

Published monthly  
Annual subscription:  
fr.s. 130.—  
Each monthly issue:  
fr.s. 13.—

# Copyright

20th year - No. 5  
May 1984

Monthly Review of the  
World Intellectual Property Organization (WIPO)

---

## Contents

WORLD INTELLECTUAL PROPERTY ORGANIZATION	
Sub-Regional Course on Copyright and Neighboring Rights for ASEAN and Oceania Countries (Manila, February 20 to 27, 1984) . . . . .	211
NOTIFICATIONS	
<b>Convention Establishing the World Intellectual Property Organization</b>	
New Zealand. Accession . . . . .	214
<b>Berne Convention for the Protection of Literary and Artistic Works</b> <b>(Paris Act, 1971)</b>	
Mexico. Notification concerning Articles II and III of the Appendix to the Paris Act (1971) . . . . .	214
<b>Nairobi Treaty on the Protection of the Olympic Symbol</b>	
Bulgaria. Accession . . . . .	215
Syria. Accession . . . . .	215
Uruguay. Ratification . . . . .	215
NATIONAL LEGISLATION	
Upper Volta. Ordinance Affording Protection to Copyright (No. 83-16 CNR. PRES, of September 29, 1983), as rectified by Ordinance No. 84-12 CNR. PRES, of February 29, 1984 . . . . .	216
GENERAL STUDIES	
The "Body Other than the Original Broadcaster" in Cable Transmissions—Article 11bis (1) (ii) of the Berne Convention ( <b>Victor Hazan</b> ) . . . . .	228
CORRESPONDENCE	
Letter from the USSR ( <b>E. P. Gavrilov</b> ) . . . . .	237
BOOK REVIEWS	
Piracy and Counterfeiting of Industrial Property and Copyright (edited by <b>W. R.</b> <b>Cornish</b> ) . . . . .	246
CALENDAR OF MEETINGS . . . . .	247

---

© WIPO 1984

Any reproduction of official notes or reports, articles and translations of laws or agreements,  
published in this review, is authorized only with the prior consent of WIPO.

ISSN 0010-8626

---



## World Intellectual Property Organization

### Sub-Regional Course on Copyright and Neighboring Rights for ASEAN and Oceania Countries

(Manila, February 20 to 27, 1984)

#### Note

Following a recommendation of the WIPO Permanent Committee for Development Cooperation Related to Copyright and Neighboring Rights at its fifth session in New Delhi in January 1983, a general introductory course on copyright and neighboring rights was organized by WIPO for developing country officials from ASEAN (Association of South East Asian Nations) and Oceania countries. With the cooperation and kind hospitality of the Government of the Philippines through The National Library of the Philippines, this Course was held in Manila from February 20 to 27, 1984. The Government of Australia together with interested private circles in that country (the Australasian Performing Right Association (APRA) and the Australian Record Industry Association (ARIA)) also contributed financially towards the expenses of the Course.

The participants came from eight ASEAN and Oceania countries, 12 from Fiji, Indonesia, Malaysia, Papua New Guinea, Solomon Islands, Thailand and Tonga, and about 36 from the Philippines. They included attorneys, university law professors, government officials from the Justice, Education and Culture Ministries and from the respective copyright administrations, officers of performers' and record producers' associations and representatives of law enforcement agencies. The list of participants appears at the end of this Note.

The Course was inaugurated by Ambassador Narciso Reyes (Foreign Affairs Adviser to the Prime Minister) on behalf of His Excellency Mr. Cesar E.A. Virata, Prime Minister of the Republic of the Philippines. The text of the Prime Minister's welcome address is reproduced hereafter. The opening session was also addressed by the representative of the Director General of WIPO.

The purpose of the Course was to discuss the general principles in the field of copyright and neighboring rights which are of special interest to the countries of the sub-region; to discuss experience in the exercise of such rights in the sub-region; and to consider in the overall context of development, the role of such rights at the national and international levels.

There were in all 19 lectures and 10 country reports delivered and discussed during the Course.

The lectures covered a wide range of subjects, which included an introduction to copyright: its basic notions; the exercise of copyright; problems of effective copyright implementation; the model law on copyright for, and new copyright legislation in, developing countries; copyright law in the Philippines; organization and functions of the Filipino Society of Composers, Authors and Publishers; copyright and book publishing in developing countries; international protection of copyright and the Berne Convention; basic notions and international conventions in the field of neighboring rights; copyright and broadcasting; copyright and sound recordings with special reference to problems of unauthorized reproduction and piracy; administration of copyright and of neighboring rights; protection of expressions of folklore; WIPO and its program of development cooperation in the field of copyright and neighboring rights; piracy and modern media technology; piracy: films and videos; role of copyright and neighboring rights in development.

The lectures were delivered by WIPO officials, by invited foreign guest lecturers (specialists from Australia, India, Japan, Fiji, the Philippines, Switzerland, Sweden) and experts from non-governmental organizations, (the Australasian Performing Right Association (APRA), the Regional Directorate for Asia and the Pacific of the International Federation of Phonogram and Videogram Producers (IFPI), the Regional Directorate of the Motion Picture Association of America).

Each lecture was followed by a lively discussion which, *inter alia*, covered the question of piracy of intellectual works and the urgent need to control and eliminate such piracy. There was also much discussion on the desirability of ensuring deterrent penal provisions for this purpose.

The program also provided for country reports by the participants giving the status of the law and its application as well as availability of infrastructural facilities in their respective countries. Each presentation of a country report was followed by ques-

tions to the speaker by other participants and by a discussion thereon.

The organizational arrangements for the Course made by The National Library of the Philippines were excellent; foreign participants and guest lecturers were also given an insight into the cultural life of the Philippines; there was, in addition, TV and press coverage of the meeting.

A preliminary evaluation by the participants in-

dicated that they had greatly benefited from the program of papers presented at the Course by a number of experts and specialists, that the discussions were rationally organized and that the knowledge gained would be useful in respect of new legislation contemplated in some of the countries as also in considering adherence to the international system of copyright and neighboring rights through accession to the relevant multilateral conventions.

### **Welcome Address of Prime Minister, Mr. Cesar E.A. Virata of the Republic of the Philippines**

It is a pleasure to welcome the participants to this first Sub-Regional Course on Copyright and Neighboring Rights for ASEAN and Oceania Countries, the first to be held in the Philippines and in Asia. I am very pleased that the World Intellectual Property Organization (WIPO), in cooperation with The National Library, is sponsoring this training course in Manila. I am sure that this significant and educational course will inspire copyright awareness in this part of the world.

It is gratifying to note that almost one-half of the participants are from the Philippines. The presence this morning of many local participants and observers augurs well for the future of copyright in this country and perhaps for the rest of Southeast Asia and Oceania. In the Philippines today, there are many people who are becoming more and more conscious of the importance of copyright and neighboring rights.

I wish also to take this opportunity to commend the World Intellectual Property Organization for its persistent and laudable efforts in giving technical assistance to Third World countries in the field of copyright and neighboring rights. I also wish to congratulate the officials of The National Library of the Philippines for making this important event possible.

Today, the need for the protection of intellectual property can hardly be overemphasized. No nation can hope to build up its national cultural heritage without copyright protection. Effective protection of copyright is an indispensable instrument in promoting the intellectual and artistic creations of men. It also provides inspiration for the arts and science to flourish. The absence of effective copyright protection stifles the national creativity and cultural development of a country.

The rapid strides in science and technology have brought about serious infringement problems affecting the rights of authors, publishers and film producers, such as the pirating or unauthorized reproduction of books, cassettes and videotapes. These problems pose a grave threat to the rights of all beneficiaries of copyright. Copyright must therefore keep abreast of technological developments. Otherwise, the day is not far distant when the principles on which copyright is based will fall under the weight of misapplied technology. Then works which are creations of the mind will be treated as common commercial commodities and exploited without regard to the rights of their authors or publishers.

The program of the World Intellectual Property Organization for developing countries in the form of training courses for copyright specialists, both lawyers and administrators; helping to draft national legislation suited to the needs of each particular country and in line with the provisions of the Berne Convention; and assisting the establishment of strong national authors' societies under either public or private laws constitute the basic framework for strengthening copyright protection. The success of this program, however, will depend largely on the unstinting cooperation extended by the governments concerned.

It is my earnest hope that the new crop of copyright specialists who will emerge from this training course will provide the necessary leadership to inspire their respective governments to give effective support to the ongoing programs of the World Intellectual Property Organization.

In closing, I wish you all success and a pleasant stay in Manila.

### **List of Participants**

#### **I. States**

##### **Fiji**

Mr. Joni MADRAIWIWI, Legal Officer, Crown Law Office, Suva  
Mr. Eremasi TAMANISAU, Secretary, Fiji Composers' Association, Suva

##### **Indonesia**

Mr. Walter SIMANDJUNTAK, Head, Sub-Directorate of Copyright, Department of Justice, Jakarta

##### **Malaysia**

Mr. Khamis BIN MOHD. DERUS, Assistant Director, Domestic Trade Division, Ministry of Trade and Industry, Kuala Lumpur

Mr. Yacob YAAKUB BIN ALI, Assistant Controller of Enforcement, Ministry of Trade and Industry, Kuala Lumpur

#### Papua New Guinea

Mr. Arthur JAWODIMBARI, Director, National Theatre Company, National Cultural Council, Boroko  
Mr. Pomat PALIAU, Principal Legal Officer, Department of Justice, Port Moresby

#### Philippines

Miss Elizabeth AGUILING, University of the Philippines, Academy of ASEAN Law and Jurisprudence, Quezon City  
Mr. Tito Y. AREVALO, Filipino Society of Composers, Authors and Publishers (FILSCAP), Manila  
Miss Corazon BALANGUE, Fujitsu Philippines, Inc., Makati, Manila  
Atty. Rosa Maria J. BAUTISTA, University of the Philippines Law Center, Division of Research and Law Reform, Quezon City  
Atty. Crisanto S. CORNEJO, Vice President, Songwriters' Guild of the Philippines, Manila  
Mrs. Prudencia C. CRUZ, Chief, Publications Division, The National Library of the Philippines, Manila  
Atty. Miguel G. DAMASO, Quiason Law Office, Manila  
Atty. Conrado D. DAVID, Chief Extension Division, The National Library of the Philippines, Manila  
Mrs. Estrella DE LA ROSA, Makati, Manila  
Atty. Jose M. DIAZ, Legal Officer, The National Library of the Philippines, Manila  
Atty. Luis M. DUKA, Jr., Philippine Patent Office, Makati, Manila  
Atty. Apolo P. GAMINDE, LVN Pictures, Inc., Quezon City  
Atty. Filemon L. GEGOLEA, Philippine Library Association, Inc., Manila  
Mrs. Marietta GIRON, Variety International Newspaper, Manila  
Miss Editha C. GOGHINCO, Regional Trial Court, Manila  
Atty. Milagros S. JANTE, National Economic Development Authority (NEDA), Manila  
Atty. Lorna Patajo KAPUNAN, Angara, Concepcion, Regala & Cruz Law Offices, Makati, Manila  
Mr. Alfredo R. LOTERIA, Fujitsu Philippines, Inc., Manila  
Mr. Narciso MANANTAN, Quasha, Asperilla, Ancheta Law Office, Makati, Manila  
Mr. Roberto Noel MARCELO, The National Library of the Philippines, Manila  
Mrs. Natividad A. NUGUID, National Media Production Center, Manila  
Mr. Danilo P. OLIVARES, Philippine Association of the Record Industry, Inc., Manila  
Miss Lily O. ORBASE, The National Library of the Philippines, Manila  
Mr. Raul PANGALANGAN, University of the Philippines, College of Law, Quezon City  
Dr. Marina S.J. PANGAN, University of the East Board of Textbooks Review, Manila  
Prof. Leo QUISUMBING, University of the Philippines, College of Law, Quezon City  
Dr. Purificacion V. QUISUMBING, University of the Philippines, Academy of ASEAN Law and Jurisprudence, Quezon City  
Atty. Ernesto REYES, Regional Trial Court, Pasay City  
Mr. Alfredo B. ROBLES, Musicians' Guild of the Philippines, Manila  
Mr. Librado R. RODRIGUEZ, Administrative Officer, The National Library of the Philippines, Manila  
Atty. Ramon G. SAMSON, Angara, Concepcion, Regala & Cruz Law Offices, Makati, Manila

Atty. Nenita R. SOLIMAN, University of the Philippines Law Center, Quezon City  
Miss Marie Jane SUAREZ, Filipino Society of Composers, Authors and Publishers (FILSCAP), Manila  
Atty. Francisco M. TRINANES, Trinanés Law & Business Office, Manila  
Atty. Rogelio VINLUAN, Angara, Concepcion, Regala & Cruz Law Offices, Makati, Manila  
Atty. Daniel P. YSON, Philippine Association of the Record Industry, Manila

#### Solomon Islands

Mr. Martin ANTA, Curriculum Development Officer (Primary Sector), Ministry of Education, Training and Cultural Affairs, Honiara  
Mr. Gina TEKULU, Undersecretary, Ministry of Education, Training and Cultural Affairs, Honiara

#### Thailand

Mr. Chalermpon AKE-URU, First Secretary, Legal Division, Department of Treaties and Legal Affairs, Ministry of Foreign Affairs, Bangkok  
Mrs. Nanda WORANETIWONG, Head, Translation and Copyright Section, Department of Fine Arts, Ministry of Education, Bangkok

#### Tonga

Mr. Aisea H. TAUMOEPEAU, Assistant Crown Solicitor, Crown Law Department, Nuku'alofa

## II. Guest Lecturers

Mr. Qoriniasi B. BALE, Solicitor General, Suva, Fiji  
Prof. Esteban BAUTISTA, University of the Philippines Law Center, Manila, Philippines  
Dr. Robin BELL, Principal Legal Officer, Attorney General's Department, Canberra, Australia  
Mr. Fumio HARADA, Senior Officer, Copyright Division, NHK, Tokyo, Japan  
Mr. Francis G. KNIGHT, Regional Director, East Asia Film Security Office, Motion Picture Association of America, Hong Kong  
Mr. Narendra KUMAR, President, Federation of Indian Publishers, New Delhi, India  
Mr. A. Henry OLSSON, Legal Adviser, Ministry of Justice, Stockholm, Sweden  
Dr. Serafin D. QUIASON, Director, The National Library of the Philippines, Manila, Philippines  
Mr. John STURMAN, General Manager, Australian Performing Right Association (APRA), Crow Nest, Australia  
Dr. Ulrich UCHTENHAGEN, General Manager, Swiss Society for Authors' Rights in Musical Works (SUISA), Zurich, Switzerland  
Mr. Janus WOLSEY, Regional Director for Asia and the Pacific, International Federation of Phonogram and Videogram Producers (IFPI), Singapore Branch, Singapore

## III. International Bureau of the World Intellectual Property Organization (WIPO)

Mr. Claude MASOUYE, Director, Public Information and Copyright Department  
Mr. Shahid ALIKHAN, Director, Developing Countries Division (Copyright)

## Notifications

### Convention Establishing the World Intellectual Property Organization

#### NEW ZEALAND

##### Accession

The Government of New Zealand deposited, on March 14, 1984, its instrument of accession to the Convention Establishing the World Intellectual Property Organization (WIPO).

The said instrument of accession contains the declaration that the accession of New Zealand shall extend to the Cook Islands, Niue and Tokelau.

The Convention Establishing the World Intellectual Property Organization will enter into force, with respect to New Zealand, and also the Cook Islands, Niue and Tokelau, three months after the date of deposit of its instrument of accession, that is, on June 14, 1984.

WIPO Notification No. 127, of March 20, 1984.

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

#### MEXICO

##### Notification concerning Articles II and III of the Appendix to the Paris Act (1971)

The Government of the United Mexican States deposited, on March 8, 1984, a notification by which it renews the declaration, made on May 20, 1976,\* according to which it avails itself of the faculty provided for in Article II and the faculty provided for in Article III of the Appendix to the Berne Convention for the Protection of Literary and Artistic Works of

September 9, 1886, as revised at Paris on July 24, 1971.

In accordance with Article I(2)(a) of the said Appendix, the renewal of the said declaration made by the United Mexican States is effective for a period of ten years from October 10, 1984, that is, until October 10, 1994.

\* See *Copyright*, 1976, p. 187.

Berne Notification No. 109, of March 16, 1984.

## Nairobi Treaty on the Protection of the Olympic Symbol

### BULGARIA

#### Accession

The Government of the People's Republic of Bulgaria deposited, on April 6, 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 the People's Republic of Bulgaria, on May 6, 1984.

Nairobi Notification No. 22, April 9, 1984.

### SYRIA

#### Accession

The Government of the Syrian Arab Republic deposited, on March 13, 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 entered into force, with respect to the Syrian Arab Republic, on April 13, 1984.

Nairobi Notification No. 21, of March 27, 1984.

### URUGUAY

#### Ratification

The Government of the Eastern Republic of Uruguay deposited, on March 16, 1984, its instrument of ratification of the Nairobi Treaty on the Protection of the Olympic Symbol, adopted at Nairobi on September 26, 1981.

The said Treaty entered into force, with respect to the Eastern Republic of Uruguay, on April 16, 1984.

Nairobi Notification No. 20, of March 20, 1984.

## National Legislation

### UPPER VOLTA

#### Ordinance Affording Protection to Copyright

(No. 83-16 CNR.PRES, of September 29, 1983)\*

as rectified by Ordinance No. 84-12 CNR.PRES, of February 29, 1984

#### CHAPTER 1

##### General Provisions

*Article 1.* The authors of original intellectual works, literary, artistic and scientific, shall enjoy protection of their works in accordance with the provisions of this Ordinance.

They shall enjoy in their works, by the mere fact of their creation, an exclusive incorporeal property right which shall be enforceable against all persons, known as: copyright.

Copyright shall include attributes of an intellectual and moral nature and attributes of an economic nature, as determined by this Ordinance.

The protection provided for in the first paragraph above shall not be subject to any formality.

Works shall be protected irrespective of their value and purpose.

*Article 2.* Intellectual works produced abroad by nationals of Upper Volta, whether published or not, shall enjoy this protection as if they had been produced in Upper Volta.

*Article 3.* Works of foreign nationals published for the first time in Upper Volta shall also enjoy under this Ordinance the same protection as works by nationals of Upper Volta.

*Article 4.* Independently of the rules of protection laid down by the international conventions to which Upper Volta is a party, the works of foreign nationals not published for the first time in Upper Volta shall enjoy the protection afforded by this Ordinance on condition that the country of which the original owner of copyright is a national affords equivalent protection to the works of nationals of Upper Volta.

*Article 5.* Utilization during the term of protection afforded by this Ordinance of foreign works not enjoying this protection shall nevertheless require payment of a fee to the professional body of authors referred to in this Ordinance.

This fee shall be paid into a national cultural promotion fund.

#### CHAPTER 2

##### Protected Works

*Article 6.* Intellectual works, literary, artistic and scientific, within the meaning of this Ordinance, shall include, in particular:

- (a) written works: books, pamphlets, articles and other writings;
- (b) oral works: lectures, addresses, sermons and other works of such nature;
- (c) dramatic and dramatico-musical works of stagecraft;
- (d) musical works, whether written or not, with or without words;
- (e) choreographic works and mimed works;
- (f) cinematographic works, sound and audio-visual broadcast works;
- (g) works of drawing, painting, architecture, sculpture, engraving, lithography and tapestry;
- (h) photographic works of artistic or documentary character, including works expressed by a process analogous to photography;
- (i) works of applied art, whether produced by handicraft or by industrial process;
- (j) illustrations, maps, plans, sketches and three dimensional works relative to geography, topography, architecture or science.

*Article 7.* Collective works constituted by the assembly of works or parts of works, that have the

\* Sources: *Journal officiel de la République de Haute-Volta*, No. 40, of October 6, 1983, and rectifying Ordinance by the *Conseil National de la Révolution, Présidence de la République*, of February 29, 1984 — WIPO translation.

character of an independent creation, resulting from selection and arrangement for literary, artistic, scientific, didactic or like purposes, such as encyclopedias, dictionaries, anthologies, reviews and journals, shall be protected as independent original works without prejudice to the author's rights in the works or the parts of the works of which they are composed.

*Article 8.* Without prejudice to the rights existing in the original work, protection shall also be afforded to developments of such work that constitute a creation, such as translations, adaptations, arrangements, reductions, summaries and variations.

*Article 9.* Folklore and works derived from national folklore shall also be protected.

*Article 10.* For the purposes of this Ordinance:

- (a) folklore shall mean all literary and artistic productions created on the national territory by national ethnic communities, passed from generation to generation and constituting one of the basic elements of the traditional cultural heritage of Upper Volta;
- (b) works derived from folklore shall mean any work composed of elements borrowed from the traditional cultural heritage of Upper Volta;
- (c) the adaptation of folklore or the use of any of its elements shall be declared to the professional body of authors referred to in this Ordinance and responsible for administering the right of exploitation of folklore;
- (d) the public performance or reproduction of folklore with a view to exploitation for profit-making purposes shall require authorization by the above-mentioned body;
- (e) such authorization may be obtained on payment of a fee, the revenue from which shall be paid into the national cultural promotion fund provided for in Article 5. The amount of the fee shall be fixed in accordance with usual practice in respect of protected works of the same category;
- (f) folklore shall be protected without limitation in time;
- (g) copies of works of folklore and copies of translations, adaptations, arrangements or other transformations of such works, manufactured abroad without authorization in accordance with the provisions of this Ordinance, shall be neither imported nor distributed.

*Article 11.* The title of a work shall enjoy the same protection as the work itself if it is original in character.

Even if the work is no longer protected under this Ordinance, the title may not be used to distinguish a work of the same kind if such use is liable to create confusion.

*Article 12.* For the purposes of this Ordinance:

- “original work” shall mean a work whose characteristic elements and whose form, or whose form alone, enable its author to be distinguished;
- “derived work” shall mean a work proceeding from preexisting elements;
- “work of collaboration” shall mean a work whose creation results from the contributions of a number of natural persons. Such a work may be the result of relative collaboration where the individual contribution of each author can be clearly identified or of absolute collaboration where the individual contribution of each author can no longer be distinguished in the overall work created jointly;
- “composite work” shall mean a new work in which a preexisting work or elements of a preexisting work are incorporated without the collaboration of the author of that latter work;
- “collective work” shall mean a work created on the initiative of a natural or legal person who edits it, publishes it and discloses it under his direction and name, and in which the personal contributions of the various authors who participated in its development are merged in the overall work for which they were conceived, so that it is impossible to attribute to each author a separate right in the work as created;
- “posthumous work” shall mean a work made available to the public after the death of the author.

### CHAPTER 3

#### Restrictions on Authors' Rights and Free Uses

*Article 13.* The provisions of this Ordinance shall not apply to the texts of laws, ordinances, decrees, regulations, judicial decisions and, generally, the official acts of the State or of the public administrations both of Upper Volta or of foreign countries, nor to translations thereof.

The same shall apply to the news of the day published by newspapers, radio or television.

*Article 14.* Where a work has been lawfully made available to the public, its author may not prohibit:

- private performances made exclusively within the family circle, subject to their having no profit-making purpose;

- reproductions, translations and adaptations intended for strictly personal and private use and not intended for collective utilization, with the exception of works of art;
- analyses, press reviews, short quotations justified by the critical, polemical, pedagogical, scientific or informative nature of the work.

The same shall apply to the use of literary or artistic works by way of illustration for teaching purposes by means of publication, broadcasting or sound or visual recordings, subject to such utilization not being abusive and being devoid of any profit-making nature.

Such quotations and utilizations must be accompanied by the source and the name of the author where such name is shown in the source.

*Article 15.* Subject to mention of the name of the author and of the source and on condition that the right of reproduction has not been expressly reserved, the following may be reproduced by newspapers, radio or television for information purposes:

- articles on current political, social and economic topics published in the original or in translation,
- speeches delivered in deliberating assemblies, in public court proceedings, in political meetings or during official ceremonies.

*Article 16.* Works of art, including works of architecture permanently located in a public place, may be reproduced and made accessible to the public by means of cinematography, photography or television.

*Article 17.* In reporting current events by means of photography, cinematography, radio or television, the recording, reproduction and public communication of literary, artistic and scientific works which may be seen or heard in the course of such events shall be lawful, insofar as it is justified by the objective of obtaining information.

## CHAPTER 4

### Ownership of Copyright

*Article 18.* The original entitlement to acquiring copyright shall be constituted by the creation of the work as an individual expression of intellectual work.

*Article 19.* A work shall be considered created, irrespective of any public disclosure, by the mere fact of the author's conception being realized, even incompletely.

*Article 20.* The author of a work, in the absence of proof to the contrary, shall be the person under whose name or pseudonym the work is disclosed.

*Article 21.* A work of collaboration shall belong in common to the joint authors, who shall exercise their rights by common accord; in the event of disagreement, the competent jurisdiction to which the case has been submitted shall decide.

Where the participation of each of the joint authors is of a different kind, each shall be entitled, in the absence of an agreement to the contrary, to exploit separately his personal contribution without, however, prejudicing the exploitation of the common work.

*Article 22.* The author of a collective work shall be deemed to be the natural or legal person who has organized and directed the creation of such work.

The author of any contribution shall be deemed to be the person who, within the limits of his work, has contributed to the work.

*Article 23.* The authors of pseudonymous or anonymous works shall enjoy in such works the rights afforded by Article 1 of this Ordinance. They shall be represented in the exercise of those rights by the original publisher or editor, until such time as they declare their identity and prove their authorship.

The author of an anonymous or pseudonymous work shall be entitled at any time to reveal his identity and obtain judicial recognition of his authorship.

Notwithstanding any prior agreement to the contrary, the successors in title of an author whose identity has been revealed must mention his name in the publications, reproductions, transcriptions, performances, recitals and distribution or in any other kind of manifestation or announcement to the public.

*Article 24.* Copyright shall belong to the State administrations, the departments, the communes, the sub-prefectures and districts in the works created and published under their name and at their cost.

Such right shall also belong, except in the case of agreement to the contrary concluded with the authors of the published works, to private institutions pursuing non-profit-making aims, as regards collections of their instruments and publications; the same shall apply to academies and other public institutions having a cultural purpose.

*Article 25.* In the case of a work produced by another employee under a contract for hire, original copyright shall belong to the author.

However:

- (a) in the case of a three-dimensional work or of a commissioned portrait in painting, photography or any other medium, the author shall not have the right to exploit the work or the portrait by any means whatsoever without the express authorization of the person who has commissioned the work;  
in the event of manifest abuse by the owner preventing exercise of the right of disclosure, the Court may, at the request of the author, his successors in title or of the Ministry responsible for Culture, order any appropriate measures;
- (b) where the work has been produced by employees of an administration as part of their functions, the proceeds deriving from disclosure of the work may be distributed in accordance with the special rules of the administration that employs them. In the event of difficulties, the Court to which the matter has been submitted may decide;
- (c) where the work has been produced by students or trainees at a school or an artistic establishment, the proceeds deriving from disclosure of the work may be distributed in accordance with the special rules of that school or establishment. Any disputes shall be decided in the manner stipulated in the preceding paragraph.

## CHAPTER 5

### Content and Duration of Copyright

*Article 26.* The author of a protected work shall have the exclusive right to publish his work.

He shall further have the exclusive right to exploit his work for profit-making purposes in any form or mode, whether original or derived, within the limits set out by this Ordinance and, in particular, in the exercise of the exclusive rights set out in the following articles.

The first form of exercise of the right of utilization shall be deemed the first publication.

*Article 27.* The exclusive right of reproduction shall cover the duplication of copies of the work by any means whatsoever, including copying by hand, printing, lithography, engraving, photography, cinematography and any other reproduction process.

*Article 28.* The exclusive right of transcription covers the use of means appropriate to transforming an oral work into a written work or a work repro-

duced by the means referred to in the preceding article.

*Article 29.* The exclusive right of performance or recital in public covers the performance or recital, carried out in any manner whatsoever, free of charge or against payment, of a work intended for public showing or of an oral work.

The performance or recital of a work in the family circle, within the community, a school or an old people's home, shall not be considered public on condition that it is not carried out for profit-making purposes.

*Article 30.* The exclusive right of dissemination covers the use of remote means of dissemination: such as telegraph, telephone, radio, television or similar means.

*Article 31.* The exclusive right to supply the trade covers the distribution, for profit-making purposes, of a work and its copies and also includes the exclusive right to introduce into the territory of the State reproductions made abroad for the purpose of distributing them.

*Article 32.* The exclusive right of translation covers the translation of the work into another language or dialect.

The exclusive right to adapt comprises all forms of modification, adaptation and transformation of the work referred to in Article 8.

The author shall further have the exclusive right to publish his works in a collection.

Finally, he shall have the exclusive right to make any change whatsoever to his work.

*Article 33.* The exclusive rights set out in the preceding articles shall be independent of each other. The exercise of one of those rights shall not exclude the exclusive exercise of any of the other rights. Their subject matter shall be the work as a whole and each of its parts.

*Article 34.* Unless otherwise provided, exploitation of the work for profit-making purposes by a person may only take place with the prior formal and written authorization of the author or of his successors in title.

Any full or partial performance or reproduction made without the authorization referred to in the above paragraph shall be unlawful. The same shall apply to translation or reproduction by any art or process whatsoever.

*Article 35.* Independently of the exclusive rights of exploitation of the work set out in the provisions of the preceding articles and also after assignment of

such rights, the author shall maintain the right to claim authorship of the work and to oppose any distortion, mutilation or other modification of the said work which could be prejudicial to his honor or reputation.

However, where an author has had knowledge of the modifications made to his work and has accepted them, he shall no longer be entitled to take action to prevent their execution or to demand their removal.

As regards works of architecture, the author may not oppose modifications that prove necessary during the building. Nor may he oppose modifications recognized as indispensable for a work that has already been completed. However, where the competent State authority considers that the work is artistically important, the author shall be commissioned to study and execute the said modifications.

The rights afforded to authors under the first paragraph of this Article shall be perpetual, inalienable and imprescriptible. They may be transmitted *mortis causa* to the author's executors who shall exercise them beyond the exclusive rights of exploitation specified in the preceding articles.

If there are none, or after their death, and unless the author has willed otherwise, these rights shall be exercised in the following order:

- by the descendants;
- by the spouse or spouses against whom there exists no final judgment of divorce or who have not remarried;
- by the heirs other than descendants, who inherit all or part of the estate;
- by the general legatees or donees of the totality of the future estate.

*Article 36.* In case of manifest abuse of the exercise or non-exercise of the right of disclosure by the deceased author's representatives, the first instance courts or their sections, at the request of any interested party, particularly the Department responsible for Cultural Affairs, may order any appropriate measure. The same shall apply if there is a conflict between the aforesaid representatives, if there is no known successor in title, no heir or no spouse entitled to inheritance.

*Article 37.* The economic attributes of copyright shall be deemed movable property.

Notwithstanding the transfer of the exploitation rights, the author, even after the publication of his work, shall enjoy, in relation to the assignee, the right of withdrawal. He cannot, however, exercise this right except on the condition that he indemnify the assignee beforehand for the loss that the withdrawal may cause him.

*Article 38.* A general lien on debtor's property shall be attached to the author's economic rights. The lien shall survive bankruptcy and legal winding up. It shall be exercised immediately after that guaranteeing the salaries of servants.

*Article 39.* The economic rights shall last for the lifetime of the author and until expiry of the fiftieth calendar year following his death. These rights shall be transferable by succession or donation.

Where there is no heir and no legatee, these rights shall vest in the professional body of authors referred to in Article 88 and the revenue from royalties deriving from those rights shall be paid into the national cultural promotion fund without prejudice to the rights of creditors under the execution of any assignment contracts concluded by the author or his successors in title.

*Article 40.* The right of exploitation may be assigned in whole or in part, against payment or free of charge, to a natural or legal person.

However:

1. the assignment must be evidenced by an authenticated instrument on pain of nullity;
2. assignment by the author of any of the rights referred to in Articles 26 *et seq.* shall not imply assignment of any other rights;
3. where a right is assigned in whole by contract, the scope shall be limited to the modes of exploitation laid down in the contract;
4. the person to whom the right of exploitation of a work has been assigned may not, except as otherwise agreed, transfer such right to a third person without the agreement of the holder of the right;
5. the assignment in whole of future works shall be null and void.

*Article 41.* An exploitation contract is an instrument of a mixed nature; civil in respect of the author, but commercial in respect of the other party where that party is a dealer.

The contract shall set out the field of exploitation of the assigned rights in respect of their scope, their place and their term of exploitation as also the remuneration of the author or his successors in title as regulated in the following article.

*Article 42.* Assignment for payment shall comprise the author's proportional participation in revenue of any type deriving from sale or exploitation.

However, the author's remuneration may be evaluated as a lump sum if the basis for calculating the proportional participation cannot be determined in practice or if the nature and conditions of exploitation make it too expensive or impossible to apply the rule of proportional remuneration.

*Article 43.* Notwithstanding any assignment of the original work, the authors of graphic and three-dimensional works and original manuscripts shall have an inalienable right to a share of the proceeds of any sale of that work by public auction or through a dealer, whatever the methods used by the latter to carry out the operation.

After the death of the author, this *droit de suite* shall subsist for his heirs or legatees in accordance with the provisions of the fifth paragraph of Article 35.

The rate of such right shall be laid down by decree.

*Article 44.* For those works referred to in Article 21 and for dramatico-musical, choreographic and mimed works, the duration of the exploitation rights belonging to each of the joint authors or contributors shall be determined in accordance with the lifetime of the last surviving joint author.

*Article 45.* For collective works, the duration of the economic rights belonging to each contributor shall be determined in accordance with the lifetime of each of them. The duration of such rights in the work considered as a whole shall be fifty years after first publication, whatever the form in which publication has taken place, subject to the provisions of Article 49 as regards magazines, newspapers and other periodicals.

*Article 46.* For anonymous or pseudonymous works, with the exception of the case covered by Article 23, the duration of the economic rights shall be fifty (50) years as from first publication, whatever the form in which publication has been made.

If, prior to expiry of that term, the author has revealed himself or has been revealed by the persons mentioned in Article 35 or by persons authorized by him in the way set out in Article 23, the duration laid down in Article 39 shall be applicable.

*Article 47.* In order to enjoy the normal duration of the exclusive rights of exploitation for profit, revelation of the name of the author must be made by means of a declaration to the professional body of authors referred to in Article 88, attached to the Ministry responsible for Culture, in accordance with the provisions to be established by regulation.

*Article 48.* The duration of the economic rights belonging to State administrations, public cultural institutions and to private institutions not pursuing a profit-making aim in accordance with Article 24, shall be twenty years as from first publication whatever the form in which publication has been made.

The duration of protection shall be reduced to two years for communications and memorandums

published within academies and other public institutions having a cultural purpose. Once this period has expired, the author shall fully regain the free availability of his writings.

*Article 49.* Where the parts or volumes of one and the same work are published separately, at different times, the duration of the economic rights shall run for each part or for each volume as from the year of publication.

In the case of a periodical collective work such as a magazine or newspaper, the duration of the rights shall likewise be calculated from the end of each year of publication of each of the issues or numbers.

*Article 50.* For works published for the first time after the death of the author, the duration of the economic rights shall be fifty years as from first publication in whatever place and in whatever form publication was made, provided that such publication takes place within twenty years following the death of the author.

*Article 51.* Where an article is sent to a magazine or newspaper for reproduction by a person who is not a member of the editorial staff of the magazine or newspaper, and without prior agreement, the author shall regain his right to free disposal thereof if he has not received notice of acceptance within a period of one month of dispatch or if reproduction has not taken place within a period of six months counted from the notice of acceptance.

In the case of an article supplied by a journalist, the director of the magazine or newspaper may delay its reproduction, even beyond the periods set out in the preceding paragraph. However, on expiry of six months after submission of the manuscript, the author may use the article for reproduction in volumes or in offprints.

*Article 52.* A contributor to a collective work which is neither a magazine nor a newspaper shall have the right, unless otherwise agreed, to have his name shown in the reproduction of his work in the usual form.

In the case of newspapers, this right shall also belong to the editorial staff, except as otherwise provided.

*Article 53.* Notwithstanding the provisions contained in the first paragraph of Article 35, the director of the newspaper shall be entitled, unless otherwise provided, to make such formal changes to the article to be reproduced as are required by the nature and aims of the newspaper.

In the case of articles to be reproduced without stating the name of the author, such faculty shall

also extend to the deletion or reduction of parts of such articles.

*Article 54.* The author of an article or of any other work reproduced in a collective work shall be entitled to reproduce his work as offprints or in collections, on condition that he indicates where the article has been taken from and also the date of publication.

In the case of articles that have appeared in magazines or in newspapers, the author shall be further entitled, unless otherwise provided, to reproduce them in other magazines or newspapers.

*Article 55.* The publisher or director of a magazine or a newspaper shall be required to preserve or to return at the cost of the author within a period of one month the manuscripts of articles that have not been reproduced and which he has received unsolicited.

## CHAPTER 6

### Cinematographic Works

*Article 56.* The economic rights in a cinematographic work shall last for fifty years as from first public showing on condition that such showing does not take place later than five years after the calendar year in which the work was produced. Where such period has been exceeded, protection shall last for fifty years as from the year following that in which the work was produced.

*Article 57.* The author of the original work, the author of the screenplay, the composer of the music, with or without words, and the director shall be deemed the joint authors of a cinematographic work.

*Article 58.* The exercise of the exploitation rights in a cinematographic work shall vest in the producer.

The natural or legal person who takes the initiative and the financial responsibility for making the work and whose name is shown in the credits shall be deemed to be the producer of a cinematographic work. He shall be required to conclude written contracts with the joint authors.

The natural person who assumes the direction and the artistic responsibility for the transformation into pictures and sound, the cutting and the final editing of a cinematographic work shall be deemed the director of the cinematographic work.

*Article 59.* Unless otherwise provided, the producer may not execute or project elaborations,

transformations or translations of the work produced without the consent of the authors referred to in Article 57.

The composers of the music, with or without words, shall be entitled to receive directly from those who project the work in public a separate compensation for such projection. The compensation shall be established, failing agreement between the parties, in accordance with the provisions of a set of rules.

In the event of their remuneration not being determined as a percentage of takings from the public projections of the cinematographic work, the authors of the original work and of the screenplay and the director shall be entitled, except as otherwise provided and where the takings reach a figure to be negotiated with the producer, to an additional payment whose amount and conditions shall be laid down by contract between the parties concerned.

*Article 60.* The director shall be empowered to make such changes as are necessary for cinematographic adaptation of the works used within the cinematographic work.

Failing agreement between him and one or more of the authors referred to in Article 57 of this Ordinance, the question whether the changes made to the cinematographic work, or which were intended to be made, are necessary or not, shall be decided by a body of technicians designated by the Ministry responsible for Culture in accordance with standards laid down by a set of rules.

The findings reached by that body shall be final.

The provisions of Article 11 shall apply to cinematographic works.

*Article 61.* The joint authors of a cinematographic work shall be entitled to have their names, together with their professional capacity and their contribution to the work, mentioned in the credits.

*Article 62.* Where the producer is not able to complete the cinematographic work within a period of three years from the day on which the literary or musical part has been submitted to him, or does not have the completed work shown within three years of its completion, the authors of those parts shall be entitled to dispose freely of the work.

*Article 63.* Where one of the joint authors of the cinematographic work refuses to complete his contribution or is unable to complete it due to circumstances beyond his control, he shall not be entitled to object to the use of the part of his contribution already in existence for the purposes of completing the work.

*Article 64.* A cinematographic work shall be deemed to have been completed once the first mas-

ter print has been established by common agreement between the director or possibly the joint authors and the producer.

## CHAPTER 7

### Radio and Television Works

*Article 65.* In view of the nature and purposes of radio and television broadcasting as services which are the preserve of the State that exercises, either directly or through a concession, the exclusive right to broadcast a work by radio or television, whether directly or through an intermediary means, shall be governed by the following special provisions.

*Article 66.* The owners, the impresarios and all those who contribute to the entertainment shall be required to permit the installations and technical trials required for preparing radio or television broadcasting.

The consent of the author shall be required for broadcasting his work.

The name of the author and the title of the work must be broadcast at the same time as the work.

*Article 67.* The natural or legal person or persons ensuring the intellectual creation of the work shall be deemed the authors of a radio or television work. The provisions of Article 56 shall apply to radio and television works.

*Article 68.* The author of a radio or television work, in accordance with the terms of the preceding articles, shall be entitled to obtain from the organization that provides the radio or television service payment of remuneration to be settled by the competent judicial authority in the event of disagreement between the parties.

*Article 69.* Without prejudice to the author's rights in the radio or television broadcasting of his work, the radio or television broadcasting organization shall be authorized to record the said work on a disc or on metallic tape or by any similar process, with a view to deferred use for reasons of timetable or technical necessity, on condition that the said recording be destroyed after the agreed use.

*Article 70.* Unless otherwise stipulated, the authorization to broadcast shall cover all free communication of sound or images made by the radio and television broadcasting organization using its own technical and artistic facilities and under its own responsibility.

This authorization shall not cover communications made in public places such as cafés, restau-

rants, hotels, cabarets, church clubs, various shops, cultural centers and so-called private clubs, for which prior authorization must be requested in accordance with Article 34.

## CHAPTER 8

### Authors' Contracts

*Article 71.* Contracts by which an author or his successors in title authorize the performance or publication of his works shall be drawn up in an instrument executed by a notary, failing which they shall be void.

#### (a) Publishing Contracts

*Article 72.* A publishing contract is a contract under which the author of a work or his successors in title assign, under specified conditions, to the publisher the right to manufacture or have manufactured a number of graphical, mechanical or other copies of the work, on condition that the latter ensures publication and dissemination thereof.

The form and mode of expression, the terms of execution of the publication and the termination clauses shall be specified in the contract.

*Article 73.* A publishing contract must state the minimum number of copies that are to constitute the first printing. However, this obligation shall not apply to contracts providing for a minimum of royalties guaranteed by the publisher.

It must provide for remuneration proportional to the proceeds of exploitation, except in the case of lump sum remuneration, in accordance with the second paragraph of Article 42.

*Article 74.* The author shall be required to:

- guarantee the publisher exclusive exercise of the assigned right, except as otherwise agreed;
- have the right respected and defended against any infringement;
- permit the publisher to fulfill his obligations and, in particular, deliver to him, within the period of time stipulated in the contract, the subject matter of the publication in a form permitting normal manufacture.

The subject matter of publication shall remain the property of the author.

*Article 75.* The publisher shall be required to:

- carry out or have carried out manufacture in accordance with the conditions, in the form and following the modes of expression stipulated in the contract;

- make no change to the work without written authorization from the author;
- unless otherwise agreed, have the name, pseudonym or symbol of the author appear on each of the copies;
- unless specially agreed, effect publication within the period of time that is usual in the trade;
- ensure permanent and sustained exploitation of the work and commercial distribution in accordance with the practices of the trade;
- return to the author the subject matter of the publication after completion of manufacture.

*Article 76.* The publisher shall also be required to provide accounts to the author and appropriate proof to establish the accuracy of his accounts.

Failing special conditions laid down in the contract, the author may require the publisher to furnish at least once a year a statement showing the number of copies made during the period and specifying the date and quantity of printings, together with the number of copies in stock.

Except where it is no usual practice or has been agreed otherwise, this statement shall also include the number of copies sold by the publisher, the number of copies that cannot be utilized or have been destroyed by accident or due to unavoidable circumstances and also the amount of the royalties owed to the author or paid to him.

*Article 77.* Neither bankruptcy nor winding up by court decision of the publishing firm shall terminate the contract.

If exploitation of the business is continued by the receiver in bankruptcy, under the conditions laid down by the law, the receiver in bankruptcy shall be held to all the publisher's obligations.

In the event of sale of the business, the purchaser shall similarly be held to the obligations of the assignor.

Where exploitation of the business is not continued by the receiver in bankruptcy and no transfer of the business has occurred during a period of one year after the declaration of bankruptcy, the publishing contract shall be cancelled at the request of the author.

The receiver in bankruptcy may not sell at reduced price or sell out the manufactured copies until at least thirty days after having advised the author of his intention by registered letter with acknowledgment of receipt.

The author shall have a preemptive right over all or part of the copies. Failing agreement, the price shall be fixed by expert opinion.

*Article 78.* The publisher may not transmit the benefits of the publishing contract to a third party, for or without payment, or as a contribution to the

assets of a partnership, independently of the business, without having first obtained the authorization of the author.

In the event of transfer of the business in such a way as to seriously compromise the material and moral interests of the author, the latter shall be entitled to obtain reparation even by means of cancellation of the contract.

If the publishing business has been run as a company or a coparcenary, the allocation of the business to one of the former partners or one of the coparceners, as a consequence of the winding up or division thereof, shall in no case be considered a transfer.

*Article 79.* The publishing contract shall end, independently of the cases set out in general legal provisions or in the preceding articles, when the publisher carries out the complete destruction of the copies. Where the publisher acts in bad faith, the author shall be entitled to compensation corresponding to the prejudice suffered.

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

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

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

*Article 80.* It shall be lawful for the author to give a publisher a right of preference for the publication of his future works on condition that they are of a given kind. This right shall be limited for each kind of work to five new works as from the date of signature of the publishing contract concluded for the first work or within a period of five years from that same date for the completed production.

*Article 81.* A contract for publication known as a "contract at the author's expense" shall not constitute a publishing contract within the meaning of Article 72.

Under such contract, the author or his successors in title pay to the publisher an agreed remuneration against which the latter manufactures copies of the work in the quantity, form and according to the modes of expression specified in the contract, and ensures its publication and dissemination.

Such contract shall constitute a contract for hire governed by the agreement, customary practice and the provisions of the Civil Code.

*Article 82.* A contract known as a “contract at joint expense” shall not constitute a publishing contract within the meaning of Article 72.

Under such a contract, the author or his successors in title commission a publisher to manufacture, at his expense and in quantity, copies of the work in the form and according to the modes of expression specified in the contract, and to ensure their publication and dissemination in accordance with the agreement reciprocally contracted to share the profits and losses of exploitation in the agreed production.

Such contract shall constitute a joint undertaking. It shall be governed by the agreement and by customary practice.

### *(b) Performance Contracts*

*Article 83.* A performance contract shall mean a contract under which the author of a work of the mind or his successors in title authorize an entertainment promoter to perform such work under the conditions they stipulate.

A general performance contract shall mean a contract under which the professional body of authors referred to in Article 88 grants to an entertainment promoter the right to perform, for the duration of the contract, the existing or future works constituting the repertoire of such body under the conditions stipulated by the author or his successors in title.

In the case referred to in the above paragraph, the requirements of the fifth paragraph of Article 35 may be waived.

*Article 84.* “Entertainment promoter” shall mean any natural or legal person who, on occasion or in a regular fashion, performs or causes to perform in an establishment to which the public is admitted, and by any means whatsoever, works protected by this Ordinance.

*Article 85.* An entertainment promoter who performs or causes to perform works protected by this Ordinance shall be required to obtain prior authorization, as laid down in Article 34, and settle the corresponding royalties. The performance contract shall be concluded for a limited duration or for a specified number of communications to the public. Unless exclusive rights are expressly stipulated, the contract shall not afford to the entertainment promoter any exploitation monopoly.

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

The validity of the exclusive rights afforded by a playwright may not exceed five years. The interrup-

tion of performances for two consecutive years shall automatically terminate the contract.

*Article 86.* The entertainment promoter may not transfer the benefits of his contract without the formal consent given in writing by the author or his representative.

The entertainment promoter shall be required to inform the author, his successors in title or the professional body of authors referred to in Article 88, of the exact program of public performances and to supply a documented statement of receipts and to pay to them, at the agreed times, the amount of the stipulated royalties.

## CHAPTER 9

### Public Domain

*Article 87.* On the expiry of the terms of protection laid down by this Ordinance, the right of exploitation of works in the public domain shall be administered by the professional body of authors referred to in Article 88.

The public performance and reproduction of such works shall require authorization from that body. In the case of a profit-making event, such authorization shall be granted against payment of a remuneration calculated on the revenue from exploitation.

The amount of that remuneration shall be equal to one half of that applied to works of the same category in the private domain in accordance with customary practice and the provisions of Article 83 shall apply.

The proceeds of such remuneration shall be paid into the national cultural promotion fund referred to in Article 5.

## CHAPTER 10

### Exercise of Copyright

*Article 88.* The protection and exploitation of authors’ rights as defined in this Ordinance shall be entrusted to a professional body of authors whose tasks, organization and operation shall be laid down by decree.

*Article 89.* This body shall administer on the national territory the interests of the various foreign societies of authors under the treaties or agreements it shall be required to conclude with them.

*Article 90.* The provisions of Article 88 shall not impair the ability of the author, his heirs and his

successors in title to directly exercise the rights afforded to them by this Ordinance.

*Article 91.* The professional body of authors shall be under the authority of the Ministry responsible for Culture. Its statutes shall be approved by decree of the Council of Ministers on a proposal by the Ministry responsible for Cultural Affairs.

## CHAPTER 11

### Procedures and Sanctions

*Article 92.* The professional body of authors shall be empowered to take legal action to defend the interests that are its responsibility.

*Article 93.* Any infringement of any of the moral and economic rights defined by this Ordinance shall be punished in accordance with the provisions of the Penal Code.

*Article 94.* At the request of any author of a work protected by this Ordinance, of his successors in title or of the professional body of authors referred to in Article 88, bailiffs, police superintendents, officers of the *gendarmerie* or any other agent empowered to effect seizures shall be required to seize the copies that constitute an unlawful reproduction of the work. The presiding judge of the First Instance Court or of its other courts elsewhere may order, against guarantee where appropriate:

- the seizure at any place, and even at times other than those specified in the Code of Civil Procedure, of the copies already manufactured or in the process of manufacture of an unlawfully reproduced work and of the equipment used for that purpose;
- the seizure of revenue from any reproduction or public communication made unlawfully;
- the suspension of any manufacture or public performance, in progress or announced, that constitutes infringement or an act leading to infringement;
- any other measure deemed necessary.

The above provisions shall apply in cases of unauthorized exploitation of folklore or of a work in the public domain.

*Article 95.* The distrainee or the garnishee may request the magistrate who has ordered the seizure to end it or limit its effects or to authorize resumption of manufacture or of public performance under the authority of an administrator appointed as receiver, to hold the proceeds from such manufacture

or performance on behalf of the person to whom the work belongs.

*Article 96.* If the petition of the distrainee or garnishee is allowed, the petitioner may be ordered to deposit a sum to be used as a guarantee for damages to which the author might be entitled.

*Article 97.* The measures ordered under Article 97 shall be lifted automatically in the event of a nonsuit or a *nolle prosequi*.

*Article 98.* Failing criminal proceedings, they shall also be automatically lifted if the petitioner has failed to submit the matter to the competent civil court within thirty days.

*Article 99.* The professional body of authors shall be authorized to designate sworn representatives with powers to verify the implementation of the provisions of this Ordinance on the national territory and to report infringements.

*Article 100.* All authorities, particularly police and *gendarmerie*, shall be required, at the request of the representatives of the professional body of authors, to give their assistance and, where appropriate, their protection.

The competent authorities shall not grant a license or authorization to entertainment promoters prior to presentation by such entertainment promoters of the authorization issued by the professional body of authors.

*Article 101.* Any natural or legal person who permits unlawful reproduction or communication to the public in his establishment of works protected under this Ordinance shall be deemed responsible for such unlawful reproduction or public communication, together with any other person, whether his agent or not, who has materially committed the infringement.

*Article 102.* Any person exploiting a work of folklore or a work in the public domain who has omitted to obtain prior authorization from the professional body of authors shall be liable to the penalties laid down for third category offenses.

*Article 103.* In the event of an offense under the provisions of Article 43, the acquirer, the vendor and the person responsible for the public auction shall be jointly liable for damages in favor of the beneficiaries of *droit de suite*.

*Article 104.* The place of first publication shall be the place at which the rights of exploitation laid down in Articles 26 *et seq* of this Ordinance have been exercised for the first time.

*Article 105.* This Ordinance shall also apply to works published in any way whatsoever prior to and after its entry into force.

The legal effects of instruments and contracts concluded or stipulated prior to the said entry into force shall remain fully valid and unaffected, in compliance with the provisions in force.

*Article 106.* Until entry into force of this Ordinance, the professional bodies of authors that are properly constituted shall provisionally exercise, within the framework of the provisions in force, the activities entrusted to the professional body of authors referred to in Article 88.

*Article 107.* All provisions contrary to those contained in this Ordinance, particularly Law No. 57-298 of March 11, 1957, on Literary and Artistic Property, and Law No. 58-447 of April 19, 1958, shall be repealed.

*Article 108.* The implementing rules under this Ordinance shall lay down the sanctions for infringement of the provisions of the said rules.

This Ordinance shall enter into force together with the rules to be promulgated within the months following publication of this Ordinance.\*\*

Within that same period, the statutes of the professional body of authors referred to in Article 88 shall also be promulgated.

*Article 109.* This Ordinance shall be implemented as a law of the State and shall be published in the Official Journal of the Republic of Upper Volta.

---

\*\* *Editor's note:* According to information received by the International Bureau of WIPO these rules have not been promulgated yet.

## **General Studies**

### **The “Body Other than the Original Broadcaster” in Cable Transmissions**

**Article 11<sup>bis</sup>(1)(ii) of the Berne Convention**

Victor HAZAN\*

















## **Correspondence**

### **Letter from the USSR**

#### **New Developments in Soviet Copyright**

E.P. GAVRILOV\*

















## Book Reviews

**Piracy and Counterfeiting of Industrial Property and Copyright.** Edited by *W.R. Cornish*. One volume of 143 pages. Common Law Institute of Intellectual Property Ltd and British Institute of International and Comparative Law, London, 1983.

This is a collection of papers given at the inaugural Conference of The Common Law Institute of Intellectual Property Ltd (CLIP) in London in January 1983. As its title indicates, the volume unusually deals with the problems of piracy and counterfeiting across the field of intellectual property as a whole, without confining itself to copyright alone. Its 12 contributors are either in legal practice in the field, or have recently had other relevant experience as senior officials of institutions involved in the teaching or enforcement of intellectual property law. Within the contributions themselves, no single aim is expressed for the volume as a whole, but a foreword and "A Final Word" (by Lords Templeman and Scarman respectively) outline the task of CLIP as "study leading to proposals for improving the effectiveness of law enforcement in the field where high technology is abused to serve the ends of counterfeiting and piracy," and mention reform of the substantive law to this end. The structure of the volume also provides a key: Part I deals with "British and EEC Law and Practice," Part II with "Foreign Law and Practice" (i.e. the laws and enforcement practices of the Federal Republic of Germany, France, Hong Kong, Singapore and the United States of America), and Part III with "Enforcement in Practice." The subject matter of the first two parts can be deduced from the titles. Part III is a combination of actual national practice of certain aspects of the law in the United Kingdom, and a final paper on the international ramifications of law enforcement by customs services.

A slim but packed compendium of Conference papers setting out to cover so much ground — including, apart from copyright and neighboring rights, patents, industrial designs, trademarks, geographical indications of source used in trade, and other trade practices — is an ambitious compilation, which naturally cannot represent "all things to all readers," but within the limits of space and selection of material, remains a useful and important contribution to the study of certain aspects of the problems of piracy and counterfeiting.

Paradoxically, some apparent weaknesses of this volume might, to certain readers, constitute certain of its strengths, or at least reflect certain realities. The copyright side on the whole emerges more strongly than the industrial property side. Partially this can be explained by some differences in the nature of copyright and industrial property: as it is pointed out in this volume, the monopoly conferred by a patent in one sense invites others to "patent around" information already available, the condition being that the "state-of-the-art" is a basis for a further novel inventive step which in turn can be patented. Partially, it can also be said that there is comparatively less litigation in certain fields of industrial property.

The volume does not bring out clearly the intricacies of the protection of industrial designs (i.e., "exclusive" design protection versus "cumulative" protection, etc.), but it is at least arguable that the complexity of the subject — which can be read of elsewhere<sup>1</sup> — precludes more detailed treatment here.

On the other hand, there is some detailed and interesting material on trademark laws and their enforcement which does indeed reflect a reality — namely, that the growth of the problem of counterfeit goods and misuse of trademarks in recent years is reaching a significance comparable to that of piracy in the fields of copyright and neighboring rights.

Another matter for criticism might be that there is in places excessive description of the content and enforcement of laws, and insufficient analytical examination and recommendation of remedies. For example, the contribution on the law and practice to combat piracy and counterfeiting in the United States of America is indeed a descriptive summary on the structure of the legal system, the contents of the laws, legal procedures (even containing, in the part called "Practical Guide," check lists for certain kinds of legal action) which is in the nature of a users' manual rather than the expression of an expert's views and interpretations; in the same spirit, the contribution on "Practical Enforcement of Remedies in the United Kingdom" — although containing a certain element of personal evaluation — is in effect entirely devoted to detailed advice on how to obtain and enforce Anton Piller Orders in copyright cases, and gives as an appendix a model of a typical Order.

Depending on what the reader is looking for, this descriptive quality could also be considered a strength. It is helpful even for specialists, who have access elsewhere to less factually detailed and more general works of analysis which take knowledge of basic laws, structures and procedures for granted, to be able to refer to the concrete facts in relatively concise yet accurate summaries, without returning to textbooks. Neither is this volume devoid of specific points of critical questioning in places. There are signs of some contributors to this volume weighing carefully the suggested remedies to problems which, although deservedly gaining currency nationally and internationally as constructive solutions, may be repeated unqualified and uncritically in some quarters. For instance, the undoubted utility of rapid pre-trial raids facilitated by Anton Piller-type Orders is offset by attention being drawn to the dangers of misuse, arising from procedural rashness, superficial evaluation of evidence, or even systematic industrial espionage; or else there is the sound idea of reinforcing criminal law to combat piracy and counterfeiting, which is nevertheless put in a context of the realities of the law, its practice, and the law-breaker's psychology.

The most serious weakness of the volume, which cannot this time be turned into a strength, is in its treatment of the wider international aspects of the problem, both as to international institutions and as to geographical spread. Although it conscientiously mentions the work of international organizations of the United Nations System such as GATT, WIPO and Unesco, deals with certain international aspects of the work of other institutions, and actually reproduces an entire paper on the prospects of international cooperation in customs enforcement, which brings in the work of the Customs Co-operation Council, the publication gives a general impression of reflecting the laws and enforcement practices of Western Europe and the United States of America, with glimpses into another industrially developed country, Japan. The contribution on music piracy in Hong Kong and Singapore suitably explains the choice of these two regions, but Hong Kong is not entirely "foreign" in this context (it comes under "Foreign Law and Practice") and Singapore, though statistically interesting, is

<sup>1</sup> See *Copyright*, 1983, pp. 317 to 323.

not the most representative of developing countries, and moreover the material given on it is relatively thin. Hong Kong is admittedly a tempting "showpiece" in the fight against piracy, but it is becoming a familiar example, and other countries and other regions of the developing world (for example, Nigeria) are also becoming important for case-study purposes. It may indeed be argued that international organizations and individual authors have produced publications<sup>2</sup> which cover the international aspects (both institutionally and

<sup>2</sup> See, for example, *WIPO Worldwide Forum on the Piracy of Broadcasts and the Printed Word* and *WIPO Worldwide Forum on the Piracy of Sound and Audiovisual Recordings*, published by WIPO, Geneva, in 1983 and 1981, respectively.

geographically) more fully. But in that case, it might possibly have been wiser to confine this volume to Western Europe and the United States of America. In such a volume, studies of some depth on fewer themes are often preferable to a thinner spread bringing in several more.

On balance, however, this is a most worthwhile collection of Conference papers. It avoids certain pitfalls of its genre, that can produce a number of unsubstantiated, even superficial general statements, which may be of limited use on a bookshelf after the Conference. The professional solidity of this volume, which appears in well-documented, meticulous research, with ample references to and explanations of case law, and reproduction of some interesting source material, seems to ensure its continuing use for reference purposes.

A.S.

## Calendar of Meetings

### WIPO Meetings

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

#### 1984

- 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)
- September 24 to 28 (Geneva) — Ordinary Sessions of the Coordination Committee of WIPO and the Executive Committees of the Paris and Berne Unions; Paris Union Assembly (Extraordinary Session); PCT Union Assembly (Extraordinary Session);
- October 8 to 10 (Doha) — Regional Committee of Experts on Means of Implementation in Arab States of Model Provisions on Intellectual Property Aspects of Protection of Expressions of Folklore (convened jointly with Unesco)
- 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

**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 — October 3 to 6 (Cyprus)

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

Congress — November 12 to 17 (Tokyo)

**International Council on Archives (ICA)**

Congress — September 17 to 21 (Bonn)

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

Council — June 19 and 20 (Helsinki)

**International Federation of Translators (FIT)**

Congress — August 17 to 23 (Vienna)

#### 1985

**International Union of Architects (IUA)**

Congress — January 20 to 26 (Cairo)