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Contents

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World Intellectual Property Organization

The World Intellectual Property Organization in 1985*

WIPO and Development Cooperation Activities in the Fields of Copyright and Neighboring Rights

I. Intellectual Property Activities: Promotion of the Worldwide Recognition of and Respect for Intellectual Property; Contacts with States and International Organizations

Objectives

The general objective is to promote the realization of the benefits of intellectual property — both industrial property and copyright — for the cultural and economic progress of any country. As a natural avenue leading to such benefits, the objective is also to promote accession to the treaties administered by WIPO by countries not yet party to them.

Activities

During the period covered by this report, WIPO continued to promote acceptance by States of the WIPO Convention and of the other treaties administered by WIPO. In addition to the activities referred to below in relation to specific treaties, discussions on such acceptance took place during WIPO missions to States, particularly missions for the purposes of development cooperation, in meetings with permanent missions of States in Geneva and in contacts with delegations of States at intergovernmental meetings. Notes concerning the advantages of acceptance of particular treaties for particular countries were prepared and sent to the competent authorities of the countries concerned.

Convention Establishing the World Intellectual Property Organization. During the period covered by this report, three countries deposited their instruments of accession to the WIPO Convention: Angola in January, and Bangladesh and Nicaragua in February 1985. In May 1985, when the accessions of Bangladesh and Nicaragua entered into force, the number of members of WIPO was 112. They are the following: Algeria, Angola, Argentina, Australia, Austria, Bahamas, Bangladesh, Barbados, Belgium, Benin, Brazil, Bulgaria, Burkina Faso, Burundi, Byelorussian SSR, Cameroon, Canada, Central African Republic, Chad, Chile, China, Colombia, Congo, Costa Rica, Côte d'Ivoire, Cuba, Cyprus, Czechoslovakia, Democratic People's Republic of Korea, Denmark, Egypt, El Salvador, Fiji, Finland, France, Gabon, Gambia, German Democratic Republic, Germany (Federal Republic of), Ghana, Greece, Guatemala, Guinea, Haiti, Holy See, Honduras, Hungary, India, Indonesia, Iraq, Ireland, Israel, Italy, Jamaica, Japan, Jordan, Kenya, Libya, Liechtenstein, Luxembourg, Malawi, Mali, Malta, Mauritania, Mauritius, Mexico, Monaco, Mongolia, Morocco, Netherlands, New Zealand, Nicaragua, Niger, Norway, Pakistan, Panama, Peru, Philippines, Poland, Portugal, Qatar, Republic of Korea, Romania, Rwanda, Saudi Arabia, Senegal, Somalia, South Africa, Soviet Union, Spain, Sri Lanka, Sudan, Suriname, Sweden, Switzerland, Togo, Tunisia, Turkey, Uganda, Ukrainian SSR, United Arab Emirates, United Kingdom, United Republic of Tanzania, United States of America, Uruguay, Venezuela, Viet Nam, Yemen, Yugoslavia, Zaire, Zambia, Zimbabwe. Of these, 18 States are members of WIPO but are not members of the Paris or Berne Unions (Angola, Bangladesh, Byelorussian SSR, Colombia, El Salvador, Gambia, Guatemala, Honduras, Jamaica, Nicaragua, Panama, Peru, Qatar, Saudi Arabia, Somalia, Ukrainian SSR, United Arab Emirates, Yemen).

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* This article is the first part of a report on the main activities of WIPO in general and in the fields of copyright and neighboring rights. Activities in the field of industrial property are covered in a corresponding article in the review *Industrial Property*.

The first part deals with the activities of WIPO as such and with development cooperation activities in the fields of copyright and neighboring rights. The second part will deal with other activities in those fields.

In general, the report follows the order in which activities are set out in the program for the 1984 and 1985 biennium, approved by the Governing Bodies of WIPO and the Unions administered by WIPO in 1983. It recalls, from the said program, the objectives of the activities described.

In addition, 15 States that have not yet become members of WIPO are party to one or more of the treaties administered by WIPO. They are the following: Bolivia, Dominican Republic, Ecuador, Equatorial Guinea, Ethiopia, Iceland, Iran (Islamic Republic of), Lebanon, Madagascar, Nigeria, Paraguay, San Marino, Syria, Thailand, Trinidad and Tobago.

Therefore, the total number of States that are members of WIPO, of one or more of the Unions administered by WIPO or of both WIPO and one or more of such Unions is 127.

Treaties Providing for the Substantive Protection of Intellectual Property

Paris Convention for the Protection of Industrial Property. In January 1985, Mongolia deposited its instrument of accession to the Paris Convention, choosing Class VII for the purpose of contributions. In April 1985, when that accession entered into force, the number of States members of the Paris Union was 97.

Berne Convention for the Protection of Literary and Artistic Works. In October 1985, the Netherlands deposited a declaration extending the effects of its ratification, in 1974, of the Paris Act (1971) of the Berne Convention to Articles 1 to 21 and the Appendix of the said Act.

Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations. In May 1985, an instrument of accession was deposited by Peru and in September 1985, an instrument of ratification was deposited by Monaco. In December 1985, when the ratification of Monaco entered into force, the number of States members of the Rome Convention was 29.

In June 1985, the Rome Convention and the *Guide to the Rome Convention and to the Phonograms Convention* were published in Portuguese.

Geneva Convention for the Protection of Producers of Phonograms Against Unauthorized Duplication of Their Phonograms. In May 1985, Peru deposited its instrument of accession to the Phonograms Convention. In August 1985, when that accession entered into force, the number of States members of the Phonograms Convention was 39.

In June 1985, the *Guide to the Rome Convention and to the Phonograms Convention* was published in Portuguese.

Brussels Convention Relating to the Distribution of Programme-Carrying Signals Transmitted by Satellite. In May and June 1985, Peru and Panama, respectively, deposited instruments of accession to the Brussels Convention. In September 1985, when the accession of Panama entered into force, the number of States party to the Brussels Convention was 11.

Nairobi Treaty on the Protection of the Olympic Symbol. In 1985, instruments of ratification or accession were deposited by the following countries: Mexico in April, Bolivia and Cyprus in July, Italy in September and Argentina in December. In January 1986, when the ratification of Argentina entered into force, the number of States party to the Nairobi Treaty was 28.

In December 1985, the Spanish-language version of the Records of the Nairobi Diplomatic Conference was published.

Treaties Providing for Simplified Possibilities for the International Protection of Inventions, Marks and Industrial Designs

Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure. In 1985, instruments of ratification were deposited by the following countries: Denmark in April, Finland in June, Norway in October and Italy in December. In March 1986, when the ratification of Italy entered into force, the number of States party to the Budapest Treaty was 19.

In April 1985, communications were received from the Governments of the United Kingdom and the United States of America concerning, respectively, the extension of the list of kinds of microorganisms accepted by the National Collection of Animal Cell Cultures as an international depositary authority, and a change in fees charged, as well as the extension of the list of kinds of microorganisms accepted, by the American Type Culture Collection as an international depositary authority. The said communications were published in the May 1985 issue of *Industrial Property.*

In May 1985, communications were received from the EPO concerning the extension of the list of kinds of microorganisms accepted, and a change in fees charged, by the Centraalbureau voor Schimmelcultures (CBS) as an international depositary authority. The said communications were published in the July/August 1985 issue of *Industrial Property.*

In May 1985, a Deputy Director General delivered lectures on the Budapest Treaty at a training program for patent experts in industry in Zurich.

Madrid Agreement Concerning the International Registration of Marks. In January and April 1985, Mongolia and Bulgaria, respectively, deposited instruments of accession to the Madrid Agreement. When the accession of Bulgaria entered into force in August 1985, the number of States members of the Madrid Union was 28.

In February 1985, the Russian text of the Madrid Agreement for the International Registration of Marks was published.

Treaties Establishing International Classifications in the Fields of Inventions, Marks and Industrial Designs

Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks. In August 1985, the Nice Agreement was published in Italian.

Vienna Agreement Establishing an International Classification of the Figurative Elements of Marks. In May 1985, Tunisia deposited its instrument of accession to the Vienna Agreement. As a result of that deposit, the Vienna Agreement entered into force on August 9, 1985, in respect of France, Luxembourg, the Netherlands, Sweden and Tunisia.

In August 1985, the Vienna Classification, containing the modifications proposed by the Provisional Committee of Experts in 1975 and 1976, was published in Spanish.

In October 1985, the Vienna Union Assembly unanimously adopted, at its first ordinary session, amendments to the Vienna Agreement such that the session of the said Assembly would have the same periodicity, i.e., biennial ordinary sessions, as the sessions of the Assemblies of the other Unions administered by WIPO.

Treaty in the Field of Double Taxation

Madrid Multilateral Convention for the Avoidance of Double Taxation of Copyright Royalties. In January 1985, the *Guide to the Madrid Convention on Double Taxation* was published in French.

II. Copyright and Neighboring Rights Activities of Particular Interest to Developing Couutries

Objective

The objective is to assist developing countries in the establishment or modernization of their copyright systems in the following four ways:

(i) training specialists,
(ii) creating or modernizing domestic legislation and infrastructure for the administration of such legislation,
(iii) stimulating domestic creative activity,
(iv) facilitating access to foreign works protected by copyright owned by foreigners.

Activities

Development of General Awareness and Knowledge of the Law and the Practical Implications of Copyright and Neighboring Rights (Training)

In 1985, WIPO received 162 applications for *training in the fields of copyright and neighboring rights* from 71 developing countries, from the Gulf Cooperation Council (GCC), Office of the United Nations High Commissioner for Refugees (UNHCR) and the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNWRA). Sixty of these applications, from the following 48 developing countries, from GCC and from UNRWA, have been accepted: Angola, Argentina, Bangladesh, Barbados, Belize, Bolivia, Brazil, Cameroon, Central African Republic, China, Colombia, Costa Rica, Côte d'Ivoire, Cuba, Dominican Republic, El Salvador, Fiji, Ghana, Guatemala, Guinea, Honduras, India, Indonesia, Jamaica, Jordan, Lesotho, Malawi, Malaysia, Mali, Mauritius, Mexico, Morocco, Mozambique, Nicaragua, Niger, Pakistan, Panama, Paraguay, Peru, Philippines, Republic of Korea, Rwanda, Sri Lanka, Sudan, United Republic of Tanzania, Uruguay, Zambia, Zimbabwe.

The training arranged in 1985 took the following forms (listed in chronological order):

(a) for 11 trainees, a Training Course (in Spanish) in Copyright and Neighboring Rights, in *Brasilia*, in April 1985, organized by WIPO in cooperation with the Swiss Society of Authors' Rights in Musical Works (SUISA) and the Government of Brazil; the 11 trainees came from Argentina, Bolivia, Colombia, El Salvador, Guatemala, Honduras, Mexico, Nicaragua, Paraguay, Uruguay; about 70 other trainees were from Brazil; the lecturers came from Argentina, Brazil, Chile, Mexico, Switzerland, and WIPO;

(b) for eight trainees, a Specialized Training Course (in English) on the Administration of Copyright and Neighboring Rights, in *Zurich*, in May 1985, organized by WIPO in cooperation with the Swiss Society for Authors' Rights in Musical Works (SUISA); the participants came from Bangladesh, Brazil, Fiji, Honduras, India, Indonesia, Pakistan, Republic of Korea; lectures were given by officials of SUISA and an official of WIPO;

(c) for 10 trainees, a Specialized Course on the Administration of Copyright and Neighboring Rights (in English), in *Stockholm*, in August and September 1985, organized by WIPO in cooperation with the Ministry of Justice of Sweden, and with the financial support of the Swedish International Development Authority (SIDA); they came from Cameroon, Ghana, Lesotho, Malawi, Mozambique, Sri Lanka, Sudan, United Republic of Tanzania, Zambia and Zimbabwe; lectures were given by officials of the Ministry of Justice of Sweden and various Swedish institutions in the fields of copyright and neighboring rights, and by an official of WIPO;

(d) for 18 trainees, a General Introductory Course (in English and French) on Copyright and Neighboring Rights, in *Budapest*, in October 1985, organized by WIPO in cooperation with the Government of Hungary and the Hungarian Bureau for the Protection of Authors' Rights (ARTISJUS); the participants came from Angola, Brazil, China (2), Côte d'Ivoire, Guinea, India, Jordan, Malaysia, Mali, Mauritius, Morocco, Nigeria, Peru, Philippines, Rwanda, Gulf Cooperation Council (GCC) and United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA); lectures were given by officials from ARTISJUS and by guest speakers from Colombia, German Democratic Republic, India, Soviet Union, Switzerland, United Kingdom and from intergovernmental and international non-governmental organizations as well as by two officials of WIPO. This Course was followed, for most of those concerned, by practical training in copyright and neighboring rights in the following countries: Algeria, German Democratic Republic, Germany (Federal Republic of), Hungary, India, Senegal, Switzerland, United Kingdom;

(e) for one trainee, a practical individual training course in copyright and neighboring rights was organized in *Argentina*;

(f) for two trainees, study visits to two or three of the following countries and to WIPO: *Algeria, Côte d'Ivoire, Mexico, Senegal* and *Switzerland.*

In most cases, the arrangements for training in 1985 included visits to WIPO.

The following 12 countries and one national organization contributed in full or in part to the payment of travel expenses and subsistence allowances, or otherwise, for training in the fields of copyright and neighboring rights: Algeria, Argentina, Brazil, Côte d'Ivoire, Egypt, German Democratic Republic, Germany (Federal Republic of), Hungary, India, Senegal, Sweden, United Kingdom, SUISA (Switzerland).

Development of the Legislative Infrastructure in Developing Countries in the Fields of Copyright and Neighboring Rights

WIPO continued to cooperate, on request, with governments or groups of governments of developing countries on the adoption of new laws and regulations, or the modernization of existing ones, in the fields of copyright and neighboring rights.

In the period covered by this report, such cooperation was pursued with the following countries:

Algeria. In January 1985, a WIPO official visited Algiers for discussions with government officials on Algeria's participation in the Permanent Committee for Development Cooperation Related to Copyright and Neighboring Rights and on the compatibility of the national copyright law with the Berne Convention.

Angola. In October 1985, a government official attended a Seminar on Copyright and Neighboring Rights organized by WIPO with the cooperation of the Government of Egypt in Cairo.

In October 1985, three WIPO officials visited Luanda and discussed with government officials WIPO's assistance in the field of copyright (and industrial property) legislation, the setting up of a national intellectual property institute and the organization of an intellectual property seminar to be held in Luanda in early 1986.

Argentina. In February 1985, a government official participated, as a lecturer, in a Seminar on Copyright and Neighboring Rights for Central American and Caribbean States organized by WIPO in cooperation with the Government of Mexico in Mexico City.

In April 1985, a government official attended a Training Course in Copyright and Neighboring Rights organized by WIPO in cooperation with the Government of Brazil and SUISA in Brasilia. Two WIPO consultants from Argentina participated as lecturers.

Barbados. In February 1985, a government official attended a Seminar on Copyright and Neighboring Rights for Central American and Caribbean States organized by WIPO in cooperation with the Government of Mexico in Mexico City.

Belize. In February 1985, a government official attended a Seminar on Copyright and Neighboring Rights for Central American and Caribbean States organized by WIPO in cooperation with the Government of Mexico in Mexico City.

Benin. In March 1985, a WIPO official visited Cotonou to discuss with officials of the Copyright

Office the organization of a National Seminar on Copyright which took place in September.

This Seminar was organized by the Government of Benin in cooperation with WIPO, in Cotonou. There were about 70 participants from government departments and professional circles involved in copyright and cultural matters. The Seminar was opened by the Minister for Culture, Youth and Sport. Papers were presented by officials of the Beninese Copyright Office (BUBEDRA), by the Director of the Copyright Office of the Côte d'Ivoire (BURIDA) and by two officials of WIPO. The Seminar adopted a number of recommendations including, *inter alia*, assistance by WIPO in the fight against piracy and the teaching of copyright in the National University of Benin.

In October 1985, a government official attended a Seminar on Copyright and Neigboring Rights organized by WIPO with the cooperation of the Government of Egypt in Cairo.

Bolivia. In April 1985, a government official attended a Training Course in Copyright and Neighboring Rights organized by WIPO in cooperation with the Government of Brazil and SUISA in Brasilia.

Brazil. In April 1985, a Training Course in Copyright and Neighboring Rights was organized by WIPO in cooperation with the Government of Brazil and SUISA in Brasilia. It was attended by 11 trainees from Argentina, Bolivia, Colombia, El Salvador, Guatemala, Honduras, Mexico, Nicaragua, Paraguay and Uruguay, a number of participants from Brazil and lecturers from Argentina, Brazil, Chile, Mexico, Switzerland and WIPO (see also under "Development of the Effective Use of the Copyright System for the Protection of Authors in Their Own Countries and in Foreign Countries," below).

Cameroon. In October 1985, a government official attended a Seminar on Copyright and Neighboring Rights organized by WIPO with the cooperation of the Government of Egypt in Cairo.

Chad. In October 1985, a government official attended a Seminar on Copyright and Neighboring Rights organized by WIPO with the cooperation of the Government of Egypt in Cairo.

Chile. In April 1985, a WIPO consultant from Chile participated as a lecturer in a Training Course in Copyright and Neighboring Rights organized by WIPO in cooperation with the Government of Brazil and SUISA in Brasilia.

China. In February 1985, three officials of the Publishing Administration of the Chinese Ministry of Culture held discussions with the Director General of WIPO in Geneva on the organization of a Course on Copyright which was held in Nanjing in November 1985.

This Course was organized by WIPO at the invitation of the National Copyright Administration of China. The Course was opened by the Director General of WIPO and the Director, National Publishing Administration (NPA) and National Copyright Administration of China (NCAC). There were about 150 participants who were mainly from the National Publishing Administration and the National Copyright Administration of China, other government departments, organizations, institutes and companies, at the national and provincial level, dealing with or interested in copyright publishing, music and broadcasting as well as several universities. Papers were presented by two officials of WIPO and by speakers from Argentina, France, Hungary, India, Japan and Switzerland.

Colombia. In February 1985, a government official attended a Seminar on Copyright and Neighboring Rights for Central American and Caribbean States organized by WIPO in cooperation with the Government of Mexico in Mexico City.

In April 1985, a government official attended a Training Course in Copyright and Neighboring Rights organized by WIPO in cooperation with the Government of Brazil and SUISA in Brasilia.

In July 1985, a government official visited WIPO for discussions on WIPO's assistance in upgrading the national copyright administration and on the Berne Convention.

Costa Rica. In February 1985, a government official attended a Seminar on Copyright and Neighboring Rights for Central American and Caribbean States organized by WIPO in cooperation with the Government of Mexico in Mexico City.

Côte d'Ivoire. In October 1985, a government official attended a Seminar on Copyright and Neighboring Rights organized by WIPO with the cooperation of the Government of Egypt in Cairo.

Dominican Republic. In February 1985, a government official attended a Seminar on Copyright and Neighboring Rights for Central American and Caribbean States organized by WIPO in cooperation with the Government of Mexico in Mexico City.

Egypt. In March 1985, a WIPO official held discussions with government officials in Cairo on the organization of a Seminar on Copyright and Neighboring Rights for African specialists which was held in Cairo in October 1985.

This Seminar was organized by WIPO with the cooperation of the Government of Egypt. Forty-four specialists from 17 African countries (Angola, Benin, Cameroon, Chad, Côte d'Ivoire, Egypt, Ethiopia, Ghana, Guinea, Kenya, Malawi, Morocco, Senegal, Somalia, Sudan, Togo, Tunisia) participated, in addition to the two WIPO officials and three speakers from Greece, Nigeria and the United States of America. The Seminar was opened by the Minister of State for Foreign Affairs of Egypt and the Director General (see also under "Development of the Effective Use of the Copyright System for the Protection of Authors in Their Own Countries and Foreign Countries," below).

El Salvador. In February 1985, a government official attended a Seminar on Copyright and Neighboring Rights for Central American and Caribbean States organized by WIPO in cooperation with the Government of Mexico in Mexico City.

In April 1985, a government official attended a Training Course in Copyright and Neighboring Rights organized by WIPO in cooperation with the Government of Brazil and SUISA in Brasilia.

Ethiopia. In October 1985, an official attended a Seminar on Copyright and Neighboring Rights organized by WIPO with the cooperation of the Government of Egypt in Cairo.

Ghana. In October 1985, a government official attended a Seminar on Copyright and Neighboring Rights organized by WIPO with the cooperation of the Government of Egypt in Cairo.

Guatemala. In February 1985, a government official attended a Seminar on Copyright and Neighboring Rights for Central American and Caribbean States organized by WIPO in cooperation with the Government of Mexico in Mexico City.

In April 1985, a government official attended a Training Course on Copyright and Neighboring Rights organized by WIPO in cooperation with the Government of Brazil and SUISA in Brasilia.

Guinea. In February 1985, an official of the Guinean Copyright Office discussed with WIPO officials in Geneva the possibility of organizing a national copyright seminar in 1986.

In October 1985, a government official attended a Seminar on Copyright and Neighboring Rights organized by WIPO with the cooperation of the Government of Egypt in Cairo.

Honduras. In February 1985, a government official attended a Seminar on Copyright and Neighboring Rights for Central American and Caribbean States organized by WIPO in cooperation with the Government of Mexico in Mexico City.

In March 1985, in response to a request by the Government, WIPO prepared and sent a draft of a new copyright law.

In April 1985, a government official attended a Training Course in Copyright and Neighboring Rights organized by WIPO in cooperation with the Government of Brazil and SUISA in Brasilia.

Jamaica. In February 1985, a government official attended, both as a participant and as a lecturer, a Seminar on Copyright and Neighboring Rights for Central American and Caribbean States organized by WIPO in cooperation with the Government of Mexico in Mexico City.

Kenya. In October 1985, an official attended a Seminar on Copyright and Neighboring Rights organized by WIPO with the cooperation of the Government of Egypt in Cairo.

Malawi. In April 1985, at the request of the government authorities, WIPO prepared and sent a draft of a new copyright law.

In April 1985, a National Workshop on Copyright was organized by the Government of Malawi in Zomba, with the participation of WIPO and Unesco whose officials also presented papers at the meeting. The participants (about 55) were mainly government officials, university teachers, artists and musicians.

During the Workshop, papers were presented and discussed. The Workshop concluded its deliberations, held both in plenary and in groups, with the adoption of nine resolutions. They concerned, among other things, the need to amend the Copyright Act of Malawi to extend the duration of protection to a minimum of 50 years after the death of the author, as well as the need to provide for protection of expressions of folklore and to include stringent penalties for infringement. It was recommended that the Government should consider acceding to the Paris (1971) Act of the Berne Convention and the revised 1971 text of the Universal Copyright Convention (UCC), as well as to consider the setting up of a statutory organization to protect the rights of authors and artists.

In October 1985, a government official attended a Seminar on Copyright and Neighboring Rights organized by WIPO with the cooperation of the Government of Egypt in Cairo.

Malaysia. In August 1985, two government officials from the Ministry of Trade and Industry visited WIPO for discussions concerning the Berne Convention and planned amendments to the national copyright law.

Mexico. In February 1985, a Seminar on Copyright and Neighboring Rights for Central American and Caribbean States was organized by WIPO in cooperation with the Government of Mexico in Mexico City (see also under "Development of the Effective Use of the Copyright System for the Protection of Authors in Their Own Countries and in Foreign Countries," below).

In April 1985, a government official attended a Training Course in Copyright and Neighboring Rights organized by WIPO in cooperation with the Government of Brazil and SUISA in Brasilia. A WIPO consultant from Mexico also attended the course as a lecturer.

Morocco. In October 1985, a government official attended a Seminar on Copyright and Neighboring Rights organized by WIPO with the cooperation of the Government of Egypt in Cairo.

Nicaragua. In April 1985, a government official attended a Training Course in Copyright and Neighboring Rights organized by WIPO in cooperation with the Government of Brazil and SUISA in Brasilia.

Nigeria. In October 1985, a senior official of a publishing house participated as a lecturer in a Seminar on Copyright and Neighboring Rights organized by WIPO with the cooperation of the Government of Egypt in Cairo.

Panama. In February 1985, a government official attended a Seminar on Copyright and Neighboring Rights for Central American and Caribbean States organized by WIPO in cooperation with the Government of Mexico in Mexico City.

Paraguay. In April 1985, a government official attended a Training Course in Copyright and Neighboring Rights organized by WIPO in cooperation with the Government of Brazil and SUISA in Brasilia.

Qatar. In June 1985, in response to a request by the government authorities, WIPO prepared and sent in Arabic and English a draft of a new copyright law.

Senegal. In October 1985, a government official attended a Seminar on Copyright and Neighboring Rights organized by WIPO with the cooperation of the Government of Egypt in Cairo.

Somalia. In October 1985, a government official attended a Seminar on Copyright and Neighboring Rights organized by WIPO with the cooperation of the Government of Egypt in Cairo.

Sudan. In October 1985, a government official attended a Seminar on Copyright and Neighboring Rights organized by WIPO with the cooperation of the Government of Egypt in Cairo.

Togo. In February 1985, an official of the Direction of Cultural Affairs discussed with WIPO officials in Geneva the organization of a national copyright day in Lomé later in 1985.

In October 1985, a government official attended a Seminar on Copyright and Neighboring Rights organized by WIPO with the cooperation of the Government of Egypt in Cairo.

Tunisia. In October 1985, a government official attended a Seminar on Copyright and Neighboring Rights organized by WIPO with the cooperation of tbe Government of Egypt in Cairo.

Uruguay. In April 1985, two government officials attended a Training Course in Copyright and Neighboring Rights organized by WIPO in cooperation with the Government of Brazil and SUISA in Brasilia.

Arab League, Educational, Cultural and Scientific Organization (ALECSO). In March 1985, a Deputy Director General visited the headquarters of ALECSO in Tunis and discussed plans for cooperation with ALECSO in the framework of the working agreement between WIPO and ALECSO.

Development of the Effective Use of the Copyright System for the Protection of Authors in Their Own Countries and in Foreign Countries

A *Seminar on Copyright and Neighboring Rights for Central American and Caribbean States*, organized by WIPO in cooperation with the Ministry of Public Education of the Government of Mexico, was held in Mexico City in February 1985. The purpose of the Seminar was to consider, in the overall context of development, the role of national and international copyright, to discuss the general principles in the fields of copyright and neighboring rights which were of special interest to the countries of the region, to disseminate information with respect to international conventions in the fields of copyright and neighboring rights, and to examine the effect of technological development on the protection of the rights and interests of authors, performers, record producers and broadcasters.

Twenty–eight specialists from 11 countries (Barbados, Belize, Colombia, Costa Rica, Dominican Republic, El Salvador, Guatemala, Honduras, Jamaica, Mexico, Panama), participated, in addition to three guest speakers, one each from Argentina,

Jamaica (who was also one of the country participants) and Switzerland. There were also observers from three international non-governmental organizations (International Confederation of Societies of Authors and Composers (CISAC), International Federation of Phonogram and Videogram Producers (IFPI), International Federation of Actors (FIA)), Mexican publishing and record industries, and universities. There was a total of about 100 participants.

Papers were presented hy the three above-mentioned guest speakers, nine Mexican specialists, a WIPO official and two representatives of two international non-governmental organizations.

The participants in the Seminar reached a number of conclusions and recommended, *inter alia*, that governments should update and, where it did not exist, enact legislation on copyright and neighboring rights as well as consider, where they were not already members, accession to the Berne Convention for the Protection of Literary and Artistic Works and to the relevant international conventions in the field of neighboring rights.

The participants also recommended, *inter alia*, that WIPO should, within the framework of its development cooperation program, increase assistance to countries in the Central American and Caribbean Region relating to legislation in the fields of copyright and neighboring rights, institution-building and the training of staff.

A *Training Course in Copyright and Neighboring Rights*, organized by WIPO with the cooperation of the Government of Brazil and SUISA was held in Brasilia in April 1985.

Courses similar to the Brasilia Course had been earlier organized in Quito and Montevideo in 1983 and in 1984, respectively. There were 11 specialists invited from tbe following 10 countries: Argentina, Bolivia, Colombia, El Salvador, Guatemala, Honduras, Mexico, Nicaragua, Paraguay and Uruguay, in addition to those from Brazil who represented various Brazilian societies and associations of authors and performers, as well as tbe National Copyright Council of Brazil.

Lectures were given by officials of WIPO and SUISA as well as hy experts from Argentina, Brazil, Chile and Mexico. The subjects covered included, amongst others, State assistance or intervention under international conventions, broadcasting and recording rights under international conventions, the importance of proper management of phonographic recording rights in the fight against piracy, the possibilities for technical cooperation among societies of authors, as well as the history and experiences of Latin American countries in the field of copyright relating, in particular, to royalties, broadcasting and recording rights, tariffs and collecting societies.

The lectures were followed by useful discussions relevant to the practical management and application of copyright and neighhoring rights in the Latin American countries.

A *Seminar on Copyright and Neighboring Rights* organized hy WIPO with the cooperation of the Government of Egypt was held in Cairo in Octoher 1985.

The Seminar was opened by the Minister of State for Foreign Affairs of Egypt and the Director General of WIPO.

The purpose of the Seminar was to discuss and exchange views on certain aspects of copyright and neighboring rights in the context of the development of developing countries, in particular in Africa.

Forty-four specialists from 17 countries (Angola, Benin, Cameroon, Chad, Côte d'Ivoire, Egypt, Ethiopia, Ghana, Guinea, Kenya, Malawi, Morocco, Senegal, Somalia, Sudan, Togo, Tunisia) participated, in addition to two WIPO officials and three speakers, one each from Greece, Nigeria, and the United States of America.

The topics discussed included the role of intellectual property in national identity; international relations in the fields of copyright and neighhoring rights; protection of intellectual creations as an incentive for development and cultural promotion; economic impact of the protection of copyright and neighboring rights; piracy of sound and audiovisual recordings, radio and television broadcasts and printed matter; copyright as an expression of a development philosophy and policy.

Papers were presented on the above-mentioned topics by the three speakers, two WIPO officials and some of the participants. In addition, reports were also given by each of the specialists on the copyright and neighhoring rights situation in their respective countries.

The participants of the Seminar concluded that, *inter alia*, appropriate national legislation on copyright and neighboring rights should be promulgated in countries where it did not exist and be amended and updated where it did exist hut was considered inadequate or obsolete; due consideration be given in such legislation to antipiracy measures; a regional agreement or convention to safeguard African culture identity be considered in the field of folklore protection and consideration be given to accession to the Berne Convention for the Protection of Literary and Artistic Works and to the relevant international conventions in the field of neighboring rights by countries which were not parties to those international conventions. WIPO was also asked to increase its assistance in training of specialists in national copyright legislation and in the creation or improvement of institutions administering such legislation.

WIPO Permanent Committee for Development Cooperation Related to Copyright and Neighboring Rights

The Permanent Committee consists of all States members of WIPO which have informed the Director General of their desire to be members. During the period covered by this report, Algeria, Angola, Bangladesh, Chad, Colombia, Cyprus, Gambia, Jordan, Nicaragua, Sri Lanka, United Republic of Tanzania and Uruguay became members of the Permanent Committee, bringing the membership to 76 States: Algeria, Angola, Australia, Austria, Bangladesh, Barbados, Belgium, Benin, Brazil, Bulgaria, Burkina Faso, Cameroon, Canada, Central African Republic, Chad, Chile, Colombia, Congo, Costa Rica, Côte d'Ivoire, Cyprus, Czechoslovakia, Denmark, Egypt, El Salvador, Fiji, Finland, France, Gambia, German Democratic Republic, Germany (Federal Republic of), Ghana, Guatemala, Guinea, Honduras, Hungary, India, Israel, Italy, Japan, Jordan, Kenya, Malawi, Mali, Mauritius, Mexico, Morocco, Netherlands, New Zealand, Nicaragua, Niger, Norway, Pakistan, Peru, Philippines, Poland, Portugal, Romania, Saudi Arabia, Senegal, Somalia, Soviet Union, Spain, Sri Lanka, Sudan, Suriname, Sweden, Switzerland, Togo, Tunisia, Turkey, United Kingdom, United Republic of Tanzania, United States of America, Uruguay, Yemen.

The Permanent Committee held its sixth session in February 1985 in Geneva. Forty–five States members of the Permanent Committee (Australia, Benin, Brazil, Burkina Faso, Cameroon, Canada, Chile, Congo, Costa Rica, Czechoslovakia, Egypt, El Salvador, France, German Democratic Republic, Germany (Federal Republic of), Ghana, Guatemala, Guinea, Honduras, Hungary, India, Israel, Italy, Japan, Malawi, Mali, Mexico, Morocco, Niger, Norway, Pakistan, Peru, Philippines, Portugal, Saudi Arabia, Somalia, Soviet Union, Spain, Sudan, Sweden, Togo, Tunisia, Turkey, United Kingdom, United States of America) were represented; 12 non–member States (Afghanistan, Algeria, Argentina, Cape Verde, China, Indonesia, Jamaica, Lesotho, Madagascar, Mozambique, Qatar, Trinidad and Tobago) were represented by observers, as were three intergovernmental organizations (International Labour Organisation (ILO), United Nations Educational, Scientific and Cultural Organization (UNESCO), Arab League Educational, Cultural and Scientific Organization (ALECSO)) and 10 international non–governmental organizations (European Broadcasting Union (EBU), International Bureau of Societies Administering the Rights of Mechanical Recording and Reproduction (BIEM), International Confederation of Societies of Authors and Composers (CISAC), International Copyright Society (INTERGU), International Federation of Actors (FIA), International Federation of Associations of Film Distributors (FIAD), International Federation of Musicians (FIM), International Federation of Phonogram and Videogram Producers (IFPI), International Publishers Association (IPA), International Secretariat of Arts, Media and Entertainment Trade Unions (ISETU)).

The Director General opened the meeting. In the course of their general remarks, most delegations noted with satisfaction the expansion of development cooperation activities carried out under the Permanent Program since the last session of the Permanent Committee in January 1983, and stressed the importance they attached to those activities. Some delegations expressed considerable satisfaction that the Governing Bodies of WIPO had been responsive, at their September 1983 sessions, to the need to increase the resources devoted to development cooperation activities in order to reduce the gap between the requests for such activities and the resources available to satisfy them. Those delegations hoped that WIPO would continue this trend in development cooperation in the fields of copyright and neighboring rights during the next biennium 1986–87. They suggested that the Permanent Committee recommend this to the Assembly of WIPO at the next meeting of the Governing Bodies due at the end of September 1985. They also emphasized that development cooperation activities in the fields of copyright and neighboring rights should not be viewed as a one–way flow of assistance from a group of developed countries to a group of developing countries but rather as an exchange where both groups of countries were active participants since such development cooperation ultimately benefited the international community.

A number of delegations also highlighted the need to take into account the special needs of the least developed among developing countries for cooperation in the fields of copyright and neighboring rights, and invited WIPO to give particular attention to those countries in initiating programs adapted to their specific needs.

Several delegations expressed appreciation of WIPO's activities in the training of developing country personnel and were of the view that they should be expanded to narrow the gap between the needs of developing countries and the resources to meet them. The Permanent Committee thanked the countries and organizations that had received WIPO trainees in 1983 and 1984.

Delegations of several developed and developing countries, as well as international non–governmental organizations offered to continue their cooperation in the field of training. Certain other delegations hoped to marshal resources to enable them also to contribute to WIPO's training program which they felt was of vital importance to dissemi-

nating knowledge of, and respect for, the copyright system. The Permanent Committee expressed appreciation of those offers.

A number of delegations expressed satisfaction with the extensive work being done by WIPO in providing advice and assistance to developing countries in the preparation, amendment and updating of legislation in the fields of copyright and neighboring rights, as well as in the setting up or modernization of institutions.

Several delegations expressed appreciation of WIPO's efforts in the organization of regional and national seminars and wished this activity to be continued as such seminars were useful in the dissemination of knowledge in the fields of copyright and neighboring rights.

The Permanent Committee noted with satisfaction the activities and projects concerning cooperation among developing countries within the framework of the Permanent Program. A number of delegations and observers stressed the advantages of regional cooperation leading to possible harmonization of laws and the use by groups of smaller countries of regional institutions.

There was a general recognition of the need to continue efforts aimed at the establishment of international protection of expressions of folklore. The Permanent Committee noted with satisfaction that WIPO would, in cooperation with Unesco if Unesco so wished, further explore various aspects of an effective legal protection of expressions of folklore, at both the national and international levels, taking into account the observations and suggestions made by the delegations.

The Permanent Committee noted with satisfaction that WIPO would continue to study the setting up of national chambers of copyright, keeping in view the statements made in the meeting.

Finally, the Permanent Committee noted with approval new priorities and new approaches, proposed by WIPO, in the implementation of the Permanent Program during the forthcoming biennium 1986–1987.

III. Governing Bodies

The *Assembly and the Committee of Directors of the Madrid Union for the International Registration of Marks* held their fourteenth (9th extraordinary) sessions in Geneva in March 1985.

The following 20 States members of the Madrid Union, and one intergovernmental organization, were represented at the meeting: Algeria, Austria, Belgium, Czechoslovakia, Democratic People's Republic of Korea, France, German Democratic Republic, Germany (Federal Republic of), Hungary, Italy, Morocco, Netherlands, Portugal, Romania, Soviet Union, Spain, Switzerland, Tunisia, Viet Nam, Yugoslavia, Benelux Trademark Office (BBM).

The meeting considered two matters, namely, the computerization of data concerning marks registered in the past in the International Register, and the provision of the data published in the review *Les Marques internationales* on a machine-readable medium.

In respect of the first matter, the Assembly and the Committee of Directors decided that the International Bureau would, by its own means, progressively enter into computer memory all published and unpublished data relating to international registrations that were the subject of a renewal or a change as each applicant requested the renewal or the recording of the change. It was also decided that the International Bureau would report on the implementation of the data entry operation at the ordinary session of the Assembly and the Committee of Directors in 1987 or, if the experience gained by that time seemed insufficient, not later than at an extraordinary session of the Assembly and Committee of Directors in 1988.

Furthermore, it was decided that, at the session to which the International Bureau would submit its report, the Assembly and the Committee of Directors would decide whether the said operation should continue, or whether, within a period of about 12 months, data concerning all marks in force and not yet entered on that date should be entered at once; if the latter solution were to be adopted, the International Bureau would propose that the carrying out of the data entry operation be put to tender in the member States of the Madrid Union.

With regard to the second matter considered by the meeting, namely, the provision, for national offices, of the data published in the review *Les Marques internationales* on a machine-readable medium, the Assembly and the Committee of Directors decided that the matter would be included in the agenda of their ordinary session in September and October 1985, and invited the Director General to draw up a detailed report on all the technical, financial and legal aspects of the question, which would serve as a basis for discussion.

In May 1985, the seventh session of the *WIPO Budget Committee* was held in Geneva.

The following 13 States, members of the Budget Committee, were represented: Brazil, Cameroon, Canada, Cuba, Czechoslovakia, Egypt, France, Germany (Federal Republic of), India, Japan, Soviet Union, Switzerland, United States of America.

The Budget Committee reviewed the draft program and budget for the 1986–87 biennium, propos-

als to establish the working capital fund of the IPC Union and to increase tbe level of the working capital funds of tbe Paris Union and of the PCT Union, and a report on the question of arrears in contributions.

The full text of the report, and the comments of the Director General on the same, were submitted for the consideration of the Governing Bodies.

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

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

Delegations of the following 86 States participated in the meetings: Algeria, Angola, Argentina, Australia, Austria, Bangladesh, Belgium, Brazil, Bulgaria, Byelorussian SSR, Cameroon, Canada, Chile, China, Colombia, Costa Rica, Côte d'Ivoire, Cuba, Cyprus, Czechoslovakia, Democratic People's Republic of Korea, Denmark, Egypt, Finland, France, Gambia, German Democratic Republic, Germany (Federal Republic of), Ghana, Greece, Guinea, Haiti, Holy See, Honduras, Hungary, India, Indonesia, Iran (Islamic Republic of), Ireland, Israel, Italy, Japan, Libya, Luxembourg, Madagascar, Mexico, Monaco, Mongolia, Morocco, Netherlands, New Zealand, Nicaragua, Nigeria, Norway, Pakistan, Panama, Peru, Philippines, Poland, Portugal, Qatar, Republic of Korea, Romania, Rwanda, Saudi Arabia, Senegal, Somalia, Soviet Union, Spain, Sri Lanka, Sudan, Sweden, Switzerland, Thailand, Tunisia, Turkey, Ukrainian SSR, United Arab Emirates, United Kingdom, United Republic of Tanzania, United States of America, Uruguay, Venezuela, Viet Nam, Yugoslavia, Zaire. Nineteen intergovernmental organizations and 11 international non–governmental organizations were represented by observers: United Nations (UN), United Nations Conference on Trade and Development (UNCTAD), UNDP, Food and Agriculture Organization of the United Nations (FAO), International Labour Organisation (ILO), United Nations Educational, Scientific and Cultural Organization (UNESCO), World Meteorological Organization (WMO), General Agreement on Tariffs and Trade (GATT), OAPI, Arab League Educational, Cultural and Scientific Organization (ALECSO), Benelux Trademark Office/Benelux Designs Office (BBM/BBDM), Commission of the European Communities (CEC), Council for Mutual Economic Assistance (CMEA), European Free Trade Association (EFTA), EPO, Interim Committee for the Community Patent, League of Arab States (LAS), Organization of African Unity (OAU), and European Association of Industries of Branded Products (AIM), European Broadcasting Union (EBU), European Communities Trade Mark Practitioners' Association (ECTMPA), International Association for the Protection of Industrial Property (AIPPI), International Chamber of Commerce (ICC), International Confederation of Free Trade Unions (ICFTU), International Federation of Industrial Property Attorneys (FICPI), International Federation of Inventors' Associations (IFIA), International Organisation for Standardization (ISO), International Publishers Association (IPA), Union of European Practitioners in Industrial Property (UEPIP).

Director General. On the basis of the nomination made by the WIPO Coordination Committee at its eighteenth session, the WIPO General Assembly, unanimously and by acclamation, appointed Dr. Arpad Bogsch as the Director General of WIPO for a further period of six years. A great number of delegations of States and representatives of intergovernmental organizations congratulated Dr. Bogsch.

The Director General expressed his heartfelt thanks to all the delegations for their unanimous decision. In his speech, he highlighted his intention to deploy and develop the services of the International Bureau mainly in three fields:

"The three fields in question are: development cooperation with developing countries, extension or consolidation of intellectual property protection in new fields, and simplification of the international protection of intellectual property rights.

"Development cooperation. Our goal is that intellectual property should accelerate the development of developing countries. Naturally, each developing country's government sets its own economic goals. It is in the service of those goals that intellectual property should play a significant and realistic role. Such service requires trained persons, well-equipped and well-functioning industrial property offices and adequate legislation. My objective is that in every case where a developing country asks for advice and training, WIPO should be in a position to furnish it.

"The second main objective is the consolidation of existing protection and the extension of intellectual property to new fields. Such new fields include, for example, biotechnology, computer software, integrated circuit designs, television broadcast satellites, cable television and videocassettes. One has to act positively and fast enough in all those and other fields, both nationally and internationally. Otherwise, intellectual property will lose much of its *raison d'être*. 'Consolidation' also means our efforts to harmonize certain provisions of intellectual property legislation. And it also means our efforts to harmonize patent documentation in order to promote patent information. The latter is the backbone of any legal system for protecting inventions.

"The third main objective is the simplification of the obtaining of protection for inventions, trademarks and industrial designs where the owner needs and wishes protection in several countries. Such 'international' protection should cost less and should be obtainable in a simpler way than today. Our means of action are, or should be, the Patent Cooperation Treaty, a new worldwide system for the registration of marks, and an extension of the Hague Agreement Concerning the International Deposit of Industrial Designs.

"Results in all these fields come from interaction between the member States with WIPO as catalyzer and organizer."

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

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

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

Program and Budget. The Governing Bodies adopted by consensus (with the exception of the delegations of five States, which declared that they could not join the consensus) the program and budget of WIPO and the Unions for the 1986 to 1987 biennium.

Matters of General Interest in the Field of Intellectual Property. The WIPO Convention contains a provision that the WIPO Conference shall discuss matters of general interest in the field of intellectual property and may adopt recommendations relating to such matters, having regard for the competence

and autonomy of the Unions. At its 1985 session, the Conference took action under the said provision for the first time; it discussed, and unanimously adopted two recommendations, one concerning piracy and the other cable television. Both recommend that member States provide information through the International Bureau to the 1987 session of the Conference concerning developments related to the said matters.

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

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

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

Agreements with Intergovernmental Organizations; Admission of Observers. The WIPO Coordination Committee approved an agreement among WIPO and the African Regional Centre for Technology (ARCT), the African Regional Industrial Property Organization (ARIPO) and the African Intellectual Property Organization (OAPI), and agreements with ALECSO, SIECA and the Latin–American Integration Association (LAIA). The Governing Bodies concerned accorded observer status to the ARCT, the European Association of Advertising Agencies (EAAA), the European Tape Industry Council (ETIC), the Ibero–American Television Organization (OTI), the Max Planck Institute for Foreign and International Patent, Copyright and Competition Law and the World Blind Union (WBU).

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

Election of Members of Governing Bodies. The Assemblies and Conferences of Representatives of the Paris and Berne Unions elected, each as far as it was concerned, the members of the Executive Committees of the Paris and Berne Unions, and the WIPO Conference designated the *ad hoc* members of the WIPO Coordination Committee. In addition, the WIPO General Assemhly and the Assemhlies of the Paris and Berne Unions elected the members of the WIPO Budget Committee. The resulting membership of those committees is as follows:

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

Berne Union Executive Committee: Canada, Chile, Côte d'Ivoire, Czechoslovakia, France, German Democratic Republic, Hungary, India, Mexico, Morocco, Netherlands, Senegal, Sweden, Switzerland *(ex officio)*, Tunisia, Turkey,* United Kingdom, Venezuela, Zimhabwe.

WIPO Coordination Committee: Algeria, Angola,** Argentina, Australia, Austria, Brazil, Bulgaria, Canada, Chile, China, Colombia,** Côte

* Associale member.
** *Ad hoc* member.

d'Ivoire, Cuba, Czechoslovakia, Denmark, Egypt, France, German Democratic Republic, Germany (Federal Republic of), Hungary, India, Indonesia, Italy, Japan, Mexico, Morocco, Netherlands, Nicaragua,** Nigeria, Philippines, Poland, Saudi Arabia,** Senegal, Soviet Union, Sweden, Switzerland *(ex officio)*, Tunisia, Turkey, United Kingdom, United Republic of Tanzania, United States of America, Uruguay, Venezuela, Yugoslavia, Zaire, Zimbabwe.

WIPO Budget Committee: Brazil, Cameroon, Canada, Cuba, Czechoslovakia, Egypt, France, Germany (Federal Republic of), India, Japan, Soviet Union, Sri Lanka, United States of America. Switzerland continues to be an *ex officio* member.

IV. Management and Supporting Activities

Missions. In 1985, the Director General undertook missions to or attended meetings held in: Austria, Brazil, Bulgaria, China, Egypt, France, German Democratic Republic, Germany (Federal Republic of), Hungary, Iraq, Japan, Switzerland (Berne), Togo, United States of America.

During the same period, Deputy Directors General undertook missions to or attended meetings held in: Austria, Bangladesh, Belgium, Brazil, Bulgaria, China, Denmark, Egypt, Ethiopia, German Democratic Republic, Germany (Federal Republic of), Hungary, Italy, Japan, Luxembourg, Peru, Republic of Korea, Soviet Union, Spain, Switzerland, Togo, Tunisia, United States of America, Zimbabwe.

Other officials or consultants of WIPO effected missions during the said period to: Algeria, Angola, Argentina, Australia, Austria, Bangladesh, Barbados, Belgium, Benin, Bolivia, Botswana, Brazil, Bulgaria, Cameroon, Central African Republic, Chile, China, Colombia, Costa Rica, Côte d'Ivoire, Cuba, Democratic People's Republic of Korea, Democratic Yemen, Denmark, Ecuador, Egypt, El Salvador, Ethiopia, Fiji, Finland, France, Germany (Federal Republic of), Ghana, Guatemala, Guyana, Haiti, Honduras, India, Indonesia, Iraq, Italy, Jamaica, Japan, Jordan, Kenya, Kuwait, Lesotho, Liberia, Libya, Malawi, Malaysia, Mexico, Morocco, Netherlands, Nicaragua, Nigeria, Pakistan, Panama, Paraguay, Peru, Philippines, Qatar, Republic of Korea, Senegal, Sierra Leone, Singapore, Somalia, Soviet Union, Spain, Sri Lanka, Swaziland, Sweden, Switzerland, Syria, Thailand, Togo, Trinidad and Tobago, United Kingdom, United Republic of Tanzania, United States of America, Uruguay, Venezuela, Viet Nam, Yugoslavia, Zambia, Zimbabwe; and Macao.

United Nations. The Director General and other officials of WIPO participated in the work of a number of intersecretariat bodies of the United Nations system established for the purpose of facilitating coordination of the policies and activities of the organizations of the system. Those bodies included the Administrative Committee on Coordination (ACC), composed of the executive heads of all the organizations and programs of the system under the chairmanship of the Secretary–General of the United Nations, which met in Geneva in April and July 1985, and in New York in October 1985, and had joint meetings with the UN Committee on Programme and Coordination (CPC) in July, its Organizational Committee and its Consultative Committees on Substantive Questions (Programme) and (Operations) (CCSQ (PROG) and CCSQ (OPS)) and on Administrative Questions (Finance and Budget) and (Personnel) (CCAQ (FB) and CCAQ (PER)). Other subsidiary bodies of the ACC, task forces, working groups and *ad hoc* intcragency meetings in which WIPO participated during the period covered by this report were convened to deal with various matters of common interest, including science and technology for development, information systems for science and technology for development, register of development activities, consultations on the follow–up to the Substantial New Programme of Action for the Least Developed Countries, preparations for the 40th anniversary of the United Nations, procurement of supplies, language arrangements, documentation and publications, and legal questions. WIPO was represented at meetings of the Management Committee of the International Computer Centre (ICC) in Gencva and of the Bureau of the UN Economic and Social Council (ECOSOC) in Geneva in July 1985.

In Octobcr 1985, the Director General attended a ceremony commemorating the 40th anniversary of the United Nations, in New York. WIPO was also represented at other meetings held in Gencva to commemorate the anniversary, in particular at a symposium on the theme "Is Universality in Jeopardy?" in December 1985.

In January 1985, WIPO was represented at a special session of the UN Advisory Committee for the Co–Ordination of Information Systems (ACCIS) in Geneva.

In February 1985, WIPO was represented at the Second Committee of Governmental Experts on the Safeguarding of Works in the Public Domain convencd by Unesco in Paris.

In March 1985, WIPO was represented by the Director General, a Deputy Director General and other WIPO officials at the Conference on the Emergency Situation in Africa in Geneva.

In March 1985, WIPO was represented at the celebrations of the International Day for the Elimina-

tion of Racial Discrimination, and of the International Women's Day, both in Geneva. On the occasion of the International Women's Day, WIPO presented a special exhibition under the title "The Woman Inventor."

In March, April and June 1985, a WIPO staff member followed the discussions that took place in the meetings of the Group of Experts on Trade in Counterfeit Goods convened hy GATT in Geneva.

In April 1985, WIPO was represented at a meeting of a Working Party on the Program–Budget for the Biennium 1986–87, convened by UNCTAD in Geneva.

In April 1985, UNDP officials from New York held discussions in Geneva with a Deputy Director General and other WIPO officials on UNDP project budgeting and implementation.

In April 1985, WIPO was represented at the 20th Session of the ECA and I1th Meeting of the Conference of Ministers, in Addis Ababa, which were preceded by the 6th Meeting of the Technical Preparatory Committee of the Whole. A paper on the Emergency Situation in Africa prepared by WIPO was incorporated in one of the working documents which were approved. In November 1985, a WIPO official attended the Fourth Session of the Intergovernmental Committee for Science and Technology for Development in Addis Ahaha, in the framework of the ECA, and presented a paper on patent information and documentation.

In May and June 1985, WIPO was represented at the sixth session of the United Nations Conference on an International Code of Conduct on the Transfer of Technology in Geneva.

In June 1985, a Deputy Director General and a WIPO official attended a session of the Governing Council of UNDP in New York, and, at the same time, held discussions with UNDP officials on cooperation hetween WIPO and UNDP. In November 1985, a Deputy Director General and another WIPO official participated in a Glohal Meeting of UNDP Resident Representatives in Copenhagen.

In July 1985, a Deputy Director General and another official of WIPO held discussions in Addis Ahaba with officials of the ECA on cooperation between the two organizations as well as on the High–Level Policy Planning Meeting on Industrial Property in Africa which was held in Lomé in July and August 1985.

In July and August 1985, WIPO was represented at the 34th session of the United Nations Joint Staff Pension Board in Montreal.

In September 1985, WIPO was represented at the sixth session of the Intergovernmental Group on the Least Developed Countries, convened hy UNCTAD in Geneva. In September 1985, WIPO was also represented at the thirty–first session of the UNCTAD Trade and Development Board in Geneva.

In September and October 1985, WIPO was represented by an official who presented a paper at the Interregional Seminar on the Vienna Program of Action Concerning Prospects for the Establishment of a Glohal Information Network, in Moscow.

In November 1985, WIPO was represented at the celebration in Geneva of the International Day of Solidarity with the Palestinian People.

In November 1985, WIPO was represented at the UNCTAD Conference on Restricted Business Practices in Geneva.

In November 1985, two WIPO officials attended the annual meeting of editors of UN periodicals in London.

In November 1985, a WIPO official attended, in Paris, the 11th session of the Section of Archivists of International Organizations of the International Council of Archives.

In response to requests from the Secretariat of the United Nations, WIPO provided information on its activities for inclusion in reports concerning implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples, the question of Namibia, Apartheid, assistance to the oppressed people of South Africa, cooperation with the OAU, assistance to the Palestinian people, measures in favor of countries affected hy drought, cooperation with the League of Arab States, coordination of outer space activities, peaceful uses of outer space, issues left unresolved at the UN Conference on Science and Technology for Development, Mid–Decade Review on Implementation of the Vienna Program of Action for Science and Technology for Development, the establishment of a global network of scientific and technological information, economic and technical cooperation among developing countries, Charter of Economic Rights and Duties of States, activities in favor of young inventors and the International Year of Youth, International Year of Peace, development assistance in the legal field, as well as an inventory on all joint planning efforts and coordinating arrangements in the United Nations system.

Public Information, Publications, etc. Lectures on WIPO and its activities, in general or related to particular topics, were given by WIPO officials, often in conjunction with visits by organized groups, in particular groups of university students from various countries, to the headquarters of WIPO.

Interviews were given to newspaper and radio correspondents. WIPO officials participated in the regular press briefings given in the United Nations Office in Geneva. WIPO was represented at the regular meetings in Geneva of the Circle of International Information Officers; its representative continued to serve as Chairman for 1985.

In April and November 1985, two issues of the WIPO Newsletter were published in Arabic, English, French, Portuguese, Russian and Spanish.

A new edition of the WIPO General Information brochure was issued in March 1985 in English and in French, and in November 1985 in Chinese.

In 1985, WIPO publications were displayed at the International Fair of Leipzig (in March), at the International Fair of Milan (in April), at the Geneva International Exhibition of Inventions and New Technology (in April), at the Moscow Book Fair (in September), at the Open Day for the 40th anniversary of the United Nations in Geneva (in October), and at the China Book Exhibition in Beijing, Shanghai and Guangzhou (in November).

Notifications

Nairobi Treaty on the Protection of the Olympic Symbol

SOVIET UNION

Ratification

The Government of the Union of Soviet Socialist Republics deposited, on March 17, 1986, its instrument of ratification of the Nairobi Treaty on the Protection of the Olympic Symbol, adopted at Nairobi on September 26, 1981.

The said instrument of ratification contains the following declarations:

The fact that the Soviet Union is a party to the Nairobi Treaty on the Protection of the Olympic Symbol of September 26, 1981 — of which Article 4 stipulates that the provisions of Chapter I shall, as regards States party to this Treaty which are members of a customs union, a free trade area, any other economic grouping or any other regional or subregional grouping, be without prejudice to their commitments — shall not alter the relations of the Soviet Union with such unions, areas or groupings;

The provisions of Article 5(2) of the Nairobi Treaty on the Protection of the Olympic Symbol, placing restrictions on the circle of parties to the Treaty, are contrary to the principle of the sovereign equality of States. *(Translation)*

The said Treaty enters into force, with respect to the Union of Soviet Socialist Republics, on April 17, 1986.

Nairobi Notification No. 36, of March 18, 1986.

National Legislation

PORTUGAL

Code of Copyright and Related Rights

(No. 45/85, of September 17, 1985)*

(Articles 1 to 106)

TITLE I

Works Protected and Copyright

CHAPTER I

Works Protected

Definitions

Article 1. (1) Works shall mean intellectual creations in the literary, scientific and artistic fields, in whatever form, and as such they shall be protected under the present Code, as shall the rights of their authors.

(2) Ideas, processes, systems, operational methods, concepts, principles or discoveries alone and as such may not be protected under the present Code.

(3) For the purposes of the present Code, a work shall be independent of its disclosure, publication, use or exploitation.

Original works

Article 2. (1) Intellectual works in the literary, scientific and artistic fields, whatever their type, form of expression, merits, mode of communication or objective, include, in particular:

(a) books, pamphlets, magazines, newspapers and other writings;
(b) lectures, lessons, addresses and sermons;
(c) dramatic and dramatico–musical works and their production;
(d) works of choreography or mime which are expressed in written or any other form;
(e) musical compositions, with or without words;
(f) cinematographic, television, phonographic, video and radiophonic works;
(g) works of drawing, tapestry, painting, sculpture, pottery, glazed tiles, engraving, lithography and architecture;
(h) photographic works and works produced by processes analogous to photography;
(i) works of applied art, industrial designs, and works of design that constitute artistic creations, whether or not protected as industrial property;
(j) illustrations and geographical maps;
(l) plans, sketches and three–dimensional works concerning architecture, town planning, geography or other sciences;
(m) emblems or slogans, even if used for advertising, provided that they show originality;
(n) parodies and other literary or musical compositions, even if inspired by the theme or subject of another work.

(2) Subsequent editions of a work, even though they are corrected, enlarged, revised, or their titles or format are changed, shall not constitute works distinct from the original work, nor shall reproductions of works of art, even though their dimensions may have been changed.

Works deemed to be original

Article 3. (1) The following shall be deemed to be original works:

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This new consolidated text of the Code of Copyright and Related Rights — which contains the amendments introduced by Law–Decree No. 63/85 of March 14, 1985, and Law No. 45/85 of September 17, 1985 — was published as an annex to the latter Law.

(a) translations, arrangements, instrumentations, dramatizations, cinematographic and other transformations of a work, even if it has not been the subject of protection;
(b) summaries and collections of works, whether protected or not, such as selections, encyclopaedias and anthologies which, by reason of the selection or arrangement of their contents, constitute intellectual creations;
(c) systematic or annotated collections of texts of conventions, laws, regulations, decrees, administrative or legal decisions, or decisions hy any hody or authority of the State or administration.

(2) The protection granted to these works shall not prejudice the rights recognized to the authors of the corresponding original work.

Titles of works

Article 4. (1) The protection granted to a work shall extend to its title, whether or not it is registered, provided that it is original and that it cannot be confused with the title of any other work of the same nature by another author which has previously been disclosed or puhlished.

(2) Such protection shall not apply to the following:
(a) titles consisting of the generic, necessary or habitual designation of the subject matter of works of a certain kind;
(b) titles consisting solely of the names of historical, historico–dramatic or literary and mythological personages, or of the names of living persons.

(3) The title of a work not disclosed nor published shall be protected if it fulfills the conditions set out in this Article and if it has been registered jointly with the work.

Titles of newspapers and other periodicals

Article 5. (1) Titles of newspapers or other periodicals shall be protected, provided that the latter are published regularly, subject to due registration in the relevant section of the register of the governmental department responsible for social communications.

(2) The title protected may be used for a similar publication one year after expiry of the right to publication, communicated in any manner whatsoever, or three years after cessation of publication.

Published and disclosed works

Article 6. (1) A published work shall mean a work reproduced with the consent of its author, however the copies are produced, provided that they are effectively made availahle to the public in such a way as to meet its requirements, taking into account the nature of the work.

(2) The use or disclosure of a work that does not constitute reproduction within the meaning of the preceding paragraph shall not constitute publication.

(3) A disclosed work shall mean a work which has been lawfully hrought to the knowledge of the public by any means such as the performance of a dramatic, dramatico–musical or cinematographic work, the performance of a musical work, public recitation of a literary work, transmission or hroadcasting, construction of an architectural work and exhibition of an artistic work.

Works not protected

Article 7. (1) The following may not be protected:
(a) news of the day and reports of events given simply for information, however disclosed;
(b) petitions, allegations, complaints and other texts submitted in writing or orally to public authorities or services;
(c) texts proposed and speeches made hefore assemblies or other collegiate, political and administrative bodies, at the national, regional or local levels, or in puhlic debates, on topics of common interest;
(d) political speeches.

(2) The integral reproduction, either separately, in a collection or for related use, of speeches, declarations and other texts referred to in subparagraph (1)*(c)* and *(d)* above may only be carried out by the author or with his consent.

(3) Where the works referred to in paragraph (1) above are used hy a third party, use shall be limited to what is required by the ohjective to be achieved through disclosure.

(4) The texts referred to in subparagraph (1)*(b)* ahove shall not be communicated if they are of a confidential nature or if their disclosure might result in prejudice for the honor or reputation of the author or any other person, except if a judicial decision to the contrary is taken as a result of proof of the existence of legitimate reasons which supersede those justifying prohibition.

Collections and annotations of official texts

Article 8. (1) The collected or annotated texts referred to in subparagraph (1)*(c)* of Article 3, as well as their official translations, shall not benefit from protection.

(2) Where the texts referred to in the preceding paragraph incorporate protected works, these may be used without the consent of the author and without giving him any right, in the field of activity of the public service concerned.

CHAPTER II

Copyright

SECTION I

Contents of Copyright

Contents of copyright

Article 9. (1) Copyright shall include economic rights and personal rights, termed moral rights.

(2) In the exercise of economic rights, the author shall have the exclusive right to dispose of his work, to exploit it and to use it, or to authorize its total or partial exploitation or use by a third party.

(3) Independently of economic rights, and even after their transfer or lapse, the author shall enjoy moral rights in his work, in particular the right to claim authorship and to ensure its authenticity and integrality.

Carriers of works

Article 10. (1) Since it is incorporeal, copyright in a work shall be independent of the right of ownership in the material objects used for its fixing or communication.

(2) The manufacturer or the person acquiring the carriers mentioned in the preceding paragraph shall not enjoy any of the powers derived from the copyright.

SECTION II

Attribution of Copyright

Ownership

Article 11. Unless otherwise specified, copyright shall belong to the intellectual creator of the work.

Recognition of copyright

Article 12. Copyright shall be recognized independently of registration, filing, or any other formality.

Subsidized works

Article 13. Any person who has in any way either totally or partially subsidized or financed the preparation, conclusion, disclosure, or publication of a work shall not thereby obtain any of the powers derived from the copyright, unless there is written agreement to the contrary.

Determination of ownership in exceptional cases

Article 14. (1) Without prejudice to the provisions of Article 174, ownership of copyright in a work carried out on commission or on behalf of another person, either in fulfillment of official duties or under an employment contract, shall be determined in accordance with the relevant agreement.

(2) In the absence of any agreement, it shall be deemed that ownership of copyright in a work carried out on behalf of another person belongs to the intellectual creator.

(3) Where the name of the creator is not mentioned in the work or is not shown in the customary place, it shall be deemed that the copyright remains the property of the person or entity on whose behalf the work is carried out.

(4) Where ownership of the economic rights belongs to the person on whose behalf the work was carried out, the intellectual creator shall be entitled to special remuneration, in addition to the agreed remuneration and whether or not the work is disclosed or published, in the following cases:

(a) when the intellectual creation has been carried out with all due care but clearly goes beyond the responsibility or task entrusted;

(b) when benefits or uses not foreseen in the agreement on remuneration arise.

Limitations on use

Article 15. (1) In the cases provided for in Articles 13 and 14, when the copyright belongs to the intellectual creator, the work may only be used for the purposes stipulated in the relevant agreement.

(2) Changes may only be made to the work following the specific agreement of the creator and according to the terms agreed upon.

(3) The intellectual creator may not make use of the work in any way prejudicial to the purposes for which it was produced.

Concepts of work of joint authorship and collective work

Article 16. (1) A work that has been created by a number of persons shall be designated as follows:

(a) a work of joint authorship, when it has been disclosed or published in the names of all or some of the coauthors, whether or not it is possible to distinguish their individual contributions;

(b) a collective work, when it has been carried out by a single or collective entity and has been disclosed or published in its name.

(2) An aleatory work of art in which creative contributions by one or more performers were originally envisaged shall be considered a work of joint authorship.

Works of joint authorship

Article 17. (1) Copyright in a work of joint authorship as a whole shall belong to all those who collaborated therein and the joint exercise of this right shall be subject to the regulations governing joint ownership.

(2) Unless otherwise stipulated, and always in writing, the indivisible parts belonging to the coauthors of the work shall be deemed to be of equal value.

(3) Where a work of joint authorship is disclosed or published solely in the name of one or several of the authors, in the absence of any explicit indication by the remaining authors in some part of the work, it shall be presumed that the authors not mentioned have assigned their rights to the author or authors in whose name the work has been disclosed or published.

(4) Any person who has simply helped the author to produce, disclose or publish the work in any way shall not be deemed to be a coauthor and consequently shall not participate in the copyright.

Individual rights of authors of a work of joint authorship

Article 18. (1) Any of the authors may request the disclosure, publication, exploitation or modification of the work of joint authorship; any disagreements shall be settled according to the principles of good faith.

(2) Without prejudice to exploitation in common of the work of joint authorship, any of the authors may individually exercise his rights related to his individual contribution provided that the latter can be distinguished.

Collective works

Article 19. (1) Copyright in a collective work shall belong to the single or collective entity that has organized and directed its creation and in whose name the work has been disclosed or published.

(2) Where it is possible to distinguish the individual contributions of some or all of the authors in a collective work, the provisions on individual contributions to works of joint authorship cited above shall apply.

(3) Newspapers and other periodicals shall be deemed to be collective works and copyright therein shall belong to the respective enterprises.

Composite works

Article 20. (1) A work incorporating all or part of a preexisting work with the consent, but without the collaboration, of its author shall be deemed to be a composite work.

(2) The rights pertaining to a composite work shall belong exclusively to its author, without prejudice to the rights of the author of the preexisting work.

Broadcast works

Article 21. (1) Broadcast works shall mean those works created for the specific purposes of audio or visual broadcasting, as well as adaptations for audiovisual purposes of works originally created for other uses.

(2) The authors of the text, music and production of a broadcast work, considered to be a work of joint authorship, as well as the authors of the adaptation of a work not originally produced for audiovisual purposes, shall be deemed to be the joint authors.

(3) The provisions relating to cinematographic works contained in the following Articles, amended accordingly, shall apply to authorship of broadcast works.

Cinematographic works

Article 22. (1) The following persons shall be deemed to be the joint authors of cinematographic works:

(a) the director;

(b) the author of the work's subject and, if it is a different person, the author of the screenplay, as well as the author of the music.

(2) In the case of adaptation of a work not specifically created for the cinema, the authors of the adaptation and the screenplay shall also be deemed to be joint authors.

Use of other works in cinematographic works

Article 23. The rights of creators not deemed to be joint authors according to the provisions of Article 22 shall be governed by the provisions of Article 20.

Phonographic and videographic works

Article 24. The authors of the text and music fixed and the producers of videographic works shall be deemed to be the authors of phonographic and videographic works.

Works of architecture, town planning and design

Article 25. The creator of the global concept and the relevant project shall be the author of a work of architecture, town planning or design.

Technical collaborators

Article 26. Without prejudice to related rights which they may own, single or collective entities acting as collaborators, technical agents, designers, constructors or in similar capacities in the production and disclosure of the works referred to in Articles 21 *et seq.* may not claim any of the rights related to copyright in respect of these works.

CHAPTER III

Authors and Literary or Artistic Names

Authorship of works

Article 27. (1) Unless otherwise provided, the intellectual creator of the works shall be the author.

(2) The author shall be deemed to be the person whose name is indicated in the work as being such, in conformity with customary usage, or who is in any way declared or communicated to the public as the author.

(3) Unless otherwise provided, reference to the author shall extend to his successor and to the transferee of the relevant rights.

Identification of the author

Article 28. The author may indicate his authorship either by using his own name in full or in part, his initials, a pseudonym, or any other conventional symbol.

Protection of names

Article 29. (1) The use of a literary, artistic or scientific name liable to be confused with another name previously used in a disclosed or published work, even where it is of a different nature, or the use of the name of a person who is well–known in the history of literature, the arts or science, shall not be permitted.

(2) Where the author is a relative of another person previously known by the same name, he may make a distinction by adding another name showing the relationship.

(3) No person may use the name of another author on his own work, even with his consent.

(4) The injured party in cases of unlawful use of a name contrary to the provisions of the preceding paragraphs may request that satisfactory legal measures be taken so as to avoid confusion among the public as to the identity of the author, including cessation of use of the name.

Works by anonymous authors

Article 30. (1) Any person who discloses or publishes a work with the consent of the author using a name which does not reveal the author's identity or anonymously shall be deemed to be the author's representative and shall be responsible for defending the relevant rights against third parties, unless the author has specified otherwise.

(2) The author may at any time reveal his identity and authorship of his work and thereafter the powers of representation referred to in the preceding paragraph shall cease.

CHAPTER IV

Duration

General rules

Article 31. In the absence of any special provision, copyright shall lapse 50 years after the death of the creator of the work, even in the case of works disclosed or published posthumously.

Works of joint authorship and collective works

Article 32. (1) Copyright in works of joint authorship as a whole shall lapse 50 years after the death of the last surviving author.

(2) Unless otherwise provided, copyright in collective works or in works originally attributed to a collective entity shall lapse 50 years after the first disclosure or publication.

(3) With regard to individual contribution that can be distinguished, the duration of copyright attributed to each author in works of joint authorship or in collective works shall be in conformity with the provisions of Article 31.

Anonymous works and works deemed to be anonymous

Article 33. (1) The duration of protection of anonymous works or works lawfully disclosed or published without any author being indicated shall be 50 years following disclosure or publication.

(2) Where the use of a name that is not the author's own leaves no doubt as to the author's identity or if his identity is revealed within the pe-

riod referred to in the preceding paragraph, the duration of protection shall be that granted to works disclosed or published in the author's own name.

Photographic works, works deemed to be photographic works and works of applied art

Article 34. (1) Copyright in photographic works or in works obtained by a process analogous to photography, as well as works of applied art, shall lapse 25 years after the work has been carried out.

(2) Where the work has not been made available to the public with the author's consent, the copyright referred to in the preceding paragraph shall also lapse 25 years after the work has been carried out.

Cinematographic works

Article 35. (1) Copyright in cinematographic works or in works obtained by a process analogous to cinematography shall lapse 50 years after the work has been disclosed.

(2) Where the work has not been disclosed, copyright shall also lapse 50 years after the work has been carried out.

Protection of parts or volumes of works

Article 36. (1) Where the various parts or volumes of a work have not been published simultaneously, the legal period of protection referred to in Articles 31 and 32 shall apply to each part or volume.

(2) The same principle shall also apply to issues and numbers of collective works published periodically such as newspapers and magazines.

Calculation of the date of lapsing

Article 37. The dates of lapsing referred to in the preceding Articles shall only be calculated from the first day of the year following that in which the period of protection ended.

Protection of foreign works

Article 38. The duration of protection granted to works originating in foreign countries shall be that laid down in the above provisions, provided that it does not exceed the duration granted by the legislation in the country of origin.

Falling into the public domain

Article 39. A work shall fall into the public domain upon expiry of the periods of protection of copyright referred to in Articles 31 *et seq.* of the present Code.

CHAPTER V

Transfer and Assignment of the Economic Content of Copyright

Availability of economic powers

Article 40. The original owner of the copyright, as well as his successors or transferees, may:

(a) authorize use of the work by a third party;

(b) transfer or assign all or part of the economic content of the work's copyright.

Authorization regime

Article 41. (1) Simple authorization granted to a third party to disclose, publish, use or exploit a work in any way shall not imply transfer of copyright in the work.

(2) The authorization referred to in the previous paragraph shall only be granted in writing and shall be considered nonexclusive and subject to payment.

(3) The written authorization must show specifically the authorized form of disclosure, publication and use, as well as the relevant conditions governing duration, place and remuneration.

Limitations of transfer and assignment

Article 42. Powers granted for the guardianship of moral rights and other rights excluded by the law may not be the subject of either voluntary or compulsory transfer or assignment.

Partial transfer or assignment

Article 43. (1) The sole object of partial transfer or assignment shall be the forms of use designated in the relevant agreement.

(2) Under penalty of nullity, contracts whose object is the partial transfer or assignment of copyright shall consist of a written document bearing signatures witnessed by a notary.

(3) The transfer deed shall show the rights that are the subject of the provisions and conditions for their exercise, namely, the duration and place of exercise and, where payment is involved, the amount of the remuneration.

(4) Where the transfer or assignment is temporary and no duration has been laid down, it shall be considered that the maximum duration shall be 25 years in general and 10 years in the case of works of photography or applied art.

(5) The exclusive right granted may lapse after a period of seven years if the work has not been used.

Total transfer

Article 44. Under penalty of nullity, the total and permanent transfer of the economic content of copyright may only be effected by public deed identifying the work and indicating the relevant remuneration.

Usufruct

Article 45. (1) Copyright may be the subject of legal or voluntary usufruct.

(2) Unless otherwise specified, the usufructuary may only use the work subject of usufruct for any purpose involving its transformation or modification with the authorization of the owner of the copyright.

Copyright as security

Article 46. (1) The economic content of copyright may be offered as security.

(2) Any sale shall only apply to the right or rights which the debtor has pledged as security in respect of the work or works indicated.

(3) The creditor shall not acquire any rights in the work's material carriers.

Seizure and attachment

Article 47. An author's economic rights in all or some of his works may be the subject of seizure or attachment; their action shall take place in accordance with the provisions of Article 46 regarding sale of security.

Advance payment of copyright

Article 48. (1) Transfer or assignment of copyright in future works may only apply to works to be produced by the author within a maximum period of 10 years.

(2) Where a contract concerns works produced over a longer period, its effects shall be limited to the period mentioned in the preceding paragraph and the remuneration provided for shall be reduced accordingly.

(3) Any contract providing for transfer or assignment of future works without any time limit shall be null and void.

Additional compensation

Article 49. (1) Where the intellectual creator or his successors in title, having transferred or assigned their right to exploit their work financially, suffer grave economic prejudice as a result of evident disproportion between their revenue and the profits earned by the beneficiary of the rights, they may claim additional compensation to be reflected in the results of the exploitation.

(2) In the absence of agreement, the additional compensation referred to in the preceding paragraph shall be fixed taking into account the normal results of exploitation of all the author's similar works.

(3) Where the payment for transfer or assignment of copyright is fixed in the form of participation in the income derived by the beneficiary from exploitation, the right to additional compensation shall only apply where the percentage established is evidently lower than that customarily paid in transactions of the same nature.

(4) The right to compensation shall lapse if it is not exercised within a period of two years from the date of becoming aware of the grave economic prejudice suffered.

Seizure and attachment of unpublished and incomplete works

Article 50. (1) Unpublished manuscripts, sketches, drawings, paintings or sculptures, whether signed or not, shall be exempt from seizure and attachment when they are unfinished unless the author offers them or consents thereto.

(2) Where the author, by his direct acts, shows his intention to disclose or publish the works referred to above, the creditor may obtain seizure and attachment of the corresponding copyright.

Copyright in an unclaimed estate

Article 51. (1) Where copyright forms part of an estate declared by the State to be unclaimed, it shall be exempt from liquidation, although the regime established under paragraph 3 of Article 1133 of the Code of Civil Procedure shall remain applicable.

(2) Where the State has not used or authorized use of the work at the expiry of a period of 10 years following the date upon which the estate was declared unclaimed, the work shall fall into the public domain.

(3) Where the succession of one of the authors of a work of joint authorship has devolved upon the State, copyright in the work as a whole shall then belong to the remaining authors.

Re-edition of works out of print

Article 52. (1) Where the owner of the right to re-edit refuses to use his right or to authorize

another edition after the work has become out of print, any interested party, including tbe State, may seek legal authorization to re–edit the work.

(2) The legal authorization shall be granted provided that re–edition of the work is in the public interest and that the refusal was not based on justified moral or material reasons, excluding financial reasons.

(3) The owner of the right to publish shall not be deprived of his right to undertake or authorize future editions.

(4) The provisions of the present Article, amended accordingly, shall apply to all forms of reproduction if the transferee of rights in a work already disclosed or publisbed does not satisfy the reasonable requirements of the public.

Procedure

Article 53. (1) The legal authorization shall be in conformity with procedure for the withdrawal of consent and shall indicate the number of copies to be published.

(2) Appeals against the decision may be lodged with the Court of Appeal, which will give final judgment, and they shall have suspensive effect.

Surviving rights

Article 54. (1) An author who has transferred an original work of art that is neither a work of architecture nor applied art, his own manuscript or copyright in his own work, shall have the right to participation of six percent in the remuneration for each subsequent transaction.

(2) Where two or more transactions take place within a period of less than two months or within a longer period in such a way that it is considered that the author is intentionally being deprived of his right to participation, the increase in the remuneration referred to in the preceding paragrapb sball be calculated according to the last transaction only.

(3) Tbe right referred to in paragraph (1) above shall be perpetual, inalienable and imprescriptible.

(4) The cost of transactions for the purposes of attributing the right of participation and the fixing of its amount shall be limited to verified expenditure on advertising, representation and other similar actions involved in promoting and selling works and the corresponding inflation indexes.

Prescription

Article 55. Copyright may not be acquired by prescription.

CHAPTER VI

Moral Rights

Definitions

Article 56. (1) Independently of his economic rights, and even if they have been transferred or assigned, during his lifetime the author shall enjoy the right to claim authorsbip of his work and to ensure its authenticity and integrality by opposing any mutilation, distortion or other modification thereof and, in general, opposing any act that might be prejudicial to his honor and reputation.

(2) This right shall be perpetual, inalienable and imprescriptible and shall continue after the death of the author in accordance with the provisions of the following Article.

Exercise

Article 57. (1) Upon the death of the author, provided that the work does not fall within the public domain, the exercise of these rights shall belong to his successors.

(2) The State shall be responsible for the defense of the authenticity and integrality of works within the public domain and this right shall be exercised by the Ministry of Culture.

(3) Following the death of the author, the Ministry of Culture shall be responsible for taking adequate measures to ensure the defense of works not falling within the public domain but whose authenticity or cultural standing has been diminished, after the owners of the copyright have been notified thereof and have failed to exercise theirs rights without any reasonable motive.

Reproduction of ne varietur *works*

Article 58. Where the author has partially or wholly revised his work and has effected or authorized the disclosure *ne varietur*, his successors or third parties may not reproduce any of the previous versions.

Modification of works

Article 59. (1) Modifications of works without the author's consent shall not be permitted, even where use of the work without such consent is lawful.

(2) In the case of anthologies to be used for educational purposes, the necessary modifications may be made provided that the author does not object to them according to the provisions of the following paragraph.

(3) The author's consent shall be requested by registered letter with acknowledgment of receipt and the author shall have one month from the date of registration to make his position known.

Modifications of architectural projects

Article 60. (1) The author of an architectural project shall have the right to supervise the construction in all its stages and details, so as to ensure the conformity of the work and the project.

(2) Where a work is executed according to a project, the proprietor of the work may not, either during or after building, introduce any alterations without previously consulting the project's author, under penalty of compensation for damages.

(3) In the absence of agreement, the author may repudiate authorship of the modified work, and the proprietor shall not thereafter be permitted to use the name of the author of the original project for his personal profit.

Moral rights in cases of attachment

Article 61. (1) Where the purchaser of copyright in an attached and published work decides to publish it, the right to revise the proofs, to correct the work and, in general, the moral rights, shall not be affected.

(2) In the case mentioned in the preceding paragraph, where the author retains the proofs without justification for a period exceeding 60 days, the printer may proceed without the revision.

Right of withdrawal

Article 62. The author of a disclosed or published work may at any time withdraw it from circulation and may terminate its use in any form, provided that he has justifiable moral reasons, but he shall compensate the interested parties for the prejudice caused.

CHAPTER VII

International Regime

Competence of Portuguese jurisdiction

Article 63. Portuguese jurisdiction shall have exclusive competence for determining the protection to be granted to works, without prejudice to ratified or approved international conventions.

Protection of foreign works

Article 64. Works by foreign authors or having a foreign country as their country of origin shall enjoy the protection granted by Portuguese law, subject to reciprocity, and with the exception of any international convention to the contrary to which the Portuguese State may be bound.

Country of origin of published works

Article 65. (1) Published works shall have the original country of publication as their country of origin.

(2) Where a work is published simultaneously in several countries that grant different periods of copyright protection, in the absence of any applicable international treaty or agreement, the country of origin shall be deemed to be that granting the minimum duration of protection.

(3) A work published in two or more countries within a period of 30 days from the first date of publication inclusive shall be deemed to have been published simultaneously in several countries.

Country of origin of unpublished works

Article 66. (1) The country of origin of unpublished works shall be deemed to be the country of origin of the author.

(2) Nevertheless, in the case of works of architecture, the country of origin shall be deemed to be that in which the said works are built or incorporated in the building.

TITLE II

Use of Works

CHAPTER I

General Provisions

SECTION I

Procedure Regarding Use

Enjoyment and use

Article 67. (1) An author shall have the exclusive right to enjoy and use his work, either in whole or in part, including, in particular, the right to disclose, publish and exploit it economically in any direct or indirect form within the limitations of the law.

(2) From the economic point of view, the guarantee of the pecuniary benefits resulting from such exploitation shall constitute the basic objective of legal protection.

Forms of use

Article 68. (1) Exploitation and, in general, use of the work, can be implemented, according to its type and nature, in any form whether currently known or not.

(2) The author shall, *inter alia,* bave the exclusive right to carry out or to authorize the following, either by himself or by his representatives:

(a) publication, either by printing or by any other method of graphic reproduction;
(b) performance, recitation, execution, exhibition or display to the public;
(c) cinematographic reproduction, adaptation, performance, execution, distribution and projection;
(d) fixing or adapting any apparatus used for mechanical, electric, electronic or chemical reproduction and public performance, transmission or retransmission by such means;
(e) diffusion by photography, telephotography, television, radio or by any other process for reproducing signals, sounds or images, as well as public communication by loudspeaker or analogous instruments, whether by wire or not, in particular, by bertzian waves, optical fiber, cable or satellite, when sucb communication is carried out by an organization other than the original one;
(f) direct or indirect appropriation in any form such as the sale or rental of copies of the work reproduced;
(g) translation, adaptation, arrangement, instrumentation or any other transformation of the work;
(h) use in another work;
(i) total or partial reproduction by any means;
(j) construction of an architectural work according to a plan, whetber or not it is a repetition.

(3) The owner of the copyright sball have the exclusive right to decide freely upon the procedures and conditions of the work's use and exploitation.

(4) The various forms of the work's use shall be independent one from another and adoption of one of them by the author or the person entitled shall not prejudice the adoption of the remaining forms by the author or by third parties.

Authors in a state of incapacity

Article 69. An intellectual creator in a state of incapacity may exercise his moral rights provided that he is naturally able to do so.

Posthumous works

Article 70. (1) An author's successors shall have the right to decide upon the use of undisclosed and unpublished works.

(2) Successors who disclose or publish a posthumous work shall have the same rights in respect of the work as would have been enjoyed if the author had disclosed or published the work during his lifetime.

(3) Except in the case of impossibility or delay in disclosure or publication for serious moral considerations that shall be decided upon by the courts, where the successors do not use the work within a period of 25 years from the date of the author's death, they may not oppose the disclosure or publication of the work, without prejudice to the rights provided for in the preceding paragraph.

Legal right of translation

Article 71. The legal right to use a work without the author's prior consent also implies the right to translate or transform the work in any way necessary for its use.

SECTION II

Administration of Copyright

Administrative powers

Article 72. Powers related to the administration of copyright may be exercised by the owner of the copyright himself or through his duly authorized representative.

Authors' agents

Article 73. National or foreign associations and organizations established for the administration of copyright shall carry out this function as agents of the respective copyright owners, either because the author is a member thereof or is registered as a beneficiary of their services.

Register of agents

Article 74. (1) Exercise of the mandate referred to in the preceding Article, whether specifically granted or derived from the status mentioned therein, shall be subject to registration with the Directorate-General of Entertainment and Copyright of the Ministry of Culture.

(2) Registration shall be subject to application by the agent, accompanied by a document proving his mandate, and if the document is written in a foreign language a translation may be required.

(3) The fees payable for the registration referred to in this Article and for the corresponding certificates shall be those contained in the table annexed to this Code of which it is an integral part.

CHAPTER II

Unrestricted Use

Scope

Article 75. The following uses of a work without the consent of the author shall be lawful:

(a) reproduction by social communication channels for information purposes of speeches, statements and lectures given in public that do not come within the categories provided for in Article 7, either as excerpts or in the form of summaries;

(b) regular selections of press articles in the form of press reviews;

(c) fixing, reproduction and public communication by any means of short excerpts from literary or artistic works when their use in news stories is justified for information purposes;

(d) partial or total reproduction by photography or by an analogous process of a work that has previously been made available to the public, provided that such reproduction is carried out by a public library, a noncommercial documentation center or a scientific institution, and that such reproduction and the corresponding number of copies are not for public use and are limited to the requirements of such institutions' activities;

(e) partial reproduction by the processes mentioned in the preceding subparagraph by educational establishments, provided that such reproduction and the corresponding number of copies are used exclusively for educational purposes in such establishments;

(f) inclusion of quotations or summaries from another author's work, whatever their type or nature, in support of one's own opinions or for purposes of criticism, discussion or teaching;

(g) inclusion of short excerpts or parts of another author's work in works used for teaching;

(h) performance of national anthems or officially adopted patriotic songs, as well as works of a religious character, during religious rites or services;

(i) reproduction of news articles and economic, political or religious articles, provided that rights have not been specifically reserved.

Conditions

Article 76. (1) The unrestricted use referred to in the preceding Article shall be subject to the following conditions:

(a) where possible, indication of the author's name, the work's title and other identifying features;

(b) in respect of subparagraph *(d)* of the preceding Article, equitable remuneration to be paid to the author by the organization carrying out the reproduction;

(c) in respect of subparagraph *(g)* of the preceding Article, equitable remuneration to be paid to the author.

(2) In respect of subparagraphs *(a)*, *(e)*, *(f)* and *(g)* of the preceding Article, the works reproduced or quoted shall not be liable to confusion with the works in which they are being used and the reproduction or quotation shall not be so extensive that they prejudice interest in such works.

(3) The author alone has the right to assemble the works mentioned in subparagraph *(a)* of the preceding Article in a volume.

Comments, annotations and discussions

Article 77. (1) Reproduction of another author's work without his permission under the pretext of commenting on or annotating it shall not be permitted. Comments or annotations may be published separately with references to chapters, paragraphs or pages in the other author's work.

(2) An author who reproduces his articles, letters or arguments published in newspapers or periodicals, may also reproduce the replies by the adverse party or parties; the latter may grant the same right, even after publication by the other party.

Publication of unprotected works

Article 78. (1) Any person who publishes manuscripts existing in public or private libraries or archives may not oppose their subsequent publication by another party, unless such publication is no more than a reproduction of the previous one.

(2) Any person who has carried out fixing, establishment or re-establishment of a text liable to alter considerably the given tradition may also oppose the reproduction of their disclosed interpretation of an unprotected work.

Lectures

Article 79. (1) Lectures by professors may only be reproduced by third parties with the consent of the authors, even if they are presented under the personal responsibility of the person publishing them.

(2) Unless otherwise specified, publication shall be deemed to be for the use of students.

Works in Braille

Article 80. Reproduction or other forms of use employing Braille or another system for blind persons of lawfully published works shall be permitted, provided that such reproduction or use is not for profit-making purposes.

Other uses

Article 81. The following reproduction shall also be permitted:

(a) one copy, for purposes of exclusively scientific or humanitarian interest, of works not commercially available or impossible to obtain, for the period necessary for their use;

(b) for exclusively private use, provided that it does not harm normal exploitation of the work nor cause unjustified prejudice to the author's legitimate interests, and that the reproduction is not used for any purposes of public communication or commercialization.

Compensation for fixing and reproduction

Article 82. (1) The sale price of any mechanical, chemical, electric, electronic or other apparatus used to fix and reproduce works, as well as any material carriers for fixing and reproduction obtained by any such method, shall include a sum to be used to promote cultural activities and to compensate authors, artists and national phonographic and videographic producers.

(2) The amount of the sum referred to in the preceding paragraph, its collection and distribution shall be defined by legislative decree.

(3) The provisions of paragraph (1) above shall not apply to such apparatus and carriers when they have been acquired by audiovisual communication organizations or phonogram or videogram producers exclusively for use in their own productions or by organizations which use them exclusively as aids for the visually or aurally handicapped.

CHAPTER III

Special Uses

SECTION I

Publishing

Publishing contracts

Article 83. A publishing contract shall mean a contract by which an author grants a third party, subject to the conditions stipulated in the contract or provided for in the legislation, an authorization to produce on his own behalf a specified number of copies of a work or series of works, the third party being responsible for the distribution and sale of the work or works.

Other contracts

Article 84. (1) Agreements by which the author gives the following responsibilities to a third party shall not be considered publishing contracts:

(a) production by the third party of a specified number of copies of a work and its stocking, distribution and sale, the parties having agreed between them to divide the profits or losses of the corresponding exploitation;

(b) production by the third party of a specified number of copies of a work and its stocking, distribution and sale, on behalf of the owner of the right and at his risk, against payment of a fixed or proportional sum;

(c) the stocking, distribution and sale of copies of the work against payment of a commission or any other form of remuneration.

(2) Contracts corresponding to the situations mentioned in the preceding subparagraphs shall be regulated by the conditions stipulated therein, and subsidiarily by the legal provisions governing participatory associations in respect of subparagraph *(a)* and by those governing contracts on the provision of services in respect of subparagraphs *(b)* and *(c)*, and additionally by customary usage.

Object

Article 85. Publishing contracts may have as their object one or more existing or future, published or unpublished works.

Contents

Article 86. (1) Publishing contracts shall mention the number of editions concerned, the number of copies for each edition and each copy's sale price to the public.

(2) Where the number of editions is not contractually stipulated, the publisher shall only be authorized to produce one edition.

(3) Where the publishing contract omits to specify the number of copies to be printed, the publisher shall be obliged to produce a minimum of 2,000 copies of the work.

(4) Where the publisher produces a smaller number of copies than that agreed upon, he may be required to make good the number; if he fails to do so, the owner of the copyright may agree with a

third party to produce the number of copies missing, at the publisber's expense, without prejudice to his right to be compensated for damages.

(5) Where the publisher produces a larger number of copies than that agreed upon, the owner of the copyright may seek legal attachment of the additional copies and take possession of them, the publisher forfeiting the cost of·sucb copies.

(6) Where the publisher has already sold either all or some of the additional copies or where the owner of the copyright has not sought legal attacbment, the publisher shall compensate the author for damages.

(7) The author shall have the right to verify himself or through his representative the number of copies published. For this purpose, under the legal provisions, he may require auditing of the accounts of the publisher or the enterprise producing the copies when the latter does not belong to the publisher; he may also use other means that do not interfere with production of the work, such as putting his signature or seal on each copy.

Form

Article 87. (1) Publishing contracts shall only be valid if they are drawn up in writing.

(2) Nullity resulting from failure to draw up the contract in writing shall be attributable to the publisher and may only be invoked by the author.

Effects

Article 88. (1) Publishing contracts shall not imply the permanent or temporary transfer to the publisher of the right to publish the work, but shall solely imply the granting of permission to reproduce and commercialize the work in accordance with the specific terms of the contract.

(2) Authorization to publisb the work shall not give the publisher the right to translate, transform or adapt the work to other types and forms of use, this right remaining the prerogative of the author.

(3) With the exception of tbe provisions contained in paragraph (1) of Article 103 and any provisions to the contrary, publisbing contracts shall prevent the author from undertaking or authorizing new editions of the same work in the same language, either in Portugal or abroad, until the previous edition is exhausted or the period laid down has terminated, unless circumstances arise that prejudice the interest of the edition and make the work's revision or updating necessary.

Obligations of the author

Article 89. (1) The author shall furnish the publisher with the means necessary to fulfill the contract, in particular, by handing over within the agreed period the original version of the work to be published in a way that enables the publisher to reproduce it.

(2) The original version referred to in the preceding paragrapb shall be the property of the author and he shall have the right to require its return after publication.

(3) Where the author unjustifiably delays handing over the original version so that the expectations of the publisher are jeopardized, the latter may cancel the contract, without prejudice to any claim for compensation for damages.

(4) The author shall guarantee to the publisher the exercise of rights deriving from the publishing contract against opposition and disputes arising from the rights of third parties in the work to which the contract refers, but not against opposition and disputes simply engendered by third parties.

Obligations of the publisher

Article 90. (1) The publisher shall publish the work witb all due care so that reproduction can be carried out in accordance with the conditions agreed upon. He shall also assiduously and diligently further the promotion and sale of the copies produced; in the event of non–fulfillment of these obligations, the author shall be compensated for damages.

(2) Unless otherwise agreed, the publisber shall commence reproduction of the work within a period of four months from the date of transmission of the original version and shall terminate it within a period of nine months from the same date, except in duly proved cases of *force majeure*, when it sball be terminated within six months following expiry of this period.

(3) Lack of financial resources to pay publication costs and an increase in the latter shall not be deemed cases of *force majeure.*

(4) Where the work deals with a subject of important topical interest or is such that any delay in publication would detract from its interest or timeliness, the editor shall be obliged to commence reproduction immediately and to terminate it within a period liable to avoid prejudice caused by such a delay.

Payment

Article 91. (1) Publishing contracts shall be subject to payment.

(2) The author's remuneration shall be that laid down in the publishing contract and it may consist either of a fixed lump sum to be paid for the edition

as a whole, a percentage of the price of each copy, the attribution of a certain number of copies, or payment on some other basis, according to the nature of the work, and a combination of such forms may be used.

(3) In the absence of any stipulation regarding the author's remuneration, the latter sball bave the right to one–third of the sales price of each copy sold.

(4) Where remuneration consists of a percentage of the price of each copy, increases and reductions in this price sball affect its calculation.

(5) With the exception of the cases provided for in Article 99, the publisher shall only determine reductions in the price with the author's agreement, unless the latter's remuneration corresponds to the previous price.

Liability for payment

Article 92. The publishing price shall be liable for payment after termination of publication within the period and under the conditions laid down in Article 90, unless the form of remuneration adopted makes payment dependent upon subsequent circumstances, in particular, the total or partial disposal of the copies produced.

Modernization of spelling

Article 93. Except for the author's option regarding tbe aesthetic nature of the spelling, modernization of spelling in accordance with the official rules in force shall not be deemed to be modification of the work.

Proofs

Article 94. (1) The publisher shall provide the author with a set of galley proofs, a set of page proofs and the draft design of tbe cover. The author shall correct the composition of these pages and shall give his opinion regarding the cover; under normal conditions, he shall then return the proofs within a period of 20 days and the draft design within a period of five days.

(2) Where the publisher or author delays furnishing or returning the proofs, they may notify the other party by registered letter with acknowledgment of receipt, so that the publisher may furnish, or the author return, the proofs within a further, unextendable period.

(3) The notification referred to in the preceding paragraph shall be the condition for claiming damages for delay in publication.

(4) The author shall have the right to make typographical corrections in the galley proofs or the page proofs and the costs thereof shall be borne by the publisher.

(5) Unless otherwise agreed, the cost of corrections, amendments or additions to the text that are not justified by new circumstances shall be borne entirely by the publisher provided that they do not exceed five percent of the cost of printing; costs in excess of this percentage shall be borne by the author.

Amendments

Article 95. (1) Without prejudice to the foregoing provisions, after the death of the author, publishers of dictionaries, encyclopaedias or educational works may update or complete such works by means of notes, addenda, footnotes or small alterations in the text.

(2) The updating and alterations provided for in the preceding paragraph shall be duly indicated provided that the corresponding texts had been signed or contained teaching material.

Furnishing of accounts

Article 96. (1) Where the remuneration due to the author depends on the results of sales or payment is dependent upon the development of sales, the publisher shall furnish the author with accounts within the agreed period or, if the period has not been agreed upon, every six months following the date of the work's publication.

(2) In order to carry out the provisions laid down in the preceding paragraph, the publisher shall transmit to the author by registered letter within 10 days following expiry of tbe period, a statement of the situation regarding sales and returns during the period in question, together with payment of the corresponding remuneration.

(3) The publisher shall provide the author or his representative with the parts of his accounts necessary for correct verification of the statement referred to in the preceding paragraph.

Indication of the author

Article 97. On each copy of the work, the publisher shall mention the name or pseudonym of the author or another designation identifying him.

Printing

Article 98. (1) The work may not be printed without the author's consent.

(2) Return of the page proofs and the draft design for the cover, when they are not accompanied by any declaration to the contrary, imply authorization for printing.

Sale of copies at reduced prices or by weight

Article 99. (1) Where the work has not been disposed of for the price agreed and within the agreed period or, in the absence of any agreement, eight years after the date of publication, the publisher shall have the possibility of selling the copies remaining at a reduced price or by weight or of destroying them.

(2) The publisher shall notify the author so that he may exercise his right of priority to acquire the remaining copies at a price fixed on the basis of the profits from sale at a reduced price or by weight.

Transfer of publishing rights

Article 100. (1) Without the author's consent, the publisher may not transfer his rights under the publishing contract to third parties, either gratuitously or against payment, unless the transfer is the result of the dissolution of his establishment.

(2) Where such dissolution causes or leads to moral prejudice for the other contracting party, the latter shall have the right to cancel the contract within a period of six months from the date of being informed of such dissolution, the publisher having the right to claim compensation for damages.

(3) The inclusion of rights deriving from the publishing contract in the publisher's participation in any commercial company shall be deemed to be transfer of such rights within the meaning of this Article and shall therefore be subject to the author's consent.

(4) Granting of the rights deriving from the publishing contract to any of the partners in the publishing company as a result of its judicial or extra-judicial liquidation shall not be deemed to be transfer of such rights.

Death or incapacity of the author

Article 101. (1) Where the author dies or is unable to complete his work after having handed over a substantial part thereof, his successors may cancel the contract, compensating the publisher for damages. However, if they do not do so within a period of three months, the publisher may cancel the contract or consider it fulfilled in respect of the part handed over, subject to payment of the corresponding remuneration to the successor or representative.

(2) Where the author has expressed the desire that the work should not be published incomplete, the contract shall be cancelled and no other party may under any circumstances publish the work, however, the publisher shall be reimbursed for any copyright fees he may have paid.

(3) An incomplete work may only be completed by a person who is not the author with the latter's written consent.

(4) Without prejudice to the consent referred to in the preceding paragraph, the completed work may only be published if a clear distinction is made between the original part and the addition, together with an indication of the latter's authorship.

Bankruptcy of the publisher

Article 102. (1) Where realization of assets during the publisher's bankruptcy proceedings involves the sale at a low price of all or substantial amounts of copies of the published work stocked by the publisher, the bankruptcy administrator shall inform the author not less than 20 days previously so that he may take the steps he deems necessary to defend his material and moral interests.

(2) The author shall have priority to purchase the works auctioned at the highest price reached.

Complete works

Article 103. (1) An author who has concluded contracts with one or more publishers for the separate publication of each of his works retains the right to conclude a contract for the publication of a complete edition of his works.

(2) Unless otherwise agreed, a contract for the complete edition shall not authorize the publisher to publish works contained therein separately and shall not affect the author's right to conclude contracts for the separate publication of any of them.

(3) An author who exercises any of the rights referred to in the preceding paragraphs shall do so in such a way that the benefits guaranteed to the publisher in the earlier contract are not affected by the subsequent contract.

Future works

Article 104. (1) The provisions laid down in Article 48 shall apply to publishing contracts in respect of future works.

(2) Where publication of a future work has been agreed without the contract specifying the time limit for handing the work over to the publisher, the latter shall have the right to request the judicial authorities to fix the time limit for this purpose.

(3) Subject to valid reasons, the time limit fixed in the contract may be legally extended at the author's request.

(4) Where the work specified in the contract is to be written as it is published in volumes or instalments, the contract shall specify approximately the

number and length of the volumes or instalments; with regard to the length, a margin of 10 percent shall be allowed, unless otherwise agreed.

(5) Where the author exceeds the limits mentioned without the prior consent of the publisher, he shall not have any right to additional payment and the publisher may refuse to publish the additional volumes, instalments or pages. The author shall however retain the right to cancel the contract, compensating the publisher for the expenditure incurred and the anticipated profits. Where the work has already been sold in part, the results obtained shall form the basis for calculating compensation.

Re-editions and successive editions

Article 105. (1) Where the publisher has been authorized to publish several editions, in case of doubt, the conditions laid down for the original edition shall apply to subsequent editions.

(2) Before publishing a new edition, the publisher shall give the author the possibility of amending the text by making small corrections or changes that do not imply substantial amendment of the work.

(3) Even where the price has been fixed globally, the author shall nevertheless have the right to additional remuneration where, with the publisher's agreement, he has substantially modified the work by revising or enlarging it.

(4) Under penalty of being liable for damages, a publisher who undertakes to publish successive editions of a work shall publish them uninterruptedly so that copies are always available on the market.

(5) Cases of *force majeure* may constitute an exception to the provisions laid down in the preceding paragraph. However, lack of financial resources to cover the cost of the new publication or increases in such costs shall not constitute cases of *force majeure.*

Cancellation of contracts

Article 106. (1) Publishing contracts may be cancelled:

(a) where a prohibition has been imposed on the publisher;

(b) where, at the death of the individual publisher, his establishment does not continue with one or several of his successors;

(c) where the author does not hand over the original version of his work within the time limit agreed or where the publisher does not terminate publication within the time limit laid down in paragraph (2) of Article 90, unless there is a duly proved case of *force majeure*;

(d) in all other cases specifically provided for and, in general, where it is proved that any of the contractual clauses or the direct or supplementary legal provisions applicable have not been fulfilled.

(2) Cancellation of contract shall be without prejudice to liability for damages on the part of the person responsible.

(To be continued)

The Hundredth Birthday of the Berne Convention: the Evolution of the Law in the Copyright Field Resulting from Interaction Between the Convention and National Legislation

Valerio DE SANCTIS* and Mario FABIANI**

1. The mutually supporting federatioo of peoples for the defense of the universal heritage of literary and artistic works is one of the characteristics of modern civilizatioo. The Congresses of the mighiy, who in former times mei only io discuss problems of war, now have more exalted and more humane inteotions; in the city of Berne, which awarded the prize for the besi work to *Des délits et des peines*, there has taken place, a ceotury later, a gathering of the represeotatives of the priocipal States of Europe and also of America for the purpose of laying the foundations of a Union io joio them iogether with the aim of securing protection for the rights of authors by means of uniform and reciprocal provisions.

Thus spoke the Italian lawyer Enrico Rosmini, just a century ago, after the conclusion of the Diplomatic Conference that adopted the Convention "for the creation of an International Union for the Protection of Literary and Artistic Works," in other words the Berne Convention, which for Italy entered into force on December 5, 1887.

Apart from a certain naïveté regarding the supposedly firm intention of the mighty no longer to discuss questions of war, a hope which the history of the hundred years just past has unfortunately dashed (Rosmini's naïveté is comparable to that of his contemporary Victor Hugo: "The literary race will take the lead, and the peoples of the world will follow. Universal peace will grow out of this immeasurable brotherhood!"), it does have to be recognized that the foundations of the Union that were laid a hundred years ago have made it possible to build the copyright edifice well, both in international terms and in terms of national legislation. This Union structure has stood up very well in spite of the events that have so frequently transformed the lives of peoples and nations.

The Convention passed unscathed through the two wars of 1914–1918 and 1939–1945. Most of the States, including Italy, accepted the idea that the Berne Union could not be dissolved on account of the state of hostility existing between member States, an idea attributable to the international, indeed supranational quality of copyright.

The interaction of the Berne Convention and national copyright legislation has manifested itself on several occasions throughout the decades of the life of the Convention and its revisions. Likewise the preparatory work on the revision of the Convention texts has very often influenced the amendment of domestic law.

2. The entry into force of the original 1886 text of the Berne Convention induced the various countries that had ratified it to start consultations on the revision of the provisions of their national copyright laws. Above all, however, it was after the Berlin Diplomatic Conference of 1908 that national revision moves developed in a manner conducive to the promulgation of new laws on copyright. That is due to the fact that the Berlin revision gave a systematic structure and a more uniform set of provisions to the whole of the subject matter of the Convention.

The structure of the Berlin Act concerned, among other things, the general principle of assimilation, the categories of works protected by virtue of the Convention itself, the country of origin of the work and the eligibility criteria that served to determine the scope of the Convention, the concept of first publication and simultaneous publication, and the absence of formalities to bring the right into being. The purpose of this structure was to facilitate, in the future, the smooth development of the protection of literary and artistic property, both at the international level and at the level of the domestic laws of Union countries.

Certain provisions of the Convention, according to the Berlin Act, afforded minimum rights which were sometimes accompanied by possible "reservations" (for instance the right of translation and the right of mechanical recording of musical works), whereas other provisions were drafted as matters of "principle." Consequently, while they did not bind the contracting States, they did however lay down precise rules and indications for national legislation. This was true, for instance, of the term of protection of 50 years after the author's death, whicb was acknowledged under the Union system as a model

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term and applied by the majority of the contracting countries.

3. In Italy, the preparatory work on the revision of the Copyright Law of 1865–1882 (this Law was the first on the subject after the national unification of the country) began in 1897, just after the 1896 Paris Additional Act. A Ministerial Commission on the incorporation in the Law in force of such amendments as were necessary for its adaptation to the rules of the Berne Convention was set up by decree on June 27, 1897. However, the work of this Commission and of the other Commissions that followed it, set up by decrees of 1901, 1902 and 1909, did not produce any definite result. Finally, a Commission appointed by decree on April 17, 1917, drew up a preliminary draft Law on Copyright. The new Law (No. 1950) was not approved until November 7, 1925. Italy thus aligned itself on the principles of the Berne Convention, which was essential for the country that had been designated to receive in its capital, Rome, the 1928 Diplomatic Conference of Revision.

The legislative innovations made by the 1925 Law were the following: (1) Abolition, in accordance with the Convention, of any formality for the constitution of copyright; copyright therefore vested in the author by virtue of the sole act of creation of the work. (2) Uniform term of protection of copyright on the basis of the principle laid down by the Berne Convention (50 years after the author's death). (3) Right of translation of the work as a manifestation of the copyright in the original work, by virtue of the principle stated in the Berlin Act; the exercise of this right was nevertheless subject to a 10–year delay, a condition that was not to be removed until 1931, in the Law No. 774 of June 12, 1931, ratifying the Rome Act of the Convention. (4) Moral rights of the author: in recognizing this right, Italian law anticipated the Berne Convention, which did not sanction the protection of moral rights until the 1928 Rome Act.

The credit goes to the Rome Conference for having introduced, in addition to the protection of the author's moral rights, other international undertakings. It adopted the Convention text on the exclusive right of broadcasting, limited by the faculty given to contracting States to introduce compulsory license systems, and it perfected the legal regime governing cinematographic works, the protection of which had made its appearance in the Berlin Act. From the Rome Act onwards, the right of "reservation" was no longer to be found in the Berne Convention.

4. Immediately after the Rome Conference, the work began on a further revision of the Convention. At the same time the foundations were laid in Italy, as in other countries such as Austria, France and Germany for the amendment of national laws. The postponement of the Brussels Revision Conference to 1948 was dictated by a "*force douloureuse*" (these were the words of *Le Droit d'Auteur* in 1940, p. 4), due to wartime events, whereas the new Italian Law on Copyright was to be approved on April 22, 1941. The process of drafting of this Law benefited from the studies and reform proposals made in the course of the preparatory work on the Brussels revision of the Convention.

Thus it is that we find in the 1941 Italian Law certain rules and innovations introduced by the Brussels Act with respect to protected works, broadcasting and the *droit de suite*.

It should be mentioned in connection with the 1941 Italian Law that it dates back to a period before the proclamation of the Republic in Italy, and that it was drawn up under a regime whose principles the Italian Republican Constitution, which entered into force on January 1, 1948, intended to transform, notably in matters concerning State organization and civil liberties. In spite of the circumstances, all the exceptions claimed on the basis of the supposed nonconformity of certain provisions of the 1941 Law with the rules of the Constitution were rejected by the Constitutional Court.[1] A fact such as this shows that, in spite of the very different spirit of the times, careful account was taken, at the time of the drafting of the 1941 Law, of objective legal criteria, derived from the principles developed in the international regulation of copyright, without regard to national ideologies of the time.

With regard to the protection of foreign authors, the Italian Law of 1941 referred expressly to international conventions by stating that those conventions "determine the field of application of the Law to the works of foreign authors" (Article 186).

The rule of "factual equivalence," provided for in the second paragraph of Article 186, was abolished by Legislative Decree No. 82 of August 23, 1946. This Decree introduced the principle of generic reciprocity, which was written into the earlier 1925 Law, "subject to the application of international conventions."

5. The fourth Diplomatic Conference of Revision of the Convention took place in Brussels in 1948, following an invitation from the Belgian Government and also in the desire to assert the permanency of the Berne Convention and that of its spiritual values at such a troubled time in international life.

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[1] See Valerio De Sanctis, *Etudes en hommage à Henri Desbois*, Paris, 1974, p. 299.

While it left the structure of the Union intact, the Brussels revision made remarkable changes to the protection deriving from the substantive clauses. Within the context of the eligibility criteria and of the country of origin concept, it was specified that, for "unpublished works," the country of origin was the one to which the author belonged.

The 1948 Brussels Act brought to an end a very exclusive period of treaty law protection of international relations in our field. After Brussels, the need to organize relations with countries that were not able to accede to the Berne Convention (above all the United States of America), the new economic and cultural demands of Third World countries, the new inventions and technology affecting the protection of intellectual works, the intertwining of copyright protection with the protection of rights connected with the exercise of copyright (known as neighboring rights) presented complex problems in the regulation of international copyright relations.

6. It should be noted that the very same year of the Brussels Act of the Berne Convention, the United Nations General Assembly, meeting in Paris in December 1948, adopted the Universal Declaration of Human Rights. Under Article 27(2) of the Declaration, everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author. Copyright was thus assimilated to human rights. It was mentioned by way of a derogation from the right of everyone freely to participate in the cultural life of the community (Article 27(1)).

The adoption of the second paragraph of Article 27 did however give rise to quite an animated discussion, and its introduction by means of an amendment was justified as being the logical and normal complement to the rights asserted by the first paragraph. Had it been reduced to its first paragraph alone, Article 27 could have provided the basis for a public claim to benefit from intellectual works without any concern for the authors' rights.

The various anxieties expressed by the opponents of the text of paragraph (2) of Article 27 highlighted the necessity of devising a unified world charter for the rules of protection of copyright against the growing and ever more widespread exploitation of works.

7. The idea of a world copyright charter motivated the proposals during the years between 1930 and 1940 for a world convention to be submitted to a universal conference. It was above all a question of pronouncing on the nature and purpose of such a convention. It was wondered whether it should be an agreement replacing the multilateral treaties in force and therefore entailing the merging of the Berne Union with the Pan–American Unions of Buenos Aires and Havana and the South American Union of Montevideo, or whether it would be sufficient to bridge the gap between the first group of countries and the other two. Pursuing the latter solution, the idea of the Universal Convention came to fruition in 1952. This Convention was to be designed as a sort of initiation to copyright protection, distinct from any other international convention, and at the same time complementary to the Berne Convention. The Universal Copyright Convention made it possible to organize uniformly the relations between the countries members of the Berne Union and other countries (especially American), without compromising the achievements of the Berne charter and at the same time to avoid a proliferation of bilateral treaties.

The last stage in the protection of authors' rights in international treaty relations, up to the present day, was completed in Paris in 1971 by two different Diplomatic Conferences which took place one after the other; the two texts were signed on the same day, July 24, 1971, and they brought about the revision of both the 1952 Universal Convention and the Berne Convention. With regard to the latter Convention, it should be mentioned that the Stockholm Act of July 1967, which revised the 1948 Brussels Act, never entered into force in its entirety, as it did not secure the minimum number of ratifications, accessions or acceptances that was necessary for the entry into force of the substantive clauses and of the integral Protocol containing special provisions for the benefit of developing countries members of the Union. The substantive articles of the Stockholm Act were incorporated in the 1971 Paris Act, however, whereas the Protocol was replaced by an Appendix which formed an integral part of the latter Act.

8. The 1971 Paris Act pays tribute in its preamble to the Stockholm Act, recognizing the importance of the work of that Conference and, while it revises the Convention, it leaves Articles 1 to 20 and 22 to 26 unchanged.

The Stockholm Conference also and above all takes the credit for having for the first time faced the problem, which by then had become acute, of introducing a set of treaty provisions for the benefit of developing countries members of the Union, and also for having adopted the Convention Establishing the World Intellectual Property Organization (WIPO).

The amendments made to the Brussels text by the Stockholm and Paris Acts (disregarding those embodied first in the Protocol and later in the Appendix) did not transform the structure of the protection of substantive rights afforded by the Berne Convention. Even in this respect, however, a men-

tion does have to be made of certain changes in the eligibility criteria which, in the Convention (Articles 3 and 4), come before the country of origin concept, the provisions on which were moved from Article 4 of the Brussels Act to Article 5 of the Paris Act.

The principle of the nationality of the author was applied more widely; this very liberal change, above all for works of joint authorship, brought the Berne system closer to the Universal Convention.

Changes were made to the concepts of publication and simultaneous publication.

The new provisions governing cinematographic works (Articles 14 and 14[bis]) gave rise to long and impassioned debates which ended in compromise. With regard to the term of protection, one should not overlook the minimum terms for cinematographic works and photographic works.

From the point of view of principles, a special place should be reserved for the provisions of Article 9 of the Stockholm and Paris Acts, in that they incorporated in the Convention the general provisions regulating the exclusive right of reproduction "in any manner or form," including, among the new forms of reproduction, not only photocopying and reprography in general, but also sound, visual and audiovisual recordings.

Following its ratification of the Paris Act of the Berne Convention, Italy has made certain amendments to its Copyright Law, in order to bring it into line with the principles of the Convention. The following innovations were made by Decree No. 19, of January 8, 1979[2]: photographic works were given protection as copyright material; the term of protection of cinematographic works was increased from 30 to 50 years; the scope of moral rights was broadened to afford protection against modifications, distortions and any other "derogatory action" in relation to the work that would be prejudicial to the author's honor and reputation; the *droit de suite* was extended to original manuscripts.

In 1981, the Italian Parliament approved a Law (No. 406, of July 29) whose purpose is to combat phonographic piracy. Another Law, against the pirating of cinematographic works, has now been adopted by the Italian Parliament (Law No. 400 of July 20, 1985). These are matters of current concern that have been the subject of studies and also of a Worldwide Forum organized in Geneva in 1981 by the World Intellectual Property Organization.[3]

9. The new era of audiovisual technology, computers, cable distribution and communication satellites is dawning with the Berne Union ready to investigate these phenomena and their implications for the protection of literary and artistic works.

Italian legislation, like the copyright legislation of other countries, will need amendment and revision if it is to adapt to the technological and socioeconomic evolution of our time. The intertwining and intersection of international and national legislation, in other words the world harmonization of copyright, are bound to become ever closer and more intricate.

The future of the Convention is mapped out by its past.

There is indeed one very typical characteristic of the Berne Convention that should be emphasized, and it is effectively highlighted in the preface by the Director General of WIPO, Dr. Arpad Bogsch, to the *Guide to the Berne Convention* written by Mr. Claude Masouyé. That typical characteristic is the permanency and stability that have been a feature of the Convention throughout the vicissitudes of history. These solid foundations, made out of the assertion and recognition of the most sacred and most inalienable kind of ownership, have enabled it to ensure the continuity of the international protection of copyright, and at the same time to retain the freshness of the youth with the aid of its periodical revisions. The Convention has thus always aligned itself on the development of techniques for the creation and use of intellectual works. Those properties have enabled it in the past, and will enable it in the future, to progress and also to foster progress in the national laws of Union countries, by keeping pace with the development of the times and of the society in which and for which literary and artistic creations find their source and their *raison d'être.*

(WIPO translation)

[2] See *Copyright*, 1980, p. 331.

[3] WIPO Worldwide Forum on the Piracy of Sound and Audiovisual Recordings, *ibid.*, 1981, pp. 191 *et seq.*

The International Law of the Berne Convention and the National Copyright Law of the Member States, with Particular Reference to the Legislation of the German Democratic Republic

Heinz PUSCHEL*

I. Interaction of the Law of the Convention and National Copyright Law — a Vital Component of the Berne Convention

The Berne Union was founded one hundred years ago as an association of States for the protection of literary and artistic works. During the century that preceded the creation of the Union, the number of States that recognized and protected copyright at national level had grown continually. At the same time, there progressively grew up an awareness that, on a worldwide scale, copyright protection should be more than just the sum — although quite considerable — of individual national legislation. It lies deep within the intangible nature of that which we designate a "work of the author" that such protection can only be fully guaranteed when the author's rights are acknowledged and secured for the use of his works beyond the national frontiers. This elementary need for international legal protection arising out of the protection afforded at national level was initially satisfied by the conclusion of international bilateral copyright treaties — the era of what were known as the "literary treaties." This movement reached its peak in the 19th century with the conclusion of the multilateral Berne Convention, on September 9, 1886.

The fruitful interplay of national and international factors within the historical development of copyright is clearly reflected in the original Act of the Berne Convention. The declared aim of this Union of States, set out in the Preamble, to protect "in as effective and uniform a manner as possible" the rights of authors in their literary and artistic works," highlights two of the main components of this reciprocal effect: the link between national and international copyright as a significant factor in improving the effectiveness of copyright protection, on the one side, and the move towards protection that is as uniform as possible by implementing this new multilateral copyright instrument, on the other. These two aspects of legal protection under the Berne Convention are closely interdependent; they both require and promote the positive interaction between national and international copyright required to effectively protect authors' rights.

One hundred years of history of the Berne Union has proved the fertility of this concept of interaction between the system of international legal protection set up in 1886 and the national copyright legislations that it covers. It is fascinating to follow this continual interplay between national and international aspects bound up with the further development of substantive law under the Berne Convention. The Conferences of member States provided for already in Article 17 of the original Act of the Berne Convention, for its revision "for the purpose of introducing therein amendments intended to perfect the system of the Union," have proved themselves "instigators" of this fruitful interaction between national and international aspects. A large measure of credit must go to the legendary Bureau in Berne, whose tasks included from the very beginning the collection of information of all kinds relating to the protection of copyright in works of literature and art, of collating such information and publishing it, as also "the study of questions of general interest concerning the Union" (item 5 of the Final Protocol of the Founding Conference on September 9, 1886). Likewise, the provision in Article 17(3) of the Berne Convention that "no alteration in the present Convention shall be binding on the Union except by the unanimous consent of the countries composing it" demonstrates this constant process of achieving a balance between national and international aspects in the existence of the Berne Union.

A significant proof of the efforts undertaken to mutually enrich and stimulate national and international aspects is to be found in the original Act of the Convention in respect of photographs. Although they are not actually mentioned in the definition of the expression "literary and artistic works" given in Article 4, item 1 of the Final Protocol nevertheless contains the following statement:

> As regards Article 4, it is agreed that those countries of the Union where the character of artistic works is not refused to photographs engage to admit them to the benefits of the Convention concluded today, from the date of its coming into force.

Thus, despite the wording of Article 4 of the Convention, photographs were admitted to international protection, even if only those member countries were committed whose national legislation also provided for such protection. This altogether favorable attitude towards the Union on the part of the member States concerned, who entered into the rel-

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evant commitment on entry into force of the Berne Convention without any practical reciprocity,[1] thus made a contribution to the further development of the idea that such works should enjoy effective protection, with the result that at the very first Revision Conference in 1908, the application of the Convention to photographic works was decided and it was clearly stated that *all* member countries of the Berne Union were committed to affording protection to such works (see Article 3 of the 1908 Berlin Act of the Convention).

A particularly effective instrument in exerting the pressure of the currently achieved status of international law on the level of protection in the domestic laws of the member States was provided by the continuing development of minimum rights, particularly those which newly acceding States were required to afford to Union authors: the consensus of the Union States as regards the minimum level of protection had a direct effect on the legislation of new member States; although the commitment to guarantee minimum rights in fact only existed in respect of Union authors, in practice it also benefitted domestic owners of rights since, for reasons of international image, no State could afford to grant to its own authors a lower level of rights than to foreign authors whose States belonged to the Berne Union. In addition, a fundamental principle of the Berne Convention is that foreign authors and domestic authors are placed on the same footing (national treatment). The combination of these two principles (national treatment and minimum rights), constituting the Berne Convention system, thus became a constant source of international exchange of ideas on the further development and increased effectiveness of the national laws of the member countries.

The Revision Conference at which these elements of substantive law under the Convention showed their full effect in stimulating and enriching the national laws, was that held in Rome in 1928. It is no coincidence that both this Conference and the 1948 Brussels Conference provided a forum for the theoretical discussion to determine the actual content of the Berne Union system.[2] The Rome Conference suddenly made clear what forces of international cooperation came into play in the differences that existed between the proposed revision of the Convention and the state of development of domestic laws in each case. Three elements in the revision carried out by the Berne Union stood out even more clearly than had been the case at the first Revision Conference in Berlin, in 1908: firstly, the preparation of the Conference that had gone on for some years; secondly, the conduct of the Conference itself together with the outcome of the debates; and, thirdly, the implications of the Conference, its progression and its results, in the member States and in other countries considering accession, the debates on ratification and declarations of accession, and indeed the overall echo of the Conference at national level.

The first phase prior to the Rome Conference led to passionate debates on basic principles in the former German Reich as regards the introduction of a 50–year *post mortem auctoris* period as a general term of protection to be compulsory under the Berne Convention. Two regular camps were constituted, collecting signatures, making public declarations, publishing propaganda brochures and resolutions, with which the 30–year advocates and the 50–year advocates did battle. One party was in favor of maintaining the previous German term of 30 years *post mortem auctoris* and the other supported the extension by 20 years as proposed by the Bureau in Berne. Learned authorities were brought in to provide a theoretical basis and a large number of well–known artists and others involved in cultural matters joined the one side or the other. The attitude adopted by the German delegation was finally dictated by the economic interests of the most powerful sector of publishing capital, which was determined to maintain the 30–year term of protection. Thus, despite support for the 50–year term from the great majority of the Berne Union member States of the time, the introduction of this general term was prevented in Rome. However, the tenor of the Conference debates in this important matter of the term of protection finally proved stronger than the negative vote obtained in Rome. It was no coincidence that fairly soon after the Rome Conference, despite the result obtained, an ever increasing number of States adopted the 50–year term, including also the former German Reich. As this shows, the echo obtained by the revision Conference became an independent factor of influence for national copyright legislation.

II. The Work on the Copyright Legislation of the German Democratic Republic in the Context of its Membership of the Berne Union

Following the end of the Second World War, one of whose results was the coming into being of the

[1] Article 2 of the Additional Act of Paris of May 4, 1896, states as a modification to the Final Protocol to the Berne Convention that: "Photographic works and works produced by an analogous process shall be admitted to the benefits of these engagements in so far as the domestic laws of each State may permit, and to the extent of the protection accorded by such laws to similar national works."

[2] See, e.g., W. Goldbaum, "Die Berner Ubereinkunft zum Schutz von Werken der Literatur und Kunst und die Brüsseler Revision vom 26. Juni 1948," GRUR 1950, No. 9, pp. 405 *et seq.*

worldwide socialist system, a new situation also arose within the Berne Union. For the first time, a number of socialist States belonged to the Union, that is to say Hungary, Poland and Czechoslovakia, who already in 1948 were among the signatory States of the Brussels Revision Conference,[3] and also Bulgaria, Romania and Yugoslavia. On October 7, 1949, with the foundation of the German Democratic Republic, they were joined by a further socialist State. The GDR assumed, in respect of its territory, the succession of the German Reich that had collapsed in the Second World War.[4]

Most of the above-mentioned socialist States promulgated new national copyright laws soon after their foundation to correspond to socialist relationships in society.[5] A new element in the existence of the Berne Union, arising from the membership of socialist States, was discernible in particular in the fact that entitled persons from non-socialist Union countries were subject on the territories of socialist States to the socialist copyright legislation applied in those States, just as, vice versa, the situation of entitled persons from socialist Union States in member States with a capitalist society was based on copyright existing in those countries. The existing international copyright relationships referred to here within the framework of the Berne Union constitute relationships of international cultural exchange between States with differing social systems. The concept of peaceful coexistence between such States is inherent in these relationships by their very nature, which is one of continuous dialogue between national concepts of law and the requirements of international law. The Final Act of Helsinki acknowledges these international copyright relationships as a necessary element of peaceful coexistence between the nations in the cultural field.[6] Today, this is all the more significant in view of the threat of nuclear catastrophe for the whole of mankind.

In the GDR — as in Hungary[7] — the earlier copyright laws taken over from the capitalist era remained in force for some time and were therefore sanctioned by the socialist State. These instruments were the Law on Copyright in Literary and Musical Works of June 19, 1901 (RGBl. p. 227), the Law on Copyright in Artistic Works and Photography of January 9, 1907 (RGBl. p. 7) and the Law on Publishing Rights of June 19, 1901 (RGBl. p. 217).[8]

As part of the development of the socialist legal system, a start was made in the GDR around 1958 with legislative work on a new copyright law. This work was completed on promulgation of the Copyright Law of September 13, 1965 (GBl. I, p. 209). This new Law, that entered into force on January 1, 1966, bases on the experience gained in the GDR with the new law of copyright contracts that corresponded to socialist relationships in society.[9] Its drafting also made use, however, of the store of experience gained by the other socialist countries when implementing their new copyright laws. At the same time as the copyright legislation was being prepared, the preliminary work on a new socialist Civil Code for the GDR had been put in hand and those results that had already been obtained were reflected in the Copyright Law where appropriate.

A question that was repeatedly asked, and indeed is rightly still asked, was what constituted the typical, unmistakable element of a socialist copyright system when compared with copyright in a capitalist society. The fact that socialist copyright is based on the economic foundation of socialist production relationships, of socialist ownership of the means of production, is an essential feature, particularly since intellectual creation is thereby liberated from the shackles of capitalist profit-seeking. However, further fundamental aspects of the difference between socialist and capitalist copyright are closely linked to this first element. The antagonistic opposition of interests between the authors and the commercial undertakings that distribute their works, on the one hand, and between such undertakings themselves, on the other, has been replaced by the objective harmonization of the interests of authors and of society, and the objective harmonization of the collective interests of cultural institutions that use the works with the interests of the whole society in the development of cultural life.[10] This is not simply a

[3] As reported, e.g., on the active participation of the delegation of Czechoslovakia at the Brussels Revision Conference, A.Baum, "Brüsseler Konferenz zur Revision der Revidierten Berner Ubereinkunft," GRUR 1949, No. 1/2, p. 1.

[4] See H. Püschel, *Internationales Urheberrecht*, Berlin, 1982, p. 36 and the cited literature.

[5] For example, the Bulgarian Law of November 12, 1951, the Polish Law of July 10, 1952, and the Romanian Law of June 18, 1956.

[6] The Final Act of Helsinki of August 1, 1975, states in this respect that the States participating at the Conference expressed their intention to contribute to the improvement of facilities for exchanges and the dissemination of cultural property by "endeavoring to ensure the full and effective application of the international agreements and conventions on copyrights... to which they are party or to which they may decide in the future to become party."

[7] See G. Boytha, "Wesenszüge des sozialistischen Urheberrechts und das neue Urheberrechtsgesetz der Ungarischen Volksrepublik," Wiss. Z. Humboldt-Univ. Berlin, Ges.-Sprachw. R. XX (1971), Vol. 2, pp. 131 *et seq.*

[8] As regards the legal situation at that time in the GDR, see E. Kaemmel, *Das geltende Urheber- und Verlagsrecht der Deutschen Demokratischen Republik*, Leipzig, 1956.

[9] See *Autorenkollektiv, Urheberrecht der Deutschen Demokratischen Republik*, Berlin, 1969, pp. 42 *et seq.*

[10] See *Autorenkollektiv, Urheberrecht*, Berlin, 1980, pp. 19 *et seq.*

question of the social background to socialist copyright law, but dominates both the content *and* form of the statutory provisions themselves.[11] Thus, to mention but one example, the Copyright Law of the GDR contains in Article 1(2) a commitment in line with socialist relationships in society:

> The directors of State and Economic bodies, of cultural and scientific organizations, of publishing houses and enterprises, and of other organizations shall, within the field of their competence, assure that the rights of authors [of foreign authors also] be realized, independently of the fact that a work was created within the framework of the artistic and scientific activity of citizens in the course of the exercise of a profession, or outside of such exercise.

A further example of the specific configuration of the content and form of socialist copyright is given by the way in which the Copyright Law of the GDR regulates subjective copyright (Articles 2 to 35) in conjunction with the complex matter of copyright contracts (Articles 36 to 72).

One of the further characteristics of socialist copyright law in the GDR is also constituted by its internationalistic aspect. The preamble to the Copyright Law of the GDR says in this context:

> Copyright contributes to the development, promotion and protection of international cultural exchanges on the basis of reciprocity.

This is further concretized in Article 96 of the Law, particularly in paragraph (3):

> As regards works and performances of nationals of other States or of stateless persons, which have been disseminated outside the German Democratic Republic, the present Law shall apply in conformity with the provisions of international conventions to which the German Democratic Republic is a party. In the absence of such conventions, the protection of copyright and of performances will be granted on the basis of reciprocity.

The Law then continues by specifying that this provision applies not only to citizens, but also to foreign legal persons that own rights.[12]

As from its foundation in 1949, the GDR belonged to the Rome Act of the Berne Convention, of June 2, 1928.[13] The GDR has never permitted any doubt to arise as to its membership of the Union and has repeatedly declared its allegiance to the Berne Union. Already on May 11, 1955, the Government of the GDR stated clearly that the Rome Act of the Berne Convention applied to the GDR and communicated this declaration to the other countries of the Berne Union through the Government of the Swiss Confederation. Subsequently, the Government of the GDR notified the renewed application of multilateral international agreements on April 16, 1959,[14] and thereby confirmed the membership of the GDR in the Rome Act of the Berne Convention. There exists no doubt that, regardless of the use of the expression "renewed application," neither of these two governmental declarations constitute a declaration of accession, but simply state that the existing legal situation continues to apply. In this way, the GDR was able, despite years of harassment and discrimination on the part of various NATO States, to express clearly and unmistakably its determination to assume its rights as a member and its will to take an active part in the Berne Union. This meant that the Rome Act of the Berne Convention constituted a binding international agreement for the GDR within the meaning of Article 96(3) of the Copyright Law of the GDR.[15]

This legal situation was of considerable significance for the preparatory work on the Copyright Law of the GDR. The relationship between membership of the GDR in the Berne Union and the new national Copyright Law of the GDR was basically affected by three factors:

— The provisions of the 1928 Rome Act of the Berne Convention. The GDR was required by its Constitution[16] to guarantee the application of this Act of the Berne Union in respect of the member States under its new Copyright Law.

— The development of the Berne Union that had been achieved by the Brussels Act of the Convention. Although the GDR did not accede to the Brussels Act of the Convention in connection with the entry into force of its own Copyright Law on September 13, 1965, the copyright legislation of the GDR could not ignore the outcome of the Brussels Revision Conference, but, on the contrary, had to take that Brussels Act into consideration since any future development of the Berne Union would be based on the results obtained in Brussels.

— The proposals for revising the Convention in preparation for the Stockholm Revision Conference in 1967. The period during which the legislative work on the Copyright Law of the GDR entered into its final, decisive phase, was also a time of preparing for the Stockholm revision Conference. Theorists and practitioners in the GDR paid great attention to the proposals for revising the Berne Convention that were subsequently to be submitted to the

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[11] This is an important item that must be taken into account in all comparisons between the copyright of capitalist and of socialist States.

[12] Article 96(4) of the Copyright Law lays down that the provisions on the scope of the Law shall also apply *mutatis mutandis* to legal persons.

[13] RGBl. 1933, Part II, p. 890.

[14] GBl. Part I, p. 505.

[15] See *Autorenkollektiv, Urheberrecht der Deutschen Demokratischen Republik, op. cit.*, p. 543.

[16] Article 22(3) of the first Constitution of the GDR, of October 7, 1949, reads: "The intellectual work, the right of authors, inventors and artists shall enjoy the protection, promotion and sollicitude of the Republic."

Stockholm Conference; these proposals were incorporated in the work on the legislation and became one of the topics of discussion of the bodies dealing with the draft of the Copyright Law.[17] The Copyright Law of the GDR promulgated on September 13, 1965, contains unmistakable traces of this interaction between the development trends in international copyright under the Berne Union and the domestic copyright legislation.

To discuss all the interfaces between international copyright under the Berne Convention and national copyright in the GDR would well exceed the limits of this paper. Therefore, a small number of major aspects only will be briefly described.

1. Copyrightable Works

The Brussels Act of the Convention defined in Article 2(4) those works of literature and art that were to be protected and thus at the same time placed an obligation on the member States to afford protection to Union authors of the afore-mentioned types of work. The wording of Article 2(2) of the Copyright Law of the GDR is clearly marked by the endeavors to satisfy this international commitment to protect "every production in the literary, scientific and artistic domain" stipulated in Article 2(1) to (3) of the Berne Convention. The clear presentation of major examples of protected works remains open to future technical developments that were either not known or were insignificant at the time the legislative work was completed. In addition, Article 2(1) of the Copyright Law sets out the two general requirements for protection that must be satisfied hy every work that is to be protected, that is to say a work of the mind created in an objectively perceptible form and representing an individual creative production. The explicit statement that the means or procedures whereby the work is created are of no significance likewise demonstrates the fact that the Copyright Law of the GDR remains open to future technical developments.[18]

The Brussels Act of the Berne Convention also contains the obligation to protect "cinematographic works and works produced by a process analogous to cinematography." There was a clearly recognizable trend to protect cinematographic works not only "as an original work" — as the subsequent wording of Article 14bis(1) of the Stockholm Act of the Convention — but because they are themselves original works. Prior to Stockholm, during the work on the Copyright Law of the GDR, the view that a film work constituted an adaptation of the scenario or the script was rejected as was the opinion that film works should qualify only for neighboring rights. In addition to cinematography, the new mass medium of television had just started out on its dynamic career at the beginning of the 60's; this new medium led to the development of numerous new types of work. The fact that the Copyright Law of the GDR lists *works for television* as an independent category reflects not only the fact that creating for television and creating for the cinema are related, but shows above all that the first-mentioned category possesses a distinct nature of its own. Moreover, there exist transitional forms between the two types of work; for instance, a television film may be described as both a cinematographic work and a television work.

2. Rights of Authors

The trends in the development of the Berne Convention that emerged in the Brussels Act and in the preparations for the Stockholm Revision Conference also moved towards a further extension of the system of minimum rights for authors, particularly in view of the proposed inclusion of the right of reproduction in the Convention. The exclusive rights laid down in the Copyright Law of the GDR, that are vested in the author *ab initio* when he creates his work, correspond not only to these trends but also go considerably further than the minimum rights under the Convention. Thus, owners of rights belonging to other member States may also claim the application of more extensive provisions than those under the Convention, as provided for in Article 19.[19]

The clear tendency of the Brussels Act of the Berne Union towards further extension of the author's moral rights, as provided for in Article 6bis of the Rome Act of the Convention, was followed in the GDR legislation in order to give greater prominence to this type of copyright powers. It is a basic concern of socialist copyright to afford legal protection to the personality of the creator, as both moral and material support for the further deployment of his potential for creative work in society. This legislative concept was subsequently reflected in the GDR by the promulgation of the new Civil Code on June 19, 1975, that is to say the right of every citizen to respect for his personality, including the right to

[17] See, for example, A. Glücksmann, "Das Urheberrechtsgesetz und die internationalen urheberrechtlichen Abkommen," *Neue Justiz*, 1965, No. 21, p. 686.

[18] This is considerably more precise than the general requirement under the Berne Convention that products in the literary, scientific and artistic domains should be protected, "whatever may be the mode or form of expression."

[19] See in this respect A. Glücksmann, *op. cit.*, pp. 689 *et seq.*

respect for his authorship and the rights arising therefrom.[20]

Article 6bis(2) of the Brussels Act of the Convention may be understood as an appeal to the lawmakers of the member countries to protect the noneconomic rights of authors after their death for at least as long as the economic rights subsist. This concern is fully satisfied by the Copyright Law of the GDR. In addition, it affords special social protection of the noneconomic interests of copyright owners in respect of the period after expiry of the term of protection; under Article 34 of the Copyright Law, it is the competent State agencies or institutions that ensure protection of the integrity of the work and the maintenance of the author's reputation — by administrative means — after such time.[21]

The Copyright Law of the GDR also far exceeds the minimum requirements of the Berne Convention as regards the content of the author's noneconomic rights that are protected. In addition to the right of recognition of authorship in his work, Article 14 of the Copyright Law also contains a separate right to require the name chosen by him to be mentioned in connection with his work. Additionally, the right of the author to give his work for first publication and to decide on the first public communication of its essential content (Article 15 of the Copyright Law) is set out as a noneconomic right of the author, despite the fact that it is closely linked to the author's possibilities of deciding on the utilization of his work in society. The right of the author to oppose any mutilation, disfigurement or other change to his work that would impair it is guaranteed by Article 16 of the Copyright Law of the GDR, without the additional statement that such derogatory action could be prejudicial to the honor or the reputation of the author, as is restrictively prescribed by Article 6bis of the Berne Convention. Additionally, Article 17 of the Copyright Law of the GDR affords the author the right to forbid any use of his work, even where no change has been made to it, which would be prejudicial to his artistic or scientific reputation, for instance because of a completely unsuitable preface or epilogue, or due to advertising texts on the jacket of a book or a record sleeve, deforming the intention of the work. The author's rights in respect of the owner of the original of a work, guaranteeing access to his work, or the right to buy it back at current value provided by Article 43 of the Copyright Law of the GDR where the original of a work is in danger of being placed at risk or destroyed due to the conduct of the owner, are also basically of a noneconomic nature.

3. Term of Protection

The duration of protection is of cardinal importance in the concept and practical scope of copyright protection in a socialist society. The copyright legislation of the GDR took attentive note of the fact that a number of European socialist countries had laid down relatively short terms of protection in their initial copyright laws, in particular the Soviet Union, Bulgaria, Poland and Romania. In the GDR, the concept of the term of protection was based on the fact that copyright serves the material and moral incentives of the author to achieve intellectually and culturally valuable creations that are incorporated in the socialist cultural heritage. It stimulates the process of creating works for the author to know that his next of kin, who are the accompaniers of his creative activities, or even indeed his helpers, will enter into possession after his death of the economic and noneconomic rights afforded by copyright. This consideration justifies the extension of the term of protection to 50 years after the author's death and the transfer of the author's rights to his heirs (Article 33 of the Copyright Law); however, this period is altogether sufficient to satisfy this legislative aim.[22]

Furthermore, the participation of the GDR in international copyright relations through its membership in the Berne Union was of great significance for this legislative decision. The term of 50 years *post mortem auctoris*, as imposed by Article 7(1) of the Brussels Act of the Convention, appeared altogether suitable to guarantee clarity, stability and effectiveness in relation to the author's family circle in the case of copyright protection extending beyond the national frontiers.

Further considerations in respect of the term of protection, discussed during the preparatory work for the Stockholm Conference within the Berne Union, were also taken into account when the duration of protection was decided in the GDR, as for example the term of protection for cinematographic works, as subsequently incorporated in Article 7(2) of the Stockholm Act of the Convention. Thus, in the GDR, the term of protection for film and television works, where a legal person assumes the au-

[20] Article 7 of the Civil Code reads: "Every citizen shall have the right to respect for his personality, in particular his honor and reputation, his name, his likeness, his copyrights and other similarly protected rights in creative activities. He shall be required to similarly respect the personality of other citizens and the rights deriving therefrom." The sanctions applicable on infringement of such rights, particularly defensive rights and claim to damages, derive in respect of copyright from Article 91 of the Copyright Law.

[21] See *Autorenkollektiv, Urheberrecht der Deutschen Demokratischen Republik, op. cit.*, pp. 216 *et seq.*

[22] See H. Püschel, "Wesenszüge des sozialistischen Urheberrechts der DDR," *Neue Justiz*, 1965, No. 21, p. 667.

thor's rights in such works (normally the film maker or the television organization), ends 50 years after first publication of the work (Article 33(6) of the Copyright Law).

4. Copyright in Film and Television Works

The discussions on a reform of film copyright, that began at the Rome Conference and then led to comprehensive proposals by a working group during the preparations for Stockholm, exerted considerable influence on the legislative work in the GDR insofar as they drew attention to a series of provisions of great interest for the future in view of the development of television as a mass medium. Article 10 of the Copyright Law of the GDR, which results from this legislative work, is based, in accordance with the fundamental thinking of the above-mentioned working group, on the principle that the author's rights in existing works that have provided the material for film or television production (novels, short stories, tales, plays, etc.) must be clearly distinguished from the rights of authors who have contributed works specifically for a film or television production as such, such as the synopsis, the screenplay, the scenario, the script, the music, and the like. These authors are the only ones that can be counted among the film authors. However, the Copyright Law of the GDR intentionally avoids rigid provisions on the composition of authorship for film and television works, and instead simply provides in Article 10(1) that

> A cinematographic work or a television work is an independent work. It is the result of collaboration based upon separate and distinct creations and which, under the control of a director, and with the assistance of cinematographic or television techniques, has been created for the purposes of communication.

Assuming that the final product constituted by a film or television work combines all of these creative film performances merged together to form a synthesis that in no way enables fixed copyright shares to be determined, Article 10(2) of the Copyright Law defines the following legal situation:

> When a cinematographic or television work has been produced within an enterprise, such enterprise has the exclusive right, and also the obligation, for all legal purposes, to control, in its own name, the rights of the collectivity of the authors of such work.

This *right of representation*, vested in the filmmaker *ab initio* on creation of the film or television work as a final product, should not be confused with film copyright such as, for example, exists in Britain; likewise, it does not signify an independent, even if only fictitious, copyright belonging to the legal person who acts as the producer. On the contrary, it constitutes a trust mandate that comprises not only the right, but also the obligation to assert the rights of the film authors collective that is not capable of being defined in more statutory detail. Furthermore, the rights of the authors in independent works utilized in the making of a film or television work as a component part remain unaffected by this provision on the assertion of rights in the final product, particularly rights in works of literature as, for instance, in an exposé or scenario, or in works of music such as those composed specifically for a film (Article 10(3) of the Copyright Law). This provision on film copyright is supplemented and materialized by civil law and labor law contract provisions for film workers (e.g. in a scenario contract concluded between the film studio and the film author).

Film copyright in the GDR, with which we will not deal in detail, corresponds to the practical needs of film production and distribution, respecting and securing the rights and interests of film and television workers. It also constitutes one of the many examples of how ideas and proposals for reforming the Berne Convention, irrespective of how many of those projects were realized at the Stockholm Conference, have given the impetus for legislation in a socialist State by regulating this matter in content and form in a specific way corresponding to the socialist relationships within film and television activities.

For the continued strengthening of international cultural exchange, as demanded by the Final Act of Helsinki, a close and trusting collaboration between the nations is essential in the field of copyright. The hundred years of development of the Berne Convention have shown the potential for international understanding that is contained in such an international treaty through the related problems of national and international copyright and their reciprocal relationships. It is to be hoped that the further work on this unique multilateral treaty will continue to serve the development of the creativity of authors and the distribution of their works throughout the world in an even more effective manner.

(WIPO translation)

Obituary

Claude Masouyé †

The present lines are intended to chronicle, for the readers of today and of the decades to come, the attaching personality and the professional career of a man who, for a very long time, was the editor of this review and a lawyer–diplomat in the service of the protection of the rights of the creators of literary and artistic works.

Claude Masouyé was born on February 14, 1924, in Paris. He was French.

During the Second World War, and right after it, he acquired four university degrees: a *licence en droit* and a *doctorat en droit* at the Law Faculty of the University of Paris; a *licence ès lettres* at the Sorbonne in Paris; and a *diplôme de l'école* at the *Ecole des sciences politiques* in Paris. This accumulation of university degrees is characteristic of Claude Masouyé in several respects. It shows his hunger for knowledge, his ease to learn and his assiduity in work. He could not have given a better example to his two sons, Patrick and Philippe, who, however, were born much later.

These were the times when General de Gaulle was in power (for the first time) in France. And it seems only natural that the young, ambitious and intelligent man that Claude Masouyé was, tried to be near the General and serve his country. He did just that. He worked at the Office of the President of the Republic of France. The experience gained there marked him for the rest of his life. That experience forged his diplomatic skills and developed the ease of the style for official contacts at the highest level.

Partly parallel to the assignment at the President's Office, Claude Masouyé started to teach law, as assistant, at the Law Faculty of the University of Paris. He continued to do that for three years. It is here that he tried out for the first time, and developed, his didactical talent. Claude Masouyé was a born teacher. He could explain, orally or in writing, with extreme clarity the most complex legal questions. Those skills he put to good use for the rest of his professional career, as an author of many articles and several books on law, and as a teacher in the field of copyright law in dozens of courses and seminars organized for nationals of developing countries by the International Bureau.

Still in Paris, Claude Masouyé was, for 12 years (from 1949 to 1961), Director of one of the services — the external services — of the French *Société des auteurs et compositeurs dramatiques.* In that capacity, he negotiated the many contracts that the said society concluded abroad setting the conditions under which plays and operettas of French authors and composers were performed outside France. Parallel to that (from 1951 to 1961), he was Secretary in the *Fédération internationale des sociétés de droits de représentation.* In these capacities, Claude Masouyé rendered innumerable and important services to the French composers and authors of the time. He became a popular person with the celebrities of stage and music. After all, their financial success was, to some extent, dependent on the negotiating skills of Claude Masouyé. The experience of those 12 years not only established important contacts with the world of copyright — a world in which Claude Masouyé started to play an important role — but also added, to his academic knowledge of copyright law, a vast practical experience.

During those same Paris years, Claude Masouyé had his first encounters with the preparation of national legislation and international treaties. He participated in the consultations that led to the 1957 French Copyright Law (the first since the Law adopted during the French Revolution) and was a member of the French delegation to the Diplomatic Conference of Geneva that, in 1952, adopted the Universal Copyright Convention.

These experiences extended not only to the French scene, but also to international negotiations in which profound knowledge of the copyright laws of many countries and of the international copyright treaties were indispensable. Claude Masouyé acquired them and had, in his hand, all the trumps needed for a brilliant career in the field of international copyright relations.

The trumps were made use of and that career began in July 1961, when Claude Masouyé moved from Paris to Geneva to occupy the post of the counsellor in charge of the Berne Convention and general copyright matters in the *Bureaux internationaux réunis pour la protection de la propriété intellectuelle* (BIRPI) — predecessor of WIPO — then directed by Jacques Secretan. (At that time, the officers of BIRPI had the same titles as the staff of diplomatic missions: third, second and first secretaries and counsellors.)

Together with him, naturally, came to Geneva Jacqueline Masouyé, his young wife. She immediately assumed the diplomatic role that wives of high international officials have to assume and fulfilled it with elegance, charm and exceptional efficiency during the whole Geneva period of the life of the Masouyé couple, a period that lasted almost a quarter of a century. This role of a wife is not only that of a hostess but also that of a person who encourages her husband when times are difficult in his professional life and who tends alone home and children when the husband is, much too frequently, away abroad on official missions.

Claude Masouyé kept his position as the man in charge of copyright also when George Bodenhausen became Director (in 1963) and up until 1969, that is for eight years. In 1969, he became the first head of the newly created external relations service of BIRPI and remained in that position until the end of 1973. During that period, the Berne Convention was revised (in Paris, in 1971), and Claude Masouyé played an important role in the Diplomatic Conference of Revision as Secretary–General of that Conference.

When the writer of these lines became Director General in 1973, he appointed Claude Masouyé as his *Chef de Cabinet*, the first WIPO official to have that title. He was in that position for over two years.

In 1976, he was appointed Director of the newly created Public Information and Copyright Department, a post that he held for 10 years.

During that period, Claude Masouyé continued to write on matters of copyright law. The number of articles and studies — the latter remaining anonymous if published as documents of BIRPI or WIPO for official meetings — that he wrote is impossible to count but certainly amounts to several hundreds. He also wrote three *Guides* or commentaries of book length, and published by WIPO as books, on treaties administered by WIPO: the first (1978) was the *Guide to the Berne Convention*, the second (1981) was the *Guide to the Rome Convention and to the Phonograms Convention*, and the third (1985) was the *Guide to the Madrid Convention on Double Taxation*. All of them have been translated from their original French into other languages. The *Guide to the Berne Convention*, for example, was translated into Arabic, English, German, Hindi, Japanese, Portuguese, Russian and Spanish.

It was already mentioned that Claude Masouyé was the editor of this periodical. The careful choice of the material published and the elegant style of everything that was in French were due to the great attention that he devoted to this editorial work. He was proud to direct a periodical that, for almost one hundred years now, never missed a monthly issue and which has a great tradition.

Claude Masouyé also was involved to a high degree, both professionally and emotionally, in activities concerning developing countries. He loved to work with developing countries. He advised the governments of a number of such countries in their work of adopting or revising their copyright laws.

He lectured in innumerable seminars and courses on copyright law in general and the Berne Convention in particular. The fact that he could do that not only in French but also in English and Spanish was, of course, of the greatest usefulness as with those three languages at one's disposal one can carry on direct conversations in the great majority of developing countries.

Claude Masouyé not only displayed his profound knowledge of the law of copyright when he lectured in developing countries or participated in WIPO meetings in Geneva or elsewhere. He always also created a most agreeable atmosphere in the contacts with delegates, trainees, newspapermen and his own colleagues. He did that with his permanently good disposition, his sense of humor, his great patience and his empathy, his understanding of the problems and wishes of other people.

He passed away, after a brief illness, in Geneva, on January 2, 1986.

Those who knew him will never forget him. They will always cherish his memory. Those who did not know him should take note, through this obituary, that, with the passing away of Claude Masouyé, an exceptional servant of international cooperation and the promotion of copyright has been lost.

Arpad Bogsch

Calendar of Meetings

Commemoration of the Centenary of the Berne Convention

The official celebration of the Centenary of the Berne Convention will be held in Berne on September 11, 1986, at the invitation of the Swiss Government. The Assembly of the Berne Union will hold an extraordinary session on that occasion.

So far we have received information on the following other commemorative events by international non-governmental organizations and national organizations:

June 20 and 21 (Zurich) — Commemoration of the Centenary by the Swiss Society for Authors' Rights in Musical Works (SUISA)

September 8 to 12 (Berne) — Congress of the International Literary and Artistic Association (ALAI) in the framework of which the Centenary will be celebrated

September 25 and 26 (Mexico City) — Commemoration of the Centenary in the framework of the Copyright Workshop for Latin American Countries organized by WIPO and the Mexican Institute of Copyright

October 5 to 11 (Madrid) — Congress of the International Confederation of Societies of Authors and Composers (CISAC) in the framework of which the Centenary will be celebrated

November 18 to 21 (Cracow) — Commemoration of the Centenary in the framework of a Seminar organized by the Jagiellonian University

November 24 to 28 (New Delhi) — Commemoration of the Centenary in the framework of the Regional Workshop on Copyright and Neighboring Rights organized by WIPO and the Government of India

WIPO Meetings

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

1986

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 Audiovisnal Works and Phonograms (convened jointly with Unesco)

Jone 4 to 6 (Geneva) — Permanent Committee on Patent Information (PCPI): Working Groop 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

May 21 to 23 (Hanover) — Technical Working Party oo Automatioo and Computer Programs
May 26 to 29 (Pontecagnano-Salerno) — Technical Working Party for Vegetables, and Sobgroup
June 3 to 6 (Doblin) — Technical Working Party for Agricultural Crops, and Sobgroop
July 15 to 18 (Wageningen) — Technical Workiog Party for Ornameotal Plants and Forest Trees, and Subgroop
September 15 to 19 (Wädenswil) — Technical Working Party for Fruit Crops, and Subgroup
November 18 and 19 (Geoeva) — Administrative and Legal Committee
November 20 and 21 (Geoeva) — Technical Committee
December 1 (Paris) — Consoltative Committee
December 2 and 3 (Paris) — Council

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

Non-Governmental Organizations

1986

May 6 to 8 (Brussels) — International Confederatioo of Societies of Authors and Composers (CISAC) — Legal and Legislatioo Committee
September 8 to 12 (Berne) — International Literary and Artistic Association (ALAI) — Coogress
October 5 to 11 (Madrid) — International Confederation of Societies of Authors and Composers (CISAC) — Coogress
October 20 to 23 (Vienna) — International Federatioo of Musicians (FIM) — Congress