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# Copyright

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## World Intellectual Property Organization

### Training Course in Copyright and Neighboring Rights

(Brasilia, April 16 to 26, 1985)

A training course in copyright and neighboring rights for officials in charge of these matters at the governmental level or directors of authors' societies and organizations from the countries of Latin America was organized by WIPO, with the cooperation of the Swiss Society for Authors' Rights in Musical Works (SUISA). The course was held in Brasilia, from April 16 to 26, 1985, with the cooperation and kind hospitality of the Government of Brazil, through the National Copyright Council (Conselho Nacional de Direito Autoral, CNDA) of the Ministry of Culture and the services of the Ministry of External Relations.

The Brasilia Course followed on from courses of the same type held in Quito from May 31 to June 10, 1983, and in Montevideo from May 8 to 18, 1984, at the invitation of the Governments of Ecuador and Uruguay, respectively.\*

The specialists invited came from the following 11 countries: Argentina, Bolivia, Brazil, Colombia, El Salvador, Guatemala, Honduras, Mexico, Nicaragua, Paraguay and Uruguay. A number of delegates and representatives from various Brazilian societies and associations of authors and performers, as well as the members of the National Copyright Council of Brazil, also attended the Course. The list of participants is given at the end of this note.

The opening ceremony and the working sessions took place at the Palácio do Itamaraty and were reported on by press, radio and television on a number of occasions.

The Brasilia Course was inaugurated by His Excellency, Mr. José Aparecido de Oliveira, Minister for Culture of Brazil, in the presence of His Excellency, Mr. José Olympio Almeida Roche, Minister responsible for the Cultural Department and representative of His Excellency, Mr. Olavo Egydio Setúbal, Minister for External Relations of Brazil, and Mrs. Ruth Escobar, Deputy of the State of São Paulo. The Ambassadors accredited in Brasilia of the Latin American countries from which the participants came were also present, as were senior officials from the Ministries of Culture and External

Relations, and numerous other Brazilian personalities. The representative of the Director General of WIPO and the Director General of SUISA also made speeches at the opening of the course.

The working program comprised a number of lectures, presented:

(i) by WIPO, on the following topics: WIPO's activities for the development of copyright and neighboring rights; the possibilities of State assistance or intervention under the international conventions; broadcasting and recording rights under the international conventions;

(ii) by SUISA, on the following topics: the assistance or intervention of the State in copyright administration in Europe; European experience of cooperation with publishers; the importance of proper management of phonographic recording rights in the fight against piracy; documentation on authors, publishers and performers of musical works; documentation on those works; the possibilities for technical cooperation between societies of authors.

In addition, lecturers had been invited to deal with the following subjects: State intervention in the administration of copyright royalties in the Latin American countries and broadcasting and recording rights in the law of those countries, by Dr. Carlos Alberto Villalba (Argentina); the copyright tariffs and cue-sheets of the radio and television stations in Latin America and the collection of mechanical reproduction rights, by Mr. Américo Nasi (Argentina); basic considerations on the question of a single or several societies for administering copyright royalties in a given country, by Professor Homero Zamorano Cubillos (Chile); the Mexican experience of a multiplicity of collecting societies and the position of publishers in Latin America, by Mr. Francisco T. Cayuela Villareal (Mexico); the Brazilian phonographic industry and its relations with authors, publishers and performers, by Dr. Henri Jessen (Brazil).

In addition, in a national context, Professor Antonio Chaves reviewed the history of copyright in Brazil, and a certain number of communications were then presented by Brazilian lecturers on the

\* See *Copyright*, 1984, pp. 43 and 278.

practical aspects of copyright in Brazil, in particular the rights of theatrical authors, the rights of performers, the rights of film producers, the rights of phonogram producers, the rights of publishers of musical works, and on the structure and role of the National Copyright Council (CNDA) and the activities of the Center for Collecting and Distributing Royalties (Escritório Central de Arrecadação e Distribuição, ECAD).

Each of the lectures and communications was followed by a wide-ranging exchange of views, which proved most useful in the context of improving the practical management and application of

copyright and neighboring rights in the Latin American countries from which the specialists invited to this training course came.

The closing session was held in the presence of the representatives of the Ministries of Culture and External Relations of Brazil and the members of the National Copyright Council, who paid tribute to the assistance given by WIPO, with the cooperation of SUISA, in organizing the course and expressed the wish that, in WIPO's program of activities for the next biennium 1986–1987, similar meetings be convened for the benefit of developing countries on the Latin American continent.

## List of participants

### I. Specialists Invited

#### Argentina

Sra. Hilda Retondo de Garcia Holgado, Directora Nacional del Derecho de Autor, Ministerio de Justicia, Buenos Aires

#### Bolivia

Sra. Yolanda R. Mantilla de Santander, Asistente de la Dirección Legal y del Departamento de Derechos de Autor, Instituto Boliviano de Cultura, La Paz

#### Colombia

Sr. Herbert Vasquez Pinson, Asesor Asistente, Dirección Nacional del Derecho de Autor, Ministerio de Gobierno, Bogotá

#### El Salvador

Sr. Jorge A. Flores Mendoza, Registrador Jefe del Registro de Comercio, Ministerio de Justicia, San Salvador

#### Guatemala

Sr. Francis R. Polo Sifontes, Presidente del Consejo Técnico de Educación, Ministerio de Educación, Ciudad de Guatemala

#### Honduras

Sr. Manuel J. Salinas Paguada, Director General de Cultura, Ministerio de Cultura y Turismo, Tegucigalpa

#### Mexico

Sr. Ramón Neme Sastre, Jefe del Departamento de Registro Público, Dirección General del Derecho de Autor, Mexico

#### Nicaragua

Sr. William Aguilar Bustamante, Director de Asesoría Legal, Ministerio de Educación, Managua

#### Paraguay

Sr. Pierpaoli Fremiort Ortiz, Director, Departamento Jurídico, Sociedad Paraguayos Asociados (APA), Asunción

#### Uruguay

Sr. Víctor Reyes Lopez, Jefe de Departamento, Asociación General de Autores del Uruguay (AGADU)  
 Sr. Rúben Eduardo De La Puente Pietrafesa, Jefe de Departamento de Recaudación, Asociación General de Autores del Uruguay (AGADU)

### II. Delegation of Host Country

Dr. Fábio Luis Pereira Magalhães, Secretário da Cultura do Ministério da Cultura

Messrs. Antonio Chaves, Hildebrando Pontes Neto, Fábio Maria De Mattia, João Carlos Müller Chaves, Dirceu de Oliveira e Silva, members of the National Copyright Council (CNDA)

Sr. Otávio Afonso, Diretor do Centro Brasileiro de Informações sobre Direito de Autor

Sra. Maria Salete de Carvalho Nastari, Secretária-Executiva do CNDA

Sr. Edmundo Nunes Lopes Neto, Chefe dos Serviços de Arrecadação do ECAD

Dr. Henry Mário Francis Jessen, Vice-Presidente do Instituto Inter-americano de Direito de Autor (IIDA)

Representatives from the following national organizations:

Associação Brasileira de Regentes, Arranjadores e Músicos (ABRAMUS); Associação Brasileira de Produtores Cinematográficos (ABPC); Associação Defensora de Direitos Auto-

rais Fonomecânicos (ADDAF); Associação de Músicos, Arranjadores e Regentes (AMAR); Associação Nacional de Autores, Compositores e Intérpretes de Música (ANACIM); Associação de Autores em Dublagem, Cinema, Rádio, Televisão, Propaganda e Imprensa (ASA); Associação de Intérpretes e Músicos (ASSIM); Associação de Autores Brasileiros e Escritores de Música (SABEM); Sociedade Arrecadora de Direitos de Execução Musical no Brasil (SADEMBRA); Sociedade Brasileira de Autores, Compositores e Escritores de Música (SBACEM); Sociedade Brasileira de Autores Teatrais (SBAT); Sociedade Independente de Compositores e Autores Musicais (SICAM); Sociedade Brasileira de Intérpretes e Produtores Fonográficos (SOCINPRO); União Brasileira de Compositores (UBC).

### III. Guest Lecturers

#### Argentina

Sr. Américo Nasi, Gerente, Recaudación Nacional, Sociedad Argentina de Autores y Compositores de Música (SADAIC), Buenos Aires  
 Sr. Carlos A. Villalba, Presidente, Centro Argentino del Instituto Interamericano de Derecho de Autor, Buenos Aires

#### Chile

Sr. Homero Zamorano Cubillos, Académico, Departamento de Administración y Economía, Universidad del Norte, Facultad de Economía, Antofagasta

#### Mexico

Sr. Francisco T. Cayuela Villarreal, Asesor Legal, Sociedad de Autores y Compositores de Música (SACM), Mexico

### IV. Sponsoring Organizations

#### World Intellectual Property Organization (WIPO)

Mr. Claude Masouyé, Director, Public Information and Copyright Department  
 Mr. Guy Eckstein, Deputy Head, Development Cooperation Support Unit

#### Swiss Society for Authors' Rights in Musical Works (SUISA)

Mr. Ulrich Uchtenhagen, Director General  
 Mr. Victor Stidwill, Planning Specialist

## National Legislation

### COLOMBIA

#### Decree No. 3116

#### Constituting Partial Implementation of Law No. 23 of 1982\*

(of December 21, 1984)\*\*

#### PART I

##### Reservation of Rights in Names

*Article 1.* The Ministry of the Government (*Ministerio de Gobierno*) shall, by means of a resolution with a statement of reasons, reserve the rights in the names of periodicals, magazines, radio and television programs and other communication media.

*Article 2.* For the purposes of this Decree, "name" means the title or specific distinguishing feature by which a periodical, magazine, radio or television program or other communication medium is identified.

*Article 3.* "Reservation of rights" means the defense or custody accorded to a name by the Ministry of the Government with a view to its use exclusively by the applicant in whose favor the reservation is granted. Reservation of rights may be granted to the same person for use of the name in different communication media.

\* See *Copyright*, 1982, pp. 287 et seq.

\*\* *Source:* Communication from the Colombian authorities.— WIPO translation.

*Article 4.* In order to secure reservation of the rights in a name, the interested party shall file a written application with the National Copyright Directorate (*Dirección Nacional del Derecho de Autor*) which shall contain the following:

- (a) the given name and surname, identity document and domicile of the applicant;
- (b) the specific designation of the name in which the rights are to be reserved, which shall be in Spanish and shall state the medium of communication in which it is to be used;
- (c) the frequency of the publication, transmission or broadcast;
- (d) in the case of publications that are not in circulation, the date set for the first edition;
- (e) the given name and surname, identity document and domicile of the natural person who is to appear as the manager;
- (f) evidence of the undertaking to make the guarantee deposit specified by the Ministry of the Government, in the case of magazines of other than scientific, literary, religious, educational or business character;
- (g) the place of printing of the magazine or publication.

Paragraph. The managers of periodicals, reviews or publications that are either temporarily or permanently concerned with national politics shall be working Colombian citizens and not public servants.

*Article 5.* The following shall be enclosed with the application referred to in the preceding Article:

- (a) certification of existence and legal representation when the reservation of rights is sought on behalf of a legal entity;
- (b) certification from the Ministry of Communications or the National Institute of Radio and Television (*Inravisión*), stating that the radio and television programs have been authorized or commissioned, as the case may be;
- (c) a copy of the publication if already in circulation.

*Article 6.* The name in which the rights have been reserved shall be used in full, without anything removed or added. In the case of publications or television programs with a video presentation, it shall be inserted in the same letter size.

The Ministry of the Government shall not reserve the rights in identical or similar names that are liable to cause confusion, or diminutive or superlative forms of names in which the rights are

already reserved, or names used by others, but reversed in such a way that they retain the same meaning as the names in which the rights are reserved.

*Article 7.* The Ministry of the Government shall, by means of a resolution with a statement of reasons, after consideration of the application and the enclosed documents, specify the guarantee deposit for the periodicals that require one, setting the amount and the period within which it must be made for them to be circulated; it shall likewise reserve the rights in the name, specifying the time within which first publication has to occur in the case of periodicals, magazines or similar publications that are not in circulation. The resolution shall state that the reservation of the rights in the name remains subject to use, and use for the purposes specified by the applicant.

Paragraph. The guarantee deposit referred to in this Article shall be renewed one month prior to the date of its expiry.

*Article 8.* The reservation of the rights in a name shall protect only the distinctive title of a periodical, magazine, radio or television program or other medium of communication, without that protection extending to the contents or dissemination of the medium concerned.

*Article 9.* Any change in the particulars stated in the application for the reservation of rights shall be notified to the National Copyright Directorate; requests addressed to the Directorate concerning changes in the name of the issuer shall in addition be accompanied by the corresponding petition filed with the Ministry of Communications.

*Article 10.* Renewal of the reservation of the rights in a name shall be effected in conformity with the provisions of Article 7 of Law No. 23 of 1982 and with the formalities specified in Articles 4 and 5 of this Decree.

*Article 11.* The reservation of the rights in a name that is in use may be assigned, for which purpose the National Copyright Directorate shall be informed in writing, and a copy of the document evidencing assignment, with the signatures duly authenticated, shall also be filed. The assignee shall file the application for the reservation of rights in accordance with the provisions of Articles 4 and 5 of this Decree.

*Article 12.* The Ministry of the Government may cancel the reservation of the rights in a name by means of a resolution with a statement of reasons

when it is not duly exploited or used, or when the renewal of the reservation of rights is not effected in the manner prescribed in Article 10 of this Decree.

*Article 13.* The National Copyright Directorate shall, on request, issue certification for the purposes of the National Postal Administration attesting the validity of the reservation of rights in the name and the payment of the guarantee deposit, where appropriate.

## PART II

### Videograms

*Article 14.* The terms "cinematographic work," "videotape" and "videogram" shall mean the fixing on a physical carrier of sounds synchronized with images, or of images without sound. "Fixation" shall mean the incorporation of images and/or sounds on a permanent and stable material base which allows them to be perceived, reproduced or communicated.

*Article 15.* The producer of a cinematographic work shall be the natural person or legal entity legally and financially responsible for the commissioning of the persons and bodies who are instrumental in the making of the cinematographic work, to whom, unless otherwise provided, economic rights are recognized without prejudice to the moral rights of the director or maker and those of the authors of the script, libretto, music and design work, as the case may be.

*Article 16.* In addition to the exclusive rights provided for in Article 103 of Law No. 23 of 1982, the producer of a cinematographic work may authorize or prohibit the incorporation of the cinematographic work in videograms, videotapes or any other form of fixation.

*Article 17.* Any natural person or legal entity intending to fix, distribute, sell, hire or use a cinematographic work on videotape shall be obliged to obtain the express prior authorization of the owner of rights, the producer of the cinematographic work or his legal representative.

Paragraph 1. The express prior authorization referred to in the preceding Article may relate to all cinematographic works without it being necessary to distinguish between them in the instrument or title concerned. Each of the carriers or videocassettes on which the cinematographic work is fixed shall comply with the provisions of the following Articles.

Paragraph 2. Fixation or reproduction of the cinematographic work in a single copy, without gainful intent, for personal use in a private home, within the meaning of Article 76 of the Civil Code, shall be exempted from the aforementioned obligations.

*Article 18.* The National Copyright Directorate shall register the documents of authorization referred to in the foregoing articles; to that end the parties interested in such registration shall file an authenticated copy of the instrument or title concerned. Compliance with this formality shall make the documents binding on third parties.

*Article 19.* The protection of cinematographic works on videotape or videocassette or other audiovisual works shall require that all the copies made available for sale, hire or any similar use comply with the formalities laid down in Article 125 of Law No. 23 of 1982.

*Article 20.* No cinematographic work fixed on videotape, videogram or other audiovisual material that does not comply with the requirements laid down in this Part may be distributed, sold, hired, exchanged or shown. Any violations of these provisions shall be punished in conformity with the provisions of Chapters XVII and XVIII of Law No. 23 of 1982. The police authorities shall afford the owners of the rights described in this Part or their legal representatives or legitimate assignees the protection and surveillance that is provided by law.

*Article 21.* Fixations of cinematographic works made on videotape or videogram that have been legitimately made and used prior to this Decree shall have a period of three months following its entry into force to comply with the requirements laid down in this Part.

## PART III

### Public Performance

*Article 22.* It shall be considered a public performance in any place, location or establishment of whatever kind, accessible to the public, when musical works are performed or transmitted by radio or television, whether by mechanical, electronic or audiovisual processes or in a permanent or occasional manner.

Paragraph. It shall not be considered public performance when music is used in establishments in general exclusively to promote the well-being of their employees, or in the cases provided for in

paragraphs 44, 149 and 164 of Law No. 23 of 1982.

*Article 23.* In order that the authorities may issue operating licenses or renewals thereof, the evidence provided for in Article 161 of Law No. 23 of 1982 shall be signed and sealed by the National Copyright Directorate, and also by the person granting the license with the management seal of the association concerned. That document shall be valid for the same period of time as the license or renewal, and may be granted by any one of the legally recognized associations.

*Article 24.* The daily planning sheets referred to in Article 163 of Law No. 23 of 1982 shall be mandatory for all the establishments or entities referred to in Article 22 of this Decree.

Paragraph. The particulars contained in the daily planning sheets shall serve to determine the use of the works and productions and the mode of distribution among the entitled persons of the royalties charged for public performance rights as recognized by Law No. 23 of 1982. The National Copyright Directorate may request the sending of daily planning sheets whenever it considers this appropriate.

*Article 25.* The scales of royalties for public performance shall be those agreed upon between the owners of the rights and the users. In the absence of any settlement, agreement or contract between the parties, the scales laid down in general terms by the National Copyright Directorate shall apply by virtue of a resolution with a statement of reasons.

*Article 26.* Once royalties have been collected for public performance, the association shall be obliged to issue to the users of the right the corresponding receipt at the time of payment.

## PART IV

### Registration

*Article 27.* For the purposes of Article 192(iii) of Law No. 23 of 1982, the interested party shall file with the National Copyright Directorate a request with the following particulars:

- (a) the date of the request;
- (b) the given name, surname, identity document and domicile of the requesting party, specifying whether he is acting in his own name or in that of another natural person or legal entity, in which case he shall en-

close the duly authenticated document attesting his power of attorney;

- (c) the identity of the contracting parties;
- (d) the legal nature, purpose, value, duration and date of signature of the contract concerned;
- (e) the title of the work;
- (f) a duly authenticated photocopy of the contract.

*Article 28.* For the registration of phonograms the interested party shall file with the National Copyright Directorate a request specifying the following particulars:

- (a) the date of the request;
- (b) the given name, surname, identity document and domicile of the requesting party, specifying whether he is acting in his own name or in that of another person or legal entity, in which case he shall enclose a duly authenticated document attesting his power of attorney.
- (c) the title of the phonogram or production;
- (d) the name and authors of the works incorporated in the phonogram;
- (e) the year of first recording.

A request for the registration referred to shall be filed in respect of each recording or production, and a copy corresponding to the phonogram shall be enclosed, in accordance with the provisions of Article 180 of Law No. 23 of 1982.

*Article 29.* For the registration of musical works, the interested party shall file with the National Copyright Directorate a request in writing which shall among other things contain the following required particulars:

- (a) the title of the work and the musical tempo;
- (b) whether it is unpublished or published;
- (c) a copy or photocopy of the score and words, with the duly authenticated signature of the author.

*Article 30.* For the purposes of Law No. 23 of 1982, "musical work" means any production of the mind, with or without words, which has harmony and melody resulting from the combination of the sounds of human voices or of instruments or of both at the same time.

*Article 31.* For the registration among other things of plans, sketches, maps, photographs, lithographs or illustrations, the signature of the author shall be authenticated on the copy or photocopy of the work concerned.

*Article 32.* The powers of attorney referred to in Article 192(v) of Law No. 23 of 1982 shall be related to the specific functions of the National Copyright Directorate and shall be registered with the Directorate by the personal appearance of the holder of the powers.

*Article 33.* For the purposes of the provisions of Article 200(d) of Law No. 23 of 1982, the request for registration of a cinematographic work shall be accompanied by a minimum of five photographs of the main scenes of the film.

*Article 34.* The National Copyright Directorate may register pseudonymous works, stating the author's real name as well as his pseudonym. The Directorate may not register pseudonyms alone.

## PART V

### Associations

#### CHAPTER I

##### General Principles

*Article 35.* The owners of the rights recognized by Law No. 23 of 1982 may form non-profit-making associations according to the conditions and for the purposes specified in the said Law.

*Article 36.* The National Copyright Directorate shall recognize legal personality to those associations alone that are constituted with a minimum of 25 members, whether natural persons or legal entities, being owners of the rights recognized by Law No. 23 of 1982, and belonging to the same area of activity, such as authors of literary, pictorial or musical works, performers of musical works or of literary works (actor-performers) and producers of cinematographic and video works, among others.

*Article 37.* The domicile of an association shall be that specified in its statutes.

Associations may set up offices in any part of the country, which shall be under the responsibility of a delegate appointed in accordance with the statutes and having duties specified therein.

Paragraph. The appointment of delegates, together with their personal particulars, shall be communicated in writing to the National Copyright Directorate.

*Article 38.* The abbreviated and full corporate names of the associations referred to in this Decree

shall bear a direct relation to the activity carried out by their members, in relation to which the associations are set up, and which shall be clearly and expressly stated in the statutes of the association.

*Article 39.* Associations may perform the following functions among others:

- (a) the collection and distribution to their members, and to foreign authors in the same area of activity, of sums charged for copyright or related rights and accruing to them by reason of their activity; for that purpose associations shall be considered agents acting on behalf of their members, by virtue of the mere fact of membership;
- (b) the conclusion of contracts, in their own name or as representatives of their members, concerning whatever is necessary for the fulfillment of their corporate objectives or activities;
- (c) the conclusion of reciprocal agreements with foreign associations or societies with a view to representing them in matters concerning their equivalent activity;
- (d) concern for the professional advancement, promotion and artistic betterment of their members;
- (e) the development of permanent programs of social security in the artistic and socio-economic fields;
- (f) the provision of such reports as are requested by the National Copyright Directorate.

#### CHAPTER II

##### Approval and Registration of Statutes and Recognition of Legal Personality

*Article 40.* The National Copyright Directorate shall review the statutes, order the registration and recognize the legal personality of associations by means of resolutions with statements of reasons, subject to compliance with the requirements and procedures specified in the following Articles.

*Article 41.* The statutes of associations may contain the following requirements:

- (a) the manner of providing evidence of status as author, performer or producer in the branch concerned, and also of the fact that works are being used or exploited, in accordance with Article 217 of the Law;
- (b) the manner, conditions and procedures for the withdrawal of members whose works

are not used or exploited as provided in Law No. 23 of 1982, and also for cases of expulsion and suspension of membership rights;

- (c) the constitution and functions of administrative and supervisory bodies, conditions, incompatibilities and disqualifications, and the manner of election of their members;
- (d) the method of managing the associations' assets, of formulating and implementing their expenditure budgets for periods not exceeding one year, and of presenting their balance sheets.

*Article 42.* For the review of its statutes and recognition of its legal personality, the association's legal representative shall file a request in writing with the National Copyright Directorate, accompanied by the following documents:

- (a) an authenticated copy of the record of the constituent or founding Assembly, with the names and identity cards of those who took part in it;
- (b) an original and an authenticated copy of the statutes, and a record of their approval by the Assembly;
- (c) a membership record, with an indication of domicile, identity document and the activity justifying membership;
- (d) evidence attesting the status of owners of rights in respect of the activities concerned, referred to each member individually;
- (e) an authenticated record attesting the appointment of the Management Council.

Paragraph. The documents referred to in this Article, with the exception of that mentioned under (d), shall be signed by the President and the Secretary of the association.

*Article 43.* For the purposes of the preceding Article, under (d), the following shall be considered evidence attesting the status of owners of rights:

- (a) for the authors of literary, artistic or scientific works, as a minimum, the certificate of registration of two works at the National Copyright Directorate;
- (b) for composers of musical works, the certificates of registration of at least three works at the National Copyright Directorate, and certification from legally constituted producers of phonograms attesting that the said works are fixed on physical carriers and are being exploited;
- (c) for producers of phonograms, the certificate of registration of a minimum of 10 phonograms;

- (d) for interpretative performers of musical works, proof provided by legally recognized producers of phonograms of a minimum of five recordings;
- (e) for executant performers of musical works, proof provided by legally recognized producers of phonograms of a minimum of 30 recordings;
- (f) for actors or actresses performing literary or artistic works, certification provided by the competent body attesting their status.

*Article 44.* The National Copyright Directorate shall register the statutes; when they have been found to be in conformity with the laws in force, it shall seal and initial each sheet thereof, enter an attestation in the original and in a copy of the same document, showing the date of the attestation and that of approval of the statutes by the Assembly. The original of the statutes shall be issued to the association, and a copy thereof shall be kept in the archives of the National Copyright Directorate.

*Article 45.* Resolutions denying registration and the recognition of legal personality may be the subject of requests for reconsideration and appeals. Notifications shall be effected in conformity with the provisions of the Judicial and Administrative Code.

*Article 46.* For all legal purposes, the certification issued by the National Copyright Directorate shall constitute sufficient proof of the existence and representation of associations. No association that has been formed may do business as long as its legal personality has not been recognized by the National Copyright Directorate.

*Article 47.* Amendments to the statutes shall be considered and decided upon by the General Assembly of members, and shall not operate until they have been approved by the National Copyright Directorate.

### CHAPTER III

#### Resources and Budget

*Article 48.* The resources of the association shall consist among other things of the following:

- (a) the membership quotas granted by the Assembly;
- (b) donations or subsidies received from natural persons or legal entities under public or private law;
- (c) the percentage for administrative costs deducted from sums collected for copyright

and related rights, as specified by the Assembly;

- (d) royalties or other charges collected but statute-barred after three years, under the conditions specified in Article 226 of Law No. 23 of 1982;
- (e) movable property and real estate acquired for the provision of its services;
- (f) income and revenue derived from any other activity undertaken within the framework of its corporate objective.

*Article 49.* In order that the royalties or other charges referred to in the preceding Article, under (d), may be credited to the assets of the association, it is required that the Secretary thereof shall have previously informed and notified the owner that the sum in question has been collected by the association and is available for collection by the beneficiary. This notification shall be made personally in the terms specified in the Code of Civil Procedure. If it cannot be made personally, the procedure specified in Article 318 of the said Code shall be put in hand within the following five days.

*Article 50.* The assets of associations shall be independent of those of each of their members.

*Article 51.* The sale, pledging or change of purpose of real estate owned by the association shall require prior authorization by the Assembly, by means of a favorable vote of half the membership plus one.

*Article 52.* The Management Council of the association shall draw up the budget and submit a copy thereof to the National Copyright Directorate; the budget shall include an account of the income and expenditure of the association; the draft shall be presented to the Assembly for the necessary approval during the last quarter of the year preceding that of its implementation. When Law No. 23 of 1982 has been in force for five years, the provisions of the second paragraph of Article 225 thereof shall be implemented.

#### CHAPTER IV

##### Books and Seals

*Article 53.* Every association recognized by the National Copyright Directorate shall keep at least the following books: Inventories and Balance Sheets, Members, Records of the General Assembly, Budget and Accounts and Acts of the Management Council. These books shall be initialled and sealed

by the National Copyright Directorate, which shall enter an attestation specifying the number of leaves and the date of opening; leaves may not be removed, replaced or added, or corrections, interlineations, erasures or deletions made; any error or omission shall therefore be corrected by means of a subsequent annotation.

*Article 54.* The books referred to in the preceding Article may only be replaced at the request of the General Assembly, because they are full or have been mislaid, lost or damaged.

*Article 55.* The association shall register with the National Copyright Directorate, among other things, the seals of the Manager, Secretary General and Treasurer.

#### CHAPTER V

##### Members

*Article 56.* Members shall have the following rights among others:

- (a) the right to take part in Assemblies with the right to speak and vote;
- (b) the right to elect and be elected at General Assemblies;
- (c) the right to consider, either directly or by proxy, the acts, documents and account books of the association;
- (d) the right to share in the benefits or services that the association grants to its members, and in the collection of the economic rights accruing to them.

*Paragraph.* The members referred to under (d) who are owners of rights in relation to a public performance shall receive a share corresponding to the number of works or productions that are exploited or used.

*Article 57.* Members shall be subject to the following obligations and prohibitions among others:

- (a) the obligation to comply with the regulations and statutes of the association;
- (b) the obligation to attend assemblies and observe the orders of the Management Council;
- (c) the obligation to watch over the assets of the association and to put them to the use for which they are intended;
- (d) prohibition from engaging in any activity or conduct contrary to the corporate objective of the association, or in a manner prejudicial to its members or instructions.

*Article 58.* Membership shall be lost through death, exclusion or voluntary withdrawal.

*Article 59.* Exclusion may be declared:

- (a) by a decision of a two-thirds majority of the Assembly;
- (b) through cessation of the exploitation or use of the works or productions of the owners of the copyright or related rights.

*Article 60.* For the exclusion of a member to be acceptable, a favorable decision of the National Copyright Directorate shall be required; the Directorate shall verify the grounds, taking due account of the evidence provided by the association, and it may seek exclusion when it finds that the works have ceased to be exploited or used.

## CHAPTER VI

### Administration, Management and Supervision

*Article 61.* The administration, management and supervision of associations shall be under the responsibility of the Assembly of the Management Council, the Supervisory Committee, the Manager and the Financial Controller.

*Article 62.* The Assembly shall meet in ordinary session at least once a year and in extraordinary session whenever it is convened by such persons as are empowered to do so.

*Article 63.* The convening of ordinary assembly meetings shall be ordered by the Manager of the association, and extraordinary meetings when the statutes require or when requested by at least one-third of the membership, by the Manager of the association or by the National Copyright Directorate.

*Article 64.* The National Copyright Directorate may, by a resolution with a statement of reasons, suspend the ordinary or extraordinary sessions of the Assembly when just reasons dictate.

*Article 65.* When the convening of a meeting has been ordered, the Secretary General of the association shall give notice of the fact in a written communication sent to each of the members, with advance notice of no more than eight days and no more than 15 days from the date of the meeting; the communication shall contain at least the following:

- (a) the place, date and time of the meeting;
- (b) the agenda;

- (c) the matters to be discussed;
- (d) the name and capacity of the person ordering the convening of the meeting.

Paragraph. A copy of the notice of the assembly meeting shall be addressed to the National Copyright Directorate.

*Article 66.* The Assembly shall be validly constituted when at least half of the members plus one are present.

*Article 67.* Decisions of the Assembly shall be taken by half of the members present plus one, subject to verification of the quorum.

*Article 68.* For the approval or amendment of the statutes, the dissolution of the association or the exclusion of one of its members, a favorable vote of two-thirds of the membership shall be required.

*Article 69.* Each member shall have one vote and may represent two further members by virtue of a legally granted proxy.

*Article 70.* The Assembly shall have the following functions, among others, in addition to those specified in the statutes:

- (a) adoption and/or amendment of the plans and programs submitted to it by the Management Council concerning its corporate objective, and evaluation of their implementation;
- (b) monitoring of the general operation of the association;
- (c) election and dismissal of the members of the Management Council, of those of the Supervisory Committee and of the Treasurer, and determination of their terms of office;
- (d) fixing of the remuneration for the directorial tasks of the association;
- (e) determination of the fees payable to the Management Council for each session;
- (f) adoption and/or amendment of the statutes, in accordance with the Law and this Decree;
- (g) approval of and objection to balance sheets, accounts and reports presented by the directorial, administrative and supervisory bodies of the association;
- (h) approval of the investment and expenditure budget, a copy thereof being addressed to the National Copyright Directorate;
- (i) fixing of the amounts corresponding to the apportionment of expenditure;

- (j) determination of the dissolution and/or liquidation of the association and appointment of a liquidator in accordance with the provisions of this Decree;
- (k) authorization of the sale, assignment or change of purpose of real estate property of the association;
- (l) determination of the percentage collected for administration from royalties received for copyright and related rights;
- (ll) application of any sanctions that may be required and determination of the exclusion of a member in accordance with Articles 59 and 60 of this Decree;
- (m) such other functions as are not assigned to other bodies of the association.

*Article 71.* The Management Council shall be the body responsible for the management and administration of the association, and it may be composed of: a President, a Vice-President and ordinary members, with personal alternates for each, elected for a period of two years.

Paragraph. The Management Council shall elect its Secretary, who may also be Secretary of the Assembly and of the association; he shall have the right to speak but not to vote, he shall keep the records and shall perform those functions that are specified in the statutes.

*Article 72.* The Management Council shall have the following functions, among others, in addition to those assigned to it by the statutes or by the General Assembly:

- (a) preparation of the draft annual budget, balance sheets and other statements of account and reports as requested by the Assembly for approval;
- (b) the sending of a copy of the budget to the National Copyright Directorate;
- (c) election of the Manager and of the Secretary General of the association;
- (d) the drafting of such investment plans as may be appropriate;
- (e) the ordering of expenditure according to what is specified by the statutes or by the Assembly.

*Article 73.* The Management Council shall take decisions by a favorable vote of half its members plus one; it shall meet in ordinary session at least once a month and in extraordinary session when considered appropriate; its members may only draw fees for up to three sessions a month.

*Article 74.* The President of the Management Council shall preside over the Assembly. He, the

Vice-President and the ordinary members of the Management Council shall have the functions specified by the statutes and the Assembly.

*Article 75.* The Treasurer, in addition to the functions assigned to him by the statutes, shall be responsible for the custody and management of the assets of the association, shall sign, jointly with the Manager and the Financial Controller, checks and other payment orders; for the exercise of his functions, he shall deposit a bond in favor of the association in an amount which shall be specified by the Management Council, with a copy being sent to the National Copyright Directorate.

*Article 76.* The Supervisory Committee shall be composed of up to three active members of the association elected by the Assembly, who may not be members of the Management Council or perform any function within the administration of the association.

*Article 77.* The Supervisory Committee shall have the following functions in addition to those specified by the Assembly and statutes:

- (a) to ensure strict compliance with legal and statutory obligations;
- (b) to ensure each management body's fulfillment of its duties;
- (c) to present reports on its activity to the Management Council and to the Assembly;
- (d) to put in hand such investigations as are ordered by the Assembly.

*Article 78.* The Manager shall be the legal representative of the association and shall be elected by the Management Council.

*Article 79.* The Manager shall have the following functions, among others, in addition to those assigned to him by the Assembly, by the Management Council or by the statutes:

- (a) to implement the plans and programs decided upon by the Assembly and the Management Council;
- (b) to ensure the proper functioning of the association;
- (c) to request the convening of the Assembly and of the Management Council;
- (d) to present to the Assembly and to the Management Council such reports as they may request;
- (e) to order expenditure up to the amount specified by the Assembly and statutes;
- (f) to appoint staff for the tasks authorized by the Assembly, and to dismiss them;

- (g) to sign checks and payment orders jointly with the Treasurer and the Financial Controller;
- (h) to grant the necessary powers where appropriate;
- (i) such other functions as may be assigned to it by the Assembly, the Management Council or the statutes.

*Article 80.* The Financial Controller shall be a public accountant designated by the Assembly for periods of two years, and shall have the functions assigned to him by the statutes and the Assembly, and also the following:

- (a) to authorize with his signature inventories, balance sheets, checks and whatever other documents may be necessary;
- (b) to make inventories of cash in hand, at least once every quarter;
- (c) to supervise and control the accounting system and the budget of the association.

*Article 81.* The names of the members of the Management Council, of the persons composing the Supervisory Committee, the Manager, the Secretary, the Treasurer and the Financial Controller shall be registered with the National Copyright Directorate; any authorization shall be communicated to the Directorate together with a copy of the deed whereby the persons concerned were appointed or elected, with an indication of their domicile, names and identity documents.

## CHAPTER VII

### Incompatibilities and Disqualifications

*Article 82.* The members of the Management Council shall be subject to the following incompatibilities and disqualifications in addition to those specified in the statutes:

- (a) being related to each other, up to the fourth degree of kinship, the second of affinity or the first of adoptive relationship;
- (b) being married to or permanent companions of each other;
- (c) being public servants;
- (d) being relatives up to the fourth degree of kinship, the second of affinity or the first of adoptive relationship, spouses or permanent companions of members of the Supervisory Committee, of the Manager, of the Secretary, of the Treasurer or of the Financial Controller of the association;

- (e) being relatives up to the fourth degree of kinship, the second of affinity or the first of adoptive relationship, spouses or permanent companions of officials of the National Copyright Directorate.

*Article 83.* The members of the Supervisory Committee shall be subject to the following incompatibilities and disqualifications in addition to those specified in the statutes:

- (a) being related to each other up to the fourth degree of kinship, the second of affinity or the first of adoptive relationship;
- (b) being married to or permanent companions of each other;
- (c) being public servants;
- (d) being relatives up to the fourth degree of kinship, the second of affinity or the first of adoptive relationship, spouses or permanent companions of members of the Management Council, of the Manager, of the Secretary, of the Treasurer or of the Financial Controller of the association;
- (e) being relatives up to the fourth degree of kinship, the second of affinity or the first of adoptive relationship, spouses or permanent companions of officials of the National Copyright Directorate.

*Article 84.* The Manager, Secretary and Treasurer of the association shall be subject to the following incompatibilities and disqualifications in addition to those specified in the statutes:

- (a) being the Manager or belonging to the Management Council of an association not provided for in this Decree;
- (b) having managerial duties in any trade union grouping or workers' syndicate;
- (c) being a relative up to the fourth degree of kinship, the second of affinity and the first of adoptive relationship, the spouse or permanent companion of a member of the Management Council, of a member of the Supervisory Committee, or of the Secretary, Treasurer or Financial Director of the association;
- (d) being a public servant;
- (e) being a relative up to the fourth degree of kinship, the second of affinity or the first of adoptive relationship, the spouse or permanent companion of an official of the National Copyright Directorate.

Paragraph. The Manager may not engage in dealings with his spouse or permanent companion, or with his relatives up to the fourth degree of kinship, the second of affinity or the first of adoptive relationship.

*Article 85.* The Financial Controller shall be subject to the following incompatibilities and disqualifications in addition to those specified in the statutes:

- (a) being a member;
- (b) being the spouse or permanent companion, or a relative up to the fourth degree of kinship, the second of affinity or the first of adoptive relationship, of a member of the Management Council, the Supervisory Committee or any of the employees of the association.

## CHAPTER VIII

### Sanctions

*Article 86.* The Assembly may impose sanctions on a member on the following grounds in addition to those specified in the statutes:

- (a) violation of legal or statutory provisions or those related to copyright, and those specified in this Decree;
- (b) improper use of the name of the association;
- (c) appropriation, retention or improper use of the property, funds, documents, seals or books of the association, *inter alia*.

*Article 87.* When presented with any of the grounds referred to in the foregoing Article, the Assembly shall, either *ex officio* or at the request of a party, have a period of not more than 30 calendar days from the date on which the matter was brought to its notice within which to decide on the merits, taking due account of the provisions of Article 60 of this Decree.

*Article 88.* On expiry of the period specified in the foregoing Article, the Assembly shall order the Supervisory Committee to put the appropriate investigation in hand; the Committee shall formulate the charges, where appropriate, and shall set the time limit for the submission of rebuttals, and shall present a report within the time limit set by the Assembly.

*Article 89.* If the report presented by the Supervisory Committee establishes the liability of the person investigated, the Assembly shall determine the sanction to be imposed. A copy of the notification made to the party responsible shall be sent to the National Copyright Directorate.

*Article 90.* The National Copyright Directorate may, either *ex officio* or at the request of a party, put

in hand such investigations as it considers appropriate.

*Article 91.* The Assembly may impose on members the following sanctions, among others, in addition to those specified in the statutes:

- (a) suspension of membership for a period not exceeding six months;
- (b) exclusion of the member, in accordance with the provisions of Articles 59 and 60 of this Decree.

Paragraph 1. Suspension of membership shall cause temporary loss of the rights written into Article 56 of this Decree, with the exception of entitlement to remuneration accruing to the member by virtue of his ownership of the said rights.

Paragraph 2. The member punished by exclusion shall have the right to claim the settlement of the remuneration to which he was entitled up to the time at which the decision to impose the sanction became final.

*Article 92.* The National Copyright Directorate may, by virtue of its rights of inspection and supervision, put in hand such investigations as it considers appropriate and take the following action:

- (a) reprimand the association in writing;
- (b) impose fines up to 10 minimum salaries, taking due account of the economic strength of the association;
- (c) suspend legal personality;
- (d) revoke legal personality.

By means of a resolution with a statement of reasons, and subject to proof of infringement of the Law, the statutes and the provisions of this Decree, the Directorate may impose any one of the sanctions referred to in this Article without it being necessary for the previous sanctions to have been exhausted.

*Article 93.* Suspension may be ordered for a period of three months by means of a resolution with a statement of reasons, against which the remedies of a request for reconsideration and appeal shall be available.

*Article 94.* When one of the members of the association or of the Management Council is implicated, the National Copyright Directorate shall recommend to the association the action that it considers appropriate.

*Article 95.* Where the revocation of legal personality has been ordered, the Ministry of the Government may temporarily appoint an official from its own midst or from the association concerned to

have custody of and responsibility for the association's assets.

*Article 96.* When the resolution ordering the revocation of legal personality becomes final, the association shall be dissolved and the National Copyright Directorate, by means of a resolution with a statement of reasons, shall order its liquidation and specify the duration thereof, appointing a liquidator and/or depositary for the assets. Where the appointed person is an individual, he shall have the right to the remuneration specified in the resolution appointing him, which shall be debited to the budget of the association. The liquidator shall present the Directorate with such reports as it may request.

*Paragraph.* The liquidation of the association shall take place in conformity with the procedure specified for the purpose by this Decree.

## CHAPTER IX

### Dissolution and Liquidation of the Association

*Article 97.* The association shall be dissolved by decision of the General Assembly, in accordance with the regulations and statutes, as a result of a reduction in the membership below that required by the Law, and in the event of revocation of legal personality, once the judgment ordering the measure has become final.

*Article 98.* The National Copyright Directorate, by a resolution with a statement of reasons where appropriate, shall specify the time limit for liquidation and shall personally notify the legal representative, indicating that the remedies of a request for reconsideration and appeal are available. The same judgment shall designate the liquidator and/or depositary of the assets, and set the administration and management bond, while the obligation to present the reports requested by the Directorate shall be maintained.

*Article 99.* The National Copyright Directorate may appoint an official from its midst as liquidator and/or depositary of the assets of the association, who shall not be entitled to any remuneration.

Where the foregoing is not possible, the Directorate shall appoint an individual, who shall be entitled to the allowance specified in the resolution appointing him, which shall be debited to the budget of the association.

*Article 100.* Where dissolution is ordered by the Assembly, the same document shall specify the time limit for liquidation, and shall appoint a liquidator

and/or depositary for the assets, who shall present a report on the conduct of his management both to the Assembly and to the National Copyright Directorate, within the time limit specified by those bodies. The liquidator shall be entitled to the allowance specified by the Assembly, which shall be debited to the budget of the association.

*Article 101.* The liquidator shall publish three notices in a major national newspaper, with periods of 15 days between each, which shall announce the liquidation process and advise interested parties to assert their rights. The cost of this publication shall be debited to the budget of the association.

*Article 102.* Liquidation shall take place 15 days after the last publication, in the following form: obligations contracted towards third parties shall be paid subject to observance of the legal provisions on the priority of credits; when the foregoing has been done, if a surplus of liquid assets remains, it shall be distributed among the members according to their rights or in the manner specified by the statutes.

*Article 103.* Associations currently in operation shall bring their statutes into conformity with the provisions of this Decree within six months following the publication thereof.

## PART VI

### Inspection and Supervision

*Article 104.* The National Copyright Directorate shall exercise inspection and supervision of associations with a view to determining compliance with the legal provisions of the statutes and the provisions of this Decree.

*Article 105.* The National Copyright Directorate shall have the following duties, among others, in relation to associations:

- (a) it shall initiate investigations, for which purpose it may make inspections of their books and documents and may request such reports as it considers appropriate;
- (b) it shall attend assemblies when it considers this necessary, for which purpose the assemblies shall comply with the second paragraph of Article 65 of this Decree;
- (c) it shall convene extraordinary assemblies in the cases provided for in Article 63 of this Decree;

- (d) it shall impose sanctions in the case of legal or statutory violations or failure to comply with the provisions of this Decree;
- (e) it shall carry out visits to the associations subject to its inspection and supervision, examine their books and request such information as it considers appropriate.

*Article 106.* After having made a visit, the National Copyright Directorate shall give the association an account of whatever criticisms it may have, in order that defects may be remedied and clarifications and rebuttals provided as appropriate, together with the relevant proof.

*Article 107.* The associations referred to in this Decree shall be obliged to send the following information and documents to the National Copyright Directorate:

- (a) an authenticated copy of the records of assemblies, any change in the membership of the Management Council, in that of the Supervisory Committee, any change of auditor and any statutory reforms that may have been approved;
- (b) quarterly reports on the admission of new members, with an indication of their names, identity cards, addresses and domiciles and the titles of the works or productions that entitle them to membership of the association, and also on the withdrawal of members;
- (c) quarterly reports on income from sums collected;

- (d) half-yearly reports on the distribution of royalties received on behalf of their members for copyright or related rights, on the personal notification of the member concerned under Article 226 of Law No. 23 of 1982, and on payments to foreign associations exercising the same activity, pursuant to such reciprocal contracts as have been signed;
- (e) an authenticated copy of the annual expenditure budget, as approved by the General Assembly, which shall have been drawn up according to the provisions of Article 225 of Law No. 23 of 1982, and a report at least quarterly to the National Copyright Directorate concerning the manner of its implementation;
- (f) such other documents and reports as may be required by this Decree.

## PART VII

### Miscellaneous Provisions

*Article 108.* For the purposes of Article 19 of Law No. 23 of 1982, the editor of a compilation shall always be a natural person.

*Article 109.* This Decree shall enter into force on the date of its enactment.

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## **Correspondence**

### **Letter from Senegal**

#### **Piracy and the Statutory and Regulatory Copyright Provisions in Senegal (The Afram Films v. VIC Case)**

Ousseynou FALL\*





## Activities of Other Organizations

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

#### Legal and Legislation Committee

(Perugia, May 2 to 4, 1985)

The Legal and Legislation Committee of the International Confederation of Societies of Authors and Composers (CISAC) (hereinafter referred to as "the Committee") met in Perugia from May 2 to 4, 1985, at the invitation of the Italian Society of Authors and Publishers (SIAE). The members of the Committee participating in the meeting came from the following 19 countries: Austria, Belgium, Czechoslovakia, Denmark, Finland, France, Germany (Federal Republic of), Greece, Hungary, Israel, Italy, Netherlands, Poland, Soviet Union, Spain, Sweden, Switzerland, United Kingdom, United States of America. WIPO was represented by Mr. Claude Masouyé, Director, Public Information and Copyright Department. Unesco and the Commission of the European Communities had also sent observers. Mr. Valerio de Sanctis, Honorary President of the Committee, and several copyright experts from the host country likewise participated in the work of the Committee.

The meeting was opened by the outgoing Chairman, Professor Jan Corbet (Belgium). After the usual welcoming addresses, the Committee unanimously elected Mr. Victor Hazan (Israel) Chairman for the term 1984-86.

After the approval of the report of the previous meeting held in Corfu in May 1984,\* a panoramic survey was made of legislative, case law and doctrinal trends and also of practical developments in copyright, in which the members of the Committee described the current position in their respective countries.

The guest of honor of the Committee, Mr. Harvey Winter (Director, Office of Business Practices, Department of State, Washington, D.C.) then delivered a statement on "The possibility of the United States of America becoming a party to the Berne

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\* See *Copyright*, 1984, p. 273.

Convention." The Committee emphasized the basic importance that such an event would have in the history of international copyright and unanimously expressed the wish that accession could be decided in the very near future, particularly in the context of the celebration of the centenary of the Berne Convention.

The agenda of the meeting also included communications on the following subjects:

- status of the authors of cinematographic works and problems of the authorship of these works, by Mr. H.L. Christiansen (Denmark);

- rental of material supports of works, by Mr. Victor Hazan (Israel);

- copyright protection of computer programs, by Mr. Denis de Freitas (United Kingdom);

- direct broadcasting satellites and spillover across frontiers, by Mr. Claude Joubert (France);

- role of authors' societies in the field of moral rights, by Mr. R.L. du Bois (Netherlands);

- quotations in the field of artistic works, by Mr. J.P. Oberthur (France);

- free distribution of cultural material in the United States of America, by Mr. B. Korman (United States) and in Europe, by Mr. R. Abrahams (United Kingdom).

These various reports submitted to the Committee were followed by a lively discussion and several of them referred specifically to the deliberations of the groups of experts convened by WIPO, together with Unesco, in particular on the rental of phonograms and videograms, on the protection of computer programs and on direct broadcasting by satellite. Working groups were established in order to study in depth these questions within CISAC.

The next meeting of the Committee will take place in May 1986, in Brussels, on the occasion of the commemoration of the centenary of the Belgian Copyright Law.

## National Copyright Meetings

### National Workshop on Copyright

(Zomba, Malawi, April 1 to 4, 1985)

#### Note

#### Introduction

A Workshop on Copyright was organized by the Cultural Affairs Department of the Ministry of Education and Culture, Government of Malawi and was held at the Chancellor College of the University of Malawi, in Zomba, from April 1 to 4, 1985. The Workshop was assisted through funding by Unesco and through participation of WIPO and Unesco.

Around 55 participants, drawn mainly from Government officials in the Ministries of Education and Culture, Justice and Information, the Malawi Broadcasting Corporation, the National Archives, the Registrar General's Office, the Museum, the

Bureau of Standards, the National Commission for Unesco, and from University faculty personnel, artists, musicians and officials from the Department of Fine and Performing Arts, attended the substantive sessions of the Workshop each day.

#### Opening of the Workshop

The Workshop was opened by Mr. B.N.C. Kachama, Deputy Principal Secretary to the Government of Malawi in the Ministry of Education and Culture. A statement was also made at the opening ceremony on behalf of the Director General of

WIPO by Mr. Shahid Alikhan, Director, Developing Countries Division (Copyright).

Unesco was represented at the Workshop by Mr. A.M.N. Alam, Legal Officer, Copyright Division.

### Chairman of the Workshop and of Sessions

The Chairman of the Workshop was Dr. J.L. Ng'ombe, General Manager, Dzuka Publishing Company, Blantyre. There was a different Chairman during the presentation of each paper, as also for the various group meetings.

### Substantive Discussions

As envisaged in the program, 16 papers were presented on various aspects of copyright and neighboring rights: four by the representative of WIPO, two by the representative of Unesco, and others by officials of the Ministries of Justice, of Education and Culture, the Malawi Broadcasting Corporation, the Malawi National Commission for Unesco, the National Archives, University faculty members, authors, publishers and performing artists.

The discussions in the plenary sessions were further extended to more in-depth examination of questions by the participants in six separate groups, each presided over by a group leader, which led to the framing of resolutions.

Considering the importance of creative activities in the cultural development of the country, realizing a general lack of awareness amongst national authors as regards copyright and being aware of the importance of having an institution to safeguard the rights of authors, the Workshop adopted the following nine resolutions and recommendations:

### Resolutions and Recommendations

#### No. 1

*Having noted* that the Copyright Act as it exists to date in Malawi does not deal with the artist's rights adequately, the Workshop recommends the following amendments to the Act:

- (a) that the list of works enumerated in section 3 of the Act is incomplete and not conclusive and that the list should be extended to include folkloric material and scientific publications and discoveries;
- (b) that the period of protection be extended to a minimum of fifty (50) years after the death of the author or the date of publication of the work as the case may be;

- (c) that the Act should provide for stringent penalties for infringement of copyright works;
- (d) the Workshop further recommends that the amended Act should include relevant references to other Acts where this is necessary.

#### No. 2

*Considering* that Malawi already acceded to the 1952 text of the Universal Copyright Convention, the Workshop recommends that the Government should consider acceding to the revised 1971 text of the Universal Copyright Convention and also to the Paris Act (1971) of the Berne Convention.

#### No. 3

*Having noted* the need for it, the Government should seriously consider the setting up of an organization for the implementation of copyright and for effective protection of the artists; this organization should be a statutory body to perform the following functions, among others:

- initiate the formation of artists' associations;
- receive complaints from various societies and advise them on matters of dispute, promotion and possible amendments of the law of copyright;
- act as an information center where infringement will be monitored;
- act as a channel for fostering international cooperation on matters of copyright;
- promote artistic activities by conducting workshops, meetings, addresses, etc.

#### No. 4

*Considering* the great strides the country has made in economic development since independence, the Workshop felt that Government efforts to develop and promote creative works in the country have not been adequate and recommends:

- (a) that the Government increase the financial allocation to the Cultural Division of the Ministry of Education and Culture in order to enable the institutions within the Division to promote effectively cultural activities such as seminars, training workshops, festivals and research. If need be, the Government should consider seeking aid from appropriate donors;
- (b) that the Government pass an Act to make provision for the protection and regulation of the arts and crafts in the country;
- (c) that schools should include cultural studies in their curriculum;
- (d) that the Ministry responsible for Culture look into the creation of cultural centers with satellites at village level and monitor that the cultural centers are actually being utilized.

## No. 5

*Recognizing* the important role the Cultural Affairs Department can play in the development and promotion of creative work, the Workshop recommends:

- (a) that the Department acquire equipment for use by various artists during festivals and similar occasions;
- (b) that the Department provide facilities such as studios for recording, galleries and properly equipped theaters which will help and enhance the development of creative work;
- (c) that in the long run the Department should seriously look into setting up a disc-cutting enterprise;
- (d) that the Department take measures to stop the current piracy of musical and cinematographic works.

## No. 6

*Having heard* a report from the Malawi Broadcasting Corporation on the treatment of royalties for local performing artists, the Workshop recommends that the Ministry of Education and Culture appoint a Commission to enquire into the question of royalties which may have accrued to local performing artists from the Performing Rights Society of London, and that measures be taken to correct the present deplorable situation affecting local performing artists.

## No. 7

*Realizing* that the Malawi Broadcasting Corporation (MBC) is the only broadcasting station in the country, while appreciating the important role it plays in the development of creative works and having heard of irregularities in the treatment of copyright works within the organization, the Workshop recommends:

- (a) that MBC should investigate into the allegations of piracy vis-à-vis the music they record from local artists;

- (b) that MBC be asked to help stop copyright infringement among local performing artists themselves, especially copying of musical works for recording with the corporation without proper acknowledgment to the original author.

## No. 8

*Being mindful* of the contributions that Unesco and WIPO have made towards the success of the Workshop, the Workshop recommends:

- (a) that thanks be extended to Unesco for financing and, therefore, making this Workshop possible;
- (b) that thanks be extended to Unesco and WIPO for their active participation in the Workshop and for making available relevant publications to the Workshop.

*Realizing* the important role Unesco and WIPO have played in the development and promotion of copyright, the Workshop further recommends:

- (c) that further assistance in the promotion of copyright, neighboring rights and other cultural activities in the country be solicited from Unesco and WIPO.

## No. 9

*Appreciating* the role the Copyright Working Sub-Committee has played in the organization and success of the Workshop, the Workshop recommends:

- (a) that the Committee become a Steering Committee to ensure follow-up and continuity after the Workshop;
- (b) that the Steering Committee have power to co-opt additional members as the need arises.

## Book Reviews

**A User's Guide to Copyright**, by *Michael F. Flint*. One volume of 289 pages. Butterworths, London, 1985.

This is the second edition of a work first published in 1979, the purpose of which, according to its preface, "is to enable people whose jobs, businesses — or even hobbies — cover any copyright field, to acquire a general understanding of copyright," and which may also be used as a reference work for dealing with the less complex problems encountered. The publication of this second edition bears witness to the tremendous movement and change taking place in the United Kingdom, including technological advance (new material has been added on cable and satellite television, video games, teletext and electronic publishing, piracy and counterfeiting), an increasing body of case law, proposals for the revision of copyright law, and the rising tide of piracy.

The author has valuable experience as a practising solicitor in the copyright field, as well as an impressive array of other qualifications and titles — namely, member of the editorial board of *International Media Law*, Council member of the Common Law Institute of Intellectual Property, Vice-Chairman of the Communications and Entertainment Law Committee of the International Bar Association (IBA), and Chairman of the Copyright Section of the Intellectual Property Committee of the IBA.

The book is divided into two parts, the first on "Copyright law generally" in the United Kingdom, and the second on "Copyright in use." The first part broadly identifies, describes and explains the major areas of the law on and touching on copyright and neighboring rights, whilst the second part expounds some important problems in greater detail and is more oriented towards offering practical advice. The author ably covers a wide variety of issues in the field of intellectual property, concerning, *inter alia*, the following: publishers, printers, newspapers, periodicals, libraries and public lending rights, educational institutions, reprography, the entire "music industry," public entertainment of all kinds, television and radio stations, artists, photographers, art galleries, art dealers, museums, architecture and advertising, as well as providing some clear analysis of the problems caused by technological development.

The claim on the cover that it is a useful guide for both the layman and the practitioner is on the whole justified. Mr. Flint not only answers the most commonplace questions of a lay-

man (such as how to prove authorship of a work in the absence of registration procedures under the law), but also gives more sophisticated advice of interest to the practitioner: for example, in the chapter on computer software, in the face of the difficulty of proving deliberate copying of a computer program, he suggests the insertion of deliberate mistakes or bugs in the programs, which will also appear in the copy and thus provide the necessary evidence of infringement. Moreover, the work is well enough written to be useful to the specialist as a reminder or summary: to give some examples, we tend to overlook the fact that performers are in a weak position in the United Kingdom, having no recourse to civil law procedures of direct benefit to them, or that lighting designs for stage productions may qualify for protection not only as artistic works (since they are drawings), but also partly as literary works if there is a text written on them.

In connection with technological advance, the author handles with clarity the problem of protection in the fields where technological progress has outstripped the conceptions and terminology of a law as yet unreformed. For instance, he discusses the case of whether point-to-point satellite signals are protected as broadcasts, by reference to the Wireless Telegraphy Act of 1949, where, indeed, a "broadcast" is not precisely defined: taking a dictionary definition, as something intended for reception by the public, it is arguable that point-to-point satellite transmissions are not protected as broadcasts, since they are not intended for direct reception by the public.

As a user's manual, on the one hand intended to provide a general background on the subject, and on the other hand to enable the reader to dip into it for information on specific points, the work is very well presented. The chapters are concise, considering the breadth and depth of the subject matter dealt with, and an adequate index, combined with subheadings in heavy type throughout the text, facilitate rapid retrieval of the information required. Tables, diagrams and annexes are put to good use; this is especially so in the case of a diagram showing the labyrinth of legal and economic relationships governing copyright in music and records (marred only by the diagram and its explanatory notes being printed separately, *recto verso!*). References to case law are suitably brief and illustrate a point, without weighing down the reader or cluttering a text which is easy to follow. This is certainly a worthwhile acquisition on a reference shelf.

A.S.

## Calendar of Meetings

### WIPO Meetings

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

#### 1985

- July 8 to 12 (Geneva) — Committee of Experts on the Harmonization of Certain Provisions in Laws for the Protection of Inventions
- 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) and PCT Committee for Technical Cooperation (PCT/CTC)
- 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
- October 21 to 25 (Geneva) — Nice Union: Committee of Experts
- November 4 to 30 (Plovdiv) — WIPO/Bulgaria: World Exhibition of Young Inventors and International Seminar on Inventiveness for Development Purposes (November 12 to 15)
- November 18 to 22 (Geneva) — Permanent Committee on Patent Information (PCPI): Working Groups on Special Questions and on Planning
- November 25 to 29 (Paris) — Committee of Governmental Experts on Model Provisions for National Laws on Publishing Contracts for Literary Works (convened jointly with Unesco)
- November 25 to December 6 (Geneva) — Permanent Committee on Patent Information (PCPI): Working Group on Search Information
- November 26 to 29 (Geneva) — Committee of Experts on a Treaty for the Protection of Integrated Circuits
- December 3 to 6 (Geneva) — Permanent Committee for Development Cooperation Related to Industrial Property
- December 9 to 13 (Geneva) — Committee of Experts on the International Registration of Marks

### UPOV Meetings

#### 1985

- 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

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

### Non-Governmental Organizations

#### 1985

August 18 to 24 (Chicago) — International Federation of Library Associations and Institutions (IFLA) — Congress

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

September 19 (Geneva) — International Literary and Artistic Association (ALAI) — Executive Committee

#### 1986

April 24 and 25 (Heidelberg) — International Publishers Association (IPA) — Copyright Symposium

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

