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# Copyright

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Monthly Review of the  
World Intellectual Property Organization (WIPO)

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## Conventions Administered by WIPO

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

#### Tenth Ordinary Session

(Paris, June 26 to 28, 1985)

#### Report

submitted by the Secretariat and adopted by the Committee

#### Introduction

1. The Intergovernmental Committee of the International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations (Rome Convention, 1961) (hereinafter referred to as "the Committee"), convened in accordance with paragraph 6 of Article 32 of that Convention and Rule 10 of the Rules of Procedure of the Committee, held its Tenth Ordinary Session at Unesco headquarters, in Paris, from June 26 to 28, 1985.

2. The 12 member States of the Committee (Austria, Brazil, Congo, Czechoslovakia, Denmark, Germany (Federal Republic of), Italy, Mexico, Niger, Norway, Sweden and the United Kingdom) were represented. The governments of six States, party to the Rome Convention but not members of the Committee (Colombia, Ecuador, Finland, Guatemala, Philippines and Uruguay) and 19 States not party to the Rome Convention (Algeria, Angola, Australia, Democratic People's Republic of Korea, Egypt, France, Ghana, Greece, Holy See, India, Japan, Lebanon, Netherlands, Senegal, Syria, Thailand, Togo, Tunisia and the United States of America) were represented by observers.

3. Two intergovernmental and six international non-governmental organizations attended the session as observers.

4. The list of participants appears as annex to this report.

#### Opening of the session

5. In the absence of Mr. H. Aguilar de la Parra, outgoing Chairman of the Committee, Mr. R. Dittrich, outgoing Vice-Chairman, opened the session.

6. Mr. Henri Lopes, Unesco's Assistant Director-General for Programme Support, welcomed the participants on behalf of the Directors General of ILO, Unesco and WIPO, and wished them every success in their work.

#### Election of officers

7. Following a proposal made by the delegation of Sweden and seconded by the delegation of Italy, Mrs. Margret Möller, head of the delegation of the Federal Republic of Germany, was unanimously elected Chairman. Mr. Dominique Ganga Bidie, head of the delegation of Congo, and Mrs. Jarmila Karhanová, head of the delegation of Czechoslovakia, were elected Vice-Chairmen.

#### Adoption of the agenda

8. The provisional agenda (document ILO/UNESCO/WIPO/ICR.10/1) was adopted unanimously by the members of the Committee, with one amendment. Consideration of document ILO/UNESCO/WIPO/ICR.10/9, which came under "Other business" (item 11), was included as an additional item after item 3.

### **Request for observer status**

9. The Committee considered the request submitted by the "Organización de la Televisión Iberoamericana" (OTI) to be invited by the Committee to be represented at its sessions as an observer.

10. Having taken note of the information contained in document ILO/UNESCO/WIPO/ICR.10/9, the Committee decided unanimously to allow OTI to participate as an observer in its sessions in accordance with Rule 3, subparagraph (iii), of its Rules of Procedure.

### **Membership of the International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations (Rome Convention): state of accessions, ratifications and acceptances**

#### **List of States party to the two International Copyright Conventions and list of States party to the Rome Convention**

#### **Membership of the Convention for the Protection of Producers of Phonograms Against Unauthorized Duplication of Their Phonograms (Phonograms Convention) and of the Convention Relating to the Distribution of Programme-Carrying Signals Transmitted by Satellite (Satellites Convention): state of accessions, ratifications and acceptances**

11. On the proposal of the Chairman and with the agreement of the Committee, items 4, 5 and 6 of the agenda of the meeting were considered together.

12. Documents ILO/UNESCO/WIPO/ICR.10/2 and 2 Add., 3 and 3 Add., and 4 and 4 Add. were placed before the members of the Committee.

13. The Secretariat drew attention to the accession of Peru and the Philippines to the Rome Convention, the accession of Czechoslovakia and Peru to the Phonograms Convention, the ratification by the United States of America of the Satellites Convention and the accession of Panama and Peru to the latter since the previous meeting of the Intergovernmental Committee. It was also reported that, at the recently held meetings of the Intergovernmental Copyright Committee of the Universal Copyright Convention and the Executive Committee of the Berne Union, several delegations had informed other delegations of the work in progress in their countries with a view to the possibility of their accession to the Rome Convention.

14. The delegations of Australia, France, Ghana, Italy, Japan and the Netherlands reported on the current situation in their country with regard to the protection of so-called neighboring rights.

15. The delegation of France confirmed the information it had given at the meetings of the aforementioned copyright convention committees, according to which France was to reconsider the possibility of ratifying the Rome Convention, following the adoption of a bill currently before the French Parliament.

16. The delegation of Japan said that the studies currently being carried out in Japan on the ratification of the Rome Convention had not yet reached firm conclusions.

17. The delegation of the Netherlands stated that a decision not to ratify the Rome Convention had been taken in 1982 because of the budgetary implications of recognizing so-called neighboring rights in the broadcasting field. It informed members of the Committee, however, that a new document was in preparation on the problem with a view to the possible ratification of the Convention, as the Netherlands Parliament wished to examine the financial implications of the question.

18. The delegation of Ghana informed the Committee that a new law on copyright and neighboring rights had just been adopted in its country, and emphasized that the relevant authorities were studying the budgetary consequences of accession to the international conventions.

19. The delegation of Australia declared that the policy of its government was favorable to protection for artists and that the question of accession to the Rome Convention was being given serious consideration. A discussion paper prepared in April 1985 had been distributed to the interested parties; the comments of those concerned would be collected by the end of July and form the basis of a report to the government by the competent body. It was not yet able to adopt a definitive position before the Committee, but the possibility of accession in the near future could not be ruled out.

20. Finally, the delegation of Italy observed that the Rome Convention should be regarded as an appropriate instrument, through intellectual property rights, for the protection of folklore, since sound and audiovisual recordings were an essential means of disseminating folklore. It also stated that such recordings would be useful for making inventories of folklore and for constituting archives.

21. In conclusion, the Chairman considered that there was a need to encourage States which were not yet party to the Rome Convention to accede to that international instrument, and recalled that, at meetings of the aforementioned copyright convention committees, several delegations had expressed the view that the Rome Convention was a satisfactory instrument for the international protection of artists, producers of phonograms and broadcasting organizations, where the utilization of folklore was concerned.

**Developments in legislation, state of collective agreements, state of bilateral agreements and arrangements made by the societies for the collection and distribution of royalties, in the field of the protection of performers, producers of phonograms and broadcasting organizations**

22. Documents ILO/UNESCO/WIPO/ICR.10/5 and Annex were submitted to the members of the Committee and introduced by the Secretariat and, in the case of the Annex, by an observer from the International Federation of Phonogram and Videogram Producers (IFPI).

23. The delegations and observers from international non-governmental organizations who spoke praised the quality of the documents submitted. The delegations of Austria, Czechoslovakia, France, Germany (Federal Republic of), Ghana, Italy, Norway, Sweden and the United Kingdom, and observers from three international non-governmental organizations (FLAIE, IFPI and OTI) made a number of remarks in order to update the information contained in the document cited above, which were noted by the Secretariat.

24. The delegation of Sweden expressed its regret at the small number of replies, though it considered that the questionnaires did not always reach the appropriate bodies. It suggested that copies of the letters to governments be sent systematically to the delegates who attended the meetings.

25. The delegations of Czechoslovakia, Denmark, Finland, Ghana, India, Norway and Sweden furnished information on the content of their legislation in this field and on the prospects for the future, emphasizing a trend towards increased protection of neighboring rights.

26. The delegation of India indicated that the protection of the rights of the performing artist was at present guaranteed in India by means of contracts, but that the protection of the rights of these artists through appropriate legislation was also envisaged.

With regard to broadcasting organizations, on the other hand, it indicated that since these belonged to the State, legislation in that area was not essential. The delegation of Ghana informed the participants that the new copyright law which had just been passed bore especially on neighboring rights, programme-carrying signals, arbitration, authors' societies, folklore, videograms and cinematography. It added that, since broadcasting was run by the State, the problem of piracy of broadcasts did not arise in Ghana.

27. The delegation of Denmark said that in 1985 the Danish Parliament had amended the copyright law of 1961 and that the amendment was to come into force on July 1st next. This amendment was designed to increase the duration of protection for performers, producers of phonograms and broadcasting organizations from 25 to 50 years; to give composers the sole right over the rental and all kinds of reproduction of their works; to increase penal sanctions against piracy in order to improve the possibility of public prosecution and to introduce non-voluntary licensing of simultaneous, unaltered cable broadcasting and wireless retransmission. Under the new provisions concerning cable transmission, a right to remuneration was accorded to authors and performers, whether the program was of national or foreign origin. Remuneration had to be made when the program was distributed by cable to more than 25 subscribers. Remuneration could be requested only through an organization recognized by the Ministry of Cultural Affairs, and it had to be negotiated by the parties concerned. Failing agreement, the matter was to be taken before an arbitration tribunal whose decision was subject to appeal. Remuneration should be equitable and should correspond to that paid in the other countries of Europe on the basis of free negotiation. The delegation of Denmark said that those amendments were provisional, since the text was to be revised in 1988.

28. The delegation of Sweden stressed the close collaboration existing among the Nordic countries. The question of neighboring rights was soon to go before the Swedish Parliament and also proposed legislation relating to cable transmission.

29. The delegation of Norway informed the members of the Committee of a proposed amendment of the copyright law, which would increase the duration of protection for owners of neighboring rights from 25 to 50 years. Legislation was being developed to improve protection of these rights, and a law on cable transmission of foreign programs had been passed in June 1985.

30. The delegation of Finland reminded the Committee that revision of the legislation in this field was in progress, particularly with regard to extension of the period of protection of neighboring rights, and that work was under way on the possible accession of Finland to the Satellites Convention.

31. Finally, the delegation of Czechoslovakia briefly described the situation in that country, emphasizing the need to have authorization before making a recording. The delegation stressed the close collaboration between the different administrative services in Czechoslovakia, which promoted efficient protection of the individuals concerned.

32. The delegation of Sweden insisted on the need for developing regional agreements in this field.

33. The observer from one international non-governmental organization (the International Federation of Musicians) emphasized the importance both of collective agreements and of statutes — national laws or international conventions. According to that observer, it was in fact very difficult to obtain remuneration without precise legal standards on which to base a claim. The Rome Convention should be revised, taking new technologies into account, and it would be interesting to conduct a survey among States to obtain information on those of their national provisions which were more favorable than those of the Rome Convention.

34. The observer from another international non-governmental organization (the International Federation of Actors) regretted that the relations between authors and performers were not always entirely satisfactory. He considered that performers were in need of specific rights, in view of their essential role in the dissemination of works, and that they should be placed on the same level as authors as regards the legal protection of their rights. He hoped that an appeal would be launched to national authorities and international organizations with a view to improving national laws in that field.

**Activities to provide assistance and training for the protection of performing artists, producers of phonograms and broadcasting organizations**

35. The Committee had before it document ILO/UNESCO/WIPO/ICR.10/6.

36. The delegations of Australia, Austria, Congo, Germany (Federal Republic of), Italy, Sweden and the United Kingdom, as well as the observers from three international non-governmental organiza-

tions, made a point of expressing their satisfaction with the action of Unesco and WIPO in the field of training and assistance to States.

37. The observer from the Federation of Actors (FIA), supported by the observer from the International Federation of Musicians (FIM), pointed out that the Rome Convention, in its present version, could not adequately protect the interests of performing artists, and that in view of technological developments there were grounds for envisaging a revision of it. Pending such a revision, it would be worthwhile launching an appeal to States immediately with a view to encouraging the adoption of national legislation or improving such legislation as already existed in order to provide artists with the protection they deserved by virtue of their role in the dissemination of intellectual creations and culture. The observer from the Latin American Federation of Performing Artists (FLAIE) associated himself with the idea of launching this appeal.

38. The representative of the Director General of WIPO stressed the importance of these comments by FIA with regard to sending out an appeal to member States.

39. The delegation of the United Kingdom noted that, in pursuance of a decision by the Committee, the Secretariats had already sent a circular to States drawing their attention to the benefits to be derived from acceding to the Rome Convention, and it wondered whether the results obtained were such as to encourage a repetition of that operation.

40. The representative of the Director-General of ILO, when asked for advice, noted that while the results of the survey carried out had perhaps not produced the expected results, there was no need to be discouraged. An appeal devised in a different way, according to procedures to be established jointly by the Secretariats, might well be helpful.

41. The representative of the Director General of WIPO said that an appeal to States should focus, first and foremost, on the legislative aspect of the question. In his opinion, it was not appropriate to ask States why they did not ratify international treaties, since the answer came within the scope of national sovereignty. He suggested that the circular be drawn up with a new approach and should deal with three aspects: (i) the advantage to be derived from protecting neighboring rights; (ii) legislative measures for achieving this (including model laws); and (iii) international relations through accession to multilateral treaties.

42. The delegations of Austria, Congo, Greece, Italy, Sweden and the United Kingdom, as well as the Chairman of the Committee, fully supported this proposed approach and requested the Secretariats to take it into account when preparing the circular with a view to the encouragement envisaged. Some delegations suggested that reference should also be made to the problem of piracy and the possibilities afforded by the Rome Convention for the protection of folklore.

43. The hope was expressed that the circular should be distributed as widely as possible and particularly that, for their personal information, the delegates who had attended the sessions of the Committee, and also the international governmental and non-governmental organizations concerned and the national Commissions for Unesco should be among the recipients of the circular.

44. In this connection, the representative of the Director-General of ILO pointed out that her Organization could also approach employers and workers. To be sure, the purpose of the appeal would be to make governments aware of the problem so that they would enact legislation and, if possible, ratify the Rome Convention. However, the parties involved could also have a role to play in creating awareness. She informed the Committee that, in the 1986–1987 biennium, ILO would organize a training course on the negotiation and management of the rights of performing artists.

45. The observers from FIA, FLAIE and FIM expressed their agreement that such a circular should be sent. Its content should include a reply to certain arguments levelled against ratification of the Rome Convention. On this last point, the observer from FLAIE, referring to the argument that the recognition of neighboring rights would involve large outflows of foreign currency, suggested that the circular should mention the various possible solutions regarding ways and means of distributing remuneration. He thanked Unesco for the support it had given to the Montevideo Symposium and emphasized the importance of collaborating with the States in training the magistrates in respecting and applying national legislations and, to that end, of organizing training courses specifically designed for them.

46. The observer from IFPI warmly supported that suggestion, already made previously by his organization, and he reiterated to the Secretariats IFPI's offer of cooperation in organizing seminars dealing with the rights and interests of the beneficiaries of the Rome Convention.

#### **Proposal to amend the Rules of Procedure submitted by the International Labour Office**

47. The members of the Committee had before them document ILO/UNESCO/WIPO/ICR.10/7. It was introduced by the representative of the Director-General of ILO, who stressed that the purpose of the proposal to amend the Rules of Procedure should be properly understood. That purpose was to ensure that the representatives of performers, producers of phonograms and broadcasting organizations could be present as observers during the deration of questions that concerned them by subsidiary bodies, in the same way as at plenary meetings of the Committee, in accordance with the principles of tripartite consultation specific to ILO. This obviously did not mean that the representatives of other interested parties should be excluded. The proposed text was the same as that submitted originally, as its consideration had been deferred to the present session. It went without saying, however, that ILO would accept any other possible proposal to amend the Rules of Procedure that would achieve this purpose.

48. The delegation of Austria, which had requested at the preceding session that the matter be deferred to the present session so that it could be studied thoroughly, put forward nine arguments against the proposal to amend the Rules of Procedure. (1) There is no reference to the principle of tripartism in the Rome Convention. (2) Nor is there any such reference in the Constitutions of Unesco and WIPO. (3) The principle is admittedly in keeping with the right to work, in view of the differences existing between the interests of workers, employers and neutral representatives of governments, but it cannot be transposed to the system of the Rome Convention. The three categories of parties covered by this Convention do not always have opposing interests; they also have some converging interests in respect of authors and users — for example, as regards cable transmission. (4) The Rome Convention also takes account of the interests of authors (Article 1), and its Article 24 refers expressly to the international copyright conventions as a condition for accession to the Rome Convention; international non-governmental organizations representing authors should therefore be treated on the same footing as the others. (5) The observers representing interests which are users in relation to the beneficiaries of the Rome Convention, for example the cable distributors, should be accorded the same treatment as the international non-governmental organizations representing the beneficiaries of the Rome Convention. If the present proposal were adopted, some international non-governmental organizations might be more favorably treated than

others. (6) Making exceptions to the Rules of Procedure regarding the status of observer might put States and the intergovernmental organizations in a less favorable position than some international non-governmental organizations. (7) In exceptional cases, and for the study of certain questions, it might be felt necessary for small groups of States to meet in order to facilitate a compromise between the interests in question. (8) Specifying the number of observers as proposed could lead to discrimination and give rise to difficulties in the event of disagreement between international non-governmental organizations. (9) In practice, no difficulties have been recorded, as all international non-governmental organizations have always been able to make any observations they wished before the plenary committee or before subsidiary bodies. In conclusion, the delegation of Austria said that it opposed this proposal, considering that it would not be advisable to change either the Rules or current practice and that the Committee should retain complete freedom to set up subsidiary bodies as it wished.

49. The delegations of Czechoslovakia, Denmark, Germany (Federal Republic of), Italy, Norway, Sweden and the United Kingdom supported this position, the delegation of Italy stating its firm support for the principle that the Committee should be free to determine as it wished the procedure to be followed in each case. The delegations of Norway, Sweden and the United Kingdom stressed that no difficulties had hitherto been encountered in the work of the Committee, the delegation of Norway calling to mind that the application of the Rome Convention did not justify an amendment to the Committee's Rules of Procedure. The delegation of Sweden said that consultations with interested parties had always taken place at the national level before every session of the Committee dealing with important international issues in this field. This delegation also indicated that account should also be taken, for example, of the interests of authors and distributors of cable transmissions and it was important to preserve the Committee's freedom to set up small working groups in accordance with procedures suited to each case. The delegation said that it would be advisable to maintain the present procedures, which did not exclude the possibility of admitting the greatest possible number of observers to subsidiary bodies, and suggested that in future decisions on admitting observers to such bodies consideration should be given to the interest which international non-governmental organizations could have in attending meetings of that body.

50. In conclusion, the Chairman took note of the unanimous opposition to the proposal to amend the Rules of Procedure. She thought that, on the whole,

account should be taken of the desire of international non-governmental organizations to participate fully in the work. To that end, she requested the Secretariat to prepare a declaration for the next session of the Committee simply indicating the following: in cases where the Committee had to decide whether international non-governmental organizations should be admitted as observers to subsidiary bodies, special attention should always be given to the fact that the beneficiaries of the Rome Convention had an interest in participating in its work.

#### **Problems arising with regard to the Rome Convention through developments in law and practice concerning transmission by cable and by satellite**

51. In presenting the document on this item of the agenda (document ILO/UNESCO/WIPO/ICR.10/8), the Secretariat informed the Committee that the transmission by cable or by satellite of performances by artists, of phonogram recordings and radio broadcasts constitutes a relatively new phenomenon in view of the situation prevailing at the time when the Rome Convention was adopted in 1961. The Committee was also informed of the conclusions of its Subcommittee on Television by Cable which met in December 1983<sup>1</sup> jointly with the respective subcommittees of the copyright committees and of the conclusion of the Group of Experts on the Copyright Aspects of Direct Broadcasting by Satellite which met in March 1985.<sup>2</sup> This Group of Experts "suggested that various aspects of the application of those [Berne and Universal Copyright] Conventions when broadcasting is effected through direct broadcasting satellites should be further studied by the Secretariats" and "to extend the study to the field of neighboring rights."

52. Accordingly, the Committee was invited to take a decision on the proposal put forward in the said document "that the Intergovernmental Committee of the Rome Convention recommend that its Secretariat submit to it at its eleventh session a study on the problems arising with regard to the Rome Convention through developments in law and practice concerning transmission by cable and by satellite."

53. The proposal was adopted unanimously without discussions.

#### **Other business**

54. No statement was made on this agenda item.

<sup>1</sup> See *Copyright*, 1984, pp. 184 *et seq.*

<sup>2</sup> *Ibid.*, 1985, pp. 180 *et seq.*

## Adoption of the report

55. This report was adopted unanimously.

## Closing of the session

56. After the customary exchange of thanks, the Chairman declared the meeting closed.

## List of Participants

### I. States Members of the Committee

**Austria:** R. Dittrich. **Brazil:** A.A. de Freitas Carvalho. **Congo:** D. Ganga Bidie. **Czechoslovakia:** J. Karhanová; A. Bujnak; J. Kordač; M. Jelinek; D. Illík. **Denmark:** W. Weincke. **Germany (Federal Republic of):** M. Möller. **Italy:** G. Aversa. **Mexico:** S. Lagos Martínez; V.C. García. **Niger:** S. Siddo. **Norway:** H. M. Soenneland; A. Kleveland. **Sweden:** H. Olsson. **United Kingdom:** J.P. Britton.

### II. Observers

#### *a) States Party to the Convention Who Are Not Members of the Committee*

**Colombia:** B. Delgado. **Ecuador:** E. Johnson; M. Carbo. **Finland:** J. Lieder. **Guatemala:** F. Sesenna Olivera; A. Garoz Cabrera; G. Putzeys-Alvarez. **Philippines:** D.M. Macalintal. **Uruguay:** S. Rivero.

#### *b) Other States*

**Algeria:** T. Jellouli. **Angola:** A. Morais Da Costa; F.M. Da Costa; R.P. Do Amaral Gurgel. **Australia:** I. Harvey. **Democratic People's Republic of Korea:** T.S. Pak; H.S. Ri. **Egypt:** N. Saad. **France:** M.C. Rault; B. Blin; N. Renaudin; S. Bogé. **Ghana:** E.B. Odoi Anim. **Greece:** N. Papageorgiou. **Holy See:** L. Rousseau; R. Blaustein. **India:** I. Rahman; B. Bose. **Japan:** Y. Oyama. **Lebanon:** J. Sayegh. **Netherlands:** J. Meyer Van der Aa; R. Wolfensberger. **Senegal:** B. Ndoeye. **Syria:** E. Choueri. **Thailand:** S. Povatong. **Togo:** A. Ayivi-Ga Togbassa. **Tunisia:** T. Ben Slama. **United States of America:** D. Schrader.

#### *c) Intergovernmental Organizations*

**Council of Europe (CE):** G. Brianzoni. **Arab Educational, Cultural and Scientific Organization (ALECSO):** A. Deradji.

#### *d) International Non-Governmental Organizations*

**International Copyright Society (INTERGU):** G. Halla. **International Federation of Actors (FIA):** R. Rembe. **International Federation of Musicians (FIM):** Y. Burckhardt. **International Federation of Phonogram and Videogram Producers (IFPI):** I. Thomas; G. Davies; E. Thompson. **Latin American Federation of Performers (FLAIE):** J. Dias; H. Jessen; A. Millé. **Organización de la Televisión Iberoamericana (OTI):** N. Pizarro.

### III. Secretariat

#### International Labour Office (ILO)

R. Cuvillier (*Chief, Salaried Employees and Professional Workers Branch, Sectoral Activities Department*); C. Privat (*Salaried Employees and Professional Workers Branch, Sectoral Activities Department*).

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

H. Lopes (*Assistant Director-General for Programme Support*); K. Vasak (*Director, Copyright Division*); A. Amri (*Senior Lawyer, Copyright Division*); A.M.N. Alam (*Lawyer, Copyright Division*); Y. Gaubiac (*Consultant, Copyright Division*).

#### World Intellectual Property Organization (WIPO)

C. Masouyé (*Director, Public Information and Copyright Department*).

**Meeting of Governmental Representatives  
for the Re-election of the Intergovernmental Committee  
of the International Convention for the Protection of Performers,  
Producers of Phonograms and Broadcasting Organizations**

(Paris, June 28, 1985)

**Report of the Tellers**

1. In accordance with the revised Rules of Procedure adopted by the Intergovernmental Committee at its fourth session (1973), the Directors General of the International Labour Office (ILO), the United Nations Educational, Scientific and Cultural Organization (UNESCO) and the World Intellectual Property Organization (WIPO) convened a meeting of all the States party to the International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations on June 28, 1985, in order to elect the members of the Intergovernmental Committee established by Article 32 of the Convention.

2. The representatives of the following Contracting States were present and took part in the election: Austria, Brazil, Congo, Czechoslovakia, Denmark, Germany (Federal Republic of), Italy, Mexico, Niger, Norway, Sweden, United Kingdom. Total: 12 States.

3. The Meeting adopted the Provisional Agenda (document ILO/UNESCO/WIPO/RCEM/85/1). It

had at its disposal document ILO/UNESCO/WIPO/RCEM/85/2, which contained a note written by the Secretariat with regard to election procedure.

4. The election was conducted in accordance with Rule 31 of the Rules of Procedure. The Nominations Committee consisting of the Chairman and two Vice-Chairmen of the Intergovernmental Committee proposed the following 12 States for membership: Austria, Brazil, Congo, Czechoslovakia, Finland, Germany (Federal Republic of), Italy, Mexico, Niger, Norway, Sweden, United Kingdom. The Chairman explained that the proposed list took into account the actual participation in the work of the Committee and that, in conformity with the wish expressed by their respective delegations, Denmark was replaced by Finland.

5. The proposal of the Nominations Committee was adopted by acclamation by the Meeting.

Rolande Cuvillier  
Chief  
Salaried Employees and  
Professional Workers Branch  
ILO

Karel Vasak  
Director  
Copyright Division  
UNESCO

Claude Masouyé  
Director  
Public Information and  
Copyright Department  
WIPO

## Notifications

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

PERU

#### Accession

The Secretary-General of the United Nations has informed the Director General of the World Intellectual Property Organization that the Government of the Republic of Peru deposited, on May 7, 1985, its instrument of accession to the International Convention for the Protection of Performers, Producers

of Phonograms and Broadcasting Organizations, done at Rome on October 26, 1961.

Pursuant to Article 25(2), the Convention enters into force, for the Republic of Peru, three months after the date of deposit of the instrument of accession, that is, on August 7, 1985.

### **Convention for the Protection of Producers of Phonograms Against Unauthorized Duplication of Their Phonograms**

PERU

#### Accession

The Director General of the World Intellectual Property Organization (WIPO) has informed the Governments of the States invited to the Diplomatic Conference on the Protection of Phonograms that, according to the notification received from the Secretary-General of the United Nations, the Government of the Republic of Peru deposited, on May 7, 1985, its instrument of accession to the Convention for the Protection of Producers of Phonograms

Against Unauthorized Duplication of Their Phonograms.

The Convention enters into force, with respect to the Republic of Peru, three months after the date of the notification given by the Director General of WIPO, that is on August 24, 1985.

Phonograms Notification No. 44, of May 24, 1985.

### **Convention Relating to the Distribution of Programme-Carrying Signals Transmitted by Satellite**

PERU

#### Accession

The Secretary-General of the United Nations notified the Director General of the World Intellectual Property Organization that the Government of the Republic of Peru deposited, on May 7, 1985, its instrument of accession to the Convention Relating to the Distribution of Programme-Carrying Signals

Transmitted by Satellite, adopted at Brussels on May 21, 1974.

The Convention enters into force, for the Republic of Peru, three months after the date of deposit of its instrument of accession, that is on August 7, 1985.

## National Legislation

### JAPAN

#### Law for Partial Amendments to the Copyright Law

(No. 46, of May 25, 1984)\*

The Copyright Law (Law No. 48, of 1970)<sup>1</sup> shall be partially amended as follows:

1. In the Table of Contents, the words "Article 95" shall be replaced by the words "Article 95bis" and the words "Articles 96 and 97" by the words "Articles 96 to 97bis."

2. In Article 2, paragraph (8), the words "the preceding paragraph" shall be replaced by the words "the preceding two paragraphs," and paragraph (8) shall be renumbered as paragraph (9), and the following new paragraph shall be inserted next to paragraph (7):

(8) In this Law, "lending" includes any kind of similar acts of acquiring the right to use, whatever may be their purpose or means.

3. In Article 3, paragraphs (1) and (2), the words "in the case of cinematographic works" shall be deleted, and the words "or Article 26bis" shall be inserted next to the words "Article 26."

4. The following new Article shall be inserted next to Article 26:

#### *Right of lending*

*Article 26bis.* — The author shall have the exclusive right to offer his work (except a cinematographic work) to the public by lending copies of the work (excluding copies of a cinematographic work in the case of a work reproduced in the cinematographic work).<sup>2</sup>

\* This Law was promulgated on May 25, 1984, and came into force on January 1, 1985. — English translation communicated to WIPO by courtesy of the Cultural Affairs Department, Copyright Division, of Japan.

<sup>1</sup> See *Copyright*, 1971, pp. 71 *et seq.*

<sup>2</sup> The author of a cinematographic work and the author of a work reproduced in a cinematographic work have the distribution right under Article 26. In Japan, there is no exhaustion of the distribution right with respect to a cinematographic work (including videograms).

5. In Article 30, the following phrase shall be added at the end:

"except in the case where such reproduction is made by means of automatic reproducing machines ("automatic reproducing machine" means a machine having reproducing functions and in which all or main parts of reproducing devices are automatic) placed for the use of the public."

6. In Article 38, paragraph (1), the phrase "the making available of a work to the public;" shall be replaced by the phrase "the offering and the making available of a work to the public;" and in the same Article, the following two new paragraphs shall be added at the end:

(3) It shall be permissible to offer to the public a work (except a cinematographic work) already made public by lending copies of the work (excluding copies of a cinematographic work in the case of a work reproduced in the cinematographic work) for non-profit-making purposes and without charging any fees to borrowers of such copies.

(4) For audiovisual education establishments and other establishments not for profit-making, designated by Cabinet Order, having the purposes, among others, to offer cinematographic films and other audiovisual materials for the use of the public, it shall be permissible to distribute a cinematographic work already made public by lending copies of the work, without charging any fees to borrowers of such copies. In this case, a person who makes such distribution shall be bound to pay a reasonable amount of compensation to the owner of the right mentioned in Article 26 (including the owner of the same right as that mentioned in Article 26 by virtue of the provision of Article 28) with respect to such a cinematographic work or a work reproduced in that cinematographic work.

7. In Article 68, paragraph (2), the words “Article 38” shall be replaced by the words “Article 38, paragraphs (1) and (2).”

8. In Article 89, paragraph (1), the words “Article 91 and 92” shall be replaced by the words “Article 91, paragraph (1), Article 92, paragraph (1) and Article 95bis, paragraph (1),” and the words “and the right to remuneration mentioned in Article 95bis, paragraph (3)” shall be added at the end; in paragraph (2) of the same Article, the words “Article 96” shall be replaced by the words “Article 96, paragraph (1) and Article 97bis, paragraph (1),” and the words “and the right to remuneration mentioned in Article 97bis, paragraph (3)” shall be added at the end; and in paragraph (5) of the same Article, the words “and the right to remuneration” shall be inserted next to the words “the right to secondary use fees.”

9. In Article 91, paragraph (2), the words “this Chapter” shall be replaced by the words “this and next Chapters.”

10. In Chapter IV, Section 2, the following new Article shall be inserted next to Article 95:

*Right of lending, etc.*

*Article 95bis.* — (1) Performers shall have the exclusive right to offer their performances to the public by lending commercial phonograms incorporating their performances.<sup>3</sup>

(2) The provision of the preceding paragraph shall not apply to the lending of commercial phonograms going beyond the period prescribed by Cabinet Order within the limits of one to twelve months from the first sale of such phonograms in this country (including commercial phonograms containing the same phonograms as those incorporated in such commercial phonograms; hereinafter referred to as “commercial phonograms going beyond the period”).<sup>4</sup>

(3) When those who engage in business of lending commercial phonograms to the public (hereinafter referred to as “commercial phonogram lenders”) have offered performances to the public by lending commercial phonograms going beyond the period, they shall pay a reasonable amount of remuneration to the performers whose performances (in which neighboring rights subsist) are incorporated in such phonograms.

<sup>3</sup> In the Copyright Law, the term “commercial phonograms” means copies of phonograms made for commercial purposes.

<sup>4</sup> This period was prescribed as 12 months by a Cabinet Order which came into force on January 1, 1985.

(4) The provisions of the preceding Article, paragraphs (2) to (11) shall apply *mutatis mutandis* to the right to remuneration mentioned in the preceding paragraph. In this case, “broadcasting organizations, etc.” in paragraph (7) of the same Article and “broadcasting organizations, etc. mentioned in Article 95, paragraph (1)” in paragraph (9) of the same Article shall read “commercial phonogram lenders mentioned in Article 95bis, paragraph (3).”

(5) The right to royalty with respect to authorization given by owners of the right mentioned in paragraph (1) may be exercised through the intermediary of the association mentioned in the preceding Article, paragraph (2) which shall apply *mutatis mutandis* in the preceding paragraph.

(6) The provisions of the preceding Article, paragraphs (4) to (11) shall apply *mutatis mutandis* in the preceding paragraph. In this case, the second sentence of paragraph (4) of this Article shall apply *mutatis mutandis*.

11. In Chapter IV, Section 3, the following new Article shall be inserted next to Article 97:

*Right of lending, etc.*

*Article 97bis.* — (1) Producers of phonograms shall have the exclusive right to offer their phonograms (excluding those mentioned in Article 8(iii)) to the public by lending commercial phonograms in which their phonograms are reproduced.<sup>2</sup>

(2) The provision of the preceding paragraph shall not apply to the lending of commercial phonograms going beyond the period.

(3) When commercial phonogram lenders have offered phonograms to the public by lending commercial phonograms going beyond the period, they shall pay a reasonable amount of remuneration to the producers whose phonograms (which are mentioned in Article 8(i) or (ii) and in which neighboring rights subsist) have been so offered to the public.

(4) The provision of the preceding Article, paragraph (2) shall apply *mutatis mutandis* to the exercise of the right to remuneration mentioned in the preceding paragraph.

(5) The provisions of Article 95, paragraphs (3) to (11) shall apply *mutatis mutandis* to remuneration mentioned in paragraph (3) of this Article and to associations mentioned in the preceding Article, paragraph (2) which shall apply *mutatis mutandis* in the preceding paragraph. In this case, the provision of the first sentence of Article 95bis, paragraph (4) shall apply *mutatis mutandis*.

(6) The right to royalty with respect to authorization given by owners of the right mentioned in paragraph (1) of this Article may be exercised through the intermediary of the association mentioned in the preceding Article, paragraph (2) which shall apply *mutatis mutandis* in paragraph (4) of this Article.

(7) The provision of paragraph (5) of this Article shall apply *mutatis mutandis* in the preceding paragraph. In this case, "Article 95, paragraph (3)" in paragraph (5) shall read "Article 95, paragraph (4)."

12. In Article 102, paragraph (1), the words "Article 38, paragraph (1)" shall be replaced by the words "Article 38, paragraphs (1) and (3)," and in paragraph (2) of the same Article, the words "in paragraph (4)(i)" shall be deleted.

13. Article 119 shall be amended as follows:

*Article 119.* — The following shall be punishable by imprisonment for a term not exceeding three years or a fine not exceeding one million Yen:

- (i) any person who infringes moral rights, copyright, right of publication or neighboring rights, with the exception of those who reproduce by themselves works or performances, etc. for the purpose of private use mentioned in Article 30 (including the case where this Article shall apply *mutatis mutandis* in Article 102, paragraph (1));
- (ii) any person who, for profit-making purposes, causes others to use automatic reproducing machines mentioned in Article 30 for such reproduction of works or performances, etc. as constitutes an infringement on copyright, right of publication or neighboring rights.

14. In Article 120, the words "three hundred thousand Yen" shall be replaced by the words "one million Yen."

15. In Article 121, the words "one hundred thousand Yen" shall be replaced by the words "three hundred thousand Yen."

16. In Article 122, the words "ten thousand Yen" shall be replaced by the words "one hundred thousand Yen."

17. In Article 2, paragraph (3) of the Supplementary Provisions, the words "Articles 95 and 97" shall be replaced by the words "Article 95, Article 95bis, paragraphs (3) and (4), Article 97 and Article 97bis, paragraphs (3) to (5)," and in paragraph (5) of the same Article, the words "and Article 95bis,

paragraphs (3) and (4)" shall be inserted next to the words "Article 95."

18. The following new Article shall be inserted next to Article 4 of the Supplementary Provisions:

*Transitory measures: lending of books, etc.*

*Article 4 bis.* — The provision of Article 26bis of the new Law shall not apply for the time being to the lending of books or magazines (excluding those consisting mainly of music).

19. The following new Article shall be inserted next to Article 5 of the Supplementary Provisions:

*Transitory measures:  
automatic reproducing machines*

*Article 5bis.* — For the application of the provisions of Article 30 and Article 119(ii) of the new Law, the words "automatic reproducing machines" mentioned in these provisions shall not include for the time being those exclusively for use in copying writings or printings.

## Supplementary Provisions

### *Date of enforcement*

1. This Law shall come into force on January 1, 1985.

### *Repeal of the Interim Measure Law*

2. The Law to Take an Interim Measure for the Protection of the Rights of Authors, etc. with Respect to the Lending of Commercial Phonograms to the Public<sup>5</sup> (Law No. 76, of 1983; hereinafter referred to as "the Interim Measure Law") shall be hereby repealed.

### *Transitory measures required by the repeal of the Interim Measure Law*

3. Notwithstanding the provisions of Articles 26bis, 95bis and 97bis of the amended Copyright Law, those who have obtained authorization with respect to the lending to the public of commercial phonograms in accordance with the provisions of

<sup>5</sup> See *Copyright*, 1984, pp. 285 *et seq.*

the Interim Measure Law before the enforcement of this Law may offer to the public such works, performances and phonograms as reproduced in such commercial phonograms by lending such commercial phonograms, within the scope of conditions of that authorization.

4. The provisions of the Interim Measure Law (including a Cabinet Order under it) shall still be effective with respect to acts which have been made before the enforcement of this Law in violation of the provision of Article 4, paragraph (1) of the Interim Measure Law.

## **General Studies**

### **Satellite Television and Performers' Rights**

Yvonne BURCKHARDT\*









## **Correspondence**

### **Letter from Argentina**

#### **The Impact of Case Law on Copyright Protection in Latin America**

Carlos Alberto VILLALBA\*























## Book Reviews

### List of Books and Articles

From January 1 to June 30, 1985, the WIPO Library has entered in its catalogue a number of works or other publications on copyright and neighboring rights, among which the following are mentioned that are most important or most relevant to recent developments.

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## Calendar of Meetings

### WIPO Meetings

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

#### 1985

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, Vienna 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 December 6 (Geneva) — Permanent Committee on Patent Information (PCPI): Working Group on Search Information**
- November 26 to 29 (Geneva) — Committee of Experts on Intellectual Property in Respect of Integrated Circuits**
- December 2 to 6 (Paris) — Committee of Governmental Experts on Model Provisions for National Laws on Publishing Contracts for Literary Works (convened jointly with Unesco)**
- December 3 to 6 (Geneva) — Permanent Committee for Development Cooperation Related to Industrial Property**
- December 11 to 13 (Geneva) — Committee of Experts on the International Registration of Marks**

## **UPOV Meetings**

### **1985**

- 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**

- 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**
- October 9 to 12 (Palermo) — European Broadcasting Union (EBU) — Legal 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**

