Published monthly
Annual subscription:
fr.s. 145.—
Each monthly issue:
fr.s. 15.—

# Copyright

22nd year — No. 2
**February 1986**

Monthly Review of the
World Intellectual Property Organization (WIPO)

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ISSN 0010-8626

# World Intellectual Property Organization

## Committee of Governmental Experts on Model Provisions for National Laws on Publishing Contracts for Literary Works

(Paris, December 2 to 6, 1985)

NOTE*

In pursuance of the decisions adopted by the Governing Bodies of the World Intellectual Property Organization (WIPO) at their fourteenth series of meetings in October 1983, and by the General Conference of the United Nations Educational, Scientific and Cultural Organization (UNESCO) at its twenty-second session, the Directors General of WIPO and Unesco convened a Committee of Governmental Experts on Model Provisions for National Laws on Publishing Contracts for Literary Works (hereinafter referred to as "the Committee"), which met at Unesco headquarters in Paris from December 2 to 6, 1985.

Experts from 41 countries (Argentina, Belgium, Botswana, Chile, Colombia, Costa Rica, France, Gabon, Germany (Federal Republic of), Ghana, Guatemala, Guinea, Holy See, Honduras, Hungary, Italy, Japan, Jordan, Lebanon, Madagascar, Malaysia, Namibia, Netherlands, Niger, Nigeria, Pakistan, Panama, Paraguay, Qatar, Saudi Arabia, Soviet Union, Spain, Sri Lanka, Thailand, Togo, Turkey, Ukrainian SSR, United Kingdom, United States of America, Yemen and Yugoslavia) attended the meeting. Two countries (Brazil and Iraq) and eight international non-governmental organizations were represented by observers.

The meeting was opened by the Director General of WIPO and by a representative of the Director-General of Unesco. Discussions were based on the draft annotated model provisions for national laws on publishing contracts for literary works in book form prepared by a working group which met under the auspices of WIPO and Unesco in June 1984.

In the general debate, a number of delegations and observers recognized the importance of striking an appropriate balance between the interests of authors and those of publishers and emphasized the importance of some model provisions, first of all for developing countries which had not yet legislated and had but a limited experience in this field. Several delegations said that the draft did not leave enough freedom to the contracting parties, and some of them went as far as saying that all that was needed was legislation limited to a few general, guiding principles.

After the general debate, the Committee discussed in detail the draft annotated model provisions which covered the following questions: essential elements and form of the contract for publishing a book edition of a protected work, grant of rights, warranty, publication of the work, determination of the selling price, moral rights, remuneration of the author, statements and accounts of sales, termination of the contract, succession to rights and obligations, special rules on commissioning the work and option to publish further works of the author.

At the end of the deliberations, the Committee noted that the Secretariats would, in due course, seek the necessary authority from their Governing Bodies to convene another session of the Committee, a session in which the matter would be further considered on the basis of the results of the present session of the Committee.

* Prepared by the International Bureau of WIPO.

## List of Participants

### I. States

**Argentina**: J. Fernández. **Belgium**: F. Van Isacker. **Botswana**: M. Segametsi Chukura. **Chile**: J. Mora Brugere. **Colombia**: M.V. Durán. **Costa Rica**: N. Mourelo; I. Leiva de Billault. **France**: M.-C. Rault; S. Berlin. **Gabon**: J. Boulingui-Kouély. **Germany (Federal Republic of)**: M. Möller; H.H. Landau. **Ghana**: D. Kusi. **Guatemala**: G. Putzeys-Alvarez; M.F. Sesenna Olivero; A. Garoz-Cabrera. **Guinea**: M. Camara; O. Guilavogui. **Holy See**: L. Rousseau; R. Blaustein. **Hondnras**: N. Alvarez Alvarado. **Hnngary**: G. Boytha. **Italy**: G. Catalini; M. Fabiani. **Japan**: M. Homma. **Jordan**: S. Bader; A.M.A. El-Aamiry. **Lebanon**: J. Sayegh. **Madagascar**: B. Ranaivoharivony. **Malaysia**: A. Khair O. Khairuddin. **Namibia**: W. de Souza. **Netherlands**: L. Verschuur-de Sonnaville. **Niger**: S. Siddo. **Nigeria**: J.A. Araoye. **Pakistan**: A. Mohammad Najm. **Panama**: J. Patino. **Paraguay**: J. Hamuy-Dacak; H. Florentín Franco. **Qatar**: Y. Darwish. **Saudi Arabia**: M. Al Duaig; N. Kanaan. **Soviet Union**: N.I. Razina. **Spain**: E. de la Puente García; D. Colomé; M. del Corral Beltrán; A. Delgado Porras; P. Miserachs Sala; A. Gual de Sojo; E. López-Manrique. **Sri Lanka**: A.W.P. Gurugé; S. de Silva. **Thailand**: S. Povatong; A. Otrakul-Sales. **Togo**: K. Koffi. **Turkey**: A. Ayhan. **Ukrainian SSR**: I. Matvijenko. **United Kingdom**: E.J. Barnett; N.R. Mohamed. **United States of America**: W. Skok; M. Peters. **Yemen**: A. Saleh Sayyad. **Yugoslavia**: M. Jovicić; P. Atanackovic.

### II. Observers

*(a) States*

**Brazil**: J.C. de Souza-Gomes; J. de Souza Rodrigues. **Irak**: Y. Taha Hafez.

*(b) International Non-Governmental Organizations*

**International Confederation of Free Trade Unions (ICFTU)**: M. Lesage. **International Confederation of Societies of Authors and Composers (CISAC)**: N. Ndiaye. **International Copyright Society (INTERGU)**: G. Halla. **International Federation of Translators (FIT)**: M. Voituriez; E. Boucher. **International Group of Scientific, Technical and Medical Publishers (STM)**: J.-A. Koutchoumow. **International Literary and Artistic Association (ALAI)**: A. Françon; R. Castelain. **International Publishers Association (IPA)**: J.-A. Koutchoumow; J.F. Cavanagh. **International Secretariat for Arts, Mass Media and Entertainment Trade Unions (ISETU)**: M. Lesage.

### III. Secretariat

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

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

**World Intellectual Property Organization (WIPO)**

A. Bogsch *(Director General)*; M. Ficsor *(Director, Copyright Law Division)*.

# Notifications

## Nairobi Treaty on the Protection of the Olympic Symbol

## BARBADOS

### Accession

The Government of Barbados deposited, on January 30, 1986, its instrument of accession to the Nairobi Treaty on the Protection of the Olympic Symbol, adopted at Nairobi on September 26, 1981.

The said Treaty enters into force, with respect to Barbados, on February 28, 1986.

Nairobi Notification No. 33, of February 3, 1986.

# National Legislation

## NETHERLANDS

### Law Adapting the 1912 Copyright Law to the Paris Act of the Berne Convention

(of May 30, 1985)*

*Article I.* The following amendments shall be made to the 1912 Copyright Law[1]:

A. Article 10 shall be amended as follows:

In the first paragraph, indent (iv), the words "choreographic works and entertainments in dumb show, the acting form of which is fixed in writing or otherwise;" shall be replaced by "choreographic works and entertainments in dumb show;".

The first paragraph, indent (ix), shall read as follows:

(ix) photographic works;

The first paragraph, indent (x), shall become first paragraph, indent (xi).

The first paragraph, indent (x), shall read as follows:

(x) film works;

B. Article 15 shall read as follows:

It shall not be deemed an infringement of copyright to reproduce news reports, miscellaneous reports, or articles concerning current economic, political or religious topics, that have appeared in a daily or weekly newspaper or weekly or other periodical, or works of the same nature that have been broadcast by radio or television or have been transmitted by cable by a cable broadcasting organization within the meaning of the 1904 Telegraph and Telephone Law (*Staatsblad* No. 7), on condition that:

(i) the reproduction is effected by a daily or weekly newspaper or weekly or other periodical, in a radio or television broadcast, or by means of transmission by cable to the public by a cable broadcasting organization within the meaning of the 1904 Telegraph and Telephone Law (*Staatsblad* No. 7),
(ii) the provisions of Article 25 have been complied with;
(iii) the source is stated in a clear manner, together with the name of the author if it is given in the source;
(iv) copyright is not explicitly reserved.

In the case of periodicals, a generally worded reservation placed at the head of each number shall also be deemed an explicit reservation within the meaning of indent (iv) of the first paragraph.

A reservation within the meaning of indent (iv) of the first paragraph may not be made in respect of news reports and miscellaneous reports.

The provisions of this Article shall be of application where the reproduction is in a language other than that of the original.

C. Article 15a shall read as follows:

Quotations in an announcement, criticism, polemic or scientific treatise shall not be deemed an infringement of copyright in a literary, scientific or artistic work where:

(i) the work from which the quotation is made has been lawfully published,
(ii) the quotation is compatible with that which may be reasonably accepted under the rules of social intercourse and the number and length of the quoted passages is justified by the purpose to be achieved;
(iii) the provisions of Article 25 have been complied with;
(iv) the source is stated in a clear manner, together with the name of the author if it is given in the source.

In the case of a short work or of a work within the meaning of Article 10, first paragraph, indent (vi), indent (ix) or indent (xi), it shall be permissible for the purpose and under the conditions stated in the first paragraph to reproduce the entire work if done in such a way that the reproduction differs appreciably in size or in process of manufacture from the original work.

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* Published in *Staatblad*, No. 307, of June 18, 1985. — WIPO translation.

[1] See *Copyright*, 1973, pp. 181 *et seq.*

Quotations within the meaning of this Article shall include quotations from articles that have appeared in daily or weekly newspapers, weeklies or other periodicals in the form of press reviews.

The provisions of this Article shall also be of application in respect of quotations in a language other than the original.

We reserve Our right to determine, in general administrative regulations, what is to be understood in the first paragraph, indent (ii), by "reasonably accepted under the rules of social intercourse."

D. Article 16 shall read as follows:

The following shall not be considered an infringement of copyright in a literary, scientific or artistic work:

*(a)* the reproduction of parts of works in publications or recordings of sounds or images made for use as illustrations in teaching, on condition that:

(i) the work from which the reproduction is made has been lawfully made available to the public;
(ii) the reproduction is compatible with that which may be reasonably accepted under the rules of social intercourse;
(iii) the provisions of Article 25 have been complied with;
(iv) the source is stated in a clear manner, together with the name of the author if it is given in the source;
(v) reasonable remuneration has been paid to the author or his successors in title;

*(b)* making available to the public parts of works by means of a radio or television broadcast or by communication by means of cable by a cable broadcasting organization within the meaning of the 1904 Telegraph and Telephone Law (*Staatsblad* No. 7) in a program made to serve as an illustration in teaching, on condition that:

(i) the work from which the reproduction is made has been lawfully published;
(ii) the making available to the public is compatible with that which may be reasonably accepted under the rules of social intercourse;
(iii) the provisions of Article 25 have been complied with;
(iv) the source is stated in a clear manner together with the name of the author if it is given in the source;
(v) reasonable remuneration has been paid to the author or his successors in title.

In the case of a short work or of a work within the meaning of Article 10, first paragraph, indent (vi), indent (ix) or indent (xi), the entire work may be reproduced for the same purpose and subject to the same conditions.

In the case of reproduction in a work of compilation, only short works or short passages of works may be reproduced from one and the same author and, in the case of works within the meaning of Article 10, first paragraph, indent (vi), indent (ix) or indent (xi), only a small number of those works may be reproduced and only if done in such a way that they differ appreciably in size or process of manufacture from the original work, on the understanding that, where two or more such works had been made public together, the reproduction of only one of them shall be permitted.

The provisions of this Article shall also be of application in respect of reproduction in a language other than that of the original.

We reserve Our right to determine, in general administrative regulations, the reasonable remuneration to be paid in accordance with the first paragraph, indents *(a)*(v) and *(b)*(v), and also to determine what is to be understood in the third paragraph by "short works or short passages of works."

E. In the second paragraph of Article 17a, the words "of cinematographic reproductions" shall be replaced by "of reproductions of film works."

F. A new Article 29a shall be added, with the following wording:

*Article 29*a. Proceedings for the prohibition of an act by which copyright has been infringed or will be infringed by a third party may also be instituted by legal persons, to be designated by Our Minister for Justice, having full legal rights for the purpose of administering the interests of authors of works or their successors in title.

G. In the first paragraph of Article 38, the words "first made public by or on behalf of the copyright owner" shall be replaced by "first made lawfully public."

H. A new Chapter V shall be inserted, with the following wording:

CHAPTER V

**Special Provisions on Film Works**

*Article 45*a. Film work shall mean a work consisting of a sequence of moving images, with or without sound, irrespective of the manner of fixation of the work, where it is fixed.

Notwithstanding the provisions of Articles 7 and 8, those natural persons who have furnished a contribution of a creative nature intended for the realization of a film work shall be considered the authors of a film work.

The natural or legal person responsible for the making of a film work with a view to its exploitation shall be considered the producer of the film work.

*Article 45*b. Where one of the authors is unwilling or unable to complete his contribution to the film work, he may not oppose, unless otherwise agreed in writing, the use by the producer of the contribution, to the extent that it is already in existence, for the purposes of completing the film work. He shall be considered the author within the meaning of Article 45a of the contribution that he has made.

*Article 45*c. A film work shall be deemed to have been completed once it is ready for exhibition. Unless otherwise agreed in writing, the producer shall decide when the film work is ready for exhibition.

*Article 45*d. Unless otherwise agreed in writing by the authors and the producer, the authors shall be deemed to have assigned to the producer as from the time referred to in Article 45c the right to make the film work available to the public, to reproduce it within the meaning of Article 14, to add subtitles to it and to dub the dialogue. The above shall not apply to those who have composed music for the purpose of the film work or who have written the words belonging to the music. If the producer effects exploitation in a form that did not exist or was not reasonably foreseeable at the time referred to in Article 45c or if he assigns the right to a third party to effect exploitation, he shall be required to pay reasonable remuneration to the authors for that exploitation.

*Article 45*e. Each author shall have the following rights in respect of the film work in addition to the rights set out in Article 25:

*(a)* the right to have his name mentioned in the film work at the place that is usual for the purpose with mention of his capacity or of his contribution to the film work;

*(b)* the right to require that the part of the film work referred to in *(a)* also be exhibited;

*(c)* the right to oppose the mention of his name on the film work unless such opposition be unreasonable.

*Article 45*f. The author shall be assumed, unless otherwise agreed in writing, to have refrained in respect of the producer from opposing amendments referred to in Article 25, first paragraph, indent *(b)*, to his contribution.

*Article 45*g. Each author shall preserve, unless otherwise agreed in writing, his copyright in his contribution where the latter constitutes a work that may be separated from the film work. After the time referred to in Article 45c, each author may, unless otherwise agreed in writing, make his contribution separately available to the public and reproduce it, on condition that he does not thereby prejudice the exploitation of the film work.

I. Article 47 shall be amended as follows:

In the first paragraph, the words "by or on behalf of the author" shall be deleted.

A new paragraph shall be inserted following the first paragraph, with the following wording:

For the application of the preceding paragraph, authors who are not Dutch citizens but who have their usual place of residence in the Netherlands shall be treated as Dutch citizens in respect of unpublished works or works that have been published subsequent to the author taking up his usual place of residence in the Netherlands.

The third paragraph (former second paragraph) shall read as follows:

A work shall be deemed to have been published within the meaning of this Article when, with the consent of the author, it has appeared in print or, in general, when, with the consent of the author, sufficient copies thereof, of whatever kind, have been made available, depending on the type of work, to meet the reasonable needs of the public.

In the fourth paragraph (former third paragraph), the words "cinematographic work" shall be replaced by "film work."

A new paragraph shall be added at the end, worded as follows:

Notwithstanding the provisions of the preceding paragraphs, this Law shall be of application to film works if the producer thereof has his registered offices or his usual place of residence in the Netherlands.

J. Article 50b shall be deleted.

*Article II.* The provisions of section H of Article I shall not be of application if a start has been made on making the film prior to the time of the entry into force of this Law.

*Article III.* Objects that are intended to perform by mechanical means a musical work or a part thereof, fabricated in compliance with Article 50b as worded prior to the entry into force of this Law, may still be placed on the market during one year, computed from January 1 of the year following that in which this Law enters into force.

*Article IV.* This Law shall enter into force at a time that We shall determine.

We direct and ordain that it shall be entered in the *Staatsblad* and that all ministerial departments, authorities, official bodies and civil servants, as it concerns them, shall ensure its correct implementation.

# Collective Administration of Authors' Rights

## The Relations Between Authors and Organizations Administering Their Rights

Gunnar KARNELL*

The solution and the more precise framing of the questions that I intend to consider in this article on the relations between authors and the organizations that administer their rights is partly determined by the article's position within the series of articles on collective administration of authors' rights that is now being published in this review. Several authors write on subjects such as the development and objectives of the collective administration of authors' rights, various types of right that require such administration, various types of authors' organization and their various functions, the relations between the organizations and the users of works and the connection with the public interest, technical problems of collective administration of authors' rights, for instance regarding distribution schemes, and specific questions relating to collective administration in developing countries.

The treatment in other articles of so many topics that frame and give a factual background to the subject of my own article, as well as the so widely varied forms of State influence and other national and international prerequisites that govern the relations between authors and organizations — which I shall briefly touch on below—justify my making this presentation not so much a description of factors influencing the relations under examination as an analysis and a statement of my own opinions on a range of issues of fundamental importance, drawing for examples on the wealth of existing situations in the field of collective administration of authors' rights. The limits that I shall set on what will be dealt with more extensively and in greater depth by other articles in the series are bound to be rather arbitrary, as indeed will my choice of what to write about under the broad title and proposed subtitles given to me by the editors of this review. I rely on the indulgence of readers for this, as I do for my inability to do justice to all interests that make themselves felt in my large and varied subject field.

A rather broad introductory exposition in *Part I* on the organizations, rights and authors to which questions concerning the relations indicated in the title of my article relate will lead to some reflexions in *Part II* on the effect of collective administration of authors' rights when those rights are exclusive. Then in *Part III* I shall discuss in rather more detail the legal nature of the entitlement of the organizations administering their rights. The problem of extending the effect of collective authorization to the use of works by authors other than those bound by membership or other agreements to authorizing organizations has given rise to various attempts at solutions, which will be discussed in *Part IV*. *Part V* will deal with some questions relating to the participation of publishers and other users of works of authors in an organization administering authors' rights. Finally, in *Part VI*, I shall list rather than analyze certain conflicts of interest that may arise

* Professor, Stockholm School of Economics, Sweden.

between authors and the organizations administering their rights in addition to those that I have discussed in the course of the article.

## I. Introduction

The title of the article may perhaps direct readers' thoughts to *collecting societies* and tbeir relations with authors. However, depending on how the notion of administration of rights in the copyright field is conceived, it will also accommodate organizations that do not, or do not mainly, engage in the collection of revenue for use of the rights attaching to the works of authors, but only, or mainly, administer their rights in other respects. Then authors' professional associations, trade associations or trade unions, guilds, etc., will also come into the picture insofar as they represent the rights of authors in relation to others.

The administration may also take the form of international cooperation between collecting societies, such as that within the Nordic Copyright Bureau (NCB), which administers mechanical rights for the Nordic performing rights societies, or alternatively it may be carried out nationally and vertically by organizations within a coordinated structure, so that for instance a number of organizations distribute among authors proceeds that have been brought together by an association of theirs by virtue of mandates given to it by the coordinated organizations. The Swedish negotiation cartel COPYSWEDE, which is a coordinating organization and contracting party for rights held by its member organizations in the field of so–called mass uses, cable television, etc., is a case in point.

A glance at the reality behind the designations of organizations of all these kinds in various countries shows that there are no across–the–board divisions between those organizations that are called collecting societies just because of their collecting activities, and those that do not have any such preponderant activities. Both kinds may for instance be subject to State influence in one form or another, so that the authors' own influence on the administration may be no greater in one kind of organization than in the other.

However, the organizations that concern us here will have one feature in common — which will also bc serving as a frame for my subject — namely that they all engage in the *collective administration* of authors' rights, either exclusively or together with other activities, for instance in connection with cultural policy or social security for authors, or in the role of parties to general agreements with users' organizations, which may have a bearing on individual contracts of their members. They administer rights for many authors in dealings with users of their works. In some cases this occurs through what amounts to the acquisition of the rights by the organization itself, and in other cases without such acquisition.

In consequence, I shall be dealing here with a number of questions about authors' relations with what I shall call CAOs, for *Collective Administration Organizations.* Under this denomination I shall group organizations to which authors of one category or the other have entrusted the administrative task of concluding specific contracts for the use of individual works under particular conditions worked out for the work concerned, and also organizations that conclude their contracts with users on the basis of general tariffs, general agreements or the like. I shall also include organizations whose administration of rights concerns the use of entire catalogs (repertoires) of works, like the traditional performing rights societies in the field of music, and involves uses for a certain period or for specific occasions or purposes. The question whether they base their claims against users on statutory provisions, administrative approvals or concessions, tariffs or decisions taken case by case has no bearing on their inclusion in the category of CAOs. Those organizations whose administration relates to authors' claims for compensation under general nonvoluntary licenses in the form of either compulsory licenses (obliging authors to give nonexclusive rights against compensation) or statutory licenses (where there is no licensing by the author of any rights but only an author's claim for compensation), and to claims based on public lending rights, levies on cassettes or recorders, *droit de suite*, etc., also come into this category. It will sometimes be apparent from the context to what extent this article refers just to one or other specific kind of CAO.

In their historical setting, CAOs owe their origin to the individual action of authors to give effect to their rights in accordance with what had been granted them by national legislation. Initially there was no State or supranational influence on their foundation. No international bodies bothered about them, and they acted without any control from the outside.

There are still, in a few countries, one or more CAOs that work in such independence. Nowadays, however, CAOs are often subject to special rules imposed on them by law or by the resolutions of this or that competent authority. In some countries this is true of only some CAOs. In Europe the law of the European Community makes itself felt in this domain too by its requirement of nondiscrimination between members of organizations, at least as far as authors from other member countries are concerned.

National rules and regulations vary a great deal. There is nevertheless a clear trend towards ever–in-

creasing State influence on the formation of CAOs and on their activities. The nature of that influence may vary, however, as may its forms.

The importance of determining what law governs these CAOs to the market built on or influenced by copyright is becoming more and more clear. State plans for new copyright legislation almost always make some provision for CAOs as subject matter to be made subject to existing or amended rules. Thus the Law Amending Provisions in the Field of Copyright, of June 24, 1985, of the Federal Republic of Germany,[1] the French Law No. 85–660, of July 3, 1985, on Authors' Rights and on the Rights of Performers, Producers of Phonograms and Videograms and Audiovisual Communication Entreprises, (Title IV),[2] and the Swiss draft Law No. 84.064, of August 29, 1984 (*Botschaft zu einem Bundesgesetz über das Urheberrecht*) all contain new provisions on various types of CAO.

State involvement in the establishment of CAOs and State interest in their forms of activity are increasingly coupled with the introduction of general nonvoluntary license provisions for the use of works, such as in the field of cable distribution of broadcasts, and the creation of systems for the compensation of authors on a copyright or copyright–related basis (levies on tapes, public lending rights, etc.). With regard to such rights to compensation, CAOs are more likely to function as links in a chain between categories of persons entitled to compensation and consumers of works or products affected by the compensatory systems than as organizations representing authors' interests.

After starting in the field of music and concentrating first on the administration of performance rights, soon to be followed by dramatic rights and the right to record music, the mission of the CAO has gradually spread to cover wider areas of use in the literary as well as musical fields and also in the field of the visual arts. Where there is a right to administer which cannot with reasonable ease be safeguarded in an individual form, a CAO will spring up or expand to take care of that administration.

The value to authors of the right given them by copyright legislation is today, from a general point of view, intimately related to the terms that apply to the organizations administering their rights. Copyright may nowadays be said to consist of two closely connected, partly integrated types of legal text, the traditional, substantive copyright law and the administrative copyright law governing all the public and private law aspects of the administration of rights. Both types of law may be given their practical form by legislation, by enactments under public law and by contracts or other private legal acts, and all these measures may be combined. The effect of copyright on the market, and hence its importance to authors, as the ones being in one way or another attached to the CAOs or else dependent on their achievements, rests to a progressively larger extent on the balancing of the two types of provision governing copyright, the substantive and the administrative.

State influence, as just mentioned, continues to make itself felt, and to an ever–increasing degree, in particular on matters arising from the relations between authors on the one hand and CAOs on the other. The nature and extent of the influence will vary considerably between countries and within a given country, however, depending on the national CAO structure and on which rights are administered by each CAO where there are more than one on the same national market. The relations between authors and the organization administering their rights will of course be quite different, in one and the same field of rights, in countries where the organization is a government–controlled public agency and those where it is a copyright society, the authors and publishers or just the authors themselves having joined together to administer their own affairs. Different national conditions, determined by the general law on contracts or the law on associations, and, not least, conditions of a labor law or competition law character, will influence the actual and potential relations between authors and CAOs.

Internationally an interest in the forms of collective administration of rights has long been cultivated by the two international bodies of collecting societies, CISAC (International Confederation of Societies of Authors and Composers) and BIEM (International Bureau of Societies Administering the Rights of Mechanical Recording and Reproduction). Not least through their efforts to standardize the contractual relations between types of CAO across national borders, they have prepared the ground for that uniformity in mutual agreements and elsewhere which is an important stabilizing factor in copyright administrative law. This is true even if, as with mechanical rights, the extent of the standardization covers for the most part only European countries. The national prerequisite of mutual agreements is of course the freedom to license the administration of rights for larger or smaller parts of the world — often the whole world — which is normally acquired by CAOs having the right of administration for their own country.

The standardization is based on model contracts for mutual representation in respect of musical public performance rights of 1974, in respect of rights in literature of 1982, and in respect of recordings of musical works and mechanical rights of 1974. There is as yet no question of total international coverage.

[1] See *Copyright*, 1985, pp. 368 *et seq.*
[2] *Ibid.*, 1985, pp. 332 and 333.

For instance, mutual agreements with the weighty CAOs of the United States of America are based on foundations other than these model contracts, and organizational development in the literary field has not progressed very far internationally compared with the musical field. The visual arts sector lags behind, even though SPADEM has successfully bridged gaps in its field between the CAOs of quite a few countries. However, present organizational practice, even in the case of organizations adhering to the model contract systems, seems to deviate in some important respects from what should follow from the application of the contracts. Nevertheless, a considerable amount of work has been and is still being put into standardization efforts within the two organizations CISAC and BIEM, for instance in the form of recommendations to member organizations.

The work done within WIPO and Unesco, on the preparation of the two 1983 Model Statutes for Institutions Administering Authors' Rights in Developing Countries,[3] which followed an earlier, less ambitious attempt by BIRPI and Unesco in 1969 to establish a Draft Model Statute for Societies of Authors in African Countries (the Abidjan Statute) may produce some stabilization in the field of copyright administrative law by virtue of its ambition to unify, but its primary aim is to establish models that may prove attractive when new CAOs are formed within developing countries.

A supranational influence manifests itself in the relations discussed in this article by way of the competition law that has evolved within the European Common Market. Both the Commission and the European Court of Justice have had to resolve a number of questions concerning the dominant position of CAOs on the national markets of the Federal Republic of Germany, Belgium and France, and the effect of that position on the benefits derived by authors from the activities of their organizations.

The rights affected by the relations of authors, as creators of the literary and artistic works which in effect are what copyright is all about, with CAOs, and which are to be dealt with here, are in the first instance those that belong to the domain of the authors' exclusive rights, in other words copyright proper, without regard to limitations. Generally that means the right to produce copies of protected works and to make the works available to the public (whether in the original or in a changed form, in translation or adapted, in another literary or artistic form or by other technical means), for instance in the form of copies distributed to the public or publicly exhibited, or public performance of the work, regardless of whether the work reaches the public directly or by means of some technical contrivance such as broadcasting, film, cable distribution, etc. The classification of rights whose use may be restricted in time, space and effect by means of assignments and license contracts, varies to some extent, but not usually very much, between countries. This is also true of the freedom to dispose by contract of greater or lesser parts of the battery of rights without specifying in some detail the uses to be covered by an agreement. However, not every country will in all cases and under all circumstances allow copyright to originate with the creator of the work. For instance, in the United States of America and some other countries, the right to a work created under a contract of employment or hire will vest in the employer.

An important part of the exclusive rights of the author will of course, in many countries, be his moral rights, normally nontransferable but usually waivable in respect of more or less clearly specified uses of his work. In some countries this kind of right does not exist. Instead the corresponding interests of authors are provided for, to a greater or lesser extent, by other sets of legal rules.

The exclusive right may as a general concept be viewed as a kind of cake cut into slices of various sizes according to country, from which nationally–determined pieces are in various ways carved away by limitations, concerning private use or educational uses for instance, or kept without icing by provisions on general nonvoluntary licenses of various kinds, which are themselves sometimes combined with stipulations that compensation, for instance under a compulsory license rule, may not be claimed except by a CAO.

In addition to the actual copyright prerogatives just mentioned, which also encompass the right to damages for infringements of copyright, CAO administration of rights also covers claims under special compensatory schemes such as the public lending rights, audio cassette, videotape or recorder levies and *droit de suite* mentioned earlier. At times the legislation on such systems stipulates that the authors' rights have to be administered by CAOs. The legal technique used to frame provisions on rights under the systems does not always qualify as copyright. Sometimes the provisions are written into the copyright law system; sometimes they remain outside, and then occasionally with the purpose of avoiding application of the national treatment principle. I shall be returning to that principle shortly.

Authors want users to have easy access to their works, and they want no unnecessary obstacles to their claims for remuneration based on their exclusive rights. They also want easy access to the compensation to which they are entitled under legislation on general nonvoluntary licenses and specific systems such as the ones just mentioned.

[3] See *Copyright*, 1983, pp. 348 *et seq.*

Sometimes, but not very often, there is a legal requirement that the administration of authors' rights must be effected through a CAO in the case of claims related to exclusive rights. However, once a right has been taken into administration by a CAO the power of decision of the holders of rights will usually diminish in many respects — as we shall see in a moment — sometimes because of the State influences that I have already touched upon, but always — albeit to a greater or lesser degree — because of the collective character of the administration.

The exclusive right will be least affected by collective administration when it is one that the organization administers individually in relation to users, as most often in the case of dramatic rights, or "grand" rights, where, also in the event of collective administration, conditions may be adjusted from one work to the other. This contrasts with the collective administration of the "small" rights regarding public performances of nondramatic musical works, where for instance the right of the individual author/composer may be combined with what could amount to the rights of the authors/composers of the whole world in a blanket license, permitting public performances for a year at a time for instance via radio cushions for patients in all the hospitals of a region against a monthly lump sum payable to the national performing rights society.

The authors whose relations with CAOs will be discussed here are not only the authors of the country of the CAO itself. As already mentioned, mutual and other agreements on the administration of rights between CAOs of different countries form a network that spans the world; it is more or less developed with regard to any given right, mainly depending on the degree of organizational development in the countries concerned, but most developed in relation to musical performance rights. Moreover a CAO in one country may at times have authors attacbed to it who are citizens of, or who have their tax domicile in, another country.

A fundamental provision in most mutual agreements between CAOs across national borders is that in each country all holders of rights, regardless of the organization to which they belong, are treated in exactly the same way. Thus, the organizations apply the national treatment principle proclaimed by both the Berne Convention and the Universal Copyright Convention. Admittedly, the principle whereby — to put it simply — authors of one country signatory to either of the Conventions will in other such countries enjoy the same rights as those countries grant their own authors is a principle addressed to legislators, and it applies to what I have here called copyright proper. Of course, the principle as applied by CAOs is not so inflexible a basis for the exchange between them of revenues collected that a CAO is prevented from being exacting as to the standards of administration that it demands of the other contracting party.

Even if we disregard for a while the effects of possible mutual agreements, we note that the administrative side of copyright will not remain unaffected by the national treatment principle. Thus, among countries party to the Berne Convention, a country whose legislation requires its authors to let a CAO administer a right covered by the Berne Convention must apply the national treatment principle (expressed in Article 5(1) of the 1971 Paris text of the Berne Convention), so that its residents and residents of the other country will benefit from the administration on an equal footing whcrever the foreigners also need it for the enjoyment and exercise of their rights under the Convention. The same reasoning applies to the Universal Copyright Convention (Paris text of 1971, Article II). The extent to which authors entitled to invoke the Berne Convention in defense of thcir rights may, if at all, bc compelled to submit to the formality of administration by a CAO of any of their minimum rights under the Convention in spite of Article 5(2) (Paris text), is a controversial question on which legal writers have not agreed. I shall put forward my own opinion in *Part II* of this article.

The insistence within the European Economic Community on the autbors of member countries being granted cqual treatment with regard to the administration of their rights by organizations with a dominant position on the market has already been mentioned. Community law strengthens the demands already made by the Berne Convention and the Universal Copyright Convention about national treatment not only by applying to the enjoyment and exercise of their rights — according to current notions — but also by asserting claims regarding details in the CAOs' administration of authors' rights.

## II. The Effect of Collective Administration on the Exclusivity of the Rights Administered

At the ALAI (International Literary and Artistic Association) centenary in Paris in 1978, Rob Du Bois stated that "without tbe work of copyright societies no sizable exploitation of the right of the author is possible any more. We have to realize that this means that the exclusive right of the author, whoever he may be, is to a significant extent emptied of its meaning for his own benefit." He was right. Copyright societies — and CAOs in general — are marvellous marketing tools for authors' rights, in that they offer easy access to the legitimate use of products of literary and artistic creativity. They bridge the administrative gap between rights

granted and their lawful exploitation making them available to anyone who would otherwise have to look for them — often at great expense — in order to remain within the law, and tben, often with very little if any prospect of finding them. CAOs also make it possible to supervise the actual and possible market for those rights.

In many a field of use the exclusive right would be a legal futility if there were no collective administration to implement it to a sensible degree and in a sensible manner, itself governed by more or less appropriate national legislation and other external and internal rulings concerning the activities of the bodics concerned. The demand for accessibility with no more effort than is inevitable cannot reasonably be countered with thc argument that there are works in public domain available for use if the user is not satisfied with the demands made by the author by virtue of a complete exclusivity of rights establisbed by copyright legislation.

However, even in countries with a developed organizational structure for the authors' professional sector, quite a few groups of authors have only recently become aware of the possibility of using a CAO to mobilize their otherwise unused and unusable exclusivc rights. In many countries the visual arts sector provides examples of this, and also of individual reluctance to make the sacrifice of exclusivity in relation to the CAOs' administration needs.

The effect of collective administration on the exclusivity of the rights administered is of course conditioned by the legal prerequisites under which the administration has been exercised, differing as they do from country to country. In this, State regulation restricts the CAOs' proper choice of standards for thc purpose by virtue of the freedom given them by national law.

The degree to which State–determined or organization–determined rules are anchored in the authors' own opinions about how they would want their rights administered would presumably condition the influence of those rules on the exclusivity of the rights themselves if that influence were to be graded according to the principle of the least being also the best. I shall here refrain from making such a grading. There are however, as we shall see, some quite clear points of departure for a discussion of effects on exclusivity.

Collective administration does not place the author under any obligation at all to make his works available to the public. In situations where the author in practice and in law can administer his rights himself and secure a reasonable income according to what the market may provide, and chooses to do so, the availability of collective administration, to which he *might* attach his rights, will have no effect on the exclusivity othcr than the risk that a person wishing to use his work could enter into agreement with the organization alone in respect of whatever rights are under its administration, and then either abstain from using the unaffiliated author's works or use them without authorization. The author can weigh the advantages of collective administration against disadvantages of this type and make his own decision on whether to preserve the exclusivity of his rights or make it subject to the effects of the administration of the particular CAO. On the other hand, compulsory collective administration can be so designed that an author's works are used under conditions set by himself, with the result that the CAO effectively functions as an agent in relation to prospective users of the rights administered.

Anything else, however, is bound to influence exclusivity to some extent. Its essence is typically the author's right to say yes or no to uses of his works, either directly or through intermediaries. Linked to this right there is the possibility of laying down conditions for approved uses of economic or other character. The possible interest of authors in handling their own rights, witbout the effect that collective administration has on their exclusivity, may differ in frequency and strength according to the kinds of work, use or user involved. It will typically be more marked in relation to public performances of literary works, for instance, than in relation to the same use of musical works.

The exclusive rights of authors tend more and more to lose their economic value or become less valuable if they are not collectively administered, with the varying degree of effect that this has on their exclusiveness. It seems reasonable under tbe circumstances that the author should seek as much revenue as possible with the greatest possible respect for his moral rights.

Demands of this kind can sometimes be satisfied by allowing an author wbose other rights are administered by a CAO to keep his right to authorize or prohibit a certain use of his work, but only on condition that he respects the remuneration minima decided by the CAO, which may be agreed upon with an organization of users. Sometimes a CAO may, if an author so wishes, allow or negotiate individual remuneration, possibly not below a certain minimum level, even though it would ordinarily apply fixed tariffs for uses of separate works in its repertoire, whereas in other respects it would apply its own conditions to the administration of bis works.

However, where the exercice of the option to stay out of a CAO is tantamount to one's works not being used at all or being used without due respect for the copyright involved, it would usually complicate the administration of rights within the CAO so much for them to be taken care of on individual

conditions that no such administration could ever be contemplated.

If, then, the author is placed under the obligation to have his rights administered by a CAO, that need not be considered a threat to their exclusivity. Instead, it may be regarded as entirely in conformity with it, as there could be no such threat unless, on account of the administration, the author is denied his right to refuse a particular use of his work. In any event he will not be able, in the cases discussed, to impose his own conditions on levels of remuneration, etc., unless the CAO chooses to accept them for general application.

The borderline with compulsory license systems is wiped out in situations like those just mentioned if a CAO has been allowed to authorize uses of the work irrespective of whether or not the rights have in fact been entrusted to collective administration. This effect may be mitigated as long as the author has been left some means of influencing the CAO's decision by virtue of his membership or other connection with it. It should however be emphasized that the prospect of a well-functioning CAO should be able to outweigh any ambition that a legislator might bave of limiting exclusivity by means of a general nonvoluntary license in one domain or the other. It could be added tbat a system of remuneration based on a compulsory license might, more easily than a statutory license, conform to the interests attaching to an exclusive right because of the possibility that the CAO retains of meeting unwilling debtors with sanctions specially designed for copyright infringements. This argument also applies to the possibilities of protection under moral rights, unless statutory license rules are combined with specific rules to that end.

What has been said about what might be called "conformity as far as possible" with the exclusivity concept will in many cases also be true of compensation schemes, such as cassette or recorder levies, etc.; there, moreover, the absence of established principles for distribution of the proceeds may dissociate the compensation from the works used, and statistical fictions used as a basis for distribution, while better than nothing, will still lead far away from the notion of exclusivity of rights.

In many cases where limitations on the exclusivity of authors' rights may seem warranted, the exclusivity concept may nevertheless, even better than by compulsory license schemes, themselves preferred to more radical solutions, be served by systems of extended collective license clauses and agreements of the kind that operate in the Nordic countries, which will be presented in *Part IV* below.

When for a certain field of use the author is directed to a CAO with a monopolistic or clearly dominant position on the market, based on either law or fact, then, as a rule, his options will be either to abstain from having his right administered or to adapt to whatever is contained in the CAO's statutes or distribution rules, or whatever else determines its administrative activities, as a guarantee of the fate of his right. This is true both of his existing and of his future works for as long as the administration lasts. From the author's point of view the situation may not differ much from that in which the right to compensation is recognized by law and administered collectively, as in the case of a public lending right, for instance. What differences there are between countries will depend on the CAOs themselves and their planning of the effects of their own work.

An exclusive right in a complete and unimpaired state constitutes implicit recognition of the individual value of each particular work as compared with any other. Non-individualized collective administration neutralizes the competition between works, for instance within a genre or any other category of works with administered rights.

Blanket or bulk licenses granted by CAOs for uses that are made without being accounted for, and without any control over the use or the extent of use of any particular work of a given author, will of course give collective administration a substantial effect on the exclusivity of the rights administered, and that effect will condition the relations between authors and the CAO. Its choice of criteria for the distribution of revenue is unlikely ever to be an exact reflection of the actual uses of works. In any event it is a reflection that serves only as the theoretical market basis of an exclusive right. Moreover, the author will not necessarily always have to give up his individual control, even where the CAO issues blanket licenses. Sometimes he will have a right under CAO rules to forbid or reserve certain uses of his works or of some of them, although he may for instance have to give up his right to object to his work being performed by or recorded with a particular performer.

Nevertheless, the obligation on CAOs to conform to rules and regulations decided by legislators, various authorities, courts, arbitral bodies, etc., and also to apply rules on standardized compensation and conditions of certain kinds to whoever — at least in principle — applies for blanket licenses in the CAO's area of concern will be an important factor with a significant effect on the exclusivity of the rights administered in relations between authors and CAOs, and that effect will be precisely due to the fact that the very existence of collective administration will entail such obligations.

Regardless of external influences on the activities of a CAO, it is probable, in my view, that those organizations in which the authors themselves — by virtue of their membership or other association and, where appropriate, jointly with their publishers —

have a right of decision or at least a say in the administration of their rights are the ones best equipped to attend to whatever interests there may be both in a preserved sphere for individualized administration and in the creation and maintenance of sets of conditions for use as much in keeping with the exclusivity concept involved as circumstances permit when individualized administration has to give way to standard or generally agreed conditions, blanket licenses, etc.

An entirely opposite picture, where the value to authors of the exclusivity of their rights in relation to the CAO can easily be reduced to nothing, is provided by developments in the field of broadcasting in one or two European countries. There the broadcasting companies have tried, by instituting CAOs of their own, to avail themselves, for the purpose of cable distribution for instance, of copyright that they have acquired from employees and commissioned staff who, under the prevailing monopoly or oligopoly conditions, have lacked the necessary strength to oppose the broadcasters.

The bargaining power of users of works may be a reason for incorporating limitations on the authors' disposal of their exclusive rights in an organization's statutes and association contracts merely in order to guarantee the freedom of the CAO from user influence. An enlightening decision was taken by the Commission of the European Economic Community on December 4, 1981. It concerned the applicability of Article 86 of the Rome Treaty to an amendment to the statutes of the GEMA organization of the Federal Republic of Germany. The amendment was intended to prevent anyone whose rights GEMA administered from entitling a third party with a user's agreement with GEMA or any other CAOs of the kind, either directly or indirectly to any share in what would accrue to him as a result of GEMA's administration, and thereby to prevent the third party from improperly preferring to use particular works rather than others from the GEMA repertoire.

In order to prevent the exclusivity of the rights administered from being diluted, with the result that the system applied may come to be at variance with the very idea of an exclusive right, it is reasonable that the CAOs responsible for the field of rights concerned should be obliged to agree to administer rights submitted to them in cases where the rights would not otherwise have any proper value, as for instance with a music performance right, whether in relation to local cable distribution of broadcasts or more generally.

Whenever the rights cannot be negotiated work by work, the CAOs should also apply equivalent conditions according to the kind of work and use and the extent of use as a basis for claims for remuneration and distribution of proceeds, and be under the obligation to contract with serious users. The obligation to contract for the works that they administer should be the self-evident consequence of the very substance of a CAO's activities, but it is sometimes directly imposed on CAOs by statute. In this manner authors will be assured of the maximum profit that they can expect from the administration of their rights. In these cases, however, the exclusivity of rights will clearly suffer from effects of collective administration that are themselves important, in many respects, to the authors' relations with the organization, compared with what the author might have decided by himself in the hypothetical case of his having access to a market where individualized administration was possible.

There may be good reasons, in the interest of protection of the exclusive rights of authors, for measures which at the outset may seem to have a restricting effect on those very rights. Such measures may be a commitment to times and to periods of notice, which may prevent an author in an individually weak bargaining position from transferring his right himself, for instance to media producers under contracts of employment or commission, and thereby circumventing his CAO and weakening its collective strength. I shall return to this issue in *Part V.*

In cases where the value of a right depends on its collective administration, the equal treatment principle within the CAO comes to the fore. Every affiliated author should have most-favored-person status with regard to his non-individually administered rights. This means that the CAO's conditions of affiliation must have a general bearing on those affiliated, and that proceeds must be distributed in accordance with general principles, tariffs, etc. The affiliated author must not have lesser advantages than any other author whose rights in the same kind of results of creative effort are administered by the organization in respect of the same kinds of use. When the author is a member or a partner of a CAO, claims for equal treatment may often be based on the law on associations under which the CAO has been set up. Nevertheless, in relation to other corresponding rights within the sphere of administration of a CAO, the equal treatment principle may be looked upon as a general protective principle, which is the ultimate guarantee of the exclusivity of a right for the purposes of the CAO. The fact that the principle does not have its assigned place in the relations between different categories of holders of rights, such as authors and various kinds of publishers, etc., is another matter, to be discussed further in *Part V.* In international relations based on the CISAC rules already mentioned, "as concerns works in the repertory of another society, the same rates, modes of collection and of distribution of royalties shall be applied" as those which the partic-

ular society "applies to the works in its own repertory."

If an author does not allow his rights to be administered individually outside collective administration or on his own terms within a CAO, and non–individualized collective administration takes place, then the author must submit to the CAO's rules on administrative costs and distribution of proceeds for a number of possible purposes other than distribution to those whose rights are administered, for instance cultural or social development projects. The returns from the use of an exclusive right may here be affected to a greater or lesser extent. If the author is referred for the administration of his rights to a CAO that has a market monopoly in that particular kind of rights, he will, however, often be virtually powerless against such a lessening of the personal revenue from his rights, even though allocations as just mentioned would not depend on the CAO being obliged to make them but rather on its own decisions. The principle of equal treatment does not protect against general percentage deductions, which are alike for everybody. Nevertheless, where allocations for cultural, social and other such purposes are allowed to influence the exclusivity of rights, and this is due to action decided by the CAO itself, there will in most legal systems be a limit on at least the blatant abuses committed by the CAO in relation to its affiliated authors. The member organizations of CISAC are allowed, under mutual agreements, to set aside a maximum of 10% of what they have collected for cultural and social purposes. There are also limits related on administrative costs. These are important factors that condition the practicability of mutual agreements between the CAOs of different nations. Moreover, the allocations are often below the agreed maxima.

In Socialist countries the conditions regarding the distribution of revenue to autbors are, as a rule, fashioned rather differently from elsewhere. An author's creative efforts are not absolutely certain to give him a remuneration claim for particular uses of his works, even though tbe situation does vary between countries. In Socialist countries the professional organizations of authors, where appropriate in collaboration with collecting societies, provide support for authors in accordance with principles of social and cultural policy, the application of which of course has a marked effect on tbe otherwise as far as possible individual–work–related and use–related gain usually attached to the exclusivity of autbors' rights. This is particularly evident in the Soviet Union, where copyright transactions are controlled within a system of governmental organizations that administer cultural activities according to principles laid down by the one political party.

Otherwise it will be found that State interest in the relations between authors and CAOs, as far as the effect on the exclusivity of the rights administered is concerned, has not come to be expressed very extensively in national law. Neither does maximum sympathy just for individual–work–related systems for authorizations and revenues give, as a matter of fact, that maximum effect to authors' economic claims in the market which is usually set forth as the legal purpose underlying the provisions of national legislation on exclusivity within tbe framework given by copyright itself. To produce such a maximum effect it would however, in my view, be necessary — contrary to what is the case in the United States of America for instance — for each field of use to have only one national CAO, or for each field of use to be administered by an independent unit, where convenient within a national coordinating organization like COPYDAN in Denmark. In any case this is true of the activities directed towards users of the works. Of course these activities may, within the one unit whose activities are immediately user–directed, depend on collaboration with other CAOs, whose repertoires of rights it administers. History shows too great disadvantages for authors and users in competitive administration of the same rights.

I may add that, as the price of music rights will influence a user much more exceptionally than as a rule to select one piece of music instead of the other, the argument behind an effort to influence price levels in the market for performing rights by promoting competition by legal means (antitrust law) is most unlikely to ensure reasonable cost levels for the buyers of performing rights. In the US market, where above all ASCAP and BMI compete against each other for performing rights, this does not in itself afford a guarantee of competitive prices, any more than the possible competition represented by direct licensing on the part of the author. The competition law measures applied seem more than anything to complicate matters and to diminish the value of authors' exclusive rights where other legal means of preventing abuses might better serve the values inherent in the basically exclusive character of the rights administered.

I am not convinced that persons other than the authors themselves are the ones to achieve the establishment within CAOs of systems that conform best to the idea of exclusivity of rights. However, the respect for copyright in the form of exclusive rights demands easily accessible and rapid redress for authors against CAO abuses, not only with regard to the conditions governing the external activities of a CAO, but also stretching into the relations between authors and the CAO, and into its internal rules. The protection measures should be aimed only against abuses: they should not exert any con-

trol over reasonableness. Protection may be needed for minorities or for the possibilities for individual authors not to subject their works to administration — an ideal which will not gain a hearing in all political systems — or to benefit within a CAO from a system for the administration of their rights that does not, more than is absolutely necessary, limit their freedom of decision on uses of their works. Protection may also be needed for the practical possibility of abolishing rules of distribution of proceeds in operation within a monopolistic organization when they have become unjust, for instance owing to the development of new media (more will be said about this in *Part V* below) or in order to create means of changing from one CAO to another, or of not entrusting a particular category of rights to a CAO.

The existence of interest in all these aspects does not necessarily mean that the organization against which they are directed has a dominant position, or else that competition law provisions may be introduccd on the issues concerned: the remedies against abuses based solely on competition law control functions may prove too rigid. Increasingly often the authors of works of different categories compete for tbe distribution of sums collected, their claims originating from compensation systems associated with reprography, local cable distribution of broadcasts, distribution of videograms to the Merchant Navy, etc. In that case an initial distribution may be made among the authors' professional organizations, at one remove from the bargaining and collecting CAO, whereupon each professional organization provides for its own category of authors in a second distribution of the revenue allotted to it. Here, even what happens between the collaborating organizations is of such importance to the value to the author of his originally exclusive right that the State interest expressed in the legislation giving initial exclusivity of rights to the author should also be directed towards attempts to assure the author of the practical effects of the exclusivity.

In support of protection for at least an individual–directed distribution of remuneration or compensation even when it might seem most convenient to use the revenue for collective aims, the following Danish experience may be mentioned. When a collection has been made by a joint body of organizations in a certain field of use, it has proved easier to settle disputes about distribution between those organizations when the proceeds have already been earmarked at the outset for distribution among individual authors, of whatever organizational background, than when they have been set aside for collective uses to be decided upon by each member organization according to its needs and interests.

### III. The Legal Nature of the Entitlement of the Organizations Administering Authors' Rights

It is not for me to consider in this article what legal types of CAO exist, but ratber what types of legal act on the part of the authors empower CAOs to administer their rights. Whether the administration of rights by a CAO relies on copyright assignments of a private law character or has another legal foundation, the administration may be carried out in organizational forms of a public or private law character, which we shall not describe further here. The characteristics of these forms will however serve as the foundation of different kinds of relations between authors on the one hand and a CAO on the other. An economic association may offer membership, a company partnership. A certain influence usually attaches to such relations, which is determined by the general law on associations and which influences the relations between authors and a CAO. Moreover, in a CAO established as a collective or juridical entity under public law authors will usually be represented in one way or another even if, in some countries, they may be deprived of any real possibility of influencing the administration because of the structure given to the executive and policy–making bodies of the organization, be it for one–party–State, party–political or other similar reasons.

Rules from the law on associations — which will not be discussed here — may have repercussions not only on the legal character of the empowering acts in the relations between authors and organizations, but more directly on the actual terminology used to define the terms of the administration of authors' rights. In this respect there is a considerable range of variations from country to country.

In practice the administration of rights will most often rely on a combination of statutes, by–laws or the like, contracts between the author and the organization concerning the administration, and the distribution rules decided upon by the CAO under internal rules of the kind just mentioned or set by courts, arbitral bodies, etc. Even in organizations of an entirely private law character, much of the legal foundation may be conditioned by State influence, which we sball not be discussing further here.

I shall concentrate on the very act that confers on thc CAO its right of disposal in relation to an author's rights; at the same time however, I would remind readers that the focus of this article is on the relations between autbors and CAOs. Questions relating to what may empower a CAO to collect revenue without a private law foundation on behalf of nonmembers or other unconnected persons will as a rule be left out.

The right concerned may, however, even with the limitations just mentioned, have the character of

any of those that I indicated in the introduction (*Part I* above), and which by law are given to the author as a prerogative of his, whether an exclusive right, for instance to perform musical works in public, or a right to reasonable compensation out of what a CAO has been allowed to collect under provisions on cassette levies, etc., as under the new Article 54 of the Copyright Act of the Federal Republic of Germany following the most recent amendments to the Act in 1985. Between the two types of rights mentioned here there is, however, the fundamental difference of the administrative tasks of the CAO: in the first case it will turn the right to account — as a rule in accordance with what it has been empowered to do by the authors — by concluding agreements with others on the uses of the rights and on the collection of dues, while in the second case the CAO does not need to be empowered by any author in order to collect the amounts concerned. The production of cassettes giving raise to the claim of compensation is not to be related to any particular work of an author. In the Article 13*b*(2), introduced in 1985[4] in the Law on the Administration of Copyright and Related Rights of the Federal Republic of Germany, there is a presumption, *inter alia* that if a CAO makes compensation claims of the kind just mentioned, then it is empowered to administer the rights of all possible holders of rights. It also has to discharge all persons liable for payment from any compensation claims made by persons who have not entrusted the CAO with the administration of those claims. In the last mentioned cases it is the very legal provisions, defining the compensation schemes that give the CAO its empowerment. Here, for a relationship to be established with an author he has to make a claim against the CAO, unless of course he is already connected to it in one way or another.

In order not to complicate unnecessarily I shall restrict my discussion here to the first-mentioned kind of rights, namely the exclusive rights proper, and then to them as the subjects of empowering acts of an essentially private law character by authors in relation to CAOs. The relations between individual CAOs and joint organizations of CAOs, which carry out part of the administration of rights, for instance the negotiations with users, and the collection and distribution of revenues, will now be left aside.

A unique situation, on which I shall also not comment further, is that in which a CAO is only given the role of agent for rights in individualized uses, acting in the name of the author.

Memberships or partnerships in a CAO may sometimes in themselves empower the organization to administer the rights of its members/partners where the latter are considered to have accepted that effect by the fact of agreeing to the CAO statutes, by-laws or the like. One question here is what terminology may be required to validate in law the effects of a mere membership or partnership on an exclusive right.

In Sweden, the Swedish Union of Authors' administration of its members' rights, that is videogram distribution to the national Merchant Navy and local cable distribution of radio and television broadcasts, via the national organization COPYSWEDE, is based on nothing other than a provision in the statutes of the Union under which its aim is to "attend to the economic and ideal interests of the writers" and in doing so, among other things, "by means of agreements with opposite parties create economic and social security for writers, individually and as a corps." Such a basis may be enough for practical purposes when the rights in question cannot otherwise be brought to bear at all, and when the authors have some guarantees for the best possible, nondiscriminating result of the administration, because it is their own representative professional organization that concludes the agreements.

It is not uncommon in authors' professional organizations for the legal backing to their handling of authors' rights to be given a more stable character by individual proxy forms signed by members/partners and other connected authors, whereby the organization is empowered to represent all concerned. The choice of proxy forms from among the various legal forms of empowering instruments may for instance be due to the fact that they enable a CAO to act in law in quite a short time, at least for a substantial number of the authors involved. The procedures necessary for the amendment of statutes, by-laws, etc., can be more time-consuming, and a transfer-of-rights model has a somewhat daunting air of finality. Thus, a lesser degree of formal stability in its powers may be the price a CAO has to pay for nevertheless becoming operational in the administration of rights. Proxies may also give the CAO more flexibility to allow for the opinions of non-majority groups of members, etc., during the development of the activities of a CAO, for instance by letting it administer only certain sectors of use, while other sectors within the same field of application of a right are left to individual administration.

Stability and some flexibility may also be achieved by what statutes, by-laws, connection contracts, etc., will call anything from an agency, commission or assignment relationship to licenses or actual transfer of ownership of the copyright to a greater or lesser extent.

The legal categories in use vary from one legal system to the next, but also between CAOs in one and the same country. The reason for avoiding the use of terminology that suggests transfer of the copy-

[4] See *Copyright*, 1985, pp. 371 *et seq.*

right itself or parts of it may, as in Austria and the Federal Republic of Germany, be that an author's rights cannot — in principle — be definitively taken from him, even in part, during his lifetime by acts under private law, whereas he may well, in ways typical of the exclusivity of his rights, give others a right of use of a nonexclusive character or indeed an exclusive right of use, in both cases limiting his own disposal in space, time and effect. Even countries that afford greater contractual freedom, where for instance only moral rights may not be transferred, attach to specific expressions for the legal disposals now involved effects which may, even though the same term is used, be different from one country to the next. Thus, section 101 of title 17 of the United States Code[5] gives the following definition of "transfer of copyright ownership," which would not suit any current legal use of the same phrase in any of the Nordic countries, or in many others:

> ...an assignment, mortgage, exclusive license or any other conveyance ... of a copyright or of any of the exclusive rights comprised in a copyright, whether or not it is limited in time or place of effect...

Both authors and CAOs may have an interest in dissociating themselves from a terminology whose meaning, in national terms, is laden with associated legal effects that were not intended for use under the conditions now prevailing.

In the CISAC model contract of 1973 for mutual contracts between authors' societies, the national legal basis for such contracts is described in terms designed to accommodate any current terminology in the contract markets of various countries. The performance right is made over, transferred or entrusted in some way, for its administration, to each contracting CAO by its members, in accordance with its statutes and by–laws. The private law model of the 1983 WIPO/Unesco Model Statutes for Institutions Administering Authors' Rights in Developing Countries stipulates in its Article 6,[6] to the same end that "All members shall... assign to the Society the exclusive right... to act as their sole representative and to authorize or forbid all uses." Of course this assignment to act as sole representative, etc., is not an assignment of ownership of the author's right or any part of it.

Before I turn to take a closer look at the interests underlying various kinds of attempt to divide powers by means of this internationally variable terminology, there is something to be gained by looking into the position that the CAOs discussed here will typically need for their possible administration of rights, so that they may do the business that, also typically, they are asked to do. In short it would be as follows:

(1) The CAO must — normally in exclusivity, even in relation to the author himself (something which will not be legally feasible in all countries, however) — assert the rights of the author within its field of competence by authorizing the use of his present and future works (in some instances, however, there may be competition law restrictions on a CAO committing members with respect to all such works or for their period of protection). This assertion of rights is in certain respects (as a rule all those within the field of activities of the CAO) done in the name of the CAO and for a reasonable period of time within a specified geographical region. The right to act in its own name is of course important, not least because the repertoire of the organization will vary in the course of time and in relation to a changing circle of authors.

(2) The CAO must supervise uses.

(3) The CAO must collect revenue from uses of the authors' works or otherwise related to the authors by virtue of their entitlement to compensation within the field of the CAO, and do this under the obligation to distribute a proportion of what has been collected in accordance with appropriate rules (on which no guarantee can be given — legally determined conditions excepted — owing to the sheer diversity of ways in which the CAO can be empowered by authors).

(4) The CAO must take legal action against infringements of the authors' rights (but with the author himself in some instances having a *locus standi* in one respect or another, sometimes according to mandatory legal rules in spite of the corresponding powers having been given to the CAO).

All this may be subject to the restriction that the CAO may not give an exclusive license of use and also to its freedom to sign mutual contracts or other agreements with CAOs in other countries. On the other hand the CAO must not itself, or in any case not on terms other than those that apply to other users, perform works in public or make copies of them, etc., and normally no authors' rights need be part of the assets of the CAO.

A last point of importance to many CAOs, especially because it allows the organization to lay down fixed rules of distribution among various categories of holders of rights within itself (such as composers, scriptwriters, arrangers and publishers in a performing rights society), is that members, etc., agree to respect the rules that are constantly being established by the organization regarding collection, recording and shares in proceeds.

When all these conditions are summarized in an agreement that makes no mention of the author assigning, transferring or licensing any of his rights to the CAO, the agreement will be a type of contract that does not fit the rules of private law on such

[5] See *Copyright*, 1977, p. 154.
[6] *Ibid.*, 1983, p. 355.

things as proxy, mandate, commission, agency, trust or whatever more generally formulated or traditionally used notions there may be in the civil law field.

So for instance under US law the word "trust," if applied to the author/CAO relations, would probably mean — to put it simply — that a successful author would be entitled to a higher level of revenue from his CAO than less successful authors could expect. This state of affairs would conflict with the organizations' interest in giving blanket licenses. Furthermore, in some countries proxies have the attribute of being revocable at any time, and that is not good terminology if the permanency of the relations between author and CAO is of the essence. It is also evident that the idea of empowering a CAO to administer rights cannot reasonably be construed as acquisition of those rights under a right of redemption in exchange for the possible amounts of money payable to the author from the proceeds of its collections. Given the variety of obscure wordings to be found in the market, some emphasis to dispel even ideas of this kind seem necessary.

The contract to be considered here more than anything else is what in German would be called a *Wahrnehmungsvertrag*, in which elements of various traditional legal notions are to be found without anyone being any the wiser as a result of their inclusion. There is no small risk involved if such notions are made into bridging elements between authors and CAOs.

The written form, which is sometimes mandatory simply to validate the disposal of rights in future works, may under national rules of procedural law be also needed for a CAO to sue for infringement, but this does not in fact complicate matters, as agreements of the type involved here will always be in writing. The right of an organization to sue in its own name, if not established by statutory law, may however sometimes depend on the CAO's own acquisition of the allegedly infringed right. This may in some countries account for the choice of a contract terminology in which the rights in question are transferred to the CAO by means of an assignment or, when that is sufficient to achieve the desired effect, an exclusive license, while the absence of an exclusive license in contracts of affiliation may be a result of competition law requirements of public character applicable to the CAO, as in case of the administration of music performance rights by ASCAP and BMI (but not SESAC) in the United States. However, this does not prevent the two organizations from filing claims against infringements in their own names. Thus, the ASCAP Agreement with writers or publishers contains a grant of

> ...the right to license nondramatic public performances...[of musical works including]...all the rights and remedies for enforcing the copyright or copyrights of such works...as well as the right to sue under such copyrights in the name of the Society and/or in the name of the owner and/or others, to the end that the Society may effectively protect and be assured of all the rights hereby granted.

A further reason for allowing the CAO-empowering element to take the form of a transfer of the author's exclusive right by assignment is to be found in collecting societies where such a transfer is designed to protect the authors against themselves by preventing them from assigning their rights to publishers (see below, *Part V*), or for instance to companies where there is a risk of their power of decision on the revenue from their rights falling into the wrong hands, leaving the author without reward for his efforts as compared with the rights taken care of by the CAO. The same effect may however be attained by the less drastic and more usual means of granting the CAO an exclusive right to administer the author's rights over a sufficient period of time.

At times the phrasing of a CAO's statutes on one hand and that of the contracts of affiliation to the CAO on the other do correspond closely enough to prevent disputes on interpretation when — often for tax reasons — there are doubts regarding the real intention underlying the elements that form the contractual base of the membership or the other affiliation. Statutes may be restricted to pure administration of rights, certain elements of which have been listed here, where the agreements which refer to the statutes contain the assertion that the CAO is the "holder of the rights in the works (sic!) signed over to it by the contract." However, the problems associated with such difficulties of interpretation may here be left aside without further comment.

It should be borne in mind that no author can transfer more rights than are still his after earlier agreements with other parties, for instance his publishers or employers. This sometimes provides an organization with an argument for acquiring the actual copyright, to the effect that it will in so doing itself obtain copyright protection against the author, and then especially against later double disposals of the right to the categories of parties just mentioned, or for instance against a corresponding right being given to another organization, even though it was already administered by a CAO under a valid contract. This protection — following in most jurisdictions from a principle that the first acquisition of a copyright in good faith is binding on any third party by virtue of the agreement alone — may be needed when an effect against a third party cannot be achieved by a contract of administration. Transfer of the actual copyright to the CAO may also be dictated by a wish for everybody connected with administration to be bound up with their rights, so that they will not be able to question the CAO's pricing of "its" rights in dealings with users subject to legal systems in which otherwise such questioning

must be justified in relation to mere entitlement to administer the rights. This argument may also be put forward with regard to such minimum contracts as an organization may conclude, during the period of its administration, with users of the authors' work when no binding effect of such contracts would otherwise be guaranteed by law.

In my view it is obviously, from a practical point of view, meaningless to regard the empowering transactions between authors and CAOs considered here as disposals of a kind by which copyright itself, in the form of one of the author's exclusive or other rights, is transferred to a CAO, when no such intention is expressly mentioned in the contracts concerned (statutes, etc., included). Transfers of the rights themselves to the CAOs seem to be conditioned — wherever they take place — by circumstances that ought to be manageable by other legal techniques in order to give the peculiarities of the legal domain an appropriate legal attire. The author should be deprived of his rights only insofar as, after assignments for time, space and effect agreed upon with the CAO, he should not himself be allowed to dispose of the rights so assigned. Under the impact of competition law a right to such disposal may have to be reserved to him, for instance in some cases in the United States, but that is exceptional in international terms (and usually a rather useless privilege for the author). Whatever he will not do himself but might otherwise be formally free to do, with respect to the administration of rights, will be taken care of by the CAO. In the same way as rules of the law on associations concerning a partner's attachment to a CAO comparable to the *Société civile* under French law will not be allowed to mean that his rights are bound to the Society for the duration of its existence (cf. the statutes of the French collecting society SACEM, Article 1, in their 1955 wording: "Every author or composer...gives the Society...for the duration of the Society, the right to authorize or prohibit the public performance of his works, as soon as they are created"), copyright rules, for instance the rule of the Federal Republic of Germany (Article 26(2) of the Copyright Law) that an author may not in advance dispose of his share in a *droit de suite* should not prevent the transfer of a right of administration of that right, to the extent that law gives it its content, as happens with the VG Bild Kunst "as fiduciary for all countries."

Actually, the expression "fiduciary assignment" (*treuhänderische Uebertragung*) comes closest to covering whatever may be needed from a practical point of view, even when the expression "assignment of authors' rights" is used in the same context. This kind of assignment must have been the one envisaged even when, as in the Memorandum and Articles of the British Authors' Lending and Copyright Society (ALCS) one finds the expression "every member shall... assign or cause to be assigned... all rights to be administered on his behalf" (Article *7(a)*). By a fiduciary assignment a right may be signed over to the assignee, but only for use in the interest of the assignor. It is not a matter of taking over any copyright, only of taking over the copyright administration.

This view of the nature of what should empower the CAO — an act by which it is entrusted with the possible administration of the rights and this without any complications imposed by legal dogma on categories — will usually put the CAO in the same position of trust in relation to the author and his exclusive rights as it may have under statutory provisions introducing a particular system of remuneration. The standing of the organization should in principle be the same regardless of the guise in which it appears according to the law on associations.

The contract market is in need of terminological inspection and rationalization; that much seems to be quite clear. To serve the *lex administratoria* (cf. *lex mercatoria*), that is developing in this field, a CAT list (Copyright Administration Term list) ought perhaps to be prepared to further the unification of language and the harmonization of conceptions of things, this being in my view highly desirable within the domain of the *lex administratoria iuris auctorium.*

### IV. The Problem of Extending the Effect of Collective Authorization to the Use of Works of Nonmembers of a CAO or Works Otherwise Outside its Repertoire

The problem mentioned in the title to this part of my article is intimately related to the fact that modern techniques and media for the use of works — especially in the field of so–called secondary uses and generally in broadcasting — have brought about a situation in which the act by which a certain work is used will often be no longer used in practice as a reference, either in determining whether a particular use calls for remuneration or in measuring the amount due to all those whose rights may have been affected by the act. Reality groups individual authors and their works in categories, whose members do not secure any share in the lump sums considered payable for certain uses unless they appear together, in collective bodies. It may be a matter of X per cent of the net receipts of a broadcasting company for the distribution of videograms containing what has been broadcast of works not earlier published and intended for home video rental or, for a yearly payment, Y monetary units per subscriber and hour of distribution via cable of certain broadcast programs up to a certain number of subscribers,

and Z units in tbe case of a larger number. Tbe right given by statute may be a purely exclusive right or one affording mere entitlement to compensation. It may be a law–given right to compensation without any attachment to an exclusive right. In these contexts real copyright, unlike theoretical copyright, is collective by nature even though individually calculated sums may be handed out to the authors at the end of an administrative procedure, which is necessary for the right to have *any* value at all, and then perhaps on tbe basis of some statistical model bearing a rnore or less true relation to the uses and the works used.

In these as well as in the multitude of sirnilar cases of use against compensation without any reference to identification of works by wbatever author, or any correlation of the compensation to uses of given works, one could ask why only those authors who bave surrendered their rights to administration by a CAO should enjoy the right given them by the legislator. A first demand will of course be that the legislator, as indeed often happens, should empower existing CAOs to care also for unaffiliated authors, or that action sbould be taken to help establish CAOs capable, for any author concerned, of collecting the compensation to wbich the law entitles him. When several organizations cover different categories of entitled authors (but also artists, etc.) there may be a need for a joint organization in order to guarantee, as far as possible, the functional value of the rights administered.

Whoever undertakes something which, according to the law, will give rise to a claim for remuneration has a vested interest deriving from the very existence of tbe law, to be able to acquit himself of the financial obligations imposed on him by it. This he wants to be able to do in a concentrated manner, not necessarily in dealings with just one contracting partner, but at least in relation to all potential holders of rights. In tbe case of tbose agreements with a CAO of which I have just given examples, the one liable for payment does not want the risk of exposure to new claims from unexpected quarters that could not be foreseen at tbe time of contracting, and which could upset any reasonable cost estimate on his part, for uses of works touching on one or other aspect of copyright. In view of such sentiments the legislator may choose to provide for some kind of general nonvoluntary license and attach to it a stipulation that the administration of rights must be effected through a CAO, possibly to ensure that these rules — for instance under State supervision of one type or another — will be applied generally. Moreover, it is not uncommon nowadays for such systems to be introduced when compensatory schemes are established on a copyright basis. What may be necessary, bowever, is first of all to assure the CAO of such a dominant position on the market tbat it will group a sufficicnt number of authors for other authors to be unable to create problems of significance. These authors, in their turn, must be accommodated in a manner that assures them of what they have legal reason to expect and at thc same time makes users feel secure with their contracts with the CAO concerned. In order to achieve this alone there would be no need for nonvoluntary legal licenses, provided that the national organizational structure is well developed. Proven organizational ineptitude on the part of authors will bc the best of pretexts for such legal measures.

However, the liberty of the legislator, in any member country of the Berne Union, to limit an exclusive author's right protected by the Convention is considerably restricted insofar as — to put it simply — authors other than its own are concerned. I need not dwell on this. The legislator, who for many reasons cannot give less of exclusivity of rights to national than to foreign authors, is oftcn faced with an insoluble problem in the situations now arising — one of those being the mixture of results of creative effort simultaneously present in what is used (videogram, broadcast, etc.). He will want to give access to the use of works, so that there will be a practical result of the copyright attached to them, by finding a solution that respects the Convention's defense of exclusive rights and at the same time prevents those authors who have not chosen to have their right administered by the CAO in charge of administration of rights concerned from invoking their exclusive rights individually, basing their claims on their own knowledge of actual use of their works.

Hitherto legislation has usually turned a blind eye to this. This is true not least of Berne Union countries, where the latitude for limitations on the exclusivity of rights is so restricted, as I have just mentioned, both legally and practically, and where a stipulation compelling authors to have their exclusive rights administered by a CAO would conflict with the exclusivity of the rights and contravene international rules. Especially for reprography some countries — also those that otherwise cxercise restraint in the limitation of copyright by means of nonvoluntary license provisions — have taken the small step of giving a CAO thc power to collect compensation also for authors who have not authorized the CAO to represent them.

What is rnore, CAOs in a number of countries have taken upon themselves to protect and indernnify users demanding it against claims that may at any time or in any manner be sustained as a consequence of possible demands for remuneration from non–affiliated authors, albeit possibly within some time limits and only up to certain amounts. Sometimes thc responsibility will cover only claims from nationals, which reflects that discordant opinion on

fundamental principles that I touched upon earlier. Generally, systems like those just mentioned seem to have functioned in such a way that those entitled, unaffiliated authors who have claimed their due at all have been content with what they have been given.

Nevertheless, courts of law that have not by law been placed under the obligation to apply certain tariffs for compensation have been free to fix an individual price according to work and use in excess of what would be payable to a CAO–affiliated author from a lump sum paid to that CAO for the same kind of use. Furthermore, where copyright infringement has been punished by fine or imprisonment, the criminal sanction will of course not have been ruled out by a contract between a CAO and users that contains clauses of the kind just mentioned. Even the latter problem would be soluble in national law, and without any conflict with the Berne Convention, if criminal law were simply ruled out in cases of infringement of rights for which a CAO — in such cases it had better be generally authorized in an appropriate manner — had entered into standardized agreements of the kind just mentioned, with an indemnification clause in favor of unaffiliated authors for certain kinds of use and, where appropriate, with tbe exclusion of infringements of moral rights, which could remain subject to criminal law.

Litigation costs may keep at bay many of the claims for small amounts that as a rule are tbe only individual ones at stake, not least because of the difficulty of establishing that uses of a particular work have taken place. In countries where copyright infringements are matters for the public prosecutor, he may even be unwilling to handle cases of the kind, which will keep them away from the courts. There is also reason to believe that courts will more often than not allow their evaluations to be guided by the customary shares of CAO proceeds payable to affiliated autbors.

Nevertheless, we are in the presence of a disturbing factor, wbich has to do with whether an unaffiliated author, with his exclusive rights, can be forced into the type of relationship with a CAO that has been discussed here, there to be affected by the relationship already existing between otber authors and the CAO in its administration of their rights. Of course, what has been discussed here about the situation concerning the CAO will also greatly influence its working conditions in the administration of the rights of its affiliated authors.

One way of solving part of the problem is that used in Great Britain, where an order issued on a reference to the Performing Right Tribunal concerning a license scheme under Part IV of the Copyright Act of 1956 (see section 29(1) and (2)) will have a generally binding effect, so that any person who does not have a license under the scheme and nevertheless does wbat would otherwise infringe a copyright may in bis defense in infringement proceedings (including criminal ones) claim that he is in tbe same position as if he were the bolder of a license if he complies with the scheme and fulfills his obligations regarding payment. This may, albeit in an indirect way, take care of the level of remuneration problem. Further to this it may be said that questions about amounts of remuneration should most suitably be directed to arbitral bodies or to special courts by statutory provisions. The opinions of these instances on tariffs and conditions used by CAOs may have a specific effect guiding tbe market and preventing in practice the bringing of law suits once a CAO bas contracted for everybody without in fact being empowered by all. However, in many countries the opinions of arbitral bodies may be challenged before the ordinary courts. This should by the way be the case in all countries party to the first Additional Protocol to the European Convention of Human Rights (with its protection of property, which includes authors' exclusive rights), except where the parties have themselves, witb equal rights, been allowed to compose tbe arbitral body.

General rules of competition law may be an obstacle to CAOs being allowed to contribute to an individual contract market based on collective agreements reached by collective bargaining with users or user–organizations, unless they bave been directly exempted from the application of that law.

A small step towards the extension of CAO agreements to cover unaffiliated autbors may be seen in the recent rule of presumption, mentioned earlier, in Article 13b of the Law on the Administration of Copyright and Related Rights of the Federal Republic of Germany. That country provides, for authors who are employees and for those who may be regarded as being in the same position, legislation which, however, creates problems of transformation for practical application to the problems discussed here. It makes it possible to extend, in a specific order, the effect of a collective bargaining agreement to employers and authors of the kinds mentioned who are not bound by the agreement (Articles 12a and 5, *Tarifvertragsgesetz*).

Rules of a more practicable and efficient character now exist in the field of labor law in some other countries. There tbe effects of a collective bargaining agreement can more or less generously — and at that also with regard to copyright — apply to unaffiliated employers and employees or their equivalents. It will only be suggested here that this may create problems of demarcation between trade unions on the one hand and those CAOs that are established by the authors as traditional collecting societies, etc., on the other. I do, however, wish to stress that copyright, as a property right of tbe

author, has some difficulty in conforming to a legal picture in which agreements are primarily directed towards labor instead of its intellectual result.

The problem indicated in the title to this part of my article — and which I have not seen discussed with reference to the state of law in Socialist countries — seems unlikely to find any solution in countries where several unrelated CAOs in the same field of rights and for the same kind of works are supposed to act in competition with each other. The conditions of one cannot very well be given priority over those of another. The consequence will be the same where, in the actual organizational situation, administered rights of CAOs are split in such a way that the organizations encroach on each other's fields in their administration of rights.

Finally, in an article in the review *10 Art & the Law 1985* (pp. 73 *et seq.*), I have dealt with the features of Nordic copyright law that are usually called extended collective license clauses (ECL clauses) and the corresponding extended collective license agreements (ECL agreements). Systems embodying such clauses and agreements are at present in force in broad areas of the copyright of the Nordic countries.

ECL clauses are statutory copyright law provisions which allow an agreement made by an organization of authors (in other words an ECL agreement) to apply to works of those who are not members of the organization and are not otherwise legally affiliated to it so as to be bound by its acts. A further condition is that the organization of authors must duly represent a large number of authors in its field. The effect of the agreement will only extend to works of the same kind or category as those referred to in it. Out of respect for the Berne Convention, if nothing else, two more requirements usually appear in the statutory texts, namely that unaffiliated authors must have a right to claim compensation individually, and that any author must have a right to veto the use of his works.

To date the existing clauses concern the right to broadcast published works, the right to make copies of published works by means of reprography, especially for educational uses but in Finland also outside that sector, and the right to make copies of radio and television broadcasts by sound recording and video recording insofar as the broadcasts contain published works. ECL clauses are also contemplated in some Nordic countries for use instead of the general nonvoluntary license provision recently introduced in Denmark with regard to simultaneous and unchanged retransmission of broadcast programs by cable.

Of course an ECL system can only be used to solve the problem indicated by the title to this part of my article in those countries that have a reasonably well developed organizational structure for the holders of rights. There are also other problems attached to the ECL model, some of which I have dwelt upon in the article referred to above, and to which I wish to direct the attention of my readers. And yet international debate does not seem to have proposed a more acceptable, overall solution to the problem of extending the effect of collective agreements. If for instance such a method should seem alien to a particular country's established legal notions, there may be reason to give thought to the possible advantages of a change. Under the right circumstances — perhaps still far in the future, and depending above all on the direction and degree of organizational development — formal acceptance under the Berne Convention of an ECL model for well-defined, limited uses and under specified conditions might make law conform to reality and reality to law in those countries of the Berne Union where today the only prospect is of general nonvoluntary licenses or just a blind eye turned on the problems.

## V. Participation of Publishers and Other Users of Authors' Works in a CAO Administering Authors' Rights

In the music field it has since very long ago been customary the world over for CAOs to administer the rights not only of composers, lyric writers and adapters but also of music publishers. Also in the literary field it happens nowadays that authors' and publishers' rights are administered jointly within a CAO, especially rights in reprographic copying and other "mass uses" of the works, for instance cable distribution. An example in the field of reprography gives the British Copyright Licensing Agency (CLA), established in 1983 by ALCS, mentioned earlier, and the Publishers Licensing Society.

I shall not discuss here what is relevant only to one country or another and to the system practised by it of connecting publishers to a CAO in particular, although in fact such connections have, in various quarters, prompted most interesting discussions in legal doctrine. I shall content myself with bringing up a couple of general issues on the connection of publishers with CAOs representing authors' rights as well as rights that may initially have belonged to authors but now belong to other holders of rights.

The question of what rights may be put into CAO administration by authors on the one hand and publishers on the other will of course in the first instance depend on what rights the party itself possesses at the time when the CAO is empowered to take them into its administration. As I already ex-

plained in *Part III* above, it is customary for tbe administration of rights in future as well as existing works to be entrusted to the CAO. Once concluded, such a contract with a CAO will as a matter of course prevent it from agreeing to administer the same right for someone else. A publisher may have acquired a right from a writer before tbe writer entrusted it to administration, or he may later have transferred his right to the publisber. Be that as it may, regardless of the copyright, it will be the distribution rules of the CAO that determine the economic outcome of the right administered insofar as it depends on the activities of the organization.

The CAO is free to relate the distribution to tbe copyright situation, but it need not do so. It may for instance stipulate that a publisher has the same share in the proceeds of tbe CAO regardless of whether the author, composer, etc., also bas a claim for remuneration or not (such as when he is no longer in possession of his right). The possibilities available to a publisber who has acquired the entire autbor's right in respect of wbat is administered for having statutes and related distribution schemes with such effects discarded as unreasonable, for instance on general civil law grounds, will not be discussed here.

In the United States of America, where, as explained, the rights of employees in works created during employment or hire will belong initially to the employer, that is, in the cases that concern us here, normally a producer, tbe employer may not collect a share larger tban the publisher's either from ASCAP or from BMI. It may be said tbat, in a collecting society administering musical performance rights, a distribution rule to tbe effect tbat the organization need not automatically use the authors' rights of disposal over their rights as a basis for its distribution schemes should satisfy an authors' social security interest. The CAO will then be seen as the guardian of the autbors' interests up to a certain economic percentage level, the philosophy being that the area between author and user should be kept open for collection by tbe author himself (and possible relatives), and that limits on the possibilities for an acquirer of rights to raise claims on money collected will deter the author from selling his birthright for a mess of pottage.

The protective interest just mentioned has also manifested itself in the broadcasting sector, and that in a way which has united authors and publishers in tbe music field against broadcasting companies that have sought to be admitted to CAOs, either as music publishers or via the rights of tbeir employees by way of a claim to coautborship rights, all as a means of sharing in the proceeds from their own uses of the music, to which the broadcasters themselves bave acquired a right, in excbange for some form of compensation to tbe authors.

The role of publishers alongside authors within one and the same CAO has been questioned wbere, because of the internal decision–making procedure of the CAO, the relations between authors and publishers in sharing the proceeds of the CAO cannot be changed at all or only with great delays in relation to the development of actual market situations.

This seems especially to have been a topic for discussion in the Federal Republic of Germany, where the operation of the "*Kuriensystem*" of the GEMA (see Ulmer in GEMA *Nachrichten* No. 108, 1978, pp. 99 *et seq*) has been opened to debate. The delay problems seem, bowever, to have a more general bearing on tbe administrative rules governing CAOs.

There seems to be little reason to question further the suitability of the presence of publishers in CAOs administering authors' rights. More appropriate would be a discussion on the forms of collective administration — wboever may bold the rights — that would be most beneficial in relations witb users who need the CAOs in order to be able to conduct their business according to the law. Here the development may be that authors join in witb others in CAOs for sectors wbere users act in such manner tbat they contract for "bundles" of rights to such an extent that there is reason to assign the administration of all the rights involved to one and tbe same organization. It may bring together traditional collecting societies, including publishers but also authors' professional organizations, and organizations of other bolders of rights such as producers of phonograms, films and videograms as well as broadcasting companies insofar as the specific rights (neighboring rights) of these categories are involved in tbe use concerned. Such a development has already started. It should be noted in this connection that different kinds of use, like the ones that call for the "bundling" of rights, provide ground for different combinations of owners of rights being established in view of particular decisions within one and the same organization, unless entirely separate organizational units inside it are assigned individual domains to take care of. In the Nordic countries tbis development bas progressed quite far, with the establishment in each country of national joint organizations, now working in close cooperation with eacb other and with tbe participation of the collecting societies that have for long been active in tbe music field. There are some differences to be noted between these Nordic organizations, for instance with regard to the participation of broadcasting organizations in projects or more generally, and there are tensions between the interests of well–

established collecting societies on the one hand and results of other organizational endeavors on the other. It would take us too far — when even the near future is not clear enough — to go into any further detail here.

It is probable, however, that long–established, continuously expanding and to all appearances well–functioning CAO structures in many sectors of use of authors' works will keep and may be even strengthen their market positions in some respects. Within that structure authors and publishers may in their own organizations fight about distribution rules when they would otherwise have to fight organization against organization over the distribution of what a joint cooperative organization might have collected. In the music field (performing and mechanical) it will thus seem as if, in most quarters, there are no major problems in the relations between authors and publishers. Publishers' participation in CAOs there is fairly generally regarded by authors as being useful, not to say necessary, and this not least in order to secure satisfactory market contact in the administration of the rights concerned, although — especially in the field of so–called serious music — voices have lately been raised in support of a more extensive and intense commitment on the publishers' part to market support for works. Also, the increased commitments of publishers in the acquisition and marketing of performers' rights, at the expense of lyric writers and composers, have created some problems in the relations within some CAOs between authors and publishers.

To some extent the participation of composers and lyric writers (now more usually one and the same person) in publishing houses of their own may have made for an increased understanding of the importance of the publisher's role in the joint administration of musical rights. The presence of publishers in the same CAO will also typically give the authors the advantage of the proceeds of the organization being distributed in accordance with fixed schemes, with the result that they, typically the weaker parties, will not have to try to reach acceptable agreements with their publishers work by work for rights otherwise administered by CAOs.

Each copyright CAO will however need to protect itself internally, so that its policies are not influenced by the interests of user institutions or user enterprises which — if viewed with a long enough telescope — conflict with the true interests of any category of their members, and it is here that, typically, the authors are in a danger zone. Notwithstanding the mutual interests of composers and record or tape manufacturers, for instance, in good sales or rental figures for the latter's products containing the former's works, their interests conflict with regard to each category's shares in the proceeds. The same is true of the relative interests of composers on the one hand and, on the other, publishers that are subsidiaries to the record or video companies or are owned by other music users, such as broadcasting companies. Thus, decisions within a CAO of authors and publishers must not be exposed to the influence of such controlling bodies in cases where their interests are in conflict with those of the authors.

It must be of predominant interest, however, to try to confront powerful users and groups of users with strong and efficient CAOs. The methods by which a balance of interests may be achieved in the rules for the activities of a CAO, and not least for its distribution of proceeds, may then of course include arranging for no abuse of a dominant position in relation to users to be capable of being challenged. The issue may be illustrated by the GEMA statutes case mentioned earlier, which was decided by the European Commission on December 4, 1981, in which GEMA — by an amendment to its statutes — wished to prohibit its members, being composers, lyric writers and music publishers, from concluding agreements with users of music that assured the latter of a direct share in the income of members if they played certain of their works.

To the extent that it may be of interest to cultivate the social security aspect and role of CAOs, and to develop the organizational structure for authors more in the direction of unions — at the expense of the traditional view of copyright as property and in favor of a development influenced by labor law — the interest of, not to say the possibilities for, publishers' participation in such CAOs will have to be reconsidered. In practice there is little indication of such a development in those sectors of rights and countries where the association with CAOs of publishers and authors together has acquired established forms. Such a development would also in my view be unlucky both for authors and publishers, because it would, or in any case should be expected to, disturb the process, which has already been going on for many years, of internationalization in the field, as well as ambitions to develop existing, often already well–functioning systems of administration by attaching rights to what as a rule are very nationally conditioned labor law disciplines and current, more or less transitory, socio–political conceptions.

A more likely development would be to find different kinds of organization representing, alongside authors and publishers, other categories, at least those whose members are the first to bring on to the market something in which they have a right tied up with the use of the author's works, and who therefore will resemble publishers, who are themselves the first to bring on to the market the products in which they have acquired the publishing rights.

### VI. Possihle Conflicts of Interest Between the Authors and the Organization Administering Their Rights

What conflicts may arise at all between authors and a CAO will of course depend very much on how their *in casu* relationship has been shaped and under what legal conditions the CAO may or may not undertake something to do with a possible administration of rights. The conflicts of an author in a CAO whose activities rely upon the contributions of its members to its decision–making process will be different from those of an author who is otherwise connected to the CAO, having neither access to nor involvement in its activities. In some countries authors are so dissociated administratively from the organization's handling of their rights that this in itself should be viewed as a reason for conflict. In such cases, however, the authors' opinions on such matter will more often than not lack means of influencing the situation, and that for reasons more or less to do with general politics.

In order to avoid dealing too much with what is determined by the general setting of CAOs in a given country, by the different kinds of CAO in existence and hy the different kinds of relationship hetween CAOs and authors, I shall only list here a number of typical, possible conflicts of interest which may be noticed at the stage of development that the collective administration of authors' rights has reached today.

The obvious risk in any listing of a number of possible conflicts is that it may give an unrealistically adverse impression of what may be found in a particular organization in a given country. Also the very opposite — a too favorahle impression — can of course be imagined in some cases. Perhaps my observations will nevertheless serve a purpose as items on a mental check–list of possible sources of trouhle.

There is a marked and justified tendency among those who take an interest in what happens in CAOs to let their interest focus on their distribution schemes, which are often specially named parts of thc statutes, etc., of the CAOs. The conformity or non–conformity of such schemes to the varying realities of use is often a source of conflict between individual authors or groups of authors on the one hand and their CAO on the other, the former often discontent with what is decided hy a majority of members of the organization to which they are in some way connected. There are breakouts, and groups of authors form their own CAOs. There was a recent example in Norway, in the music field, where a hreakout from the well–estahlished collecting society TONO was made hy a number of mostly young composers. It is in my view a matter of urgency for the authors' own professional organizations in various countries to attract the authors not least of "young" music, and to give support to the efforts made by established collecting societies in the administration of rights also for the benefit of the composers, lyric writers, etc., of such music.

A CAO may have reason to demand strict loyalty to its agreements in various respects if it is going to agree at all to represent a particular author or group of authors. If a CAO is meant to make it possible for authors to have a joint determining influence, it is reasonahle that it should demand from applicants for memhership/partnership a certain permanency of creative activity in the field that it covers. This will typically guarantee the continuous development of the aims of the CAO. However, authors have been unwilling to wait long to accept such responsihilities and — of course — in particular when they have in any case found it difficult to gain a hearing on distribution scheme matters. Still, CAOs need the ability to prevent the large number of authors who only contribute one piece or another to the total of works under administration from having a disproportionate influence within the organization. The proceeds from the administration of rights or claims are also so different for certain authors as compared with others that it would be plainly unjust to give them all the same powers of decision on administration.

Often the distribution problem which creates the greatest conflicts has to do with the extent to which distrihution is individual or collective. This is a prohlem of growing importance because of some authors' expectation from collecting societies and other CAOs of the social security which sometimes, and in many countries, even the considerable literary or artistic success of their works may not give them.

As joint CAOs for collecting societies, authors' professional organizations and organizations of other holders of rights gradually grow in number, centered on kinds of rights or claims in ways which have already been mentioned, and as in some quarters there are breakups of existing CAOs hut still a need for a certain unity in order to achieve the necessary strength in the market, there will be an increasing prevalence of two–tier distribution problems. First there has to be a distrihution to organizations within the joint CAO, and then, often according to widely differing principles, another distribution within each memher organization. Here the opportunities for comparison and the more socially than economically directed distrihution amhitions within some units may create tensions and conflicts inside the units as well as between them.

More serious for the authors, however, is the fact that their rights may under certain circumstances be jointly administered, in view of the split distrihution of collective amounts, in competition against

the CAO between those who otherwise appear in the role of users of their works. The risk of conflicts is unavoidable when, under those conditions, someone tries to get more than his due by drawing pickles out of two pots. This leads one to wonder how procedures for settling disputes should he worded in order to reconcile conflicting interests within all these new organizational structures, where minority problems may not easily find ready answers. These questions must however be left aside here. I shall only add that there are good reasons for CAOs of a (still) "free" character to give their hest attention to methods of resolving internal disputes, as State interference may be considered necessary if such disputes begin to affect users' access to rights at "reasonable prices." Rules about unanimity between categories of holders of rights within a CAO decision procedure that is designed to reconcile group interests will not prevent State interference in the case of serious clashes of interest within any CAO with a degree of market strength if the application of those rules leads to a malfunction of the market for products or services affected by copyright.

There is a risk that a growing estrangement of authors and their organizational units, already widened hy the increasing complexity of traditional material law, is being further accentuated hy the fact that the administration of their rights now more than ever calls for management by experts, who may view themselves as representatives more of the interest of the organization itself than of the interest of the authors whose rights they administer. Increased, continuous information for authors and an openness affording authors access to and also control over the activities of their representatives in organs within or attached to the CAO may prevent small conflicts from growing into big ones. Here many already well–established collecting societies and a few new ones may serve as models to build on experience that has not always been very peaceful; not everywhere do matters stand well enough, however. Genuine risings — and there have been some — would here as always just as easily stem from misunderstanding as from want of understanding (cf. the attack of certain regional composers on the SACEM in 1981, as referred to in *Le Monde*, Septemher 30, 1981, p. 24).

Conflicts between authors and their CAOs may easily arise out of the increasing number of cases in which the amounts to distrihute are not work or use–related, which may — of course — in many cases ultimately depend on what demands for reports and for control can in fact be made and maintained. Where instead methods of distrihution have to be resorted to other than, for instance, adherence to lists of uses that have heen made under agreements with users, the rationality of the result of methods used to achieve individual distrihution of remuneration may be questioned, as may the rationality of the individual distribution itself if the CAO chooses to set aside the proceeds for collective uses. Sometimes the whole prohlem with a certain right may stem from the CAO's inability to assert its claims for reliahle program reports from users. In its efforts to avoid conflicts within performing rights organizations between foreigners and others entitled to shares in amounts collected without any accompanying listing of works and uses, CISAC has recommended that the funds should be divided equally between national and foreign authors in proportion to the known performances of their works. In some circumstances methods used for sampling may result in what is only too evidently an unsatisfactory reflection of reality.

Distribution should rely — in addition to the already mentioned efficient control — on rapid collection, well–halanced administration costs in relation to the henefits to the holders of rights from the administration of their works, and speedy payment to those entitled to it. The standards of control applied vary considerahly. Too often — and not least under international contracts — imperfections ahound in connection with collection reports and payments made. Memhers/partners and other authors associated with a CAO have claims to amounts payable, in principle, when their works are used. In consequence of common agreements (statutes, distribution schemes, etc.) between the author and his CAO and, in turn, between the CAO and users, the indehtedness of the CAO to the author will not mature often until a year or even two have passed since the use of his work. The CAO may also need reports — usually only yearly ones are given — from sister–organizations in other countries hefore an exchange of money can take place. Slowness in these respects has often heen a suhject of criticism directed by authors against their CAOs.

Claims for remuneration will hear interest in most parts of the world. If only CAOs, as a matter of course, were careful in making the amounts collected reasonably interest–bearing, and if, as a matter of course, without discrimination or delay, even across horders, they were to distribute such interest to the authors in proportion to their claims, the interest issue might he less controversial than it sometimes is at present.

One also may hear about the author who knows that his work has been performed very extensively and for a long time in a foreign country whose competent CAO is hound to his own hy mutual contract. His own CAO has for many years received neither reports on the uses nor payment for them. I mention this as an example of how an author's interests may conflict with those of a foreign CAO administering his rights outside his own sphere of influence, hut in a situation where it is for his own CAO to stand up

for him by establishing its rights as firmly as possible. As a last resort, but for political and other reasons this is not very often done, it may cancel its own payments to the foreign organization and demand solidarity from other organizations, both national and foreign. Thus, the CAO of the unpaid author may ultimately create a conflict between authors in the foreign country on the one hand, who will not be paid by their organization for foreign uses of their works, and their organization on the other, and this may ultimately lead to improvements, at least for future exchanges.

I have tried to avoid giving too much space here to the specific situation created within the European Common Market by the possible application of Article 86 of the Rome Treaty, on dominant positions, to issues regarding the inner relations between authors and organizations administering their rights. However, the principles expressed in accordance with Community law are a reflection of the conflicts that I am dealing with in this part of my article, and they may also afford guidance outside their intended scope. The application of Article 86 is intended tc strike a balance between the requirement of maximum freedom for composers, authors and publishers to dispose of their works and that of effective management for their rights by an undertaking which in practice they are bound to join.

A list of possible conflicts of interest between the two sides would probably appear incomplete without some words on what under Community law have been regarded as abusive practices affecting the inner relationship. In an earlier part of this article I touched on how attempts to commit members to an organization with respect to all present and future works, and for an unreasonable period of time, are to be viewed. Other practices that have been considered abusive have consisted in preventing members of one performing rights society from granting the administration of their rights to another society, in making it difficult for members to swich to another society, and in discriminating against citizens of other member States by refusing to admit them as members, if their tax domicile is a country other than the society's own. The right of withdrawal from a performing rights society is thus supposed to guarantee freedom of movement for composers, authors and publishers, and to make such societies compete on the market for such members by guaranteeing them free access to any national performing rights society with a dominant market position. Little use seems to have been made of that freedom, and indeed there is not very much reason for it to be used outside individual cases of change of tax domicile, etc., given the rule that applies between organizations to the effect that an author may in principle (there are exceptions) only belong to one organization at a time for the same field of use of his rights.

# Book Reviews

**Immaterialgüterrecht, Patentrecht, Markenrecht, Muster- und Modellrecht, Urheberrecht, Wettbewerbsrecht**, by *Alois Troller*. Two volumes of XVII–1,125 pages. Verlag Helbing & Lichtenhahn, Basel und Frankfurt am Main, 1985.

It was in the October 1960 issue of *Le Droit d'Auteur* that the first book review on Professor Troller's work appeared (this monthly was published only in French at that time). "It is a considerable contribution to the work of all those who have the task of influencing the future development of intellectual property law and the instruments in which it is regulated both at the national and the international levels." That was the opinion of the reviewer on the first volume of the first edition of the book (which was published in 1959) and he praised the outstanding value of the work, a fruit of thorough studies, systematic analysis of all problems of intellectual property and that of the author's original thoughts and ideas. In the meantime, this two-volume book has become really one of the basic works and an indispensable source of information for all lawyers and other specialists working in the field of industrial property and copyright.

This is the third edition of Professor Troller's book. The second edition was published in 1968. At that time the author only concentrated on some new legislative developments, court cases and publications and the revision was not of a major nature. Since then, developments have accelerated in the field of intellectual property, which is duly reflected in the newest edition.

This third edition is really a fully revised one. It contains some completely new chapters while other chapters have also been rewritten to a significant extent (some of the new subject matters dealt with in the new edition: the European Patent Convention, the Patent Cooperation Treaty (PCT) and the corresponding modifications of the Swiss Patent Law, the fundamental principles of the protection of firm and trade names, etc.). As far as copyright is concerned, the author deals with all the important new questions which have been raised by recent new technological developments. The subchapter dealing with the protection of computer programs shows particularly how consistently and, at the same time, with what elasticity Professor Troller applies the basic principles of copyright in these new fields, successfully adapting them to the needs of everyday practice without making unnecessary compromises.

There are two new characteristics of the third edition in comparison with the two previous ones. Firstly, it has become more international; secondly, it pays even more attention to the practical implications of copyright protection. It uses many more examples of foreign legislative solutions and court decisions and analyzes a wider circle of legal literature not only from western industrialized countries, but also from socialist and developing countries. Even if philosophic considerations on copyright have not been omitted, their proportion has been considerably diminished in favor of analyzing questions which are closer to the practical application of international conventions and national laws.

It was already obvious before that Professor Troller's work is indispensable for everybody dealing with the international problems of intellectual property. So, it is no news now that its third edition has been published. What we can really say about it is that it has become up to date again and even richer in thoughts and information.

M.F.

# Calendar of Meetings

## WIPO Meetings

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

### 1986

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

May 5 to 7 (Geneva) — Paris Union: Committee of Experts on Protection Against Counterfeiting

May 12 to 14 (Geneva) — WIPO International Forum on the Collective Administration of Copyrights and Neighboring Rights

May 22 to June 6 (Geneva) — Permanent Committee on Patent Information (PCPI): Working Group on Search Information

May 26 to 30 (Geneva) — Paris Union: Committee of Experts on the Harmonization of Certain Provisions in Laws for the Protection of Inventions

June 2 to 6 (Paris) — Committee of Governmental Experts on Audiovisual Works and Phonograms (convened jointly with Unesco)

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

June 23 to 27 (Geneva) — Committee of Experts on Intellectual Property in Respect of Integrated Circuits

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 8 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 (Geneva) — Consultative Committee

April 16 and 17 (Geneva) — Administrative and Legal 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

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 5 to 11 (Madrid) — International Confederation of Societies of Authors and Composers (CISAC) — Congress