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World Intellectual Property Organization

Audiovisual Works and Phonograms

Preparatory Document for and Report of the WIPO/Unesco Committee of Governmental Experts

(Paris, June 2 to 6, 1986)

Editor's Note. What is published in the following on this Committee of Experts consists of the text of the preparatory document (hereinafter referred to as "the memorandum of the Secretariats") that the International Bureau of WIPO and the Secretariat of Unesco have prepared for the Committee of Experts *and* the report on the discussions and conclusions of the Committee of Experts (hereinafter referred to as "the report of the Committee of Experts").

The memorandum of the Secretariats is printed in Roman characters (the "Principles" in bold type), whereas the report of the Committee of Experts is printed in italics.

The memorandum of the Secretariats was published on March 26, 1986, under the title "Questions Concerning the Protection of Copyright and the Rights of Performers, Phonogram Producers and Broadcasting Organizations in Respect of Audiovisual Works and Phonograms"; it has the document number UNESCO/WIPO/CGE/AWP/3.

The report of the Committee of Experts was adopted by the Committee of Experts on June 6, 1986; it has the document number UNESCO/WIPO/CGE/AWP/4.

The paragraphs in both documents have numbers. Each paragraph number of the report of the Committee of Experts is, in the following, preceded by the word "Report," so as to make the distinction between the two sets of paragraphs easier.

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INTRODUCTION

1. The Committee of Governmental Experts for whicb the present document bas been prepared is being convened by virtue of decisions made by the Governing Bodies of Unesco and WIPO responsible for establishing the programs of tbe two Organizations (see in particular, as far as Unesco is concerned, Approved Program and Budget for 1986–1987 (23C/5 Approved), paragraph 15115, and, as far as WIPO is concerned, document AB/XVI/2, Annex A, items PRG.04(2) and (3) and document AB/XVI/23, paragraph 105).

2. Those decisions provide for a new approach regarding copyright questions of topical interest in the 1986–87 biennium. Whereas the discussions in the 1984–85 biennium concentrated on the *new uses* (mainly, cable television, private copying, rental and lending, direct broadcasting satellites, electronic libraries) affecting the owners or other beneficiaries of copyright and neighboring rights, tbe specific questions to be discussed in the 1986–87 biennium are grouped according to the main *categories of works.* In connection with eacb category, all the various new uses of works of that category, and the interests of all the various owners and beneficiaries of copyright and neighboring rights in such works, will be considered. Virtually all main categories of works will be covered, so that, by the end of the biennium, a global review will bave been carried out of the current situation in all tbe fields of copyright and neighboring rights.

3. According to the decisions mentioned above, the Secretariats of Unesco and WIPO will prepare, convene and service meetings of committees of governmental experts on the following eight categories of works: printed word, audiovisual works, phonograms, works of visual art, works of architecture, works of applied art, dramatic and cboreographic works and musical works.

4. The Committee of Governmental Experts, for which the present document bas been prepared, is the first of such committees, and it is invited to deal with two of the eight categories of works, namely, audiovisual works and phonograms.

5. In recent years, several meetings (they will be mentioned in detail in tbe corresponding parts of the document) convened jointly by Unesco and WIPO have dealt with copyright and so–called neighboring rights questions which are relevant in regard to those two categories of works (cable distribution, rental and lending, private recording, direct broadcasting by satellites, piracy). This document takes into account and utilizes the results of those meetings. If, in those previous meetings, certain generally accepted principles were adopted (for example, in the case of piracy and cable distribution), this document does not reopen their detailed analysis, except wbere new technical or legal developments make it necessary. Wbere on otber questions, no generally accepted principles were adopted (for example, in the case of private recording, rental and lending, satellite broadcasting), the present document tries to offer solutions.

6. The intention is not to deal with *all* the possible copyright and neighboring rights aspects of audiovisual works and pbonograms in an academic style study, but to concentrate on what appear to be the most urgent problems, most of whicb have emerged as a result of new tecbnological developments and which call for the interpretation and application of the international conventions and of national legislations.

7. The purpose of this document is to summarize and discuss the various copyright and neighboring rights issues in relation to audiovisual works and pbonograms for the purpose of arriving at certain "principles" which, togetber witb the comments, could serve as a guidance for governments when they bave to deal with tbose issues. It sbould be stressed that the "principles" — neither as proposed nor as they might emerge as the result of the deliberations of the Committee of Experts — have or will have any binding force on anyone. Tbey are merely intended to indicate directions whicb seem to be reasonable in the search of solutions wbich, by safeguarding the rights of the authors and other holders of rights in literary and artistic works and other intellectual creations protected by copyright or neighboring rights, give them a fair treatment and promote creative activity eminently necessary for safeguarding the cultural identity of every nation. At the same time, the proposed solutions should be of a nature that facilitates, from both the creators' and the users' viewpoint, tbe use of protected works, performances, etc.

8. The principles proposed are believed to provide for an efficient and appropriate protection of intellectual property rights in respect of tbe various types of uses of audiovisual works and phonograms. Dealing with those uses is particularly timely since the interests of the persons

engaged in intellectual creativity are often neglected in connection with the uses of their creations by new technological means and in the name of the necessity of "free access" as if everything that is desirable could be obtained free of charge and without regard to the interest of those who create or own the goods that the public wishes to enjoy.

Report 1. In pursuance of the decisions adopted by the General Conference of the United Nations Educational, Scientific and Cultural Organization (UNESCO) at its twenty–third session and by the Governing Bodies of the World Intellectual Property Organization (WIPO) at their fifteenth series of meetings in October 1985, the Directors General of Unesco and WIPO jointly convened a Committee of Governmental Experts on Audiovisual Works and Phonograms at the Unesco headquarters in Paris from June 2 to 6, 1986.

Report 2. The purpose of the meeting was to discuss the various copyright and neighboring rights issues in relation to audiovisual works and phonograms for the purpose of arriving at certain "principles" which, together with the comments, could serve as guidance for governments when they have to deal with those issues. The need for such "principles" seems to be particularly timely since in today's media environment the interests of the persons engaged in intellectual activity are often neglected in connection with the uses of their creations by new technological means.

Report 3. The "principles" have no binding force and their purpose is merely to indicate directions which seem to be reasonable in the search for solutions which, by safeguarding the rights of the authors and other owners of rights in literary and artistic works and other intellectual creations protected by copyright or neighboring rights, give them a fair treatment and promote creative activity eminently necessary for safeguarding the cultural identity of every nation.

Report 4. Experts from the following 43 States attended the meeting: Angola, Argentina, Belgium, Brazil, Cameroon, Canada, Central African Republic, Costa Rica, Czechoslovakia, Ecuador, Finland, France, Germany (Federal Republic of), Guinea, Holy See, Hungary, India, Italy, Japan, Jordan, Kuwait, Mexico, Nepal, Netherlands, Norway, Oman, Peru, Philippines, Poland, Portugal, Republic of Korea, Saudi Arabia, Senegal, Soviet Union, Spain, Sri Lanka, Sweden, Switzerland, Thailand, Turkey, United Kingdom, United States of America, Venezuela. Two States — Australia and Panama — were represented by observers.

Report 5. Observers from two intergovernmental organizations: Commission of the European Communities (CEC) and Arab Educational, Cultural and Scientific Organization (ALECSO), and 22 international non–governmental organizations: European Broadcasting Union (EBU), European Tape Industry Council (ETIC), International Alliance for Distribution by Cable (AID), International Association for the Advancement of Teaching and Research in Intellectual Property (ATRIP), International Association of Sound Archives (IASA), International Bureau of Societies Administering Recording and Mechanical Reproduction Rights (BIEM), International Catholic Organization for the Cinema and Audiovisuals (OCIC), International Chamber of Commerce (ICC), International Confederation of Free Trade Unions (ICFTU), International Confederation of Societies of Authors and Composers (CISAC), International Copyright Society (INTERGU), International Federation of Actors (FIA), International Federation of Film Distributors Associations (FIAD), International Federation of Film Producers Associations (FIAPF), International Federation of Musicians (FIM), International Federation of Phonogram and Videogram Producers (IFPI), International Film and Television Council (IFTC), International Literary and Artistic Association (ALAI), International Music Council (IMC), International Publishers Association (IPA), International Secretariat for Arts, Mass Media and Entertainment Trade Unions (ISETU), Latin American Federation of Performers (FLAIE), also participated in the meeting.

Report 6. The list of participants is attached to this report.

Report 7. Mr. Amadou–Mahtar M'Bow, the Director–General of Unesco and Mr. Arpad Bogsch, the Director General of WIPO, welcomed the participants to the meeting.

Report 8. Mr. A. Henry Olsson, the head of the delegation of Sweden, Mr. Péter Gyertyánfy, the head of the delegation of Hungary, and Mrs. Dolores Macalintal, the head of the delegation of the Philippines, were elected Chairman and Vice–Chairmen, respectively, of the Committee.

Report 9. The Committee adopted the Rules of Procedure contained in document UNESCO/WIPO/CGE/AWP/2 Prov. It was decided that the tasks of the Rapporteur be fulfilled by the Secretariats.

Report 10. The provisional agenda of the meeting of the Committee submitted in document UNESCO/WIPO/CGE/AWP/1 Prov. was adopted. [It reads as

follows: "1. Opening of the meeting. 2. Election of the Chairman. 3. Adoption of the Rules of Procedure. 4. Election of the other Officers. 5. Adoption of the Agenda. 6. Examination of the problems of the protection of audiovisual works and phonograms. 7. Adoption of the Report of the Committee. 8. Closing of the meeting."].

Report 11. The discussion took place on the basis of the Memorandum on Questions Concerning the Protection of Copyright and Rights of Performers, Phonogram Producers and Broadcasting Organizations in Respect of Audiovisual Works and Phonograms prepared by the Secretariats (document UNESCO/WIPO/CGE/AWP/3).

Report 12. After congratulating the Secretariats for the high quality of the document, a great number of participants emphasized the usefulness of elaborating principles which could be proposed as guidance to national legislators in the establishment of rules providing for adequate protection of all right owners, particularly in connection with the new forms of exploitation of audiovisual works and phonograms.

Report 13. Several delegations stated that, in general, the Principles contained in the memorandum were acceptable to their governments.

Report 14. Several other delegations reserved the position of their governments in respect of some Principles to which they intended to refer in the framework of principle-by-principle discussions of the memorandum.

Report 15. Some other delegations, while accepting the Principles in general, expressed their intention to propose changes in the wording of some of the Principles.

Report 16. Some delegations expressed the opinion that the activities of producers of phonograms were of creative nature, therefore they should be granted protection as copyright owners. They regretted that the document under discussion did not sufficiently emphasize that fact and the fact that the rights of producers of phonograms were protected under copyright legislation in many countries.

Report 17. An observer from a non-governmental organization stated that in some countries, legislative steps had already been taken which were quite contrary to what was proposed in the document. Referring to the legal nature of the Principles, he stated that if the Principles were to be considered as simple advice or recommendation, they would not be efficient.

Report 18. Another observer from a non-governmental organization appreciated the fact that the document took in due consideration the legitimate interests of performers in respect of some forms of exploitation of performances which were not mentioned in the Rome Convention. National legislation, he stressed, should be adjusted to the new technologies.

Report 19. Still another observer from a non-governmental organization regretted that the document, while purporting to deal to some extent — in the absence of any meeting in the 1986-87 biennium on broadcasts as such — with the neighboring rights of broadcasters, did not deal with the whole range of rights in broadcasts.

Report 20. A great number of participants strongly condemned piracy in respect of audiovisual works and phonograms. One delegation stated that piracy was the major commercial crisis which threatened the economic lives of copyright interests in all countries. Therefore, it proposed that a special resolution concerning piracy be adopted by the Committee. It indicated its intention to submit a draft resolution for consideration by the Committee later on.

AUDIOVISUAL WORKS

[Preliminary Observations]

9. The expression "audiovisual works" used in this document includes all cinematographic works and other works (televisual works and other audiovisual works such as videograms) assimilated to them and expressed by a process analogous to cinematography, whatever the mode of their fixation (films, tapes, cassettes, discs, etc.) and their content (fiction, non-fiction, music, sport, news, etc.).

10. Before the last one or two decades, there were two basic ways of using audiovisual works: theatrical exhibition and broadcasting. The distribution of such works was regulated in a well-established manner both at the level of legislation and at that of contractual practice. With the ever more widespread application of video-technique, cable television and satellite broadcasting, a completely new situation has emerged. The utilization of audiovisual works has become wider and, from a legal viewpoint, much more complex, and the distribution of such works needs a more carefully planned strategy than before to enable the owners of the rights in those works — in general, the producers — to make the best use of their economic rights. There are certain distribution patterns (the order of distribution in different markets) which cannot be arbitrarily changed; otherwise, the work necessarily fails in certain markets.

11. The typical sequence of distributioo in certain markets is the following:

theatrical exhibition,
public performance of videograms,
home video rental,
home video sales,
pay per view cable,
subscription pay television,
network television (with cable retransmission).

However, more and more producers issue audiovisual works simultaneously for theatrical distributioo and for home video market, and music video productions generally are first distributed through television. The strategy of distribution also requires the planning of the order of distribution in different countries or regions.

Report 21. On the introductory paragraphs of that chapter of the document, only one comment was made. One delegation mentioned that in the sequence of distribution mentioned in paragraph 11 "home video rental" and "home video sales" should not be mentioned separately. These two means of distribution were now, in general, simultaneous.

12. Besides the sequence of distributioo, there are two other pbenomena whicb influence the economic results obtained in certain markets: piracy and private recording,

13. There are several weak points in the distributioo chain as a result of new developments. Here are some examples of it in a telegraphic style, under each of the three basic forms of distribution:

(a) Theatrical exhibition and public performance of videograms: piracy. Consequences: weakening or destroying home video rental and home video sales markets; tbe possibility of using pirate copies for public performance or for broadcast or cable programs.

(b) Home video rental and bome video sales: piracy, with tbe consequence of weakening or destroying the markets for further autborized distribution; private recording, with the consequence of weakening reotal and sales markets; the lack or uncertainty of rental right, with the consequcnce that all othcr markets (sale, etc.) are being weakened or destroyed; tbe possibility of using legitimate copies for unauthorized public performance and for unautborized broadcast or cable programs, with the consequcnce that tbe authorized markets are being weakened or destroyed.

(c) Broadcasting and cable distributioo: piracy in tbe form of recording and reproducing programs, with the consequence of weakening or destroying the markets for further authorized distribution; private recording, with the consequence of weakening reotal and sales markets; legal uncertainties about direct broadcasting by satellite, satellite–to–cable programs and cable retransmission, aod unautborized rebroadcasting or retransmissioo by cable eveo wbere it is clear that it is illegal, with the consequence that the owners of the rights in audiovisual works canoot make use of their economic rights.

14. The final and overall consequeoce of the uses mentioned above is that tbe exercise and exploitation of copyright and neighboring rights are in great danger. If the investments of the producers cannot be recovered and the owners of copyright and oeighboring rights cannot eojoy their moral and pecuniary rights, the production of audiovisual works decreases and, in certain fields, even comes to an end. Tbe most important purpose of this document is the identificatioo of legal and practical means which are necessary for tbe avoidance of those coosequences, highly undesirable from the viewpoint of cultural development both at the national and at the international levels.

15. The problems mentioned above can be classified into two groups:

(a) Problems where the legal situation is clear but copyright and neighboring rights are infringed: piracy (illegal reproduction and distribution of copies), unauthorized public performance, unauthorized broadcast and cable–originated programs.

(b) Problems wbere there is a need for interpreting the intemational conventions, for interpreting — if not completing — national laws or for findiog appropriate means for the practical applicatioo of the existing legal provisions: private copying, reotal and lending, direct broadcasting by satellites, satellite–to–cable programs, simultaneous and unchanged retransmission by cable.

Piracy

16. Tbe notion of "piracy" is sometimes used in a fairly wide sense, almost as a synonym of iofringemeot, for example, to cover uoauthorized public performances of legitimate audiovisual products. Io this document, the notion of piracy is used in a narrower sense, namely in the sense according to whicb piracy is the unauthorized commercial manufacture and tbe subsequent sale or other distribution of copies of works and other products protected by copyright and/or neighboring rights.

17. The piracy of audiovisual works was not absolutely unknown in the past (for example, films were sometimes fraudulently reproduced), but it was a fairly isolated pheoomenon and did oot have the disastrous consequences that today's piracy has.

18. The situation has dramatically changed with the appearance and rapid spreading of videorecording machines. By means of such machines, it has become extremely easy to record films and televisioo programs, duplicate prerecorded videocassettes and distribute the pirated copies in ever higher quantity.

19. The losses caused by video piracy to the film industry, broadcasting organizations, producers of videograms and — coosequently — to authors, performers, phonogram producers and other program contributors, are becoming bigger all the time. Piracy has now reached sucb proportions that it very dangerously drains off tbe resources of program producers aod the sources of creativity.

20. It is a false and bypocritical argument to say that pirates should be allowed to distribute their "products" because those products are usually much cheaper than legally produced videograms aod, coosequently, are advantageous for consumers. Pirates are thieves, and it is wby they can sell for a mucb cheaper price what they have stolen. They have no studio costs, they pay no royalties and fees to authors, performers and technicians aod, geoerally, they do not pay any taxes. At the same time, tbey do not take any commercial risk. They simply reproduce works which have become successful as a result of the creative and financial efforts of otbers.

21. Piracy is particularly detrimental to the cultural life of developing countries. Piracy suffocates national production of audiovisual works at birth, and without national production there is no outlet for the development of national creativity. Piracy leads to cultural dependence, tbe denationalizatioo of popular demand and — as a most undesirable result — the fading away of national cultural identity.

22. At the international level, the copyright cooventions do not leave any doubt that piracy is an illegal activity.

23. The most important foundation for any action against piracy is the exclusive right of reproduction granted to the authors of works. Under Article 9(1) of the Berne Convention, the authors of literary and artistic works protected by the Convention enjoy the exclusive right to authorize the reproduction of those works in any manner or form. Paragrapb (3) of the same Article makes it clear that any sound or visual recording is considered reproduction. Article 9(2) allows the national legislator to provide for exceptions to the exclusive right of reproduction in certain special cases. However, acts of piracy obviously could never be considered as such cases. The Convention makes the exceptions subject to two conditions: the reproduction must not conflict with a normal exploitation of the work; the reproduction must not unreasonably prejudice the legitimate interests of the author. Piracy does exactly the opposite.

24. The Universal Copyright Convention, in its Article IV*bis*, paragrapb 1, provides for the exclusive right of authors to authorize reproduction by any means. Paragraph 2 of the same Article allows national legislation to make exceptions that do not cooflict with the spirit and tbe other provisions of the Convention, but it adds that a reasooable degree of effective protection sbould be accorded nevertheless.

25. The producers of audiovisual works can themselves fight piracy if they are invested witb copyright by way of contractual assignment or liceose, or by *cessio legis*. Some legislations, considering audiovisual works as such to be not merely an industrial product but tbe result of a special kind of creativeoess, vest copyright in the producers, thereby placing them in a better position to fight piracy.

26. Tbe Rome Conveotioo may contribute to the fight against piracy of audiovisual works at least in two respects. Under Article 13, broadcastiog organizations enjoy the right to autborize or prohibit the fixation of their broadcasts and the reproduction of fixatioos of their broadcasts, made without their consent, or made in accordance with the provisions of Article 15 (provisioos on certain exceptions, for example, in the case of private use or use solely for the purposes of teaching or scientific research), if the reproduction is made for purposes different from those referred to in those provisions. Article 7 provides that thc protection of performers includes the possibility of preventing the fixation, without their coosent, of their unfixed performance and the reproduction, without tbeir consent, of a fixation of their performance, if the original fixatioo itself was made without their consent, or if tbe reproduction is made for purposes different from those for which the performers gave their consent or if tbe original fixatioo was made in accordance with the provisions of Article 15 and the reproduction is made for purposes different from those referred to in tbose paragraphs. Article 7 of the Convention offers protection against "bootlegging," which consists in recording live performances witbout authorization at concerts, stage performaoces and recitals, followed by the duplication of those recordings and selling sucb copies.

27. In the field of industrial property, the Paris Convention for tbe Protection of Industrial Property can be invoked, as it is designed, among other purposes, to protect trademarks and repress unfair competition. Trademark protection may be claimed wherever recordings are sold under a trademark that has beeo affixed on the piratical copies without the authorization of the owner of the trademark. Furthermore, piracy is obviously an act of unfair competition, an "act of competition contrary to honest practices in industrial or commercial matters" (Paris Convention, Article $10^{bis}(2)$). Thc Paris Convention gives examples of acts of unfair competition among which the following is particularly pertinent: "all acts of such a nature as to create confusion ... with tbe establishment, the goods ... of a competitor" (Article $10^{bis}(3)$).

28. It is clear from tbe above references to international conventions that tbe legal weaponry exists at the international level. And yet, it is oot sufficient, for a number of reasons.

29. First, many States are not party to the above–mentioned international conventions, and a great part of the piratical activity in the world takes place on the territory of such States. Steps bave therefore to be takeo to promote wider acceptance of the international conventions.

30. Secondly, in several countries, the national laws do not afford sufficient protection of tbe interests at stakc. Even though the international conventions generally provide tbat the States subscribing to them bave to take the necessary steps to eosure their application, the national laws concerned are not always in perfect harmony with all the obligations assumed by joining the conventions.

31. Thirdly, existing provisions are not always applied effectively because tbe sanctions applicable against pirates are not strict enough, or there is a lack of capacity — if there is no reluctance — on the side of the law–enforcing authorities to fight piracy.

32. In pursuance of the program approved hy the General Conference at its twenty–second session (Approved Program and Budget for 1984–1985, paragraph 15132), the Unesco Secretariat carried out a comprehensive and glohal study of the phenomenon of piracy with a view to better identifying its causes, extent and socio–economic and cultural implications. The Unesco Secretariat has prepared a document entitled "Analysis of the replies to the Unesco questionnaire on the phenomenon of the piracy of printed material, phonograms, audiovisual material, films, and radio and television programs," which summarizes and analyzes the replies to the questionnaire given hy member States. That document might contrihute to the further study of the prohlem of the protection of intellectual property rights against piracy.

33. WIPO has convened two Worldwide Forums on piracy. Both were held in Geneva: the first on the piracy of sound and audiovisual recordings in March 1981, and the second on the piracy of hroadcasts and of the printed word in March 1983. Unesco associated itself with both of those forums hy contrihuting papers on piracy. On the hasis of the discussions in those forums, the most important means of fighting piracy were outlined.

34. In the Worldwide Forum on the Piracy of Sound and Audiovisual Recordings, the participants adopted a resolution which contained, *inter alia*, the following statements:

"The participants affirm the unanimous view that:

(1) the enormous growth of commercial piracy of sound and audiovisual recordings and of films all over the world is posing dangers to national creativity, to cultural development and to the industry, seriously affecting the economic interests of authors, performers, producers of phonograms, videograms and films, and hroadcasting organizations;
(2) commercial piracy stifles efforts undertaken to safeguard and promote national cultures;
(3) commercial piracy constitutes a grave prejudice to the economy and to employment in the countries affected hy it;
(4) possihle inadequacies of, or inadequate use of, existing legislations do not effectively prevent acts of commercial piracy, which are facilitated hy continual technological progress of the means of reproduction and communication.

The participants express the wish that, both in developed and developing countries, steps may be taken as necessary, as a matter of urgency, to comhat and eliminate commercial piracy of sound and audiovisual recordings and films and, in particular:

— to hring into force appropriate legislation, where such legislation does not already exist, which guarantees the specific rights of those affected hy such piracy to prevent the unauthorized fixation and/or reproduction of the products of their creative efforts; and
— to ensure the application of such legislation, civil and criminal, hy the establishment of speedy and efficient procedures which would put an immediate stop to the production, distrihution, import and export of pirate products and hy imposing penalties of sufficient severity to act as a deterrent;
— an increasing number of countries should adhere to the appropriate intellectual property Conventions."

35. In recent years, several countries have legislated against piracy. Penalties to be applied in such cases have been increased, new offenses have been defined, stricter control has been introduced over importation and national markets. Those measures have hrought ahout promising results in some countries, hut, unfortunately, it cannot be said that piracy has been driven hack in general or even that it is on the decline at the international level.

36. That was why the Conference of WIPO, at its seventh session, held in Geneva in September–October 1985, unanimously adopted a recommendation concerning piracy. The Conference — "desiring to encourage further progress towards the elimination of piracy, and to review such progress on the hasis of full and up–to–date information" recommended "that the Government of each member State provide information through the International Bureau to the next ordinary session (1987) of the Conference concerning *(a)* the extent, within its jurisdiction, of commercial piracy of works protected... *(b)* measures adopted to comhat piracy, and *(c)* the effect of the said measures."

37. It is highly desirahle that the recommendation he fulfilled as fully as possihle and that States make joint efforts to eliminate piracy.

Principle AW1. (i) Piracy of audiovisual works is the unauthorized commercial manufacture, sale or other distribution of copies of such works.

(ii) Piracy is an illegal activity — a form of theft — and, as such, thoroughly antisocial and contrary to the public interest and not merely a matter affecting the private rights of individuals.

(iii) The manufacture, distribution — including the import and export — of pirate copies of audiovisual works should be expressly forbidden by law and, where such acts are still perpetrated, penalties of sufficient severity should be imposed as punishment and to act as deterrent.

Report 22. A great number of participants emphasized that piracy had reached such proportions that it very dangerously drained off the resources of program producers and the sources of creativity. Therefore, the fight against piracy should be the highest priority when dealing with the problems of the protection of audiovisual works.

Report 23. It was said that the document correctly identified the sources and causes of piracy as well as the steps to be taken at the international and national levels in paragraphs 28 to 36.

Report 24. Several delegations informed the Committee about legislative steps and other measures

that had been taken or that were under consideration in their countries. The representatives of some intergovernmental and international non-governmental organizations also informed the Committee of the anti-piracy activities of their respective organizations.

Report 25. The participants, in general, agreed with the intention expressed in and the wording of Principle AW1. However, some delegations emphasized that developing countries should receive assistance from the competent international organizations and from the industrialized countries in setting up their national infrastructure which was indispensable for a successful fight against piracy.

Report 26. A great number of comments were made regarding certain details of Principle AW1. Some participants proposed that the concept of piracy should be broadened to also cover acts other than manufacture, sale or other distribution of copies. It was suggested, for example, that rental of copies should also be mentioned.

Report 27. It was agreed, that "possession of copies for sale or other distribution" should be added to the list of acts covered by the definition in paragraph (i) of Principle AW1.

Report 28. It was agreed that the expression "commercial manufacture ..." should be replaced by "manufacture ... for purposes of commercial advantage" in paragraph (i) of Principle AW1.

Report 29. One delegation proposed that the acts mentioned in paragraph (i) of Principle AW1 should be qualified by the adjectives "willful and deliberate." The proposal was, however, not insisted upon on the understanding that, as far as penal sanctions were concerned, the general rules of penal law concerning intent would automatically apply and that where the acts were committed by retailers, they might invoke, as a defense, their innocence, that is, that they did not know the piratical nature of the copies.

Report 30. It was agreed that seizure should be mentioned in paragraph (iii) of Principle AW1 as one of the sanctions indispensable in the case of piracy.

Report 31. One delegation proposed that the words "where such acts are still perpetrated" should be deleted in paragraph (iii) of Principle AW1.

Report 32. Some participants drew attention to the importance of the Satellites Convention in fighting piracy of broadcasts and said that countries which were not party to that Convention should adhere to it.

Private Copying

38. Pursuant to the decisions taken by the General Conference of Unesco at its twenty-second session and by the Governing Bodies of WIPO at their fourteenth series of meetings in October 1983, the Secretariats of Unesco and WIPO convened a Group of Experts on Unauthorized Private Copying of Recordings, Broadcasts and Printed Matter, which met in Geneva in June 1984.

39. The Group of Experts has not given detailed answers to all the problems of private copying but has identified certain principles which can be taken into account when one considers the problems of private copying of audiovisual works.

40. According to Article 9(1) of the Berne Convention, "Authors of literary and artistic works protected by this Convention shall have the exclusive right of authorizing the reproduction of these works, in any manner or form." This provision covers also cinematographic works, which, according to Article 2(1), include "works expressed by a process analogous to cinematography," that is, not only films in the traditional meaning of the word, but also televisual and other audiovisual works, such as videograms.

41. If there were any doubts, Article 9(3) of the Berne Convention makes it absolutely clear that "Any sound or visual recording shall be considered as a reproduction for the purposes of this Convention."

42. The right of reproduction is not limited to reproduction for public or profit-making use of the work, and it also covers protection as regards various forms of reproduction for private purposes.

43. Article 9(2) of the Berne Convention gives to member States the power to restrict this exclusive right of reproduction and permit works to be reproduced in "certain special cases." However, there are two conditions of any restriction even in such cases: the reproduction must not conflict with a normal exploitation of the work, and it must not unreasonably prejudice the legitimate interests of the author.

44. The above-mentioned Group of Experts found that the cumulative effect of reproduction for private purposes of sound and audiovisual recordings and broadcasts as well as reprographic reproduction for private use of printed works was prejudicial to the author's legitimate interests (in particular, to his claim to derive material benefit from the use of his work by others) and such kinds of reproduction may also conflict with a normal exploitation of the work reproduced. Consequently, it would not be compatible with the Berne Convention to exempt from copyright liability such reproductions even if made for private purposes.

45. This finding of the Group of Experts also covered private recording of audiovisual works. However, it should be taken into account that private recording does not concern the different genres of works to the same extent. Therefore, its conflict with a normal exploitation of

the works and the prejudice caused by it may, for the different genres, be more or less significant.

46. It is undeniable that videorecording machines are fairly frequently used for what is called "time-shifting," that is, for recording television broadcasts for watching them at convenient time, but the copying of television programs and videocassettes for private video libraries or for circulation among friends and acquaintances is becoming more and more widespread. The most valuable and interesting programs are simply kept and circulated after "time-shifting." These recordings, separately, may seem harmless, but, collectively, they are highly detrimental to the rights and interests of the owners of copyright. Such a practice cannot be allowed without at least some compensation according to the spirit of Article 9(2) of the Berne Convention.

47. One can come to the same conclusion on the basis of the Universal Copyright Convention, which provides for the right of reproduction — as one of the basic rights — in paragraph 1 of Article IV*bis*. Paragraph 2 of the same Article allows any Contracting State to make exceptions to the rights mentioned in paragraph 1 but only if they do not conflict with the spirit and the provisions of the Convention and subject to the condition that the legislation of that State accords a reasonable degree of effective protection to each of the rights to which exception has been made. The cumulative effect of reproduction for private purposes of audiovisual works does seriously conflict with the requirement of guaranteeing a reasonable degree of effective protection of the right of reproduction. Consequently, national legislations of countries party to the Universal Copyright Convention should not exempt such reproduction for private purposes from copyright liability. Such prohibition also follows from the requirement of adequate and effective protection of authors' rights provided for in Article I of the Universal Copyright Convention.

48. It would be impractical and even impossible to *control* the reproduction of audiovisual works for private purposes because such control would conflict with the respect for individual privacy and the inviolability of the home. Consequently, the exclusive right of reproduction cannot be exercised in such cases either on an individual or a collective basis.

49. There is only one way to avoid conflict between the provisions of the two copyright conventions on the one hand and the widespread private recording of audiovisual works on the other, namely, by eliminating the element which makes such a practice incompatible with the conventions. That element is the prejudice caused to the authors as described above. The prejudice can be eliminated by the imposing of a charge on recording equipment and/or blank material supports (tapes and cassettes). The amounts corresponding to such a charge should be collected by collective administration bodies and distributed to the individual owners of rights (as closely as possible to those owners whose works are the subject of private recordings).

50. In the case of private copying, the actual users of audiovisual works are private persons. It is they who should be responsible for the payment of the charge. However, such payments cannot be collected directly from individuals, or at least, such collection would be highly impractical. The only workable solution is that the manufacturers or importers of equipment and/or blank material supports be made responsible for the payment of the charge. They may then recover the resulting expense through a corresponding increase in the price of the said equipment and/or blank material supports. (Making importers responsible for the payment of the charge has a logical consequence: the exemption of the equipment and material supports exported from any charge in the country of manufacture (the country of the exportation)).

51. The principles which should be applied in the case of reproduction of audiovisual works for private purposes are the following:

Principle AW2. Widespread reproduction of audiovisual works for private purposes prejudices the legitimate interests of copyright owners. It is an obligation of States party to the Berne Convention or the Universal Copyright Convention to eliminate such prejudice.

Principle AW3. The most appropriate way of eliminating the prejudice mentioned in Principle AW2 is the introduction of a charge on recording equipment and/or blank material supports (tapes, cassettes). The charge should be paid by the manufacturers or importers and collected by organizations responsible for the collective administration of the rights in question.

Principle AW4. Recording equipment and material supports exported into another country should be exempt from any charge in the country of manufacture.

Principle AW5. The collective administration organizations — after the deduction of the administrative costs actually incurred and strictly necessary — should distribute the amounts collected to the individual owners of copyright according to the presumed frequency of the reproduction of their works for private purposes (for example, in proportion to the frequency of the various forms of public use, such as broadcasting, sales and rental of videocassettes, etc.).

Principle AW6. The amounts collected by the collective administration organization must not be used for purposes (for example, for general cultural, social purposes) other than what is defined in Principle AW5.

Principle AW7. Foreign owners of copyright in audiovisual works should enjoy exactly the same

rights as national ones. The collective administration organization should distribute the amounts collected to foreigners on the same basis as to nationals. Principle AW6 also applies to foreigners: the amounts due to them must not be used for purposes other than those mentioned in Principle AW5.

52. It goes without saying that the payments necessary for the elimination of the prejudice caused by widespread private recording to the owners of copyright in audiovisual works must not be used for other purposes (such as fiscal purposes) by the governments concerned either. Such practice would be in conflict with the two copyright conventions.

53. As far as performers, phonogram producers and broadcasting organizations are concerned, there is no provision in the Rome Convention which would involve such an obligation as is contained in the two copyright conventions regarding the reproduction of audiovisual works for private purposes.

54. Despite the fact that there is no such obligation at the international level, it is recommendable that national legislators, when introducing a charge on recording equipment and/or blank material supports in favor of owners of copyright, should consider the need of extending this measure in favor of performers, phonogram producers and broadcasting organizations if they, too, suffer prejudice from widespread private copying of audiovisual works. That seems to be the case, beyond any doubt, as far as performers are concerned (their chances for employment may be drastically reduced if the production of audiovisual works is diminishing), and it may be true — at least in some circumstances — also in the case of phonogram producers (for example, in the case of musical programs) and broadcasters.

Principle AW8. If the widespread practice of reproduction of audiovisual works for private purposes also prejudices the legitimate interests of performers, phonogram producers and broadcasting organizations, such prejudice should be eliminated by granting a right to any (or all) of the three categories to receive an appropriate share from the charge mentioned in Principle AW3. In such a case, the total amount of the charge should be proportionally higher than it would be if it served only the elimination of the prejudice caused to owners of copyright. Principles AW4 to AW7 apply mutatis mutandis also in the case of performers, phonogram producers and broadcasting organizations.

55. The amount (the percentage) of the charge on recording equipment and/or blank material supports should be specified by each country, according to its particular circumstances. It is recommendable to leave it to the agreement of the representatives of the interested parties (copyright and neighboring rights owners, manufacturers and importers of equipment and material supports, consumers). In the absence of agreement, a court or another independent body should decide on the amount of the charge. However, it does not seem to be against any provisions of any international convention, if it is the legislator himself who fixes the amount of the charge. The same applies regarding the share of the different groups of owners of copyright as well as different categories of owners of neighboring rights in the payments collected.

56. Paragraph 52, above, applies *mutatis mutandis* also as regards performers, phonogram producers and broadcasting organizations.

Report 33. The majority of the participants agreed upon the intention and the essence of Principles AW2 to AW8.

Report 34. Several delegations said that the desirability of the charges proposed in those Principles should be further studied and further evidence was necessary to persuade governments about the need for a legislative step instituting such charges.

Report 35. It was thoroughly discussed whether "time-shifting" was really a dominant purpose of private copying of audiovisual works. Views differed on that question. One delegation said that "time-shifting" was the dominant purpose and this practice did not prejudice the interests of the right holders. The representatives of interested non-governmental organizations said that the copying of television programs and videograms for private "video libraries" or for circulation among friends and acquaintances was becoming ever more widespread. Some participants said that "time-shifting" itself was prejudicial to the interests of right holders, irrespective of whether it was dominant or not.

Report 36. It was generally held that in the text of Principles AW2, AW3 and AW8 the verb "to eliminate" should be replaced by the verb "to mitigate" in order to express better the actual result of the proposed system of charges.

Report 37. It was proposed that the Principles should expressly state that paying the charge mentioned in Principle AW3 had as a corollary that the buyer was entitled to reproduce audiovisual works for private purposes.

Report 38. A number of participants expressed the view that the concept of "private purposes" should be defined either in the Principles themselves or, at least, in the comments on them. It should be made clear that what was meant was copying for strictly personal use and that the copies should not be used outside the family circle, and, in particular should not be used for public performance.

Report 39. Severol delegations were of the opinion that it should be further studied whether exceptions to the proposed chorge should not be provided iu the case of certoin educationol purposes or in the case of copying for hondicapped persons.

Report 40. Most of the porticiponts expressed the view that the word "if" should be deleted in Principle AW8, as for as performers ond phonogrom producers were concerned. A number of porticiponts were of the opinion that the rights of performers and phonogram producers should be dealt with separately from the rights of broadcasters, preferobly by meons of merging Principles AW2 ond AW8. The representotive of on internationol noii-governmental orgonization emphasized that broadcasters should be entitled to participote in the income from the charge mentioned in Principle AW3 iu the some woy as performers ond phonograin producers were.

Report 41. Although the basic soundness of Principle AW6 was generally recognized, severol porticipants soid that if the right holders wished to use some of the money otherwise due to theiu for social or culturol purposes, they were free to so decide.

Report 42. The Director General of WIPO said that such decision would be justified only if all the right holders, including the foreigners, could effectively porticipote, with equal right, in making tlie decision.

Report 43. Severol porticipants proposed that the statement contained in paragroph 52 — occording to which governments were not entitled to use the income from the chorge mentioned in Principle AW3 for other (in particulor, fiscal) purposes — should be transformed into o seporote Principle.

Report 44. The representotive of o non-governmentol organization proposed thot whenever the Principle — regarding privote copying, but also in regord to other uses — dealt with the rights of broadcosters, the rights of coble operotors ("coble-casters") should be regulated in the some way as far as their coble-originated programs were concerned. Thot proposal was accepted.

Rental and Public Lending

57. Rental and public lending are economically important methods of distrihution of videograms (audiovisual fixations in videocassettes, videodiscs) throughout the world.

58. The worldwide expansion of rental and public lending of videograms has negative repercussions on the distribution pattern estahlished by the right owners in the works constituting videograms, or in the works embodied in vidcograms, and, in the ultimate analysis, on the possibilities of producing such works. Uncontrolled rental and puhlic lending undermine the normal exploitation of the works concerned and is prejudicial to the legitimate interests of the owners of copyright.

59. In pursuance of the decisions adopted by the General Conference of Unesco at its twenty-second session and by the Governing Bodies of WIPO at their fourtecnth series of meetings in October 1983, the Secretariats of Unesco and WIPO convened jointly a Group of Experts on the Rental of Phonograms and Videograms which met in Paris in November 1984.

60. On the basis of the documents prepared for and the discussions at the meeting, it became clear that the rental or public lending of copies of a videogram should be recognized as an act requiring the authorization of the owner of the copyright in the work that constitutes or is emhodied in the videogram. The owner of copyright concerned would then be in a position to control, through the exercise of his right of authorization, the extent to which the rental or lending of recordings constituting or embodying his work could compete with the sales thereof and to claim a remuneration for authorizing such forms of public distribution of lawfully reproduced copies of his work.

Principle AW9. The owner of copyrigbt in a work constituting, or embodied in, a videogram should have an exclusive right of authorization of the rental or public leuding of any videogram constituting ur embodying such work, as long as the said work is protected by copyright.

61. The rental and puhlic lending right in favor of owners of rights in audiovisual works is one of the aspects of the right of distribution and as such it can be deduced from the existing provisions of the two copyright conventions.

62. In the Universal Copyright Convention and in the general provisions of the Berne Convention, no direct mention is made of the right of distribution. However, it can be said that the right of distribution flows from the right of reproduction (which is recognized hy Article 9(1) of the Berne Convention and Article IV*bis* of the Universal Copyright Convention). The author, when making a contract about the reproduction of his work, can lay down conditions governing the distribution of copies, for example, as to the countries in which those copies may be sold. It may also be stipulated in the contract that the copies or some of them can only be distributed in the form of rental or public lending.

63. Distribution means distribution to the public. When copies reach the public, it may be said that the distribution right has been exercised, hut it cannot be necessarily said that it has been exhausted. The copies can be freely used for personal and private purposes (including non-profit private lending to family members, friends and acquaintances) but the right of distrihution is "renewed" as soon as

the owners of the copies start distributing them to a new public (outside private circles), for example, in the form of rental or public lending.

64. It is to be noted that it is in the case of cinematographic works (and other audiovisual works assimilated to them) that Articles 14(1) and 14bis(1) of the Berne Convention make the existence of the right of distribution (connected to the right of reproduction) absolutely clear. Traditionally, cinematographic works were distributed through theatrical exhibition. However, the right of distribution does obviously cover other ways of distribution as well, such as selling, rental and public lending of videograms.

65. The implementation of Principle AW9 by national legislation will largely depend on the system of copyright existing in the country concerned. In countries following the "first sale doctrine" or "exhaustion theory" in respect to the distribution of copies of the work, the application of such a doctrine or theory should be expressly negated where the copy sold is used for rental or public lending, and the exclusive right to authorize the rental or public lending of copies of videograms should be expressly recognized. Where the law of a country contains no special rules as regards various forms of distribution of copies of a work, a particular solution for rental and public lending of videograms should be introduced in the law. Where the law of a country recognizes a public lending right of authors as regards books but limits it to a compulsory license, such a right should be developed but by making it an *exclusive right* of authorization with regard to copies of videograms.

66. Authorization should be required for any rental or public lending of videograms and not only where such uses of the recordings are made on a commercial basis, for profit. It is the cheaper and repeatable secondary access to a copy of the videogram that is prejudicial to the normal sale of copies, and it is the prevention of such prejudice that justifies rental and public lending right and should lead to remuneration to the owner of rights compensating him for the decrease in his revenue because of rental and lending instead of sale.

67. Principle AW9 provides for an exclusive right of authorization of the owner of copyright. The necessary corollary of such a right is that any remuneration payable as a condition of the authorization to rent or publicly lend copies of videograms is due to the owner of the copyright in the work constituting or embodied in the copies rented or lent and to no other person or entity. Such remuneration, therefore, should not be regarded as a kind of tax or levy that can be used for general cultural, welfare or other purposes.

Principle AW10. National legislations should not oblige the owners of copyright in audiovisual works to exercise their rental and public lending right in the framework of collective administration. It should be up to copyright owners to have recourse to collective administration if they find such administration necessary.

68. Rental or public lending may facilitate the reproduction of videograms for private purposes. However, it should be seen very clearly that rental or public lending on the one hand, and reproduction for private purposes on the other, are separate uses. They should be the subjects of separate rights and separate provisions in national laws.

69. Rental and public lending of videograms is an important form of distribution also from the viewpoint of performers. However, their legal situation is rather disadvantageous at the international level.

70. Under Article 7 of the Rome Convention, performers enjoy the right to prevent the reproduction without their consent of a fixation of their performance in certain cases. However, it is just in the case of visual or audiovisual fixation of their performances that they have no rights. According to Article 19 of the Rome Convention, once a performer has consented to the incorporation of his performance in such a fixation, Article 7 shall have no further application.

71. There is a general feeling which has been repeatedly expressed also by government delegations, for instance at the meetings of the Intergovernmental Committee of the Rome Convention, that Article 19 of the Rome Convention places the performers in a position that is no longer justified. Audiovisual works play a leading role in the professional life of a performing artist. But once he has consented to the sounds and images in his screen appearance being recorded, he is deprived of all means to control (and hence receive payment for) any of the uses to which that fixation may be put. At the time of the establishment of the Rome Convention, cinema and television were taken into account. Since then, new means of exploitation have evolved, for example videograms to be sold — or rented or lent — for showing (or perhaps for reproduction) in the home.

72. On the other hand, Article 19 of the Rome Convention has no effect on performers' freedom of contract in connection with the making of visual or audiovisual fixations, nor does it affect their right to benefit by national treatment, even in connection with such fixations.

73. It is just at the level of national laws where a solution may and should be found to remedy the disadvantages mentioned in paragraph 71 above, granting performers reproduction and/or distribution rights to make it possible for them to participate in the benefits of exploiting the visual or audiovisual fixations of their performances by means of new distribution methods, such as rental and public lending.

Report 45. A great number of participants expressed their agreement with Principles AW9 and AW10 and the comments accompanying them.

Report 46. Some delegations said that their governments were not yet persuaded that a right of rental should be introduced. They added that even if such a right were introduced it would not have to be necessarily an exclusive right; a right to equitable remu-

neration also might be an acceptable solution; and if that solution had been chosen, obligatory collective administration might also be provided for.

Report 47. Other delegations and observers emphasized that the right of rental should be an exclusive right and it should be left to the owners of the rights to choose collective administration.

Report 48. Some delegations were of the opinion that public lending could be regulated in ways other than rental was. Other participants emphasized that the results of public lending were the same as that of rental.

Report 49. It was agreed that the principle of national treatment should also be applied in the case of rental right.

Satellite Broadcasting

74. There are two types of satellites used for transmission of television programs (including — io a very bigh percentage — audiovisual works): "direct broadcasting satellites" (DBS) and "fixed service satellites" (FSS). Direct broadcasting satellites distribute signals to the public without any intermediary earth station, while fixed service satellites are used for transmission of signals between earth stations.

75. There are two subtypes of fixed service satellites: point–to–point satellites and distribution satellites. Point–to–point satellites are used for intercontioental communication, and the earth stations receiving the signals from tbem must be very powerful; consequently, they are expensivc. Distribution satellites transmit signals for a greater number of receivers (cable operators or broadcasters) in a smaller geographical area; those signals are more powerful thao those transmitted by point–to–point satellites; consequently, the equipmcnt required for their reception is usually much simpler and cheaper.

76. The two types of satellites — direct broadcasting and fixed service satellites — raise differeot legal questions. The answer to those questions is not always easy, and it is further complicated by some new developments, particularly by the fact that, recently, stronger fixed service satellites have started fuoctiooing, whose signals can be received not only by earth stations and cable operators but also (by means of less and less expensivc receiving installations) by the general public.

Direct Broadcasting Satellites

77. In pursuance of the decisions taken by tbe Geoeral Conference of Unesco at its twenty–second session and by thc Governing Bodies of WIPO at their fourteenth series of meetings in October 1983, the Secretariat of Unesco and the International Bureau of WIPO jointly convened a Group of Experts on tbe Copyright Aspects of Direct Broadcasting by Satellite which met at Unesco headquarters in Paris in March 1985.

78. There was a fairly general agreement among the participants of the meeting that broadcasting through direct broadcasting satellites is broadcasting in the sense of Article 11bis of the Berne Convention, Article IV*bis* of the Universal Copyright Conveotion and Article 3*(f)* of the Rome Convention.

79. It was in Article 11bis(1) of the 1928 Rome Act of the Berne Convention that the concept of broadcasting was first mentioned. That provisioo was worded as follows: "Authors of literary and artistic works shall enjoy the exclusive right of authorizing the communicatioo of their works to the public by radiodiffusion." That text was revised at the Brussels Conference io 1948 and the text adopted then was retained at tbe Stockholm and the Paris Cooferences of 1967 and 1971. It reads as follows: "Authors of literary and artistic works shall enjoy the exclusive right of authorizing ... the broadcasting of their works or the communication thereof to the public by any other means of wireless diffusion of signs, sounds or images."

80. Wben tbe expression "communicatioo to the public by radiodiffusion" was replaced by the word "broadcasting" no modification of the concept of broadcasting was envisaged. It is obvious also on the basis of the present text of the Berne Convention that broadcasting is a communication of the work to the public by wireless diffusion (by Hertzian waves) of signs, sounds or images. The communication to the public means making the program available to the public. Such a communication takes place irrespective of the actual reception of the program. The program involved is communicated to tbe public eveo if thc majority of the public does not receive it (or even no member of the public watches tbe program made available by the broadcast).

81. In the Universal Copyright Convention, broadcasting right is mentioned in Article IV*bis* without any definition. The very fact that at the 1971 Paris Diplomatic Conference, where this Article was inserted into the Convention, no mention was made about any possible different interpretation, proves that this concept was intended to be the same as what had been generally accepted until that time on the basis of the Berne Convention.

82. According to Article 3*(f)* of the Rome Convention, "broadcasting" means "the transmission by wireless means for public reception of sounds or of images and sounds." This definition is io harmony with the notion of broadcasting used in the two copyright conventions. (The other convention which provides for a so–called oeighboring rights protection for broadcasters — namely the Convention Relating to the Distribution of Programme–Carrying Signals Transmitted by Satellite (Satellites Conveotion) (which otherwise does not covcr direct broadcasting satellites) — does not contain any definition of broadcasting but it can be presumed tbat this notion is used in the same meaning in that convention as in tbe two copyright conventions and the Rome Convention.)

83. Direct broadcasting by satellite is a communication to the public (or, in the words of the Rome Convention, "a transmission for public reception") by means of wireless diffusion. Therefore, it is obvious that such broadcasting is covered by the notion of broadcasting as it is used in the copyright and neighboring rights conventions.

Principle AW11. Broadcasting through direct broadcasting satellites is broadcasting under tbe Berne Convention, the Universal Copyright Convention and the Rome Convention. Consequently, wbere audiovisual works are broadcast by such satellites, the owners of copyright in such works, as well as performers, phonogram producers and broadcasting organizations wbose rights may be concerned by the direct broadcasting hy satellite should enjoy the same rights as in tbe case of traditional broadcasting (by earth stations).

84. In the case of broadcasting by direct broadcasting satellites, it is obvious that tbe user of tbe audiovisual works (and the copyrights and so-called neighboring rights involved by broadcasting them) is the broadcaster that injects the program towards the satellite.

Principle AW12. It is tbe broadcaster originating the direct broadcasting by satellite (giving tbe order for such broadcasting) that is responsible towards the owners of copyright in audiovisual works and towards performers, phonogram producers and broadcasting organizations whose rights may he concerned hy the direct broadcasting by satellite of such works.

85. A further question is the following: whicb country's law should be applied in the case of direct broadcasting by satellite? The law of the country from which the signals are emitted towards the satellite and/or the law(s) of the country or countries wbere the program is communicated to the public? Since, according to generally accepted principles, it is the law of the country in whicb the act of using a work (and a performance, phonogram, broadcast) takes place, that applies, tbe answer to the question depends on the answer to another question, namely, the following: where does broadcasting take place in the case of direct broadcasting by satellite?

86. Broadcasting takes place where the wireless diffusion (or, in the words of the Rome Convention, the transmission for public reception) takes place as a communication to the public. Sucb diffusion (transmission) starts with emitting the programme-carrying signals towards the satellite, but it is not finished by the emission. Diffusion (transmission) covers both the so-called up-leg (or up-link) and the down-leg (or down-link) pbases of transmission of signals. This whole process consisting of various subsequent phases should be considered as communication to the public (transmission for public reception), that is, it should be considered broadcasting. Therefore, in the case of direct broadcasting by satellite, broadcasting takes place both in the country where the signals are originated (that is, where the process of broadcasting starts) and the country (or countries) to whose public the program is communicated (that is, where the process of broadcasting is completed).

Principle AW13. Where communication to the pnblic (transmission for puhlic reception) is effected through a direct broadcasting satellite, the communication (transmission) process takes place hoth in the country where the programme-carrying signals are originated and in all the countries which are covered by the "footprint" of the satellite (and to whose public the audiovisual works involved are commnnicated (transmitted for public reception)).

Principle AW14. Under the Berne Convention, the Universal Copyright Convention and the Rome Convention, all of which provide for national treatment, the national laws of both the country where the programme-carrying signals are originated and that of each country covered by the "footprint" of the satellite are applicable. If the national laws involved do not grant the same kind or degree of protection, the highest level of protection should be applied.

87. At the meeting of the Group of Experts mentioned in paragraph 77 above, some participants were of the opinion that since direct broadcasting by satellite was broadcasting, the law applicable to the responsibility of the broadcaster under international conventions sbould be determined in the traditional way, as has generally been determined in connection with traditional broadcasting. According to those participants, the law of the country of the broadcaster, and that law alone, should apply to the copyright responsibility of the broadcaster, even where the satellite broadcasting covered several countries. The country of the broadcaster, according to some of the said participants, was the country where the broadcaster had his headquarters, wbereas according to others it was the country from which the emission to the satellite took place.

88. The reference to the "traditional interpretation" of broadcasting is misleading in itself. In the overwhelming majority of cases, the country of the broadcastcr, the country of the emission and the country where the communication to the public took place was the same in the case of traditional broadcasting; consequently, if one said that, for example, the law of the country of the emission should be applied, one was generally right, because that law was, at the same time, the law of the country to whose public the program was communicated. Certain questions of broadcasting emerged — or at least emerged in a significant manner — for the first time only when broadcasting satellites started to function. Those questions — never asked before then — should be answered now.

89. As was emphasized by other participants at the above-mentioned meeting of the Group of Experts, there was nothing in the Berne Convention, the Universal Copy-

right Convention and the Rome Convention which would support the view that the coocept of broadcasting, that is, the eommunication to the public (or the transmission for public reception) of programs hy wireless diffusioo covered only the beginning of the communication (transmission), that is, the emission of the program, and it did not cover the whole process of the communication (transmission). The word "emissioo" is not used io those conventions. There is no hasis to say that hroadcasting is hroadcasting when the signals are emitted but not when the signals reach the satellite or when the signals are transmitted to the territory of the countries covered by the "footprint." There is no hasis to say that a transmission by wireless means takes place at ooe single point, namely where it starts, and not hetween that point and all the points to which the signals are transmitted. There is no hasis to say that communication to the public by hroadcasting takes place only in the country where the communication process starts and not also in the country to whose puhlic the program is communicated.

90. "Communication to the public" — making works availahle to the public — has nothing to do with the concept of reception (*transmission for* public reccptioo is not the same as actual reception), and does not imply any responsibility of anyone who merely receives the broadcast.

91. From the fact that hroadcasting is hroadcasting from the beginning (emission) until the eod (the actual making availahle of the program to the puhlic), it follows that both the law of the country of emissioo and that of the country to whose public the program is communicated must be applied when one has to answer the question, which national law should be applied on the basis of the principle of national treatment. Applying two laws does oot mean that there are two rights of utilization involved. It merely means that there are two laws that must be taken into account in determining the existence and extent of the hroadcasting right.

92. If hoth national laws grant protection, and if the extent of protection is the same under hoth laws, then, of course, there is no conflict to be solved. If, bowever, there is a difference between the two laws as regards the extent of the protection, one has to choose betweeo the two kinds of protection. If one of the laws grants no protection or grants only a protection lesser in its extent thao that granted hy the other law, the law that is more favorahle to the owners of rights should be applied. Otherwise, one would deny or diminish rights, and there is no legal hasis to do that.

93. The solution just outlined means that if in the country of emission there is no copyright or neighboring rights protectioo, but in the couotry covered by the "footprint", there is, then the rights involved are protected under the law of the country to whose puhlic the program is communicated; on the other hand, if in the country of emission there is, and in the country of "footprint" there is no protection, then the law of the country of emission prevails. The same is true in the case of compulsory liceosing. If compulsory licensing is allowed in one of the two countries, but it is not in the other, then compulsory licensing is not applicahle.

94. The latter result follows also from Article 11bis(2) of the Berne Convention, according to which compulsory licenses "shall apply only in the countries where they have been prescribed."

95. At the meeting of the Group of Experts mentioned in paragraph 77, some participants opposed the application of the laws of the countries covered hy the "footprint" on the hasis that the observance of more than one law could cause practical difficulties. Such a practical prohlem could be — aeeording to them — that the refusal of the grant of right for one of the countries covered by the satellite would make it impossihle to go ahead with the hroadcasting.

96. Such arguments do not seem to be valid for two reasons. Firstly, the acquisition of rights with regard to several countries usually does not cause any practical difficulties since the owner of the right existing in the various countries is, in most cases, one and the same person and where those rights are eollectively administered they can generally be obtained for all countries from one and the same organization, namely, the organization of the country of the hroadcaster since that organization usually repreSeots also the organizations of the other eouotries concerned. Secoodly, if the owner of a right does not wish to permit the transmission of a program for puhlic reception in a country — for example, because he does not wish that television reception be possible in a country before theatrical exhihition has taken place in that country — he merely exercises a right he has. Oo what hasis could one say that the justified interests of the owner of copyright should be ignored and his rights, although clearly established, should be denied just because the existence of such interests and rights create some "praetical problems" to the hroadcaster?

97. It may happen — albeit rarely — that rights are owned hy different persons in different countries concerned by the satellite broadcasting. In such a situation the hroadcaster will have to obtain the authorization of not one hut two or more right holders. Such a situation, however, is not unique or eharacteristic for satellite hroadcasting. It exists in the case of other utilizations of works as well, and it is taken care of by means of appropriate contractual solutions. It can be and should be done in the same way also in the case of satellite hroadcasting.

98. Even in the case of "traditional" hroadcasting. copyright and oeighboring rights fees for a hroadcast are usually caleulated in consideration of the size of the public to wbich the program is diffused. The same can and should be done in the case of direct broadcasting hy satellite. In the latter case, where the "footprint" exteods to countries in which the language of the broadcast program is geoerally oot understood, this fact should also be taken into account when estimating the size of the public.

99. It should be seen that so–called "practical problems" would emerge also on the basis of the interpretation according to which the concept of broadcasting would be

limited to one phase of broadcasting (to the emission) and their number would not be significantly less than in the case of the above explained interpretation of the same concept. It would also necessarily involve certain problems which are different from those existing in the case of traditional broadcasting. For example, the right holders could make their authorization conditional on the respect of their interests in the "footprint" countries; consequently, the fees would be calculated according to the size of the public in the countries covered by the "footprint." It would have to be taken into account also in such a case that according to Article 11bis(2) of the Berne Convention, any compulsory license can only be applied in the country where it has been prescribed. The final practical result of the two interpretations simply cannot be significantly different if certain basic principles of copyright and neighboring rights are duly taken into account.

100. Where the "footprint" covers only a part of a country, and the proportion of that part is relatively small when compared with the total size of the public reachable by the transmission, one might consider, according to the "de minimis" principle, that the national copyright law of that country need not be taken into account.

Report 50. A great number of participants emphasized that the objective of the Principles on direct broadcasting satellites was very attractive and favorable for owners of copyright and so-called neighboring rights.

Report 51. Several participants expressed their full support for those Principles. They emphasized that they were the only guarantees for the possibility of exercising the right to broadcast in the case of direct broadcasting satellites.

Report 52. Several other participants said that while they fully agreed with Principles AW11 and AW12, they had serious reservations with regard to Principles AW13 and AW14. The majority of those participants emphasized that they opposed those Principles because they were of the opinion that the application of the latter Principles would raise legal and practical difficulties. The following difficulties were mentioned: it would be hard to enforce the law of other countries if the case was brought before the court of the country of emission and this could give rise to problems of extraterritoriality; if the case was decided by the court of a "footprint" country, the enforcement of the decision against a broadcaster whose headquarters was in another country would be difficult; the comparison of the levels of protection of the country of emission and the "footprint" country where protection was sought would not be easy and could not be applied in the case of penal sanctions; the notion of "footprint" was not absolutely clear, taking into account the phenomenon of "overspill." Those participants who were against the application of Principles AW13 and AW14 were in favor of the application of the law of the country of emission and of trying to persuade countries where no protection existed to introduce appropriate protection.

Report 53. Those participants who supported Principles AW13 and AW14 referred to the fact that there was no basis in the international copyright and neighboring rights conventions for restricting the concept of broadcasting to one phase of the whole process of broadcasting as a particular case of communication to the public. It was said that the alleged practical problems could be solved by regulating certain details and through case law; at the same time, the exclusive application of the law of the country of emission would create not only certain practical problems, but could, and in many cases would, lead to the complete denial of the exclusive rights — or the rights in general — of copyright and neighboring rights owners: if, in the country of emission, there was no appropriate protection of those rights or there was no protection at all, the owners of rights would be left without any protection.

Report 54. The Director General of WIPO said that where the legislation of the country of emission gave an exclusive right of authorization, there was generally no practical need for looking at the legislation of the countries of the "footprint" since any exclusive right implied the necessity of agreement and the agreement would take into account the size of the "footprint." On the other hand, where the country of emission provided for compulsory licensing or did not provide for any right, there was no possibility of negotiation between the right holders and the organization emitting the signals. It was in those cases that the laws of the countries of the "footprint" became relevant and since, under the Berne Convention, "broadcasting" meant transmission, rather than mere emission, they should be taken into account. The rights of the right holders could be effectively enforced in any country of the "footprint" if in that country the organization effecting the emission had some assets. One delegation, in support of those views, said that the advertisers ordering the emission might be in one of the countries of the "footprint" (rather than in the country of emission), and they should be made co-responsible. In that situation, there could be assets that the right holders could seize.

Fixed Service Satellites

101. Direct broadcasting satellites provide broadcasting for direct public reception. No further activity is necessary for the communication of the program to the public. If the received signals are rebroadcast, or if they are distributed by cable, such rebroadcast or distribution is a separate, new utilization. In the case of fixed service satellites, the

situation is different. The signals transmitted through such satellites are (at least, geoerally) not intended for direct reception by the general public, and sucb a reception is (again, geoerally) eveo impossible or at least impractical. This is so because there is a need for a ground station or a cable system to receive the signals and transform them io order to make them directly available to the public.

102. Does the broadcasting right cover transmission of audiovisual works through fixed service satellites or not? The answer depends on whether the fact that the signals passing through such satellites cannot be received by the public directly is of significance for the definition of broadcasting or not.

103. Those who give an affirmative answer to this question refer to the defioition of broadcasting contained in the Radio Regulations of the International Telecommunications Union (ITU). According to that definition, only transmissions intended for *direct* receptioo by the general public constitute broadcasting.

104. It is believed, however, that for the purposes of the law of intellectual property, definitions established for other purposes may be, and in this case are, irrelevant. For tbe purposes of the law of intellectual property, only the definitions contained in copyright and oeighboring rights cooveotions and national laws are relevant. They alone should be applied.

105. As has been stated in paragraphs 79 to 82, it is obvious that under the Berne Convention, the Universal Copyright Conventioo and the Rome Cooveotioo, the possibility of *direct* receptioo is not an elemeot of the definitioo of broadcasting. There is oo reasoo whatsoever to restrict the scope of broadcasting right by the notion "direct" in the application of those conveotions.

106. Under the conventions meotiooed above, broadcasting meaos broadcasting made for public receptioo. It is unquestionable that the transmitted signals passing through the fixed service satellite, although not receivable as such by the public, are inteoded for public receptioo from the outset, irrespective of tbe question at wbat stage in their transmission they become receivable by the public at large. What really matters seems to be wbether tbe entire process of the distributioo to the public of the sounds, images or both, carried by the signals, bas been definitely decided and scheduled at the time of the beginning of the transmission, or on the contrary, the reaching of the public, at that time, remained conditional oo decisions to be taken later, either by the originating organization or by the distributing earth station. Transmissions of programme-carrying signals for the mere purpose of *storage* and *future* availability to the distributor cannot be considered broadcast, eveo if the programs were produced for purposes of broadcasting. Oo the other hand, the transmission of programme-carrying signals in a single determined process, coosisting of various subsequeot phases aiming at reaching the public at large, sbould be coosidered broadcasting also as regards the initial emission of relevant signals not yet available to the public. It sbould be stressed, however, that this approach applies only to the intellectual property aspects of the problem and does oot necessarily coincide with the interpretation of certain coocepts under other internatiooal law.

107. The preceding considerations also raise tbe question of the legal nature of the so-called up-leg (or up-link) phase of transmission of programs carried by signals via satellites and of the legal nature of the down-leg (or down-link) phase in the case of fixed service satellites. Signals in either of those phases of the transmission are not directly receivable by tbe public. Nevertheless, from the point of view of the protection of copyright and the so-called neighboring rights, and with reference to the reasoning above, the ootion of "broadcasting" should be understood as covering also the said "up-leg" and "down-leg" phases of the transmissioo, provided that the sounds, images or both so transmitted are intended to eoable definitely scheduled reception by tbe general public.

108. If both the up-leg pbase (including the emissioo of the signals) and the down-leg phase of the transmission coostitute broadcasting, then what is tbe relationship betweeo those phases and the final phase when an earth statioo transforms the signals and makes them *directly* available to the public? Is this pbase rebroadcasting? Certainly not, because it is still a phase of the *original* broadcast itself.

109. Coosequently, the transmission of the signals from the emitting point to the satellite, then from the satellite to the earth station and, finally, from the earth statioo oowards, should be coosidered as one single utilization of the audiovisual works involved. If the final pbase (earth station to the public) is done by a separate organization (whicb is the case io general), then there are two organizations that are jointly respoosible towards the right owners. In actual practice, it is generally the provider of the final phase who fulfills the obligations towards the owners of rights. Sometimes, bowever, it is the originating organizatioo that fulfills the said obligatioos.

110. Where two organizations in two differeot countries are iovolved, the situation concerning the question of applicable law is slightly different from the ooe existing in the case of direct broadcasting satellites. Tbe broadcaster that originates the program should be coosidered responsible (at least secondarily) for the whole process of broadcasting (because his intention covers the wbole process); while the broadcaster of the final phase sbould be considered responsible only for the final phase (because his activity and intention cover only that phase). As far as the broadcaster of the final phase is concerned, it is the law of the country where this final pbase takes place whicb should be applied. As far as the originating organization is concerned, the same considerations prevail as in the case of direct broadcastiog satellites.

111. With this exception, paragraphs 87 to 101 apply *mutatis mutandis* also in tbe case of fixed service satellites. *Mutatis mutandis* application is, in particular, oecessary because in the case of fixed service satellites not all the countries of the "footprint" bave to be takeo into account but only the countries wbere the final phase of broadcasting (from an earth station) takes place.

Principle AW15. In the case of fixed service satellites, the whole process of transmission of programme-carrying signals (emission, "up-leg," "down-leg," transmission from the earth station onwards) should be considered as *one* broadcasting composed of different phases. Consequently, if audiovisual works are broadcast in this way, the owners of copyright in such works as well as performers, phonogram producers and broadcasting organizations whose rights may be concerned by the broadcasting, should enjoy the same rights as in the case of traditional broadcasting (by earth stations).

Principle AW16. Both the broadcasting organization originating the program and the broadcasting organization transmitting it from the receiving earth station onwards are — jointly — responsible towards the owners of copyright in audiovisual works and towards performers, phonogram producers and broadcasting organizations whose rights may be concerned by such broadcasting as far as the *final* phase of the broadcasting (from the earth station onwards) is concerned. The originating organization alone is responsible towards the owners of rights for the phases preceding the final phase of broadcasting.

Principle AW17. When communication to the public (transmission for public reception) is effected through a fixed service satellite — and then as a continuation of it through an earth station — the communication (transmission) takes place both in the country from where the programme-carrying signals are emitted towards the satellite and in all the countries where earth stations distribute them (and to whose public the audiovisual works involved are communicated (transmitted for public reception)).

Principle AW18. Under the Berne Convention, the Universal Copyright Convention and the Rome Convention, all of which provide for national treatment, the national laws of both the country from where the programme-carrying signals are emitted towards the fixed service satellite and that of each country where an earth station distributes them are applicable. If the owners of rights exercise their rights towards the organization transmitting the signals from the earth station onwards, the law of the country where the earth station is located should be applied. If the owners of rights choose to exercise their rights towards the organization which emitted the signals towards the satellite, and if the national laws do not grant the same kind or degree of protection, the highest level of protection should be applied.

112. The following Principle seems to be obvious, but in the present stage of development when certain so-called fixed service satellites start transmitting strong signals which are receivable directly by the general public, it seems to be preferable to state it expressly.

Principle AW19. If a fixed service satellite transmits signals which are receivable by the general public by means of receiving equipment normally used by such public, such transmission should not be considered as transmission by a fixed service satellite as far as the protection of copyright and neighboring rights is concerned but should be considered as if the signals had been transmitted by a direct broadcasting satellite.

113. As far as the problems of "fixed service satellite to cable" transmissions are concerned, they are dealt with in paragraphs 130 to 137, below.

Report 55. Some participants expressed their full support for Principles AW15 to AW19. Other participants said that they had the same reservations with regard to these Principles as those expressed in relation to the Principles on direct broadcasting satellites.

Report 56. Some other participants were of the opinion that the transmission of programs by fixed service satellites should not be qualified broadcasting but rather a mere technical transport of signals. Some of those participants, however, said that even if no right of broadcasting was involved, there was a need for authorization to include a work or other protected production into the signals thus transported (for example, on the basis of the right of reproduction or the right of public performance).

Report 57. An observer from a non-governmental organization said that, where fixed service satellite transmissions were broadcast or distributed by cable, the laws of the country of reception were, in practice, applied by the parties concerned which avoided double payment of remuneration. She also said that the possibility of choosing to proceed against the satellite broadcast transmitter when the alleged infringement took place only in one distributing country would endanger the whole program.

Report 58. One delegation said that in its country direct reception by the public of programs transmitted by fixed service satellites had recently been made lawful. Such transmissions therefore constituted a communication to the public, and it was intended to amend the law so that they would, if made from that country, carry the same copyright liability as if they were direct broadcasting by satellite. If the program was distributed by cable, that was a separate utilization under certain conditions. The representative of a

non-governmental organization quoted Articles 9 and 23 of the International Radio Regulations according to which it was an obligation of parties to those Regulations to protect the transmission of broadcasts and not to allow direct reception of programs transported by fixed service satellites. If the government concerned did not meet that obligation, the broadcaster could not be made responsible towards the copyright and neighboring rights owners.

Cable Distribution

114. Cable distribution coostitutes an economically significant kind of utilization of protected works. Its importaoce is steadily increasing. The questions raised by cable distribution bave been extensively dealt with within the intergovernmental organizations concerned. The Subcommittees of the Executive Committee of the Berne Union, the Intergovemmental Committee of the Universal Copyright Convention and the Intergovemmental Committee of the Rome Convention met in Geneva in December 1983 in order to examine the questions relating to the protection of autbors, performers, pbooogram producers and broadcasting organizations in connection with distribution of programs by cable. The Subcommittees bad as a basis of their discussions a document entitled "Annotated Principles of Protection of Authors, Performers, Producers of Pbonograms and Broadcasting Organizations in Connection with Distribution of Programs by Cable." Even though some members of the Subcommittees expressed disagreemeot oo particular parts of the document, there was a substantial agreement on most of the basic issues dealt witb in it. The Executive Committee of tbe Beme Union, the Intergovemmental Committee of the Universal Copyright Convention and tbe Intergovemmental Committee of tbe Rome Convention, in their sessions held in Geneva in December 1983, approved the cooclusions arrived at by their Subcommittees.

115. In view of the fact that the above-mentioned Annotated Principles were geoerally approved by the said high-rankiog Committees, the paragraphs merely quote the principles cootained io those Annotated Principles and contain only very short explanations wbere such seem to be necessary.

Principle AW20. The author or other owner of the copyright has the exclusive right of authorizing any distribution by cable of the broadcast of his work protected by copyright.

116. Under Article 11bis(1)(ii) of the Beme Conventioo, authors of literary and artistic works eojoy the exclusive right of authorizing "any communication to the public by wire ... of the broadcast of the work, when this communication is made by an organization other than the original one..." This provision also covers the communication of audiovisual works by cable distribution. Under the quoted provision, there is *only one case* where the recognition of a special right to authorize distribution by cable of works broadcast is *not* required: oamely, where the distribution is made *by the broadcasting organization itself.* Otherwise, neither the wording of the provision oor the relevant conference documents offer any basis for the restriction of the scope of the right under coosideration oo the basis of any particular criteria, such as geographical or technological consideratioos ("direct receptioo zone," "service zone," etc.) or "must carry" obligations under public laws.

117. The Universal Copyright Conveotioo as revised in Paris in 1971 contains only general provisions in this respect. Article IV*bis*.1 provides that the rights of authors referred to in Article 1 "shall include the basic rights eosuring the autbor's economic interests, iocluding the exclusive right to authorize reproduction by any means, public performaoce and broadcasting." Sucb geoeral requirement of recognition of the basic rights to ensure the author's ecooomic interests and tbe reference to the right to autborize broadcasting seem to be sufficient to cover distributioo by cable since the words "include" and "including" in the said Article indicate that tbe specific rights mentioned in it are mere examples.

Principle AW21. If the cable distributor is different from the broadcaster, the authorization mentioned in Principle AW20 may be given to the cable distributor or to the broadcaster, entitling the latter to authorize distribution by cable of the broadcast of the work.

Principle AW22. The authorization mentioned in Principle AW20 may be given by an organization of authors in respect of works the authors of which have delegated to such organization the exercise of the right mentioned in the said Principle.

Principle AW23. The authorization mentioned in Principle AW20 may be given by an organization of authors also in respect of works the authors of wbich have not delegated to tbat organization the exercise of the right mentioned in the said Principle; however, this may be done only if such a power of that organization is recognized by the applicable law and only if, by virtue of that law, the said organization must guarantee the broadcaster or the cable distributor against possible claims of such authors, and must undertake to apply, in respect of tbe distribution of authors' fees and other benefits, the same principles to the said authors as it applies to authors who have delegated to it the exercise of the right mentioned in Principle AW20.

Principle AW24. Where an organization of authors as referred to in Principles AW22 and AW23 cannot agree witb tbe broadcaster or the cable distributor, through negotiations conducted in good faith, on the conditions of autborizing dis-

tribution by cable of a broadcast of the work, such conditions shall be fixed by a court, another impartial body designated by law or appointed to that effect by the government, or an arbitration tribunal whose chairman will, unless the parties agree on his person, be appointed by the government, and shall ensure the protection of the moral rights of the author. Before the fixation of such conditions, the said court, another designated body or arbitration tribunal shall give an occasion to the authors' organization and the broadcaster or cable distributor to be heard.

118. In the above-mentioned Annotated Principles, Principle 6 provides for the possibility of non-voluntary licensing. However, the annotation to that Principle emphasizes that non-voluntary licensing will not necessarily have to apply to all kinds of protected works broadcast, and the legislation may specify certain categories of works exempt from the possibility of non-voluntary licensing. In principle, non-voluntary licensing should be permitted only in respect of a work whose distribution by cable would not prejudice lawful interests in connection with other uses of the same work. Distribution by cable of audiovisual works could contravene existing contractual obligations and, in any case, is likely to cause serious damage to the right holders concerned. Therefore, non-voluntary licensing should not be allowed in the case of audiovisual works. Consequently, this memorandum does not contain a principle similar to Principle 6 of the said Annotated Principle.

Principle AW25. Money and possible other considerations collected for authorizations mentioned in Principle AW24 should, after the deduction of related administrative expenses, be due to the authors whose works protected by copyright were actually used in distribution by cable of broadcasts, with due regard to the extent of the use and the importance of the works of each author, whether domestic or foreign. However, those authors who have expressly delegated the exercise of their rights to an organization administering authors' rights, may decide upon exceptions to the said Principle of distribution, without affecting the rights of those authors who did not expressly delegate the exercise of their rights to that organization.

Principle AW26. It does not amount to distribution by cable of the broadcast of the work where the broadcast, received by an aerial larger than generally used for individual reception, is transmitted by cable to individual receiving sets within a limited area consisting of one and the same building or a group of neighboring buildings, provided that the cable transmission originates in that area and is made without gainful intent.

119. It is to be noted that it follows from Principle AW26 that authorization by the author is required if the distribution is made with gainful intent.

120. It should be emphasized that it is not the consideration of technological characteristics of the aerial equipment applied (whether it effects reception rather than retransmission) that justifies the limitation of the author's right. What matters is the concept of neighborhood.

121. The notion of the "limited area consisting of one and the same building or a group of neighborhood buildings," can be further specified by national legislation. It could be provided, for example, that none of the buildings, constituting the group of buildings, may be separated from another building by a public street or road. In any case, it should be borne in mind that the aim of the limitation is to exempt simultaneous and unchanged transmission of works broadcast when that transmission is on a certain — namely, a relatively small — scale, when it is of a non-commercial (non-profit) nature and when it is of such a kind as to make it a neighborhood affair.

Principle AW27. The author or other owner of the copyright has the exclusive right of authorizing the distribution of his work protected by copyright in the framework of a cable-originated program.

122. Cable-originated program means a program that is distributed by cable and where the program is not originating from a broadcast or where, although it originates from a broadcast, the distribution by cable is not simultaneous with the broadcast, or even where it is simultaneous with the broadcast, sounds or images or both not contained in the broadcast are superimposed on the broadcast when it is distributed by cable.

123. In the case of audiovisual works, Principle AW27 is based on Articles 11(1) and 11bis(1) of the Berne Convention according to which the communication of such works to the public by wire is an exclusive right of the copyright owners. The existence of such an exclusive right can be based also on the interpretation of Article IV*bis*.1 of the Universal Copyright Convention, as explained in paragraph 117 above.

Principle AW28. Limitations of copyright, except any kind of non-voluntary licensing, admitted under international conventions and applicable national law with regard to the broadcast of the work may be extended by national legislation to the distribution by cable of cable-originated programs.

Principle AW29. The performer has the right to equitable remuneration for the distribution by cable of the broadcast of his performance protected by law.

124. This Principle is pioneering since it provides for protection (i.e., claim for a remuneration) for a kind of use

for which no protection is guaranteed under the Rome Convention. The application of this Principle, however, may be limited in the case of performances included in audiovisual works pursuant to Article 19 of the Rome Convention. This Principle is nevertheless recommended because it is believed that national laws may grant a higher level protection to performers than what is obligatory under the Rome Convention.

125. The Annotated Principles contaio principles on collective administration of performers rights similar to those which are mentioned above in the case of authors' rights whose repetition here does not seem to be necessary.

Principle AW30. Principle AW26 applies mutatis mutandis to distribution by cable of the broadcast of a performance.

Principle AW31. The performer sbould bave a right to equitable remuneration where his protected performance is incorporated in an audiovisual work and it is distributed by cable in the framework of a cable–originated program.

126. Principle AW31 is an adaptatioo of Principle 17 of the Annotated Principles to the case of performances included in audiovisual works. It suggests to grant a higher level protection to performers (oo the same hasis that is explained in paragraph 124) than the Rome Convention.

Principle AW32. Limitations of copyright, except any kind of non–voluntary licensing, admitted under international conventions and applicable law with regard to tbe broadcast of the work may be extended by national legislation mutatis mutandis to the rigbts of performers relating to distribotion by cable of their performances in the framework of cable–originated programs.

127. As far as phonogram producers are concerned, the Annotated Principles contain Priociples on the cable distribution of their *phonograms*. With regard to audiovisual works, it is possible — in principle — that phonogram producers may cnjoy under national legislation a right to equitable remuneration in the case of cable distribution when their phonograms are included in such works and used in broadcasts distributed hy cable. If it is the case, Principles AW29 to AW32 may be applied *mutatis mutandis*.

Principle AW33. Broadcasters bave tbe exclusive right to autborize simultaneous and unchanged distribution by cable of their broadcasts as well as the use of tbeir broadcasts in the framework of cable–originated programs.

128. Iotemational copyright conventions are silent on the protection of the rights of broadcasting organizatioos. As regards communication to the public (of which cable distribution can be one type) of broadcasts, the Rome Convention provides protection only against the communication to the public of television hroadcasts "in places accessible to the public against payment of an entrance fee" (Article 13*(d)*). National legislations adopted different solutions. In some countries, broadcasts are protected under copyright laws as a "work" or "other subject matter of copyright," and therefore the legal regime of the use of broadcasts and of the exercise of rights of broadcasters may be the same as of authors or slightly different as regards the specification of rights. In other countries again, rights of broadcasting organizations are protected under laws on so–called neighboring rights, but such laws also differ: under some of them, the degree of protection of broadcasters' rights may be the same as that of the protection of authors' rights, while other countries afford a lesser degree of protection, albeit still in conformity with the requirements of the Rome Conventioo.

Principle AW34. (i) Principle AW26 applies mutatis mutandis to simultaneous and unchanged distribution by cable of broadcasts.

(ii) Limitations of copyright, except any kind of non–voluntary licenses, admitted under international conventions or tbe applicable national law with regard to the broadcasting of protected works may be extended mutatis mutandis to the rights of broadcasters relating to distribution by cable of tbeir broadcasts in the framework of cable–originated programs.

129. The only reason for the establishment, in special cases, of non–voluntary licenses in respect of the rights of authors whose works are used in distribution hy cable of a broadcast, is the practical impossibility — if it really exists — of securing uninterrupted cable distribution of broadcast programs by means of individual or collective authorizations the terms of which are laid down in freely negotiated contracts. Such practical impossibility, however, does not exist where the authorization of the broadcaster is needed, because the cable distributor is well aware of the identity and whereabouts of the hroadcaster whose hroadcast he wants to use. Furthermore, any cable distributor plans well in advance which programs or program items contained in the broadcast will be included in thc program distributed or originated by him.

Report 59. The Chairman said that Principles AW20 to AW34 were practically the repetition — with some minor changes — of the corresponding Principles of the "Annotated Principles of Protection of Authors, Performers, Producers of Phonograms and Broadcasting Organizations in Connection with Distribution of Programs by Cable" adopted in December 1983 as mentioned in paragraph 114.

Report 60. Several participants expressly supported those Principles. Some other participants, however, expressed doubts about some of the Principles. For example, one delegation said that the distribution in the so–called intended reception zone

should not be covered by a separate right. Another delegation said that the cable retransmission of local signals should be free and otherwise, compulsory licenses should be applied for cable retransmission.

Report 61. The representative of the Commission of the European Communities said that the proposal for a directive of his organization was in general in harmony with the above-mentioned Principles. According to this proposal, the authorization of cable retransmission should be settled preferably by agreement between the concerned parties. However, if in two years' time there was no agreement, non-voluntary licensing should be applied.

Report 62. Several participants expressed the view that in such a case there was no need for non-voluntary licenses which did not offer appropriate protection for right owners particularly for the owners of rights in audiovisual works. The experience of certain countries showed that contractual solutions were workable. They suggested that the Principles should be modified, taking those developments into account.

Report 63. In answer to a question of an observer from a non-governmental organization concerning cable distribution, it was said that if a broadcast was received in one country and retransmitted by cable to another country where the broadcast could not be received with sufficient quality, such a retransmission might be qualified as a cable-originated program.

Cable Distribution of Programs Transmitted by Fixed Service Satellites

130. In the case of direct broadcasting by satellite, the programme-carrying signals distributed by cable can be received directly by the general public. Consequently, if the distribution is simultaneous and unchanged, the distribution amounts to a secondary utilization similar to the cable distribution of ordinary broadcasts, and all what has been said on secondary cable distribution above applies.

131. According to Principle AW15 above, in the case of transmission of programs through fixed service satellites the whole process of communication (emission, up-leg, down-leg, distribution by an earth station) should be considered as one process of broadcasting. Taking that Principle into account, there are two possible answers to the question whether the cable distribution (instead of distribution by an earth station) of the program transmitted by a fixed service satellite is a primary utilization or a secondary one.

132. There is a possible literal interpretation of Article 11bis(1)(ii) of the Berne Convention. According to that interpretation, the diffusion of the audiovisual work has started — and the work is broadcast — before the signals reach the so-called "head-end" of the cable system. Therefore, in such a case, the cable distribution should be qualified as a "communication to the public by wire ... of the broadcast of the work," that is, it is a simultaneous and unchanged distribution by cable of a work broadcast in the case of which the above-mentioned provision of the Berne Convention should be applied.

133. Such an interpretation is, however, in contradiction with what has been stated in paragraph 108 above. That statement is unquestionably correct: the final phase of broadcasting (from the earth station onwards) cannot be qualified as rebroadcasting, because it is a phase of the original broadcasting itself. Consequently, this phase is not a "communication to the public ... by rebroadcasting of the broadcast of the work" according to Article 11bis(1)(ii) of the Berne Convention. In other words: it is not *the broadcast of the work* which is the subject of this phase of communication to the public but *the work itself* whose broadcasting is in progress but it has not been completed yet. It can be also said that what is distributed by cable in the case of audiovisual works transmitted to the head-end of the cable system by a fixed service satellite is not the broadcast of the work, but the work itself which has not been completely *broadcast* yet. Therefore, the applicability of Article 11bis(1)(ii) of the Berne Convention is questionable. The following Principle — and the corresponding explanation to it — offers a solution to this contradiction.

Principle AW35. If an audiovisual work transmitted through a fixed service satellite — in the final phase of the communication to the public — is distributed by cable, such distribution should be considered as a distribution of the work in the framework of a cable-originated program. Consequently, Principles AW27, AW28, AW31 to AW33 and AW34(ii) should be applied.

Principle AW36. As far as the phase of the cable distribution is concerned, both the broadcasting organization transmitting the program through a fixed service satellite and the organization distributing the program by cable should be considered to be responsible — jointly — towards the owners of copyright in audiovisual works and towards performers, phonogram producers and broadcasting organizations whose rights may be concerned by such broadcasting. As far as the phases preceding the phase of the cable distribution are concerned, the originating organization alone should be considered to be responsible towards the said owners of rights.

Principle AW37. When communication to the public (transmission for public reception) is effected through a fixed service satellite — and then as a continuation of it by cable — the communication takes place both in the country from where the programme-carrying signals are emit-

ted towards the satellite and in all the countries where the signals are distriboted hy cable.

Principle AW38. Under the Berne Convention, the Universal Copyright Convention and the Rome Convention, all of which provide for national treatment, the national laws of both the country from where the programme–carrying signals are emitted towards the fixed service satellite and that of each country where the signals are distributed by cable are applicahle. If the owners of rights exercise their rights towards tbe organization distrihuting the signals hy cable, the law of the country where the cable distrihotion takes place shoold be applied. If the owners of rights choose to exercise their rights towards the organization which emitted the signals towards the satellite, and if the national laws do not grant the same kind or degree of protection, the highest level of protection should be applied.

134. Principle AW35 is the consequence of what has been stated in paragraph 133, above. If cable distribution cannot be qualified according to Article 11bis(1)(ii), then it is distribution of a cable–originated program.

135. Under this interpretation, another contradiction seems to emerge. How can it be said that such a program is cable–originated when it is obviously the broadcaster who starts the communication process, and, therefore, he is the originator of the program?

136. In reality, there is no contradiction on substance. What has been said in the preceding paragraph does not sbow anything else in itself but that there is a problem of terminology. The expression "cable–originated" does not fit this situation well. However, this expression is not used by the international conventions themselves, and terminology is not the essence of the problem. It can be said that the expression "cable–originated program" is not the best possible one and suggest some other expressions. For example, the terminology to be used in this respect could refer to the basic difference, namely to the *primary or secondary nature* of cable distribution. What is really important here is not terminology but the fundamental fact that in certain cases — like the one under consideration — communication methods are interchangeable and are more and more frequently mixed up *in one single communication process.* Therefore, it is a more relevant difference whether the subsequent phases — for example, injection–satellite transmission–cable distribution — remain in the framework of one process of communicating the program to the public (*primary distribution)* or a re–utilization is involved on the basis of programs already available to the public (*secondary distribution*).

137. It is unquestionable that a "satellite to cable" service is one single communication process, a primary distribution composed of several phases. The difference here — in comparison with the case where the communication is completed through an earth station — is that here it is not the earth station, but the "head–end" of the cable system from which the ultimate phase starts. Therefore, the considerations regarding the joint responsibility of the two organizations, the applicable law and the possible choice of exercising rights sbould be applied *mutatis mutandis* as reflected in Principles AW16 to AW18. Principles AW36 to AW38 correspond *mutatis mutandis* to Principles AW16 to AW18.

Report 64. Since Principles AW35 to AW38 referred expressly to previous Principles or contained practically the same solutions as the said previous Principles, the views expressed concerning the latter were recognized to apply generally also to Principles AW35 to AW38.

General Statement

Report 65. At the end of the discussions on the chapter on audiovisual works, one delegation made a statement. It informed the Committee that because of the social and economic conditions and the planned economy in its country and of the control by the Copyright Agency of uses of protected works and the paynient of remuneration, there was no piracy in its country. As far as private copying, rental and cable distribution were concerned, they were not yet significant phenomena. As for direct satellite broadcasting, this delegation expressed the view that no signals should be broadcast to the territories of States without previous agreement with their governments. Where such agreements were reached, it would be easy to agree on the responsibility towards owners of rights. If that principle was violated, there would be no responsibility in the States concerned towards right owners.

PHONOGRAMS

[Preliminary Observations]

138. The expression "pbonograms" used in this memorandum means exclusively aural fixations of sounds, whatever their form (discs, tapes or other) and whatever their content (musical, dramatical or other performances, delivery of speeches, recitation of poetry, etc.).

139. In the last decade, two technical developments have gradually progressed. The first is that the quality of phonograms has become more and more perfect (particularly since the advent of digital recording and compact discs) and that the quality of the record players bas become such that they are able to reproduce sounds contained in phonograms with a very high fidelity or even without any distortion whatsoever (by the application of laser–technique). The second development is that the reproduction of phonograms by means of cassette recorders

(including dual-port or even triple-port recorders) has become extremely easy and relatively cheap, and that the quality of the resulting copies is practically flawless.

140. Parallel to those developments, new ways of using phonograms have appeared. While in the past selling was the only or nearly exclusive way of distributing copies of phonograms, rental and public lending have recently started becoming widespread in many countries. "Home taping" (that is, reproduction of phonograms for private purposes) is now a worldwide phenomenon. People who would like to have a copy frequently do not buy a record or a prerecorded cassette but make the copy themselves when the phonogram is broadcast or borrow the phonogram from friends or acquaintances for just such purposes. It also happens that rented records are copied. Reproduction of phonograms is very frequently made for unauthorized commercial distribution. Cable distribution and satellite broadcasting also concern phonograms.

141. The overall consequence of the phenomena mentioned above is that the exercise and exploitation of copyright and neighboring rights in phonograms are in great danger. If the problems are not appropriately solved, the result may be the stagnation or decrease of the production of phonograms and, in certain countries (first of all in developing countries), it will not be possible to guarantee the most basic conditions for the establishment and healthy development of national phonogram industries.

142. There are three major groups of practical and legal problems connected with the protection of copyright and neighboring rights in phonograms:

(a) the problem of piracy, that is the problem of illegal reproduction and commercial distribution of copies;

(b) a traditional problem, with greater emphasis: the problem of the use of phonograms for broadcasting or other communication to the public ("secondary use of phonograms");

(c) the problems caused by new ways of using phonograms — such as private copying, rental and lending, distribution by cable, satellite broadcasting — where there is a need for interpreting the provisions of the existing international conventions or national laws or for adopting new provisions in national laws.

143. The problems connected with the protection of the rights in phonograms are — to a very large extent — the same as those examined in connection with videograms or, at least, similar to them. Consequently, the rest of this memorandum often repeats considerations and arguments which have been mentioned in connection with videograms. It frequently repeats them by referring to them. However, the Principles themselves are always presented independently and fully.

Report 66. It was understood that the opinions expressed by the participants in respect of audiovisual works were also relevant mutatis mutandis to phonograms.

Report 67. Several participants expressed concern that the document did not sufficiently emphasize the creative nature of phonogram producers on the basis of which the intellectual property laws of several countries provided copyright protection rather than neighboring rights protection, if any, to such producers. These participants requested that this point should be taken into account in any future work on the commentary.

Report 68. The Director General of WIPO said that the draft Principles covered both types of legislation: those that considered producers of phonograms as creators of "works," in the copyright law sense of the word, and those that considered them as owners of neighboring rights. That is why the relevant Principles use the expression "owners of copyright" (rather than "authors"), the expression covering also producers of phonograms in the case of laws in which phonograms are "works."

Piracy

144. The piracy of phonograms has older "traditions" and is even more widespread than the piracy of audiovisual works. Piracy became a serious problem as long ago as in the 1960s, with the advent of cassette and cartridge recording machines, which made the reproduction of phonograms easy and cheap.

145. The piracy of phonograms is rampant in all the three forms of piracy: piracy proper, counterfeiting and "bootlegging." Piracy proper is the unauthorized reproduction and commercial distribution of phonograms without making or trying to make the pirate copies look like the genuine copies. In the case of counterfeiting, not only the phonograms themselves are illegally reproduced but also the original trademarks, labels and packaging to make the products look as much like the genuine copies as possible. Finally, "bootlegging" is the unauthorized recording, duplication and commercial distribution of artists' performances.

146. Paragraphs 16 to 37 apply *mutatis mutandis* also in the case of phonograms. Two comments seem to be necessary in regard of those paragraphs. The first is that the legal status of phonogram producers is similar to that of the producers of audiovisual works as it is mentioned in paragraph 25: some legislations, considering phonograms as such to be not merely an industrial product but the result of creativeness, vest copyright in the producers, thereby placing producers in a better position to fight piracy. The second comment concerns paragraph 26: besides the Articles mentioned in that paragraph, in the case of phonograms, Article 10 of the Rome Convention should also be mentioned according to which, "Producers of phonograms shall enjoy the right to authorize or prohibit the direct or indirect reproduction of their phonograms."

147. It should be added that, in the case of phonograms, there is one more international convention that could provide for effective means in fighting piracy. It is the "Phonograms Convention" (Geneva Convention for the Protection of Producers of Phonograms Against Unauthorized Duplication of Their Phonograms, 1971) under which "Each Contracting State shall protect producers of phonograms who are nationals of other Contracting States against the making of duplicates without the consent of the producer and against the importation of such duplicates, provided that any such making or importation is for the purpose of distribution to the public, and against the distribution of such duplicates to the public."

Principle PH1. (i) Piracy of phonograms is the unauthorized commercial manufacture, sale or other distribution of copies of phonograms.

(ii) Piracy is an illegal activity — a form of theft — and, as such, thoroughly antisocial and contrary to the public interest and not merely a matter affecting the private rights of individuals.

(iii) The manufacture, distribution — including the import and export — of pirate copies of phonograms should be expressly forbidden by law and where such acts are still perpetrated, penalties of sufficient severity should be imposed as punishment and to act as deterrent.

Report 69. It was emphasized that what had been said about the piracy of audiovisual works applied mutatis mutandis to the piracy of phonograms.

Report 70. Several participants recalled the importance of the Phonograms Convention; they said that countries which were not yet party to that Convention should adhere to it and all countries concerned should provide for and apply serious enough criminal sanctions.

Secondary Uses of Phonograms for Broadcasting or for Other Communication to the Public

148. According to Article 12 of the Rome Convention, "If a phonogram published for commercial purposes, or a reproduction of such phonogram, is used directly for broadcasting or for any communication to the public, a single equitable remuneration shall be paid by the user to the performers, or to the producers of the phonograms, or to both. Domestic law may, in the absence of agreement between these parties, lay down the conditions as to the sharing of this remuneration."

149. The Rome Convention was adopted in 1961, and it was clear, already at that time, that secondary uses of phonograms may heavily prejudice the legitimate interests of performers and phonogram producers.

150. The use of discs in broadcasting programs diminishes the opportunity to give live performances. If the broadcasting organizations were unable to broadcast commercial discs, they would have to employ more orchestras, vocal groups and soloists. And even if, in the beginning, the broadcasting of his recording provides useful publicity for the performer, its plugging over a period of weeks or months may make the artist's performance less attractive to the public. The public performance of phonograms has similar effects. Records take the place of bands in dance halls and in cabarets, and even at places where serious music is needed.

151. The prejudices suffered by phonogram producers are also evident. The use of discs on radio does have an effect on sale: fewer people buy, because they have already heard the recording and they can hear it again fairly frequently, sometimes too frequently. Some broadcasting organizations rely on discs so heavily that they could not function at all without them. This calls, at the very least, for the makers' participation in the resulting profits. Similar considerations apply in the case of public performances.

152. The ever improving quality of phonograms has made their secondary use even more attractive, and the prejudice caused by such practice is getting heavier. Therefore the following principle should be stated:

Principle PH2. If a phonogram published for commercial purposes, or a reproduction of such phonogram, is used for broadcasting or for other communication to the public, the performers and phonogram producers should have — at least — a right to equitable remuneration.

153. This Principle covers not only performers and phonogram producers of the country where the broadcasting or public performance takes place but foreign performers and producers as well. Therefore, it is highly desirable that more countries accede to the Rome Convention and apply Article 12 of that Convention and apply it without the reservations allowed by Article 16 of the same Convention.

154. According to Principle PH2, performers and phonogram producers should have *at least* a right to equitable remuneration. The words "*at least*" refer to the possibility of an even higher level of protection than the one which is prescribed in Article 12 of the Rome Convention. Some countries give phonogram producers copyright in their recordings, while some other countries grant performers the right to authorize the use of the phonograms containing their performances for all purposes to which they have not already consented.

Report 71. The great majority of participants expressed their full support for Principle PH2 and the comments on it. The right to control or receive equitable remuneration for secondary uses of phonograms would become increasingly important in the future as a result of technical development, in particular, as a result of the further development of the methods of the electronic distribution of phonograms.

Report 72. The representative of a non-governmental organization recalled the doubts, which her organization had expressed many times in the past, whether, in the case of broadcasting, it was justified to grant performers and/or phonogram producers any rights, even a right to equitable remuneration. Therefore, her organization was oppposed to the approach of the Principle and the commentary, which did not reflect the options open to States under the provisions of the Rome Convention.

Private Copying

155. Paragraphs 38 to 45 and 47 to 56 apply *mutatis mutandis* in the case of phonograms.

156. The prejudice caused to authors, performers, phonogram producers and — in certain respect — to broadcasting organizations by the reproduction of phonograms for private purposes is even more evident than in the case of audiovisual works. It is more evident for two reasons. Firstly, because easy and perfect copying techniques appeared much earlier in the field of sound recordings than in that of audiovisual recordings; consequently, in the case of phonograms, private copying is much more widespread and the losses caused to the owners of copyright and neighboring rights are even heavier. Secondly, because, in the case of phonograms "time-shifting" (see paragraph 46) is not a typical purpose — or excuse — of reproducing works.

157. Individual instances of private recording of phonograms may seem harmless, but collectively, they are highly detrimental to the rights and interests of the owners of copyright and certain neighboring rights. Such a practice cannot be allowed without any compensation under Article 9(2) of the Berne Convention and Article IV*bis* of the Universal Copyright Convention (see paragraphs 40 to 44 and 47), and the considerations regarding the need for compensating the owners of neighboring rights concerned also apply here (see paragraph 54).

Principle PH3. Widespread reproduction of phonograms for private purposes prejudices the legitimate interests of copyright owners. It is an obligation of States party to the Berne Convention or the Universal Copyright Convention to eliminate such prejudice.

Principle PH4. The most appropriate way of eliminating the prejudice mentioned in Principle PH3 is the introduction of a charge on recording equipment and/or blank material supports (tapes, cassettes). The charge should be paid by the manufacturers or importers and collected by organizations responsible for the collective administration of the rights in question.

Principle PH5. Recording equipment and material supports exported into another country should be exempt from any charge in the country of manufacture.

Principle PH6. The collective administration organizations — after the deduction of the administrative costs actually incurred and strictly necessary — should distribute the amounts collected to the individual owners of copyright according to the presumed frequency of the reproduction of their works for private purposes (for example, in proportion to the frequency of the various forms of public use, such as broadcasting, sales and rental of records and prerecorded cassettes).

Principle PH7. The amounts collected by the collective administration organization must not be used for purposes (for example, for general cultural, social purposes) other than those mentioned in Principle PH6.

Principle PH8. Foreign owners of copyright in works constituting, or embodied in, phonograms should enjoy exactly the same rights as national ones. The collective administration organization should distribute the amounts collected to foreigners on the same basis as to nationals. Principle PH7 also applies to foreigners: the amounts due to them cannot be used for purposes other than those mentioned in Principle PH6.

Principle PH9. The widespread practice of reproduction of phonograms for private purposes also prejudices the legitimate interests of performers, phonogram producers and it may also prejudice the legitimate interests of broadcasting organizations. Such prejudice should be eliminated by granting a right to any (or all) of the three categories to receive an appropriate share from the charge mentioned in Principle PH4. In such a case, the total amount of the charge should be proportionally higher than it would be if it served only the elimination of the prejudice caused to owners of copyright. Principles PH5 to PH8 apply mutatis mutandis also in the case of performers, phonogram producers and broadcasting organizations.

Report 73. It was understood that the views expressed on the private copying of audiovisual works were mutatis mutandis applicable to the private copying of phonograms, with the exception of the problem of "time-shifting" which was generally irrelevant in the case of phonograms.

Report 74. One delegation said that legislators should consider provisions for exceptions from the charge for those, such as visually handicapped people, who used the equipment or material supports for non-infringing purposes.

Report 75. The representative of a non-governmental organization expressed the view that the introduction of a charge on material supports and/or equipment was not justified. A great number of other participants expressed the contrary opinion.

Rental and Public Lending

158. Rental and public lending is not as predominant a method of distribution of phonograms as in the case of videograms; but in certain countries it is fairly widespread and it has become an even more general practice with the advent of compact discs. Therefore, as far as the owners of copyright in phonograms are concerned, paragraphs 57 to 68 apply *mutatis mutandis* also for the rental and lending of phonograms.

Principle PH10. The owner of copyright in a work constituting, or embodied in, a phonogram should have an exclusive right of authorization of the rental or public lending of any phonogram constituting or embodying such work, as long as the said work is protected by copyright.

Principle PH11. National legislations should not oblige the owners of copyright in works constituting, or embodied in, phonograms to exercise their rental and public lending right in the framework of collective administration. It should be up to copyright owners to have recourse to collective administration if they find such administration necessary.

159. In the case of phonograms, the legal status of performers is much more favorable under the Rome Convention than in the case of audiovisual works. According to Article 7(1)*(c)* of the said Convention, "The protection provided for performers ... shall include the possibility of preventing ... the reproduction, without their consent, of a fixation of their performance: (i) if the original fixation itself was made without their consent; (ii) if the reproduction is made for purposes different from those for which the performers gave their consent; (iii) if the original fixation was made in accordance with the provisions of Article 15, and the reproduction is made for purposes different from those referred to in those provisions." Phonogram producers have an even stronger right of reproduction. Under Article 10 of the Rome Convention, they enjoy the right to authorize or prohibit the direct or indirect reproduction of their phonograms. A right of distribution does not follow necessarily from such rights of reproduction, but the possibility of a generous interpretation as outlined in paragraphs 62 and 63 cannot be excluded here either. Such interpretation, of course, may be even more logical under certain national laws which grant copyright protection.

160. Uncontrolled rental and public lending is prejudicial to the legitimate interests of phonogram producers in the same manner as is explained in paragraph 58 with regard to owners of copyright. It may be — at least indirectly — prejudicial also to the performers' legitimate interests. Therefore, the application of the following Principles seems to be necessary:

Principle PH12. The producer of a phonogram should have an exclusive right of authorization of the rental or public lending of any copy of the phonogram. Principle PH11 applies mutatis mutandis regarding this right of phonogram producers.

Principle PH13. In the case of rental and public lending of a phonogram, the performer whose performance is included in the phonogram should have the right to equitable remuneration.

161. In Principle PH13 there is no reference to *mutatis mutandis* application of Principle PH11 because in the case of such a right of performers to equitable remuneration which may be granted by certain national laws, collective administration can sometimes be the only workable way of exercising rights.

Report 76. It was understood that the observations made in connection with the rental and public lending of audiovisual works also applied mutatis mutandis to the rental and lending of phonograms.

Report 77. One delegation said that its government introduced a right of rental to cope with the problems raised by rental practice in its country.

Satellite Broadcasting

162. Satellites are mainly used for transmission of television programs, but they may serve also for the transmission of radio programs for which phonograms are used much more frequently. As regards the types of satellites used for such purposes, paragraphs 74 to 76 apply *mutatis mutandis*.

163. Certain problems which in the case of television broadcasting emerged only with the advent of satellites had existed earlier in the field of radio broadcasting (broadcasting from one country to the public of other countries, spillover of broadcasts, etc.). Those problems, however, did not raise serious copyright and neighboring rights questions, and where some questions were raised, they could be answered fairly easily. In the light of considerations applied to satellite broadcasting of television programs, some traditional theories of sound broadcasting may be losing their value, but this does not mean that the practical legal solutions adopted for "traditional" broadcasting should be necessarily changed.

164. Everything which is stated in paragraphs 77 to 113 regarding satellite broadcasting of television programs necessarily applies *mutatis mutandis* to satellite broadcasting of radio programs. Consequently, the Principles based on the considerations contained in those paragraphs should also be applied.

Direct Broadcasting Satellites

[164*bis*. The following Principles are suggested:]

Principle PH14. Broadcasting through direct hroadcasting satellites is broadcasting under the Berne Convention, the Universal Copyright Convention and the Rome Convention. Consequently, where phonograms are broadcast by such satellites, the owners of copyright in works constituting, or embodied in, such pbonograms, as well as performers, phonogram producers and broadcasting organizations whose rights may be concerned hy the direct hroadcasting by satellite should enjoy the same rights as in the case of traditional hroadcasting (by earth stations).

Principle PH15. It is the broadcaster originating the direct broadcasting by satellite (giving the order for such broadcasting) that is responsihle towards the owners of copyright in works constituting, or embodied in, phonograms and towards performers, phonogram producers and broadcasting organizations whose rights may be concerned by the direct broadcasting hy satellite of such pbonograms.

Principle PH16. Where communication to the public (transmission for puhlic reception) is effected through a direct broadcasting satellite, the communication (transmission) process takes place both in the country where the programme-carrying signals are originated and in all tbe countries wbich are covered by the "footprint" of tbe satellite (and to whose public the phonograms involved are communicated (transmitted for public reception)).

Principle PH17. Under the Berne Convention, the Universal Copyright Convention and the Rome Convention, all of which provide for national treatment, the national laws of both the country where the programme-carrying signals are originated and that of each country covered by the "footprint" of the satellite are applicable. If the national laws involved do not grant the same kind or degree of protection, the highest level of protection shonld he applied.

Fixed Service Satellites

[164*ter*. The following Principles are suggested:]

Principle PH18. In the case of fixed service satellites, tbe whole process of transmission of programme-carrying signals (emission, "up-leg," "down-leg," transmission from the earth station onwards) should be considered as *one* broadcasting composed of different phases. Consequently, if phonograms are broadcast in this way, the owners of copyright in works constituting, or emhodied in, phonograms as well as performers, phonogram producers and broadcasting organizations whose rights may be concerned by the broadcasting enjoy the same rights as in the case of traditional broadcasting (by earth stations).

Principle PH19. Both the broadcasting organization originating the program and the broadcasting organization transmitting it from the receiving earth station onwards are — jointly — responsible towards the owners of copyright in works constituting, or embodied in, phonograms and towards performers, phonogram producers and broadcasting organizations whose rights may be concerned by such hroadcasting as far as the *final* phase of the broadcasting (from the eartb station onwards) is concerned. The originating organization alone is responsible towards the owners of rights for the phases preceding the final phase of hroadcasting.

Principle PH20. When communication to the public (transmission for public reception) is effected through a fixed service satellite — and then as a continuation of it through an earth station — the communication (transmission) takes place both in the country from where the programme-carrying signals are emitted towards the satellite and in all the countries where earth stations distrihute tbem (and to whose public the phonograms involved are communicated (transmitted for puhlic reception)).

Principle PH21. Under the Berne Convention, the Universal Copyright Convention and the Rome Convention, all of which provide for national treatment, the national laws of both the country from which the programme-carrying signals are emitted towards the fixed service satellite and that of each country where an earth station distributes them are applicable. If the owners of rights exercise their rights towards the organization transmitting the signals from the earth station onwards, the law of the country where the earth station is located should be applied. If tbe owners of rights choose to exercise their rights towards the organization which emitted the signals towards the satellite, and if the national laws do not grant the same kind or degree of protection, the highest level of protection should be applied.

Principle PH22. If a fixed service satellite transmits signals which are receivable by the general

public by means of receiving equipment normally used by such public, such transmission should not be considered as transmission by a fixed service satellite as far as the protection of copyright and neighboring rights is concerned, but should be considered as if the signals had been transmitted by a direct broadcasting satellite.

165. As is mentioned in paragraph 163, above, the application of these Principles [PH14 to PH22] does not mean that the present practice of exercising copyright and neighboring rights in connection with the broadcasting of phonograms need be significantly changed. The overwhelming majority of works contained in phonograms is represented by musical works in the case of which a well-established international system of collective administration functions. Practically every national authors' society is in the position to authorize the use of the whole world repertoire. Therefore, the broadcaster may obtain authorization — in general — for all countries from the same society (from the society functioning in his country).

Report 78. It was understood that the views expressed in respect to satellite broadcasting of audiovisual works were applicable mutatis mutandis to the satellite broadcasting of phonograms.

Report 79. Furthermore, it was understood, that in Principles AW16 and PH19, the expression "jointly" should be replaced by the expression "separately and jointly."

Report 80. Some participants said that further study was necessary regarding short wave radio broadcasts. It was also said that the various views expressed concerning satellite broadcasting might be applied mutatis mutandis to short wave broadcasting.

Cable Distribution

166. Paragraphs 114 to 117, 119 to 122, 123 to 125, 128 and 129 apply *mutatis mutandis* to the cable distribution of phonograms. Therefore, this part of the document contains explanations only where the considerations to be taken into account are different, in the case of phonograms, from those applicable to audiovisual works.

Principle PH23. The author or other owner of the copyright has the exclusive right of authorizing any distribution by cable of the broadcast of his work protected by copyright.

Principle PH24. If the cable distributor is different from the broadcaster, the authorization mentioned in Principle PH23 may be given to the cable distributor or to the broadcaster, entitling the latter to authorize distribution by cable of the broadcast of the work.

Principle PH25. The authorization mentioned in Principle PH23 may be given by an organization of authors in respect of works the authors of which have delegated to such organization the exercise of the right mentioned in the said Principle.

Principle PH26. The authorization mentioned in Principle PH23 may be given by an organization of authors also in respect of works the authors of which have not delegated to that organization the exercise of the right mentioned in the said Principle; however, this may be done only if such a power of that organization is recognized by the applicable law and only if, by virtue of that law, the said organization must guarantee the broadcaster or the cable distributor against possible claims of such authors, and must undertake to apply, in respect of the distribution of authors' fees and other benefits, the same principles to the said authors as it applies to authors who have delegated to it the exercise of the right mentioned in Principle PH23.

Principle PH27. Where an organization of authors as referred to in Principles PH25 and PH26 cannot agree with the broadcaster or the cable distributor, through negotiations conducted in good faith, on the conditions of authorizing distribution by cable of a broadcast of the work, such conditions shall be fixed by a court, another impartial body designated by law or appointed to that effect by the government, or an arbitration tribunal whose chairman will, unless the parties agree on his person, be appointed by the government, and shall ensure the protection of the moral rights of the author. Before the fixation of such conditions, the said court, another designated body or arbitration tribunal shall give an occasion to the authors' organization and the broadcaster or cable distributor to be heard.

Principle PH28. (i) In respect of phonograms to which neither Principle PH25 nor Principle PH26 applies, and in respect of which the experience in the country concerned shows that the broadcaster or the cable distributor cannot rely on obtaining the necessary authorization from the copyright owners concerned in due time, legislation may determine — in the public interest — the conditions which, in the absence of authorization by the copyright owner, the broadcaster or the cable distributor must satisfy to be able to use lawfully the work in the distribution by cable of broadcasts.

(ii) The conditions referred to in paragraph (i) should provide for the safeguard of relevant moral interests of the authors and should include

the payment of appropriate fees to the owners of copyright in works constituting, or embodied in, phonograms.

(iii) The amount of fees to be paid for the distribution by cable of the phonogram broadcast should not be less than what is customary under authorizations given in the country concerned in accordance with Principles PH24, PH25 and PH26 or PH27 if comparable precedents exist. If there are no comparable precedents, the fees should be determined in the form of an equitable percent share of the fees paid by the subscribers to the cable distributor for the distribution by cable of broadcasts; alternatively, they should be calculated on the basis of the fees paid to copyright owners for the broadcast of phonograms, in the same proportion as the number of recipients of the distribution by cable is to the number of recipients of the broadcast.

(iv) If legislation does not itself provide for a schedule of fees, it should appoint a court or another impartial body to fix a schedule of fees or the amount of the fee for any given case. Any schedule of fees, whether fixed by legislation, by a court or other impartial body, and the amount of any fee for any given case, should be fixed only after having given an opportunity to all interested parties to be heard.

Principle PH29. Money and possible other considerations collected for authorizations or licenses mentioned in Principles PH25 to PH28 should, after the deduction of related administrative expenses, be due to the copyright owners whose works constituting, or embodied in, phonograms were actually used in distribution by cable of broadcasts, with due regard to the extent of the use and the importance of the works of each copyright owner, whether domestic or foreign. However, those copyright owners who have expressly delegated the exercise of their rights to an organization administering such rights, may decide upon exceptions to the said Principle of distribution, without affecting the rights of those copyright owners who did not expressly delegate the exercise of their rights to that organization.

Principle PH30. It does not amount to distribution by cable of the broadcast of the work where the broadcast, received by an aerial larger than generally used for individual reception, is transmitted by cable to individual receiving sets within a limited area consisting of one and the same building or a group of neighboring buildings, provided that the cable transmission originates in that area and is made without gainful intent.

Principle PH31. The author or other owner of the copyright has the exclusive right of authorizing the distribution of his work protected by copyright in the framework of a cable-originated program.

Principle PH32. Limitations of copyright, except any kind of non-voluntary licensing, admitted under international conventions and applicable national law with regard to the broadcast of the work may be extended by national legislation to the distribution by cable of cable-originated programs.

Principle PH33. The performer has the right to equitable remuneration for the distribution by cable of the broadcast of his performance protected by law.

Principle PH34. Principle PH30 applies mutatis mutandis to distribution by cable of the broadcast of a performance.

Principle PH35. The performer should have — at least — the right to equitable remuneration, where his protected work is incorporated in a phonogram and it is distributed by cable in the framework of a cable-originated program.

167. Principle PH35 is an adaptation of Principle 17 of the Annotated Principles mentioned in paragraph 114 to the case of performances included in phonograms. It corresponds — in the field of cable-originated programs — to Principle PH4 above.

Principle PH36. Limitations of copyright, except any kind of non-voluntary licensing, admitted under international conventions and applicable law with regard to the broadcast of the work may be extended by national legislation mutatis mutandis to the rights of performers relating to distribution by cable of their performances in the framework of cable-originated programs.

Principle PH37. The producer of a protected phonogram should have — at least — the right to equitable remuneration for the distribution by cable of the broadcast of that phonogram.

168. This right corresponds to that provided for under Article 12 of the Rome Convention — except that it should not be subject to any reservation, unlike the right under the said Article, the recognition of which can be excluded or limited to certain cases — with respect to the broadcast or any direct communication to the public of phonograms published for commercial purposes. It is considered justified that producers should also have the right to reasonable compensation for the distribution by cable of a broadcast of their phonograms.

169. The minimum of protection provided for by Principle PH37 should in no way be interpreted as limiting or prejudicing the protection otherwise granted to producers of phonograms or to be granted in the future. It should be noted that some countries, mainly among those granting copyright protection to producers of phonograms, already provide producers with the right to authorize or prohibit the distribution of their phonograms hy cable, whether the program comprising their phonograms is broadcast or cahle–originated. This fact proves the viability of granting such a right to producers of phonograms.

170. The Annotated Principles contain principles on collective administration of the rights of phonogram producers similar to those which are mentioned above in the case of authors' rights whose repetition here does not seem necessary.

Principle PH38. Principle PH30 applies mutatis mutandis to distribution by cable of the broadcast of a phonogram.

Principle PH39. The producer of a phonogram has the same right as regards the distribution of his phonogram in the framework of a cable–originated program as he has in relation to the broadcast thereof.

171. For the purpose of the protection of the rights of producers of phonograms, the act of distrihution of the phonograms in a cable–originated program should be assimilated to the act of hroadcasting of the phonograms. Consequently, producers of phonograms should have the same rights in the case of the two types of uses, and the liahilities of the distributor of cable–originated programs should be the same as those of the hroadcasting organization. In some countries, producers of phonograms have the right to remuneration where their phonograms are hroadcast, whereas in other countries they have the right to authorize or prohihit the use of their phonograms.

Principle PH40. Limitations of copyright, admitted under international conventions or the applicable national law with respect to the broadcasting of protected works may be extended by national legislation mutatis mutandis to the rights of producers of phonograms relating to the distribution by cable of their phonograms in the framework of a cable–originated program.

Principle PH41. Broadcasters have the exclusive right to authorize simultaneous and unchanged distrihution by cable of their broadcasts as well as the use of their broadcasts in the framework of cable–originated programs.

Principle PH42. (i) Principle 30 applies mutatis mutandis to simoltaneous and unchanged distribution by cable of broadcasts.

(ii) Limitations of copyright, except any kind of non–voluntary licenses, admitted under international conventions or the applicable national law with regard to the broadcasting of protected works may be extended mutatis mutandis to the rights of broadcasters relating to distribution by cable of their broadcasts in the framework of cable–originated programs.

Report 81. It was understood that the views expressed in respect to cable distribution of audiovisual works were applicable mutatis mutandis to cable distribution of phonograms. However, it was admitted that some new developments should be studied and taken into account which might make the modification of certain Principles necessary.

Cable Distribution of Programs Transmitted by Fixed Service Satellites

172. Paragraphs 130 to 137 necessarily apply — *mutatis mutandis* — also to the transmission and distrihution of phonograms hy fixed service satellites and hy cahle.

Principle PH43. If a phonogram transmitted through a fixed service satellite — in the final phase of the communication to the public — is distributed by cable, such distribution should be considered as a distribution of the phonogram in the framework of a cable–originated program. Conseqnently, Principles PH31, PH32, PH35, PH36, PH39 to PH41 and PH42(ii) should be applied.

Principle PH44. As far as the phase of cable distribution is concerned, both the broadcasting organization transmitting the program through a fixed service satellite and the organization distributing the program by cable should be considered to be responsible — jointly — towards the owners of copyright in works constituting, or embodied in, phonograms and towards performers, phonogram producers and broadcasting organizations whose rights may be concerned by such broadcasting. As far as the phases preceding the phase of the cable distribotion are concerned the originating organization alone should be considered responsible towards the said owners of rights.

Principle PH45. When communication to the public (transmission for public reception) is effected throogh a fixed service satellite — and then as a continnation of it by cable — the communication takes place both in the country from where the programme–carrying signals are emitted towards the satellite and in all the countries where the signals are distriboted by cable.

Principle PH46. Under the Berne Convention, the Universal Copyright Convention and the

Rome Convention, all of which provide for national treatment, the national laws of hoth the country from where the programme–carrying signals are emitted towards the fixed service satellite and that of each country where the signals are distributed by cahle are applicable. If the owners of rights exercise their rights towards the organization distributing the signals by cable, the law of the country where the cahle distribution takes place should be applied. If the owners of rights choose to exercise their rights towards the organization which emitted the signals towards the satellite, and if the national laws do not grant the same kind or degree of protection the highest level of protection should be applied.

Report 82. It was understood that what was said with regard to audiovisual works should also be applied mutatis mutandis to phonograms.

Report 83. At the end of the discussion of the questions of the protection of phonograms, one delegation said that the Principles on the rights of performers, phonogram producers and broadcasting organizations were not applicable in States which were not party to the Rome Convention.

Report 84. Another delegation proposed a study of the definition of "communication to the public." It was important because of new uses of audiovisual works and phonograms which had become easier with new technological developments, such as uses in closed circuit video systems in hotels, apartment houses and prisons as well as in restaurants and bars.

MISCELLANEOUS

Draft Resolution

Report 85. Several delegations submitted a draft resolution concerning piracy and urging actions against it. After a thorough discussion and some modifications, the resolution was adopted by the Committee. It is contained in [the] annex to this report.

Report 86. One delegation declared that it was not opposed to the principle of fighting piracy, but it had to reserve its government's position on the resolution.

Conclusion

Report 87. The Committee noted that the Secretariats would report on the results of the meeting to the next sessions of the Executive Committee of the Berne Convention and the Intergovernmental Committees established by the Universal Copyright Convention and the Rome Convention.

Adoption of the Report and Closing of the Meeting

Report 88. The Committee unanimously adopted this report and, after the usual thanks, the Chairman declared the meeting closed.

RESOLUTION*

The Unesco/WIPO Committee of Governmental Experts on Audiovisual Works and Phonograms, meeting in Paris from June 2 to 6, 1986, proposes that the appropriate hodies of the Berne and Universal Copyright Conventions endorse the resolution along the following lines:

Recognizing **that the enormous growth of the worldwide commercial piracy of audiovisual works and phonograms is posing a danger to national creativity, to cultural development, to local industry, and to intellectual property rights,**

Urges **that States should in their national laws introduce the rights guaranteed under the international conventions in this field, and** invites **the States which are not parties to these conventions to adhere to them and bring their legislation up to date so as to take fully into account the new technological uses of intellectual property,**

Expresses **the strong conviction that the adequate and effective protection of all rights holders under the conventions requires the provision of criminal sanctions in national law of sufficient severity to punish and deter piracy, and effective enforcement of such criminal sanctions,**

Acknowledges **that such sanctions should include fines and/or imprisonment terms appropriate to other serious thefts of property in the country concerned; provisions for the seizure and destruction of infringing copies and the equipment used in their production; measures to prevent importation into Convention States; and, procedures to facilitate the detection and proof of piracy.**

(Adopted on June 6, 1986)

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* proposed by the delegations of Argentina, Canada, France, Germany (Federal Republic of), Guinea, Japan, Mexico, Portugal, Senegal, Spain, Sweden, United Kingdom, United States of America.

LIST OF PARTICIPANTS

I. States

Angola: D. Van Dunem. **Argentina:** S.M. Peláez Ayerra; M.A. Emery. **Belgium:** F. Van Isacker. **Brazil:** J.C. de Souza-Gomes; J. de Souza Rodrigues. **Cameroon:** G. Etoundi Menguele. **Canada:** G. Redling. **Central African Republic:** J. Guelembi. **Costa Rica:** I. Leiva de Billault. **Czechoslovakia:** J. Karhanová; M. Jelinek. **Ecuador:** M. Carbo Benites. **Finland:** J. Liedes; S. Lahtinen; J. Eskola; A. Alaspää. **France:** A. Kerever; M.-C. Rault; N. Renaudin. **Germany (Federal Republic of):** M. Möller. **Gninea:** O. Kaba. **Holy See:** L. Frana; R. Blaustein; M.-S. de Chalus. **Hungary:** P. Gyertyánfy. **India:** A. Ghose; P. Singh. **Italy:** G. Catalini; M. Fabiani. **Japan:** Y. Oyama. **Jordan:** H. Mahmoud. **Kuwait:** S. Homoud Al-Nesef; S. Abdullah Ali. **Mexico:** M.N. Suárez Paniagua; V. Blanco Labra. **Nepal:** N.S. Thapa. **Netherlands:** P. Van Moort; L.M.A. Verschuur-de Sonnaville. **Norway:** J. Robsahm. **Oman:** A. Al-Mossawi. **Peru:** M. Carréon Velarde. **Pbilippines:** D. Macalintal. **Poland:** M. Stąpor-Romańska. **Portugal:** A.M. Pereira. **Republic of Korea:** K. Yong-Moon; B. Chang-Yull. **Sandi Arabia:** M. Al-Mosfer; N. Kanan. **Senegal:** B. Ndoye. **Soviet Union:** N. Razina. **Spain:** E. de la Puente Garcia; E. Balmaseda Arias-Dávila; C. Grande Renales; F. Castaño Garcia; F. Aguilera Orihuel. **Sri Lanka:** A.W.P. Gurugé. **Sweden:** B.-M. Blanck; A.H. Olsson. **Switzerland:** A. Bauty. **Thailand:** S. Povatong; A. Sales. **Turkey:** A. Ügdül. **United Kingdom:** D. Irving; N. Steinitz. **United States of America:** H.J. Winter; L. Flacks; S. Gortikov; N. Alterman. **Venezuela:** S. Durante.

II. Observers

(a) States

Australia: D. Macintyre. **Panama:** J. Patiño.

(b) Intergovernmental Organizations

Commission of the European Communities (CEC): D. Franzone. **Arab Educational, Cultural and Scientific Organization (ALECSO):** A. Derradji.

(c) International Non-Governmental Organizations

European Broadcasting Union (EBU): W. Rumphorst; M. Burnett. **European Tape Industry Council (ETIC):** M. Ritter; N. Forwood; W.H. Andriessen; C. Bruetschy. **International Alliance for Distribntion by Cable (AID):** G.G.S. Moreau. **International Association for the Advancement of Teacbing and Researcb in Intellectual Property (ATRIP):** A. Françon. **International Association of Sound Arcbives (IASA):** G. Davies. **International Burean of Societies Administering Recording and Mechanical Reproduction Rights (BIEM):** J. Elissabide; F. Pietranera. **International Catholic Organization for the Cinema and Andiovisuals (OCIC):** D. Van Espen. **International Cbamber of Commerce (ICC):** R. Schwartz; S. Vidal-Naquet. **International Confederation of Free Trade Unions (ICFTU):** J. Wilson. **International Confederation of Societies of Antbors and Composers (CISAC):** L.-F. Rebello; N. Ndiaye. **International Copyrigbt Society (INTERGU):** V. Movsessian. **International Federation of Actors (FIA):** R. Rembe. **International Federation of Film Distribntors Associations (FIAD):** G. Grégoire. **International Federation of Film Prodncers Associations (FIAPF):** A. Brisson; M. Ferrara-Santamaria. **International Federation of Musicians (FIM):** J. Morton; Y. Burckhardt. **International Federation of Pbonogram and Videogram Prodncers (IFPI):** I. Thomas; G. Davies; B. Colas; J.C. Muller Chaves; P. Cbesnais; V. Rubensobn. **International Film and Television Council (IFTC):** P. Maarek; E. Flipo; A. Suffert. **International Literary and Artistic Association (ALAI):** A. Françon; R. Castelain. **International Music Conncil (IMC):** J. Masson-Forestier. **International Publisbers Association (IPA):** J.A. Koutcboumow. **International Secretariat for Arts, Mass Media and Entertainment Trade Unions (ISETU):** J. Wilson. **Latin American Federation of Performers (LAFP):** A. Millé.

III. Secretariat

United Natious Edncational, Sclentific and Cultural Organization (UNESCO)

A.-M. M'Bow *(Director-General)*; T. Keller *(Acting Assistant Director-General for General Programmes and Programme Support)*; K. Vasak *(Director, Copyright Division)*; A. Amri *(Senior Lawyer, Copyright Division)*; E. Guerassimov *(Lawyer, Copyright Division).*

World Intellectual Property Organization (WIPO)

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

Notifications

Convention Establishing the World Intellectual Property Organization

ICELAND

Ratification

The Government of the Republic of Iceland deposited, on June 13, 1986, its instrument of ratification of the Convention Establishing the World Intellectual Property Organization (WIPO).

The Convention Establishing the World Intellectual Property Organization will enter into force, with respect to the Republic of Iceland, three months after the date of deposit of its instrument of ratification, that is, on September 13, 1986.

WIPO Notification No. 135, of June 13, 1986.

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

SWEDEN

Withdrawal by the Kingdom of Sweden of its Declaration Under Article 7(4)

According to a notification dated June 30, 1986, and received on July 1, 1986, the Government of the Kingdom of Sweden declares that, with effect on July 1, 1986, it withdraws its declaration, made at the time of the deposit of its instrument of ratification of the said Convention,* that it will apply the criterion according to which it affords protection to producers of phonograms solely on the basis of the place of first fixation instead of the criterion of the nationality of the producer.

Phonograms Notification No. 45, of July 4, 1986.

* See *Copyright*, 1973, p. 35.