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## World Intellectual Property Organization

### Governing Bodies of WIPO and the Unions Administered by WIPO

#### Sixteenth Series of Meetings

(Geneva, September 23 to October 1, 1985)

#### NOTE\*

The Governing Bodies of WIPO and the Unions administered by WIPO held their sixteenth series of meetings in Geneva from September 23 to October 1, 1985. The following 23 Governing Bodies held sessions:

- WIPO General Assembly, eighth session (7th ordinary);
- WIPO Conference, seventh session (7th ordinary);
- WIPO Coordination Committee, nineteenth session (16th ordinary);
- Paris Union Assembly, tenth session (7th ordinary);
- Paris Union Conference of Representatives, twelfth session (7th ordinary);
- Paris Union Executive Committee, twenty-first session (21st ordinary);
- Berne Union Assembly, seventh session (7th ordinary);
- Berne Union Conference of Representatives, seventh session (7th ordinary);
- Berne Union Executive Committee, twenty-fifth session (16th ordinary);
- Madrid Union Assembly, fifteenth session (6th ordinary);
- Madrid Union Committee of Directors, fifteenth session (6th ordinary);
- Hague Union Assembly, eighth session (5th ordinary);
- Hague Union Conference of Representatives, eighth session (5th ordinary);
- Nice Union Assembly, eighth session (7th ordinary);
- Nice Union Conference of Representatives, seventh session (7th ordinary);
- Lisbon Union Assembly, sixth session (6th ordinary);
- Lisbon Union Council, thirteenth session (13th ordinary);
- Locarno Union Assembly, eighth session (6th ordinary);
- IPC [International Patent Classification] Union Assembly, sixth session (5th ordinary);
- PCT [Patent Cooperation Treaty] Union Assembly, thirteenth session (5th ordinary);
- TRT [Trademark Registration Treaty] Union Assembly, fourth session (4th ordinary);
- Budapest Union Assembly, fifth session (3rd ordinary);
- Vienna Union Assembly, first session (1st ordinary).

Delegations of the following 86 States participated in the meetings: Algeria, Angola, Argentina, Australia, Austria, Bangladesh, Belgium, Brazil, Bulgaria, Byelorussian SSR, Cameroon, Canada, Chile, China, Colombia, Costa Rica, Cuba, Cyprus, Czechoslovakia, Democratic People's Republic of Korea, Denmark, Egypt, Finland, France, Gambia, German Democratic Republic, Germany (Federal Republic of), Ghana, Greece, Guinea, Haiti, Holy See, Honduras, Hungary, India, Indonesia, Iran (Islamic Republic of), Ireland, Israel, Italy, Ivory Coast, Japan, Libya, Luxembourg, Madagascar, Mexico, Monaco, Mongolia, Morocco, Netherlands, New Zealand, Nicaragua, Nigeria, Norway, Pakistan, Panama, Peru, Philippines, Poland, Portugal, Qatar, Republic of Korea, Romania, Rwanda, Saudi Arabia, Senegal, Somalia, Soviet Union, Spain, Sri Lanka, Sudan, Sweden, Switzerland, Thailand, Tunisia, Turkey, Ukrainian SSR, United Arab Emirates, United Kingdom, United Republic of Tanzania, United States of America, Uruguay, Venezuela, Viet Nam, Yugoslavia, Zaire. Nineteen intergovernmental organizations and 11 international non-governmental organizations were represented by observers. The list of the 273 participants, and the list of elected officers, follow this Note.

\* Prepared by the International Bureau.

**Director General.** On the basis of the nomination made by the WIPO Coordination Committee at its eighteenth session, the WIPO General Assembly, unanimously and by acclamation, appointed Dr. Arpad Bogsch as the Director General of WIPO for a further period of six years. A great number of delegations of States and representatives of intergovernmental organizations congratulated Dr. Bogsch. The text of the speech made by Dr. Bogsch on this occasion appeared, in an announcement concerning the appointment by the General Assembly, in the November 1985 issue of *Copyright*.

**Activities, Accounts, etc.** The Governing Bodies noted with approval reports by the Director General on the activities of WIPO in 1984 and from January to August 1985, and on financial matters. Twenty-eight delegations of States and two observer organizations made statements. All the delegations expressed satisfaction with the number and range of activities, as well as their positive results, carried out by the International Bureau during the period under review.

Many delegations took special note of the resources and efforts of the International Bureau devoted to development cooperation activities for the benefit of developing countries, and expressed the view that in many instances such activities would enable the intellectual property systems in those countries to play a more significant role in social, technological and economic development. In pointing to the concrete benefits to their countries of WIPO's development cooperation activities, a number of delegations stressed the consequential growing importance of intellectual property protection in developing countries and requested the International Bureau to allocate more resources for development cooperation activities. They expressed appreciation of the support, and called for its continuation and expansion, from various donor countries and organizations. The delegations of a number of States drew attention to the assistance provided by their governments to developing countries through agreements or funds-in-trust arrangements with WIPO or through bilateral arrangements, and indicated their readiness to continue such assistance. Many delegations gave specific instances of participation in WIPO's development cooperation program in both the fields of industrial property and copyright and neighboring rights, as donors or beneficiaries or, in the case of several countries, as both, in such activities as training on the job and abroad, advisory missions, national and regional courses, seminars and meetings, exchange of documentation, preparation of state-of-the-art search reports, institution building, and drafting of laws.

Many delegations also commended the International Bureau on its activities in the fields of patent information, of the promotion of innovative and inventive activities and of copyright and industrial property issues of topical interest. The delegations referred in particular to the issues of the legal protection of computer programs and integrated circuits, the industrial property protection of biotechnological inventions, harmonization of certain provisions in laws for the protection of inventions, copyright aspects of direct broadcasting by satellite, transmission by cable of television programs, piracy, and model provisions for national laws on publishing contracts for literary works.

**Program and Budget.** The Governing Bodies adopted by consensus (with the exception of the delegations of five States, which declared that they could not join the consensus) the program and budget of WIPO and the Unions for the 1986 to 1987 biennium. The budget for the "Program Unions," covered mainly by contributions from member States, is 47,128,000 Swiss francs for the biennium, and that of the "Registration Unions," covered by fees paid by applicants for international registrations of trademarks and industrial designs and applicants filing international patent applications, is 50,668,000 Swiss francs, a total of 97,796,000 Swiss francs.

The main activities (other than "registration" activities) of the approved program for 1986 and 1987 fall under the following headings:

in the field of *development cooperation with developing countries*: development of human resources, development of national and regional legislation, institution-building in developing countries, development of the effective use of the intellectual property system for the benefit of inventors, authors, the industry and the commerce of developing countries, acquisition by developing countries on improved terms of foreign technology protected by industrial property rights (licensing), the Joint International Unesco-WIPO Service for Facilitating the Access by Developing Countries to Works Protected by Copyright, protection of expressions of folklore, development in developing countries of access to the technological information contained in patent documents and its dissemination, development in developing countries of the profession of intellectual property lawyer and agent, WIPO Permanent Committees for Development Cooperation Related to Industrial Property and Related to Copyright and Neighboring Rights;

in the field of *information concerning intellectual property*: periodicals, collecting of intellectual property laws and treaties, surveys of the practical administration and application of intellectual property

laws, industrial property statistics, summaries of copyright legislation, international register of audiovisual recordings, international forum on the collective administration of copyright and neighboring rights;

in the field of *industrial property questions of topical interest*: harmonization of laws (computer programs, integrated circuits, biotechnological inventions; in the field of patents: grace period, claims and description, right to file applications, granting of filing data, formalities on which automation of procedures may have an impact, novelty effect of prior applications; in the field of trademarks: definition of "mark," registration of service marks, use requirements, well-known marks; protection of confidential information disclosed to government authorities under regulatory requirements), international protection (computer programs, integrated circuits, various questions just mentioned under "harmonization of laws," international registration of marks, possible revision of the Budapest Treaty or its Regulations), effective enforcement of industrial property rights (particularly in respect of counterfeit goods);

in the field of *copyright questions of topical interest*: the printed word, audiovisual works, phonograms, works of visual art, works of architecture, works of applied art, dramatic and choreographic works, musical works;

in the field of *patent information*: meetings of the WIPO Permanent Committee on Patent Information (PCPI) and its subsidiary bodies, streamlining and otherwise improving PCPI activities, cooperation with the International Patent Documentation Center (INPADOC);

in the field of *classifications*: improvement of the International Patent Classification, the International Classification of Goods and Services for the Purposes of the Registration of Marks and the International Classification of Industrial Designs;

in the field of the *promotion of the worldwide recognition of and respect for intellectual property*: promotion of accession to WIPO and the treaties administered by WIPO, commemoration of the centenary of the Berne Convention, celebration of the International Year (1986) of Peace and cooperation with States and international organizations.

The Governing Bodies noted the objectives and activities of a plan for the medium term of 1988 to 1991, and delegated, subject to certain conditions, to the WIPO Coordination Committee decisions concerning modifications of part of the headquarters buildings.

**Matters of General Interest in the Field of Intellectual Property.** The WIPO Convention contains a provision that the WIPO Conference shall discuss

matters of general interest in the field of intellectual property and may adopt recommendations relating to such matters, having regard for the competence and autonomy of the Unions. At its 1985 session, the Conference took action under the said provision for the first time; it discussed, and unanimously adopted two recommendations, one concerning piracy and the other cable television. Both recommend that member States provide information through the International Bureau to the 1987 session of the Conference concerning developments related to the said matters.

The first reads as follows:

*"The Conference of the World Intellectual Property Organization,*

*"Recalling its decision in 1983 that the resolutions adopted by the participants in the WIPO Worldwide Forum on the Piracy of Sound and Audiovisual Recordings and in the WIPO Worldwide Forum on the Piracy of Broadcasts and of the Printed Word, held in Geneva in March 1981 and in March 1983, respectively, should be circulated to all member States as a recommendation for implementation of appropriate anti-piracy measures at the national level,*

*"Considering that piracy undermines intellectual creativity and cultural development, with harmful effects on the lawful interests of authors, performers, producers of films, phonograms and videograms, publishers and broadcasting organizations,*

*"Noting the steps already taken by certain Governments to combat piracy,*

*"Desiring to encourage further progress towards the elimination of piracy, and to review such progress on the basis of full and up-to-date information,*

*"Recommends that the Government of each member State provide information through the International Bureau to the next ordinary session (1987) of the Conference concerning*

*(a) the extent, within its jurisdiction, of commercial piracy of works protected by copyright and neighboring rights,*

*(b) measures adopted to combat piracy, and*

*(c) the effect of the said measures."*

The second reads as follows:

*"The Conference of the World Intellectual Property Organization,*

*"Welcoming the decision of the Executive Committee of the Berne Union in 1983 that the International Bureau be requested to officially transmit to all States members of WIPO and of the Berne Union the Annotated Principles of Protection of Authors, Performers, Producers of Pho-*

*nograms and Broadcasting Organizations in Connection with Distribution of Programs by Cable together with the Report of the Subcommittees on Television by Cable,*

“Noting that the said Annotated Principles, together with the said Report, constitute a valuable inventory of the problems and of possible solutions, offering guidance to national legislators,

“Desiring to encourage progress towards solutions of the problems based on common principles, and to review such progress on the basis of full and up-to-date information,

“Recommends that the Government of each member State provide information through the International Bureau to the next ordinary session (1987) of the Conference concerning the development, within its jurisdiction, of law and practice connected with the distribution of programs by cable.”

**Centenary of the Berne Convention.** The delegation of Switzerland confirmed an invitation extended by its Government to hold a session of the Assembly of the Berne Union in Berne on September 11, 1986, in order to celebrate the centenary of the Berne Convention and to adopt a solemn declaration (prepared by the Executive Committee of the Berne Union in June 1985) reaffirming the fundamental principles of the protection of the rights of authors. The WIPO Conference and the Assembly of the Berne Union unanimously adopted a resolution concerning the Berne Convention, which, *inter alia*, invites all States not yet members of the Berne Union to treat the centenary year as the occasion for considering the advantages of adhering to it. The resolution reads as follows:

*“The Conference of the World Intellectual Property Organization and the Assembly of the Berne Union for the Protection of Literary and Artistic Works, meeting at Geneva from September 23 to October 1, 1985,*

“Recalling that September 9, 1986, will be the one hundredth anniversary of the adoption of the Berne Convention for the Protection of Literary and Artistic Works,

“Noting with satisfaction that, in the first century of the existence of the Berne Convention for the Protection of Literary and Artistic Works, the number of countries of the Union created by that Convention increased from nine (Belgium, France, Germany, Haiti, Italy, Spain, Switzerland, Tunisia and the United Kingdom) to 76 (Argentina, Australia, Austria, Bahamas, Barbados, Belgium, Benin, Brazil, Bulgaria, Burkina Faso, Cameroon, Canada, Central African Republic, Chad, Chile, Congo, Costa Rica, Cyprus, Czechoslovakia, Denmark, Egypt, Fiji, Finland,

France, Gabon, German Democratic Republic, Germany (Federal Republic of), Greece, Guinea, Holy See, Hungary, Iceland, India, Ireland, Israel, Italy, Ivory Coast, Japan, Lebanon, Libya, Liechtenstein, Luxembourg, Madagascar, Mali, Malta, Mauritania, Mexico, Monaco, Morocco, Netherlands, New Zealand, Niger, Norway, Pakistan, Philippines, Poland, Portugal, Romania, Rwanda, Senegal, South Africa, Spain, Sri Lanka, Suriname, Sweden, Switzerland, Thailand, Togo, Tunisia, Turkey, United Kingdom, Uruguay, Venezuela, Yugoslavia, Zaire, Zimbabwe),

“Referring to Article 27(2) of the Universal Declaration of Human Rights which provides that ‘Everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author,’

“Bearing in mind that, in accordance with Article 62(1) and (2) of the Charter of the United Nations, the Economic and Social Council of the United Nations may make recommendations with respect to international economic, social, cultural, educational and related matters and may make recommendations for the purpose of promoting respect for, and observance of, human rights and fundamental freedoms for all;

“Declare their conviction that the Berne Convention for the Protection of Literary and Artistic Works, by providing at the international level for the protection of the rights of authors in as effective and uniform a manner as possible, contributes to the practical implementation of the Universal Declaration of Human Rights and to cultural, social and economic development in all countries of the Berne Union;

“Invite all States not yet members of the Berne Union to treat 1986, the year of the centenary of the Berne Convention, as the occasion for considering, as a matter of high priority, the advantages of adhering to it, and

“Request the Director General to transmit this resolution to the Secretary-General of the United Nations with a view to its being brought to the attention of the Economic and Social Council of the United Nations in 1986 for the adoption of an appropriate recommendation by that Council.”

**Revision of the Paris Convention.** The Assembly of the Paris Union noted reports on progress under the machinery for consultations established by the Assembly in 1984 to prepare, on substance, the next session of the Diplomatic Conference on the Revision of the Paris Convention. The said reports covered the preparatory meetings, held in December 1984 and September 1985, between the Spokesmen of the Groups of countries participating in the Dip-

lomatic Conference and on the First Consultative Meeting held in June 1985.

**Counterfeit Goods.** The Governing Bodies concerned discussed the role of WIPO concerning counterfeit goods, on the basis of a report by the Director General dealing, *inter alia*, with the relevant activities carried out within the General Agreement on Tariffs and Trade (GATT). The WIPO General Assembly adopted a decision inviting the Director General to convene an intergovernmental group of experts to examine the relevant provisions of the Paris Convention in order to determine to what extent such provisions can adequately provide for the efficient protection of industrial property and to recommend provisions for national legislation; the results of the group of experts are to be reported to the WIPO General Assembly in 1987.

**Agreements with Intergovernmental Organizations; Admission of Observers.** The WIPO Coordination Committee approved an agreement between WIPO and the African Regional Centre for Technology (ARCT), the African Intellectual Property Organization (AIPO) and the Industrial Property Organization for English-Speaking Africa (ESARIPO), and agreements with the Arab League Educational, Cultural and Scientific Organization (ALECSO), the Permanent Secretariat of the General Treaty on Central American Integration (SIECA) and the Latin-American Integration Association (LAIA). The Governing Bodies concerned accorded observer status to the ARCT, the European Association of Advertising Agencies (EAAA), the European Tape Industry Council (ETIC), the Ibero-American Television Organization (OTI), the Max Planck Institute for Foreign and International Patent, Copyright and Competition Law and the World Blind Union (WBU).

**United Nations Resolutions; International Year of Peace.** The WIPO General Assembly noted with approval activities performed or planned in respect of various resolutions and decisions of the General Assembly of the United Nations. In particular, the WIPO General Assembly unanimously approved measures to mark 1986 as the "International Year of Peace" declared by the General Assembly of the United Nations (dissemination of the text of a resolution — see below —, speech by the Director General, issuance of a WIPO medal inscribed "Authors and Inventors for World Peace," publication of a collection of articles), and adopted a resolution marking 1986 as the International Year of Peace. The said resolution reads as follows:

*"The States members of the General Assembly of the World Intellectual Property Organization,*

*"Conscious of the enormous influence that authors and others connected with the creation of books, newspaper articles, plays, motion pictures, radio and television programs and other works in the domain of literature and art have on public opinion and the spiritual life of the world community,*

*"Conscious of the fact that harmonious co-operation among inventors and the industry of the various countries, and intensive international trade among countries, governed by the rules of the international treaties administered by the World Intellectual Property Organization, increase the desire of the countries to live in peace with each other,*

*"Recalling vast creative resources of mankind and the necessity to use them in order to solve such urgent global problems as elimination of economic backwardness of many countries of the world, saving of millions of people from hunger and poverty, protection of the environment,*

*"Recognizing that all these problems can be resolved only if Peace is maintained,*

*"1. Appeal to all States to use the results of intellectual creative activity, achievements of scientific and technical progress of inventions and discoveries for the benefit of mankind.*

*"2. Invite the authors and inventors of the world, and all others who are involved in the creation, production and distribution of literary and artistic works and of industrial products and other technological achievements, protected by intellectual property, to use their spiritual and material influence for the promotion of Peace among all the nations and peoples of the world."*

**Election of the Members of the Executive Committees of the Paris and Berne Unions, Designation of the Ad Hoc Members of the WIPO Coordination Committee, and Election of the Members of the WIPO Budget Committee.** The Assemblies and Conferences of Representatives of the Paris and Berne Unions elected, each as far as it was concerned, the members of the Executive Committees of the Paris and Berne Unions, and the WIPO Conference designated the *ad hoc* members of the WIPO Coordination Committee. The resulting membership of those three Committees is as follows:

*Paris Union Executive Committee:* Algeria, Argentina, Australia, Austria, Brazil, Bulgaria, China, Cuba, Denmark, Egypt, Germany (Federal Republic of), Indonesia, Italy, Japan, Nigeria,\* Philippines, Poland, Soviet Union, Switzerland (*ex officio*), United Republic of Tanzania, United States of America, Uruguay, Yugoslavia, Zaire.

\* Associate member.

*Berne Union Executive Committee:* Canada, Chile, Czechoslovakia, France, German Democratic Republic, Hungary, India, Ivory Coast, Mexico, Morocco, Netherlands, Senegal, Sweden, Switzerland (*ex officio*), Tunisia, Turkey,\* United Kingdom, Venezuela, Zimbabwe.

*WIPO Coordination Committee:* Algeria, Angola,\*\* Argentina, Australia, Austria, Brazil, Bulgaria, Canada, Chile, China, Colombia,\*\* Cuba, Czechoslovakia, Denmark, Egypt, France, German Democratic Republic, Germany (Federal Republic of), Hungary, India, Indonesia, Italy, Ivory Coast, Ja-

pan, Mexico, Morocco, Netherlands, Nicaragua,\*\* Nigeria, Philippines, Poland, Saudi Arabia,\*\* Senegal, Soviet Union, Sweden, Switzerland (*ex officio*), Tunisia, Turkey, United Kingdom, United Republic of Tanzania, United States of America, Uruguay, Venezuela, Yugoslavia, Zaire, Zimbabwe.

The WIPO General Assembly and the Assemblies of the Paris and Berne Unions elected the following States as members of the WIPO Budget Committee: Brazil, Cameroon, Canada, Cuba, Czechoslovakia, Egypt, France, Germany (Federal Republic of), India, Japan, Soviet Union, Sri Lanka, United States of America. Switzerland continues to be an *ex officio* member.

\*\* *Ad hoc* member.

## ANNEX

### LIST OF PARTICIPANTS\*

#### I. States

**Algeria** <sup>1, 2, 3, 4, 6, 10, 14, 16</sup>: M. Albane; H. Redouane; F. Bouzid; H. Touati.

**Angola** <sup>2</sup>: A.A. Dos Santos; F. Viegas.

**Argentina** <sup>1, 2, 3, 4, 6, 7</sup>: O. Lopéz Noguero; R. Villambrosa; J. Viganó; N. Fasano.

**Australia** <sup>1, 2, 3, 4, 7, 9, 14, 19, 20</sup>: P.A. Smith; N.D. Campbell.

**Austria** <sup>1, 2, 3, 4, 6, 7, 10, 14, 19, 20, 22</sup>: O. Leberl; E. Kubesch.

**Bangladesh** <sup>2</sup>: A.H.S.A. Karim; H. Rahman; L.A. Choudhury.

**Belgium** <sup>1, 2, 4, 7, 10, 12, 14, 19, 20, 22</sup>: L. Wuyts.

**Brazil** <sup>1, 2, 3, 4, 6, 7, 19, 20</sup>: P. Nogueira Batista; G. Ferreira Martins; P.R. França.

**Bulgaria** <sup>1, 2, 3, 4, 7, 9, 10, 16, 20, 22</sup>: K. Iliev; Y. Markova; A. Angelov; S. Boyadjieva; G. Sarakinov.

**Byelorussian SSR** <sup>2</sup>: V. Grekov.

**Cameroon** <sup>1, 2, 4, 7, 20</sup>: G. Towo Atangana.

**Canada** <sup>1, 2, 3, 4, 7, 9</sup>: J.H.A. Gariépy; P.A. van Brakell; J. Butler.

**Chile** <sup>1, 2, 3, 7, 9</sup>: W. Carrasco; L.E. Cádiz; F. Pérez.

**China** <sup>1, 2, 3, 4</sup>: Huang Kunyi; Hao Zhixin; Ge Bo; Qiao Dexi; Li Yuanmin.

**Colombia** <sup>2, 3</sup>: H. Charry Samper; A. Gamboa Alder; L.A. Luna.

**Costa Rica** <sup>1, 2, 3, 7, 9</sup>: E. Soley Soler; J. Rhenan-Segura.

**Cuba** <sup>1, 2, 4, 16</sup>: M. Fernández Finalé; M. Jiménez Aday.

**Cyprus** <sup>1, 2, 4, 7</sup>: C. Yiangou.

**Czechoslovakia** <sup>1, 2, 3, 4, 7, 9, 10, 14, 16, 18, 19</sup>: M. Bělohávek; J. Prošek; A. Pečara.

**Democratic People's Republic of Korea** <sup>1, 2, 4, 10, 20</sup>: Pak Chang Gol; Kim Hong Bom; Youn Myong Djin.

\* A list containing the titles and functions of the participants may be obtained from the International Bureau.

<sup>1</sup> WIPO General Assembly.

<sup>2</sup> WIPO Conference.

<sup>3</sup> WIPO Coordination Committee.

<sup>4</sup> Paris Union Assembly.

<sup>5</sup> Paris Union Conference of Representatives.

<sup>6</sup> Paris Union Executive Committee.

<sup>7</sup> Berne Union Assembly.

<sup>8</sup> Berne Union Conference of Representatives.

<sup>9</sup> Berne Union Executive Committee.

<sup>10</sup> Madrid Union Assembly.

<sup>11</sup> Madrid Union Committee of Directors.

<sup>12</sup> Hague Union Assembly.

<sup>13</sup> Hague Union Conference of Representatives.

<sup>14</sup> Nice Union Assembly.

<sup>15</sup> Nice Union Conference of Representatives.

<sup>16</sup> Lisbon Union Assembly.

<sup>17</sup> Lisbon Union Council.

<sup>18</sup> Locarno Union Assembly.

<sup>19</sup> IPC [International Patent Classification] Union Assembly.

<sup>20</sup> PCT [Patent Cooperation Treaty] Union Assembly.

<sup>21</sup> TRT [Trademark Registration Treaty] Union Assembly.

<sup>22</sup> Budapest Union Assembly.

<sup>23</sup> Vienna Union Assembly.

- Denmark** 1, 2, 4, 7, 14, 18, 19, 20, 22: P.L. Thoft; L. Østerborg.
- Egypt** 1, 2, 3, 4, 6, 7, 10, 13, 19: S. Alfarargi; M. Hilal; W. Kamil.
- Finland** 1, 2, 4, 7, 14, 18, 19, 20, 22: E. Wuori; R. Resch.
- France** 1, 2, 3, 4, 7, 9, 10, 12, 14, 16, 18, 19, 20, 22, 23: J.-C. Combaldieu; M. Hiance; A. Chapard; L. Nicodème; N. Renaudin; J.-M. Momal.
- Gambia** <sup>2</sup>: M.A. Ceesay.
- German Democratic Republic** 1, 2, 3, 4, 6, 7, 10, 13, 14, 18, 19: J. Hemmerling; D. Schack; K. Stoecker; M. Foerster.
- Germany (Federal Republic of)** 1, 2, 3, 4, 6, 7, 10, 12, 14, 19, 20, 22: A. Krieger; I. Koch; E. Merz; B. Bockmair; E. Biskup, R. Hilger.
- Ghana** 1, 2, 4: K. Duwiejuah.
- Greece** 1, 2, 4, 7: A. Cambitsis; P. Geroulakos.
- Guinea** 1, 2, 4, 7: F.M. Camara; M. Touré; F. Bangoura.
- Haiti** 1, 2, 4, 17: G. Charles; F. Laroche.
- Holy See** 1, 2, 4, 7, 13: O. Rouillet.
- Honduras** <sup>2</sup>: J.M. Maldonado Munos; J.M. Ritter Arita; R. Castro Nuñez.
- Hungary** 1, 2, 3, 4, 7, 9, 10, 12, 14, 16, 18, 20, 22: G. Pusztai; G. Boytha; L. Mohácsy; J. Bobrowszky; P. Gyertyánfy.
- India** 1, 2, 3, 7, 9: J.D. Gupta; S.R. Tayal.
- Indonesia** 1, 2, 4, 13: P. Koentarlo; N. Wisnoemoerti; D. Dju-baedah.
- Iran (Islamic Republic of)** <sup>5</sup>: A. Hachemi; M. Zargar-Elahi; H. Rounaghi; A. Hassani.
- Ireland** 1, 2, 4, 7, 14, 18, 19: M. Nugent.
- Israel** 1, 2, 4, 7, 14, 16, 19: M. Gabay.
- Italy** 1, 2, 3, 4, 7, 9, 10, 14, 16, 18, 19, 20: M. Fortini; M.G. Del Gallo Rossoni; G. Aversa; T. Diomedea.
- Ivory Coast** 1, 2, 3, 4, 6, 7: F.K. Ekra.
- Japan** 1, 2, 3, 4, 6, 7, 19, 20, 22: M. Uga; T. Kawaguchi; Y. Oyama; H. Sato; S. Ono; Y. Masuda; S. Kamogawa; S. Shiozaki; K. Shimizu.
- Libya** 1, 2, 4, 7: G. El Ferjani; M. Swei Massaud.
- Luxembourg** 1, 2, 4, 7, 10, 12, 14, 19, 20, 23: F. Schlessler.
- Madagascar** 4, 8, 20: P. Verdoux.
- Mexico** 1, 2, 3, 4, 7, 9, 17: A. Loredó Hill; A. Arce de Jeannet.
- Monaco** 1, 2, 4, 7, 10, 12, 14, 19, 20: J.-P. Campana.
- Mongolia** 1, 2, 3, 4, 10: M. Dash; S. Yumjav.
- Morocco** 1, 2, 3, 4, 7, 9, 10, 13, 14: A. Kandil; M.S. Abderrazik; A. Bendaoud.
- Netherlands** 1, 2, 3, 4, 6, 7, 10, 12, 14, 18, 19, 20, 23: J.J. Bos; J.H. Van Kreveld.
- New Zealand** 1, 2, 4, 8: A.M. Bracegirdle; H.M. Riddell.
- Nicaragua** <sup>2</sup>: N.J. Miranda.
- Nigeria** <sup>5</sup>: A.F. Okoh.
- Norway** 1, 2, 3, 4, 6, 7, 14, 18, 19, 20: A.G. Gerhardsen; P.A. Martin-sen; E. Andhøy.
- Pakistan** 1, 2, 7: A. Ezdi; Z. Akram.
- Panama** <sup>2</sup>: I. Aizpúrua Pérez.
- Peru** <sup>2</sup>: R. Villarán Koechlin; A. Thornberry Naggy.
- Philippines** 1, 2, 4, 7, 22: T.T. Syquia.
- Poland** 1, 2, 3, 4, 6, 8: J. Szomański; J. Zawalonka; D. Januszkiewicz; M. Stapór-Romańska.
- Portugal** 1, 2, 3, 4, 6, 7, 11, 14, 17, 19: A. Costa Lobo; J. Mota Maia; R. Morais Serrão; A.M. Pereira.
- Qatar** <sup>2</sup>: M.S.R. Al-Kuwari; A. Barre.
- Republic of Korea** 1, 2, 4, 20: S.-J. Hong; J.-U. Chae; T.-C. Choi.
- Romania** 1, 2, 4, 7, 10, 20: I. Marinescu; V. Faur.
- Rwanda** 1, 2, 4, 7: M. Ngirira; A. Sebudanga; B. Murekezi.
- Saudi Arabia** <sup>2</sup>: H.S.O. Sindi.
- Senegal** 1, 2, 3, 4, 7, 9, 12, 20: A. Sène; S.C. Konate.
- Somalia** <sup>2</sup>: F. Isak Bihi; A.M. Najib.
- Soviet Union** 1, 2, 3, 4, 6, 10, 14, 18, 19, 20, 21, 22: I.S. Nayashkov; V.F. Zubarev; I.A. Gyrdymov; E.M. Buryak; E.P.E. Dapkounas.
- Spain** 1, 2, 4, 7, 10, 13, 14, 18, 19, 22: J. Delicado Montero-Ríos; M. Pérez del Arco; D.J. Martínez Martín; L. Martínez García; A. Casado Cerviño; E. de la Puente García.
- Sri Lanka** 1, 2, 4, 7, 20: J. Dhanapala; P. Kariyawasam.
- Sudan** 1, 2, 3, 4, 10, 20: M.I. El Deeb; O. Shouna; Y. Abdelgalil Mahmoud.
- Sweden** 1, 2, 4, 7, 14, 18, 19, 20, 22, 23: S. Niklasson; H. Olsson; I. Schalin; A.-K. Wegmann.
- Switzerland** 1, 2, 3, 4, 6, 7, 9, 10, 12, 14, 18, 19, 20, 22: J.-L. Comte; J.-P. Vettovaglia; A. Rosenkranz; J.-M. Souche.
- Thailand** <sup>7</sup>: N. Vejajiva; S. Kanchanalai; Y. Phuangrach; S. Devahastin; N. Punyakij.
- Tunisia** 1, 2, 3, 4, 7, 9, 11, 13, 15, 16, 23: F. Mebazaa; K. El Hafdhi; A. Ben Gaied; H. Boufares; K. Gueblaoui; T. Ben Slama; B. Zgaya.
- Turkey** 1, 2, 3, 4, 8, 9: M. Çetin; T. Tarlan; A. Arsin; E. Apakan; E. Karaahmet.
- Ukrainian SSR** <sup>2</sup>: A. Ozadovski.

**United Arab Emirates**<sup>2</sup>: A.-R. Al Shamlan; A.A. Al Burahma; Y. Hureiz.

**United Kingdom**<sup>1, 2, 3, 4, 7, 9, 14, 19, 20, 22</sup>: I.J.G. Davis; A. Sugden; M. Todd; T. David; A.G. Toothe.

**United Republic of Tanzania**<sup>1, 2, 3, 4, 6</sup>: E.E.E. Mtango.

**United States of America**<sup>1, 2, 3, 4, 6, 14, 19, 20, 22</sup>: D.J. Quigg; M.K. Kirk; H.J. Winter; L.J. Schroeder; P. Behnke; J. Richardson.

**Uruguay**<sup>1, 2, 3, 4, 6, 7</sup>: C.A. Fernández Ballesteros.

**Venezuela**<sup>1, 2, 7</sup>: A.R. Taylhardat; O. García-García.

**Viet Nam**<sup>1, 2, 3, 4, 6, 10, 13</sup>: Nguyen Van Vien; Nguyen Xuan Nguyen; Vu Huy Tan.

**Yugoslavia**<sup>1, 2, 3, 4, 6, 7, 10, 14, 18</sup>: B. Zarković; M. Manigodić.

**Zaire**<sup>1, 2, 3, 4, 7, 9</sup>: Monshemvula Onvuane Ntangu.

## II. Intergovernmental Organizations

**United Nations (UN)**: A. Djermakoye. **United Nations Conference on Trade and Development (UNCTAD)**: R.R.R. Dhanjee. **United Nations Development Programme (UNDP)**: E. Bonev. **Food and Agriculture Organization of the United Nations (FAO)**: J.C. Vignaud; A. Purcell. **International Labour Organisation (ILO)**: C. Privat. **United Nations Educational, Scientific and Cultural Organization (UNESCO)**: A. Amri. **World Meteorological Organization (WMO)**: A. Elamly. **Secretariat of the General Agreement on Tariffs and Trade (GATT)**: P.J. Williams; A. Otten. **African Intellectual Property Organization (AIPO)**: G. Meyo-M'Emane. **Arab League Educational, Cultural and Scientific Organization (ALECSO)**: A. Derradji. **Benelux Designs Office (BBDM)**: P. Rome. **Benelux Trademark Office (BBM)**: P. Rome. **Commission of the European Communities (CEC)**: B. Schwab. **Council for Mutual Economic Assistance (CMEA)**: I. Tcherviakov. **European Free Trade Association (EFTA)**: J.G. Petersson. **European Patent Organisation (EPO)**: P. Braendli; P.G.M. Zwartkruis; G.D. Kolle. **Interim Committee for the Community Patent**: H.W. Kunhardt. **League of Arab States (LAS)**: M. El May; M. Oreibi; Z. Tlili. **Organization of African Unity (OAU)**: M.H. Tunis.

## III. Non-Governmental Organizations

**European Association of Industries of Branded Products (AIM)**: G.F. Kunze. **European Broadcasting Union (EBU)**: W. Rumphorst. **European Communities Trade Mark Practitioners' Association (ECTA)**: F. Gevers; C. Kik. **International Association for the Protection of Industrial Property (AIPPI)**: G.E. Kirker. **International Chamber of Commerce (ICC)**: J.M.W. Buraas. **International Confederation of Free Trade Unions (ICFTU)**: G. Ryder. **International Federation of Industrial Property Attorneys (FICPI)**: H. Bardehle. **International Federation of Inventors' Associations (IFIA)**: K.E. Sundstrom. **International Organisation for Standardization (ISO)**: J. Blanc. **International Publishers Association (IPA)**: J.A. Koutchoumow. **Union of European Practitioners in Industrial Property (UEPIP)**: C. Kik.

## IV. Officers

WIPO General Assembly

*Chairman*: J.-L. Comte (Switzerland). *Vice-Chairmen*: O. López Noguero (Argentina); I.S. Nayashkov (Soviet Union).

WIPO Conference

*Chairman*: J. Dhanapala (Sri Lanka). *Vice-Chairmen*: P.L. Thoft (Denmark); M. Bělohávek (Czechoslovakia).

WIPO Coordination Committee

*Chairman*: A. Loredó Hill (Mexico). *Vice-Chairmen*: J. Szomański (Poland); J.H.A. Gariépy (Canada).

Paris Union Assembly

*Chairman*: Huang Kunyi (China). *Vice-Chairmen*: O. Leberl (Austria); J. Hemmerling (German Democratic Republic).

Paris Union Conference of Representatives

*Chairman*: .... (Syria). *Vice-Chairmen*: S.A. Hachemi (Iran (Islamic Republic of)); A.F. Okoh (Nigeria).

Paris Union Executive Committee

*Chairman*: A. Krieger (Germany (Federal Republic of)). *Vice-Chairmen*: J. Szomański (Poland); E.E.E. Mtango (United Republic of Tanzania).

Berne Union Assembly

*Chairman*: G. Pusztai (Hungary). *Vice-Chairmen*: S. Nilsson (Sweden); N. Vejjajiva (Thailand).

Berne Union Conference of Representatives

*Chairman*: P. Verdoux (Madagascar). *Vice-Chairmen*: A.M. Bracegirdle (New Zealand); J. Szomański (Poland).

Berne Union Executive Committee

*Chairman*: J.D. Gupta (India). *Vice-Chairmen*: J.-C. Combaldieu (France); J. Hemmerling (German Democratic Republic).

Madrid Union Assembly

*Chairman*: M. Fortini (Italy). *Vice-Chairmen*: M. Albane (Algeria); I.S. Nayashkov (Soviet Union).

Madrid Union Committee of Directors

*Chairman*: A. Ben Gaied (Tunisia). *Vice-Chairmen*: J. Mota Maia (Portugal); .... (San Marino).

Hague Union Assembly

*Chairman*: J.-C. Combaldieu (France). *Vice-Chairmen*: ....

Hague Union Conference of Representatives

*Chairman*: J. Hemmerling (German Democratic Republic). *Vice-Chairmen*: M. Hilal (Egypt); J. Delicado Montero-Ríos (Spain).

Nice Union Assembly

*Chairman*: J. Myall (United Kingdom). *Vice-Chairmen*: ....

Nice Union Conference of Representatives

*Chairman*: .... *Vice-Chairman*: A. Ben Gaied (Tunisia).

## Lisbon Union Assembly

*Chairman:* K. Iliev (Bulgaria). *Vice-Chairmen:* ... (Gabon); M. Fortini (Italy).

## Lisbon Union Council

*Chairman:* J. Mota Maia (Portugal). *Vice-Chairmen:* J.F. Laroche (Haiti); A. Loredó Hill (Mexico).

## Locarno Union Assembly

*Chairman:* B. Zarković (Yugoslavia). *Vice-Chairmen:* E. Wuori (Finland); G. Pusztai (Hungary).

## IPC [International Patent Classification] Union Assembly

*Chairman:* D.J. Quigg (United States of America). *Vice-Chairmen:* P.R. França (Brazil); I. S. Nayashkov (Soviet Union).

## PCT [Patent Cooperation Treaty] Union Assembly

*Chairman:* P.A. Smith (Australia). *Vice-Chairmen:* K. Iliev (Bulgaria); I. Marinescu (Romania).

## TRT [Trademark Registration Treaty] Union Assembly

*Chairman:* I.S. Nayashkov (Soviet Union). *Vice-Chairmen:* .... (Congo); .... (Togo).

## Budapest Union Assembly

*Chairman:* M. Uga (Japan). *Vice-Chairmen:* L. Wuyts (Belgium); K. Iliev (Bulgaria).

## Vienna Union Assembly

*Chairman:* J.J. Bos (Netherlands). *Vice-Chairmen:* F. Schleser (Luxembourg); A. Ben Gaied (Tunisia).

## V. International Bureau of WIPO

A. Bogsch (*Director General*); K. Pfanner (*Deputy Director General*); M. Porzio (*Deputy Director General*); L.E. Kostikov (*Deputy Director General*); C. Masouyé (*Director, Public Information and Copyright Department*); S. Alikhan (*Director, Developing Countries Division (Copyright)*); L. Baeumer (*Director, Industrial Property Division*); P. Claus (*Director, Patent Information and Classification Division*); F. Curchod (*Director, PCT Division (Patent Cooperation Treaty)*); M. Ficsor (*Director, Copyright Law Division*); R. Harben (*Director, Public Information Division*); K. Idris (*Director, Development Cooperation and External Relations Bureau for Arab Countries*); L. Kadirgamar (*Director, Development Cooperation and External Relations Bureau for Asia and the Pacific*); T.A.J. Keefer (*Director, Administrative Division*); G. Ledakis (*Legal Counsel*); E. Pareja (*Director, Development Cooperation and External Relations Bureau for Latin America and the Caribbean*); I. Thiam (*Director, Development Cooperation and External Relations Bureau for Africa and Western Asia*); P. Mangué (*Head, Trademark and Industrial Designs Registration Division*); B. Davoudi (*Head, Conference and General Services Section*); I. Pike-Wanigasekara (*Senior Assistant, Office of the Director General*); G. Yu (*Senior Assistant, Office of the Director General*); A. Damond (*Head, Registry, Documents and Meetings Service*).

## Notifications

### International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations

#### MONACO

##### Ratification

The Secretary-General of the United Nations, in a letter dated October 28, 1985, informed the Director General of the World Intellectual Property Organization that the Government of the Principality of Monaco deposited, on September 6, 1985, its instrument of ratification of the International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations, done at Rome on October 26, 1961.

The instrument of ratification contains the following reservations:

1. With regard to the protection of producers of phonograms, Monaco will not apply the criterion of publi-

cation but only the criteria of nationality and fixation, in accordance with Article 5, paragraph 3.

2. With regard to the protection of phonograms, in accordance with Article 16, paragraph 1(a)(i), Monaco will not apply any of the provisions of Article 12.

3. With regard to broadcasting organizations, and pursuant to the provisions of Article 16, paragraph 1(b), Monaco will not apply the provisions of Article 13(d) concerning protection against communication to the public of television broadcasts. (*Translation*)

In accordance with Article 25, paragraph 2, the Convention will enter into force for Monaco three months after the date of deposit of its instrument of ratification, that is, on December 6, 1985.

# National Legislation

## GHANA

### Copyright Law, 1985

(of March 21, 1985)\*

#### ARRANGEMENT OF SECTIONS

##### *Section*

- |  |   |
|--|---|
| <ol style="list-style-type: none"> <li>1. Authors of specified works entitled to copyright protection</li> <li>2. Works eligible for copyright</li> <li>3. Ideas, concepts, etc. not protected by copyright</li> <li>4. Copyright in works of the Government of Ghana and international bodies</li> <li>5. Works of Ghanaian folklore protected</li> <li>6. Rights of authors</li> <li>7. Employed authors</li> <li>8. Public benefit works</li> <li>9. Programme-carrying signals</li> <li>10. Duration of copyright in case of individuals</li> <li>11. Duration of copyright in case of bodies corporate</li> <li>12. Duration of copyright in case of anonymous works</li> <li>13. Duration of copyright in case of cinematographic works, etc.</li> <li>14. Duration of copyright in case of programme-carrying signals</li> <li>15. Duration of copyright in case of photographic works</li> <li>16. Duration of copyright in case of folklore</li> <li>17. Enforcement of author's rights under section 6(2)</li> <li>18. Permitted uses of works protected by copyright</li> <li>19. Transfer of copyright, etc.</li> <li>20. Ephemeral recordings</li> <li>21. Compulsory translation licence</li> <li>22. Scope and conditions of compulsory translation licence</li> <li>23. Translation licence for broadcasting</li> <li>24. Compulsory reproduction licence</li> <li>25. Scope and conditions of compulsory reproduction licence</li> <li>26. Reproduction licence for audio-visual fixations</li> <li>27. Production of copies of records</li> <li>28. Neighbouring rights not to affect copyright</li> </ol> | <ol style="list-style-type: none"> <li>29. Rights of performers</li> <li>30. Authorisation relating to broadcasts</li> <li>31. Performer's right to contract</li> <li>32. Authorisation by performer</li> <li>33. Rights of phonogram producers</li> <li>34. Obligations of phonogram producers</li> <li>35. Notice of protection of rights of phonogram producers</li> <li>36. Phonographic performance in public places</li> <li>37. Rights of broadcasting organisations</li> <li>38. Limitation on broadcasting rights</li> <li>39. Public domain</li> <li>40. Registration of works, etc.</li> <li>41. The Copyright Office</li> <li>42. Society of authors</li> <li>43. Infringement of copyright, etc.</li> <li>44. Civil remedies</li> <li>45. Offences relating to copyright, etc.</li> <li>46. Offences relating to folklore</li> <li>47. Offences by bodies of persons</li> <li>48. Compensation to victim of offence</li> <li>49. Arbitral proceedings</li> <li>50. Extension of reciprocal protection</li> <li>51. Amendment of Schedule</li> <li>52. Regulations</li> <li>53. Interpretation</li> <li>54. Repeal</li> <li>55. Saving</li> </ol> |
|--|---|

#### *Authors of specified works entitled to copyright protection*

1. The author of any work specified in section 2 of this Law shall be entitled to copyright and such protection as are provided in relation to such work under this Law.

#### *Works eligible for copyright*

2. (1) Subject to the provisions of this section the following works are eligible for copyright—
  - (a) literary works,
  - (b) artistic works,
  - (c) musical works,

\* Published in the *Gazette* of June 21, 1985.

- (d) sound recordings,
- (e) broadcasts,
- (f) cinematographic works,
- (g) choreographic works,
- (h) derivative works,
- (i) programme-carrying signals.

(2) A work is not eligible for copyright unless—

- (a) it is original in character;
- (b) it has been written down, recorded or otherwise reduced to material form; and
- (c) it is—
  - (i) created by a citizen of Ghana or a person who is ordinarily resident in Ghana;
  - (ii) first published in Ghana; and in the case of a work first published outside Ghana is subsequently published in Ghana within thirty days of its publication outside Ghana; or
  - (iii) a work in respect of which Ghana has an obligation under an international treaty to grant protection.

(3) The eligibility of a work for copyright is not affected by its artistic quality, the purpose of the author in creating it or by the manner or form of its expression.

(4) For the purposes of this section a work is original if it is the product of the independent efforts of the author.

*Ideas, concepts, etc. not protected by copyright*

3. Copyright under this Law does not extend to ideas, concepts, procedures, methods or other things of a similar nature.

*Copyright in works of the Government of Ghana and international bodies*

4. Where a work specified in section 2 of this Law is made by or under the direction or control of the Government of Ghana or a prescribed international body copyright in that work shall vest in the Government or that body.

*Works of Ghanaian folklore protected*

5. (1) Works of Ghanaian folklore are hereby protected by copyright.

(2) The rights of authors under this Law in such folklore are hereby vested in the Republic of Ghana as if the Republic were the original creator of the works.

(3) Where a person intends to use any such folklore other than for a use permitted under section 18 of this Law, he shall apply to the Secretary so to do, and shall pay such fee as may be prescribed in relation thereto.

(4) Any sums of money accruing from the use of folklore under this section shall be paid into a fund established by the Secretary and shall be used for the promotion of institutions for the benefit of authors, performers and translators.

*Rights of authors*

6. (1) The author of any work which is protected by copyright shall have the exclusive right in respect of such work to do or authorise the doing of any of the following acts—

- (a) the reproduction of the work;
- (b) the translation, adaptation, arrangement or any other transformation of the work; or
- (c) the communication of the work to the public by performance, broadcasting or any other means.

(2) In addition to the rights referred to in subsection (1) of this section, the author of any work which is protected by copyright shall have the sole right—

- (a) to claim authorship of his work and, in particular, to demand that his name or pseudonym be mentioned when any of the acts referred to in subsection (1) of this section is done in relation to such work;
- (b) to object to, and to seek relief in connection with any distortion, mutilation or other modification of the work where such act would be or is prejudicial to his honour or reputation or where the work is discredited thereby;
- (c) to alter the work at any time.

*Employed authors*

7. Where a person creates a work—

- (a) in the course of his employment by another person;
- (b) under a contract for services; or
- (c) on commission by another person,

then in the absence of any enactment or contract to the contrary the copyright in respect of that work shall vest in the employer or the person who commissions the work.

*Public benefit works*

8. (1) The rights referred to in section 6 of this Law shall not vest in any person in respect of the following works—

- (a) an enactment;
- (b) a decision made by a court or tribunal established under any enactment for the administration of justice in Ghana;
- (c) a report made by a commission of enquiry appointed by the Government or any agency of the Government and published by the Government;

- (d) news, namely a report of fresh events or current information made by the media, whether published in written form, by broadcast, or communicated to the public by any other means.

(2) The Republic of Ghana is the trustee for the public of the works specified in subsection (1) of this section.

*Programme-carrying signals*

9. Copyright in programme-carrying signals shall be the exclusive right to prevent the distribution in Ghana or from Ghana of any signals by any distributor for whom those signals were not intended by their author, but it shall not be an infringement of the right of the author where the use of the work involves—

- (a) the reproduction in any material form, the communication to the public and the broadcasting of the whole work or a substantial part thereof, either in its original form or in any form recognisably derived from the original by way of fair dealing for the purposes of scientific research, private use, criticism or review or the reporting of current events;
- (b) the broadcasting of the work if the broadcast is intended to be used for purposes of systematic instructional activities;
- (c) the reproduction of a broadcast and the use of such reproduction in any educational institution or for the systematic instructional activities of any such educational institution; or
- (d) its use for the purpose of a judicial proceeding or of any report of such proceeding.

*Duration of copyright  
in case of individuals*

10. (1) Unless otherwise provided in this Law, the rights of the author referred to in subsection (1) of section 6 of this Law are protected during the life of the author and 50 years after his death.

(2) Where a work is of joint authorship, the rights of the author referred to in subsection (1) of section 6 of this Law are protected during the life of the last surviving authors and 50 years after his death.

*Duration of copyright  
in case of bodies corporate*

11. Where the copyright in a work is owned by a public corporation or other body corporate the term of protection shall be 50 years commencing from the date on which the work was made public.

*Duration of copyright  
in case of anonymous works*

12. Where a work is published anonymously or under a pseudonym the rights of the author referred to in subsection (1) of section 6 of this Law are protected until the expiration of 50 years commencing from the date on which the work was first published, but where before the expiration of that period the identity of the author is known or is no longer in doubt such rights are protected during the life of the author and 50 years after his death.

*Duration of copyright  
in case of cinematographic works, etc.*

13. In the case of a cinematographic work, sound recording or broadcast the rights of the author referred to in subsection (1) of section 6 of this Law are protected until the expiration of 50 years commencing from the date of making of the work, or where the work is made available to the public during such period with the consent of the author until the expiration of 50 years commencing from the date of its communication of the public.

*Duration of copyright  
in case of programme-carrying signals*

14. In the case of programme-carrying signals the rights of the author referred to in section 9 of this Law are protected until the expiration of 50 years commencing from the date of the making of the recording.

*Duration of copyright  
in case of photographic works*

15. In the case of a photographic work the rights of the author referred to in subsection (1) of section 6 of this Law are protected until the expiration of 50 years from the date of the making of the work.

*Duration of copyright  
in case of folklore*

16. The rights vested in the Republic of Ghana in respect of folklore under section 5 of this Law exist in perpetuity.

*Enforcement of author's rights  
under section 6(2)*

17. The rights vested in the author of a work under subsection (2) of section 6 of this Law exist in perpetuity and are enforceable by the author or his successors in title whether or not the rights vested in the author under subsection (1) of section 6 of this Law are still vested in the author or his successors in title.

*Permitted uses of works  
protected by copyright*

18. (1) The use of a literary, artistic or scientific work either in the original language or in translation shall not be an infringement of the right of the author in that work and shall not require the consent of the owner of the copyright where such use involves—

- (a) the reproduction, translation, adaptation, arrangement or other transformation of the work for the user's use only, if the work has been made public;
- (b) subject to subsection (2) of this section, the inclusion with an indication of the source and the name of the author of quotations from such work in another work, including quotations from articles in newspapers or periodicals in the form of press summaries, if the work from which the quotations are taken has been made public;
- (c) subject to subsection (3) of this section, the utilization of the work by way of illustration in publications, broadcasts or sound or visual recordings for teaching, to the extent justified by the purpose, or the communication for teaching purposes of the work broadcast for use in educational institutions, or for professional training or public education, if the work has been made public;
- (d) in the case of—
  - (i) an article published in one or more newspapers or periodicals on current economic, political or religious topics; or
  - (ii) a broadcast on current economic, political or religious topics;
 

the reproduction of the article or broadcast in the press or the communication of the article or broadcast to the public, if the source of the article or broadcast when so used is clearly indicated, unless the article or broadcast, when first published or made, is accompanied by an express condition prohibiting its use without consent;
- (e) the reproduction or making available to the public by means of photographic works, audio-visual works or other means of communication of any work that can be seen or heard in the course of the reporting of fresh events or new information, if—
  - (i) the work is reproduced or made available for the purpose of reporting by a news medium of fresh events or of new information; and
  - (ii) the use of the work does not extend beyond that justified by the purpose of

keeping the public informed of current events;

- (f) the reproduction of works of art or architecture in an audio-visual work for cinema or television or in a broadcast by television and the communication to the public of any of those works of art or architecture so produced, if those works are—
  - (i) permanently located in a place where they can be viewed by the public; or
  - (ii) included in an audio-visual work for cinema or television by way only of background or as incidental to essential matters represented;
- (g) subject to subsection (4) of this section, the reproduction in the media or the communication to the public of—
  - (i) any political speech delivered in public;
  - (ii) any speech delivered in public during legal proceedings; or
  - (iii) any lecture, address, sermon or other work of a similar nature delivered in public,
 

where the use by reproduction or communication to the public is exclusively for the purpose of reporting fresh events or new information;
- (h) subject to subsection (5) of this section, the reproduction by recordings, photography or similar process by a public library, a non-commercial documentation centre, a scientific institution or an educational institution, of a literary, artistic or scientific work that has been lawfully made public before the reproduction is made.

(2) Paragraph (b) of subsection (1) of this section does not apply in respect of any particular quotations unless the quotations referred to in that paragraph are compatible with fair practice and the extent of the quotations does not exceed what is justified for the purpose of the work in which the quotations are used.

(3) Paragraph (c) of subsection (1) of this section does not apply in respect of any particular work unless the use referred to in that paragraph is compatible with fair practice and the source of the work used and the name of the author are indicated in the relevant publication, broadcast or recording.

(4) Paragraph (g) of subsection (1) of this section does not apply unless the reproduction referred to in that paragraph and the number of copies made in the reproduction are limited to what is required in the particular circumstances.

(5) Paragraph (h) of subsection (1) of this section does not apply in respect of any particular

establishment referred to in that paragraph unless the reproduction and the copies made—

- (a) are limited to the needs of the activities of that establishment;
- (b) do not conflict with the normal exploitation of the work reproduced; and
- (c) do not unreasonably affect the rights of the author in the work.

(6) The accidental or incidental inclusion of a work in the reporting by a news broadcast of fresh events or of new information shall not be an infringement of the rights of the author in the work.

(7) The publication of the portrait of a person shall not be an infringement of the rights of the author or other person having an interest in the portrait where the publication is related to scientific, educational or cultural purposes in general or to facts or events of public interest or events that have occurred in public.

#### *Transfer of copyright*

19. (1) The owner of copyright or neighbouring rights may transfer the rights to a third party either in whole or in part, but the transfer whether in whole or in part shall not include the rights referred to in subsection (2) of section 6 of this Law.

(2) The transfer in whole or in part of any of the rights referred to in subsection (1) of section 6 of this Law shall not imply the transfer of any right referred to in subsection (2) of that section.

(3) A contract which requires the total transfer of the rights referred to in subsection (1) of section 6 of this Law shall be limited in scope to the use provided for in that contract.

(4) Copyright may be transferred by assignment, testamentary disposition or operation of law.

(5) An assignment of copyright shall be in writing and signed by the owner of the copyright or by the person authorised by him for the purpose.

(6) A licence to do an act falling within copyright may be oral, written or inferred from conduct.

(7) In the case of joint authorship of a work an assignment or a licence in respect of such work shall be subject to the authorisation of the joint authors.

(8) Where a work is of joint authorship and one of the joint authors withholds his consent to an assignment or the granting of a licence, the matter shall be referred to the Secretary to determine whether or not consent should be granted in respect of the assignment or licence and upon what conditions.

(9) An assignment, a licence or testamentary disposition may be made or granted in respect of a future or an existing work in respect of which no copyright subsists.

#### *Ephemeral recordings*

20. (1) Where a work is broadcast by a broadcaster, he may by means of his own facilities make for the purpose of his broadcast a recording of the broadcast and produce copies of the recording for his own use.

(2) Subject to subsection (3) of this section, where a recording is authorised under subsection (1) of this section all copies made of it shall be destroyed by the broadcaster within six months commencing from the date on which the recording is made.

(3) Where a recording authorised under subsection (1) of this section is of exceptional documentary character a copy of the recording may be preserved for presentation to the national archives of Ghana.

(4) The preservation for presentation to the national archives of Ghana of a copy of the recording of the broadcast of a work under subsection (3) of this section does not otherwise affect the rights of the author in the work that was broadcast.

(5) Whether a recording of a broadcast is of an exceptional documentary character is a question of fact to be determined having regard to all the circumstances, in particular to the need for the enhancement of the historical and cultural aspects of life in Ghana.

#### *Compulsory translation licence*

21. (1) Where a work is expressed exclusively in words the right to make and publish a translation thereof shall be subject to compulsory licensing under the conditions specified in this section.

(2) A person who is a citizen of Ghana or is ordinarily resident in Ghana may, subject to the provisions of this section, apply to the Secretary for a licence to make or for the purpose of making a translation of a writing which is expressed exclusively in words into English or any Ghanaian language, and to publish or authorise the publication of the translation in copies.

(3) No application for a licence under this section may be filed until the expiration, as the case may be, of a period of—

- (a) three years commencing from the date of the first publication of the work in copies if the licence is for translation into the English language;

- (b) one year commencing from the date of the first publication of the work in copies if the licence is for translation into any Ghanaian language.
- (4) No licence shall be granted under this section unless the Secretary is satisfied that—
- (a) no translation of the work into the language in question has ever been published in copies by or under the authority of the owner of the right of translation, or that all previous editions in that language are out of print;
- (b) following the expiration of the relevant period specified in subsection (3) of this section, the applicant either has requested the owner of the right of translation for his consent to translate the work but has been refused, or in spite of genuine efforts made by the applicant he has been unable to locate the owner;
- (c) the applicant, at the time of making such request, sent a notice of his request to the International Copyright Information Centre at the United Nations Educational, Scientific and Cultural Organization (UNESCO), or to a national or regional copyright information centre officially designated to that Organisation by the government of the country where the publisher is believed to have his principal place of business;
- (d) where the applicant cannot locate the owner of the right of translation, he has by registered mail sent copies of his application to the publisher whose name appears on the work and also to the national or regional copyright information centre specified in paragraph (c) of this subsection, or in the absence of any such designated centre sent the second copy of his application to the International Copyright Information Centre of the United Nations Educational, Scientific and Cultural Organization.
- (5) For the purposes of paragraph (c) of subsection (4) of this section the Copyright Administrator shall keep up-to-date records of such centres for easy reference or contact by interested persons.
- (6) No licence shall be granted under this section until the expiration of a further period of—
- (a) six months in the case of an application filed under paragraph (a) of subsection (3) of this section; or
- (b) nine months in the case of an application filed under paragraph (b) of subsection (3) of this section.

(7) If during either of the periods specified in subsection (6) of this section a translation of the work into the language in question is published in copies by or under the authority of the owner of the right of translation then no licence shall be granted for translation of the work.

(8) Where a work is composed mainly of illustrations, a licence to translate the text and to reproduce the illustrations shall be granted only if the conditions prescribed under section 24 are also fulfilled.

(9) Where the author of a work has withdrawn all copies of the work from circulation no licence shall be granted in respect of the work under this section.

*Scope and conditions of compulsory translation licence*

22. (1) A licence granted under section 21 of this Law shall—

- (a) be limited to the non-exclusive right to translate the work into the language in respect of which it is granted, and to publish copies of the translation in Ghana;
- (b) be only for the purposes of teaching, scholarship or research;
- (c) not be transferable by the licensee;
- (d) not extend to the export of copies of the work in respect of which it is granted;
- (e) provide for just compensation, consistent with standards of royalties normally payable in the case of licences freely negotiated between persons in Ghana and the owners of the right of translation in any other country.

(2) Where a licence is granted under section 21 of this Law the licensee shall ensure that the work in respect of which the licence is granted is correctly translated and that all published copies include—

- (a) the original title and the name of the author of the work;
- (b) a notice in the language of the translation stating that copies of the translated version of the work are available for distribution in Ghana only; and
- (c) a reprint of the copyright notice, namely the symbol © accompanied by the name of the owner of the copyright and the year of first publication, where the work of which the translation is made is published with a copyright notice.

(3) A licence granted under section 21 of this Law shall terminate if a translation of the work in the same language and with substantially the same content as the edition for which the licence is granted is published in copies in Ghana by or under

the authority of the owner of the right of translation, at a price reasonably related to that normally charged in Ghana for comparable work; and any copies already made before the licence is terminated may continue to be distributed until the stock is exhausted.

*Translation licence for broadcasting*

23. (1) Subject to the provisions of sections 21 and 22 of this Law, a licence to translate a work published in printed form or other form of reproduction may also be granted under this section to the Ghana Broadcasting Corporation where—

- (a) the translation is made from a copy made and acquired in accordance with the laws of Ghana;
- (b) the translation is for use only in broadcasts intended exclusively for teaching or for the dissemination of the results of specialised technical or scientific research to experts in a particular profession;
- (c) the translation is in fact used exclusively for the purpose specified in paragraph (b) of this subsection, through broadcasts that are lawfully made and are intended for reception in Ghana, including broadcasts made from sound or visual recordings that are lawfully made and for the sole purpose of such broadcasts.

(2) A translation under this section of a sound or visual recording may be exchanged only between departments or divisions of the Ghana Broadcasting Corporation.

(3) A licence may also be granted under this section to the Ghana Broadcasting Corporation to translate any text incorporated in an audio-visual fixation that is itself prepared and published for the sole purpose of being used in connection with systematic instructional activities.

(4) No translation made under this section shall be used for commercial purposes.

*Compulsory reproduction licence*

24. (1) Where a literary, scientific or artistic work is published in printed form or other form of reproduction, the exclusive right to reproduce the work and publish it in copies shall be subject to compulsory licensing under the conditions specified in this section.

(2) A person who is a citizen of Ghana or is ordinarily resident in Ghana may, subject to the provisions of this section, apply to the Secretary for a licence to reproduce or for the purpose of reproducing a particular edition of a work referred to in subsection (1) of this section and to publish or

authorise the publication of such reproduction in copies.

(3) No licence shall be granted under this section

(a) until the expiration, as the case may be, of a period of—

- (i) three years commencing from the date of publication of a work of technology or of a natural or physical science including mathematics;
- (ii) seven years commencing from the date of publication of a work of fiction, poetry, drama or music or for a book of art; and
- (iii) five years commencing from the date of publication of any other work;

(b) unless the Secretary is satisfied that—

- (i) there has never been a sale or other distribution, authorised by the owner of the reproduction right, of copies of the particular edition in Ghana to the general public or in connection with systematic instructional activities, at a price reasonably related to that charged in Ghana for comparable works; or that there has been no such sale or other distribution during the immediately preceding six months;

(ii) the applicant either has requested from the owner of the right of reproduction for his authorisation to reproduce the work and has been refused, or in spite of genuine efforts made by the applicant he has been unable to locate the owner;

(iii) the applicant, at the time of making such request, sent a notice of his request either to the International Copyright Information Centre at the United Nations Educational, Scientific and Cultural Organization (UNESCO), or a national or regional copyright information centre officially designated to that Organisation by the government of the country where the publisher is believed to have his principal place of business;

(iv) where the applicant cannot locate the owner of the right of reproduction, the applicant has by registered mail sent copies of his application to the publisher whose name appears on the work and also to the national or regional copyright information centre specified in subparagraph (iii) of this paragraph or in the absence of any such designated centre sent the second copy of his application to the International Copyright Centre of the United Nations Educational, Scientific and Cultural Organization.

(4) For the purposes of paragraph (b)(iii) of subsection (3) of this section the Copyright Administrator shall keep up-to-date records of such centres for easy reference or contact by interested persons.

(5) No licence shall be granted under this section until after the expiration of a period of six months commencing from the date of the request referred to in paragraph (b)(iii) of subsection (3) of this section or from the date of dispatch of the copies of the application in accordance with paragraph (b)(iv) of that subsection, which period shall run concurrently with the three years specified in paragraph (a)(i) of subsection (3) of this section.

(6) Where the author of a work has withdrawn all copies of an edition of the work from circulation no licence shall be granted under this section in respect of that edition.

*Scope and conditions of compulsory reproduction licence*

25. (1) A licence granted under section 24 of this Law shall—

- (a) be limited to the non-exclusive right to reproduce the particular edition of the work in respect of which it is granted, and to publish copies of the reproduction in Ghana for use in connection with systematic instructional activities, but the price at which the reproduced copies are sold shall be at a level not higher than such amount as is reasonably related to the price normally charged in Ghana for comparable work;
- (b) not be transferable by the licensee;
- (c) not extend to the export of copies of the particular edition of the work in respect of which it is granted;
- (d) provide for just compensation, consistent with standards of royalties normally payable in the case of licences freely negotiated between persons in Ghana and the owners of the right of reproduction in any other country.

(2) Where a licence is granted under section 24 of this Law the licensee shall ensure that the particular edition of the work in respect of which the licence is granted is accurately reproduced and that all published copies include the following—

- (a) the title of the particular edition of the work and the name of the author;
- (b) a notice in the appropriate language stating that copies of the reproduced version of the works are available for distribution in Ghana only; and
- (c) if the edition which is reproduced bears a copyright notice, a reprint of that notice.

(3) A licence granted under section 24 of this Law shall terminate—

- (a) whenever copies of an edition of the work in respect of which the licence is granted are distributed to the general public in Ghana; or
- (b) whenever copies of the edition of the work are distributed in Ghana in connection with systematic instructional activities, by or under the authority of the owner of the right of reproduction at a price reasonably related to that normally charged in Ghana for comparable work, if such edition is in the same language and is substantially the same in content as the edition published under the licence; and any copies already made before the licence is terminated may continue to be distributed until the stock is exhausted.

*Reproduction licence for audio-visual fixations*

26. (1) A licence may be granted under this section by the Secretary to an applicant—

- (a) to reproduce in audio-visual form a lawfully made audio-visual fixation, including any protected work incorporated in it; or
- (b) to translate any text incorporated in such fixation into either English or any Ghanaian language.

(2) No licence shall be granted under this section unless the audio-visual fixation is prepared and published for the sole purpose of being used in connection with systematic instructional activities.

*Production of copies of records*

27. (1) A manufacture of phonograms may make copies of any musical work or a similar adaptation thereof if—

- (a) copies of the musical work or a similar adaptation of them have previously been made in or imported into Ghana for the purpose of retail sale, and were so made with the licence of, or imported by, the owner of the copyright in such work; and
- (b) before the making of the copies the manufacturer gives the owner of the copyright notice of his intention to make the copies and the address at which he intends to make them.

(2) The manufacturer shall not later than fifteen days before the sale of any of the copies made by him under this section send to the owner of the copyright or the person authorised by him for the purpose by registered post notice of his intention to sell or otherwise distribute the copies made and such notice shall contain—

- (a) the name and address of the manufacturer;

- (b) the title of the work to which the notice under paragraph (b) of subsection (1) of this section relates, with a description sufficient to identify the author of the work and the publisher thereof;
- (c) the type of phonogram on which the manufacturer intends to produce the work and an estimate of the number of copies he initially intends to sell;
- (d) the ordinary selling price of the copies the manufacturer intends to reproduce and the amount of royalty payable in respect of them; and
- (e) the earliest date on which any of the copies may be available for sale.

(3) The manufacturer shall, within fourteen days after he has sent the notice referred to in subsection (2) of this section, pay royalties to the owner of the copyright, and shall have affixed to each copy of the phonogram made by him an adhesive label issued by the appropriate body or person as evidence of such payment.

(4) The royalty payable by the manufacturer under subsection (3) of this section shall be an amount not less than seven *per centum* of the ordinary retail selling price of each copy of the phonogram made under this section.

(5) It shall be an infringement of copyright where the manufacturer exhibits for sale or sells without the adhesive label referred to in subsection (3) of this section any copy of a phonogram made by him under this section.

#### *Neighbouring rights not to affect copyright*

28. The protection granted under the provisions of sections 29 to 38 of this Law relating to neighbouring rights shall not in any way affect copyright in a literary, scientific or artistic work under this Law, and accordingly no provision in any of the said sections shall be construed so as to affect copyright in any such work.

#### *Rights of performers*

29. A performer shall have the right to authorise or prohibit the fixation, recording, communication to the public, transmission or any other form of use of his performance, and accordingly no person shall do any of the following acts without the authorisation of the performer—

- (a) the broadcasting or communication to the public of his performance, except—
  - (i) where it is made for a previously authorised fixation; or
  - (ii) where the transmission is one that has been authorised by the broadcasting or-

ganisation that transmits the first performance;

- (b) the fixation of his performance not previously fixed on a physical medium;
- (c) the reproduction of a fixation of his performance in the following cases:—
  - (i) where the performance is initially fixed without his authorisation;
  - (ii) where the reproduction is made for purposes other than those for which the performer gives his authorisation; and
  - (iii) where the performance is initially fixed in accordance with the provisions of this Law, but the reproduction is made for purposes other than those specified.

#### *Authorisation relating to broadcast*

30. In the absence of any law or contract to the contrary, the authorisation to broadcast a performance under section 29 of this Law does not imply a consent—

- (a) to license other broadcasting organisations to transmit the performance;
- (b) to make a fixation of the performance;
- (c) to reproduce the fixation where authorisation is granted to broadcast and to make a fixation of the performance;
- (d) to broadcast the performance from the fixation or any reproduction of such fixation where the authorisation granted is to make a fixation of the performance and to reproduce the fixation.

#### *Performer's right to contract*

31. Nothing in this Law shall be construed so as to remove the right of a performer to agree by contract on such terms and conditions as he thinks fit for the use of his performance by another person.

#### *Authorisation by performer*

32. Where two or more performers take part in the same performance as a group, authorisation for the purposes of section 29 of this Law may be given by the legal representative of the group, if any, or by the leader of the group.

#### *Rights of phonogram producers*

33. (1) The producer of a phonogram shall have the right to authorise or prohibit the reproduction of that phonogram.

(2) For the purposes of this section a copy of a phonogram shall be unlawful if with or without imitating the outward characteristics of the original work it incorporates all or part of the producer's phonogram without his authorisation.

(3) Where a phonogram that is published for commercial purposes or a reproduction thereof is used for broadcasting or for any other form of communication to the public the user shall pay to the producer such lump sum as is just in respect of remuneration to the producer and the performers.

*Obligations of phonogram producers*

34. (1) The producer of a phonogram shall state on the label of the disc or on its container—

- (a) the name of the author and those of the main performers;
- (b) the title of the work;
- (c) the year of the cutting of the original matrix;
- (d) the name (whether individual or corporate) or distinguishing mark of the producer; and
- (e) that the rights accruing to the producer under this Law are reserved.

(2) For the purposes of paragraph (a) of subsection (1) of this section, choirs, orchestras and composers shall be referred to by their proper names and by the name of the leader, if any.

*Notice of protection of rights of phonogram producers*

35. (1) Where copies of a phonogram are made for commercial purposes, there shall be printed on the copies a notice consisting of—

- (a) the symbol (P); and
- (b) the year of first publication of the phonogram,

placed in such a manner as to give reasonable notice of claim of protection of the rights of the producer.

(2) Where the copies of the phonogram or their containers do not identify the producer or his licence in relation thereto by his name; description or trade mark, the notice shall also include the name of the person who owns the rights of the producer.

(3) Where the copies of the phonogram or their containers do not identify the principal performers, the notice shall also include the name of the person who owns the rights of the performers.

(4) Nothing in this Law shall prejudice the right of any person to use, in accordance with the provisions of this Law, fixations or reproductions made in good faith before the coming into force of this Law.

*Phonographic performance in public places*

36. Where in any public place by means of broadcasting, cinematography, jukeboxes or other apparatus, phonographic discs or other devices are used in a public performance the authors, perform-

ers and the producers of the phonogram shall be entitled to royalties in accordance with the provisions of this Law.

*Rights of broadcasting organisations*

37. A broadcasting organisation shall have the exclusive right to authorise or prohibit—

- (a) the rebroadcasting of its broadcasts;
- (b) the fixation of its broadcasts; or
- (c) the reproduction of a fixation of its broadcasts where—
  - (i) the fixation used to make the reproduction is made without authorisation; or
  - (ii) the broadcast is initially fixed in accordance with the provisions of this Law, but the reproduction is made for purposes other than those specified.

*Limitation on broadcasting rights*

38. The provisions of sections 29, 30, 32, 33, 36 and 37 of this Law shall not apply where the acts referred to are concerned with—

- (a) private use;
- (b) the reporting of current events, except that no more than short excerpts of a performance, phonogram or broadcast are used;
- (c) teaching or scientific research;
- (d) quotations in the form of short excerpts of a performance, phonogram or broadcast, which are compatible with fair practice and are justified by the informative purpose of those quotations.

*Public domain*

39. (1) The following works shall belong to the public domain—

- (a) works whose terms of protection have expired;
- (b) works whose authors have renounced their rights; and
- (c) foreign works that do not enjoy protection in Ghana.

(2) For the purposes of paragraph (b) of subsection (1) of this section renunciation by an author or his successor in title of his rights referred to in subsection (1) of section 6 of this Law shall be by writing and made public, but any such renunciation shall not be contrary to any previous contractual obligation relating to the work.

(3) Subject to the payment of such fee as may be determined by the Secretary in relation thereto, a work that has fallen into the public domain may be used without any restriction.

(4) Any sums of money accruing from the payment of fees under subsection (3) of this section

shall be paid into a fund which shall be established by the Secretary for the promotion of institutions for the benefit of authors, performers and translators.

*Registration of works, etc.*

40. (1) There shall be maintained by the Copyright Administrator registers in which shall be registered works, productions and associations of authors.

(2) The purposes of registration of works are—

- (a) to maintain a record of works;
- (b) to publicise the rights of the owners; and
- (c) to give evidence of the ownership of intellectual property.

(3) The publisher of a work in Ghana shall cause that work to be registered at the Copyright Office within three months of its publication and a copy of the best edition shall be deposited at that Office.

(4) Any publisher who contravenes any of the provisions of subsection (3) of this section shall be guilty of an offence and liable on conviction to a fine not exceeding five thousand cedis.

*The Copyright Office*

41. (1) For the purposes of this Law there shall be established an office to be known as “the Copyright Office”.

(2) Except as otherwise provided, the Copyright Office shall be responsible for the implementation of this Law.

(3) The Copyright Office shall have a Copyright Administrator and supporting staff all of whom shall be public officers and shall be appointed by the Provisional National Defence Council on such terms and conditions as the Council may determine.

*Society of authors*

42. There shall be established in Ghana a non-profit-making body corporate which shall, among other things, be responsible for the promotion and protection of the interests of authors and, in particular, the collection and distribution of any royalties or other remuneration accruing to them in respect of their rights under subsection (1) of section 6 of this Law.

*Infringement of copyright, etc.*

43. (1) A person infringes another person's rights under this Law if without the licence or authorisation of that other person or a person authorised by him to grant such licence or authorisation does, permits or causes another person to—

- (a) reproduce, duplicate, extract, imitate, or import into Ghana otherwise than for his private use or permit or cause to be reproduced, duplicated, extracted, imitated, or imported into Ghana otherwise than for his private use; or
- (b) distribute or permit or cause to be distributed in Ghana by way of sale or hire or otherwise; or
- (c) exhibit or permit or cause to be exhibited in public for commercial purposes, any work protected under this Law.

(2) For the purposes of this section the exploitation of a work in a manner prejudicial to the honour or reputation of the author shall be deemed an infringement of the rights of the author.

*Civil remedies*

44. (1) Any person whose rights under this Law are in imminent danger of being infringed or are being infringed may initiate civil proceedings in the High Court—

- (a) for an injunction to prevent the infringement or prohibit the continuation of the infringement; or
- (b) for the recovery of damages for the infringement.

(2) Upon an ex parte application by the plaintiff, the Court may, in chambers, make an order for the inspection of or removal from the defendant's premises, copyright infringing materials which constitute evidence of infringement by the defendant.

(3) The grant of an injunction under subsection (1) of this section shall not affect the plaintiff's claim for damages in respect of loss sustained by him as a result of the infringement of his rights under this Law.

(4) A person who sustains damage by reason of an infringement of his rights under this Law may institute civil proceedings against the person responsible for the infringement whether or not such person has been successfully prosecuted under this Law.

*Offences relating to copyright, etc.*

45. Any person who infringes any copyright or neighbouring right of another person under this Law shall be guilty of an offence and shall be liable on summary conviction to a fine of not less than C10,000.00 and not exceeding C1,000,000.00 or to imprisonment not exceeding two years or both; and in the case of a continuing offence to a further fine not less than C5,000.00 and not exceeding C50,000.00 for each day during which the offence continues.

*Offences relating to folklore*

46. (1) No person shall without the permission in writing of the Secretary import into Ghana, sell, offer or expose for sale or distribute in Ghana any copies of the following works made outside Ghana—

- (a) works of Ghanaian folklore; or
- (b) translations, adaptations, or arrangements of Ghanaian folklore.

(2) Any person who contravenes subsection (1) of this section shall be guilty of an offence and liable on summary conviction to a fine of not less than C10,000.00 and not exceeding C1,000,000.00 or to imprisonment not exceeding two years or both; and in the case of a continuing offence to a further fine of not less than C5,000.00 for each day during which the offence continues.

*Offences by bodies of persons*

47. (1) Where an offence is committed by a body of persons under this Law then—

- (a) in the case of a body corporate other than a partnership, every director or secretary of the body corporate shall also be guilty of the offence; and
- (b) in the case of a partnership, every partner shall also be guilty of that offence.

(2) No person shall be guilty of an offence under subsection (1) of this section if he proves to the satisfaction of the court that the offence in respect of which he is charged was committed by some person other than himself and was without his consent or connivance and that he exercised all such diligence to prevent the Commission of that offence as he ought to have exercised having regard to all the circumstances.

*Compensation to victim of offence*

48. In addition to any punishment imposed by the court in respect of an offence under this Law the court may order—

- (a) that all sums of money arising out of the offence and received by the offender be accounted for by him and paid to the person entitled under this Law to those sums; and
- (b) that all reproductions, duplications, extracts, imitations and other material involved in the infringement, and that all implements or devices used in the infringement be forfeited and disposed of as the court may direct having regard to all the circumstances relating to the infringement.

*Arbitral proceedings*

49. (1) Notwithstanding the other provisions of this Law there may be appointed by the Secretary arbitrators for the settlement of disputes under this Law where—

- (a) in the opinion of the Secretary it is desirable so to do; or
- (b) the parties involved in a dispute apply to the Secretary so to do.

(2) The Secretary may, by legislative instrument, make regulations for the appointment of arbitrators, their proceedings and other matters relating thereto.

*Extension of reciprocal protection*

50. (1) The Secretary may, by legislative instrument, provide regulations for reciprocal treatment in relation to the rights to which this Law relates, to be given to any country that provides protection for similar rights in respect of Ghana as given by this Law.

(2) Without prejudice to the provisions of subsection (1) of this section works created in the countries specified in the Schedule to this Law, which countries are parties to the Universal Copyright Convention, are hereby protected.

*Amendment of Schedule*

51. (1) Where any country other than Ghana becomes or ceases to be a party to the Universal Copyright Convention, the Secretary shall, by legislative instrument, amend the Schedule to this Law by inserting or deleting the name of that country, as the case may require:

Provided that the Secretary shall not be required to insert the name of a country if, before the said Convention has come into force in respect of that country, the Government of Ghana has given notice that it declines to recognise the accession of that country.

(2) An instrument made under this section may contain transitional and consequential provisions as the Secretary thinks necessary.

*Regulations*

52. (1) The Secretary may, by legislative instrument, make such regulations as he may think fit for the purpose of giving full effect to the provisions of this Law.

(2) Without prejudice to the provisions of subsection (1) of this section regulations made thereunder may provide for—

- (a) anything to be prescribed under this Law;

- (b) the application for a compulsory translation or reproduction licence and related procedures;
- (c) measures to ensure the payment and transfer in convertible currency of compensation payable in respect of a compulsory translation or reproduction licence;
- (d) the registration and deposit of works;
- (e) the establishment of a fund in accordance with section 5 of this Law;
- (f) the administration of the Copyright Office;
- (g) the appointment, duties and proceedings of arbitrators;
- (h) the form and scope of contracts and licences relating to publishing, performing, photographic and cinematographic productions;
- (i) the designation of Ghanaian folklore.

#### *Interpretation*

**53.** In this Law unless the context otherwise requires—

“artistic work” means irrespective of artistic quality any of the following works—

- (a) paintings, drawings, etchings, lithographs, woodcuts, engravings or prints;
- (b) photography not comprised in a cinematograph film;
- (c) maps, plans or diagrams;
- (d) sculpture;
- (e) works of architecture in the form of buildings or models; or
- (f) works of applied art, whether handicraft or produced on an industrial scale;

“author” means a person who creates a work, but in the case of a broadcast transmitted from within a country, means the person by whom the arrangements for the making of the transmission within that country were undertaken; and in the case of a cinematographic film or sound recording means the person by whom the arrangements for the making of the film or recording were undertaken;

“broadcasting” means the transmitting for reception by the general public over a distance by means of radio, television electromagnetic emissions, light beams, wire, cable or other means;

“choreographic work” includes all forms of dance, whether or not in dramatic form;

“cinematographic work” means a fixation in a physical medium of images synchronised with or without sound, including video tapes and video-grams;

“copy” means a reproduction of a work in a written form, or in the form of a recording or film, or in any other material form, but an object shall not

be taken to be a copy of an architectural work unless the object is a building or a model;

“derivative work” means a work resulting from adaptation, translation or other transformation of an original work in so far as it constitutes an independent creation;

“distribution” for the purposes of section 9 of this Law means any operation by which programme-carrying signals are transmitted to the general public or any section thereof;

“distribute” for the purposes of section 9 of this Law means the person who decides that the distribution should take place;

“fixation” means the embodiment of images or sounds in a material form sufficiently permanent or stable to permit them to be perceived, reproduced or communicated;

“folklore” means all literary, artistic and scientific work belonging to the cultural heritage of Ghana which were created, preserved and developed by ethnic communities of Ghana or by unidentified Ghanaian authors, and any such works designated under this Law to be works of Ghanaian folklore;

“literary work” includes, irrespective of literary quality, any of the following—

- (a) novels, stories or poetical works;
- (b) plays, stage directions, film scenarios or broadcasting scripts;
- (c) textbooks, treatises, histories, biographies, essays or articles;
- (d) encyclopaedias, dictionaries, directories or anthologies;
- (e) letters, reports or memoranda; and
- (f) lectures, addresses or sermons;

“musical work” includes any musical work irrespective of its musical quality and words composed for musical accompaniment;

“neighbouring rights” includes rights of performing artistes in their performances, the rights of producers of phonograms in their phonograms and the rights of broadcasting organisations in their radio and television programmes;

“performance” means the presentation of a work by such action as dancing, playing, reciting, singing, delivering, declaiming or projecting to listeners or spectators;

“performer” means the actor, dancer, declaimer, musician, singer or other person who performs a literary or artistic work and includes the conductor or director of a performance of any such work;

“phonogram” means any exclusively aural fixation of sounds of a performance or of other sounds;

“public performance” means the performance of a work which is presented to listeners or spectators not restricted to specific persons belonging to a

private group and which exceeds the limits of usual domestic representations;

“public place” means any building, place or conveyance to which for the time being the public are entitled or permitted to have access, either without any condition or upon condition of making any payment, and includes theatres, cinemas, concert halls, dance halls, bars, clubs, sports grounds, holiday resorts, circuses, restaurants and commercial, banking and industrial establishments;

“programme-carrying signals” means electronically generated carriers transmitting live or recorded material consisting of images, sounds or both, in their original form or any form recognisably derived from the original, and emitted to or passing through a satellite situated in extra-terrestrial space;

“Secretary” means the Provisional National Defence Council Secretary responsible for Information;

“sound recording” means work that results from the fixation of a series of musical, spoken or other sound, but does not include sounds accompanying a motion picture or other audio-visual work regardless of the nature of the material objects in which those sounds are embodied;

“work of joint authorship” means a work created by two or more authors in collaboration, in which the individual contributions are indistinguishable from each other.

### *Repeal*

54. The Copyright Act, 1961 (Act 85)<sup>1</sup> is hereby repealed.

### *Saving*

55. The repeal of the Copyright Act, 1961 (Act 85) shall not affect any copyright or other rights that were vested in any person by virtue of that Act, and any such rights shall continue to be enforceable as if they were conferred upon him under this Law.

### SCHEDULE

#### **Countries in Respect of Which Works Are Protected Under Section 48(2) Being Parties to the Universal Copyright Convention**

Algeria, Andorra, Argentina, Australia, Austria, Bahamas, Bangladesh, Belgium, Belize, Brazil, Bulgaria, Cameroon, Canada, Chile, Colombia, Costa Rica, Cuba, Czechoslovakia, Democratic Kampuchea, Denmark, Dominican Republic, Ecuador, El Salvador, Fiji, Finland, France, German Democratic Republic, Germany (Federal Republic of), Greece, Guatemala, Guinea, Haiti, Holy See, Hungary, Iceland, India, Ireland, Israel, Italy, Japan, Kenya, Laos, Lebanon, Liberia, Liechtenstein, Luxembourg, Malawi, Malta, Mauritius, Mexico, Monaco, Morocco, Netherlands, New Zealand, Nicaragua, Nigeria, Norway, Pakistan, Panama, Paraguay, Peru, Philippines, Poland, Portugal, Senegal, Soviet Union, Spain, Sweden, Switzerland, Tunisia, United Kingdom, United States of America, Venezuela, Yugoslavia, Zambia.

<sup>1</sup> See *Copyright*, 1962, pp. 89 to 93.

## General Studies

### The Legal Status of Salaried Authors Under Bulgarian Law

Georgi SARAКINOV\*



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**Letter from Colombia**

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## Collective Administration of Authors' Rights

### Collective Administration: The Relationship Between Authors' Organizations and Users of Works

Michael J. FREEGARD\*

#### I. Introduction

For the purposes of this article, the term "collective administration" is understood to describe a system whereby certain rights of copyright enjoyed by one or more categories of authors are administered for the benefit of those authors by an association, which may be constituted in one of a number of different forms, but which has as its *raison d'être* not only the safeguarding of its members' professional

interests but that it is also empowered by them to stand in their shoes as regards authorizing various specified uses of their works by issuing licenses specifying the terms and conditions under which such uses may take place.

It should be emphasized that whatever the precise legal nature of the relationship between the authors and the associations which thus act collectively for their benefit, the essential feature of collective administration is that the organization in question is empowered by each of its members to negotiate and to act in respect of his works without the necessity for individual consultation with those members as regards the terms on which licenses authorizing the use of their works are to be granted.

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The author wishes to record his grateful thanks for the assistance and advice of his colleagues of the authors' societies in the countries referred to above and listed in Appendix 1.

An authors' society, thus constituted and empowered by its members (and which for convenience will from here on be referred to as a "licensing body")<sup>1</sup> differs fundamentally in one important respect from a person or organization empowered merely to act as a clearing house or agency through which the means of obtaining permission for desired uses of their works may be ascertained. The essential feature of collective administration, in the context of this article at any rate, is that the licensing body is empowered (normally as assignee of the relevant rights) itself to authorize the use<sup>2</sup> of all or any of its members' works. In effect, under a system of collective administration as thus described, the rights in question are "pooled" in such a way as to create a repertoire of works at the disposal of potential users. Normally the licensing body is vested with the exclusive right to grant licenses for specified uses of the works making up its repertoire, the author thus voluntarily divesting himself of the right to license those uses of his own works; however, in certain countries, for antitrust reasons, licensing bodies obtain only a nonexclusive grant of rights from their members who thus remain free to deal individually should they so choose.

The extent to which systems of collective administration have been developed over the years has been determined chiefly by considerations of practical necessity both from the point of view of the author and from that of the user. In circumstances where the author, either in person or through an agent or publisher, and the would-be user are readily accessible to each other, no need for any form of collective administration arises. Thus, for example, the publication of a literary work and the theatrical performance of an opera, ballet or stage play are transactions in which the author (or his representative) and user are easily able to engage in bilateral negotiation and there is thus no need whatever for any form of collective administration of the rights involved. It is only when the circumstances of the proposed use or uses of the authors' works are such that individual transactions of this kind are either too expensive to be realistic or are altogether im-

practicable that collective licensing has come into play.

As is well known it was in the sphere of the non-dramatic public performance of musical works that modern systems of collective administration have their chief origin.<sup>3</sup> Once the right of the composer and lyricist of a popular song over their creation had been established in national legislation and enforced in the courts against infringers, it was inevitable that performing right societies of the kind now established in practically every civilized country should spring up. The multiplicity of uses and the extensive scope of the popular music repertoire in the early years of this century were reasons enough for the proliferation of these organizations, while the invention and development of the phonograph and of broadcasting gave the process added impetus, the former giving rise to the first application of collective administration to the exercise of the authors' reproduction right.

Until relatively recently the application of collective licensing systems to protected works other than musical works has been rather limited in extent,<sup>4</sup> though greater in some countries than others. As regards dramatic works, notwithstanding the important role played in some countries by societies administering rights in this field, the collective administration of rights, as understood for the purposes of this article, has been extremely limited. The theatrical performance in cinemas of operas, ballets and stage musicals in the form of cinematograph films and the radio and television broadcasting of excerpts from such works (within defined limits) have been practically the only examples of the widespread collective administration of rights in this field. As regards literary works, collective administration has until recently been a rare phenomenon, limited chiefly to public recitation and public performances by means of radio and television sets. As regards artistic works (paintings, designs and sculptures) the collective administration of rights has also historically been extremely limited, having concerned principally the exercise of the artist's resale right (*droit de suite*).

This situation is now changing rapidly. The fast pace at which the new technologies for the reproduction and communication of works have been proceeding over the past two decades or so has produced a situation in which the techniques for so long largely limited to the licensing of music are coming to be more and more applied in other fields of artistic and commercial enterprise. The availability to

<sup>1</sup> In section 24(3) of the United Kingdom Copyright Act, 1956, a "licensing body" is defined as "a society or other organisation which has as its main object, or one of its main objects, the negotiation or granting of ... licences, either as owner or prospective owner of copyright or as agent for the owners or prospective owners thereof; ... Provided that [this] shall not apply to an organisation by reason that its objects include the negotiation or granting of individual licences, each relating to a single work or the works of a single author, if they do not include the negotiation or granting of general licences, each extending to the works of several author." (See also note 34).

<sup>2</sup> i.e. to the extent prescribed in its constitution and in the instruments (e.g. assignments) by which it obtains its mandate from its members.

<sup>3</sup> The first authors' society of modern times (now the SACD) was a society of dramatic authors, founded in France in 1776, but the first authors' society to engage in collective administration in the sense here understood was the French performing right society, SACEM, founded in 1851.

millions of private individuals of high quality and inexpensive recording devices, the development of optical fiber cable systems in conjunction with transmissions by satellite, the growing use of computers for the storage and reproduction of literary and other works and the explosion in the use of new reprographic techniques available to businesses, educational institutions and libraries have given rise to a situation in which the individual licensing of such uses of literary, dramatic, musical and artistic works alike has become completely impracticable, and the techniques pioneered by the musical performing right societies are being called more and more into play across the whole spectrum of copyright protection. Appendix I summarizes the results of a survey recently carried out to ascertain the extent to which collective administration techniques (in respect of authors' rights) are now being employed outside the musical sphere in European countries.<sup>4</sup>

Since, as we have seen, it is in the field of musical performance and reproduction rights that collective administration systems have been longest established, it is principally to that source that we must turn for information about the nature of the licensing agreements which have been established between the authors' societies administering rights and the users requiring licenses. Having examined the principal characteristics of those agreements we can consider whether, in any essential respects, agreements governing the "new technology" uses of literary, dramatic and other works differ from their musical antecedents.

## II. Agreements with Users

Before examining the nature of the specific agreements entered into between authors' societies and users, it will be useful to place those agreements in the context of the general nature of the relationship governing them.

Firstly, although generally speaking the rights administered by the authors' societies are exclusive rights granted by statute, in respect of which the author or his assignee (in this case the society) is therefore entitled unilaterally to determine the conditions under which his work or works may be used, it is the usual practice of the authors' societies engaged in collective administration of rights for those terms and conditions to be the subject of negotiation, either with an individual user or, more

usually, with an association representing a given class of user. The readiness of the authors' societies to enter into negotiation with users does not of course signify any lack of confidence on their part in the validity of the prerogatives they are called upon to exercise for the benefit of their members. Their willingness to negotiate rather than unilaterally to impose terms on the user stems from their knowledge, born of long experience, that the imposition of terms upon a user who considers those terms to be unreasonable is a costly and unproductive business. The horse may indeed be brought to the water and may even be compelled to drink, but the trouble and expense of bringing about this desired state of affairs could be disproportionate to the benefits obtained. Moreover, it is normally the case — and it is certainly considered desirable that this should be so — that an authors' society administering rights on a collective basis does so from a position of as near complete monopoly as possible. Provided that there exist adequate safeguards against potential abuse of that monopoly position, it is, paradoxically, in the interests of the user that this should be so, especially where the need of the user is for a "blanket" license granting him access to the full repertoire of protected works. The existence of "competing" societies administering the same categories of rights in respect of different repertoires means that the user, if he is to be secure against the risk of unwitting infringement, must obtain the license of each of the "competing" authors' organizations in that field. The incentive to negotiate is all the stronger in those jurisdictions where special statutory provision has been made for the resolution of disputes by means of special tribunals or arbitration commissions, but even in the absence of such special provisions there is usually recourse of one kind or another, either through the regular courts, or in some other way available to a user who, rightly or wrongly, considers that the terms on which an authors' society is willing to grant him a license are unreasonable. We shall return later to this aspect.

In practice agreements between authors' societies and users fall into three broad categories, namely:

- (a) international model agreements;
- (b) agreements between an authors' society and associations of users in the territory of administration of that society;
- (c) agreements between an authors' society and individual users in its territory of administration.

### (a) *International Model Agreements*

This type of agreement, although relatively rare, plays an important role in the collective administration of rights where the activities of users of a given

<sup>4</sup> Collective administration techniques are also quite widely used in respect of the licensing of neighboring rights (in particular the rights of performing artists and record producers) but detailed consideration of this aspect is outside the scope of the present article.

class are organized on an international basis or where all of the rights required to be cleared by users in given territories are not available to be licensed by the authors' society or societies operating in those territories.

(i) *BIEM/IFPI Standard Agreement*

The most important agreement falling into the former of these two categories is the standard contract for the phonographic industry entered into between the International Bureau of Societies Administering the Rights of Mechanical Recording and Reproduction (BIEM), representing the authors' societies administering recording rights on the one hand, and the International Federation of Phonogram and Videogram Producers (IFPI) on the other. This agreement, which has recently been revised after four years' intensive negotiation, sets out the basis on which IFPI's member record companies will pay mechanical royalties for the use of works represented by the authors' societies which are members of BIEM.<sup>5</sup> The agreement, which is extremely detailed, running to more than 20 pages in its printed version, is supposed to be binding on authors' societies which are members of BIEM and on the national producers' associations affiliated to the IFPI, although certain specific matters may be the subject of agreement on an alternative basis at national level. The agreement, in its recently amended form, runs for three years from January 1, 1985, and provides for a standard rate of royalty for singles, LP's and cassettes of 11% of the highest published price to dealers (PPD) subject to any adjustment agreed nationally and to a "container deduction" of 10%. However, in those countries where fixed or suggested retail prices are paid by the consumer the royalty is calculated at 8% of that price less a packaging deduction of 7.5%. In the case of discs and tapes exported to a record producer's affiliates and licensees abroad, a distinction is made between importing countries which are within and outside the EEC. Where the importer is located in an EEC member State, royalties are paid on the basis of terms agreed in the exporting country but on the prices of the importing producer. For importers outside the EEC, royalties are calculated on both the terms agreed and prices in the country of impor-

tation. Where the importer is not a licensee of the record producer, the royalties are calculated solely on the conditions and prices in the exporting country. There are special provisions establishing a minimum royalty, concerning compact discs (where the royalty is based on the PPD of the corresponding LP release) and concerning custom pressing and the facsimile stamp which must appear on every disc or tape which is subject to the agreement.

(ii) *CISAC/EBU/FIAPF Model Agreement with AID*

Another important international model agreement is one which falls into the second category mentioned above and concerns the cable distribution of television programs. It is a model agreement drawn up in 1981 between the International Confederation of Societies of Authors and Composers (CISAC) (through its then European ad hoc Committee) representing the European authors' societies, the European Broadcasting Union (EBU), the International Federation of Film Producers Associations (FIAPF) and the International Alliance for Diffusion by Wire (AID). This model contract concerns the licensing of organizations engaged in the simultaneous and complete distribution by cable of television broadcasts. Unlike the BIEM/IFPI agreement it does not specify royalty rates; its object is to provide a framework of cooperation between the different categories of right holders (authors' societies, broadcasting organizations and film producers/distributors) whose authorization is required by the cable distributor under the copyright legislation in the country in which the distribution takes place. The impetus behind the cooperation of the different right owning groups which led to the model agreement came from the realization that in the absence of such cooperation pressure would build up for the curtailment or abolition of the authors' exclusive right, under Article 11<sup>bis</sup> of the Berne Convention, to authorize the communication of his works to the public by wire "...when this communication is made by an organization other than the original one."<sup>6</sup> The text of this model contract is reproduced in full at Appendix 2.

The principles underlying the CISAC/EBU/FIAPF/AID model agreement (and the general principles of cooperation between the right owning groups which were the subject of an accompanying declaration by CISAC, EBU and FIAPF) have in practice proved extremely valuable in the negotiation of agreements covering the simulta-

<sup>5</sup> As at July 1, 1985, these were: ACUM (Israel), AEPI (Greece), ARTISJUS (Hungary), AUSTRO-MECHANA & LITERAR-MECHANA (Austria), AWA (German Democratic Republic), GEMA (Federal Republic of Germany), JASRAC (Japan), MCPS (United Kingdom), NCB (Nordic countries), OSA & SOZA (Czechoslovakia), SABAM (Belgium), SACEM & SDRM (France), SACERAU (Egypt), SADAIC (Argentina), SARRAL (South Africa), SGAE (Spain), SIAE (Italy), SOKOJ (Yugoslavia), SPA (Portugal), STEMRA (Netherlands), SUISA (Switzerland) and ZAIKS (Poland).

<sup>6</sup> In Austria, the rights provided for under Article 11<sup>bis</sup> of the Berne Convention (Brussels 1948 and subsequent Acts) had recently been severely curtailed by the Copyright Amendment Law of 1980.

neous and unaltered cable distribution of not only television but also radio broadcasts in the two most densely cabled countries of Europe, namely Belgium and the Netherlands. While the exact text of the model contract has not been generally utilized, the substance of most of its provisions has been incorporated, both in the agreement signed in Brussels on September 26, 1983, governing the simultaneous and unaltered cable distribution of both Belgian and foreign radio and television programs in Belgium,<sup>7</sup> and in its more recently concluded counterpart in the Netherlands signed on May 29, 1985, between the representatives of the Dutch Syndicate of Cable Operators (VECAI) and the Union of Municipalities (VNG) on the one hand, and the Dutch and foreign broadcasting entities concerned,<sup>8</sup> the Stichting SEKAM and the Association AGICOA (representing the film copyright owners) and the authors' society BUMA on the other hand. The Belgian and Dutch agreements also incorporate certain other provisions not dealt with in the original international model; one of the most important is that the right owners release the cable distributors from responsibility in respect of possible claims by third parties who are not represented by the right owners who are parties to the contract. The extent of the guarantee given to the cable distributors by the right owners' associations in this respect is however, reasonably enough, limited to the amount that the third parties would have received if they had been represented by the competent body which is a party to the contract. There is also a time limit prescribed in this respect in both agreements.

(b) *Agreements with associations of users*

Agreements between authors' societies and associations representing one or more classes of user also fall into two broad categories, namely:

- (a) agreements which themselves constitute license-contracts covering the activities of persons or entities who are members of the users' association in question;
- (b) agreements on the terms and conditions applicable to license-contracts offered by the authors' society to individual users who are members of the association or who fall into the class of user represented by that association.

<sup>7</sup> The parties to this agreement include the following broadcasting organizations: BRT & RTBF (Belgium), NOS (Netherlands), TF1, A2 and FR3 (France), ARD & ZDF (Federal Republic of Germany), RTL (Luxembourg) and BBC (United Kingdom).

<sup>8</sup> The broadcasting organizations parties to this agreement are all those listed in note 7 *supra* except RTL.

In practice, agreements falling into category (a) are much less frequently to be found than those in category (b). This is probably because most users' associations are somewhat loosely knit bodies, often unincorporated, which are unwilling or unable to assume the contractual obligations to which the conclusion of a binding license agreement involving its members' activities would inevitably give rise. Nevertheless, there are circumstances in which such agreements provide the most convenient method of licensing particular uses of copyright works; for example, in the United Kingdom there is a well organized association (The National Federation of Music Societies), representing a large number of amateur musical performing organizations, which has been found to be both willing and able to undertake responsibility for performances promoted by its member organizations at premises not otherwise covered by a license from the national performing right society. The terms and conditions of such agreements are normally similar to those of the license-contracts entered into between authors' societies and individual users and are referred to in more detail below.

Of much greater significance in most territories where rights are administered collectively to any appreciable extent are agreements between the authors' society and associations of users which govern the terms and conditions on which the society is prepared to grant licenses to users represented by that association or (as is frequently also the case) to any user falling within the class of user represented, even if that user is not himself or itself a member of the association. A most important example of this type of agreement is in the realm of mechanical reproduction rights, where national associations of phonogram and videogram producers negotiate agreements with the societies representing the authors and publishers. In those countries where the national authors' society concerned is a member of the BIEM the negotiation of such agreements is greatly facilitated by the existence of the BIEM/IFPI standard agreement referred to above, although there are usually a number of important matters which have to be resolved at national level. In the realm of musical performing rights the subject matter of the negotiations between the authors' society and the users' association can cover the whole range of terms and conditions under which the society is prepared to grant its license to users of the class concerned including, *inter alia*, the extent to which the user is required to furnish the society with returns of the musical works performed under the license. Usually, however, the most important element in the negotiations is the amount of the financial consideration to be paid by the user and the basis on which it is to be computed. The usual outcome of such negotiations is the publication by the society of

what is, in effect, a price list (usually referred to as a “tariff”) which defines the uses to which the tariff is applicable and sets out the royalty or other remuneration payable.

Examples of associations representing users in the field of musical performing rights are those representing local radio and television stations (national broadcasting stations normally being the subject of individual negotiations), cinemas, hotels, restaurants, industrial premises, municipalities, discotheques and educational institutions. The rates of charge prescribed by the tariffs as negotiated (or, in the absence of any representative organization, unilaterally propagated by the licensing body) may vary according to the nature and extent of the use made of the copyright works under license agreements to which the tariff applies. For example in a tariff for hotels there may be prescribed different rates of charges for “live” performances in the hotel restaurant and/or at banqueting functions, for background music in the foyers and lifts and for performances by means of radio and/or television sets in the hotel bedrooms and/or public rooms. An important distinction which is invariably made is between uses where the performance of music is an essential part of the activity (for example cabaret shows, dances or concerts) — sometimes referred to as “featured” uses — and those where the use of music is incidental to the main activity (e.g., background music in a hairdressing saloon or performances by means of a radio or television set in a public bar) (“background” uses). Wherever possible it is normal for royalties in respect of “featured” uses to be expressed as a percentage of the licensee’s receipts, but alternatively, in circumstances where there are no easily ascertainable receipts attributable to the exploitation of musical works, the percentage charged is on the licensee’s expenditure on the provision of musical entertainment (salaries or fees of the performers, etc.).

Some agreements with associations of users go further than merely providing for the terms and conditions under which licenses will be granted to its members or to other users of that class. Some users’ associations, though unable to assume actual contractual liability, are willing and able to undertake a measure of responsibility for ensuring the prompt and satisfactory performance by their members of the license conditions (furnishing of necessary returns of expenditure and/or program information, prompt payment, etc.). Agreements of this kind can be of great value to the licensing body because of the administrative cost savings to which they give rise. A user is often more likely to respond to reminders and promptings about his contractual responsibilities which come from the headquarters of the national association which represents his interests than those which come from the licensing

body itself. Associations which represent large numbers of small users (for example seaside hotels and boarding houses) may be willing to play an active part in ensuring that all its members obtain a license for their use of copyright material, emphasizing the unfairness which results when a small minority seeks to avoid legal obligations which are dealt with responsibly by the majority. The resulting savings in the licensing body’s legal and administrative costs can be quite considerable and can therefore justify the granting of licenses on specially advantageous terms to the users who are members of that particular association. Additionally or alternatively there are circumstances in which the enforcement activities of the user’s association will justify payment of a commission to that association by the licensing body for services rendered.

### (c) *Agreements with individual users*

Here we come to the heart of the relationship between the licensing body and the user of the works it administers. Appendix 3 sets out the text of a type of license–contract currently in use for the public performance of musical works for a wide variety of premises in the United Kingdom; Appendix 4 sets out the text of a typical license agreement with a broadcasting organization. While the text of these two license–contracts is largely self–explanatory, the following points need to be borne in mind:

#### (i) *“Blanket” licenses*

Both these forms of license–contract constitute “blanket” licenses entitling the user to perform or broadcast without restriction any musical work (including any associated words) for the time being in the repertoire of the licensing body, both by virtue of the latter’s agreements with its own members and of its agreements with its counterparts in other countries which have entrusted the management of their repertoires to it in its territory of administration. This is by far the most common form of license agreement in force governing the public performance or broadcasting of musical works although it is not the only form of agreement offered by the music performing right societies. For example licenses are quite frequently issued on a “per occasion” basis to promoters of concerts and recitals (mainly of “serious” music) in respect of specific works, or to theatrical producers in respect of works not originally written for the stage but which the producer desires to interpolate into the action of a non–musical stage play or of a musical “compilation show” featuring the works of a particular composer or sung by a well–known performer. However, a very high proportion of public performances of musical works is authorized within the framework

of an annual blanket license under which the user has complete freedom to choose the works which he judges will most appeal to his audience.

(ii) *Parties to the license*

As regards the public performance of musical works, it is rare for a license to be granted to the musicians and/or singers who actually give the performance. Although there is no doubt about their liability in law, they are thus relieved of the obligation to obtain a license for their performances. In many jurisdictions it is the owner or occupier of the premises at which public performances take place who is equally responsible for ensuring that those performances do not constitute an infringement of the rights of the authors and composers of the works performed. Liability usually attaches also to the promoter of a concert or other event at which performances take place and in certain circumstances (for example "pop" festivals in the open air) it is the promoter with whom the licensing body enters into an agreement. Performances given by mechanical means, such as record or tape players, radio sets, jukeboxes, etc.) are in many jurisdictions the sole responsibility of the occupier of the premises, normally the owner or the tenant, and this is another reason why licenses for the public performance of music are so often issued to the occupier of the premises at which they take place. There are of course large commercial users such as the owners of large chains of hotels, retail stores or discotheques; here a single license-contract can cover all of the premises directly owned or controlled by the licensee.

(iii) *Extent of licensed uses*

It will be noted that the license agreements carefully stipulate the precise nature and extent of the use which may be made under them. If, for example, a license in terms corresponding to those in Appendix 3 was held by the proprietors of a restaurant and the performances initially contemplated were to be given by means of record or tape players ("background" music) on every night of the week, but in addition the licensee introduced live performances on Friday or Saturday nights, although those additional performances would not constitute an infringement of the rights administered by the licensing body, the licensee would be in breach of contract unless he notified them to the licensor and paid the appropriate additional remuneration.

(iv) *Exclusions from the license*

It will be noted that licenses usually contain a clause under which certain specified types of performance and/or the performance of certain categories

of works are specifically excluded from the scope of the authorization granted. Most of these exclusions derive from the fact that the rights administered by the licensing body issuing the license are limited to the so-called "small rights" (i.e. those covering nondramatic performances), the exclusions in these cases being governed by the borderline which separates those rights from the so-called "grand rights" (covering dramatic performances). The exclusion of dramatico-musical works (operas, musical plays, etc.) and ballets, either in their entirety or in excerpt in excess of certain prescribed limits, reflects the limits of the mandate received by the licensing body from its members.<sup>9</sup> Other exclusions reflect policy decisions that certain types of use will not be permitted except on special terms and conditions. Exclusions falling within this category are, for example, the performance of a vocal work accompanied by words other than those published or otherwise associated with it by the copyright owner, the performance of any work in such a form as to produce parodied or burlesque effects and the performance by means of a recording which constitutes an infringement of the rights of the owners of the copyright in that work, having been made without the consent either of the individual copyright owner or of the licensing body administering the reproduction right.

(v) *Program returns*

It will also be noted that both forms of agreement place upon the licensee the obligation to provide the licensing body with information, conforming to prescribed requirements, about the works performed or broadcast under the terms of the license. Fulfillment by the licensee of his obligations under these provisions is of crucial importance if the licensing body is to fulfill its own obligations to its members and foreign affiliated societies by distributing the proceeds of blanket licenses in such a way as to reflect the use actually made of the works covered by those licenses. However in practice many public performance licensees are exempted altogether from this obligation or are required to comply with it only at specified and limited times.

<sup>9</sup> In 1958, a Committee of Legal Experts of the Council of Europe concerned with the exchange of sound broadcasting and television programs between European countries drew up recommendations governing the borderline between those rights ("small rights") which should be included in the blanket licenses offered by the authors' societies to the European broadcasting organizations and those ("grand rights") which should be licensed individually by the right owners. This has led to a considerable degree of standardization throughout Europe in this respect but the exclusions in paragraph 1 of Schedule II to the license agreement reproduced in Appendix 4 do not wholly conform to the Council of Europe's recommendations because in the United Kingdom they have only been applied as regards radio and not as regards television.

The reason for this is that the proliferation of performances, especially at smaller premises giving rise to relatively low royalty payments, is so great as to make it practically and economically impossible for a complete census of program information to be obtained and analyzed by the licensing body for royalty distribution purposes. Even in the field of radio and television broadcasting, the proliferation of local and regional radio and television stations in some territories is now such that returns are increasingly being obtained and analyzed only on a sample basis, a complete census being obtained only in respect of national broadcasting services. As far as performances in public by means of radio and television sets are concerned, and as regards the simultaneous cable distribution of broadcast programs, the royalties collected are invariably distributed by being added to the pools of revenue deriving from the payments made by the original broadcasters, by reference to the program returns furnished by those broadcasters under their own license agreements. As regards performances given by mechanical means at, for example, discotheques, and by means of background music devices, in many countries it has not been found necessary or practicable to obtain lists of works from individual licensees, because relevant data enabling the licensing body to make an equitable distribution among its members can be obtained from other sources, for example specialist discotheque performance charts, record and sheet music sales charts (although sales, especially of records, do not always reflect the repertoire used in public performance), information furnished by companies providing background music services and other sources. In the United States of America, except for serious music concerts and recitals, program returns are not obtained at all for non-broadcast public performances, virtually the entire revenue collected by the U.S. performing right societies for such performances being distributed by reference to the logs obtained from the thousands of radio and television stations which operate in that country.

With the exception of the model agreement set out in Appendix 2, all of the agreements so far discussed in this article have solely concerned musical works; the distribution by cable of broadcast programs is one area in which the joint licensing of musical and other works has been seen to be the most viable solution to the problems posed by the new technology. Another example of this arises in those (regrettably few as yet) jurisdictions which have provided for copyright owners to be compensated in respect of the domestic recording of their works by means of a royalty or levy applied to the manufacture or importation of blank tapes used for domestic recording and/or to the recording equipment on sale to the public for this purpose. Consid-

eration of the legislation governing this matter in those countries is outside the scope of this article, but the freedom of the parties to negotiate is, in some cases, limited by the relevant statutory provisions. For example in the Federal Republic of Germany the legislation stipulates a maximum percentage of the proceeds while in Hungary the law provides for payment on a fixed percentage basis.

As regards the actual collection of royalties in respect of the use of different categories of works, where the right holders are represented by more than one different organization two solutions have been adopted; one is for the different groups of right owners to establish a joint collecting agency to act on behalf of all of them; this formula has been used in the Federal Republic of Germany as regards the collection of private recording royalties. The other is for the parties to appoint one of their number to act as collecting agent on their behalf. This has been the solution adopted both in Belgium and the Netherlands as regards the administration of cable distribution rights where the respective authors' societies (SABAM and BUMA) have been so appointed by the interested film and broadcasting organizations.

There remain to be considered agreements with users in respect of the collective administration of a single category of works other than musical works. Although the recent survey carried out by the author, the results of which are summarized in Appendix 1, appears to show that the collective administration of reprographic reproduction rights is not yet very widespread in Europe (and this appears to be even more the case also in other parts of the world), it may well be in this area that collective administration techniques will prove most useful in the future. It is in the Federal Republic of Germany and the Scandinavian countries that the greatest progress appears to have been made in this regard; in the latter countries the process has been greatly facilitated and accelerated by the application of the doctrine of the so-called "extended collective agreement license system." Under this system, it is provided by law that anyone who has received authorization from an organization representing a large number of national authors in a certain field to reproduce published works by photocopying or analogous processes shall also have the right to reproduce by the same methods published works of the same category the author of which is not represented by the organization. This system of collective administration was pioneered in respect of reprographic activities in schools in Sweden where an organization called BONUS was established in the early 1970's for this purpose. However the proceeds were not initially distributed to the copyright owners concerned but used for collective purposes such as scholarships, grants to various cultural institutions so it is doubtful whether that activity could

properly be described as the collective administration of authors' rights; one could even say that it represents a form of collective expropriation of such rights!<sup>10</sup> However since then much progress has been made in the Scandinavian countries, and this has already been well documented in recent editions of this review which has contained several articles describing in some detail the development of collective licensing schemes as regards reprography in educational institutions in Denmark, Finland and Sweden<sup>11</sup>; annexed to these was the full text of agreements entered into between the Danish licensing society COPY-DAN and the Finnish organization Kopiosto and the respective authorities in those countries as regards the reprographic reproduction of books and other printed materials in educational institutions. Although, in Denmark, at the time the first agreements between COPY-DAN and the educational users were entered into, the system of extended collective agreement licensing had not been given statutory recognition, this system was applied nevertheless by COPY-DAN which, within the framework of its license agreement<sup>12</sup> undertook an obligation to remunerate any right owner not represented by it and whose work had been copied by a school covered by its license. However, the most important feature of the first license agreement entered into by COPY-DAN was that it included provisions requiring a representative section of the schools covered by the agreement to participate in a "registration" scheme under which each time copies of published works or parts thereof were made by them, an extra set of copies should be made and forwarded to COPY-DAN to enable it to make a distribution of royalties to the interested parties based on an analysis of these sample copies. In Finland, although scrutiny of the first agreement between Kopiosto and the State of Finland as regards the reprographic reproduction of copyright works in schools and universities does not reveal any similar provision, it is understood that, under a separate protocol, arrangements have been made under which a sample survey is carried out by an independent agency appointed by (and at the expense of) Kopiosto and of the State education authorities jointly, for the purpose of providing a basis for distribution of the remuneration to individual copyright owners. Similar provisions have been incorpo-

rated in subsequent agreements between Kopiosto and the Finnish municipal authorities, with the State administration, with Church authorities and with associations representing business enterprises.

It appears therefore that in all essential respects the development of license agreements in respect of the reprographic reproduction of copyright works has so far been very much along the lines of the much longer established blanket license schemes operated by the societies administering rights in musical works.

### III. Resolution of Disputes Between Authors' Societies and Users

Obviously the contractual relationship between a copyright licensing body and its licensee may, as with any other transaction of a commercial nature, give rise to disputes of one kind or another, and many if not most such disputes will in the normal course of events be resolved either by eventual agreement between the parties, by arbitration or by litigation in the civil courts. In this section of the present article, however, we are concerned mainly with disputes arising (usually before the licensing body and the user or association of users concerned have entered into a contractual relationship) as to the reasonableness or otherwise of the terms and conditions proposed by an authors' society in respect of licenses to be granted by it. More often than not such disputes concern the remuneration stipulated by the licensing body, not necessarily only as to its quantum but possibly also as to the method by which it is to be computed. Disputes may however also arise in respect of other terms and conditions proposed, by the licensing body, covering such matters as, for example, the program reporting obligations of the licensee or quantitative restrictions on the extent of use to be permitted under the license.

In some jurisdictions disputes of this nature which cannot be settled by agreement between the parties or by voluntary arbitration procedures can only be resolved by litigation in the civil courts. However, in the years which followed the end of the Second World War the growing importance of collective administration in the copyright field in conditions of virtual monopoly on the part of the authors' societies has accelerated a tendency on the part of governments to introduce legislative measures under which the tariffs of copyright licensing bodies are subject either to some form of governmental supervision and/or to the jurisdiction of specially established tribunals or arbitration commissions with precisely defined terms of reference. The question of how disputes between authors' societies and users may be best resolved and the broader (and more controversial) question of how best to

<sup>10</sup> BONUS acts on behalf of a number of associations representing different categories of right owners. To-date the only such association which has made a distribution of reprographic royalties to its individual member right owners is a society representing Swedish light music composers.

<sup>11</sup> See *Copyright*, 1982, Christiansen: "Reprography in Danish Schools," pp. 16 to 20; Lieder: "Letter from Finland," pp. 171 to 174; 1983, Olsson: "Letter from Sweden," pp. 30 and 31.

<sup>12</sup> *Ibid.*, 1982, pp. 19 to 20 and 172 to 174.

ensure that the monopoly or quasi monopoly powers of collective licensing bodies are not abused have thus, perhaps inevitably, become inextricably intertwined. A full discussion of the latter aspect is beyond the terms of reference of the present article, which will limit itself to a survey of the various ways in which this problem has been approached in a number of different countries throughout the world, together with some brief comments as to the perceived advantages and disadvantages of each method. This can most conveniently be done by grouping the countries which have been the subject of this survey into three categories namely (a) those in which no special statutory provision has been made, (b) those where the societies' tariffs, etc. are subject to some form of supervision and (c) those where special statutory tribunals or arbitration commissions have been established.

(a) *Countries with no special statutory provisions*

Examples of countries falling into this category are *Belgium, Greece, Italy, Portugal* and *Spain* where challenges to the authors' societies' tariffs can usually only be resolved in the ordinary civil courts. (The creation of a special arbitration commission was proposed in the earliest draft of the recently adopted Portuguese Copyright Amendment Law but was not adopted.) From the point of view of the authors, the principal advantage of this system, under which there is total freedom for the societies to fix their tariffs, is of course that the exclusive right of the author remains undiluted, even when exercised collectively under monopoly conditions. The main disadvantages are seen as (a) that challenges in the courts are more likely to arise than under a system where the tariffs have been approved by a statutory body and (b) that the normal court procedures are usually very slow.

Another important country usually considered as falling into this category is *France*. However, this categorization has to be subject to some qualification for two reasons. Firstly, since 1977 the national legislation on competition and prices has been applicable to the authors' professional organizations in that the French Commission for Competition and Prices, a body of an administrative character, has been empowered to give consultative opinions to the civil courts to which disputes about the contractual practices of authors' societies have been referred. It also has competence to assess a dispute of this nature on the basis of a complaint lodged by a users' trade association. The main advantage of these provisions is seen as lying in the possibility of disputes of this nature being heard both by judicial magistrates and by specialists in economic affairs as

compared with specialized copyright tribunals composed of persons who may not necessarily offer the same guarantee of independence and cross-debate. The main disadvantage is that the proceedings are lengthy and while they are taking place no effective measures can be taken to protect the authors' interests being injured by legal proceedings which are finally found to have been unwarranted.

Secondly, the very recently enacted French Copyright Amendment Law<sup>13</sup> contains provisions whereby the remuneration payable by the manufacturers and importers of blank tapes (audio and audiovisual) in respect of private copying is to be determined by a Committee presided over by a representative of the State and composed additionally of persons designated by (a) the organizations representing the beneficiaries of this remuneration, (b) by the organizations representing the manufacturers or importers of the blank tape and (c) by consumers' organizations.<sup>14</sup> In addition, the new Law contains provisions under which the authors' societies are obliged to bring to the notice of the Minister for Culture any proposed modifications in their rules for the collection and distribution of royalties<sup>15</sup>; while such measures cannot be said to comprise machinery for the settlement of disputes between authors' societies and users they are clearly intended to minimize the likelihood of such disputes arising and, as such, may be welcomed.

(b) *Countries where tariffs, etc. are subject to official supervision*

The first group of countries which falls into this category is that comprising the socialist States of Eastern Europe. For example, in *Czechoslovakia* tariffs for public performances of musical works are prescribed by decree of the Ministry of Culture, while in other cases the tariffs are first the subject of negotiations with the users but then have to be approved by the Ministry of Culture.<sup>16</sup> The Czechoslovak law provides that any disputes arising shall be referred to the normal courts for adjudication.<sup>17</sup> This system is considered there to be satisfactory and this has been the case also in *Hungary* where a similar system has operated and where the majority of the users are State-owned organizations under the administrative as well as the economic supervision of the competent State Ministries. However, because of the recent tendency in Hungary towards economic decentralization it may be that a

<sup>13</sup> *Ibid.*, 1985, pp. 326 *et seq.*, Law No. 85-660 of July 3, 1985.

<sup>14</sup> *Ibid.*, Article 34.

<sup>15</sup> *Ibid.*, Article 39.

<sup>16</sup> Copyright Law No. 35 of 1965, section 22(1).

<sup>17</sup> *Ibid.*, section 53.

new kind of arbitration machinery will develop there.

The socialist countries are not by any means the only ones where the tariffs of collective licensing organization are subject to the prior approval of governmental ministries or agencies. In *Denmark*, for example, prior approval by the Ministry of Cultural Affairs of tariffs for the public performance of music is required. This solution is not considered to have worked well from the point of view of the authors because of the considerable political influence of certain groups of users which has been brought to bear on the decisions of the Ministry in this regard.

A system which appears to meet with satisfaction on the part of both authors and users is to be found in *Switzerland* where the tariffs of SUIISA, the musical performing right society (which enjoys a legal monopoly) must have the prior approval of the Federal Arbitration Committee for the Collection of Royalties whose members are appointed by the Federal Department of Justice and which consists of three impartial members (usually judges or university professors), two members appointed on the proposal of SUIISA and two appointed on the proposal of users' organizations. This Federal Committee is competent to judge whether a tariff is arbitrary, i.e. whether it provides for excessively high royalties which constitute an abuse of SUIISA's monopoly position; if there is no such abuse the tariff must be approved. Appeal against its decisions may be made to the Swiss Federal High Court. From the point of view of the authors the main advantage of this system is that the prior approval of SUIISA's tariffs by an impartial Committee, including users' representatives, has helped in many cases to convince users of their reasonableness. The main disadvantage is that the proceedings are rather slow, especially as regards appeals against the Committee's decision, and can result in delays in the efficient collection of royalties for periods of two years or more.

Another interesting feature of the situation in *Switzerland*, as regards disputes generally, is that by law each Swiss canton must appoint one particular court competent for civil law litigation on copyright matters. All the Swiss cantons have in fact appointed their regular Cantonal High Court for this purpose (which in most other matters is the court of second instance).

In the *Netherlands*, the Dutch performing right society (BUMA) operates by virtue of a specific decree by the Ministry of Justice and is subject also to the provisions of a general decree setting out regulations regarding the ministerial permission required by a performing right society. These provide for the appointment of a commissioner who exercises general supervision over the way the society conducts its business. He is obliged to hear certain

groups of users of musical works once a year and to enable them to make their views known. Apart from these provisions, which are considered to work satisfactorily, disputes between users and BUMA (or STEMRA, the society administering mechanical reproduction rights) come before the civil courts in the normal way.

Finally under this heading falls to be considered the interesting case of *Japan* where under the Law on Intermediary Business concerning Copyrights<sup>18</sup> any person intending to act on behalf of copyright owners as regards "publications, translations, public performance, broadcasting, cinematographic, sound recording or other uses" of their works is required first to obtain permission of the Commissioner of the Agency for Cultural Affairs, and any person who conducts any such business without that permission is liable to a fine. Once permission has been granted the Commissioner has wide supervisory powers over the conduct of the intermediary's business; for example he may "whenever he deems it necessary in view of the condition of the business or assets of an intermediary, order the intermediary to change its methods of conducting the business, and issue such other orders as may be necessary."<sup>19</sup> In practice it appears that one of the main areas in which the Commissioner has intervened in the case of JASRAC (the authors' society administering musical public performance and mechanical reproduction rights) is to exercise effective control over JASRAC's tariffs, although this specific power is not mentioned in the legislation.

Alongside these provisions exist special provisions in the Japanese Copyright Law under which the Agency for Cultural Affairs "shall provide mediators for the settlement of disputes concerning copyright."<sup>20</sup> When a dispute arises in relation to rights of copyright the parties concerned may apply to the Commissioner for mediation and the law provides that he shall submit the matter to mediators unless he deems the nature of the dispute inappropriate for submission to mediation or that the parties have applied for mediation "for improper purposes." The decision of the mediators is not legally binding but it is considered that, in view of the position and powers of the Agency for Cultural Affairs as the administrative organ in charge of this mediation system, any decision so made would in practice be binding on the parties. However, JASRAC has not in fact utilized this procedure so its possible merits and demerits remain a matter of some speculation. The system however is seen as having some potential value, offering as it does a formal oppor-

<sup>18</sup> Law No. 67 of 1939.

<sup>19</sup> *Ibid.*, Article 8.

<sup>20</sup> See *Copyright*, 1971, pp. 85 and 86, Law No 48 of 1970, Articles 105 to 111.

tunity for dialogue, conciliation and the possibility of a speedier and simpler way of resolving disputes than under the normal processes of civil law. It appears that the main disincentive to using the procedure has been the fear that time would be wasted in the event that no real settlement resulted, since the mediator's decision is not strictly binding in the legal sense.

*(c) Countries where statutory tribunals or arbitration commissions have been established*

Examples of this type of solution are to be found in continental Europe (including, to a limited extent, the Nordic countries), in North America, in the British Isles and in a number of countries, formerly under British colonial rule and now for the most part members of the Commonwealth, which have inherited in large measure the British legal tradition, and it will be convenient to review the relevant provisions in that order (the case of Switzerland falls into category *(b)* for the purposes of this article because there the prior approval of the Tribunal is mandatory; this is not the case in any of the countries now to be considered).

*(i) Austria*

Under the Law regulating Copyright Societies<sup>21</sup> there is established a special Arbitration Board whose powers include the resolution of disputes between copyright societies and users' organizations. It consists of five members, of whom one is nominated by each party to the dispute, these two electing the remaining three. The Board elects its President, by absolute majority of the votes of all its members, from among the three independent members. In certain circumstances, if agreement is not reached about the members to be elected, application may be made to the Federal Minister of Justice to appoint members. The decisions of the Board have the effect of final court decisions.

This machinery is considered to be a fair method of resolving disputes about tariffs but in practice it has been very rarely used. Separate statutory provisions have, since 1980, been in force regarding the fixing of remuneration payable under compulsory license in respect of the cable transmission of broadcasts in Austria, and the procedures described above do not apply in this area.<sup>22</sup>

<sup>21</sup> Law No. 112 of 1936.

<sup>22</sup> For further details, see *Copyright*, 1981, Dittrich: "Letter from Austria," p. 98; 1982, Walter: "Cable Television in the Austrian Copyright Amendment Law, 1980," p. 266.

The first decision of this special Arbitration Commission gave rise to vehement protests on the part of the authors; its constitution has since been amended.

*(ii) Federal Republic of Germany*

Under the Law on the Administration of Copyright and Neighboring Rights of 1965, copyright licensing bodies (which are required to obtain the authorization of the supervising authority — the Patent Office) are obliged to enter on reasonable terms into global contracts with associations of users and if agreement cannot be reached between the parties (or between the licensing body and a broadcasting organization) either party has the right to refer the dispute to an Arbitration Board established by the Patent Office and consisting of a Chairman (or of his Deputy) and two assessors. The Chairman and his Deputy have to have the qualifications of judges under the German Judicature Act while the assessors are nominated by each of the parties. Its decisions, which must be rendered with reasons, are subject to appeal to the competent Superior Court, but once irrevocable and final they are binding on both parties. In practice these provisions appear to have worked satisfactorily.

*(iii) Norway*

A special Arbitration Commission has been appointed under the provisions of the Norwegian Copyright Law of 1961 but its functions are limited to determining the remuneration payable in respect of certain uses which are subject to compulsory licenses (for example certain educational and religious uses and recordings made by the national broadcasting organizations).<sup>23</sup> Its decisions, which are not subject to appeal and are binding on the parties, have therefore had only minor importance; in those disputes which it has settled the right owners have generally been satisfied.

*(iv) Sweden*

Until recently there were no special provisions in the Swedish copyright legislation governing disputes between authors' societies and users but on January 1, 1981, there came into force new legislation<sup>24</sup> under which disputes concerning agreements on the reprographic reproduction of works in educational activities may be referred for "mediation" by a mediator to be appointed by the Government. In the event that the mediator is unsuccessful, the law contains provisions whereby the dispute should be submitted to arbitration.

These provisions, which it must be said are of a highly tentative nature, have not yet been in force for sufficient time for a judgment to be formed on their merits.

<sup>23</sup> Copyright Law of May 12, 1961, Articles 13, 15, 20, 23 and 51.

<sup>24</sup> See *Copyright*, 1981, p. 58, Law No. 612 of June 19, 1980.

*(v) United States of America*

The general revision of the United States Copyright Law enacted in 1976 created a Copyright Royalty Tribunal<sup>25</sup> composed of five government-appointed Commissioners who appoint their Chairman annually from among their number. The Tribunal's jurisdiction is limited (i) to determining the royalty rates payable under the compulsory licenses for (a) certain secondary transmissions of broadcasts by cable systems, (b) making and distributing phonorecords, (c) the noncommercial broadcasting of certain works and (d) public performances by means of coin-operated phonorecord players (jukeboxes), and (ii) to determining the distribution of royalty fees deposited with the Register of Copyrights in respect of the cable transmission and jukebox compulsory licenses.

The licensing organizations administering musical performing rights in the USA are not therefore subject to the jurisdiction of this Tribunal or to any other statutory arbitration procedures. However in the case of the only one of the three organizations administering musical performing rights in the USA which is owned and controlled by the composers, authors and music publishers whose rights it administers (ASCAP), its operations are governed by the terms of a consent judgment resulting from antitrust proceedings brought against ASCAP by the US Department of Justice in 1950. Under this consent decree (as amended) applicants for licenses on terms which cannot be agreed between the parties may apply to the United States District Court for the Southern District of New York for the determination of a reasonable fee. In such proceedings the burden of proof is on ASCAP to establish the reasonableness of the fee requested by it. Pending the completion of negotiations or proceedings the applicant for a license has the right to use works in the ASCAP repertoire but the Court may fix an interim fee pending final determination. The Court's decisions are subject to the normal appeal processes.

This mechanism is considered to have worked well in that it has invariably led the parties to reach agreement, with the judge acting at times as a kind of informal mediator but always standing ready to conduct a trial if necessary. In the compulsory license area, the Copyright Royalty Tribunal is generally considered to have performed in a satisfactory way, although some users have expressed the view that it has unduly favored creators over users; recently however its constitution has become a matter of political controversy.

*(vi) Canada*

Under the Canadian Copyright Act,<sup>26</sup> any organization issuing licenses for performances of copyright musical works is required to file annually with the Copyright Office statements of the tariffs it proposes to apply during the next ensuing calendar year. These are then published in the *Canada Gazette* with notification that any person having any objection must file his objection within a stated period. Objections received are then referred to a Copyright Appeal Board established under the Act, consisting of "a person who holds or who has held high judicial office" (the Chairman) and two other members appointed by the Government from offices of the public service. Proceedings of the Board are governed by rules made by itself and on the conclusion of its consideration it may make such alteration in the proposed tariffs as it thinks fit. The fees and charges determined by it are then published in the *Canada Gazette* and any user who tenders payment in accordance with the Board's decision is immune from any infringement proceedings even if the licensing body concerned has not actually granted its license. Its decisions are subject to appeal only on restricted legal grounds.

Although this system has been criticized as unjustifiably prejudicial to the author's exclusive right, it is, on the whole, considered to have worked efficiently and in particular it has effectively removed the risk of antitrust accusations against the performing right societies in Canada, in marked contrast to the position across its southern border. Proposals for revision of the Canadian Copyright Law have included provision for a statutory tribunal with competence not only as regards the public performance of music but also in other areas of collective administration.

*(vii) United Kingdom*

The United Kingdom Copyright Act of 1956<sup>27</sup> established a Performing Right Tribunal consisting of a Chairman, who is appointed by the Lord Chancellor and who must be a legal practitioner of not less than seven years' standing or someone who has held judicial office, and of up to four other members appointed by the Department of Trade. Its jurisdiction is limited to determining disputes arising between licensing bodies and persons, or "organizations representative of such persons" requiring licenses for the public performance, broadcasting or cable transmission of literary, dramatic or musical works, the public performance or broadcasting of sound recordings and the public reception of televi-

<sup>25</sup> *Ibid.*, 1977, pp. 217 *et seq.*, Act of October 19, 1976, Chapter 8.

<sup>26</sup> Copyright Act 1921 (as amended), sections 48 to 50. These provisions date from 1936.

<sup>27</sup> Copyright Act 1956, Part IV.

sion broadcasts. The expression "licensing body" is narrowly defined so as to exclude organizations such as publishers which grant licenses in respect of single works or the works of a single author provided they do not include the negotiation or granting of general licenses each extending to the works of several authors.<sup>28</sup> Disputes which may be referred to the Tribunal may be in respect of a tariff (described in the Act as a "license scheme") or in respect of the terms and conditions proposed by the licensing body to an individual user not covered by such a license scheme. A reference to the Tribunal cannot be made by the licensing body but only by a user or association of users claiming that they require a license and either that the licensing body has refused to grant such a license or that its proposed charges, terms or conditions are unreasonable. The proceedings of the Tribunal are governed by rules made pursuant to the Act by the Lord Chancellor. It is required to give the parties an opportunity of presenting their cases, following which it makes an order either confirming or varying the terms and conditions proposed by the licensing body in such a way as it "may determine to be reasonable in the circumstances."<sup>29</sup> The decisions of the Tribunal are not subject to appeal except that any question of law arising in the course of the proceedings may be referred to the court for decision and orders made by the Tribunal may be referred back in certain circumstances after a prescribed time limit.

Both the composition and the functioning of the UK Performing Right Tribunal have been the subject of considerable criticism. Its initial establishment, inspired by fears of potential abuse of monopoly, was supported on all sides, but over the years both creators and users have expressed the view that reform is needed.<sup>30</sup> Its powers (which were supported to be limited to dealing with "abuse of monopoly rights") are considered to be too broadly defined<sup>31</sup>; its procedures are considered to be too

legalistic and expensive; its membership has generally lacked persons with knowledge or understanding of artistic or intellectual property matters, and some of its decisions have been criticized for a lack of consistency, for insularity and for some unfairness. Nevertheless it has in many respects facilitated the smooth administration of the rights which are subject to its jurisdiction, its mere existence often being sufficient to reassure a user as to the reasonableness of the terms offered by a licensing body.

#### (viii) Republic of Ireland

The Irish Copyright Act of 1963 confers on a single person (the Controller of Industrial and Commercial Property) jurisdiction virtually identical to that conferred on the Performing Right Tribunal in the United Kingdom.<sup>32</sup> In practice no disputes have come before the Controller for determination since the Act came into force but the availability of recourse to him in the case of dispute has generally been felt to be a helpful factor.

#### (ix) Australia, New Zealand and South Africa

Each of these countries has drawn to a considerable extent on the United Kingdom model by including in their copyright laws<sup>33</sup> provisions establishing a special tribunal (in each case designated "Copyright Tribunal") with jurisdiction to determine disputes between licensors and users. Both in its constitution and extent of jurisdiction it is the *New Zealand* Tribunal which most resembles the UK model, the principal differences being (a) that unlike the UK Tribunal its jurisdiction includes licenses to make sound recordings or cinematograph films for the purpose of broadcasting them and (in the case of cinematograph films) to broadcast them, and (b) that its jurisdiction extends to the terms and conditions of licenses offered or granted by individual copyright owners.<sup>34</sup>

In *Australia* the Copyright Tribunal, established under the Copyright Act of 1968, also has compe-

<sup>28</sup> *Ibid.*, section 24(3).

<sup>29</sup> *Ibid.*, sections 25(5) and 27(5).

<sup>30</sup> See "Copyright and Designs Law: Report of the Committee to consider the Law on Copyright and Designs," the Whitford Committee, HMSO, London, Cmnd.6732, March 1977, pp. 192 to 199, and "Reform of the Law relating to Copyright, Designs and Performers' Protection," HMSO, London, Cmnd.8302, July 1981, pp. 52 to 54.

<sup>31</sup> At the Brussels Conference for revision of the Berne Convention in 1948, the United Kingdom Government declared that it accepted the provisions of Article 11 of the Convention on the understanding that it remained free to enact legislation to "prevent or deal with any abuse of the monopoly rights conferred upon owners of copyright" and in 1956, when the Copyright Bill was debated in Parliament the responsible Minister said, in regard to the provisions establishing the Performing Right Tribunal, "we have been careful to confine the jurisdiction of the Tribunal to what we are entitled to do under the reservation we have made to ... Article 11." However, there is no explicit reference in the Copyright Act to the abuse of monopoly (see note 29 *supra* and related text).

<sup>32</sup> See *Copyright*, 1963, pp. 140 *et seq.*, Copyright Act, 1963, Part V. The Controller may, in certain circumstances, refer a case brought before him to an arbitrator (section 41).

<sup>33</sup> *New Zealand*: Copyright Act 1962, Part V, *ibid.*, 1963, pp. 208 *et seq.*

*Australia*: Copyright Act 1968, Part VI, *ibid.*, 1970, pp. 251 *et seq.*

*South Africa*: Copyright Act, 1978, Chapter 3, *ibid.*, 1984, pp. 337 *et seq.*

<sup>34</sup> *New Zealand* Copyright Act, Section 36(1); *Australian* Copyright Act, Section 136(1). The jurisdiction of the Australian and New Zealand Tribunals over the terms of certain licenses granted by individual copyright owners seems to prejudice the exclusive right of the author to a wholly unjustifiable extent and it must be at least doubtful whether these provisions are in conformity with the Berne Convention, to which both countries are party.

tence in relation to certain kinds of license granted by individual copyright owners, but its jurisdiction, in addition to covering much the same ground as in New Zealand extends also to a determination of "equitable remuneration" to be paid in respect of certain uses which are subject to compulsory licenses. These include, most importantly, the determination of the royalty payable in respect of recordings of musical works made for retail sale. The Australian provisions, which are generally considered to have worked well in practice, differ from those in the United Kingdom and New Zealand in another interesting respect, namely that in Australia a licensing body may itself, as a kind of preemptive measure, refer its own license scheme for adjudication by the Tribunal in the hope that it will be confirmed as reasonable.

The constitution and jurisdiction of the *South African* Tribunal is also largely based on the UK model,<sup>35</sup> the main differences being (a) that, as in the Republic of Ireland, its powers are vested in a single person (in this case the Commissioner of Patents), (b) that its jurisdiction is not limited to performing and broadcasting rights but extends also (in the case of literary and musical works) to licenses to publish the work in a material form or to record it and (in the case of an artistic work) to include it in a cinematograph film or a pre-recorded television broadcast. In practice, since it was first established in 1965, the South African Tribunal has only once been called upon, but, as elsewhere, the mere possibility of recourse to it is considered to have value both to licensing bodies and users alike.

<sup>35</sup> Under the South African Copyright Act, the Tribunal is not granted jurisdiction over licenses issued by individual authors but the definition of "licensing body," section 1(1) is less restrictive than in the UK, omitting the important proviso to section 24(3) of the UK Act (see note 1 *supra*).

#### (x) *Developing countries*

Appendix 5 lists 13 developing countries formerly under British colonial rule (and one territory still for the time being under British administration) where the copyright law provides for statutory machinery for the resolution of disputes between copyright licensing bodies and users and/or the supervision of licensing bodies' tariffs. However, except in *India*, where the Copyright Board has adjudicated on a number of disputes, virtually no recourse has yet been had to these provisions.

### IV. Conclusions

What conclusions can be drawn from our review of the relationship between users of works and collective licensing bodies established by the authors? Firstly, it does appear that the collective administration systems, devised in the first instance for the effective protection of the interests of the composers of musical works and as a practical means whereby users of those works may obtain the licenses they need, are gradually spreading (and are likely in the future to spread still further) to other areas of use, especially those resulting from the application of the new technologies, and that in all essential respects the licensing techniques pioneered by the musical performing rights societies can be effectively applied in those areas.

Secondly, it appears also that there is widespread acceptance of the need for provision to be made in copyright or related legislation for the resolution of disputes between licensing bodies and users in such a way as to satisfy the legitimate concerns of both sides, but that there is no general consensus as to the most appropriate measures in this respect.

## APPENDIX 1

**Examples of European Countries Where There is Collective Administration  
of Authors' Copyright (Other Than in Respect of Musical Works)**

| (A)<br>Country | (B)<br>Type of works  | (C)<br>Licensing body | (D)<br>Rights administered<br>collectively <sup>1</sup>   | (E)<br>Type(s) of<br>license issued  | (F)<br>Rights administered<br>quasi-collectively <sup>2</sup>   | (G)<br>Remarks   |
|----------------|---|-----------------------|---|--|---|--|
| Austria        | dramatic &<br>literary  | LITERAR-<br>MECHANA   | (a) mechanical reproduction<br>(radio & TV)<br>(b) public reception of<br>broadcasts <sup>3</sup><br>(c) cable transmission <sup>3</sup>  | } blanket  | mechanical reproduction<br>(phono & video)  | —  |
|                | literary  | LVG                   | (a) public reception of<br>broadcasts<br>(b) public recitation<br>(c) cable transmission  |  |   |  |
| Belgium        | literary, dramatic,<br>plastic, photographic<br>& audiovisual | SABAM                 | (a) theatrical representation <sup>4</sup><br>(b) public performance<br>(c) mechanical reproduction<br>(d) graphic reproduction <sup>5</sup><br>(e) cable transmission<br>(f) <i>droit de suite</i> | } blanket for radio and<br>for cable transmission<br>only; otherwise case by<br>case | (a) videograms<br>(b) translations and<br>adaptations<br>(c) theatrical representation <sup>4</sup><br>(d) certain uses of plastic<br>works | —  |
| Denmark        | published works<br>(literary, scientific,<br>etc.)            | COPY-DAN              | reprographic reproduction   |  | blanket   | —  |
| Finland        | published works<br>(literary, scientific,<br>etc.)            | KOPIOSTO              | reprographic reproduction   | blanket  | —   | —  |
| France         | artistic &<br>photographic                                    | SPADEM                | (a) <i>droit de suite</i><br>(b) reproduction (various<br>kinds)<br>(c) representation (all media)  | } blanket or case by case  | certain kinds of reproduction   | individual authorization is re-<br>quired for certain uses (e.g.<br>three-dimensional reproduction<br>or for advertising purposes) |
|                | dramatic  | SACD                  | —   |  |   |  |

|  | literary,<br>documentary, etc. <sup>6</sup> | SCAM          | all representation and<br>reproduction rights exploited<br>by any audiovisual means and<br>by computers (teletext, etc.)  | blanket | (a) publication<br>(b) adaptation & translation<br>(c) press reproduction<br>(d) recitation | the rights itemized in column F<br>are administered by SCAM on<br>an optional basis |
|--|---|---------------|---|---------|---|---|
| <i>Germany<br/>(Federal<br/>Republic of)</i> | dramatic, literary<br>& scientific          | VG WORT       | (a) public reception of<br>broadcasts<br>(b) radio & TV broadcasting <sup>7</sup><br>(c) private recording<br>(d) cable transmission<br>(e) reprographic reproduction<br>(f) rental (books &<br>videocassettes)<br>(g) reprint in press digests | blanket | —   | —   |
|  | visual arts                                 | VG Bild-Kunst | (a) TV broadcasting<br>(b) reprographic reproduction<br>(c) cable transmission  | blanket | —   | —   |
| <i>Hungary</i>                               | literary                                    | ARTISJUS      | (a) public performance<br>(b) radio & TV broadcasting<br>(c) recording<br>(d) cable transmission  | blanket | —   | —   |
| <i>Israel</i> <sup>8</sup>                   | dramatic & literary                         | ACUM          | (a) public performance <sup>9</sup><br>(b) radio & TV broadcasting<br>(c) recording &<br>synchronization <sup>10</sup><br>(d) reprographic reproduction<br>& reprint <sup>10</sup>  | blanket | —   | —   |

<sup>1</sup> i.e. where the licensing body is empowered to grant licences without consultation with individual right owners.

<sup>2</sup> i.e. where licenses granted by an authors' society are subject to the authorization of individual right owners.

<sup>3</sup> Dramatic works only.

<sup>4</sup> Consultation with the author is required in the case of exclusive contracts for theatrical representation in a professional theater.

<sup>5</sup> Limited to works already published (e.g. authorizations for inclusion in anthologies).

<sup>6</sup> Including magazines, computer software, videoclips, etc.

<sup>7</sup> Limited to readings up to duration of 10 minutes (TV) and 15 minutes (radio).

<sup>8</sup> Although not strictly part of Europe, Israel is included because of its geographical proximity to and cultural affinities with Europe (the Israeli authors' society ACUM belongs to CISAC's European Committee).

<sup>9</sup> Excluding dramatic works.

<sup>10</sup> Synchronization of existing works in feature and advertising films, recording of existing works, commercials and reprint of works in commercial publications.

| (A)<br>Country      | (B)<br>Type of works  | (C)<br>Licensing body | (D)<br>Rights administered collectively <sup>1</sup>  | (E)<br>Type(s) of license issued | (F)<br>Rights administered quasi-collectively <sup>2</sup>  | (G)<br>Remarks  |
|---------------------|---|-----------------------|---|----------------------------------|---|---|
| <i>Italy</i>        | dramatic <sup>11</sup>  | SIAE (DOR section)    | (a) mechanical reproduction<br>(b) public performance<br>in mixed entertainments                    | } blanket                        | (a) theatrical representation<br>(b) public performance<br>(c) radio & TV broadcasts                                      | —   |
|                     | literary  | SIAE (OLAF section)   | (a) public recitation<br>(b) radio & TV broadcasting<br>(c) mechanical reproduction                 |                                  | } blanket or case by case   | —   |
|                     | photographic works and works of figurative art                      | SIAE (OLAF section)   | TV broadcasting   | blanket <sup>12</sup>            |   | reproduction  |
| <i>Netherlands</i>  | photographic  | BURAFO                | cable transmission  | blanket                          | —   | administration of reprographic reproduction and lending rights is also planned but is not yet effective |
| <i>Poland</i>       | dramatic & literary   | ZAIKS                 | all rights except publication & adaptation (incl. film)   | case by case                     | —   | authors may stipulate special conditions in exceptional cases   |
| <i>Portugal</i>     | all categories  | SPA                   | —   | —                                | (a) public performance<br>(b) radio & TV broadcasting<br>(c) recording<br>(d) rental or lending<br>(e) cable transmission | possible administration of reprographic reproduction rights is under study                              |
| <i>Soviet Union</i> | dramatic, literary, photographic & works of fine art                | VAAP                  | —   | —                                | (a) public performance<br>(b) mechanical reproduction<br>(c) industrial utilization of works of fine art                  | VAAP itself grants licenses only in respect of foreign works <sup>13</sup>                              |
| <i>Spain</i>        | dramatic, lyric-dramatic, choreographic, literary & cinematographic | SGAE                  | (a) radio & TV broadcasting <sup>14</sup><br>(b) mechanical reproduction (phonograms) <sup>14</sup> | case by case                     | (a) representation & recitation<br>(b) public performance<br>(c) recording  | —   |

|                |   |                       |  |  |              |  |
|----------------|---|-----------------------|--|--|--------------|--|
| Switzerland    | dramatic, literary, artistic & photographic | PROLITTERIS-TELEDRAMA | (a) radio & TV broadcasting and cable distribution of non-theatrical literary works, unpublished dramatic works and artistic & photographic works<br>(b) certain types of public performance<br>(c) mechanical and reprographic reproduction<br>(d) reproduction of artistic and photographic works in books, journals, etc. | blanket for radio & TV, otherwise case by case | —            | licences for cable distribution of broadcasts are issued on behalf of PROLITTERIS-TELEDRAMA (and of SUISA in respect of musical works) by SUISSIMAGE (which itself administers cable rights in films)                |
| United Kingdom | artistic                                    | DACS                  | TV broadcasting & cable transmission   | under negotiation                              | reproduction | DACS is a newly created society with, as yet, a limited repertoire   |
|                | dramatic & literary                         | ALCS                  | (a) lending<br>(b) reprographic reproduction<br>(c) mechanical reproduction <sup>15</sup><br>(d) cable transmission  | blanket  | —            | pilot schemes for reprographic reproduction licensing being jointly operated by the Authors' Lending & Copyright Society (ALCS) and the Publishers' Licensing Society (PLS) through Copyright Licensing Agency (CLA) |
|                | literary                                    | PLS                   | reprographic reproduction  | blanket  | —            |  |

<sup>11</sup> Including operettas, revues and analogous works (including those created for broadcasting, etc.).

<sup>12</sup> Only to the Italian State Broadcasting authority (RAI).

<sup>13</sup> Namely (a) for use on radio & TV of "small" literary works of authors from Bulgaria, Czechoslovakia, German Democratic Republic, Hungary & Poland and (b) for use in the press of reproductions of works of fine art from the repertoire of a foreign society which has conferred such rights on VAAP.

<sup>14</sup> Requests for authorization from the individual right owner have to be made, but after a prescribed interval a license is deemed to be tacitly granted.

<sup>15</sup> Private and "off-air" recording only.

## APPENDIX 2

**Model Contract  
Concerning the Simultaneous Cable Distribution  
of Television Programmes**

Between

1. The following rightholders

- |   |                       |   |
|---|-----------------------|---|
| <ul style="list-style-type: none"> <li>(a) (broadcasting organisation(s))</li> <li>(b) (society of film right owners)</li> <li>(c) (authors' society or societies)</li> </ul> | } <i>Alternative:</i> | Each group signs a separate contract following the present model as closely as possible |
|---|-----------------------|---|

hereinafter called "the rightholders"

and

2. (organization for the distribution of programmes by cable)

hereinafter called "the cable distribution organization"

*Whereas*

(i) the cable distribution organization has been authorized by the appropriate licensing authority/has requested authorization from the appropriate licensing authority (where the authorization has merely been requested, the contract can only be concluded provisionally) to operate the following cable distribution system, a sufficiently detailed technical description of which is annexed to this contract:

- (name)
- (geographical area covered/population of this area)
- (present number of subscribers)
- (programme services at present distributed on the various channels)
- (subscription rates)

(ii) the rightholders, in the order given above, hold the following exclusive rights to authorize or prohibit such distribution\*:

- (a)
- (b)
- (c)

(iii) with regard to this cable distribution system, the cable distribution organization requests the authorization to distribute simultaneously to its subscribers the following television service(s):

(short title "...").

This authorization does not cover communication to the public in cafés, restaurants, hotels, etc. of the programmes thus distributed.

*Now it is agreed and declared as follows:*

The cable distribution organization is granted the requested authorization subject to the following conditions:

1. The distribution of the programmes covered by this contract must be simultaneous, complete and without any changes, additions or substitutions whatsoever.

2. This contract shall not entitle the cable distribution organization to record the programmes of the services covered by this contract.

Further, the cable distribution organization undertakes to inform the subscribers in an adequate way that payment of the subscription fee does not confer authorization on them to make recordings of the said programmes and, where applicable, that such recordings and their diffusion are illegal under the national law.

3. Subject to any contrary provisions under national public law, the cable distribution organization shall assign a specific channel for the distribution of each particular programme service. This channel may not be used for the distribution of any other programme material. Exceptions are permitted where the cable distribution organization carries certain local programming, provided that the distribution of such programming occurs during hours when there is normally no transmission of programmes on the particular channel by the broadcasting organization to which the said channel is assigned, on the understanding also that any exceptional transmission by the broadcasting organization shall always be given priority, and that the subscribers will be duly informed about such a double use, if any, of one distribution channel, so as to leave no doubt whatsoever as to the actual origin of any programming distributed.

The distribution shall be of high technical quality.

4. The rightholders reserve the right to prohibit, in exceptional cases, the distribution of certain programmes. This right shall only be exercised in cases of objective and absolute necessity, e.g. avoidance of very serious and durable prejudice to the interests of the rightholders or respect for the rights of third parties affected by the content of the programme. Any request for such blackout shall be communicated to the cable distribution organization at least 48 hours in advance.

\* To be modified if each group signs a separate contract.

5. The rightholders grant and guarantee only the utilization of the rights specified under (ii) of the preamble, subject to the terms and conditions of this contract. However, the rightholders party to this contract hold the cable distribution organization harmless against any financial claims from outsiders not represented by them but whose rights fall into the category of rights which are administered by the society of film right owners and the authors' society or societies of the one part, and exploited or used by the broadcasting organization(s) of the other part. However, the extent of the said guarantee shall be limited to the amount of the fees distributed by the rightholders, party to this contract, in respect of a work or programme of the same kind as the disputed work or programme; the guarantee shall likewise be limited to claims lodged before 31 December of the year following the distribution.

6. The cable distribution organization shall hold the rightholders harmless against any claims from persons who may deem their honour to have been attacked, or who have suffered prejudice, and that might be brought against the rightholders by any third party by reason of the distribution of television programmes by the cable distribution organization.

7. In consideration of the rights granted hereunder, the cable distribution organization shall make payments to the rightholders subject to the following conditions:

(a) the total sum to be paid shall be calculated periodically on the basis of the number of subscribers existing on ... (dates to be agreed) multiplied by ... (a lump sum or any other formula under study) it being understood that in view of their exceptional character, blackouts effected in conformity with 4 above shall not have any effect on the total sum to be paid;

(b) programme interruptions due to a cause within the broadcasting organization's control shall not have any effect on the total sum to be paid, unless and to the extent that they result in an actual reduction of the fee payable by the subscribers to the distribution system;

(c) of the total sum payable (optional formula not applicable in the case of payment to a joint organization):

...% shall be paid to the broadcasting organization(s),

...% shall be paid to the society of film right owners,

...% shall be paid to the authors' society (or societies);

(These percentages shall be determined at national level)

\*\*\*

(d) payments shall be effected quarterly on or before the ... day of April, July, October and January for the preceding three months, respectively. In support of the said payments, the rightholders shall be given a statement of the number of subscribers for the respective three months.

8. The rightholders shall be granted unrestricted access by appropriate means to any document which may be at the cable distribution organization's disposal with respect to calculation of the total sum to be paid under 7 above.

9. The rightholders shall also have access to the technical installations and services.

10. This contract shall take effect on .... It is concluded for a period of .... renewable tacitly for periods of .... Non-renewal by any party shall be notified three months in advance, such notice to be sent by registered mail.

In the event of a wilful breach by the cable distribution organization of any of the provisions of this contract, the rightholders may terminate it without notice. Such termination shall be without prejudice to any other legal remedies, including in particular claims for damages.

11. The cable distribution organization may not assign the benefit of this contract, or subrogate a third party to replace it wholly or partially without the agreement of the rightholders.

12. This contract shall be governed by the law of ... (country of distribution). Any dispute arising out of it shall if unresolved be referred to the competent courts of .....

13. The parties to this contract shall set up a joint committee to consider problems raised by this contract after its entry into force, and in which arbitration procedures will be devised to avoid, as far as possible, reference to the courts.

Done at ..... on .....

*Annex:* detailed technical description of the cable distribution system.

\*\*\* Should national statutory provisions or contractual arrangements require inclusion of a clause concerning remuneration for performers, such clause could be as follows: Moreover, a special remuneration shall be paid to ... for the exclusive benefit of the performers in the programme distributed who would have a statutory or contractual basis for claiming remuneration.

APPENDIX 3

Licence—Contract for Public Performance of Musical Works

Licence No.

THE LICENSEE

THE PREMISES

Name .....

Name .....

Address .....

Address .....

.....

.....

.....

.....

1. Licence

.....("the Society") by its signature to this document grants the Licensee a licence (subject to the terms and conditions set out below) authorising the public performance at the Premises of any and every musical work (including any words associated with it or them) for the time being in the repertoire of the Society and of the societies which for the time being are affiliated to it.

(b) on the day after the date in Clause 4(1)(a), and on the ... of the same month in each subsequent year ("the Renewal Date") the Royalty for the ensuing 12 month period ("a Licence Year") calculated according to Clause 3.

2. Manner of Performance

At the start of this licence, the performances contemplated by the Licensee (to which the Society has applied.

Tariff(s) ..... are .....

(2) If as a result of any revision under Clause 5 the Royalty is changed (through either a change of tariff or a change in the Performance Particulars on a date other than the Renewal Date), then:—

(a) the Licensee shall pay any resultant additional Royalty to the Society forthwith, but (b) if the Royalty is reduced by the revision, then the amount of the reduction shall be credited against any Royalties then due by the Licensee or, if no Royalty is due, shall forthwith be refunded to the Licensee.

(3) The Licensee shall also pay Value Added Tax on all Royalties.

3. Royalty Calculation

For this licence the Licensee shall pay a royalty ("the Royalty") calculated in accordance with the Society's tariffs in force for the time being as applied to the particulars set out in Clause 2, as varied from time to time by any changes notified by the Licensee to the Society, or which come to the Society's notice otherwise. These particulars, as varied from time to time, are called "the Performance Particulars".

5. Revision of Tariffs, Performance Particulars and Royalties

(1) The Society shall notify the Licensee of any revision made to the Society's tariffs affecting the amount of the Royalty, by sending such a notification to the Licensee's last known address.

(2) The Licensee agrees to inform the Society in writing immediately of any change in any of the Performance Particulars and shall always give the Society such information as it may require for calculating the Royalty.

(3) The revision of any Royalty shall take effect from the date on which the revised tariff becomes effective, or the date of the change in Performance Particulars as the case may be.

4. Payment of Royalty

(1) The Licensee shall pay the following Royalties to the Society: (a) for the year ending on the ..., 19.. the sum of ....(plus VAT) immediately/on receipt of invoice,\* and

6. Termination or Cancellation

(1) This licence shall continue from year to year until ended by either party giving to the other

\* Delete as necessary

(by recorded delivery) one calendar month's notice in writing to expire at the end of a Licence Year. Provided that when the Society has notified the Licensee of a revision of the appropriate tariff which results in an increase in the Royalty, the Licensee may by notice to the Society (by recorded delivery) within fourteen days from the date of the notification end the licence forthwith, but the Licensee shall then remain liable to pay the proportionate amount of the Royalty for the period up to the date of termination.

- (2) If the Licensee shall fail to pay any Royalty under this licence or be in breach of any provision or condition of it and then fail to pay the Royalty or rectify the breach within fourteen days from the date of a written demand from the Society for payment or compliance as the case may be then the Society may, in spite of anything apparently to the contrary, immediately cancel this licence by written notice to the Licensee.

### 7. Exclusions

This licence shall not extend to or authorise:—

- (1) the performance of a dramatico-musical work whether staged or otherwise unless such performance is given by means of a cinematograph film made primarily for the purpose of public exhibition in cinemas or similar premises or by means of a radio or television set used for the purpose of giving a public performance of broadcast programmes. A dramatico-musical work means an opera, operetta, musical play, revue or pantomime insofar as it consists of words and music written expressly therefore;
- (2) the performance of a dramatic excerpt from a dramatico-musical work unless performed by means of a cinematograph film made primarily for the purpose of public exhibition in cinemas or similar premises or by means of a radio or television set used for the purpose of giving a public performance of broadcast programmes. An excerpt will be deemed to be dramatic if it is accompanied by any dramatic action whether danced, acted, or mimed and thereby (and/or through the use of costume, scenery or other visual effects) gives a visual impression of or otherwise portrays the writer's original concept of the work from which the excerpt is taken;
- (3) the performance of a non-dramatic excerpt or excerpts from a dramatico-musical work, however performed
  - (i) where the total duration of the excerpt in the course of the same programme is 25 minutes or more and/or
  - (ii) where the excerpt or excerpts are a potted version of the work and/or
  - (iii) where the excerpt or excerpts are or cover a complete act of the work;
- (4) the performance of the whole or any part of any music or any words associated therewith composed or used for a ballet if accompanied by a visual representation of that ballet or part of it, unless the performance takes place by means of a cinematograph film made primarily for the purpose of public exhibition in cinemas or similar premises or by means of a television set used for the purpose of giving a public performance of broadcast programmes;
- (5) the performance of any musical work specially written for a son-et-lumière production when performed in, or in conjunction with, that production;
- (6) the performance of any musical work (which is not itself a dramatico-musical work) specially written for a production of a dramatic work in a theatre when performed in, or in conjunction with, that dramatic work;
- (7) the performance of any musical work accompanied by words other than those published or otherwise associated with it by the copyright owner;
- (8) the performance of any work in any altered or re-arranged form with such costume or action as to produce parodied or burlesque effects;
- (9) the performance of any work adapted to a dramatic form;
- (10) the broadcasting or other transmission of any performance or causing any performance to be audible beyond the precincts of the premises (unless such acts are specifically included in the performance particulars);
- (11) the performance by means of any disc, cinematograph film, tape or other recording of any musical work, if the making of such recording infringed the copyright in that work.

### 8. Other Performances at the Premises

If the Premises shall be temporarily or permanently used for any performances or entertainments different in number or type from the Performance Particulars, this licence shall not be deemed to authorise those different performances or entertainments unless the appropriate Royalty for them has been paid under Clauses 3 and 5 of this licence.

### 9. No Assignments

The Licensee shall not assign or part with the possession of this licence without the previous written consent of the Society.

### 10. The Society's Right of Entry

The Society, by its duly-authorized agent, shall have the right of entry to the Premises at all reasonable times but only for the purpose of checking the particulars on which the Royalty is assessed.

### 11. Programme Returns

The Licensee shall, if requested, supply to the Society by post, on the forms obtainable from the Society, a list

of all musical works, whether published or in manuscript, performed vocally, instrumentally or mechanically at the Premises, with the names of the composer, arranger and publisher of each such work, and the number of times each has been performed, to assist the Society to allocate the royalties it collects. These returns are to be made at intervals specified by the Society. If performances by record players and/or tape machines are covered by this licence it shall be sufficient compliance with this condition to supply to the Society an initial list of records or tapes in use, giving the title of each work recorded, the name of the composer (where this is shown on the record or tape label) and the record or tape make and number, with supplementary lists from time to time of any additions to or deletions from that list.

No return is required of any musical work in radio and/or television programmes whose public performance may be covered by this licence.

12. *Change of Address*

The Licensee shall give prompt written notice to the Society of any change in the address of the Licensee or the Premises or of any change in the name of the Premises.

*Signed by/on behalf of the Licensee* .....  
(indicate office held by signatory where appropriate)

*Full name of signatory* .....  
(in block letters)

Signed for the Society .....  
Authorised Signatory

Date signed by the Society .....

*This document, or the Society's action in sending it to the Licensee, shall not constitute a licence (express or implied) until it has been signed on behalf of the Society.*

APPENDIX 4

**Licence—Contract with a Broadcasting Organisation (Radio and Television)  
in Respect of the Broadcasting and Public Performance  
of Musical Works (“Small Rights”)**

*An Agreement* made the .....  
day of .....  
between ..... whose registered  
office is situated at .....  
(hereinafter called “the Society”) of the one part and ...  
..... whose principal office is situated at  
(hereinafter called “the Licensee”) of the other part  
*whereby it is agreed* as follows:

1. In this Agreement, unless there be something in the subject or context inconsistent therewith:

- (a) “ballet” means a choreographic work having a story, plot or abstract idea, devised or used for the purpose of interpretation by dancing and/or miming, but does not include country or folk dancing, nor tap dancing, nor precision dance sequences;
- (b) “broadcast” means broadcast by any means now known on radio and television and “broadcasting” shall be construed accordingly;
- (c) “copyright owner” means in respect of any act in relation to a musical work the person in whom for the time being is vested the right to authorise other persons to do that act;
- (d) “dramatico-musical work” means an opera, operetta, musical play, revue or pantomime, insofar as it consists of works and music written expressly therefor;

- (e) “the licensed territory” means .....
- (f) “the Society’s repertoire” means all and any musical works (including any words associated therewith) the public performance and broadcasting rights in which are at the time of broadcasting and/or public performance during the term of this Agreement controlled by the Society or any of the Societies in other countries with which the Society is at the relevant time affiliated.

2. Subject to the exceptions and limitations hereinafter set out the Society hereby grants to the Licensee licence and authority:

- (a) to broadcast, or cause or allow to be broadcast, the Society’s repertoire from any of the Licensee’s transmitting stations within the licensed territory and
- (b) to perform, or cause or allow to be performed, the Society’s repertoire in public within the licensed territory either in the studios of the Licensee or in other premises or places in respect of which the Society has not otherwise granted permission for public performances of its repertoire to be given.

3. (1) Nothing herein contained shall operate as a licence from the Society, or from any agent or representative of the Society in any part of the world, authorising:

- (a) anyone other than the Licensee personally to give such public performances of the Society's repertoire as may be given by the direct or indirect public reception or the direct or indirect public audition in any part of the world, by any means and in any manner whatsoever, of the Licensee's broadcast transmissions;
- (b) the Licensee to broadcast the Society's repertoire to a satellite for —
  - (i) the purpose of reception and rebroadcasting by another broadcasting organisation in any territory where the Society's repertoire is not administered for that purpose by the Society nor any of its affiliated societies, or
  - (ii) the purpose of distribution by cable television in any territory where the Society's repertoire is not administered for that purpose by the Society nor any of its affiliated societies, or
  - (iii) direct reception outside the licensed territory.

(2) This licence shall not extend to or authorise the broadcast and/or public performance of the Society's repertoire in the circumstances set out in the Second Schedule hereto which Schedule shall be amended from time to time pursuant to any change in the directions of the General Council of the Society, or its Articles or Rules. The Society shall inform the Licensee in advance if possible and if not as soon as possible thereafter of any changes so made and shall supply to the Licensee a revised version of Schedule II.

4. The Society will give the Licensee, on request, all such information as the Society reasonably can give respecting works claimed or represented as being comprised within the Society's repertoire.

5. The term of this Agreement shall be deemed to have commenced on the ..... and shall terminate on the .....

6. In consideration of the licence and authority hereby granted, the Licensee shall make payments to the Society in accordance with the provisions set out in the First Schedule hereto. In the event that the Licensee shall not make any payment hereunder by the due date then interest shall be paid to the Society by the Licensee calculated on a daily basis at Minimum Lending Rate plus 1%.

7. (a) The Licensee shall send to the Society at its registered office lists of all material (or such other information as shall be agreed in writing and signed on behalf of both parties hereto) broadcast in each week, during the term of this Agreement, from the Licensee's stations as aforesaid specifying (i) the point of origin where this is not a studio of the Licensee, and (ii) the name of the service or programme.

(b) In the case of all musical works broadcast, the said lists or other agreed information shall also indicate (i) the title of each individual work, (ii) the names of the respective composers, authors, arrangers and publishers, (iii) where gramophone records are used the name of the

manufacturer and identification number of each record, and (iv) the number of minutes and seconds occupied in broadcasting each work.

(c) The Licensee shall take all reasonable care to ensure the correctness of all the information required by the foregoing subparagraphs (a) and (b) of this Clause, and undertakes to check the same at the time of the broadcast and to notify the Society forthwith in writing of any errors or omissions in this respect.

(d) The said lists shall be sent to the Society with all reasonable despatch, if practicable within one week, but in no case later than four weeks, from the date of broadcasting.

(e) The Licensee shall in all published programmes, and in the said lists, adhere to the titles of works and names of composers, authors, arrangers and publishers appearing on the published works or records, and no substituted titles shall be used in the said programme or lists.

(f) The Licensee undertakes to send to the authorities responsible for broadcasting stations other than those covered by this Agreement full details as above of the musical works included in any of the Licensee's programmes that, by specific arrangement with the Licensee, are relayed by such other stations (whether such relay is taken "off the air" by wire, or by means of transcriptions or other recordings) in order that the broadcasting authorities concerned may be in a position to render proper returns to their national performing right societies. Where there is only a general arrangement between the Licensee and such other broadcasting authorities for the relaying of the Licensee's programmes, the Licensee undertakes to request such authorities to make clear in their returns to their local broadcasting fee collection society that a particular programme has been relayed from one of the Licensee's services.

8. Each of the parties hereto shall during the term of this Agreement furnish to the other all such information as may be in its possession calculated to enable such other party hereto to protect its interests.

9. The Society shall, during the term of this Agreement, keep the Licensee harmless and indemnified in respect of all actions, proceedings, costs, damages, expenses, claims and demands which are successfully brought, recovered or made by any third party upon or against the Licensee in respect of the broadcasting by the Licensee of any work which the Society claims or represents is for the time being comprised within the Society's repertoire for the purposes of this Agreement.

10. In the event of the Licensee being in breach of any of its obligations under this Agreement the Society shall be entitled to give to the Licensee written notice at its address set out above of any such breach and shall require that the same shall be remedied within a reasonable specified period which shall not be less than seven days.

11. If the Licensee has failed to remedy a breach of its obligations under this Agreement notwithstanding notice given by the Society pursuant to Clause 10 above then the Society may determine this Agreement in writing.

As Witness the hand of .....  
 .....  
 for and on behalf of the Society and the hand of .....  
 .....  
 for and on behalf of the Licensee the day and year first  
 above written.

#### SCHEDULE I

1. *(Detailed provisions governing the computation and payment of the royalty payable by the Licensee in respect of the rights granted under paragraph (a) of Clause 2 of the Agreement)*
2. In respect of the rights granted to the Licensee under paragraph (b) of Clause 2 of this Agreement the Licensee shall pay to the Society for any musical performances given under the auspices of the Licensee royalties at the rates applicable to such performances under the Society's relevant tariff in force at the time of the time of the performance *provided that* no royalties shall be charged by the Society to the Licensee for performances where the whole or any part of the performance is broadcast by the Licensee from its studios and the audience (if any) is admitted to the entertainment without payment.

#### SCHEDULE II

1. The licences granted to the Licensee in Clause 2(a) and (b) above shall not extend to or authorise the broadcast and/or public performance of:
  - (a) dramatico-musical works in their entirety whether staged or otherwise, with the exception of dramatico-musical works performed or broadcast by means of a cinematograph film made primarily for the purpose of public exhibition in cinemas or similar premises;
  - (b) subject to (c) below excerpts from such parts of any dramatico-musical work as consist of words and music written expressly therefor if accompanied by dramatic action, dumb show, costume, scenic accessories, or other visual representation of the same dramatico-musical work or verbal equivalent thereof;
  - (c) an excerpt or excerpts whether or not within (b) above from a dramatico-musical work broadcast on radio
    - (i) the total duration of which in the course of the same programme exceeds 25 minutes or 25% of the total length of the work whichever shall be the shorter; or

- (ii) which excerpt or excerpts are a "potted version" of the work; or
- (iii) which excerpt or excerpts are or cover a complete act of the work;
- (d) the whole or any part of any music and of any words associated therewith composed or used for a ballet if accompanied by a visual representation of such ballet or part thereof;
- (e) (i) unless authorised in writing by the Society or the copyright owner, any musical work accompanied by any words other than those (if any) published or otherwise associated therewith by the copyright owner;
- (ii) unless authorised in writing by the Society or the copyright owner, any musical work, with or without associated words, in any adapted or rearranged form or in such manner as to produce parodied or burlesqued effects;
- (iii) any musical work, with or without associated words, in a dramatic form. A dramatic form shall be deemed to be created only by performance in a programme in which there is a distinct plot depicted by actors and where the story of the musical work and/or its associated words is woven into and carries forward the plot and its accompanying action. (A dramatic form shall not, for example, be deemed to be created by the use of costume, scenery, and/or dance routine, merely to provide an acceptable presentation of the work). For the purpose of this paragraph, the word "actors" shall include actor-singers, mimers and/or puppets;

(f) any words associated with a musical work or ballet if unaccompanied by the music thereof;

(g) words written for the purpose of a commercial advertisement unless such words are sung to music specially written for a commercial advertisement or to non-copyright music and the sung performance has a duration of not less than five seconds.

2. Also excluded from the licence granted in Clause 2(b) above are:

(a) the right to perform in public any musical work specially written for a son-et-lumière production when performed in or in conjunction with that production, and

(b) the right to perform in public any musical work (being a musical work which is not a dramatico-musical work or part of a dramatico-musical work) specially written for a production of a dramatic work in a theatre when performed in or in conjunction with that dramatic work.

## APPENDIX 5

**Summary of Provisions in the Copyright Legislation  
of Various Developing Countries Which Are Members  
of the Commonwealth of Nations Concerning Regulation of Tariffs  
of Copyright Licensing Bodies and Resolution of Disputes with Users**

| Country           | Copyright Statute   | Summary of Relevant Provisions  |
|-------------------|---|---|
| <i>Barbados</i>   | Copyright Act 1981  | The Minister may make regulations respecting the administration of matters relating to the application of the Act, collection of royalties, and distribution thereof to persons entitled and any other matter necessary for the effective operation of the Act. (Section 51)  |
| <i>Cyprus</i>     | Copyright Law No. 59 1976   | A competent authority is established with jurisdiction to direct, if a licensing body is unreasonably refusing to grant licenses, or is imposing unreasonable terms and conditions that, as respects the doing of any act in relation to a work with which the licensing body is concerned, a license shall be deemed to have been granted by the licensing body at the time the act is done, provided the prescribed fees are paid in accordance with the authority's directions. (Section 15) |
| <i>Ghana</i>      | Copyright Act 1985  | Arbitrators may be appointed, by legislative instrument, by the Secretary of Information for the settlement of disputes regarding the application of the Law. (Section 49)  |
| <i>Hong Kong</i>  | UK Copyright Act 1956, extended to Hong Kong by statutory instrument (SI No. 17214 as amended by SI 1979 No. 910) | Sections 23–30 of the UK Act (re the Performing Right Tribunal) were extended to Hong Kong by SI 1979 No. 910, with appropriate amendments, establishing a Tribunal with the same jurisdiction as the Performing Right Tribunal in the UK.  |
| <i>India</i>      | Copyright Act 1957  | A Copyright Board is established to which objections to the tariffs of performing right societies and certain other disputes may be referred for adjudication. Its Chairman is a Judge or former Judge of the Supreme Court. (Sections 6, 11, 12, 31, 32, 35 and 50)  |
| <i>Kenya</i>      | Copyright Act 1966  | Provisions corresponding to those in section 15 of the Cyprus Copyright Law establish a competent authority with the same jurisdiction as the Cyprus competent authority. (Section 14)  |
| <i>Malawi</i>     | Copyright Act 1965  | Ditto (Section 14)  |
| <i>Malaysia</i>   | Copyright Act 1969  | Ditto (Section 16)  |
| <i>Malta</i>      | Copyright Act 1967  | Ditto (Section 15)  |
| <i>Nigeria</i>    | Copyright Decree 1970   | Ditto (Section 13)  |
| <i>Pakistan</i>   | Copyright Ordinance 1962  | A Copyright Board has been set up to which disputes relating to copyright are referred for adjudication. It acts as an appellate authority against the orders of the Registrar of Copyright, who however is <i>ex officio</i> a member of the Board. (Sections 45, 46 and 76)   |
| <i>Seychelles</i> | Copyright Act 1982  | Provisions corresponding to section 15 of the Cyprus Copyright Law authorize the appointment of a Copyright Licensing Authority with the same jurisdiction as the Cyprus competent authority. (Section 18)  |
| <i>Zambia</i>     | Copyright Act 1965  | Ditto (Section 14)  |
| <i>Zimbabwe*</i>  | Copyright Act 1964  | A Copyright Tribunal is established, the President and Registrar of which are <i>ex officio</i> the President and Registrar of the Patents Tribunal respectively. The jurisdiction and procedures of the Copyright Tribunal correspond to those of the Performing Right Tribunal in the United Kingdom. (Sections 29–41)  |

\* New legislation is currently under consideration by the Government of this country which, when enacted, may change the position described above.

## Activities of Other Organizations

### International Association for the Advancement of Teaching and Research in Intellectual Property (ATRIP)

#### Assembly and Annual Meeting

(Geneva, September 16 to 18, 1985)

#### NOTE\*

The International Association for the Advancement of Teaching and Research in Intellectual Property (ATRIP) held the fifth session of its Assembly and its annual meeting at the headquarters of WIPO in Geneva from September 16 to 18, 1985.<sup>1</sup>

WIPO provided conference facilities and other financial support for the Assembly and annual meeting, in which 60 professors and researchers from 26 countries participated. WIPO was represented by Mr. Gust Ledakis, Legal Counsel and member of ATRIP.

The Assembly of ATRIP noted with approval the reports on the activities and accounts of the Association presented, respectively, by its outgoing President, Professor Ernesto Aracama Zorraquín (Argentina), and Treasurer, Professor Alberto Bercovitz (Spain). The Assembly, in particular, expressed its satisfaction that 22 professors and researchers had become new members of ATRIP since the previous session of the Assembly, with the result that the membership of the Association, which had been 69 in 1981 when ATRIP was founded, had grown to 243 as of the start of the fifth session (from 43 countries, including 53 members from 19 developing countries).

The Assembly also considered and approved the program of activities and budget for 1986 and, on the basis of proposals made by the Nominations Committee, elected the officers of the Association for the next two-year period (starting on September 18, 1985). Those officers, who also constitute the members of the Executive Committee, are as follows: President: Professor William R. Cornish (United Kingdom); President-Elect: Professor Glen E. Weston (United States of America); Vice-Presidents: Professors Guo Shoukang (China), Gunnar Karnell (Sweden), Vito Margini

(Italy) and Nébila Mezghani (Tunisia); and Treasurer: Professor Alberto Bercovitz (Spain).

At the annual meeting, discussions were held on the following two subjects: "Choice of Research Topics in the Field of Intellectual Property," with Professor E. Aracama Zorraquín (Argentina) serving as Chairman and reports presented by Professors M.-A. Pérot Morel (France), A. Chavanne (France), F.-K. Beier (Federal Republic of Germany), J. Szwaja (Poland), A. Françon (France) and F. Dessemontet (Switzerland); and "Management of University Inventions and Innovations," with Professor H. Ullrich (Federal Republic of Germany) serving as Chairman and reports by Professors A. Bercovitz (Spain), F. Dessemontet (Switzerland), J. Lahore (United Kingdom), Y. Reboul (France) and J. Szwaja (Poland).

In addition, three working sessions were held. The first session, under the chairmanship of Professor L. Ubertaini (Italy), was devoted to an "Exchange of Experiences and Information in Respect of Recent Legislative or Judicial Developments in Intellectual Property," and included reports by Professors E. Nana Kouanang (Cameroon), J. Szwaja (Poland), V. Nabhan (Canada), Shoukang Guo (China), E. Lontai (Hungary), N. Mezghani (Tunisia), N. Silveira (Brazil), V. Besarovic (Yugoslavia), N. Orkin (United States of America) and A. Françon (France). The second session, under the chairmanship of Professor J. Azéma (France), dealt with the subject of "Piracy—Counterfeit Goods: Implications for Intellectual Property Law and its Development," and consisted of reports on the factual situation presented by three invited speakers and on possible legal remedies presented by Professors M. Levin (Sweden) and D. Rangel Medina (Mexico). Finally, the third session was consecrated to the "Consideration of the Third Draft Questionnaire Prepared by Professor Jeremy Phillips (United Kingdom) on the Ownership and Exploitation of Academic Results," and was chaired by Professor A. Bercovitz (Spain).

\* Prepared by the International Bureau of WIPO.

<sup>1</sup> For the note on the fourth session of the Assembly and the 1984 annual meeting, see *Copyright*, 1984, p. 476.

## Obituary

### Valerio De Sanctis

(1892–1985)

An outstanding figure of Italian and international copyright has left us: Valerio De Sanctis died suddenly in Rome on November 4, 1985. He would have been 93 years of age. All those — and they are many throughout the world — in whom he called forth unanimous respect and admiration, will feel with sadness this loss to the international community of intellectual property that deprives them of the opinions of an expert who was doubtlessly one of the most eminent of the 20<sup>th</sup> century.

To the very end of his life, Valerio De Sanctis indeed devoted his whole intellectual energy to imposing, safeguarding and promoting the protection of authors' economic and moral rights. In Perugia, last May, he welcomed the Legal and Legislation Committee of CISAC in his native region and participated in its deliberations. Despite the physical fatigue to be expected at his age, he had maintained astonishing clarity of mind and his suggestions for an approach to the safeguard of copyright in today's technological environment were listened to with keen interest, as were his forecasts for the coming century. The secret of his long life is perhaps to be found in the fact that he remained in contact with reality and with the developments in law, but also, above all, that he kept a youthful spirit ever looking towards the future.

Although he was flattered when his friends referred to him as the "cardinal of copyright," he always placed himself at the level of his talking partner and would listen to any reasoning on condition that it was legally sound. Indeed, we must pay homage to Valerio De Sanctis as a lawyer of brilliance.

His intelligence, his clarity of vision, his perspicacity, his theoretical knowledge, his learning, his dialectic skills, and his broadness of mind left an often indelible mark on the solutions that emerged from debate. The papers and reports submitted to him were first welcomed with scepticism and then with interest; he expressed his agreement with the approach adopted, while at the same time dismantling all its legal elements with a whole cascade of "ma ..." (Italian "buts"); the final result was a resolution, recommendation or proposal that at the first glance appeared to correspond to the originator's conclusions, but which in reality had considerably improved the treatment of the subject and the solu-

tion recommended. The many contributions that he made to the cause of copyright have constituted landmarks in the history of this branch of law, both in his own country and internationally.

He was born on December 7, 1892, at Orvieto, in Umbria, a region whose tranquillity he often praised as being inductive to meditation, reflection and inspiration. Valerio De Sanctis set out on a career in the human sciences: a doctorate of laws and a doctorate of philosophy from the University of Rome told of his brilliant studies at university.

His competence and his eloquence led him towards both the bar and learning: he practiced as a lawyer before the Supreme Appeal Court of Italy and lectured at the International University of Social Studies in Rome. These two professions gave him full opportunity to demonstrate his oratory talents. He was so on to specialize in copyright and became legal advisor to the Italian Society of Authors (SIAE), a post he held until 1976 when he became Honorary President of the Legal Committee of that Society. "Verba volant, scripta manent": Valerio De Sanctis also acted until his death as director of the legal journal *Il Diritto di Autore*, and had been likewise, in the thirties, one of the editors of the review *Studi di diritto industriale*. He wrote more than 400 studies and articles, essentially dealing with copyright, and a number of works and monographs published in this field. Nor should we forget that from 1943 onwards the "Letters from Italy" in this review came from the pen of Valerio De Sanctis, until Professor Mario Fabiani took on the responsibility in 1983.

As a member of the Standing Advisory Committee on Copyright attached to the Prime Minister's Office, he took an active part in drafting the 1941 Italian Law on the protection of copyright and related rights and in the 1968 revision of the Italian industrial property legislation, as a member of the ministerial committees. He was particularly proud of the 1941 Law whose provisions he frequently quoted as an example: it is not without reason that the Italian press carried the headline "E morto il 'padre' del diritto d'autore" (the father of copyright is dead).

However, the mark of Valerio De Sanctis was not only to be felt nationally but also at a worldwide

level. The list of diplomatic conferences to which the Italian Government delegated him is impressive: Brussels (1948) for the revision of the Berne Convention; Geneva (1952) for the drafting of the Universal Copyright Convention (UCC); Rome (1961) for the drafting of the Rome Convention on neighboring rights; Stockholm (1967) for the creation of WIPO and the revision of the Berne Convention, as of the Paris Convention and the industrial property agreements (at Stockholm, he was the rapporteur of Committee IV dealing with the delicate matter of the administrative provisions and the final clauses, particularly as regards the relations between the States bound by the differing Acts); Locarno (1968) on the institution of an International Classification for designs; Paris (1971) for the simultaneous revision of the Berne Convention and the UCC; Geneva (1971) for the drafting of the Phonograms Convention; Brussels (1974) for the drafting of the Satellites Convention; of course, not to mention the many working groups and committees of government experts that met for the preparatory discussions on all these international instruments.

Throughout his long participation within international activities, Valerio De Sanctis was to be found at the forefront: his views were authoritative, he possessed a marvellous sense of diplomacy, which he exercised with great subtlety, his contribution to the development of international law during that period (a fascinating one for those fortunate enough to be involved) was of an exceptional quality and it is certain that the worldwide notoriety he acquired during that period will long be remembered.

This broad picture of the life of Valerio De Sanctis would be incomplete if no mention were made of his activities within two non-governmental organizations: the International Literary and Artistic Association (ALAI), in which he was Chairman of the

Italian Group and one of the Association's Vice-Presidents, and above all the International Confederation of Societies of Authors and Composers (CISAC). In this breeding ground of legal talents, constituted by the Legal and Legislation Commission of CISAC, he was the *maître à penser*: Secretary of the Commission in 1936, Vice-President from 1947 to 1956, President from 1956 to 1970 and finally Honorary President. All these offices he held bear witness to the continuity of his action and the influence of his concepts for the safeguard of copyright. It must not be forgotten, in this context, that he was behind the drafting of the "Copyright Charter" published by CISAC.

The son of an ancient Umbrian family, nurtured in the halls of law and philosophy, student of the famous Italian lawyer, Piola Caselli, he was a great figure whose reputation rapidly spread beyond the bounds of his own country. The Italian Government recognized his merit by appointing him a Grand Officer of the Order of the Italian Republic; he was also awarded a number of foreign distinctions.

To quote a member of the French Academy, Paul Claudel, "it is not enough to know the past, one must also understand it." Looking back at the activities of Valerio De Sanctis, spanning an entire century, intellectual property specialists recognize the constant struggle to force respect for the rights of creators (copyright and neighboring rights) in the face of the political, economical, social and human development of the world and the never-ceasing progress of the means of communicating works to the public, to ensure that those in whom culture originates should receive the remuneration and encouragement necessary for their realization. This is the message left to posterity by Valerio De Sanctis. His many friends will long cherish an affectionate and grateful memory.

Claude Masouyé

## Calendar of Meetings

### WIPO Meetings

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

#### 1986

- January 20 to 24 (Geneva)** — International Patent Classification (IPC) Union: Committee of Experts
- January 27 to 31 (Geneva)** — Group of Experts on Model Provisions for National Laws on Employed Authors (convened jointly with Unesco)
- January 29 to 31 (Geneva)** — Madrid Union: Working Group on Links Between the Madrid Agreement and the Proposed (European) Community Trade Mark
- February 3 to 7 (Geneva)** — Paris Union: Committee of Experts on Biotechnological Inventions and Industrial Property
- April 8 to 11 (Geneva)** — Permanent Committee for Development Cooperation Related to Industrial Property
- April 14 to 18 (Geneva)** — Permanent Committee on Patent Information (PCPI): Working Group on General Information
- April 28 to May 2 (Paris?)** — Committee of Governmental Experts on Audiovisual Works and Phonograms (convened jointly with Unesco)
- May 5 to 7 (Geneva)** — Paris Union: Committee of Experts on Protection Against Counterfeiting
- May 12 to 14 (Geneva)** — WIPO Worldwide Forum on Collective Administration of Authors' Rights
- May 26 to 30 (Geneva)** — Paris Union: Committee of Experts on the Harmonization of Certain Provisions in Laws for the Protection of Inventions
- May 26 to June 6 (Geneva)** — Permanent Committee on Patent Information (PCPI): Working Group on Search Information
- June 4 to 6 (Geneva)** — Permanent Committee on Patent Information (PCPI): Working Group on Patent Information for Developing Countries
- June 9 to 13 (Geneva)** — Permanent Committee on Patent Information (PCPI): Working Groups on Special Questions and on Planning
- September 1 to 5 (Geneva)** — Permanent Committee on Patent Information (PCPI) and PCT Committee for Technical Cooperation (PCT/CTC)
- September 8 to 10 (Geneva)** — WIPO Patent and Trademark Information Fair
- September 9 to 12 (Geneva)** — Governing Bodies (WIPO Coordination Committee, Executive Committees of the Paris and Berne Unions, Assembly of the Berne Union)
- October 13 to 17 (Geneva)** — Permanent Committee on Patent Information (PCPI): Working Group on General Information
- November 24 to December 5 (Geneva)** — Permanent Committee on Patent Information (PCPI): Working Group on Search Information
- December 8 to 12 (Geneva)** — Permanent Committee on Patent Information (PCPI): Working Groups on Special Questions and on Planning

### UPOV Meetings

#### 1986

- April 15 and 16 (Geneva)** — Administrative and Legal Committee
- April 17 (Geneva)** — Consultative Committee
- May 21 to 23 (Hanover)** — Technical Working Party on Automation and Computer Programs
- May 26 to 29 (Pontecagnano-Salerno)** — Technical Working Party for Vegetables, and Subgroup

June 3 to 6 (Dublin) — Technical Working Party for Agricultural Crops, and Subgroup  
July 15 to 18 (Wageningen) — Technical Working Party for Ornamental Plants and Forest Trees, and Subgroup  
September 15 to 19 (Wädenswil) — Technical Working Party for Fruit Crops, and Subgroup  
November 18 and 19 (Geneva) — Administrative and Legal Committee  
November 20 and 21 (Geneva) — Technical Committee  
December 1 (Paris) — Consultative Committee  
December 2 and 3 (Paris) — Council

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

### Non-Governmental Organizations

#### 1986

January 27 and 28 (Cannes) — International Association of Entertainment Lawyers — MIDEM International Lawyers Meeting  
February 1 (Paris) — International Literary and Artistic Association (ALAI) — Executive Committee  
April 24 and 25 (Heidelberg) — International Publishers Association (IPA) — Copyright Symposium  
May 6 to 8 (Brussels) — International Confederation of Societies of Authors and Composers (CISAC) — Legal and Legislation Committee  
September 8 to 12 (Berne) — International Literary and Artistic Association (ALAI) — Congress  
October 12 to 18 (Madrid) — International Confederation of Societies of Authors and Composers (CISAC) — Congress

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