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World Intellectual Property Organization

Group of Experts on the International Protection of Expressions of Folklore by Intellectual Property

(Paris, December 10 to 14, 1984)

Report

I. Introduction

1. In accordance with the decisions adopted by the General Conference of Unesco at its twenty–second session (October–November 1983) and the Governing Bodies of WIPO at their fourteenth series of meetings in October 1983, the Secretariat of Unesco and the International Bureau of WIPO (hereinafter referred to as "the Secretariats") jointly convened a "Group of experts on the International Protection of Expressions of Folklore by Intellectual Property" (hereinafter referred to as "the Group of Experts"), which met at Unesco headquarters in Paris from 10 to 14 December 1984.

2. Under its terms of reference, the Group of Experts was asked to consider the need for a specific international regulation on the international protection of expressions of folklore by intellectual property and the contents of an appropriate draft.

3. The experts, invited in their personal capacity, were nationals of the following 12 countries: Australia, Bolivia, Burkina Faso, Finland, Ghana, Hungary, India, Mexico, Philippines, Soviet Union, Tunisia and United States of America.

4. States parties to the Berne Convention for the Protection of Literary and Artistic Works or to the Universal Copyright Convention were invited to attend the proceedings of the Group of Experts. Delegations from the following 18 States were present at the meeting: Australia, Belgium, Brazil, Congo, Egypt, Finland, France, Haiti, Holy See, Israel, Italy, Kenya, Senegal, Spain, Sweden, Tunisia, Turkey and United States of America.

5. Observers from two intergovernmental organizations and 11 international non–governmental organizations also attended the meeting.

6. A list of participants is annexed to this report.

II. Opening of the Meeting

7. On behalf of the Director–General of Unesco, Mr. H. Lopes, Assistant Director–General for Programme Support, opened the meeting and welcomed the participants. On behalf of the Director General of WIPO, Mr. G. Boytha, Director, Copyright Law Division, also welcomed the participants and thanked Unesco for having agreed to host the meeting.

III. Election of Officers

8. On the proposal of Mrs. M.A. Voronkova (USSR), seconded by Mr. V.C. Garcia Moreno (Mexico), Mr. S. El Mahdi (Tunisia) was unanimously elected Chairman of the Group of Experts.

IV. Presentation of Documents

9. The participants had at their disposal document UNESCO/WIPO/FOLK/GEI.1/2, which was presented by the Secretariats.

10. A second document, UNESCO/WIPO/FOLK/GEI.1/3, with an annex containing a communication which the Permanent Delegation of the Federal Republic of Germany to Unesco had forwarded to the joint Secretariat of the meeting, was also placed at the disposal of the participants.

11. The participants were unanimous in acknowledging the quality of the studies that had been submitted and congratulated the Secretariats on the preparation of the working documents.

V. Debate

12. The discussions reflected a general recognition of the need for international protection of expres-

sions of folklore, in particular with regard to the rapidly increasing uncontrolled use of such expressions by means of modern technology, beyond the limits of the country of the community in which they originate.

13. A number of participants supported the idea of preparing an international multilateral treaty on the protection of expressions of folklore, on a *sui generis* basis of safeguarding intellectual property. Several participants stressed that the draft text prepared by the Secretariats is a good starting point to this end.

14. Several participants considered it premature to establish an international treaty since there was not sufficient experience available as regards the protection of expressions of folklore at the national level, in particular concerning the implementation of the Model Provisions for National Laws on the Protection of Expressions of Folklore Against Illicit Exploitation and Other Prejudicial Actions, adopted in 1982 by a Committee of governmental experts. Other participants, however, referred to the inadequacy of the efforts aiming at the application of copyright protection to such expressions and to the fact that there was sufficient evidence as to the need for an international protection of expressions of folklore.

15. Several participants suggested that the necessity of the establishment of proper infrastructure for the implementation of a treaty on the protection of expressions of folklore be also considered. In this connection the Secretariats referred to the Recommendations, adopted by governmental experts convened by Unesco in 1982, on the question of identification of folklore, the conservation and analysis of folklore and its preservation, enhancement and reactivation as well as the utilization of folklore.

16. One participant emphasized the necessity of furthering general awareness of the need for the protection of expressions of folklore and the possibilities thereof.

17. Some participants said that measures already existing in several countries should be better explored.

18. One participant suggested further examination of the applicability of existing conventions dealing with the protection of intellectual property.

19. Some participants suggested starting with international recommendations or guidelines.

20. One participant stressed that the existence of an international instrument may induce countries to legislate accordingly. Other participants said that the elaboration of draft texts of a treaty may provide guidelines for national regulation of the matter.

21. One participant said that the urgency of the establishment of an international treaty on the protection of expressions of folklore may be different in various regions; he found that it was extremely urgent, for instance, in Africa.

22. Some participants, in particular those from Spanish-speaking countries, proposed that the use of the term "folklore" be reconsidered, this term having been introduced in the 19th century with a different meaning, not covering the entire living tradition of a community and suggesting a lower level of the culture concerned. However, it was also pointed out that in more recent times the term "folklore" obtained a new meaning and is widely accepted as a term suitable for the purposes of a relevant international treaty.

23. Several participants raised the question of the protection of expressions of folklore originating in a community that extends over the territory of more than one country. Some participants found it necessary to provide in the treaty itself some solution of the problem of national jurisdiction over such expressions. In this connection, it was suggested to distinguish between "proximate" origin (immediate source) and "ultimate" origin (historical conception) of the expression used, and to explore the possible implications of such a differentiation. The obligation of Contracting States to settle such questions at the regional level or by means of bilateral agreements was also mentioned as a possible solution. It was mentioned that possible migration of tribes or members thereof should also be considered.

24. Some participants found that it was necessary to organize regional meetings of experts on the possible contents and implementation of an international treaty on the protection of expressions of folklore. The agenda of such meetings could be limited to specific subjects.

25. Many participants emphasized the importance of strenghtening, in the proposed treaty, the links between the expressions of folklore and the respective communities in which they originated. One expert said that the communities should be explicitly recognized as owners of the rights in such expressions. On the other hand, reference was made to the fact that in some countries the nation or the State is considered proprietor of the traditional culture developed by its communities and that the

treaty is not supposed to deal with questions of ownership of rights in expressions of folklore but should provide for the administration of international protection of expressions of folklore so as to allow also for cases where they are property of the communities in which they originated.

26. Several participants said that the treaty should be more precise as regards certain details. Other participants were of the view that it should leave more freedom to the national legislator in choosing the means and ways of protection and should provide for less minimum requirements.

27. Some participants suggested preparing the treaty on a purely public law basis, obliging the Contracting States to regulate the protection of expressions of folklore themselves and without providing for new forms of private law type protection. One expert warned to be careful not to permit that too much control by prior authorization interfere with the orderly dissemination of expressions of folklore.

28. One participant suggested that the treaty should be elaborated in the manner in which the 1971 Convention for the Protection of Producers of Phonograms Against Unauthorized Duplication of Their Phonograms was conceived. Each Contracting State should be obliged to provide for effective protection of expressions of folklore originating in another Contracting State. Such protection should include: (i) protection against distortion; (ii) the requirement of authorization for specified public uses made for profit, in cases where such a requirement is reasonably motivated; (iii) obligation to pay remuneration, whenever just and reasonable; (iv) obligation to mention the source of the expression of the folklore publicly used. The means of implementing the treaty should be a matter of national legislation but should include one or more of the following measures: special right in expressions of folklore; administrative measures; penal sanctions.

29. One participant suggested drafting the treaty so as to make it applicable in countries with different socio–economic systems.

30. Some participants focused on the importance of the identification of protected expressions of folklore as a condition of their international protection. It was suggested to consider, in this connection, the question of formalities, in particular registration of expressions of folklore, or the establishment of relevant inventories. Some participants suggested utilizing better the existing network of national inventories in identifying expressions of folklore. One expert referred to the importance of registering expressions of folklore from the point of view of the information of the users and consumers of such expressions. In this context, the Secretariats referred to the interdisciplinary study conducted under the auspices of Unesco on the protection of folklore and which covers, *inter alia*, questions of inventories and registration of expressions of folklore.

31. One participant drew the attention to the links between the developing countries' obligations to protect foreign works by copyright and their need for having their expressions of folklore protected abroad.

32. A participant, while supporting the idea of international protection of expressions of folklore on behalf of producers of phonograms and videograms, said that the dissemination of legitimately made copies of a phonogram or videogram of an expression of folklore should not be restricted by the entry into force of a treaty, and expressed doubts as regards the applicability of a system of a case by case authorization in respect of producing phonograms.

33. A participant, speaking on behalf of the broadcasting organizations, said that broadcasting organizations should be free to use expressions of folklore; commercial broadcasters usually do not broadcast such expressions and non–commercial broadcasters would be in any case exempt from the obligation to request authorization to use expressions of folklore.

34. One participant referred to the necessity of also protecting the rights of certain persons and organizations concerned with the collection, preservation or conservation of expressions of folklore (informants, first users, collectors, archives, etc.). The Secretariats referred to the separate interdisciplinary study conducted under the auspices of Unesco and which covers the question raised by the participant.

VI. Article by Article Discussion of the Draft Treaty*

Title

35. Some participants suggested confining the title to a mere reference to the protection of expressions

* In order that the following paragraphs may be more readily understood, the text of the Draft Treaty and the comments on it are reproduced at the end of this report.

of folklore, without precisely describing the subject of the treaty; this would allow for a more flexible shaping of its contents. However, with regard to other aspects of the international protection of folklore which may be regulated by other international instruments, the participants agreed to maintain the title in its originally proposed text.

The Preambule

36. A great number of participants suggested deleting in the Preambule any reference to copyright type protection, with regard to the *sui generis* nature of the proposed protection. One expert suggested to qualify the legal protection referred to in the first part of the last preambular paragraph as "special."

37. Some participants suggested that the Preambule should also refer to the necessity of respecting the links between the expressions of folklore and the communities in which they originate.

38. Some participants proposed to make it clearer in the Preambule that it is not the development of technology and the commercialization of expressions of folklore itself which is adversely affecting legitimate interests relating to the protection of expressions of folklore; modern technology may properly promote desirable dissemination of expressions of folklore and it is the improper exploitation and distortion of such expressions, facilitated by modern technology, that is prejudicial.

39. One participant suggested that the Preambule should not limit the motivation of the necessity of international protection to dangers resulting from abusive utilization of modern technology but should also cover traditional forms of using expressions of folklore.

40. One participant suggested mentioning either "unlawful exploitation" instead of "improper" use, since the meaning of the latter term is too vague, or to describe what it is supposed to mean.

41. One participant suggested that in the third preambular paragraph the adjective "harmful" should be inserted before the word "distortion" since innocuous distortions were not intended to be sanctioned under the treaty.

42. One participant suggested deleting, in the fourth preambular paragraph, the adjective "authentic" before the term "maintenance" since the notion "authentic" would need interpretation.

43. One participant suggested adding to the enumeration, in the fourth preambular paragraph, of the acts to be promoted by the protection of expressions of folklore, also "legitimate use" thereof. It was also proposed to mention in the same sentence "lawful interests" rather than "legitimate" uses.

Article 1

44. Some participants suggested replacing, in the first sentence, the term "production" by the word "creations"; another expert proposed the use of the term "manifestations."

45. Some participants found that the meaning of the term "artistic" expectations should be explained more in detail, and that the word "expectations" should be replaced by a term such as "standards" or "norms" or "values."

46. One participant suggested deleting the term "folk" in points (i), (ii) and (iii), since the kind of expressions that word was intended to qualify has been already defined in the first sentence and the term "folk" may still be misunderstood as implying negative value judgment.

47. One participant suggested referring in the portion following point (iii) to "any" material form, in order to make it clear that the term "material form" also covers audio– and video–recordings.

48. Some participants proposed to complement the illustrative enumeration of protected expressions by adding therein "indigenous games," "ceramics" and "leatherware." One participant suggested replacing the word "play" by "manifestation," as this term would also cover carnavals as such; however, with regard to the discussions in previous committees of experts elaborating the Model Provisions for the protection of expressions of folklore by national laws and which are reflected in paragraph 84 of the Comments to the Draft Treaty concerning the possibilities of protecting certain folklore events, it was felt that the term "play" should be kept. The inclusion of "legends" and "foods" was also proposed by one expert but this was opposed with reference to the relevant comments to Article 2. Some participants felt that traditional "proverbs" could also be protected. One expert suggested mentioning also "choreographies." It was also proposed that "calligraphy," "feather art" and "symbolic motives" be mentioned.

49. With regard to the hesitation concerning the inclusion of "architectural forms" in the illustrative enumeration of protected expressions, one participant suggested to provide for the possibility of reservation as regards the protection of architectural expressions.

Article 2

50. The participants discussed in detail the possible scope of application of national treatment under the proposed treaty in the light of the relevant comments.

51. It was made clear that national treatment does not extend to the identification of expressions of folklore originating in another country, this being the responsibility of competent organs of the latter mentioned country. One participant emphasized that no authority of any country can be expected to be as knowledgeable about foreign expressions of folklore as it was concerning expressions originating in its own country.

52. One participant said that, *inter alia*, national treatment should apply to the determination of how far the use of expressions of folklore creating a new work can be considered an exception from the protection of the expression of folklore involved.

Article 3

53. Several participants proposed to emphasize in the Comments that the authorities should be competent also professionally. It was suggested to give more examples of the kind of institutions that might be designated as competent authority.

54. As regards the main functions of the competent authority, one participant doubted if it was justified to make it the task of the authority of the country of origin of the expression of folklore used in another country to clain the enforcement of the protection there and suggested that the enforcement of the protection should be considered the duty of the competent authority in the country where the expression was used.

55. One participant emphasized that the competent authority could not satisfactorily operate without an inventory of foreign expressions of folklore to be protected in its country.

56. One participant stressed that the provisions on the competent authority should be particularly flexible and be open to the adoption of special national solutions such as, *inter alia*, "clearance" procedures, or the exercise of communities' rights to prevent the use of secret expressions.

Article 4

57. One participant proposed to use the term "gainful intent" instead of "for profit," in order to be consistent with the wording of the Model Provisions for the protection of expressions of folklore by national laws. One participant suggested that it should be made clear in the Comments that requesting certain payments in order to cover the costs of publicly using the expression of folklore, or a part of that cost, does not necessarily involve making profit or intending to make it. One participant said that this understanding should also apply to the organization of certain amateur folklore festivities.

58. One participant proposed to define in the treaty what is meant under "publication" and "distribution to the public" and to state whether the latter term also comprises public rental or lending.

59. Some participants suggested the inclusion of "translation" in the list of acts subject to authorization.

60. Several participants stressed the fundamental importance of depositing by the countries adhering to the treaty an inventory of protected expressions of folklore originating in their respective territories. One participant said that it was indispensable to regulate in the treaty the consequences of entering by a competent authority of a country, in an internationally accepted inventory, of an item, the administration of whose protection was also claimed by one or more other country. No registered information concerning such items should imply any obligation to respect it.

61. One participant suggested that proper solutions should be explored to the problem of countries which wanted to adhere to the treaty but in which the establishment of an inventory of expressions of folklore could not yet be established. The requirement of depositing an inventory of protected expressions of folklore should not be a condition of signing a treaty or adhering to it, or should be subject to reservation.

62. One participant said that proper inventories could be established without much difficulties in most African countries, as regards both various categories and concrete items of expressions of folklore.

63. One participant said that cataloguing could be started with regard with one or more special categories of expressions. Concerning recordings of expressions of folklore, he proposed to properly mark each copy embodying a protected expression of folklore, for instance by the letter F in a square. Another participant added that such a mark could also indicate the source of the recorded expression of folklore. It was understood, however, that such a solution

would not be possible as regards the protection of orally or empirically maintained expressions of folklore, recited or performed live.

64. One participant said that the authorization to use an expression of folklore should exempt the user from any further liability as long as his activities remain within the frame of the authorization.

65. A few participants said that an unqualified requirement of authorization of uses with gainful intent goes too far and that it should be left to the Contracting States to decide whether they want to adopt it. Some countries may prefer protection by means of penal law or administrative measures, such as compulsory or statutory licences.

66. One participant drew the attention to possible conflicts of the exercises of various rights relating to the use of a phonogram embodying a protected expression of folklore.

Article 5

67. Some participants suggested to delete the provisions on the request and grant of authorization and to consider the related questions of procedure as a matter for national legislation.

68. Other participants stressed the importance of providing for in the treaty the main conditions of the procedure of authorization and insisted on maintaining the article.

69. Some participants proposed to delete the requirement of granting the authorization "in written form." It was found that the requirement of written individual authorizations would exclude the possibility of introducing statutory licences or the application of a system of "domaine public payant," kind of earmarked taxes, etc.

70. Another participant expressed the view that written form could provide a kind of security for all parties concerned.

71. Some participants proposed to delete, in paragraph 2, reference to the honour and dignity of the originating country. They proposed to consider in this context only the honour and dignity of the community. One participant suggested to allow the refusal of an application also in cases where the intended use would conflict with the public policy of the country concerned.

72. One participant suggested allowing the refusal of an application only if the intended use would constitute an offence. Another participant referred to already existing policies of folklore protection aiming at the protection of the informant in cases of confidentiality, at the respect of the right of first use of the collector, at the safety of the collected material and at the respect of the interests of archives keeping copies of expressions of folklore. Such policies may also constitute a basis for refusing the application for the use of an expression of folklore and this should be mentioned in the Comments.

73. One participant said that the criteria of deciding on the grant of authorizations should be enumerated in the Comments.

74. It was also suggested to provide for the possibility of appealing against the refusal of an application.

75. One participant suggested to define what is meant by "equitable" remuneration and to make it clear that no payments for the use of the expressions of folklore should be considered as a price for acquiring property in the expressions concerned.

Article 6

76. Several participants suggested that the scope of free use of expressions of folklore for creating an original work should be described in detail. It should be explained what kind of adaptations of expressions of folklore are intended to be made subject to authorization and what kind of derivative uses should be free, in order to secure the freedom of creation of works based on expressions of folklore, which was considered as a fundamental requirement.

77. Some participants said that it should be made clear in the comments on the specific exceptions that all kinds of uses without gainful intent (scholarship, research, collection, etc.) are free. This follows *a contrario* from the definitions of the uses subject to authorization.

78. In connection with the use for non–profit–making research some participants said that in their respective countries special regulation governs the use of expressions of folklore for research purposes, with regard to the possibility of subsequent commercialization of the collected material.

Article 7

79. One participant suggested that the indication of the source should be required also in cases of using the expressions of folklore for the creation of an original work.

Articles 8, 9 and 10 (Offences and remedies)

80. One participant proposed to reduce the above-mentioned three Articles to two, only. In one Article, deception in respect of the origin of the expressions of folklore and the distortion of such expressions should be prohibited. In the other, it should be declared a matter for national legislation to provide for appropriate means of implementing the requirements set forth in the treaty, both as regards authorization of certain uses and the prohibition of the acts specified in the treaty. Such legal means should comprise seizure.

81. Another participant said that the three Articles in question could be amalgamated in one, merely defining punishable acts and leaving the determination of sanctions to national legislations. Seizure and damages follow naturally from existing national laws.

82. One participant said that one should not go further, as regards seizure, than the Berne Convention does, and seizure of returns from offences should not be specifically required.

83. One participant said that punishments usually do not apply to corporate bodies while expressions of folklore are mainly used by such entities. Another participant, however, referred to the possibility of obliging corporate bodies to pay fines.

84. Some participants said that it was difficult (according to one of them even inacceptable) to introduce new types of offences in the framework of a convention for the protection of intellectual property, with regard to penal law standards already existing in national laws. A participant said, however, that each penal law can be revised. It was also mentioned that conventions on penal law matters are not unusual.

85. One participant found that it was important to regulate offences in the treaty and proposed to differentiate according to different kinds of uses of expressions of folklore.

86. One participant proposed to mention in point (iv) of Article 8 only cultural interests and delete reference to "honour and dignity" of the community.

Article 11

87. One participant said that relations to other conventions concerning the trade in the field of intellectual property (GATT Treaty, Florence Agreement on the importation of educational, scientific and cultural materials) should also be considered.

Article 12

88. One participant said that it was preferable to confine the possibility of adherence to the treaty to States already party to at least one of the major international copyright conventions.

Article 13

89. One participant said that retroactivity of the treaty should be explicitly excluded. Another participant said that this was unnecessary, since without explicit provision to the contrary, no convention is considered retroactive.

Articles 14, 15 and 16

90. No comments were made on these Articles.

VII. Conclusion

91. In conclusion, the participants noted that the Secretariats shall further explore various aspects of a treaty for the intellectual property type protection of expressions of folklore and shall prepare a revised text, in the light of the observations made, and the advice given by the participants, also considering possible alternative means of implementing the protection. The Secretariats shall communicate this report to the Executive Committee of the Berne Union and to the Intergovernmental Committee of the Universal Copyright Convention, and shall report on the present meeting to the respective Governing Bodies of Unesco and WIPO.

VIII. Adoption of the Report and Closing of the Meeting

92. This report was unanimously adopted by the participants.

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

Draft Treaty for the Protection of Expressions of Folklore Against Illicit Exploitation and Other Prejudicial Actions

Outline of the Annotated Text of the Draft Treaty

Title

"Draft Treaty for the Protection of Expressions of Folklore Against Illicit Exploitation and Other Prejudicial Actions."

Comments on the Title

1. In view of the wide range of the possible aspects of international protection of folklore, the title of the Draft Treaty was chosen so as to adequately reflect its particular subject, namely the intellecual–property– type protection of expressions of folklore against illicit exploitation and other prejudicial actions. A rather detailed definition of the subject in the title itself is also necessary to avoid possible confusion with other documents or legal instruments which may concern various other aspects of the international protection of folklore.

The Preamble

"The Contracting States,

Considering that expressions of folklore, developed and maintained by communities of various countries or by individuals reflecting the expectations of those communities, represent an important part of the living cultural heritage of mankind,

Considering that modern technology facilitates the commercialization of expressions of folklore beyond the frontiers of the country in which they originate,

Considering that such commercialization of expressions of folklore may lead to the improper exploitation and distortion of the cultural heritage involved,

Considering that the international regulation of the protection of expressions of folklore against illicit exploitation and other prejudicial actions has thus become indispensable as a means of promoting their further development, authentic maintenance and dissemination, without prejudice to legitimate interests in having access to them,

Considering that expressions of folklore constituting manifestations of intellectual creativity deserve legal protection in a manner analogous to that provided for works protected by copyright,

Have agreed as follows:"

Comments on the Preamble

2. The Articles of the Draft Treaty are preceded by a Preamble (the recitals) which is intended to reflect the main reasons for the proposed international protection of expressions of folklore, its purpose and legal nature. It is also intended to express a basic requirement, underlying the Draft Treaty, namely the necessity of maintaining an appropriate balance between the protection against abuses of expressions of folklore of foreign origin, on the one hand, and the respect of legitimate interests having access to such expressions of folklore, on the other. Such legitimate interests relate to the possibility of dissemination, under fair conditions, of expressions of folklore across the frontiers, and to the liberty of creating original works of authorship inspired by folklore of whatever origin.

Article 1

"*Protected Expressions of Folklore*

For the purposes of this Treaty, "expressions of folklore" mean productions consisting of characteristic elements of the traditional artistic heritage developed and maintained by a community, or by individuals reflecting the traditional artistic expectations of their community, in particular:

(i) verbal expressions, such as folk tales, folk poetry and riddles;
(ii) musical expressions, such as folk songs and instrumental music;
(iii) expressions by action, such as folk dances, plays and artistic forms or rituals,

whether or not reduced to a material form; and

(iv) tangible expressions, such as

(a) productions of folk art, in particular, drawings, paintings, carvings, sculptures,

pottery, terracotta, mosaic, woodwork, metalware, jewellery, basket weaving, needlework, textiles, carpets, costumes;

(b) musical instruments;

[(c) architectural forms]."

Comments on Article 1

3. Article 1 describes the subject of the protection provided for. The Treaty does not offer any definition of the notion of "folklore." The reason is to avoid possible conflicts with relevant definitions which are or may be contained in other documents or legal instruments concerning the protection of folklore. However, for the purposes of the Treaty, Article 1 defines the term "expressions of folklore" in line with the findings of the Committee of Governmental Experts on the Safeguarding of Folklore, which met in Paris in February 1982 under the auspices of Unesco. "Expressions of folklore" are understood as productions consisting of characteristic elements of the traditional artistic heritage developed and maintained by a community in the country or by individuals reflecting the traditional artistic expectations of such a community.

4. The use of the words "expressions" and "productions" rather than "works" is intended to underline the fact that the provisions are *sui generis*, rather than of copyright, since "works" are the subject matter of copyright. Naturally, the expressions of folklore may — and in fact most of the time do — have the same artistic form as "works."

5. The definition of the term "expression of folklore," adopted for the purposes of the Treaty, does not speak generally of the "cultural heritage of mankind" referred to in the Preamble. It is focused on artistic heritage, on the one hand, and is community–oriented, on the other. Artistic heritage is a particular domain within the more extensive realm of cultural heritage and the Treaty is intended to center around the protection of expressions of the traditional artistic heritage rather than to extend also to other forms of cultural heritage. Furthermore, the artistic heritage of communities is a more restricted body of traditional values than the entire traditional artistic heritage of mankind. "Traditional artistic heritage developed and maintained by a community" is understood as representing a special part of the "cultural heritage of mankind."

6. The fact that only "artistic" heritage is being considered means that, among other things, traditional beliefs, scientific views (e.g. traditional cosmogony), substance of legends (e.g. commonly known course of life of traditional heroes like King Arthur and his knights) or merely intellectual traditions as such, separated from possible traditional artistic forms of their expression, do not fall within the scope of the proposed definition of "expressions of folklore." On the other hand, "artistic" heritage is understood in the widest sense of the term and covers any traditional heritage appealing to the aesthetic sense of man. Verbal expressions, which would qualify as "literature" if created individually by an author, musical expressions, expression by action and tangible expressions may all consist of characteristic elements of the traditional artistic heritage and qualify as protected expressions of folklore.

7. The notion of expressions of folklore of a community covers both the expressions originating in the community concerned and those originating elsewhere but having been adopted, further developed or maintained through generations by that community. Thus, wherever in the Treaty reference is made to expressions of folklore originating in a Contracting State (or its territory) such reference also covers expressions of folklore derived by that community from elsewhere in the past, but absorbed by it with the passing of time. Moreover, it is irrelevant whether an actual expression, consisting of characteristic elements of the traditional artistic heritage, has been developed by the collective creativity of a community or by an individual reflecting the traditional artistic expectations of the community.

8. "Characteristic elements" of the traditional artistic heritage, of which the production must consist in order to qualify as a protected "expression of folklore," means in the given context that the element has to be generally recognized as representing a distinct traditional heritage of a community. Elements which become generally recognized as characteristic are, as a rule, authentic expressions of folklore, recognized as such by the tacit consensus of the community concerned.

9. An illustrative enumeration of the most typical kinds of expression of folklore is added to the definition. They are subdivided into four groups depending on the form of the "expression," namely, expression by words ("verbal"), expressions by musical sounds ("musical"), expressions by the human body ("by action") and expressions incorporated in a material object ("tangible expressions"). Each must consist of characteristic elements taken from the totality of the traditional artistic heritage. The first three kinds of expression need not be "reduced to material form," that is to say, the words need not be written down, the music need not exist in the form of musical notation and the bodily action — for example, dance — need not exist in a written choreographic notation. On the other hand, tangible expressions must be incorporated in a permanent material, such as stone, wood, textile, gold, etc. The provision also gives examples of each of the four forms of expression. They are, for the first, "folk tales, folk poetry and riddles," for the second, "folk songs and instrumental music," for the third, "folk dances, plays and artistic forms of rituals," and for the fourth, "drawings, paintings, carvings, sculptures, pottery, terracotta, mosaic, woodwork, metalware, jewellery, basket weaving, needlework, textiles, carpets, costumes; musical instruments; architectural forms." The last–named appears in square brackets to show the hesitation which accompanied its inclusion.

10. Traditional sites of folklore events do not generally qualify as expressions of folklore since they are not usually productions consisting of characteristic elements of the traditional artistic heritage of a community, but only places where expressions of folklore are performed regularly. Certain folklore events, however, may be regarded as protectible artistic expressions by action — kinds of ritual — if they do not represent merely a traditional framework for the utilization of various expressions of folklore to be protected separately.

11. Identification of expressions of folklore originating in the territory of a given country could be achieved by keeping an authentic inventory of them. The need for the establishment of such an inventory was examined in relation to the conservation of folklore by the Committee of Governmental Experts on the safeguarding of folklore convened by Unesco in February 1982 within the global and interdisciplinary study conducted by its secretariat. The recommendations adopted by that Committee provide particularly that "an international register of folk–cultural properties be established by Unesco and that a model card index system be designed and placed at the disposal of member States" and "that Unesco set up a task force of experts in documentation, archives and classification of materials relating to traditional culture." These measures will be very helpful in implementing the international protection of expressions of folklore.

Article 2

"*National Treatment*

Each Contracting State shall accord the same protection to expressions of folklore originating in other Contracting States as it accords to expressions of folklore originating in its own territory, subject to the protection specifically guaranteed, and the exceptions specifically provided for, by this Treaty."

Comments on Article 2

12. Article 2 determines the nature and extent of the protection guaranteed under the Treaty. The basic principle of protection is national treatment, that is to say the requirement that each Contracting State should grant the same protection to expressions of folklore originating in other Contracting States as accorded to expressions of folklore originating in its own territory.

13. However, national treatment under the Treaty is explicitly subject to the minimum standards of protection set forth in its substantive provisions. Such provisions concern the range of expressions of folklore protected (Article 1), the kinds of utilizations against which they should be protected (Articles 4 and 8) as well as the means of their protection (Articles 2, 5, 7, 8, 9 and 10).

14. On the other hand, the scope of national treatment under the Treaty is necessarily confined to the subject covered by the latter and which is intellectual–property–type protection against illicit exploitation and other relevant prejudicial actions. National treatment under the Treaty does not extend to other aspects of folklore protection, such as e.g. preservation of traditional artistic products or promotion of the dissemination of expressions of folklore. Moreover, national treatment is also subject to the exceptions provided for in the Treaty (Article 6) in order to guarantee specified forms of customary and legitimate use of expressions of folklore across the frontiers.

15. It is supposed that the system of protection provided for in the Treaty would induce the countries adhering, or intending to adhere, to the Treaty to coordinate or harmonize their legislations on the protection of expressions of folklore. The substantive Provisions of the Treaty have been developed in accordance with the "Model Provisions for National Laws on the Protection of Folklore Against Illicit Exploitation and Other Prejudicial Actions" adopted by the Committee of Governmental Experts convened by the Directors General of Unesco and WIPO at Geneva in 1982, and noted by the respective Committees of the Berne Union and the Universal Copyright Convention during their sessions held in Geneva in December 1983.

Article 3

"*Competent Authorities*

(1) Each Contracting State shall designate one or more competent authorities (hereinafter referred to as "the competent authority") which shall administer the protection, under this Treaty, of expressions of folklore and to ask for the enforcement of the protection in other Contracting States of such expressions originating in its own territory.

(2) Each Contracting State shall, at the time of depositing its instrument of ratification, acceptance or accession, notify the Secretary–General of the United Nations, by means of a written declaration, of all designations made in accordance with paragraph (1) and giving full information concerning the rights and obligations of the authority thus designated. Any subsequent changes in the designation, or in the said rights and obligations, shall be promptly notified in like manner."

Comments on Article 3

16. A prerequisite for international protection of expressions of folklore under the Treaty is the establishment of competent administration of that protection in each Contracting State. Such an administration is needed as regards utilization of domestic folklore in other Contracting States and vice versa. Thus, Article 3 provides that at the time of becoming party to the Convention each Contracting State shall notify the Secretary–General of the United Nations, along with the deposit of its instrument of adherence and by means of a written declaration, of the competent authority or authorities designated in that State and of the relevant rights and obligations of the designated authority or authorities.

17. The main functions of such a competent authority should be [(i) to transmit to corresponding competent authorities of other Contracting States applications for the utilization of expressions of folklore originating in the latter States (Article 5(1))]; [(ii)] to grant authorization to use domestic expressions of folklore in other Contracting

States (Article 5(2)); [(iii)] to request payment of an equitable sum of remuneration (Article 5(2)); [(iv] in the absence of agreement, to fix the equitable remuneration for the utilization of an expression of folklore originating in another Contracting State (Article 5(2)); and [(v)] to claim enforcement of the protection in other Contracting States under both penal and civil law (Article 3(1) with regard to Articles 8, 9 and 10).

18. "Authority" is to be understood as any person or body entitled by legislation to carry out specified public functions. Which authority or authorities will be designated in a given country as "competent authority" under the will largely depend on the existing system of administration of the culture, economy and foreign relations of that country. A possible solution would be to set up a special authority for the purpose of dealing with the tasks related to the protection of expressions of folklore at both the national and international level. However, the competent authority could also be an existing ministry of the country, for example the Ministry of Culture or Arts, any public institution for matters related to folklore, authors society or similar entity. Where an authority has already been established for the administration of the protection of expressions of folklore at the national level, it seems to be advisable to extend the competence of that authority to the protection of the expressions of folklore under the Treaty.

19. It is also conceivable that instead of one authority, one or more institutions, already existing or newly established, could be designated as competent authorities, as regards various kinds of expressions of folklore or specified types of utilization thereof.

20. If, under the law of a given country, the community as such is entitled to permit or prevent utilizations of its expressions of folklore, the community could act, collectively or through its represenative body, in its capacity of owner of the expressions concerned. In such cases, it seems to be necessary to provide for by legislation that the decisions of the community, relating to the utilization of its expressions of folklore in other Contracting States, should be conveyed to the competent authorities of, or enforced in, those States through the otherwise competent authority of the country, acting on behalf of the community concerned.

21. It would seem eminently useful and logical if representatives of the various folklore communities of the country were to be associated and given an important role in the work of any competent authority or authorities. Furthermore, representatives of cultural and ethnological institutions, including museums, having experience in certain aspects of the protection of folklore, could likewise be associated in the work of the competent autority or authorities.

22. The competencies, various functions and procedure of a competent authority should be regulated in detail and in appropriate form by the government of each Contracting State.

Article 4

"*Utilizations Subject to Authorization*

[(1)] The following utilizations of the expressions of folklore shall require written authorization by the competent authority of the Contracting State in which the expression of folklore originated, if the utilization is intended to be made for profit in another Contracting State:

(i) the publication, reproduction, distribution or importation, for the purpose of distribution to the public, of reproductions or recordings of recitations or performances of expressions of folklore;

(ii) the public recitation or performance of expressions of folklore, as well as any transmission to the public by wireless means, by wire, or by any other means, of expressions of folklore or of their recitations or performances, whether live or recorded.

[(2) Each Contracting State shall, at the time of depositing its instrument of ratification, acceptance or accession, notify the Secretary–General of the United Nations, by means of a written declaration, of the kinds, the main characteristics and the source of the artistic expressions of folklore originating in its territory the utilization of which is subject to the written authorization of its competent authority. Subsequent changes shall be notified in like manner.]"

Comments on Article 4

23. Paragraph (1) determines what kinds of utilization of expressions of folklore, under which territorial or personal conditions and in which form should be subject to authorization by the competent authority of the Contracting State in whose territory the expressions of folklore concerned have originated.

24. As regards the nature of utilizations of expressions of folklore subject to written authorization the Treaty covers any kind of utilization intended to be made for profit. That means, *a contrario*, that no utilization of expressions of folklore without gainful intent may be prevented under the Treaty unless it constitutes an offense according to Article 8. Thus, taking pictures or turning films for private use as souvenirs, the making of copies for non–commercial research or for archives, or performances in the framework of festivities accessible without payment, *inter alia*, would not be hampered by the Treaty.

25. As regards the *criteria* of qualifying the commercial utilization of an expression of folklore as an act subject to authorization, the Treaty requires that the expression of folklore originate in a Contracting State, and that it be utilized in another Contracting State.

26. The paragraph in question then specifies the *forms* of utilization subject to authorization. Distinction is made between the case in which copies of the expressions are

involved and the case in which copies of such expressions are not necessarily involved. In the first case, the acts requiring authorization are publication, reproduction, distribution and importation; in the second case, the acts requiring authorization are public recitation, public performance, transmission by wireless means or by wire and "by any other means," directly or indirectly, whether live or recorded.

27. "Publication" is understood in the broadest sense of the term, so as to cover any form of making available to the public the original, a copy or copies of an expression of folklore reduced to material form. For the purposes of the Treaty, publication is not restricted to reproduction of copies for distribution and covers exhibition, sale or hire alike of one or more copies of tangible expressions of folklore. Reproduction, distribution and importation of expressions of folklore have been made subject to authorization as separate acts, not merely as components of the act of publication. For instance, reproduction of an expression of folklore with gainful intent is also subject to authorization if made in a single copy for a given buyer or for the purpose of communication to the public in immaterial form. The notion of reproduction also covers recording of sounds, images or both. Distribution and importation are mentioned separately in view of the possible distribution or importation with gainful intent of existing copies of expressions of folklore reproduced by another person or authorized for purposes other than distribution or importation.

28. Paragraph (2) provides for a written notification of the kinds and the main characteristics of expressions of folklore originating in the territory of the State adhering to the Treaty. This provision implies that the expressions of folklore have been the objects of prior action for identification. The studies conducted by Unesco on the safeguarding of folklore on an interdisciplinary basis within the framework of an overall global approach have the objectives of the establishment of such measures in order to facilitate the precise knowledge of folkloric expressions which should be protected. The publication of a list of appropriately identified expressions of folklore is supposed to promote the respect of genuine expressions of folklore, the consciousness of their belonging to a community of a particular country and the awareness of the necessity of applying for authorization to utilize them with profit-making intent. Such a list could be helpful in preventing misunderstandings as regards the question whether any given expression of folklore is subject to protection.

29. The importance of an authentic inventory of expressions of folklore has already been referred to in paragraph 85, above. However, the relevant provisions in Article 4 of the Treaty are proposed in square brackets since not necessarily all States adhering to the Treaty would have at the time of their becoming party to the Treaty a sufficiently comprehensive inventory of expressions of folklore originating in their respective territory. The provisions in paragraph (2), if maintained, could be made subject to reservation.

30. It is not proposed to provide a list enumerating each particular item of the complex and proliferous body of the expressions of folklore originating in the territory of a given country. It is suggested merely to identify the kinds and the main characteristics of such expressions of folklore, rather than to specify each individual variant of the same typical form of expression of folklore.

31. It is a well-known fact that certain expressions of folklore have been developed and maintained on a territory belonging to more than one State and the same types of expressions of folklore may figure in the inventories of different countries. In such cases the different geographic locations of the expressions of folklore in the countries concerned may be indicated in the respective national inventories or/and in the international register referred to in paragraph 85 above. Authorization to utilize such an expression of folklore should be requested from the competent authority of that State from the territory of which the expression of folklore or a reproduction thereof was actually obtained if it was a tangible expression, or where it was actually fixed if it was a verbal or musical expression or an expression by action, and, in acknowledgement of its origin, the corresponding geographic place should be indicated (see Article 7 hereunder). The fact that the home land of communities developing the same kind of expressions of folklore and the boundaries of States protecting those expressions do not necessarily coincide suggests the possible need for regional agreements concerning the establishment of relevant inventories and the identification of the jurisdiction to authorize the utilization of items enumerated therein.

Article 5

"*Request and Grant of Authorization*

(1) The application for authorization under Article 4 shall be submitted by the prospective utilizer of the expression of folklore (hereinafter referred to as "the applicant"), [through the competent authority of the Contracting State of which the utilizer is a national or where he or it has his or its habitual residence or headquarters] to the competent authority of the Contracting State in which the expression of folklore originates, duly in advance; the application shall unequivocally specify, in written form, the expression of folklore intended to be used, its source, as well as the nature and extent of the intended utilization.

(2) The authorization shall be given in written form without undue delay; it may be made conditional upon the payment of an equitable remuneration whose amount, in the absence of agreement, shall be fixed by the competent authority of the Contracting State in which the expression of the folklore originates. No application shall be refused, except where the intended use would be prejudicial to the honor or dignity of the originating country or community. Any refusal shall be justified in writing."

Comments on Article 5

32. Paragraph (1) regulates the *submission of the application* for authorization to utilize an expression of folklore to the competent authority of the Contracting State in whose territory the expression of folklore originated. The paragraph covers the contents, form and procedure of applying for authorization.

33. As regards the *contents* of the application, the expression of folklore intended to be used as well as the nature and the extent of its proposed utilization have to be specified unequivocally, that is to say sufficiently in detail so as to leave no room for misunderstanding.

34. The expression of folklore chosen may be properly identified by either a detailed description or, if appropriate, by a photograph thereof or, if it was specified in an inventory or other authentic list of expressions of folklore, by reference to the corresponding item of that list. The source of the expression of folklore concerned should be indicated in the application in accordance with the requirement set forth in Article 7.

35. The nature of the intended utilization has to be specified by clearly describing the intended act in the light of Article 4, paragraph (1). Where the intended use is reproduction, it should be stated if what was intended was to publish the expression of folklore in volume form, in a newspaper or periodical, as a printed leaf, audio or videorecording, etc. It should be stated whether the expression of folklore concerned would be reproduced alone or along with other texts or pictures; the genre or purpose of the intended reproduction should also be stated (catalogue, calendar, tourist guide, reportage, essay, postcard, art print, hobby book, art book, scientific book, score for sale or for enabling performance, disk, audiocassette, videocassette, film, etc.). Where the intended use consists of importation of copies reproduced outside the country, the name and residence or headquarters of the person from whom the imported copies would be acquired, as well as the country from which they would be actually imported should be indicated. Where the intended use consists of distribution of already available copies over a territory or for a purpose other than that for which the copies were lawfully reproduced, the ways and means as well as the territory of the distribution should be specified. In the case of a performance, recitation, broadcast or other communication to the public the artist or ensemble involved, available fixations to be used and the framework in which the utilization is planned should also be stated.

36. Concerning the extent of the planned utilization the number of copies to be reproduced or imported, the territory over which the copies would be distributed, the name and address of the theater(s), broadcasting organization(s), cable distributor(s) as well as the appropriate number of planned performances or emissions, or the duration for which the authorization is being applied for, should be indicated in the application, as appropriate with regard to the proposed utilization.

37. *Written form* of any application for authorization under the Treaty is indispensable, in order to avoid misunderstandings and related uncertainty.

38. As regards *procedure* of applying for authorization in another Contracting State, the Treaty offers two alternatives: the application could be submitted by the applicant to the competent authority of another Contracting State either directly, or through the intermediary of his or its own competent authority. The latter possibility would facilitate matters for the applicant but would increase the workload of the authority of the country of the applicant.

39. Whether directly or indirectly, it is always the prospective utilizer of the expressions of folklore who must apply for authorization. Each application should contain indication of the name, professional activity and address of the applicant.

40. Any application for authorization should be submitted to the competent authority duly in advance. It follows from Article 4 that no utilization subject to authorization under the Treaty can be effected without having been authorized. The competent authorities must be given reasonable time to examine the applications submitted to them and to decide accordingly.

41. Paragraph (2) regulates the *grant of authorization* in four respects: (i) Material conditions, (ii) criteria of refusal, (iii) form of the decisions and (iv) the time factor involved.

42. The authorization may be made conditional upon the payment of an *equitable remuneration*. Thus, where a fee is fixed, the authorization will be effective only on condition of its payment. Presumably, authorizations will be made in many cases subject to remuneration. It should be noted, however, that the system of authorization is justified even where no payment is requested for the utilization of an expression of folklore since the requirement of applying for authorization will contribute to preventing distortion or other prejudicial utilizations.

43. Where fees are charged, they will be fixed by the competent authority granting the authorization. Such fees should be calculated according to tariffs and guidelines relating to various kinds of uses of expressions of folklore, and developed in the country of the authorizing authority in the light of relevant international practice and domestic rules regulating the formation of prices and fees. If the applicant disagrees with the sum of the fees requested by the authorizing authority and cannot arrive at an agreement with that authority, he has the possibility also to turn to his own competent authority for advice as to whether the remuneration requested was equitable in the light of standards usually operating for authorizations of the same kind in the prospective utilizer's country and with regard to the remuneration paid in the country of origin of the expression of folklore for similar utiliza– tions of expressions of folklore originating in the applicant's country. If no agreement can be reached between the applicant and the competent authority of the country of origin of the expression of folklore on the amount of the remuneration to be paid, the competent authority in the Contracting State of the applicant should have the right to fix the amount of an equitable remuneration. This solution corresponds to that which has been adopted in the Berne Union in connection with possible special conditions of

the exercise of the right to authorize the broadcasting of a work or the communication to the public of a broadcast work (Article 11[bis](2) of the Berne Convention).

44. A basic principle underlying the Treaty is that authorization against equitable remuneration should not be refused if lawful utilization of an expression of folklore is proposed in a Contracting State. Thus, paragraph (2) explicitly provides that an application can be refused only where the intended use would be prejudicial to the honor or dignity of the originating country or community. Such may be the case e.g. where portions of a ritual would be used out of their original context and contrary to their traditional meaning; or religious scenes would be put on stage of a night club, or authentic folkloric texts would be distorted so as to correspond to the expectations of a different public.

45. The applicant shall have the right to appeal against an unjustified refusal of the authorization to the court or tribunal that has jurisdiction under the relevant legislation of the country of the competent authority which refused the authorization.

46. Both authorization and refusal have to be communicated to the applicant *in writing*. In case of refusal, the justification thereof should also be communicated in writing, so as to enable the applicant to properly react (by further explaining his plans or appealing against the decisions).

47. As regards the *time* allowed for the competent authority to take a decision the Treaty does not contain fixed terms. It simply requires that the authorization shall be given without undue delay and leaves it up to national legislation to prescribe definite periods. It is advisable that the decision should be required within a certain number (15 or 30) of days. The period should be long enough to give sufficient time for the examination of the application, but short enough not to hamper lawful utilizations of expressions of folklore.

48. The Treaty allows for both "individual" and "blanket" authorization, the first meaning an ad hoc authorization, the second intended for customary utilizers such as cultural institutions, theaters, ballet groups and broadcasting and television organizations.

Article 6

"*Exceptions*

(1) The provisions of Article 4 shall not apply where the utilization is:

(i) for purposes of education;
(ii) for creating an original literary or artistic work.

(2) Furthermore, the provisions of Article 4 shall not apply where the utilization is incidental. Incidental utilization includes, in particular:

(i) utilization of any expression of folklore that can be seen or heard in the course of a current event for the purposes of reporting on that current event by means of photography, broadcasting or sound or visual recording, provided that the extent of such utilization is justified by the informatory purpose;
(ii) utilization of objects containing the expressions of folklore which are permanently located in a place where they can be viewed by the public, if the utilization consists in including their image in a photograph, in a film or in a television broadcast."

Comments on Article 6

49. The Treaty exempts from authorization certain kinds of utilization of expressions of folklore according to their purpose (education; creation of a new, original work) and their nature (if the utilization is incidental).

50. In the case of utilization for purposes of education, there is no need for authorization even if the expression of folklore is made accessible against payment, as is the case when selling text books, or offering teaching against tuition fees. Such free utilization of expressions of folklore is allowed for all and any educational purposes and is not restricted — as is the case in some copyright laws for protected works — to utilization "by way of illustration" in the course of teaching.

51. A further case which requires no authorization with regard to its purpose is where the utilization serves the purpose of creating an original artistic or literary work of authorship. Such utilization may consist in reproducing an expression of folklore by way of illustration in the original work of an author provided that such utilization is compatible with fair practice. The limits of fair practice could best be determined by applying the same standards that exist in the country in connection with the free use of authors' works protected by copyright. Unlike most copyright treaties, however, the Treaty does not confine the use by way of illustration to utilization "for purposes of teaching."

52. Furthermore, expressions of folklore may be reflected without authorization in an original work inspired by them. The exception under paragraph (1)(ii) of Article 6 serves the purpose of promoting development of individual creativity based on folklore. The Treaty should not hinder in any way the birth of original works borrowing the style or elements of expressions of folklore, be it the field of visual arts, as e.g. some wooden sculptures of Barlach, or music, as e.g. a number of compositions of Bartok; or literature like innumerable adaptations of folk tales.

53. The second group of cases, where authorization is unnecessary owing to the nature of the utilization, is that of "incidental utilization." In order to illustrate the meaning of "incidental utilization," paragraph (2) mentions in particular (not in an exhaustive manner) the most typical

cases considered as incidental utilization: utilization in connection with reporting on current events and utilization of images where the expression of folklore is an object permanently located in a public place.

54. The Treaty does not refer to copyright law to the effect that, in all cases where the latter allowed free use of works, the use of expressions of folklore should also be free. It should be noted that many cases of free use in respect of works protected by copyright are irrelevant to the proposed sui generis protection of expressions of folklore, as for example reproduction in the press or communication to the public of any political speech or speeches delivered during legal proceedings. On the other hand, some kinds of exceptions, usually provided for under copyright law (e.g. certain cases of private or other types of fair use of protected works) are encompassed in the general exception for utilizations without profit-making intent, following from the definition of the utilizations subject to authorization under Article 4.

Article 7

"*Acknowledgement of Source*

(1) In all printed publications, and in connection with any communications to the public, of any identifiable expression of folklore, its source shall be indicated in an appropriate manner, by mentioning the community and/or geographic place in which it has originated.

(2) The provisions of paragraph (1) shall not apply in the case of creation of original works inspired by expressions of folklore or in the case of the incidental use of expressions of folklore."

Comments on Article 7

55. In order to strengthen the links between the originating community and its expressions of folklore, and also as a means of facilitating control over the use of such expressions, this Article requires that in all printed publications, and in connection with any communication to the public of an expression of folklore, its source must be indicated by mentioning in an appropriate manner the community and/or the geographic place in which the expression utilized has originated. As already mentioned in paragraph 105, above, reference to the geographic place within the territory of a community where the live presentation of the expression of folklore utilized was fixed or where its material form to be reproduced was photographed or obtained from may be necessary, in particular, if the community in which the expression of folklore concerned has been developed extends over the territory of more than one country, or where the community adopted, maintained or further developed an expression originating, in the ultimate analysis, from elsewhere.

56. This requirement would only apply in cases where the expression of folklore is identifiable also as regards its source, that is to say, where its user can be expected to know where such expression comes from or from which community it derives. The mentioning of the source of an expression of folklore can be expected, *inter alia*, if it has been indicated by the competent authority of the country in which it originates in a proper notification under Article 4(2).

57. Acknowledgement of the source of the expression is not required in two cases where it would be unreasonable to insist on it: where expressions of folklore were used for creating an original work of an author, and in connection with incidental utilizations.

58. Omission of acknowledgement of the source in cases where acknowledgement is required is subject to punishment (see Article 8(ii)).

59. Complying with the requirement of acknowledgement of the source of an expression of folklore utilized does not give exemption from the obligation under copyright law to also indicate authorship whenever the expression of folklore has been utilized in an original form, created by an individual reflecting the traditional artistic expectations of the community, in a way which entitles that individual to copyright protection.

Article 8

"*Offences*

Each Contracting State shall punish by penal sanctions any act of

(i) willful or negligent non-compliance with the requirement of obtaining authorization under Article 4;

(ii) willful or negligent non-compliance with the requirement of acknowledgement of source according to Article 7;

(iii) willful deception of others in respect of the origin of expressions of folklore;

(iv) willful distortion, in any direct or indirect manner, of an expression of folklore in a way prejudicial to the honor, dignity or cultural interests of the community in which it originates."

Comments on Article 8

60. This Article provides for the need of penal protection against specified acts affecting legitimate interests relating to the lawfulness and fairness of the utilization of expressions of folklore. The sanctions for each type of offence established by the Treaty should be determined in accordance with the penal law of the country concerned. The two main types of possible punishments appear to be fine and imprisonment. Which of these sanctions should apply, what kinds of other punishments could be provided for and whether the sanctions should apply separately or cumulatively, depends on the nature of the offence, its probable impact on the interests to be protected and the solutions already adopted in the country for similar offences. The minimum and maximum amounts of fines or terms of imprisonment would likewise depend on the actual practice of each country. Consequently, the Treaty does not provide for any specific punishment.

61. Item (i) deals with willful and negligent non–compliance with the requirement of obtaining authorization where it is required. It is understood that the offence of using an expression of folklore without authorization is also constituted by utilizations going beyond the limits or that are contrary to the conditions of an authorization obtained.

62. Item (ii) subjects non–compliance wih the requirement of acknowledgement of the source of the expression of folklore utilized to penal sanction. It should be noted that the obligation to indicate the source arises only where the identification of the expression of folklore utilized can be reasonably expected from the utilizer. Item (ii) speaks of "willful or negligent non–compliance," and Article 7(1) requires the indication of the source of identifiable expressions of folklore only. The source of an expression of folklore can be expected to be indicated where it is generally known or where it has been mentioned in a publicly available notification by the competent authority of the country where the expressions of folklore originated, or where the knowledge of the source can be reasonably expected from the utilizer with regard to his or its professional activities.

63. Items (iii) and (iv) provide for two special cases, namely deception of the public and distortion of the expression of folklore. The first consists essentially in "passing off," that is, the creation of the impression that what is involved is an expression of folklore originating in a given community when, in fact, such is not the case. The other offence can be constituted by any kind of public utilization distorting the expression of folklore, in any direct or indirect manner "prejudicial to the cultural interests of the community concerned." The term "distorting" covers any act of distortion or mutilation or other derogatory action in relation to the expression of folklore published, reproduced, distributed, performed or otherwise communicated to the public by the culprit.

64. Deception of the public and distortion of the expression of folklore should be punished only if committed willfully; these two kinds of offence constitute active infringement of the law. On the other hand, non–compliance with the requirements of authorization to use a protected expression of folklore or of indicating its source occurs by omission where it is difficult to prove willfullness and it is just and reasonable to expect the utilizer to act with proper diligence in finding out what he or it is obliged by law to do. In such cases, negligence may also establish penal responsibility. Naturally, as regards offences that can be committed also negligently, cases of obvious negligence should be sanctioned more leniently than willful acts.

65. Two, three or all four of the said offences may be committed and punished cumulatively.

Article 9

"*Seizure*

Each Contracting State shall provide for the possibility of the seizure of any object which was made or imported in a way constituting an offence under this Treaty and any returns from such offences."

Comments on Article 9

66. This Article applies in the case of any offence under the Treaty to both objects and receipts arising from the offence.

67. "Object" is understood as meaning "any object which was made or imported in a manner constituting an offence under the Treaty," for example, copies of written expressions of folklore, phonograph records of musical expessions of folklore, videocassettes of a folklore dance performance, copies of drawings, etc., belonging to folklore, and which were made or imported with gainful intent without, or not according to the authorization required under Article 4, or without indicating their source in an appropriate manner as required in Article 7, or in a manner deceiving the public in respect of their origin or distorting the expression of folklore they embody, as prohibited in Article 8.

68. The "returns" are "returns from such offences," typical examples being receipts of the seller of any infringing object and the receipts of the organizer of an infringing public performance.

69. Such "objects" and "returns" are subject to "seizure." However, they are liable to seizure in any Contracting State in accordance with its legislation. The law of certain countries substitutes for seizure certain other corresponding actions. Such actions or remedies might, for example, consist of prohibition of stocking, importing and exporting. Furthermore, seizure is not suggested under the Treaty as a sanction necessarily under penal law. It may be provided as well in application of other branches of the law, including the law on civil procedure.

70. The Treaty does not provide for seizure of implements used for perpetrating the violation of the law since such measure is not generally adopted in other fields of protection of intellectual property. It should be noted, however, that a sanction of that kind is not alien to the copyright law of quite a few countries and it would not be contrary to either the spirit or the wording of the Treaty also to extend seizure or other similar action to implements used mainly or solely for unlawful utilization of expressions of folklore. Such articles may be, for example, plates, matrices, films or copying devices, sound or video recorders and various other tools.

Article 10

"*Civil Remedies*

Each Contracting State shall provide for the possibility of claiming damages or other civil remedies where the utilization was made without the required authorization or payment or in any other manner causing economic harm to the State or community in which the utilized expression of folklore has originated."

Comments on Article 10

71. This Article provides for damages or other civil remedies. Naturally, Article 8 is to be applied without prejudice to the availability of civil remedies. Civil remedies typically include compensation for any damage caused by the unlawful utilization of the expression of folklore, such as the loss of fees normally requested for proper authorization. Damages have to be assessed and adjudicated in accordance with the applicable national law.

72. It is to be noted that the protection afforded by the Treaty is not limited in time. This is one of the differences between the Treaty and copyright conventions. Protection not limited in time is justified by the fact that the protection of the expression of folklore is not for the benefit of individual creators but a community whose existence is not limited in time. However, whether a penal or civil action can be brought before a court without regard to the time elapsed since the date of the infringement or offence was committed, is another question. Since statutes of limitation generally exist in the applicable national laws as regards both penal and civil sanctions, the Treaty does not contain any rule of prescription. It is to be assumed that the general rules of the statutes of limitation or prescriptions for penal sanctions and related civil actions will also be applicable to offences and claims to damages under the Treaty.

Article 11

"*Relations to Other Forms of Protection*

This Treaty shall in no way limit or prejudice any protection applicable to expressions of folklore under national laws or any international treaty protecting copyright, the rights of performers, producers of phonograms and broadcasting organizations, or industrial property, nor shall it in any way prejudice other forms of protection provided for the safeguard and preservation of folklore."

Comments on Article 11

73. This Article provides that the protection granted by the Treaty shall not prejudice any other kind of protection applicable to expressions of folklore at both the national and international levels. In other words, any protection offered in a Contracting State in respect of expressions of folklore against their illicit exploitation or other prejudicial utilization by either national legislation or international treaties or regulations applicable at the time when the protection is claimed, would be concurrent with the protection offered by the Treaty.

74. A few examples of such existing other laws or treaties are the following:

(i) the copyright law, which would apply if the expression of folklore is also a "work," as understood in copyright law, as for example in cases where an individual develops an expression of folklore so that it reflects the traditional artistic expectations of the community concerned (so that it becomes part of the body of expressions of folklore of that community) by having, at the same time, sufficient originality given to it by its author (so that it also qualifies as a work of authorship);

(ii) the law protecting performers, which would apply to performers who perform expressions of folklore, particularly actors, dancers and musicians playing in plays constituting expressions of folklore, dancing folk dances or singing or playing folk songs or instrumental folk music. It is advisable to secure the link between the protection of expressions of folklore and their performance also by making it clear in any law protecting performers of literary and artistic works that the performance of expressions of folklore are to be regarded as a performance of such works;

(iii) the law protecting producers of phonograms which contain, for example, the recordings of performances of recitals of folk tales, folk poetry, folk songs, instrumental folk music or folk plays;

(iv) the law protecting broadcasting organizations, which broadcast an expression of folklore;

(v) the law protecting industrial property, which would apply, for example, if the expression of the folklore is used as an industrial design, a mark or an appellation of origin, or when the use of an expression of folklore is the object of unfair competition;

(vi) the law protecting cultural heritage, which would apply for the protection of, for example, architectural expressions of folklore in forms like groups of separate or connected buildings which, because of their architecture, their homogeneity or their place in landscape, are of outstanding universal value from the point of view of history, art or science; and

(vii) certain laws aimed at the preservation of moving images which would apply for the protection of, for example, cinematographic, television or videographic productions of expressions of folklore, such protection being in addition to that provided for by the copyright legislation.

75. Examples for existing international treaties or other forms of protection referred to by this Article, are (i) the Berne Convention, with special regard to its Article 15(4) which provides protection for "unpublished works where the identity of the author is unknown"; (ii) the Universal Copyright Convention; (iii) the Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations; (iv) the Convention for the Protection of Producers of Phonograms Against Unauthorized Duplication of Their Phonograms; (v) the Convention Relating to the Distribution of Programme-Carrying Signals Transmitted by Satellite; (vi) the Paris Convention for the Protection of Industrial Property; (vii) the Madrid Agreement for the Repression of False or Deceptive Indications of Source on Goods; (viii) the various special agreements concluded under the aegis of the Paris Union; (ix) the Convention concerning the Protection of the World Cultural and Natural Heritage, adopted by the General Conference of Unesco in 1972, which recognizes that the duty of ensuring protection of the cultural and national heritage belongs primarily to the State and recommends that States take appropriate measures to this end; (x) the "Recommendation for the Safeguarding and

Preservation of Moving Images," adopted by the General Conference of Unesco in 1980, which considers that moving images are an expression of the cultural identity of the peoples and form an integral part of the cultural heritage of the nations, and which invites States to take all necessary steps to safeguard and preserve effectively this heritage.

Article 12

"*Deposit and Signature of the Treaty*

This Treaty shall be deposited with the Secretary–General of the United Nations and shall be open until ... for signature by any State that is [a member of the United Nations, any of the Specialized Agencies brought into relationship with the United Nations, or the International Atomic Energy Agency, or is a party to the Statute of the International Court of Justice] [a party to the Berne Convention for the Protection of Literary and Artistic Works or the Universal Copyright Convention]".

Comments on Article 12

76. The Treaty, once adopted in a Diplomatic Conference convened for the establishment of the international protection of expressions of folklore, should be deposited for signature with the Secretary–General of the United Nations.

77. As regards the question of which States may sign the Treaty, two alternatives are being proposed in respective square brackets. According to one solution, the Treaty would be open for signature to any State which is a member of the United Nations or any specialized agency brought into relation– ship with the United Nations or the International Atomic Energy Agency, or is a party to the Statute of the International Court of Justice, that is to say, virtually all States of the globe. Such a solution would allow worldwide establishment of a system of mutual protection of expressions of folklore irrespective of whether all Contracting States have committed themselves also to protect authors' works at the international level. This would allow adherence to the Treaty of countries which could not yet arrive at the decision to join the international system of copyright protection. On the other hand, however, this would mean that claims to the protection of expressions of folklore could be put forward under the Treaty also by States in which authors' works, originating in countries where such States would request the protection of their expressions of folklore, were not protected at all. The other alternative would eliminate the possibility of such an imbalance between the protection of various kinds of intellectual productions, at the price of confining the circle of States that may adhere to the Treaty to those ones which are party to the Berne Convention or the Universal Copyright Convention, as it has been the case as regards adherence to the 1961 Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations.

78. The Treaty would not limit in any other way the circle of States which may sign it. Even States that did not attend the diplomatic conference adopting the Treaty or which, for whatever reason, were not invited to attend that conference, could sign it within the time limit fixed by the said conference.

Article 13

"*Entry into Force of the Treaty*

(1) This Treaty shall be subject to ratification or acceptance by the signatory States. It shall be open for accession by any State covered by Article 12.

(2) Instruments of ratification, acceptance or accession shall be deposited with the Secretary–General of the United Nations. The Treaty shall enter into force three months after the deposit of the fifth instrument of ratification, acceptance or accession.

(3) For each State ratifying, accepting or acceding to this Treaty after the deposit of the fifth instrument of ratification, acceptance or accession, the Treaty shall enter into force three months after the date of the deposit of the respective instrument with the Secretary–General of the United Nations.

(4) It is understood that at the time a State becomes bound by this Treaty, it will be in a position in accordance with its domestic law to give effect to the provisions of the Treaty."

Comments on Article 13

79. States signing the Treaty may thereafter ratify or accept it. Whether a signatory State calls its adherence "ratification" or "acceptance" is a matter of its national law. For States that do not sign within the time limit fixed in Article 12, but which qualify as required in Article 12 concerning signatory States, the Treaty is open for "accession."

80. Any instrument of adherence has to be deposited with the Secretary–General of the United Nations. Five adherences are required in order to bring the Treaty into force. A smaller number of initial adherences would render the international effect of the Treaty illusory; the requirement of a larger number of States initially party to the Treaty could unnecessarily delay its coming into operation. Thus, the Treaty should enter into force three months after the deposit of the fifth instrument of adherence.

81. For any State adhering to the Treaty after its having entered into force, it shall become effective three months after the date of the deposit of the respective document of adherence.

82. Each State adhering to the Treaty must be in a position to implement it from the time of its entering into force in respect of that State. It is understood that by that time each Contracting State will have taken all legislative

and administrative measures necessary to give effect to the Treaty. In particular, each Contracting State is supposed to have, by that time, designated and organized its competent authority(ies) described in Article 3, to have provided for a proper system of authorization corresponding to the requirements under Article 5, and to have determined the punishments of the offences defined in Article 8.

83. As regards the provisions of the Treaty susceptible of direct application, it is understood that, in countries according to the constitution of which treaties are self–executing, no separate legislation is necessary to implement those provisions.

Article 14

"*Denunciation of the Treaty*

Any Contracting State may denounce this Treaty. Denunciation shall take effect 12 months after the date on which the Secretary–General of the United Nations has received the relevant declaration."

Comments on Article 14

84. Any Contracting State may denounce the Treaty at any time after having adhered to it. The denunciation may, however, have no immediate effect since the other Contracting States need time to adapt their relevant administration to the new situation. Applications for authorization in process should not become abruptly objectless and expressions of folklore the utilization of which has already started under the Treaty should not be stripped of protection all of a sudden. A 12–month term seems appropriate, to be computed from the date on which the Secretary–General of the United Nations has received the declaration of denouncing the Treaty.

Article 15

"*Notifications by the Secretary–General of the United Nations*

(1) The Secretary–General of the United Nations shall promptly notify the Director–General of the United Nations Educational, Scientific and Cultural Organization and the Director General of the World Intellectual Property Organization of:

(a) signatures of this Treaty;

(b) the deposit of instruments of ratification, acceptance or accession;

(c) the date of entry into force of this Treaty;

(d) notifications and declarations received from Contracting States under this Treaty.

(2) The Directors General of the United Nations Educational, Scientific and Cultural Organization and the World Intellectual Property Organization shall promptly communicate to the Contracting States any notification received from the Secretary–General of the United Nations."

Comments on Article 15

85. Since both the United Nations Educational, Scientific and Cultural Organization and the World Intellectual Property Organization are concerned with worldwide protection of the expressions of folklore, and the Treaty having been developed under the joint auspices of Unesco and WIPO, the Treaty should be administered jointly by Unesco and WIPO. Thus, the Secretary–General of the United Nations should promptly, and at the same time, notify the respective Directors General of both of the said organizations of any signature of the Treaty and any deposit of an instrument of adherence, of the entry into force of the Treaty and of any notification or declaration the Secretary–General of the United Nations received in relation to the Treaty. The Directors General of Unesco and WIPO would convey any such communications without delay to the Contracting States.

Article 16

"*Languages of the Treaty*

(1) This Treaty shall be signed in a single copy in ... [specify the language(s)], [all texts being equally authentic].

(2) Official texts of this Treaty shall be established, after its having entered into force, jointly by the Director–General of the United Nations Educational, Scientific and Cultural Organization and the Director General of the World Intellectual Property Organization, in consultation with the interested Governments, in ... [specify the languages]."

Comments on Article 16

86. The original language or languages of the Treaty as well as the languages in which official texts thereof should be established, would have to be determined by the diplomatic conference adopting the Treaty.

List of Participants

I. Experts

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Executive Officer, Australian Copyright Council (Australia)

Mr. Sankho Chaudhuri
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Directeur général, Ministère des affaires culturelles (Tunisia)

Mr. Mihály Ficsor
Director General, Hungarian Bureau for the Protection of Authors' Rights (Hungary)

Sr. Victor Carlos García–Moreno
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Mr. Alan Jabbour
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Mr. Jukka Liedes
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Mr. Joseph H. Kwabena Nketia
Former Director, Institute of African Studies, University of Accra (Ghana), Andrew Mellon Professor of Music, University of Pittsburgh

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Ms. Margarita A. Voronkova
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II. States Party to the Multilateral Copyright Conventions Invited to Follow the Discussions

Australia

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Principal Legal Officer, Intellectual Property Section, Attorney–General's Department

Belgium

M. Samuel Glotz
Conservateur honoraire du Musée international du carnaval et du masque, Membre de la Commission royale belge de folklore, Membre du Conseil supérieur des arts et traditions populaires et du folklore

Brazil

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Conseiller technique et pédagogique en arts et traditions populaires, Ministère de la jeunesse et des sports

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Holy See

Maître Louis Rousseau
Avocat honoraire au Conseil d'Etat et à la Cour de cassation de Paris
Maître Renée–Virginie Blaustein
Avocat à la Cour d'appel de Paris

Israel

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Mr. Roland Halvorsen
Secretary of the Governmental Committee for Revision of the Copyright Act, Ministry of Justice

Tunisia

M. Fethi Zghonda
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Turkey

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Attaché d'information, Ambassade de Turquie en France

United States of America

Mr. William H. Skok
Office of Business Practices, Bureau of Economic and Business Affairs, Department of State

III. Observers

a) Intergovernmental Organizations

Council of Europe: G. Brianzoni. **Organization of African Unity (OAU)**: A.–K. Ekue

b) International Non–Governmental Organizations

European Broadcasting Union (EBU): W. Rumphorst. **International Association for the Advancement of Teaching and Research in Intellectual Property (ATRIP)**: A. Françon. **International Bureau of the Societies Administering the Rights of Mechanical Recording and Reproduction (BIEM)**: N. Ndiaye. **International Confederation of Societies of Authors and Composers (CISAC)**: N. Ndiaye. **International Copyright Society (INTERGU)**: G. Halla. **International Federation of Phonogram and Videogram Producers (IFPI)**: I.D. Thomas; E. Thompson. **International Federation of Translators (FIT)**: R. Haeseryn. **International Literary and Artistic Association (ALAI)**: A. Françon; W. Duchemin. **International Music Council (CIM)**: J. Masson–Forestier. **International Publishers Association (IPA)**: J.–A. Koutchoumow. **International Secretariat of Arts, Communications Media and Entertainment Trade (ISETU)**: M. Lesage.

IV. Secretariat

United Nations Educational, Scientific and Cultural Organization (UNESCO)

H. Lopes *(Assistant Director–General for Programmme Support)*; M.–C. Dock *(Director, Copyright Division)*; A. Amri *(Senior Lawyer, Copyright Division)*.

World Intellectual Property Organization (WIPO)

G. Boytha *(Director, Copyright Law Division)*.

Notifications

Convention Establishing the World Intellectual Property Organization

ANGOLA

Accession

The Government of the People's Republic of Angola deposited, on January 15, 1985, its instrument of accession to the Convention Establishing the World Intellectual Property Organization (WIPO).

The Convention Establishing the World Intellectual Property Organization will enter into force, with respect to the People's Republic of Angola, three months after the date of deposit of its instrument of accession, that is, on April 15, 1985.

WIPO Notification No. 131, of January 15, 1985.

NICARAGUA

Accession

The Government of the Republic of Nicaragua deposited, on February 5, 1985, its instrument of accession to the Convention Establishing the World Intellectual Property Organization (WIPO).

The Convention Establishing the World Intellectual Property Organization will enter into force, with respect to the Republic of Nicaragua, three months after the date of deposit of its instrument of accession, that is, on May 5, 1985.

WIPO Notification No. 132, of February 6, 1985.

National Legislation

INDIA

The Copyright (Amendment) Act, 1984

(No. 65, of September 14, 1984)*

An Act further to amend the Copyright Act, 1957**

Short title and commencement

1. (1) This Act may be called the Copyright (Amendment) Act, 1984.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.[1]

Amendment of section 2

2. In section 2 of the Copyright Act, 1957 (hereinafter referred to as the principal Act),—

(a) in clause *(f)*, the following *Explanation* shall be inserted, at the end, namely:—

'*Explanation.*—For the purposes of this clause, "video films" shall also be deemed to be work produced by a process analogous to cinematography;';

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

'*(hh)* "duplicating equipment" means any mechanical contrivance or device used or intended to be used for making copies of any work;';

(c) in clause *(o)*, for the words "and compilations", the words ", compilations and computer programs, that is to say, programmes recorded on any disc, tape, perforated media or other information storage device, which, if fed into or located in a computer or computer based equipment is capable of reproducing any information" shall be substituted;

(d) in clause *(t)*, after the word "negative", the words ", duplicating equipment" shall be inserted.

Amendment of section 51

3. In section 51 of the principal Act, in clause *(b)*,—

(a) in sub–clause *(iv)*, the brackets and words "(except for the private and domestic use of the importer)" shall be omitted;

(b) the following proviso shall be inserted at the end, namely:—
"Provided that nothing in sub–clause *(iv)* shall apply to the import of two copies of any work, other than a cinematograph film or record, for the private and domestic use of the importer.".

Insertion of new section 52A

4. After section 52 of the principal Act, the following section shall be inserted, namely:—

Particulars to be included in records and video films

"52A. (1) No person shall publish a record in respect of any work unless the following particulars are displayed on the record and on any container thereof, namely:—

(a) the name and address of the person who has made the record;

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* Published in *The Gazette of India (Extraordinary)*, No. 82, of September 14, 1984.

** The previous amendment (The Copyright (Amendment) Act, 1983) was published in *Copyright*, 1984, pp. 112 *et seq.*

[1] By notification published in *The Gazette of India (Extraordinary)*, the date of entry into force is October 8, 1984.

(b) the name and address of the owner of the copyright in such work; and
(c) the year of its first publication.

(2) No person shall publish a video film in respect of any work unless the following particulars are displayed in the video film, when exhibited and on the video cassette or other container thereof, namely:—

(a) if such work is a cinematograph film required to be certified for exhibition under the provisions of the Cinematograph Act, 1952, a copy of the certificate granted by the Board of Film Certification under section 5A of that Act in respect of such work;
(b) the name and address of the person who has made the video film and a declaration by him that he has obtained the necessary licence or consent from the owner of the copyright in such work for making such video film; and
(c) the name and address of the owner of the copyright in such work.".

Amendment of section 63

5. In section 63 of the principal Act, for the words "shall be punishable with emprisonment which may extend to one year, or with fine, or with both", the following shall be substituted, namely:—

"shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to three years and with fine which shall not be less than fifty thousand rupees but which may extend to two lakh rupees:

Provided that the court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than six months or a fine of less than fifty thousand rupees".

Insertion of new section 63A

6. After section 63 of the principal Act, the following section shall be inserted, namely:—

Enhanced penalty on second and subsequent convictions

"63A. Whoever having already been convicted of an offence under section 63 is again convicted of any such offence shall be punishable for the second and for every subsequent offence, with imprisonment for a term which shall not be less than one year but which may extend to three years and with fine which shall not be less than one lakh rupees but which may extend to two lakh rupees:

Provided that the court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than one year or a fine of less than one lakh rupees:

Provided further that for the purposes of this section, no cognizance shall be taken of any conviction made before the commencement of the Copyright (Amendment) Act, 1984.".

Amendment of section 64

7. In section 64 of the principal Act,—

(a) for sub–section (*1*), the following sub–section shall be substituted, namely:—
"(*1*) Any police officer, not below the rank of a sub–inspector, may if he is satisfied that an offence under section 63 in respect of the infringement of copyright in any work has been, is being, or is likely to be, committed, seize without warrant, all copies of the work and all plates used for the purpose of making infringing copies of the work, wherever found, and all copies and plates so seized shall, as soon as practicable, be produced before a Magistrate.";

(b) in sub–section (*2*),—
(*i*) after the words "copies of a work", the words ", or plates," shall be inserted;
(*ii*) after the words "such copies", the words "or plates" shall be inserted.

Amendment of section 65

8. In section 65 of the principal Act, for the words "one year, or with fine, or with both", the words "two years and shall also be liable to fine" shall be substituted.

Insertion of new section 68A

9. After section 68 of the principal Act, the following section shall be inserted, namely:—

Penalty for contravention of section 52A

"68A. Any person who publishes a record or a video film in contravention of the provi-

sions of section 52A shall be punishable with imprisonment which may extend to three years and shall also be liable to fine.".

Amendment of Act 12 of 1974

10. In the Economic Offences (Inapplicability of Limitation) Act, 1974,—

(a) in section 2, in clause (*i*), after the word "enactments", the words "or provisions, if any, thereof" shall be inserted;

(b) in the Schedule, after entry 1 relating to the Indian Income-tax Act, 1922, the following entry shall be inserted, namely:—

"1A. Clause *(a)* of section 63 of the Copyright Act, 1957 (14 of 1957).".

ISRAEL

Performers' Rights Law, 5744–1984

(of June 13, 1984)*

Chapter One: Interpretation

Definitions

1. In this Law —

"performer" means a person who by acting, singing, playing music, dancing, or in any other way performs a literary, artistic, dramatic or musical work;

"performance" means the performance of a literary, artistic, dramatic or musical work by a performer;

"fixation" means the preservation of a performance by any means whatsoever in a manner making it possible to see, hear or reproduce the performance;

"broadcast" means the transmission or dissemination to the public, by wire, wireless or in any other way, of sounds or images or a combination of sounds and images;

"rebroadcast" means a broadcast by any person of a broadcast of another person simultaneously with the broadcast of the other person;

"reproduction" means the making of a copy of a fixation or of a substantial part thereof.

Chapter Two: Performers' Rights

Rights of Performer

2. It shall be the right of a performer that the following acts shall not be done without his consent:

(1) a fixation;

(2) a reproduction unless both of the following apply:

(a) the fixation was made with his consent;

(b) the reproduction is made for the same purpose for which the consent was given.

(3) a broadcast of a performance unless one of the following applies:

(a) the performance is broadcast by the Broadcasting Authority, Educational Television or the Army Radio from a fixation or a reproduction thereof, made with the consent of the performer, and an agreement exists between the agency which makes the broadcast and the person who made the fixation concerning the right to use the performance;

(b) the broadcast is a rebroadcast to which the agency making the original broadcast has given its consent.

(4) the sale, hire, distribution, import or possession, for commercial purposes, of a fixation or a reproduction thereof if the fixation or reproduction was made without the consent of the performer.

* Passed by the Knesset on the 13th Sivan, 5744 (13th June, 1984). The original Hebrew text was published in *Sefer Ha-Chukkim* No. 1119 of the 20th Sivan, 5744 (20th June, 1984), p. 157; the Bill and an Explanatory Note were published in *Hatza'ot Chok* No. 1633 of 5743, p. 201. English translation received from the Israeli Ministry of Justice.

Who may give consent

3. Consent under section 2 —

(1) where the performer is a soloist or an individual who is not a member of a group — is given by the performer or a representative authorised by him in writing;

(2) where the performer is a group — is given by a representative authorised in writing by the members of the group or, if there is no such representative, by the majority of the members of the group.

Exemptions from requirement of consent

4. The provisions of section 2 shall not apply where the acts mentioned therein constitute distribution or fair use for the purposes of study or teaching on a non–profit basis or for the purposes of research, criticism, a review or a journalistic summary.

Chapter Three: Remedies and Penalties

Civil remedies

5. A performer whose right under this Law has been infringed shall, *mutatis mutandis*, have all the civil remedies available in law to the holder of a copyright whose copyright has been infringed.

Penalties

6. (a) A person who knowingly infringes rights of a performer under this Law shall be liable to imprisonment for a term of six months or a fine as provided in section 61(a)(4) of the Penal Law, 5737–1977.

(b) A person who purports to give consent for the purposes of section 2 without being authorised to do so or in excess of such authorisation or a person who acts on the basis of consent as aforesaid knowing that it was given without or in excess of authorisation shall be liable to a fine.

Responsibility for offence

7. (a) Where an offence under this Law is committed by a body corporate, every person who at the time of its commission is an active director or a partner — other than a limited partner — of that body or a senior employee thereof responsible for the field in question shall also be guilty of the offence unless he proves that it was committed without his knowledge and that he took all reasonable measures to ensure compliance with this Law.

(b) Where an offence under this Law is committed by an employee in the course of the business of his employer or by an authorised agent acting within the scope of his functions, his employer or principal shall also be guilty of the offence unless he proves that it was committed without his knowledge or that he took all reasonable measures to ensure compliance with this Law.

Order of seizure or prohibition of distribution

8. In addition to any other relief, the court may order the seizure or the prohibition of the distribution of a fixation or of any reproduction thereof; where the court orders seizure, it shall direct how the fixation or reproduction seized shall be disposed of.

Application of seizure order to person not a party

9. (a) A seizure order under section 8 shall have effect against any person named therein who is in possession of a fixation or reproduction for the purpose of sale, hire, distribution or storage even if such person was not a party to the proceeding (such a person hereinafter referred to as a "non–party").

(b) The court may make the issue of a seizure order against a non–party conditional on the giving of security to its satisfaction; if the court, on the application of a non–party, is satisfied that the application for the order was unreasonable, it may, after giving the parties concerned an opportunity to be heard, direct the forfeiture of the whole or part of the security in favour of the person against whom the order was issued, to compensate him for the damage caused by the implementation of the order.

(c) A seizure order implemented against a non–party shall become void upon the expiration of thirty days from the date of its implementation save if a criminal or civil action is brought against him for the infringement which was the ground for the issue of the order or if the order is quashed under subsection (e).

(d) A seizure order which has not been implemented shall become void upon the expiration of ninety days from the date on which it was made.

(e) A person against whom a seizure order under subsection (c) has been implemented may, within thirty days from the date of the implementation, apply to the court which made the order to revoke or vary it. The court may extend the period if it deems it justified to do so in the circumstances of the case.

Chapter Four: Miscellaneous Provisions

Period of performers' rights

10. The provisions of this Law shall not apply to a performance after the expiration of twenty–five years from the end of the year in which the original performance was given.

Performer being employee

11. Where a performer is employed as an employee and the performance is given in the course and in consequence of his service with his employer, then, unless otherwise provided by agreement, the rights conferred by this Law on the performer shall, in the first fifteen years of the period mentioned in section 10, vest in the employer, and during the remainder of that period, in the performer.

Performer being police officer or soldier

12. (a) Where a performance is given in the course and in consequence of the service of the performer in the Police or Army, the provisions of section 11 shall apply as if the State were the performer's employer if —

(1) the performer is a police officer, or
(2) the performer is a person who belongs to the regular forces of the Army, or
(3) the performer is a person who belongs to the reserve forces of the Army and the performance is produced by the Army.

(b) Where a performance is given in the course and in consequence of the service of the performer in reserve service, the State may broadcast and fix it without his consent.

(c) In this section —

(1) "a person who belongs to the regular forces of the Army" and "a person who belongs to the reserve forces of the Army" have the respective meanings assigned to these terms in the definition of "soldier" in section 1 of the Military Justice Law, 5709–1955;

(2) "reserve service" has the same meaning as in the Defence Service Law (Consolidated Version), 5719–1959.

Performance outside Israel

13. (a) This Law shall not apply to performances given outside Israel.

(b) Notwithstanding the provisions of subsection (a), the Minister of Justice may direct by order that all or part of the provisions of this Law shall apply to performances given outside Israel if so provided by an international convention to which Israel is a party.

Performance before coming into force of Law

14. This Law shall not apply to a performance which took place before its coming into force.

Saving of laws

15. This Law shall be in addition to, and not in derogation of, any other law.

Freedom of stipulation

16. The provisions of this Law shall not affect or derogate from the conditions of any agreement made either before or after its coming into force.

Status of the State

17. This Law shall apply to the State.

Commencement

18. This Law shall come into force upon the expiration of thirty days from the date of its publication.

Correspondence

Letter from Israel

Victor HAZAN*

Activities of Other Organizations

International Confederation of Societies of Authors and Composers (CISAC)

XXXIVth Congress

(Tokyo, November 12 to 17, 1984)

At the invitation of the Japanese Society for Rights of Authors, Composers and Publishers (JASRAC), the International Confederation of Societies of Authors and Composers (CISAC) held its XXXIVth Congress in Tokyo from November 12 to 17, 1984. Organized by the President of JASRAC, Mr. Yasushi Akutagawa, and his collaborators, this Congress was supported by the Government of Japan through the Agency for Cultural Affairs of the Ministry of Education, Science and Culture.

The opening meeting took place in the presence of His Excellency Yasuhiro Nakasone, Prime Minister, and of various high–ranking Japanese personalities.

This Congress, which was presided over by Mr. Roman Vlad, Italian composer, outgoing President of CISAC, was particularly well attended. It included delegations from CISAC–affiliated societies of authors from the following 40 States: Algeria, Argentina, Australia, Austria, Belgium, Brazil, Bulgaria, Cameroon, Canada, Chile, Czechoslovakia, Denmark, Egypt, Finland, France, German Democratic Republic, Germany (Federal Republic of), Greece, Hungary, Israel, Italy, Ivory Coast, Japan, Mexico, Morocco, Netherlands, New Zealand, Norway, Poland, Portugal, Senegal, South Africa, Soviet Union, Spain, Sweden, Switzerland, United Kingdom (and Hong Kong Territory), United States of America, Uruguay, Venezuela. In addition, JASRAC had invited to follow the deliberations of the Congress observers from the following Asian States: China, Indonesia, Malaysia, Philippines, Republic of Korea, Singapore, Sri Lanka and Thailand.

WIPO had been invited to attend as an observer and was represented by Mr. Claude Masouyé, Director, Public Information and Copyright Department. Unesco and several international non–governmental organizations had also delegated observers.

Apart from a certain number of administrative or purely international matters which were discussed by the Administrative Council, to which the Secretary General submitted a report on the activities of CISAC since the previous Congress held in Rome in 1982, the agenda of the debates of the Tokyo Congress included the hearing of communications presented by the rapporteurs hereafter mentioned on the following subjects:

— "The Reproduction for Private Use in Japan," by Mr. Yasushi Akutagawa, President of JASRAC (Japan);

— "To Cope with the World Upheaval in Copyright," by Mr. David Ladd, Register of Copyrights (United States of America);

— "The Situation of Copyright in Europe," by Mr. Michael Freegard, Chief Executive, Performing Right Society, PRS (United Kingdom) and by Mr. Mihály Ficsor, Director General, Hungarian

Bureau for the Protection of Authors' Rights, ARTISJUS (Hungary);

— "The Situation of Copyright in North America (Excluding Mexico)," by Mrs. Gloria Messinger, Managing Director, American Society of Composers, Authors and Publishers, ASCAP (United States of America);

— "The Situation of Copyright in Latin America," by Mr. Gabriel E. Larrea Richerand, Director General, Society of Authors and Composers of Music, SACM (Mexico);

— "The Situation of Copyright in Africa," by Mr. Salah Abada, Director General, National Copyright Office, ONDA (Algeria);

— "The Situation of Copyright in Asia," by Mr. John L. Sturman, General Manager, Australasian Performing Right Association, APRA (Australia).

The various reports gave rise to large discussions, at the end of which the Congress approved a certain number of resolutions on the subjects mentioned above, as well as on current legislative revisions in several countries. The text of the resolutions related to the said subjects is reproduced below.

On the other hand, the Congress renewed the Administrative Council of CISAC, composed of representatives of some 20 societies of authors, the Executive Bureau, composed of 12 members, and the Legal and Legislative Committee for the forthcoming 1984–1986 period of activity. Mr. Jean–Loup Tournier (Director General, SACEM, France) and Mr. Mihály Ficsor (Director General, ARTISJUS, Hungary) were re–elected Chairman and Vice–Chairman respectively of the Executive Bureau for the new biennium.

Finally, the Tokyo Congress elected by acclamations Mr. Léopold Sedar Senghor, President of CISAC, and Mr. Yasushi Akutagawa, Vice–President of CISAC.

The next Congress will be held in Madrid in October 1986.

Resolutions

The International Confederation of Societies of Authors and Composers (CISAC), meeting in General Assembly in Tokyo from November 12 to 17, 1984, on the occassion of its XXXIVth Congress,

I. General Questions

1. Reproduction for private use

Deeply concerned that the proliferation of home taping resulting from the rapid development and dissemination of both audio and audiovisual recording equipment and blank tapes unreasonably prejudices the legitimate interests of authors by displacing to a considerable extent the traditional pre–recorded record and tape market and so conflicts with a normal exploitation of works,

Believing that, when a new means of reproducing works results from technical innovation, authors have or should have the exclusive right to authorize such means of exploitation and that, in the case of home taping, it is impossible in practice for them to license or otherwise enforce their rights individually or even collectively because that use is made in the realm of family privacy,

Considering that, if States are to deal fairly with authors and not dampen their creative spirit, faced as they are with the disintegration of one of their fundamental methods of remuneration, a statutory means must be found to enable them to receive fair remuneration for home taping,

Observing that the essential role played by manufacturers and importers of the products necessary for private copying, from which they profit only because of the works which the public wishes to record, is such as to justify payment of a copyright fee for the reproduction right when these products are distributed,

Noting with satisfaction that more and more legislatures are turning their attention to this problem and that a number of laws have already been enacted which provide for some compensation to authors,

Resolves accordingly unanimously to call on all who are concerned with authorship and culture to urge the governments of those countries which have not already done so to amend their domestic laws without further delay to provide for a copyright fee for home taping.

2. The protection of authors faced with upheavals arising from technical evolution

After studying the report which was submitted to it on the means of copying with the world upheaval in copyright,

Resolves to adopt the following principles:

(1) the exclusive right to authorize the dissemination of his works is a fundamental right of the author, and the exercise of this right should ensure the author's remuneration;

(2) voluntary contractual arrangements are the norm and should be compromised only in the face of the most compelling need;

(3) if non–voluntary licences are adopted, the author must be fairly compensated;

(4) when conditions of technology, markets, or industrial organization permit, non–voluntary licences should be discontinued;

(5) authors' compensation under non–voluntary licences should not be less than they would be likely to obtain under free contractual arrangements, were they possible; (i.e. authors should not be required to subsidize the uses of their works);
(6) governments should pay market rates for their uses of copyrighted works;
(7) development of blanket licensing organizations, and of principles for their formulation and administration, should be a principal goal of intergovernmental organizations concerned with copyright.

II. Improvement of the Situation of Copyright

1. In Europe

After studying the reports which were submitted to it on the situation of copyright in Europe,

Recommends its European member societies to urge their national governments to adopt the following measures:

(1) statutory provisions enabling authors to receive fair remuneration for home taping, both audio and audiovisual;
(2) statutory provisions (including the introduction of the "extended collective licence" system and the repeal or amendment of outdated "fair dealing" exemptions such as those in the United Kingdom and Ireland) to encourage the development of contractual blanket–licensing schemes for reprographic reproducting, not only in educational institutions but wherever these techniques are widely used;
(3) introduction of statutory lending and rental rights in respect both of original works and all forms of material support incorporating copyright works;
(4) harmonization and strengthening of anti–piracy measures, including especially more severe sanctions under criminal law such as very high fines and long prison sentences; also greater powers of search and seizure for the benefit of rights owners in civil proceedings;
(5) statutory protection for the authors of works transmitted to a communications satellite in respect of the resulting communication to the public by broadcasting and/or cable distribution to the extent that the author is unable to license that public communication in the territory of reception;
(6) as regards the cable distribution of broadcasts, maintenance or re–establishment of the author's exclusive right, exercisable under voluntary licensing agreements, without any exceptions based on the criterion of the so–called "service zone";
(7) abolition of the statutory licences for the recording of musical works in Ireland, the United Kingdom and Israel;
(8) generalization and harmonization of the artist's re–sale right (droit de suite) and the introduction of a right of exhibition for the benefit of authors of the graphic and plastic arts;
(9) harmonization of the laws governing the copyright status of film authors, including directors;
(10) harmonization of the term of copyright protection at the level of 70 years *post mortem auctoris* (especially in the Member States of the EEC).

2. In the United States of America and Canada

After studying the report which was submitted to it on the situation of copyright in the United States of America and Canada, adopted the following resolution:

Whereas, copyright there is threatened as a result of new technologies which pose new problems for authors and authors' societies as to methods of licensing and of royalty distribution; and

Whereas, these problems require careful study by all concerned, and sympathetic support of authors' rights by governments under pressure to sacrifice such rights in the interest of enhancing delivery of copyrighted material to the public instantaneously throughout a nation and even throughout the world; and

Whereas, the long–term interests of the people of North America and of people everywhere are consonant with, and not antithetical to, the interests of authors; and

Whereas, authors need broad community support, beyond the support given by their own collecting societies and by CISAC, if authors' rights are not to be sacrificed as a mere inconvenience to the public and to those users who wish to deliver authors' works to the public; and

Whereas, recent experience of ASCAP, BMI and SESAC teaches that such support is available to authors and publishers from those who also comprise the arts community, including presenters, performers, teachers, consumers, appreciators and others;

Now, therefore, be it

Resolved, that each CISAC–confederated organization in the United States of America and Canada be encouraged to conduct periodic educational campaigns to inform all people who are interested in any of the arts, of the current conditions facing authors in its territory, with a view to developing a cadre of informed leaders who will join in continuing efforts to educate the public, the users, and government officials of the need to adopt and administer sound copyright laws in order to enhance and preserve those cultural values which, in the final analysis, define and measure a nation.

3. In Latin America

After studying the report which was submitted to it on the situation of copyright in Latin America,

Considering that, although Latin American countries have common cultural roots, they nevertheless have certain characteristics which differentiate them one from another so that each requires special study at the practical level in order to define the most effective measures of resolving the problems with which authors are confronted,

Recognizing that, to solve these problems, assistance is required in the legal, legislative and technical spheres in order to improve the operations of the confederated authors' societies in this continent as well as to create societies in the countries where none exist to date,

Believing that action by CISAC within the framework of its institutional responsibilities is needed in this regard and, hence, that it is vital for it to increase its initiatives with the participation of the Panamerican Council,

Taking account of the fact that a number of confederated societies operating outside the Latin American continent have already associated themselves with working for the benefit of copyright in this continent and are showing interest in continuing along this path,

Noting that Unesco and WIPO, together with non-governmental organizations specialized in the copyright field, are also working to promote authors' rights in Latin America,

Resolves to create a working group in cooperation with the Panamerican Council, a working group formed mainly of specialists from Latin America joined by representatives of other interested CISAC member societies and for this group immediately to set about conducting the studies needed to enable a program of action for strengthening authors' rights in Latin America to be defined and put into operation as soon as practicable.

4. In Africa

After studying the report which was submitted to it on the situation of copyright in Africa,

Notes with satisfaction that this report comes within the framework of the dynamic policy drawn up by the Executive Bureau with the aim of referring copyright problems in the world to the Congress on a regular basis,

Congratulates the Executive Bureau on its initiative of evaluating the legal and economic state of copyright enabling CISAC to conduct efficiently its action on behalf of authors in the world,

Expresses pleasure in the effort made by CISAC's bodies and by other specialized international institutions to promote the legal protection and practical administration of rights in Africa,

Considers that this effort must be continued and developed in order to contribute effectively to solving the major problems which still remain unanswered,

Resolves to invite the confederated societies to increase their contribution to assisting legal protection and to organizing copyright administration in Africa in order appropriately to fulfill CISAC's role of promoting copyright in the world,

Calls upon Unesco and WIPO to strengthen their programs in this area and to coordinate their implementation with CISAC,

Calls upon the other international organizations concerned to join their efforts in this undertaking to develop copyright in Africa,

Invites the Administrative Council and the Executive Bureau to draw up annual programs for implementing this aid policy as well as to pay the greatest attention to organizing the ways and means necessary for their successful implementation.

5. In Asia

After studying the report which was submitted to it on the situation of copyright in Asia,

Has observed with considerable concern that the vital role played by authors, composers and other creative persons in the cultural development of their countries is either not, or only inadequately, recognized in many of the countries of Asia,

Has noted that this situation is evidenced:

(1) in some countries, by the total absence of any copyright legislation;

(2) in other countries, by out-of-date legislation which is ineffectual in the face of contemporary technology and widescale piracy;

(3) by the vast volume of piracy in the region of all forms of intellectual property;

(4) in some countries, by the total absence of any society or other organization responsible for protecting authors' rights;

(5) in other countries, by the fact that authors' societies are weak and ineffective;

(6) by the fact that there are still countries in the region which do not belong to any of the copyright conventions,

Urges all governments in Asia to introduce, or strengthen, as the case may be, the copyright systems in their countries by taking all appropriate measures which should, in particular, include:

(a) the public denunciation of piracy from the highest official level,

(b) the enactment of up-to-date copyright laws, or where appropriate, the amendment of existing laws to bring them into line with contemporary needs, especially in relating to anti-piracy penalties and enforcement procedures,

(c) encouragement and support for the establishment of infrastructures needed for the effective operation of the copyright system, particularly the formation of authors' societies,

(d) the assumption by the law enforcement agencies in each country of responsibility for enforcing the laws which protect intellectual property, and for ensuring that the personnel of those agencies are instructed in this branch of the law,

(e) joining the international copyright community by adhering to the relevant conventions.

Book Reviews

Verlagsrecht. Kommentar zum Gesetz über das Verlagsrecht vom 19.6.1901 (Law of Publication, Commentary on the Law of Publication of 19.6.1901). Originally written by Dr. Walter Bappert and Dr. Theodor Maunz, 1952. Second, newly revised edition by Dr. Theodor Maunz and Dr. Gerhard Schricker. One volume of 807 pages. C.H. Beck'sche Verlagsbuchhandlung, Munich, 1984.

Thirty-two years after the publication of the Commentary by W. Bappert and Th. Maunz on the German Law of Publication of 1901, Professors Maunz and Schricker have prepared a thoroughly revised new edition of that basic Commentary on the same Law as it applies today in the Federal Republic of Germany, with the exception of a few articles repealed by the Copyright Act of September 9, 1965. Pertinent provisions of the new Copyright Act, the Law of 1976 on the General Terms of Trade, the application of the 1957 Rome Treaty on the European Economic Community, and also the development of case law and theory (in particular concerning relevant questions of unfair competition, or of the exercise of the author's right to authorize the use of his work) have profoundly influenced the implementation of the old law on publishing rights. The original commentary on it had to be virtually rewritten to reflect adequately the changes in both practice and legal philosophy.

The revised version is considerably more extensive than the original one was, although its authors have not surveyed the laws of publication in other German-speaking countries as was done when the first edition was prepared in which the laws of Austria and Switzerland were also considered. Since then legal development in the various countries of the German-language area has increasingly acquired features peculiar to each of those countries.

The comprehensive introduction (covering, *inter alia*, the theory, history, contractual practice, unfair competition aspects, and also private and public international law problems of the law of publishing rights) is followed by an article-by-article commentary on the Law of 1901. Each part of the commentary is preceded by the text of the article concerned.

The book also contains, in an appendix, the relevant texts of the Copyright Act of 1965, standards for contracts concerning scientific works and standard contracts for the publication of other kinds of books and translations, together with guidelines for the conclusion and interpretation of contracts between visual artists and publishers. An excellent index helps the reader to find his way in this voluminous book.

The credit for the part on the contents of the publishing contract in general and the passages with a bearing on public law goes to Professor Maunz, and that for the other parts of the Commentary to Professor Schricker.

The book is of great value to both practitioners and theorists. In order to illustrate this, two important features of the coauthors' approach to their subject should be in particular stressed.

First, in commenting on the law of publication, the authors always survey the pertinent legislation and case law in the light of the modern development of copyright philosophy. Besides the legal provisions and case law, they also refer to the relevant views expressed in literature. In cases of doubt, they develop their own argumentation, examining a given problem of publication in the broader context of the applicable law. A typical example of this is the portion dealing with the scope of the author's right to amend, or to prevent amendment of the work in the process of publishing, where they derive their solution from the general concept of the moral components of the author's right as provided in the Copyright Act.

Secondly, throughout the Commentary, its authors clearly comply with the requirement that an equitable balance should be promoted between the interests of authors and those of publishers through the protection of authors in relation to shaping just and reasonable contractual conditions of the publication of their works, over and above mere protection against unauthorized publication. The new Commentary is also an important contribution to the worldwide quest for a proper law on authors' contracts. In this context the development of subjects like the author's right to request revision of the contract in the event of a gross disproportion between the stipulated authors' fees and the actual returns from the utilization of the work, or the termination of the contract by the author for failure to exercise basic rights granted by him to the user of the work, deserves special attention.

GB

Calendar of Meetings

WIPO Meetings

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

1985

February 25 to March 1 (Geneva) — Group of Experts on Copyright Protection of Computer Software (convened jointly with Unesco)

March 11 to 15 (Geneva) — Permanent Committee on Patent Information (PCPI): Working Group on General Information

March 18 to 22 (Paris) — Group of Experts on Copyright Problems in the Field of Direct Broadcasting Satellites (convened jointly with Unesco)

April 22 to 26 (Paris) — Joint Unesco–WIPO Consultative Committee on the Access by Developing Countries to Works Protected by Copyright (convened jointly with Unesco)

May 6 to 17 (Geneva) — Permanent Committee on Patent Information (PCPI): Working Group on Search Information

June 3 to 7 (Geneva) — Nice Union: Committee of Experts

June 6 to 14 (Geneva) — Permanent Committee on Patent Information (PCPI): Working Groups on Planning and on Special Questions

June 17 to 25 (Paris) — Berne Union: Executive Committee (Extraordinary Session) (sitting together, for the discussion of certain items, with the Intergovernmental Committee of the Universal Copyright Convention)

June 26 to 28 (Paris) — Rome Convention: Intergovernmental Committee (Ordinary Session) (convened jointly with ILO and Unesco)

September 11 to 13 (Geneva) — Permanent Committee on Patent Information (PCPI): Working Group on Patent Information for Developing Countries

September 16 to 20 (Geneva) — Permanent Committee on Patent Information (PCPI)

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)

October 7 to 11 (Geneva) — Permanent Committee on Patent Information (PCPI): Working Group on General Information

November 18 to 22 (Geneva) — Permanent Committee on Patent Information (PCPI): Working Groups on Special Questions and on Planning

November 25 to December 6 (Geneva) — Permanent Committee on Patent Information (PCPI): Working Group on Search Information

UPOV Meetings

1985

March 27 and 28 (Geneva) — Administrative and Legal Committee

March 29 (Geneva) — Consultative Committee

May 8 to 10 (Wageningen) — Technical Working Party on Automation and Computer Programs

June 4 to 7 (Hanover) — Technical Working Party for Agricultural Crops, and Subgroup

June 18 to 21 (Aarslev) — Technical Working Party for Fruit Crops, and Subgroup

June 24 to 27 (Aars and Aarslev) — Technical Working Party for Ornamental Plants and Forest Trees, and Subgroups

July 8 to 12 (Cambridge) — Technical Working Party for Vegetables, and Subgroup

October 14 (Geneva) — Consultative Committee

October 15 and 16 (Geneva) — Meeting with International Organizations

October 17 and 18 (Geneva) — Council

November 12 and 13 (Geneva) — Technical Committee

November 14 and 15 (Geneva) — Administrative and Legal Committee

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

Non-Governmental Organizations

1985

April 10 to 12 (Oxford) — International Literary and Artistic Association (ALAI) — Study Session

April 24 to 26 (Geneva) — European Broadcasting Union (EBU) — Legal Committee

May 2 to 4 (Perugia) — International Confederation of Societies of Authors and Composers (CISAC) — Legal and Legislation Committee

May 6 to 9 (Zurich) — International Federation of Musicians (FIM) — Executive Committee

June 7 to 12 (Munich) — International Copyright Society (INTERGU) — Congress

June 19 and 20 (Geneva) — International Federation of Phonogram and Videogram Producers (IFPI) — Council and General Assembly

September 10 to 14 (Athens) — International Federation of Actors (FIA) — Congress

September 16 to 18 (Geneva) — International Association for the Advancement of Teaching and Research in Intellectual Property (ATRIP) — Annual Meeting

1986

May 8 and 9 (Heidelberg) — International Publishers Association (IPA) — Reprography Symposium

September 8 to 12 (Berne) — International Literary and Artistic Association (ALAI) — Congress