission of satellite signals by foreign television networks.

As more satellites are launched and used throughout the world, similar issues will repeatedly arise. The time for serious examinations and work by and in international organizations is now. Among the important questions upon which an international consensus should be developed are:

1. How do the major multilateral copyright treaties deal with satellite issues?

2. Would the Brussels Satellites Convention, if it were widely adhered to, resolve pressing problems successfully?

3. Is some new treaty desirable and, if so, how can it be drafted both carefully and expeditiously?

This paper proposes no specific answers to these questions. It simply urges that they receive prompt consideration.

B. The Electronic Library

The tension generated between portions of the library and publishing communities by disputes concerning the photocopying of library materials may, in a short time, be exacerbated by new disputes: those concerning the placement into computer-accessible media of large portions of libraries' collections and, thereafter, the copying, transmitting and displaying of parts of those collections, on demand, at several (possibly remote) locations simultaneously.

Currently two pilot projects of this type are being carried out by large federal libraries in the United States. Although they are not identical, both are characterized by the use of electro-optical disks as the storage medium and the attendant possibilities of inexpensive disk reproduction and distribution. It might, for example, be physically and economically possible within a few years to provide dozens of large libraries with disks containing large parts of the collection of the Library of Congress. Such disks may contain musical and audiovisual works as well as "conventional" printed materials.

Obviously, two important goals collide when such systems are implemented: the preservation of cultural heritage (and the more mundane but also important recordation and organization of current information of all types), on the one hand, and the enforcement of authors' rights, on the other. As libraries throughout the world increase their use of electro-optical disks and related technologies, questions concerning how copyright owners shall be compensated must be addressed early on if the answers are to be salutary for the author and publisher communities. Otherwise, if uncompensated unauthorized uses become the norm, what now look like serious problems may become intractable.

WIPO should attempt — together with international library organizations — to ensure that, in the development of the library of the near future, the creators of the works which libraries collect are not left out.

V. Recapitulation of Recommendations

Throughout this paper, many recommendations are made. They are repeated here:

— Authors and copyright owners should be *justly* compensated for all significant uses of their works.

— National laws should speak in broad prospective terms to reach that end.

— Payments for uses should reach authors and copyright owners — domestically and abroad — rather than being diverted to general purposes.

— WIPO should vigorously examine methods — such as termination and *droit de suite* — by which authors retain some control and derive some benefit for the continued use of their works.

— Unauthorized general uses — whether occurring on one occasion or as the sum of many single uses — should not be permitted upon arguments that copyright impedes "access" to copyrighted works.

— Governments should pay market rates for their uses of copyrighted works.

— New works should be protected and encouraged, but not at the expense of "traditional" works and historical copyright.

— Healthy international copyright requires the active participation of non-governmental experts and organizations.

— Treaties and model laws should be constantly examined, revised or replaced, if necessary.

— Compulsory licenses, adopted only if absolutely necessary, should be carefully drafted:

  — private collecting societies should be encouraged,

  — payments should be as close as possible to market-price payments, and

  — such licenses should be abandoned when no longer necessary.

— WIPO should help develop models and model laws concerning collecting societies and compulsory licenses.

General Studies

Cable Distribution of Broadcasts

Werner RUMPHORST *

Book Reviews

100 Jahre URG (Schweizerische Vereinigung für Urheberrecht). One volume of IX-431 pages. Verlag Stämpfli & Cie AG Bern, 1983.

This book, which contains contributions from a large number of eminent specialists, has been compiled under the guidance of Professor M. Rehbinder (who is also the author of the preface and of one of the contributions) and of Privatdozent W. Larese.

The purpose of this volume is to commemorate the centenary of the Swiss federal law on copyright. The first cantonal law containing general provisions to prevent the reprinting of literary works was adopted in Ticino in 1835. Some 20 years later, in 1856, a dozen Cantons concluded a "concordat" to provide protection for authors' rights at intercantonal level. The first federal law in this field was not adopted until 1883, after consultation with the interested circles. Early in the XXth century, the need to revise the copyright legislation began to make itself increasingly felt. The preparatory work, which lasted a number of years, led to the promulgation of a new law in 1922. This law is still in force, as amended in 1955.

It would be difficult to describe in just a few lines all the articles of undeniable interest for the historical development of copyright in Switzerland, its practical application, case law, a number of current topics, protection of the different categories of works, and so on. Special attention of foreign readers should nevertheless be drawn to the article by Professor M. Pedrazzini on Swiss copyright law and the international conventions, particularly the Berne Convention.

M.S.

Il diritto d'autore, by *Mario Fabiani*. One volume of 60 pages. UTET, Turin, 1983.

This very concise account of copyright and neighboring rights in Italy was written as part of a treatise on private law published under the editorship of Pietro Rescigno. It constitutes a new contribution to legal writing in this field and is particularly useful to foreign readers wishing to acquaint themselves with the fundamentals of the relevant legislative structure and case law situation in Italy.

One section of the work is devoted to the principles of international copyright and the territorial application of Italian law, particularly in relation to the Treaty establishing the European Economic Community.

M.S.

Le convenzioni internazionali sul diritto d'Autore e i diritti vicini. Aggiornamento al 1º Gennaio '82, by *Leonello Leonelli*. One volume of 360 pages. Alberto Carisch Editore, Milan, 1982.

This work forms part of a series covering laws, treaties and international conventions on intellectual property, edited under the guidance of the author.

The volume comprises two parts. The first is an "introductory note" of some 130 pages containing the important elements of each of the international instruments covered by the study (Berne Convention, Universal Copyright Convention, Rome Convention, Phonograms Convention, Satellites Convention, the European Agreements, and also the WIPO and Unesco Conventions governing the administrative aspect of protection). In the case of the Berne Convention and the Universal Copyright Convention, a comparative analysis of the provisions contained in the various successive Acts is also given.

The second part contains the texts, in Italian or French, of the above-mentioned instruments.

A synoptic table showing the membership of the countries in the various conventions, together with the dates of entry into force, and an analytical index are given in annex.

M.S.

Calendar

WIPO Meetings

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

1983

November 21 to 25 (Manila) — Workshop on Industrial Property Licenses and Technology Transfer Arrangements (in conjunction with the third "Technology for the People" International Trade Fair)

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

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 and Subgroups

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

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)

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)