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# Copyright

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## World Intellectual Property Organization

### The World Intellectual Property Organization in 1983\*

#### Copyright and Neighboring Rights Activities

##### Intergovernmental Committees

The *Executive Committee of the Berne Union* held its 22nd (eighth extraordinary) session in Geneva in December 1983. Sixteen of the Committee's 19 member States were represented, and 27 other member States of the Berne Union were represented by observers; as the Committee held joint meetings with the Intergovernmental Copyright Committee set up under the Universal Copyright Convention, delegations of 16 other States also attended as observers. Five intergovernmental organizations and 21 international non-governmental organizations were represented by observers.

The Executive Committee of the Berne Union took note of developments regarding acceptance of the Paris Act (1971) of the Berne Convention, including the intentions of India to ratify the said Act and of Peru to accede to the Convention; it also noted, with considerable appreciation and satisfaction, a report concerning what it felt was a wide and impressive range of activities of WIPO in the field of development cooperation, which showed an understanding of problems faced by developing countries, particularly in the areas of fellowship programs and training, of legal and technical assistance to developing countries, including establishment or strengthening of the national infrastructure for copyright protection, and of the holding of information meetings and seminars. The Committee endorsed the idea of a detailed study being undertaken by WIPO in connection with the setting up of National Chambers of Copyright in developing countries.

The Executive Committee of the Berne Union and the Intergovernmental Copyright Committee, in joint sessions, noted information concerning *rat-*

*ifications* of and *accessions* to (including statements by delegations on preparations for such acts) the International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations (Rome Convention), the Geneva Convention for the Protection of Producers of Phonograms Against Unauthorized Duplication of Their Phonograms (Phonograms Convention), the Brussels Convention Relating to the Distribution of Programme-Carrying Signals Transmitted by Satellite (Satellites Convention) and the Madrid Multilateral Convention for the Avoidance of Double Taxation of Copyright Royalties.

The Secretariats announced the publication, in November 1983, in Arabic, English, French, Russian and Spanish of *model provisions for national legislation implementing the Satellites Convention*, with a commentary, and the communication, in March 1983, to States members of the Berne Convention and the Universal Copyright Convention of "Advisory Notes on the Implementation of the System of Translation and Reproduction Licenses for Developing Countries under the Copyright Conventions," as adopted by the Working Group on the said subject at its third session in December 1982.

The Committees took note of the recommendations formulated by the second Committee of Governmental Experts on *Copyright Problems Arising from the Use of Computers for Access to or the Creation of Works* (Paris, June 1982). In those recommendations (which do not deal with the protection of computer software), the Committee of Experts considered that the use of computer systems for access to or the creation of works should be governed by the general principles of copyright protection contained in the international conventions, and for the moment did not call for any amendments to those principles. In order to assist States in their search for legal solutions to deal with the problems resulting from the use of computer systems, the Committee of Experts adopted two recommendations, one covering copyright problems arising from the use of computers for access to works protected by copyright, and the other covering the use of computer systems for the creation of protected works.

\* This article is the second part of a report on the main activities of WIPO in general and in the fields of copyright and neighboring rights. Activities in the field of industrial property are covered in a corresponding report in the review *Industrial Property*.

The first part dealt with the activities of WIPO as such and with development cooperation activities in the fields of copyright and neighboring rights (see *Copyright*, February 1984). The second part deals with other activities in those fields.

The first recommendation has six headings: subject matter to which the recommendation applies; rights concerned (reproduction, translation, adaptation, communication to the public, moral rights); acts concerned (in relation to both "input" and "output"); moral rights; limitations of copyright protection; administration and exercise of rights (including the question of non-voluntary licenses). The second recommendation emphasizes that the copyright owners in works created with the help of computers can basically only be persons who produce the creative element without which the work would not be entitled to copyright protection.

The effect of the recommendations of the Committee of Governmental Experts would be that, normally, works protected by copyright cannot lawfully be stored in or retrieved from computer systems without the authorization of copyright owners. The limitations of and exceptions to the copyright owners' exclusive rights provided for in national copyright laws and international copyright conventions would apply, and no special extension of non-voluntary licensing should be permitted.

Many delegations emphasized the importance of the work accomplished by the Committee of Governmental Experts and expressed their great appreciation of its recommendations, which represented genuine and necessary progress in the direction of the application of the international conventions and national copyright laws to the rapid development of new technology and to the growing movement of data across frontiers. A number of the delegations were gratified that the recommendations were sufficiently flexible on the one hand to allow for the interests of authors and those of users, and on the other hand to allow developing countries the adaptations that corresponded to their needs. Consequently, they afforded guidance to national legislators having to contend with the problems raised by the increasing recourse to computer systems in the use of works protected by copyright.

The majority of delegations regretted that the recommendations of the Committee of Governmental Experts had not dealt with the protection of computer programs, and asked that studies be undertaken as a matter of urgency; the growth in piracy affecting computer programs was stressed; a number of delegations stressed the necessity for a computer program to be the result of creative work if it was to enjoy copyright protection; some delegations expressed the view that it would be difficult to assimilate software to literary and artistic works and to endeavor to protect it by copyright, and that recourse should be had to specific legislation, the urgency of which could not be overemphasized.

It was noted that the approved programs of WIPO and of Unesco provided for a joint study in 1984-1985 on the question of the protection of

computer software by copyright, and that WIPO would pursue the study of questions concerning computer programs falling under the régime of industrial property.

The Committees discussed problems arising from the *transmission by cable of television programs*, on the basis of the draft annotated principles of protection of authors, performers, producers of phonograms and broadcasting organizations in connection with distribution of programs by cable, submitted to the December 1983 meeting of the Subcommittees on Television by Cable (see below), and the report of the said meeting. They took note of the said documents, approved the conclusions reached by their respective Subcommittees, and requested their respective Secretariats to officially transmit the annotated principles and the report (with certain corrections), always together, to all States members of Unesco, WIPO, the Berne Union or the Universal Copyright Convention.

The Committees considered model provisions concerning *access by handicapped persons to works protected by copyright*, adopted by a Working Group on Access by the Visually and Auditory Handicapped to Material Reproducing Works Protected by Copyright, which met in Paris in October 1982. They noted the said model provisions and recommended to their respective Secretariats that they be submitted to States for comment. They also recommended to the Secretariats that they continue their work in this field, taking due account of the various aspects concerning the use of works by the handicapped (public performances, libraries, etc.) and of the different categories of handicapped persons. Negotiations between owners of copyright and the handicapped, and also the possibility of entering into collective agreements, should likewise be subjected to thorough study. The Committees finally decided to keep the question on their agendas, and asked their respective Secretariats to report to them on the subject at the 1985 sessions.

The Committees reviewed the model provisions for national laws on the *protection of expressions of folklore* against illicit exploitation and other prejudicial actions drawn up by a Committee of Governmental Experts in 1982, together with a commentary prepared by the Secretariats. They noted with satisfaction that the said model provisions and commentary would be published in the form of a brochure early in 1984, under the joint auspices of Unesco and WIPO, and that the said publication would be distributed to all States members of the system of the United Nations and all international organizations interested in the subject. They also noted with appreciation the work of the Regional Committees of Experts on the subject, convened in Bogota, in New Delhi and in Dakar (see below), and were informed that it was proposed to convene, in

1984, a regional committee of experts to consider the protection of expressions of folklore in the Arab countries.

The majority of delegations which took the floor emphasized the need for a specific international instrument that would provide for an intellectual property type protection on a multilateral basis, expressions of folklore requiring protection primordial against illicit commercialization abroad. The Committees noted that a Committee of Experts on the Intellectual Property Aspects of the Protection of Folklore at the International Level would be convened, jointly by Unesco and WIPO, in December 1984.

The Committees discussed *copyright problems arising from the rental of materials reproducing protected works and their distribution*, on the basis of a study prepared by the International Federation of Phonogram and Videogram Producers (IFPI). They expressed their great appreciation of the said study, and recommended that the document containing it be sent to the States party to the Copyright Conventions for comment, with a view to the preparation of a meeting of a Group of Experts scheduled for the end of 1984.

The Committees took note of the report of the Committee of Non-Governmental Experts on the "*Domaine Public Payant*," which met in Geneva in April 1982, and of the view of the Director General of WIPO, specifically supported by many delegations, that the study of the question should now be ended. Revenues collected under copyright laws should go to the authors and their successors in title. Copyright laws should not provide for payments for the use of works not protected by copyright since such provisions obscure the real justification of copyright. The cultural aims financed from the revenues derived from the institution of "*domaine public payant*" — in countries in which such an institution existed — were fully respectable but such aims should be financed from sources other than a kind of tax on the use of literary and artistic works not protected by copyright.

The results of a survey undertaken by Unesco and WIPO in 1983 on the implementation of "*droit de suite*" were submitted to the Committees. After discussion, the Committees requested their respective Secretariats to keep the matter on the agenda of their forthcoming sessions, and to that end to submit to them guiding principles on the subject.

The Committees took note of the *Model Statutes for public institutions and private societies administering authors' rights*, as adopted by the Committee of Governmental Experts on the Drafting of Model Statutes for Institutions Administering Authors' Rights in Developing Countries, which met in Geneva in October 1983 (see below). They also noted that the Secretariats would draw up a set of com-

ments to accompany the said Model Statutes, and that these texts would be published together during 1984.

The Committees received the report of the Consultation Meeting on the *Question of Copyright Ownership and its Consequences for the Relations between Employers and Employed or Salaried Authors*, held in Geneva in September 1982, and gave advice on the convening of a Committee of Experts on the subject in 1984.

Finally, the Committees decided to hold their next joint session in Paris in 1985.

The *Intergovernmental Committee of the International (Rome) Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations* held its ninth ordinary session in Geneva in December 1983. Eleven of the 12 member States of the Committee were represented; four States, party to the Rome Convention but not members of the Committee, 29 States not party to the Convention and nine international non-governmental organizations were represented as observers.

The Committee noted information concerning adherences to the Rome Convention, the Phonograms Convention and the Satellites Convention, including a statement by the delegation of Peru that its country had decided to adhere to the said Conventions, and also to the Berne Convention and the Universal Copyright Convention revised in 1971.

The Committee discussed a report on developments in legislation and the status of collective agreements in the field of the protection of performers, producers of phonograms and broadcasting organizations. A number of delegations provided information on their countries' legislation in the said field; it was noted that the report revealed a growing trend towards better protection of neighboring rights, particularly as regards the prevention of piracy, a trend which should be regarded as encouraging. Several observers from international non-governmental organizations also expressed appreciation of the report.

The Committee noted that the Secretariat was ready to prepare, for its forthcoming ordinary session, as detailed a study as possible on bilateral agreements and on arrangements between fee-collecting and distributing societies, as well as to update the study on legislation and practice.

In a discussion of ways and means of promoting the protection of performers, producers of phonograms and broadcasting organizations, the Committee noted an analysis of replies received to circular letters relating to the Rome Convention and the Phonograms Convention, examined a report on the evaluation of the results of regional seminars, emphasized the great value of the training courses organized by WIPO and Unesco, making comments

and proposals for future activities, and, in relation to action to combat piracy, noted with satisfaction the Worldwide Forums organized under the aegis of WIPO and an enquiry undertaken by Unesco.

The Committee approved the conclusions contained in the report of its Subcommittee on Television by Cable, which met in Geneva (see below) in December 1983, jointly with the respective Subcommittees of the Copyright Committees to examine the problems raised by the transmission by cable of television programs. It also took note of the basic document prepared by the Secretariat for the said meeting, and decided to authorize the Secretariat to distribute the two documents together to the member States of ILO, Unesco and WIPO.

After an exchange of views, the Committee decided to defer until its next ordinary session a proposal by ILO to amend a paragraph of the Rules of Procedure concerning the admission of observers.

### **Study of Special Copyright and Neighboring Rights Questions**

#### **Objective**

The objective of the activities provided for in the approved program is to look for solutions to specific questions of a legal nature, and of topical interest, in the fields of copyright and neighboring rights. These questions are of topical interest because they are raised by relatively recent changes in the social, economic or technological environment in which mankind lives.

#### **Activities**

*A Regional Committee of Experts on Means of Implementation in Asia of Model Provisions on Intellectual Property Aspects of Protection of Expressions of Folklore*, convened by WIPO and Unesco, met, at the invitation of the Government of India, in New Delhi in January and February 1983.

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

Experts from six countries of the Asian and Pacific Region (Australia, India, Indonesia, Pakistan, Philippines and Thailand) participated in the meeting. Four international non-governmental organizations were represented by observers.

During a general discussion, the experts exchanged information, fully recorded in the report of the meeting, about the present situation of and plans

for the protection of folklore in their respective countries. This was followed by examination, section by section, of the Model Provisions and the relevant commentary, submitted to the Committee. The experts made a number of observations, and suggestions were made by one or more experts to be reflected in the completed version of the Commentary on these Model Provisions to be finalized by the Secretariat. These observations and suggestions related mainly to the scope of the definition of protected expressions of folklore, the acts of utilization subject to protection (which should include the displaying or exhibiting of secret and sacred items), the offense of distortion of folklore, the variety of national legal systems and administrative structures and relationship between the Model Provisions and other forms of protection. Finally, the experts unanimously agreed that the interests of national communities require adoption of an international agreement on protection of expressions of folklore.

*A Regional Committee of Experts on Means of Implementation in Africa of Model Provisions on Intellectual Property Aspects of Protection of Expressions of Folklore*, convened by WIPO and Unesco, met in Dakar in February 1983. The meeting was organized in cooperation with the African Cultural Institute (ACI).

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

Experts from seven countries of the African Region (Cameroon, Cape Verde, Ghana, Kenya, Senegal, Tanzania and Zaire) were invited to participate in the meeting. Three international non-governmental organizations were represented by observers.

During a general discussion, the experts expressed their appreciation at the preparation of a text enabling the national legislators to have at their disposal a model law intended to protect expressions of folklore, particularly important in view of the fact that such a protection at the legal level is not yet fully set up in Africa. It was stressed that legislations are insufficient if there is no implementation machinery allowing for a control of the use of expressions of folklore and for the collection of the appropriate fees.

The general discussion was followed by an examination, section by section, of the model provisions and the relevant commentary submitted to the Committee. The experts made a number of observa-

tions and suggestions, related mainly to the definition of the term "expression of folklore," possible exceptions for the benefit of non-profit-making public bodies which utilize expressions of folklore for their own needs, the use of the existing structures in Africa, in particular, the societies of authors, in the role of "competent authority," and the use of the fees collected in the most appropriate manner for the purpose of promoting national culture. Finally, the experts stressed the need to elaborate an instrument protecting expressions of folklore at the international level.

*Cable Television.* As agreed at the joint meeting in Paris in December 1982 of Subcommittees of the Executive Committee of the Berne Union, of the Intergovernmental Committee of the Universal Copyright Convention and of the Intergovernmental Committee of the Rome Convention, a *Consultants' Meeting on Television by Cable* was convened by WIPO, ILO and Unesco in Geneva in March 1983. The meeting was attended by 28 consultants designated by the Governments of Austria, Canada, Chile, France, Germany (Federal Republic of), Israel, Italy, Japan, Mexico, Netherlands, Norway, Sweden, Switzerland, United Kingdom, United States of America. The Arab Educational, Cultural and Scientific Organization (ALECSO) and 14 international non-governmental organizations representing authors, performers, producers of phonograms and broadcasting organizations sent observers, who actively participated in the meeting by offering information on relevant facts and contributing to the clarification of many aspects of the protection of various interests relating to the distribution of programs by cable. The participants discussed the whole range of relevant issues, encompassing, in particular, the problems of interpretation of significant notions about distribution by cable, the classification of distribution by cable of broadcast programs as a separate restricted act, the distinct features of distribution by cable without an intervening broadcast ("cable-originated programming"), the links between transmission by satellite and distribution to the public of the transmitted signals by cable, the balance between related rights of various groups of beneficiaries concerned, etc.

The meeting provided advice to the three Secretariats in their task of revising draft annotated model provisions for the protection of authors, performers, producers of phonograms and broadcasting organizations in connection with distribution by cable and of preparing a set of principles of relevant legal protection, with a detailed commentary and possible alternative solutions, for submission to further sessions of the Subcommittees.

The said three Subcommittees met in Geneva in December 1983 in order to continue to examine the

questions relating to the protection of authors, performers, producers of phonograms and broadcasting organizations in connection with distribution of programs by cable, on the basis of a working document containing draft annotated principles of protection of authors, performers, producers of phonograms and broadcasting organizations in connection with distribution of programs by cable, revised by the Secretariats in the light of the deliberations of the meeting of the Subcommittees in December 1982 and of the meeting of consultants in March 1983, as well as, as far as ILO was concerned, of further exploration of the issues involved.

Eleven States members of the Executive Committee of the Berne Union (Australia, Canada, Costa Rica, France, Hungary, Italy, Mexico, Switzerland, Tunisia, United Kingdom, Zaire), 15 States members of the Intergovernmental Committee of the Universal Copyright Convention (Algeria, Australia, Brazil, Colombia, Costa Rica, Germany (Federal Republic of), Israel, Italy, Japan, Netherlands, Soviet Union, Sweden, Tunisia, United Kingdom, United States of America) and 10 States members of the Intergovernmental Committee of the Rome Convention (Austria, Brazil, Denmark, Germany (Federal Republic of), Italy, Mexico, Niger, Norway, Sweden, United Kingdom) were represented; two intergovernmental organizations and 12 international non-governmental organizations were represented by observers.

The Subcommittees had an extensive discussion on the working document referred to above. During the discussions, a number of observations were made both on the form and on the substance of the principles and the annotations contained in the said document.

The Subcommittees expressed their great appreciation of the work which had for a number of years been conducted by various committees and by ILO, Unesco and WIPO in order to propose principles on the problems concerning the matters dealt with in the said document. They noted with great satisfaction the efforts made by the Secretariats to give to the draft principles a flexible nature while at the same time offering guidance for national legislators.

The Subcommittees took note of the contents of the working document and were of the opinion that the draft principles together with the annotations contained therein constituted a valuable inventory of the problems and of possible solutions to be applied in various cases. They noted that there was substantial agreement among their members on most of the basic issues dealt with in the document, but that in several respects members of the Subcommittees expressed disagreement on particular parts of the document or observed that their previous observations on specific issues had not been taken

sufficiently into account. The major disagreements or reservations were reflected in the report of the meeting. The time available for the discussion did not permit every delegation to express its views on every detail of the document.

The Subcommittees concluded that the solution of the issues in question should be found at the national level in each country according to the social and political conditions prevailing there and subject to the country's international obligations. They were of the opinion that the draft annotated principles, together with the observations contained in the report of their meeting, could form an important element in the consideration of such issues at the national level.

The Subcommittees considered that they had concluded their task. In view of the importance of the subject matter, the Subcommittees recommended to the three Committees respectively that the Secretariats should follow closely the development of law and practice connected with the distribution of programs by cable and report to those Committees in 1985.

*A WIPO Worldwide Forum on the Piracy of Broadcasts and of the Printed Word* was held in Geneva in March 1983.

The objective of the Forum was to make public opinion and the competent governmental authorities aware of the extent of commercial piracy — that is to say, the unauthorized recording of broadcasts and the unauthorized copying of books and other printed publications, and the sale of such unauthorized recordings and copies — and its harmful effects on the creators, performers, broadcasters and publishers whose rights are pirated, as well as on the consumers. Particular emphasis was laid on the measures existing or desirable to combat piracy.

The 180 participants in the Forum were delegates of States, specially invited experts from developing and developed countries as well as representatives of interested private circles and international organizations. Members of the public were admitted to follow the discussions, and representatives of the press were specially invited. The participants came from 65 States and from all regions of the world, making the Forum truly worldwide.

The discussions were presided over by the Head of the delegation of India and by the Director General.

The discussions concentrated on three main topics: the nature, extent and effects of commercial piracy, the relevant laws and international treaties, and the enforcement of antipiracy measures from the viewpoints of the authors, performers, broadcasters, publishers and the law enforcement authorities.

The Forum provided an opportunity for the participants to hear and discuss statements of high quality and considerable interest. The size of the market, the legal measures available and the practices of commercial piracy were examined in detail.

The majority of the papers presented and statements prepared in advance by the invited organizations and experts were reproduced and distributed as working papers of the Forum. A brochure containing the texts of these papers was published.

At the close of their discussions, the participants unanimously adopted the following *resolution*:

Representatives of governments, representatives of international and national organizations of authors and users of authors' works, broadcasters and publishers, and specialists, coming from developing and industrialized countries of different social and economic systems, participants in the WIPO Worldwide Forum on the Piracy of Broadcasts and of the Printed Word, held in Geneva from March 16 to 18, 1983;

*Having heard* some 40 prepared statements and an equal number of interventions in the course of a general debate;

*Found* the holding of the Forum useful, and *commend* WIPO on having taken the initiative of organizing it;

*Express their concern* over the spreading of the piracy, on a commercial level, of broadcasts and the printed word, facilitated by new technological developments whose impact on copyright is frequently not clearly defined in laws and practice;

*Consider* that the search for measures for combating piracy more efficiently should continue;

*Consider* that these measures should comprise the provision of more effective sanctions, particularly penal sanctions, in the legislations, adherence to appropriate international conventions, a more effective cooperation between those whose rights are endangered and the law enforcement authorities, as well as a continuing search for simplifying the methods of obtaining the necessary authorizations from the holders of the rights at a reasonable price, particularly as far as the use of foreign books and broadcasts in developing countries is concerned;

*Ask* WIPO to continue its work of making governments and the general public aware of the harmful effects of piracy on creativity and cultural progress;

*Recommend* that the Director General of WIPO bring this resolution to the attention of the Conference of WIPO and the Assembly of the Berne Union for the Protection of Literary and Artistic Works, with a view to the possible adoption of recommendations at the official level.

The Director General, accordingly, brought the above resolution to the attention of the Governing Bodies concerned at their sessions in September and October 1983. The said Governing Bodies decided that the resolution, together with the resolution adopted by the participants in the WIPO Worldwide



Forum on the Piracy of Sound and Audiovisual Recordings, held in Geneva in March 1981, be circulated to all member States as a recommendation for implementation of appropriate antipiracy measures at the national level.

A *Committee of Governmental Experts on the Drafting of Model Statutes for Institutions Administering Authors' Rights in Developing Countries* was convened by WIPO and Unesco in Geneva in October 1983. Experts from the following 21 States participated: Austria, China, Dominican Republic, Gabon, Honduras, Hungary, India, Indonesia, Italy, Japan, Kuwait, Madagascar, Mexico, Morocco, Philippines, Republic of Korea, Saudi Arabia, Soviet Union, Spain, Tanzania and Upper Volta. Four intergovernmental organizations and six international non-governmental organizations were represented by observers.

The Committee considered two drafts of Model Statutes, prepared by a Committee of Experts convened by Unesco and WIPO in Paris in June 1980, one designed for public institutions administering authors' rights, the other for private societies administering such rights.

After a general discussion of the reasons for, and purposes of, preparing two separate sets of Model Statutes for institutions administering authors' rights under public law and private law, respectively, the Committee proceeded to examine, article by article, the drafts submitted to it and drew up two texts of Model Statutes. It also entrusted the Secretariats with writing, subsequently, a Commentary to accompany the said Model Statutes, taking account of several points that emerged in the course of the debates and were recorded in the report of the meeting.

### **Information in the Fields of Copyright and Neighboring Rights**

#### **Objective**

The objective is to increase and spread knowledge about the doctrine, legislation and practical administration of copyright and neighboring rights.

#### **Activities**

The periodicals *Copyright* and *Le Droit d'auteur* continued to be published each month.

The *WIPO Glossary of Terms of the Law of Copyright and Neighboring Rights* was published in a further three-language edition (English, French, Portuguese) in July 1983. The Glossary contains 265 terms with their equivalents in the other languages, together with explanations. The Glossary exists in the following editions: English—

French—Spanish; English—French—Arabic; English—French—Russian; English—French—Portuguese.

WIPO continued to keep up to date its *collection of the texts of the laws and regulations of all the countries of the world and of all treaties dealing with copyright and neighboring rights*, both in their original languages and in English and French translations. The basic texts were published in the monthly periodicals *Copyright* and *Le Droit d'auteur*.

### **Cooperation with States and Various Institutions in Matters Concerning Copyright and Neighboring Rights**

#### **Objective**

The objective is to ensure that, through regular contacts between the International Bureau on the one hand and the governments of States and international organizations on the other hand, there should be full awareness of what is being done and planned on either side, in order to inspire mutually more and more useful activities, to combine forces wherever possible and to avoid all unnecessary duplication.

#### **Activities**

*Czechoslovakia.* A WIPO official gave a lecture at an International Consultation on the Protection of the Rights of Performers in Socialist Countries, organized by the Central Committee of the Union of Workers in the Field of Art and Culture and of Social Organizations in Czechoslovakia, in Prague in November 1983.

*France.* A WIPO official visited Paris in July 1983 to discuss with the Government authorities the organization of the General Introductory Course on Copyright and Neighboring Rights in Paris in October and November 1983.

*Unesco and ILO.* WIPO continued its cooperation with Unesco in the fields of copyright and neighboring rights and with ILO in the field of neighboring rights. WIPO was represented at the General Conference of Unesco in Paris in October and November 1983.

*Council of Europe.* WIPO was represented at a meeting of the Committee of Legal Experts in the Media Field of the Council of Europe, and at a Symposium on Technological Development and New Challenges of Cultural Policy, in Strasbourg in November 1983.

*League of Arab States.* In August 1983, the Director General paid official visits to the headquarters in Tunis of the League of Arab States, the Arab



Educational, Cultural and Scientific Organization (ALECSO) and the Arab States Broadcasting Union (ASBU), and discussed with their executive heads increased cooperation between WIPO and the said institutions and their member States. The discussions concerning cooperation with ALECSO were resumed during a visit by the Director General of ALECSO to WIPO later in August 1983. WIPO was represented at the preparatory meeting of the Permanent Committee for the Protection of Copyright of ALECSO in Tunis in November 1983.

*Non-Governmental Organizations.* WIPO was represented at the following meetings of international non-governmental organizations having an interest in copyright and related matters: the Executive Committee of the International Literary and Artistic Association (ALAI) in Paris in January 1983, and the Congress of ALAI in Greece in April 1983; the Congress of the International Federation of Library

Associations and Institutions (IFLA) in Munich in April 1983; the Legal and Legislation Committee of the International Confederation of Societies of Authors and Composers (CISAC) in Washington in May 1983. Officials of CISAC visited the Director General for discussions in July 1983.

A WIPO official gave lectures at a seminar on the Rome Convention, organized by the Japanese Association of Performers, and at a seminar on current copyright problems, organized by the Copyright Research Institute of Japan, both in Tokyo in February 1983.

In January 1983, a meeting of international non-governmental organizations concerned with copyright and neighboring rights questions was convened by the Director General in Geneva; current activities were reviewed, and suggestions were invited and offered for the future programs and medium-term plans of WIPO.

## **Conventions Administered by WIPO**

### **Intergovernmental Committee of the International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations (Rome Convention, 1961)**

#### **Ninth Ordinary Session**

(Geneva, December 8, 9 and 12, 1983)

#### **Report**

submitted by the Secretariat and adopted by the Committee

#### **Introduction**

1. The Intergovernmental Committee of the International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations (Rome Convention, 1961) (here-

inafter referred to as "the Committee"), convened in accordance with paragraph (6) of Article 32 of that Convention and Rule 10 of the Rules of Procedure of the Committee, held its Ninth Ordinary Session at the headquarters of the ILO in Geneva on December 8, 9 and 12, 1983.

2. Eleven out of the 12 member States of the Committee (Austria, Brazil, Czechoslovakia, Denmark, Germany (Federal Republic of), Italy, Mexico, Niger, Norway, Sweden and the United Kingdom) were represented. The governments of four States, party to the Rome Convention but not members of the Committee (Costa Rica, Ecuador, Finland, Panama) and 29 States not party to the Rome Convention (Afghanistan, Argentina, Australia, Central African Republic, Egypt, Gabon, Ghana, Greece, Haiti, Holy See, India, Iran (Islamic Republic of), Japan, Madagascar, Morocco, Netherlands, Democratic People's Republic of Korea, Peru, Republic of Korea, San Marino, Somalia, Spain, Sri Lanka, Switzerland, Trinidad and Tobago, Turkey, United States of America, Yemen, Zaire) were represented as observers.

3. Nine international non-governmental organizations attended the session as observers.

4. The list of participants is annexed to this Report.

### **Opening of the Session**

5. In the absence of Mr. V. Tarnovsky, outgoing Chairman of the Committee, Mr. M. Jelinek, outgoing Vice-Chairman, opened the session.

6. Mr. Francis Wolf, Legal Adviser and Deputy Director-General of the ILO, welcomed the participants on behalf of the Directors General of the ILO, Unesco and WIPO. Recalling the history of the Rome Convention, Mr. Wolf expressed satisfaction that 26 States were now party to the Convention which fulfilled a basic need. He underlined that, with regard to law and practice and technological development, the objectives established by the Convention should be brought up to date. He also drew the attention of the Committee to a number of documents submitted to it, in particular the study on collective agreements in the fields covered by the Convention, a study which constituted a new field of enquiry for the Committee. Finally he referred to the proposed amendment to the Rules of Procedure of the Committee submitted by the ILO and emphasized the importance that that Organization attached to respect for the principle of full participation of interested parties in work which concerned them.

### **Election of Officers**

7. Following a proposal made by the delegation of Sweden, seconded by the delegations of the Federal Republic of Germany, of Brazil, of Costa Rica, of

Czechoslovakia, of Denmark, of Italy, and of the United Kingdom, Mr. H. Aguilar de la Parra (Mexico) was unanimously elected Chairman, and Mr. R. Dittrich (Austria) and Mr. I. Kanka (Czechoslovakia) were elected Vice-Chairmen.

### **Adoption of the Agenda**

8. The Provisional Agenda (document ILO/UNESCO/WIPO/ICR.9/1) was adopted.

### **Application of the Rome Convention, of the Phonograms Convention and of the Satellites Convention**

9. The Committee noted the information contained in document ILO/UNESCO/WIPO/ICR.9/2.

10. The delegation of Finland, having recalled that its country had ratified the Rome Convention having made only certain reservations required by national legislation with regard to its Article 12, described the activities of the Society for the Collection and Distribution of Remuneration (GRAMEX) established jointly by the performers and producers of phonograms. In particular, GRAMEX distributed on an individual basis remuneration arising from the broadcasting of phonograms both to performers and to producers of phonograms. In addition, it had reached reciprocal agreements with foreign remuneration collecting societies. The delegation of Finland also indicated that within the framework of the revision of the legislation at present under consideration, the possibility of extending the duration of protection up to 50 years, as well as of ensuring equitable remuneration not only for broadcasting but also for other forms of performances or of dissemination of phonograms to the general public was envisaged. His country was ready to collaborate should the revision of the Rome Convention be envisaged. In this regard, the delegation of Finland called attention to the new situation created by the development of new technologies, and, particularly with regard to cable television, expressed the hope that it would be possible to take account of this while ensuring that the rights of performers are better balanced in relation to those of other beneficiaries, in particular when they had agreed to the determination of their remuneration.

11. The delegation of Peru indicated that its country had decided to adhere to the Rome Convention, the Berne Convention, the Universal Copyright Convention revised in 1971, the Phonograms Convention and the Satellites Convention. The formal ratification procedures were already in hand.

**Developments in Legislation and Status of Collective Agreements in the Field of the Protection of Performers, Producers of Phonograms and Broadcasting Organizations**

12. The discussion took place on the basis of document ILO/UNESCO/WIPO/ICR.9/3.

13. Several delegations congratulated the Secretariat on having presented a comprehensive and detailed document. In this connection, the delegation of Italy considered that the document and in particular the part relating to collective agreements contained a mass of information which would be particularly useful to legislators who had to take practice into account in revising national legislation. A similar view was expressed by the delegation of Sweden which stressed the general usefulness of the analysis of collective agreements which constituted a comprehensive study of application machinery. Certain delegations however regretted that the documentation should have reached them too late to permit an in-depth study of the question.

14. A number of delegations provided information on their legislation in the field of the protection of the beneficiaries of the Rome Convention.

15. The delegation of Italy deplored the limited scope of legislation in the field of the protection against unlawful reproduction and regretted that the efforts made so far to strengthen penal sanctions in this field had not been successful. It hoped however that the question could be considered and taken up again in the future.

16. The delegation of Denmark indicated that its Government intended to strengthen the protection of performers and producers of phonograms. A draft law, which would probably be submitted to the Parliament early in 1984, would make unlawful the renting of recordings of musical works without the agreement of its authors, thus indirectly improving the situation of both producers and performers; it was also hoped that it would extend the duration of protection to 50 years and strengthen penal sanctions with a view to facilitating the fight against piracy. A change in the situation of performers was also under consideration since, at present, they had no right with respect to the simultaneous and unchanged cable distribution of their performances.

17. The delegation of the United Kingdom referred to two amendments to its copyright law concerning piracy of audio and video recordings which added possession by way of trade of an infringing copy to the existing penal offenses, and provided for heavier penalties and for such warrants being ob-

tained in respect of offenses relating to audio and video recordings. Following the adoption of this legislation, piracy had already declined.

18. The delegation of the Central African Republic indicated that legislation for the protection of performers' rights was in the course of preparation and stressed that the development of tourism had encouraged the uncontrolled use of recordings.

19. A number of delegations pointed out that the Report revealed a growing trend towards better protection of neighboring rights, particularly as regards the prevention of the piracy, a trend which should be regarded as encouraging. In this regard, the delegation of Sweden considered that the Worldwide Forum on the Piracy of Sound and Audiovisual Recordings organized by WIPO had had a direct effect on legislations by stressing the role of sanctions in the fight against piracy. It also called attention to certain interesting aspects of recently adopted legislations such as the recognition of a right to remuneration for all public dissemination of phonograms; the extension of protection to variety artists who did not execute musical works, as well as to professional and amateur athletes performing in public; the extension of the duration of protection; the compulsory fixing of a label on phonograms irrespective of whether or not it was a prerequisite to protection; and the obligation to maintain a daily record of the number of the recordings disseminated to the public.

20. Certain delegations put forward suggestions for future action. The delegation of Czechoslovakia considered that it would be useful if the Secretariat were to prepare a study on bilateral agreements between States in the field of administration of rights as well as on the arrangements reached between different national remuneration-collecting societies. The delegation of Mexico hoped that the Secretariat would continue its studies and, in particular, complete the analysis of collective agreements by providing information on developing countries and in particular those in the Latin American region.

21. Several observers from non-governmental international organizations also expressed appreciation of the document prepared by the Secretariat. The observer from the International Federation of Musicians (FIM), speaking also on behalf of the observer from the International Federation of Actors (FIA), stressed the importance of the study on collective agreements inasmuch as it called attention to the fact that the problems under discussion formed part of a wider reality which the Committee had to take into account. He noted nevertheless that

this analysis was incomplete in some respects, particularly as regards certain collective agreements entered into in the United States. Furthermore, it did not indicate the very wide range of benefits obtained through collective bargaining. After stressing that collective agreements could not be a substitute for the protection provided by legislation and by the Rome Convention, it recalled that collective bargaining implied the existence, both on the side of the performers and that of the users of their performances, of well-established and representative organizations, as well as of the power to negotiate and equality of rights. The Secretariat study showed that performers sought contractual solutions and this should dissipate fears that performers might use their rights to oppose technological developments. Finally, it expressed the hope that the Secretariat would pursue this type of study so that this important aspect of reality might be taken into account in any future revision of the Rome Convention.

22. The observer from the International Federation of Producers of Phonograms and Videograms (IFPI) considered that, in order to promote the Rome Convention and the adoption of new legislations, the enquiry carried out in 1979 on the application of the Rome Convention and which was based on information dating back to 1977, needed to be updated. Such an updating, accompanied by a study on collective agreements, should be most useful. The IFPI would be ready to assist in such updating just as it had done in respect of the enquiry.

23. The observer from the Latin American Federation of Performers (FLAIE) stressed the importance which performers in Latin America attached to the protection provided by the Rome Convention, which they had invoked in strengthening and exercising their rights. After providing considerable information on collective agreements in the Latin American region, he expressed the hope that new studies might be undertaken which would not be limited to listing the relevant laws and collective agreements, but would also draw up a comparative table showing their application.

24. The observer from the Inter-American Association of Broadcasters (AIR) welcomed the adoption by Cuba of legislation granting broadcasters copyright rights on their radio and television programs, independently of the neighboring rights they enjoyed on their broadcast performances. In this regard the observer from the European Broadcasting Union (EBU) stressed that the protection involved was one of copyright on their programs more than of neighboring rights. He also provided certain detailed information on collective agreements.

25. The observer from the FIM, referring to paragraph 18 of the document being discussed, regretted that the Greek law concerning the protection of performers was still not being applied. The delegation of Greece, replying to relative questions, indicated that Law 1075/1980 for the Protection of Performers, etc. would become fully applicable as soon as the required Presidential Decree was issued. While the protection foreseen by Law 1064/1980 on video cassettes and other material supports could not yet be implemented for technical procedural reasons, he pointed out that there exist in the meantime other laws and regulations dealing with the problem, by which it is foreseen that for the legal production, importation or exportation of phonograms, videograms, etc., a special mark is required. This is an obligation which will cover both local Greek consumption and imports. The observer from IFPI pointed out that, in the meantime, the Greek courts treated piracy as fraud and forgery.

26. The Committee noted that the Secretariat was ready to prepare, for its forthcoming ordinary session as detailed a study as possible on bilateral agreements and on arrangements between dues-collecting and distributing societies as well as to update the study on legislation and practice.

#### **Ways and Means of Promoting the Protection of Performers, Producers of Phonograms and Broadcasting Organizations**

27. The Secretariat presented successively the various documents concerning this question before the discussion opened.

##### *(a) Circular Letters Relating to the Rome Convention and the Phonograms Convention; Analysis of the Replies Received*

28. The Committee took note of documents ILO/UNESCO/WIPO/ICR.9/4 Annex I and Annex I Add.1.

##### *(b) Evaluation of the Results of Regional Seminars*

29. Many delegations showed their satisfaction with the document prepared by the Secretariat and expressed the hope that the training activities undertaken would continue to be developed. In particular, the Mexican delegation considered that other seminars should be organized in Latin America for those countries that had not yet ratified the Convention. This view was also shared by the FLAIE observer. The Niger delegation also thought that it would be useful to extend the number of national or regional seminars. The delegation of the Central

African Republic considered that training and information activities should be carried out in Africa in order that all the regions might benefit from them. The usefulness of regional and subregional seminars was also emphasized by the Swedish delegation.

30. However, the IFPI observer, while agreeing with the incontestable need for training and education, asked whether among the various methods of training, regional seminars of wide geographical scope were the most appropriate means of achieving the objectives.

31. It was generally considered that seminars were capable of providing awareness of the problems inherent in copyright and so-called neighboring rights, which were often little known, especially in the developing countries. Until there was better knowledge of these rights, a country could not be expected to adopt the relevant legislation. The Italian delegation considered that these meetings were essential in many countries in order to inform the authorities and to induce them to frame legislation and to implement it. The Japanese delegation pointed out that a seminar organized in 1983 by the Japanese Federation of Performers was useful and timely as his Government was considering accession to the Rome Convention. The Indian delegation also indicated that the training activities organized by WIPO from which its country had benefited would help expedite the drawing up of necessary national legislation in India to enable accession to the Rome Convention. The delegation of Trinidad and Tobago recalled that a national workshop on intellectual property, organized with the help of WIPO, had provided information to the circles concerned, which explained the numerous commentaries received on the relevant draft legislation on copyright and so-called neighboring rights.

32. The question of participation in the seminars gave rise to an extensive exchange of views. The Central African delegation, while agreeing with the desirability of designating high level personnel, considered that a tripartite formula should also be found to cover the participation of the beneficiaries of the Rome Convention, in order for them to bring influence to bear on the governments to ratify the Conventions. The delegation of Costa Rica, whose opinion was shared by the observers from AIR, IFPI and FLAIE, suggested that officials charged with the administration of justice should take part in training activities because experience showed that they often had no knowledge of the copyright and so-called neighboring rights legislation which they had to apply. The observer of IFPI also indicated that the choice of participants was particularly important and that it was necessary to ensure that they

were not *a priori* opposed to the very principles that the seminar was intended to promote. It was also desirable that the participants should belong to the same cultural and legal backgrounds if the seminars were to be able to fulfill their objectives. It might also be argued that the more the geographical area covered by the seminar was limited the greater were the chances of success.

33. With regard to the substance of the seminars, several delegations considered that the seminars should not be limited to theoretical education on the subject of copyright and so-called neighboring rights, but should also be based on the practical aspects. In the opinion of the observer of IFPI, the courses should be given not only by theoreticians but also by practitioners and the organizations of the beneficiaries of the Rome Convention should be associated with them, since they had direct knowledge of local problems. In this context, the need to organize practical training courses as well as seminars was raised by the Italian delegation. The Swedish delegation stressed that training activities could, at least at an introductory stage, not only cover copyright and so-called neighboring rights, as such, but place them in the wider context of intellectual property. It also pointed out that solutions which were valid for industrialized countries were not always suited to developing nations.

34. The observer from the FIM recalled that education had to be at two levels: there was the need to disseminate information on general principles, on the one hand, and practical application, on the other. Performers were the least protected and it was therefore desirable that training activities should concentrate on their problems.

35. Several delegations suggested that the training given should also be such as to facilitate the establishment of the necessary infrastructure for the administration of rights and the application of legislation.

36. The need to explore new ways of promoting the dissemination of information on the protection of the beneficiaries of the Rome Convention was also stressed.

37. The observer of the FLAIE expressed his organization's thanks to Unesco and WIPO for their cooperation in the organization of the Buenos Aires meeting in May 1983, and to WIPO for having contributed to its financing. He recalled that his organization had participated in a large number of seminars and symposia in Latin America and added that plans for action in the future included the holding of meetings in Mexico and Colombia in 1984.

38. To bring the data given in the documents prepared by the Secretariat up to date, the delegation of Czechoslovakia referred to a seminar on copyright and neighboring rights with special emphasis on the rights of performers held in Prague in November 1983 which brought together participants from Bulgaria, the German Democratic Republic, Hungary, Poland, USSR and Czechoslovakia. Unesco, WIPO and FIM had also participated in this seminar.

39. In reply to a question from the observer from the FIM, the Secretariat explained how requests for assistance with national legislation were dealt with: the representative of the Director General of WIPO stated that cooperation was provided at the request of governments, which were sovereign. Before giving an opinion on the drafting of legislation, consultations were held. The representative of the Director-General of Unesco pointed out that Unesco acted only at the request of governments and in consultation with the interested authorities and circles. The representative of the Director-General of the ILO stated that no request for assistance in the preparation of new legislation or the revision of existing laws had been received. Neither had she been informed of the existence of such requests. She stressed that this type of assistance was normally one of the activities of ILO, which was also ready to provide its assistance in improving legislation concerning so-called neighboring rights. In this context, the IFPI observer expressed the hope of closer cooperation between the three secretariats, as well as with the organizations representing the beneficiaries, whose knowledge of local conditions would be particularly valuable.

#### *(c) Training Courses*

40. Many delegations and several observers emphasized the great value of the training courses organized by WIPO and Unesco on copyright and so-called neighboring rights and stated that they were prepared to assist in these activities. In this respect, the delegation of the Federal Republic of Germany said that training courses were one of the best methods of promoting the protection of authors and the beneficiaries of the Rome Convention. The Mexican delegation pointed out that legislation would remain a dead letter unless duly trained competent personnel were charged with implementing it not only at the judicial, but also at the administrative level.

41. With regard to the actual content of training courses, the accent, generally speaking, was placed on the need to provide practical as well as theoretical information. The Swedish delegation underlined

the importance of placing authors' and other beneficiaries' rights in the wider framework of cultural policy and the state of economic and social development. In the opinion of the FIA observer, the public at large and those responsible for policy were not conscious of the importance of the protection of the rights of artists for society and cultural life as a whole. It was felt desirable that in training courses emphasis should be given to the importance of informing public opinion. This suggestion was fully shared by the delegation of the Federal Republic of Germany, who stressed the need to underline the role played by intellectual property in the economy. The Italian delegation said that, with regard to training, which is a rather important task, resources should also be concentrated on the cultural sphere as a whole and the activities in favor of developing countries should be coordinated.

42. Several delegations and observers pointed out that an essential condition for the success of training courses lay in the selection of participants. The delegation of the Federal Republic of Germany referred to the high level of participants in the familiarization course on copyright and neighboring rights held in Munich in 1983. The fact that participants came from diverse regions had not prejudiced the quality of the discussions, but on the contrary, had acted as a stimulant. In the opinion of the observer from the FLAIE it was particularly desirable to offer training courses not only to officials proposed by governments but equally to the personnel of private organizations responsible for the administration of rights. This suggestion was supported by the Mexican and Costa Rican delegations. The delegation of the Central African Republic stressed the need to systematically welcome to training courses nationals of the least developed countries. In this context, the FLAIE observer added that member associations of his Federation were willing to provide fellowship holders with the opportunity to take training courses on the protection of performers. This would enable fellowship holders to become familiar in the developing countries with practical questions which would prove very valuable in their own countries.

43. After providing information on the training activities carried out to date by her organization in London, as well as participation in courses organized by WIPO, the observer from IFPI offered to extend these activities to IFPI's regional offices where the necessary infrastructure exists. She pointed out that the choice of countries and host organizations for training was particularly important, and only countries and organizations with a high level of protection and experience in administration of the rights of beneficiaries of the Rome Convention should be selected for this purpose. She

also regretted that IFPI had not been invited to take part in a certain number of the training courses that had been organized. The delegation of Costa Rica and the observer from FLAIE welcomed the decentralization experiment undertaken by Unesco in the field of copyright and so-called neighboring rights in the Latin American region and the Caribbean and expressed satisfaction at the recent decision of the General Conference to maintain this program. The presence of an expert on the spot improved knowledge of local problems and facilitated personal contacts.

44. The delegation of the Central African Republic expressed the hope that training activities of the type which had been organized in Bangui, i.e. in the form of a round table, would be held systematically each year in the Central African Republic and that they would be extended to the least developed countries in Africa, Latin America and Asia; he also hoped that Unesco would extend its decentralization experiment to Africa.

45. The representative of the Director General of WIPO found the discussion on this question particularly instructive; the various comments and proposals will be considered in future activities. He also stated that training courses were in principle also intended for personnel of organizations responsible for the administration of legislation and would continue to be so in the future.

46. The representative of the Director-General of Unesco stressed the constant efforts of her Organization to diversify training activities and stated that she had taken due note of the very worthwhile suggestions that had been made.

(d) *Action to Combat Piracy: Worldwide Forums Organized under the Aegis of WIPO; Enquiry Undertaken by Unesco*

47. The observer of IFPI said that his organization appreciated all measures taken to combat piracy, particularly the forums organized by WIPO, and the enquiry undertaken by Unesco. He regretted, however, that the questionnaire drawn up by Unesco on the phenomenon of piracy defined it as illegal reproduction whereas such acts should be punishable when they were not authorized by the producer of phonograms. The Unesco questionnaire was therefore misleading since authorized reproduction might very well be regarded as legal in certain countries, which should not modify its character of piracy. The IFPI had drawn up a study on piracy for the Council of Europe countries, which it proposed to extend to the entire world. This study could be sub-

mitted to the Committee at a future session and should permit discussion of the question.

48. After emphasizing the increasingly serious character of piracy, the Costa Rican delegation expressed satisfaction at the holding of worldwide forums under the aegis of WIPO, which should be continued. It suggested that these forums should be followed up by regional seminars, in order to widen understanding of this problem.

49. The delegation of Sweden stressed the very considerable impact of the WIPO worldwide forums. It also shared the opinions of IFPI concerning the definition of piracy figuring in the Unesco questionnaire.

50. The observer from the International Copyright Society (INTERGU) referred to its ninth congress, which was held in Chile, at which it was decided to combat piracy. He stressed the interest that this problem raised in Latin America and emphasized the necessity of countries replying to the Unesco questionnaire in order to determine the extent of the phenomenon and to find methods to combat it.

51. The observer from the FLAIE stressed that the "Round Table on the abusive uses of sound and audio-visual supports," which was going to be organized by FIA, FIM, IFPI and FLAIE in Cartagena (Colombia) in October 1984, and for which the collaboration of ILO, Unesco and WIPO was desired, was part of the campaign against piracy undertaken at the regional and inter-regional level.

52. The representative of the Director-General of Unesco pointed out that the definition provided in the enquiry established by Unesco not only covered illegal reproduction, but also illegal importation and distribution.

**Problems Arising from the Transmission by Cable of Television Programs**

53. After having recalled that the Subcommittee on Television by Cable of the Intergovernmental Committee of the Rome Convention had met from December 5 to 7, 1983, jointly with the respective Subcommittees of the Copyright Committees to examine the problems raised by the transmission by cable of television programs, the Secretariat stated that in this context the Subcommittee of the Intergovernmental Committee of the Rome Convention had adopted its Report on December 7, 1983. The Committee was invited: (a) to approve the conclusions contained in the Report of its Subcommittee



on Television by Cable, which appear as an annex to document ILO/UNESCO/WIPO/ICR.9/7; (b) to authorize the distribution of the basic document prepared by the Secretariat for the meeting of the Subcommittee on Television by Cable (BEC/IGC/ICR/SC.2(Part II)/CTV/6), as well as the Report of its Subcommittee. It was also pointed out that the Committee, as an autonomous body distinct from the Copyright Committees, takes its decisions independently. For material reasons it had not been possible to distribute immediately the complete version of the Report of the Subcommittee in the three languages. It was therefore decided to suspend the discussion on this Agenda item and to take it up again at the sitting to be held for the adoption of the Report of the Committee.

54. It was so decided.

#### Proposal to Amend the Rules of Procedure

55. The representative of the Director-General of the ILO presented the proposal of the ILO to amend paragraph 3 of Rule 7 of the Rules of Procedure (document ILO/UNESCO/WIPO/ICR.9/6).

56. The delegation of Peru expressed its sympathy for the amendment proposed by the ILO. It thought that the Committee should study it since the Governing Body of the ILO attached a great importance to the principles of tripartite consultation. However, since the Secretariats of Unesco and WIPO also formed part of the Secretariat of the Committee, it would be desirable that they should indicate their position.

57. The representative of the Director General of WIPO said that the suggested changes to the Rules of Procedure, put forth by the International Labour Office, had been carefully examined by the Director General of WIPO. While the latter was in a position to associate himself with the change suggested as the text of paragraph 3(a) of Rule 7, that was not the case as concerns the change suggested as the text of paragraph 3(b) of that Rule. In that respect, the Director General of WIPO was of the view that it was preferable not to change the present Rule, but that the Intergovernmental Committee should leave itself free to decide, in each case, whether observers should be admitted to the meetings of subsidiary bodies and, if so, to what extent. This view was based on the following reasons. First, the changes suggested by the International Labour Office were stated by it to be based on the "constitutional principle of tripartism, which is the cornerstone of the International Labour Organisation"; yet no such principle is contained in the Rome Convention or in

the provisions concerning the Intergovernmental Committee. On the contrary, those provisions expressly state that the Intergovernmental Committee shall consist of representatives of the Contracting States, chosen with due regard to equitable geographical distribution, and that the Rules of Procedure of that Committee should provide for its operation. Second, neither the expression "the special interest of the three beneficiaries of the Rome Convention," nor the words in that expression, which the International Labour Office wished to introduce in the text of paragraph 3(b) of Rule 7, appeared in the text of the Rome Convention. Furthermore, it was not clear what was meant by that expression or those words; moreover, it was indeed paradoxical that those "three beneficiaries" should be given guarantees in respect of attendance at meetings of subsidiary bodies of limited membership which they did not enjoy at meetings of the Intergovernmental Committee itself or at meetings of subsidiary bodies of full membership. Third, even if the words "three beneficiaries" had reference, as the International Labour Office stated, to the interests of performers, producers of phonograms and broadcasting organizations, copyright interests, which are the object of Article 1 of the Rome Convention, and other interests, must not be treated less favorably. For these reasons, and quite apart from the difficulties posed by the suggested text of paragraph 3(b) of Rule 7 in its drafting and in the modality set forth for the selection of the representatives from among the organizations concerned, the text suggested for that subparagraph was undesirable.

58. The representative of the Director-General of Unesco indicated that her Organization had examined the proposed amendment from the Unesco point of view, which was not that of tripartism. Unesco wished that international non-governmental organizations should be associated as closely as possible with the debates on questions of interest to them. The representative of the Director-General recalled the preparatory work for the Revision Conferences of 1971 relating to the Copyright Conventions, when a subsidiary organ of limited membership established by the Intergovernmental Committees of these Conventions included representation of interested circles. Unesco accordingly had no objections to the proposed ILO amendment. She could support the proposal made in paragraph 3(a). As regards paragraph 3(b), it was necessary to widen its scope so as to enable all those interested to participate in the discussions concerning them, taking into account the fact that the matter under discussion could have implications not only for performers, producers of phonograms and broadcasting organizations but also for other interested parties, such as authors. Therefore, the question of the representa-

tion of non-governmental organizations should be decided case by case by the Committee taking into account the subject matter being dealt with by the subsidiary organ.

59. The delegation of Austria proposed that the question be referred to the next session of the Committee. All the delegations which participated thereafter in the debate stressed that they were not in a position to express themselves on the proposed amendment because, due to lack of time, it had not been possible to carry out the necessary consultations on the national plane and they supported the proposed deferment. The delegation of the Federal Republic of Germany considered that the arguments put forward by WIPO carried great weight. The notion of tripartism was to her knowledge related to labor law. In her country copyright and neighboring rights did not form part of labor law but were part of the civil laws. As a result of this, the notion of tripartism was unfamiliar to copyright and neighboring rights. One might question the advisability of introducing such a notion. The Italian delegation associated itself with the remarks of Austria and expressed concern about the wording of paragraph 3(b). It could give rise to difficulties in practice should it be necessary to create small subsidiary bodies.

60. The delegation of Mexico considered that the proposed amendment might be of considerable importance. The need to ensure the representation of both governmental and non-governmental international organizations had no doubt to be kept in mind. As regards tripartism, this principle had a legal and even constitutional significance in Mexico and consultations with the representatives of the interested organizations always took place before the delegation attended the meetings of the Committee. The Brazilian delegation endorsed the principle of systematic consultation of the three groups of beneficiaries of the Rome Convention as also of all other interested parties in discussing questions of interest to them. The question was a very complex one and stemmed from the triangular composition of the Secretariat. What was important was that in deferring discussion of the item to its next ordinary session, the Committee would not be hurting the interests of the interested parties since no other meetings were planned in the interim.

61. The United Kingdom delegation stressed that if paragraph 3(a) did not seem to make any great change in the existing situation apart from making it obligatory, paragraph 3(b) on the other hand gave cause for serious concern. How would the system function in practice? How would the participation of non-member Contracting States and of other

interested international organizations be ensured? All this required examination. Moreover, the United Kingdom delegation did not have the impression that the existing rules had posed any problem so far. In that case, why was it necessary to amend them?

62. The time devoted to the discussion did not permit delegations from States which were not members of the Committee (such as the Central African Republic and Panama) or observers from certain international non-governmental organizations (FIA, FIM, IFPI and FLAIE) to express their points of view on the matter.

63. The Chairman, having declared that it was up to the members of the Committee to decide to defer discussion of the item until the next ordinary session if they so desired, noted that the Committee had so decided.

### Other Business

64. No points were raised under this Agenda item.

### Resumption of the Consideration of the Agenda Item Concerning Problems Arising from the Transmission by Cable of Television Programs

65. The Committee took note of the basic document prepared by the Secretariat for the meeting of the Subcommittees on Television by Cable (BEC/IGC/ICR/SC.2(Part II)/CTV/6) and of the Report of its own Subcommittee on Television by Cable (BEC/IGC/ICR/SC.2(Part II)/CTV/7). It approved the conclusions contained in paragraphs 145–150 of the Report of its Subcommittee. It also decided to authorize the Secretariat to distribute the two documents to the member States of ILO, Unesco and WIPO on the understanding that they would be stapled together.

66. The representative of the Director-General of the ILO pointed out that the procedure of convening the Subcommittee of the Intergovernmental Committee of the Rome Convention and the Subcommittees of the Copyright Committees of Unesco and WIPO to sit jointly, gave rise to problems of a legal and a practical nature. Consequently it should not be considered as establishing a precedent for the future.

### Adoption of the Report

67. The Report was adopted unanimously.

## Closing of the Session

68. After the customary exchanges of thanks, the Chairman declared the session closed.

## List of Participants

### I. States Members of the Committee

**Austria:** R. Dittrich. **Brazil:** E. Cordeiro. **Czechoslovakia:** J. Kanka; J. Karhanova; M. Jelinek. **Denmark:** W. Weincke; H.C. Laurberg. **Germany (Federal Republic of):** M. Möller. **Italy:** G. Aversa. **Mexico:** H. Aguilar de la Parra; J.E. Peñalosa Plascencia. **Niger:** R. Mato. **Norway:** S. Gramstad. **Sweden:** H. Olsson; E. Essen. **United Kingdom:** D.F. Carter; D. Haselden.

### II. Observers

(a) States party to the Convention who are not members of the Intergovernmental Committee

**Costa Rica:** C. Corrales. **Ecuador:** M. Samaniejo. **Finland:** J. Lieder; R. Rytö. **Panama:** I. Aizpurua de Constantino.

(b) Other States

**Afghanistan:** A. Kherad. **Argentina:** F. Jimenez Davila; J. Pereira. **Australia:** C. Creswell. **Central African Republic:** N. Kombot-Naguemon; L. Yagao-Ngama. **Democratic People's Republic of Korea:** H.Y. Hwan; I.S. Kim. **Egypt:** M. Daghash. **Gabon:** M. Nze Ekome. **Ghana:** L.K. Christian. **Greece:** A. Souloyanni; C. Ivraakis. **Haiti:** N. Lemithe. **India:** L. Puri. **Holy See:** R. Vautherin. **Iran (Islamic Republic of):** H. Motallebi. **Japan:** Y. Oyama; K. Sakamoto. **Madagascar:** S. Rabearivelo. **Morocco:** M. Rmiki. **Netherlands:** J.M.H.D. Meijer; P. van Moort. **Peru:** R. Villaran Koechlin; D. Linares Bazan; J.M. Pacheco Nuñez; R. Salmon de la Jara; A. Thornberry Naggi. **Republic of Korea:** K.-Y. Chung; Y.-M. Kim. **San Marino:** P. Giacomini; D. Thomas. **Somalia:** F.

**Eno-Hassan, Spain:** J.M. Prado Garcia; F. Castaño Garcia. **Sri Lanka:** D.M. Jayasekera. **Switzerland:** J.-L. Marro. **Trinidad and Tobago:** D. de Freitas; H. Robertson; J. Quamina; J. Sue Wing. **Turkey:** N. Akinci. **United States of America:** L. Flacks. **Yemen:** A. Hajar. **Zaire:** K.N. Lukusa.

### (c) International Non-Governmental Organizations

**European Broadcasting Union (EBU):** W. Rumphorst; J. Briquemont. **Inter-American Association of Broadcasters (AIR):** V. Blanco Labra. **International Alliance for Diffusion by Wire (AID):** G. Klemperer. **International Copyright Society (INTERGU):** G. Halla. **International Federation of Actors (FIA):** R. Rembe. **International Federation of Film Producers Associations (FIAPF):** A. Brisson. **International Federation of Musicians (FIM):** J. Morton; Y. Burkhardt. **International Federation of Phonogram and Videogram Producers (IFPI):** I. Thomas; G. Davies; E. Thompson. **International Hotel Association (IHA):** L. Jolivet. **Latin American Federation of Performers (FLAIE):** A. Millé.

### III. Secretariat

#### International Labour Office (ILO)

R. Cuvillier (*Chief, Salaried Employees and Professional Workers Branch, Sectoral Activities Department*); J. Perret (*Salaried Employees and Professional Workers Branch, Sectoral Activities Department*); C. Privat (*Salaried Employees and Professional Workers Branch, Sectoral Activities Department*); H. Kellerson (*Office of the Legal Adviser*).

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

M.-C. Dock (*Director, Copyright Division*); M.E. Guerassimov (*Copyright Division*).

#### World Intellectual Property Organization (WIPO)

C. Masouyé (*Director, Public Information and Copyright Department*); S. Alikhan (*Director, Developing Countries Division (Copyright)*); G. Boytha (*Directeur, Copyright Law Division*); G. Ledakis (*Legal Counsel*).

## Notifications

### Berne Convention for the Protection of Literary and Artistic Works (Paris Act, 1971)

#### INDIA

#### Declaration by the Republic of India Extending the Effects of its Ratification of the Paris Act (1971) to Articles 1 to 21 and the Appendix

The Government of the Republic of India, referring to its ratification, with effect from January 10, 1975, of the Berne Convention for the Protection of Literary and Artistic Works of December 9, 1886, as revised at Paris on July 24, 1971 (Paris Act (1971)), with the declaration that its ratification thereof does not apply to Articles 1 to 21 and the Appendix of the Paris Act (1971),\* deposited, on February 1, 1984, a declaration extending the effects of its ratification to the said Articles and the Appendix. This declaration is made subject to the following:

1. With reference to Article 14<sup>bis</sup> of the Convention, the Government of India declares, in accordance with paragraph 3 of the said Article, that this ratification shall not apply to the provisions of Article 14<sup>bis</sup>, paragraph 2 (b) thereof;

2. The Government of India declares and designates the Registrar of Copyrights of India as a competent authority in terms of Article 15, paragraph 4 (a) of the Convention;

3. The Government of India also declares that it avails itself of the faculties provided for in Articles II and III of the Appendix to the revised Convention.

Articles 1 to 21 and the Appendix of the Paris Act (1971) will enter into force, with respect to the Republic of India, three months after the date of this notification, that is on May 6, 1984.

The declaration of the Republic of India that it avails itself of the faculties provided for in Articles II and III of the Appendix of the Paris Act (1971) is effective until the expiration of 10 years from the entry into force, on October 10, 1974, of Articles 1 to 21 and the Appendix of the Paris Act (1971), that is, until October 10, 1984.

Berne Notification N° 106, of February 6, 1984.

\* See *Copyright*, 1974, p. 251.

### Nairobi Treaty on the Protection of the Olympic Symbol

#### JAMAICA

#### Accession

The Government of Jamaica deposited, on February 17, 1984, its instrument of accession to the Nairobi Treaty on the Protection of the Olympic Symbol, adopted at Nairobi on September 26, 1981.

The said Treaty enters into force, with respect to Jamaica, on March 17, 1984.

Nairobi Notification N° 19, of February 17, 1984.

## National Legislation

### INDIA

#### The Copyright (Amendment) Act, 1983

(No. 23, of August 31, 1983)\*

#### An Act to amend the Copyright Act, 1957

##### *Short title and commencement*

1. (1) This Act may be called the Copyright (Amendment) Act, 1983.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

##### *Substitution of expression "radio-diffusion" by expression "broadcast"*

2. Throughout the Copyright Act, 1957 (hereinafter referred to as the principal Act), unless otherwise expressly provided, for the word "radio-diffusion", wherever it occurs, the word "broadcast" shall be substituted.

##### *Amendment of section 2*

3. In section 2 of the principal Act,—

(a) after clause (d), the following clause shall be inserted, namely:—

“(dd) “broadcast” means communication to the public—

(i) by any means of wireless diffusion, whether in any one or more of the forms of signs, sounds or visual images; or

(ii) by wire, and includes a re-broadcast;”;

(b) after clause (f), the following clause shall be inserted, namely:—

“(ff) “communication to the public” means communication to the public in whatever manner, including communication through satellite;” ;

(c) for clause (1), the following clause shall be substituted, namely:—

“(1) “Indian work” means a literary, dramatic or musical work,—

(i) the author of which is a citizen of India; or

(ii) which is first published in India; or

(iii) the author of which, in the case of an unpublished work, is, at the time of the making of the work, a citizen of India;” ;

(d) clause (v) shall be omitted.

##### *Amendment of section 3*

4. In section 3 of the principal Act, in clause (a), for the words “work to the public in sufficient quantities”, the words “work, either in whole or in part, to the public in a manner sufficient to satisfy the reasonable requirements of the public having regard to the nature of the work” shall be substituted.

##### *Amendment of section 6*

5. In section 6 of the principal Act, for clause (a), the following clause shall be substituted, namely:—

“(a) whether for the purposes of section 3, copies of any,—

(i) literary, dramatic, musical or artistic work are issued to the public in a manner sufficient to satisfy the reasonable requirements of the public; or

(ii) records are issued to the public in sufficient quantities; or”.

\* Published in *The Gazette of India (Extraordinary)*, No. 26, of September 1, 1983.

*Amendment of section 12*

6. In section 12 of the principal Act, in sub-section (7), for the words and figures "sections 480 and 482 of the Code of Criminal Procedure, 1898", the words and figures "sections 345 and 346 of the Code of Criminal Procedure, 1973" shall be substituted.

*Amendment of section 15*

7. In section 15 of the principal Act, the words "Indian Patents and", at both the places where they occur, shall be omitted.

*Amendment of section 17*

8. In section 17 of the principal Act,—

(a) after clause (c), the following clause shall be inserted, namely:—

"(cc) in the case of any address or speech delivered in public, the person who has delivered such address or speech or if such person has delivered such address or speech on behalf of any other person, such other person shall be the first owner of the copyright therein notwithstanding that the person who delivers such address or speech, or, as the case may be, the person on whose behalf such address or speech is delivered, is employed by any other person who arranges such address or speech or on whose behalf or premises such address or speech is delivered;"

(b) after clause (d), the following clause and *Explanation* shall be inserted, namely:—

"(dd) in the case of a work made or first published by or under the direction or control of any public undertaking, such public undertaking shall, in the absence of any agreement to the contrary, be the first owner of the copyright therein.

*Explanation.*—For the purposes of this clause and section 28A, "public undertaking" means—

- (i) an undertaking owned or controlled by Government; or
- (ii) a Government Company as defined in section 617 of the Companies Act, 1956; or
- (iii) a body corporate established by or under any Central, Provincial or State Act."

*Amendment of section 19*

9. Section 19 of the principal Act shall be re-numbered as subsection (1) thereof and after

sub-section (1) as so re-numbered, the following sub-section shall be inserted, namely:—

"(2) The assignment of the copyright in any work shall, among other things, indicate clearly the rights proposed to be assigned and the size of the work."

*Insertion of new section 19A*

10. After section 19 of the principal Act, the following section shall be inserted, namely:—

*Disputes with respect to assignment of copyright*

"19A. Where any dispute arises with respect to the assignment of, or any of the terms of the assignment of, any copyright, the Copyright Board may, on receipt of a complaint from any of the parties to the dispute and after holding such inquiry as it may deem necessary, pass such orders as it may deem fit, including orders by way of giving permission to the owner of the copyright to revoke its assignment if the terms of the assignment are harsh to him or if the publisher unduly delays the publication of the work or by way of issue of a certificate for the recovery of any royalty due to the owner."

*Insertion of new section 28A*

11. After section 28 of the principal Act, the following section shall be inserted, namely:—

*Term of copyright in works of public undertakings*

"28A. In the case of a work, where a public undertaking is the first owner of the copyright therein, copyright shall subsist until fifty years from the beginning of the calendar year next following the year in which the work is first published."

*Insertion of new section 31A*

12. After section 31 of the principal Act, the following section shall be inserted, namely:—

*Compulsory licence in unpublished Indian works*

"31A. (1) Where, in the case of an Indian work referred to in sub-clause (iii) of clause (1) of section 2, the author is dead or unknown or cannot be traced, or the owner of the copyright in such work cannot be found, any person may ap-

ply to the Copyright Board for a licence to publish such work or a translation thereof in any language.

(2) Before making an application under sub-section (1), the applicant shall publish his proposal in one issue of a daily newspaper in the English language having circulation in the major part of the country and where the application is for the publication of a translation in any language, also in one issue of any daily newspaper in that language.

(3) Every such application shall be made in such form as may be prescribed and shall be accompanied with a copy of the advertisement issued under sub-section (2) and such fee as may be prescribed.

(4) Where an application is made to the Copyright Board under this section, it may, after holding such inquiry as may be prescribed, direct the Registrar of Copyrights to grant to the applicant a licence to publish the work or a translation thereof in the language mentioned in the application subject to the payment of such royalty and subject to such other terms and conditions as the Copyright Board may determine, and thereupon the Registrar of Copyrights shall grant the licence to the applicant in accordance with the direction of the Copyright Board.

(5) Where a licence is granted under this section, the Registrar of Copyrights may, by order, direct the applicant to deposit the amount of the royalty determined by the Copyright Board in the public account of India or in any other account specified by the Copyright Board so as to enable the owner of the copyright or, as the case may be, his heirs, executors or the legal representatives to claim such royalty at any time.

(6) Without prejudice to the foregoing provisions of this section, in the case of a work referred to in sub-section (1), if the original author is dead, the Central Government may, if it considers that the publication of the work is desirable in the national interest, require the heirs, executors or legal representatives of the author to publish such work within such period as may be specified by it.

(7) Where any work is not published within the period specified by the Central Government under sub-section (6), the Copyright Board may, on an application made by any person for permission to publish the work and after hearing the parties concerned, permit such publication on payment of such royalty as the Copyright Board may, in the circumstances of such case, determine in the prescribed manner.”

### *Amendment of section 32*

13. In section 32 of the principal Act,—

- (a) in sub-section (1), after the words “in any language”, the words “after a period of seven years from the first publication of the work” shall be inserted;
- (b) after sub-section (1), the following sub-section shall be inserted, namely:—

“(1A) Notwithstanding anything contained in sub-section (1), any person may apply to the Copyright Board for a licence to produce and publish a translation, in printed or analogous forms of reproduction, of a literary or dramatic work, other than an Indian work, in any language in general use in India after a period of three years from the first publication of such work, if such translation is required for the purposes of teaching, scholarship or research:

Provided that where such translation is in a language not in general use in any developed country, such application may be made after a period of one year from such publication.”;

- (c) in sub-section (2), for the words “such application”, the words “application under this section” shall be substituted;
- (d) in sub-section (4),—
- (i) in the opening paragraph, for the portion beginning with the words “the application, on condition that the applicant” and ending with the words “in the prescribed manner:”, the following shall be substituted, namely:—

“the application—

- (i) subject to the condition that the applicant shall pay to the owner of the copyright in the work royalties in respect of copies of the translation of the work sold to the public, calculated at such rate as the Copyright Board may, in the circumstances of each case, determine in the prescribed manner; and
- (ii) where such licence is granted on an application under sub-section (1A), subject also to the condition that the licence shall not extend to the export of copies of the translation of the work outside India and every copy of such translation shall contain a notice in the language of such translation that the copy is available for distribution only in India:

Provided that nothing in clause (ii) shall apply to the export by Government or any authority under the Government of copies of such translation in a language other than English, French or Spanish to any country if—



(1) such copies are sent to citizens of India residing outside India or to any association of such citizens outside India; or

(2) such copies are meant to be used for purposes of teaching, scholarship or research and not for any commercial purpose; and

(3) in either case, the permission for such export has been given by the Government of that country.”;

(ii) in the proviso,—

(1) for the words “Provided that no such licence”, the words “Provided further that no licence under this section” shall be substituted;

(2) in clause (a), for the words “within seven years of the first publication of the work”, the words “within seven years or three years or one year, as the case may be, of the first publication of the work” shall be substituted;

(3) in clause (b), for the words “he was unable to find”, the words “he was, after due diligence on his part, unable to find” shall be substituted;

(4) in clause (c),—

(A) for the words “such authorisation to the publisher whose name appears from the work”, the words, brackets and figure “such authorisation by registered airmail post to the publisher whose name appears from the work, and in the case of an application for a licence under sub-section (1)” shall be substituted;

(B) for the words “the application for the licence”, the words “such application” shall be substituted;

(5) after clause (c), the following clauses shall be inserted, namely:—

(cc) a period of six months in the case of an application under sub-section (1A) (not being an application under the proviso thereto), or nine months in the case of an application under the proviso to that sub-section, has elapsed from the date of making the request under clause (b) of this proviso, or where a copy of the request has been sent under clause (c) of this proviso, from the date of sending of such copy, and the translation of the work in the language mentioned in the application has not been published by the owner of the copyright in the work or any person authorised by him within the said period of six months or nine months, as the case may be;

(ccc) in the case of any application made under sub-section (1A),—

(i) the name of the author and the title of the particular edition of the work proposed to be translated are printed on all the copies of the translation;

(ii) if the work is composed mainly of illustrations, the provisions of section 32A are also complied with;”;

(e) after sub-section (4), the following sub-sections and *Explanation* shall be inserted, namely:—

“(5) Any broadcasting authority may apply to the Copyright Board for a licence to produce and publish the translation of—

(a) a work referred to in sub-section (1A) and published in printed or analogous forms of reproduction; or

(b) any text incorporated in audio-visual fixations prepared and published solely for the purpose of systematic instructional activities,

for broadcasting such translation for the purposes of teaching or for the dissemination of the results of specialised, technical or scientific research to the experts in any particular field.

(6) The provisions of sub-sections (2) to (4) in so far as they are relatable to an application under sub-section (1A), shall, with the necessary modifications, apply to the grant of a licence under sub-section (5) and such licence shall not also be granted unless—

(a) the translation is made from a work lawfully acquired;

(b) the broadcast is made through the medium of sound and visual recordings;

(c) such recording has been lawfully and exclusively made for the purpose of broadcasting in India by the applicant or by any other broadcasting agency; and

(d) the translation and the broadcasting of such translation are not used for any commercial purposes.

*Explanation.*—For the purposes of this section,—

(a) “developed country” means a country which is not a developing country;

(b) “developing country” means a country which is for the time being regarded as such in conformity with the practice of the General Assembly of the United Nations;

(c) “purposes of research” does not include purposes of industrial research, or purposes of research by bodies corporate (not being bodies corporate owned or

controlled by Government) or other associations or body of persons for commercial purposes;

- (d) "purposes of teaching, research or scholarship" includes—
- (i) purposes of instructional activity at all levels in educational institutions, including Schools, Colleges, Universities and tutorial institutions; and
  - (ii) purposes of all other types of organised educational activity.

*Insertion of new sections 32A and 32B*

14. In Chapter VI of the principal Act, after section 32, the following sections shall be inserted, namely:—

*Licence to reproduce and publish works for certain purposes*

'32A. (1) Where, after the expiration of the relevant period from the date of the first publication of an edition of a literary, scientific or artistic work,—

- (a) the copies of such edition are not made available in India; or
- (b) such copies have not been put on sale in India for a period of six months,

to the general public, or in connection with systematic instructional activities at a price reasonably related to that normally charged in India for comparable works by the owner of the right of reproduction or by any person authorised by him in this behalf, any person may apply to the Copyright Board for a licence to reproduce and publish such work in printed or analogous forms of reproduction at the price at which such edition is sold or at a lower price for the purposes of systematic instructional activities.

(2) Every such application shall be made in such form as may be prescribed and shall state the proposed retail price of a copy of the work to be reproduced.

(3) Every applicant for a licence under this section shall, along with his application, deposit with the Registrar of Copyrights such fee as may be prescribed.

(4) Where an application is made to the Copyright Board under this section, it may, after holding such inquiry as may be prescribed, grant to the applicant a licence, not being an exclusive licence, to produce and publish a reproduction of the work mentioned in the application subject to the conditions that,—

- (i) the applicant shall pay to the owner of the copyright in the work royalties in respect of copies of the reproduction of the work sold to the public, calculated at such rate as the Copyright Board may, in the circumstances of each case, determine in the prescribed manner;
- (ii) a licence granted under this section shall not extend to the export of copies of the reproduction of the work outside India and every copy of such reproduction shall contain a notice that the copy is available for distribution only in India:

Provided that no such licence shall be granted unless—

- (a) the applicant has proved to the satisfaction of the Copyright Board that he had requested and had been denied authorisation by the owner of the copyright in the work to reproduce and publish such work or that he was, after due diligence on his part, unable to find such owner;
- (b) where the applicant was unable to find the owner of the copyright, he had sent a copy of his request for such authorisation by registered air-mail post to the publisher whose name appears from the work not less than three months before the application for the licence;
- (c) the Copyright Board is satisfied that the applicant is competent to reproduce and publish an accurate reproduction of the work and possesses the means to pay to the owner of the copyright the royalties payable to him under this section;
- (d) the applicant undertakes to reproduce and publish the work at such price as may be fixed by the Copyright Board, being a price reasonably related to the price normally charged in India for works of the same standard on the same or similar subjects;
- (e) a period of six months in the case of an application for the reproduction and publication of any work of natural science, physical science, mathematics or technology, or a period of three months in the case of an application for the reproduction and publication of any other work, has elapsed from the date of making the request under clause (a), or where a copy of the request has been sent under clause (b), from the date of sending of a copy, and a reproduction of the work has not been published by the owner of the copyright in the work or any person authorised by him within the said period of six months or three months, as the case may be;

- (f) the name of the author and the title of the particular edition of the work proposed to be reproduced are printed on all the copies of the reproduction;
- (g) the author has not withdrawn from circulation copies of the work; and
- (h) an opportunity of being heard is given, wherever practicable, to the owner of the copyright in the work.

(5) No licence to reproduce and publish the translation of a work shall be granted under this section unless such translation has been published by the owner of the right of translation or any person authorised by him and the translation is not in a language in general use in India.

(6) The provisions of this section shall also apply to the reproduction and publication, or translation into a language in general use in India, of any text incorporated in audio-visual fixations prepared and published solely for the purpose of systematic instructional activities.

*Explanation.*—For the purposes of this section, “relevant period”, in relation to any work, means a period of—

- (a) seven years from the date of the first publication of that work, where the application is for the reproduction and publication of any work of, or relating to fiction, poetry, drama, music or art;
- (b) three years from the date of the first publication of that work, where the application is for the reproduction and publication of any work of, or relating to, natural science, physical science, mathematics or technology; and
- (c) five years from the date of the first publication of that work, in any other case.

#### *Termination of licences issued under this Chapter*

32B. (1) If, at any time after the granting of a licence to produce and publish the translation of a work in any language under sub-section (1A) of section 32 (hereafter in this sub-section referred to as the licensed work), the owner of the copyright in the work or any person authorised by him publishes a translation of such work in the same language and which is substantially the same in content at a price reasonably related to the price normally charged in India for the translation of works of the same standard on the same or similar subject, the licence so granted shall be terminated:

Provided that no such termination shall take effect until after the expiry of a period of three

months from the date of service of a notice in the prescribed manner on the person holding such licence by the owner of the right of translation intimating the publication of the translation as aforesaid:

Provided further that copies of the licensed work produced and published by the person holding such licence before the termination of the licence takes effect may continue to be sold or distributed until the copies already produced and published are exhausted.

(2) If, at any time after the granting of a licence to produce and publish the reproduction or translation of any work under section 32A, the owner of the right of reproduction or any person authorised by him sells or distributes copies of such work or a translation thereof, as the case may be, in the same language and which is substantially the same in content at a price reasonably related to the price normally charged in India for works of the same standard on the same or similar subject, the licence so granted shall be terminated:

Provided that no such termination shall take effect until after the expiry of a period of three months from the date of service of a notice in the prescribed manner on the person holding the licence by the owner of the right of reproduction intimating the sale or distribution of the copies of the editions of work as aforesaid:

Provided further that any copies already reproduced by the licensee before such termination takes effect may continue to be sold or distributed until the copies already produced are exhausted.’

#### *Amendment of section 37*

15. In sub-section (1) of section 37 of the principal Act, the words “by radio-diffusion” shall be omitted.

#### *Amendment of section 45*

16. In section 45 of the principal Act, to sub-section (1), the following proviso shall be added, namely:—

“Provided that in respect of an artistic work which is used or is capable of being used in relation to any goods, the application shall include a statement to that effect and shall be accompanied by a certificate from the Registrar of Trade Marks referred to in section 4 of the Trade and Merchandise Marks Act, 1958, to the effect that no trade mark identical with or deceptively simi-

lar to such artistic work has been registered under that Act in the name of, or that no application has been made under that Act for such registration by, any person other than the applicant.”.

*Insertion of new section 50A*

17. In Chapter X of the principal Act, after section 50, the following section shall be inserted, namely:—

*Entries in the Register of Copyrights, etc., to be published*

“50A. Every entry made in the Register of Copyrights or the particulars of any work entered under section 45, the correction of every entry made in such register under section 49, and every rectification ordered under section 50, shall be published by the Registrar of Copyrights in the Official Gazette or in such other manner as he may deem fit.”

*Amendment of section 52*

18. In sub-section (1) of section 52 of the principal Act, in clause (b), the following *Explanation* shall be inserted at the end, namely:—

“*Explanation.*—The publication of a compilation of addresses or speeches delivered in public is not a fair dealing of such work within the meaning of this clause.”.

*Amendment of section 53*

19. In sub-section (3) of section 53 of the principal Act, for the words and figures “under section 19 of the Sea Customs Act, 1878”, the words and figures “under section 11 of the Customs Act, 1962”, shall be substituted.

*Amendment of section 59*

20. In section 59 of the principal Act, in sub-section (1), for the words and figures “the Specific Relief Act, 1877” the words and figures “the Specific Relief Act, 1963” shall be substituted.

*Amendment of section 60*

21. In section 60 of the principal Act, for the words and figures “in section 42 of the Specific Relief Act, 1877”, the words and figures “in section 34 of the Specific Relief Act, 1963”, shall be substituted.

*Amendment of section 70*

22. In section 70 of the principal Act, for the words “a presidency magistrate or a magistrate of the first class”, the words “a Metropolitan Magistrate or Judicial Magistrate of the first class”, shall be substituted.

*Amendment of section 78*

23. In section 78 of the principal Act, for sub-section (3), the following sub-section shall be substituted, namely:—

“(3) Every rule made under this section shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.”.

## **General Studies**

### **Changes in the Indian Copyright Law**

S. BALAKRISHNAN\*











## Correspondence

### Letter from Qatar

Publications and Editorial Department  
of the Ministry of Information of the State of Qatar\*



## Book Reviews

**Teorija Autorskog Prava i Autorsko Pravo u SFRJ** [Copyright Theory and Copyright in the Socialist Federal Republic of Yugoslavia], by *Vojislav Spaić*. One volume of IX-338 pages. Zrinski, Čakovec, 1983.

Five years after the promulgation of the new Yugoslav Copyright Law, this work sets out to give an in-depth commentary on it, from the angle of modern theory by means of a comparative study of copyright law.

In fact it is a revised edition of a work bearing the same title that was published in 1969. This new edition consists of an introduction and nine chapters.

In the introduction the author expounds the general theory of copyright, laying stress on the specific bond existing between the author and his work in a socialist society, and on the special place occupied by copyright in the civil law system.

The nine chapters of the work deal successively with the protected work, the concept of authorship, the content of copyright, the duration and assignment of rights, copyright contracts, copyright management and the protection of copyright against infringement, neighboring rights and finally international copyright. A detailed index makes for easier consultation.

The author, who is a distinguished specialist in intellectual property law, a member of the Academy of Science and a professor at the Law Faculty of Sarajevo, has presented a wide picture of the most complex aspects of copyright. He deals not only with the question of "how" in relation to the legal provisions, but above all with the question of "why" in relation to

the choice of protective measures made by the legislator with regard to special categories of works.

For instance, he places emphasis in the first chapter on the protection of works inspired by folklore, cable television, electronic music, computer programs, etc.

In the second chapter he concentrates on the work created within the framework of employment relations and the remuneration to which the worker-author is entitled, in accordance with the self-management agreement of the associated work organization.

In the third chapter he points out the difference between moral rights and personal rights, which explains why the new law no longer features provisions concerning the rights of the private person (rights in memoirs, correspondence and portraits), which are within the purview of the legislation of the Federated Republics. Similarly, in the chapter devoted to the rights related to copyright, after a detailed analysis of the three groups of rights constituting neighboring rights, the author concludes that the right of performance belongs by its very nature to copyright itself, that the rights in phonograms are economic rights *sui generis* and that the right of broadcasting is exclusively an economic right. There are therefore no provisions on neighboring rights in the new Yugoslav law.

This work, which is written in Serbo-Croatian, is of course addressed to Yugoslav nationals; however, a four-page summary in French gives foreign readers an idea of the contents of this work, which represents a useful addition to copyright literature in Yugoslavia.

N.Q.H.

## Calendar of Meetings

### WIPO Meetings

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

#### 1984

- April 2 to 6 (Canberra) — Working Group on Technical Questions Relating to the Legal Protection of Computer Software
- April 2 to 6 (Paris) — Joint International Unesco-WIPO Service for Facilitating the Access by Developing Countries to Works Protected by Copyright — Working Group on Model Contracts Concerning Co-Publishing and Commissioned Works (convened jointly with Unesco)
- April 9 to 13 (Geneva) — Permanent Committee on Patent Information (PCPI) — Working Group on General Information
- May 3 to 11 (Geneva) — Permanent Committee on Patent Information (PCPI) — Working Group on Planning and on Special Questions
- May 7 to 11 (Geneva) — Committee of Experts on the Harmonization of Certain Aspects of Patent Law
- May 14 to 25 (Geneva) — Permanent Committee on Patent Information (PCPI) — Working Group on Search Information
- May 21 to 24 (Geneva) — Conference on Inventors (convened jointly with the International Federation of Inventors' Associations)
- June 4 to 8 (Geneva) — Group of Experts on Unauthorized Private Copying of Recordings, Broadcasts and Printed Matter (convened jointly with Unesco)
- June 18 to 22 (Geneva) — Working Group on Model Provisions for National Laws on Publishing Contracts for Literary Works (convened jointly with Unesco)
- September 17 to 19 (Geneva) — Permanent Committee on Patent Information (PCPI) — Working Group on Developing Countries
- September 18 to 21 (Geneva) — Permanent Committee for Development Cooperation Related to Industrial Property
- September 18 to 21 (Geneva) — Permanent Committee on Patent Information (PCPI) and PCT Committee for Technical Cooperation (PCT/CTC)
- September 24 to 27 (Geneva) — Ordinary Sessions of the Coordination Committee of WIPO and the Executive Committees of the Paris and Berne Unions; PCT Union Assembly (Extraordinary Session)
- October 15 to 19 (Geneva) — Nice Union — Preparatory Working Group
- October 22 to 26 (Geneva) — Committee of Experts on the Question of Copyright Ownership and its Consequences for the Relations between Employers and Employed or Salaried Authors (convened jointly with Unesco)
- November 5 to 9 (Geneva) — Committee of Experts on Biotechnological Inventions
- November 19 to 23 (Geneva) — Permanent Committee on Patent Information (PCPI) — Working Groups on Special Questions and on Planning
- November 26 to 30 (Paris) — Committee of Experts on Copyright Problems Related to the Rental of Phonograms and Videograms (convened jointly with Unesco)
- November 26 to 30 (Geneva) — International Patent Classification (IPC) Union — Committee of Experts
- December 3 to 7 (?) (Geneva) — Permanent Committee on Patent Information (PCPI) — Working Group on General Information
- December 10 to 14 (Paris) — Group of Experts on the Intellectual Property Aspects of the Protection of Folklore at the International Level (convened jointly with Unesco)

#### 1985

- September 23 to October 1 (Geneva) — Governing Bodies (WIPO General Assembly, Conference and Coordination Committee; Assemblies of the Paris, Madrid, Hague, Nice, Lisbon, Locarno, IPC, PCT, Budapest, TRT and Berne Unions; Conferences of Representatives of the Paris, Hague, Nice and Berne Unions; Executive Committees of the Paris and Berne Unions; Committee of Directors of the Madrid Union; Council of the Lisbon Union)

## UPOV Meetings

### 1984

April 4 and 5 (Geneva) — Administrative and Legal Committee

April 6 (Geneva) — Consultative Committee

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

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

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

August 6 to 10 (Hanover) — Technical Working Party for Ornamental Plants and Forest Trees, and Subgroups

September 25 to 28 [or October 8 to 11] (Valencia) — Technical Working Party for Fruit Crops, and Subgroups

October 16 (Geneva) — Consultative Committee

October 17 to 19 (Geneva) — Council

November 6 and 7 (Geneva) — Technical Committee

November 8 and 9 (Geneva) — Administrative and Legal Committee

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

### Non-Governmental Organizations

#### 1984

##### European Broadcasting Union (EBU)

Legal Committee — April 4 to 7 (Bruges)

Legal Committee — October 3 to 6 (Cyprus)

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

Legal and Legislation Committee — May 8 to 10 (Corfu)

Congress — November 12 to 17 (Tokyo)

##### International Council on Archives (ICA)

Congress — September 17 to 21 (Bonn)

##### International Federation of Actors (FIA)

Conference on the Statuts of the Artist — May 14 to 17 (Moscou)

##### International Federation of Phonogram and Videogram Producers (IFPI)

Council — June 19 and 20 (Helsinki)

##### International Federation of Translators (FIT)

Congress — August 17 to 23 (Vienna)

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

Study Session on Designs — April 5 and 6 (Paris)

Executive Committee — April 7 (Bourges)

#### 1985

##### International Union of Architects (IUA)

Congress — January 20 to 26 (Cairo)