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# Copyright

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## Contents





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# Notifications Concerning Treaties

## Rome Convention

### Ratification

FRANCE

The Secretary–General of the United Nations, in a letter dated May 27, 1987, informed the Director General of the World Intellectual Property Organization that the Government of France deposited, on April 3, 1987, its instrument of ratification of the International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations (Rome Convention), done at Rome on October 26, 1961.

The instrument of ratification contains the following reservations:

*(Original: French)*

*Article 5.* The Government of the French Republic declares, in conformity with Article 5, paragraph 3 of the Convention, concerning the protection of phonograms, that it rejects the criterion of first publication in favor of the criterion of first fixation.

*Article 12.* The Government of the French Republic declares, first, that it will not apply the provisions of this Article to all phonograms the producer of which is not a national of a Contracting State, in conformity with the provisions of Article 16, paragraph 1*(a)*(iii) of this Convention.

Secondly, the Government of the French Republic declares that, with regard to phonograms the producer of which is a national of another Contracting State, it will limit the extent and duration of the protection provided in this Article (Article 12), to those which the latter Contracting State grants to phonograms first fixed by French nationals.

In accordance with Article 25.2, the Convention will enter into force, with respect to France, on July 3, 1987.

# WIPO Meetings

## Dramatic, Choreographic and Musical Works

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

(Paris, May 11 to 15, 1987)

*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 6, 1987, under the title "Questions Concerning the Protection of Copyright and the Rights of Performers in Respect of Dramatic, Choreographic and Musical Works"; it has the document number UNESCO/WIPO/CGE/DCM/3.

The report of the Committee of Experts was adopted by the Committee of Experts on May 15, 1987; it has the document number UNESCO WIPO/CGE/DCM/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.

**Contents**

## I. INTRODUCTION

1. The Committee of Governmental Experts for whicb the present document has been prepared is being convened by virtue of decisions made by the Governing Bodies of Unesco and WIPO responsible for establishing the programs of the two organizations (see in particular, as far as Unesco is concerned, Approved Programme and Budget for 1986–1987 (23 C/5 Approved), paragraph 15115, and as far as WIPO is concerned, document AB/XVI/2, Annex A, items PRG.04(7) and (8) and document AB/XVI/23, paragraph 105).

2. Those decisions provide for a new approach regarding copyright questions of topical interest in the 1986–1987 biennium. Whereas the discussions in the 1984–1985 biennium concentrated on the *new uses* (mainly, cable television, private copying, rental and lending, direct broadcast satellites) affecting the owners or other beneficiaries of copyright and the so–called neighboring rights, the specific questions to be discussed in the 1986–1987 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 so–called neighboring rights in such works are considered. Virtually all main categories of works will be covered, so that, by the end of the biennium, a global review will have been carried out of the current situation in all the fields of copyright and the so–called neighboring rights.

3. According to the decisions mentioned above, the Secretariats of WIPO and Unesco have to 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 choreographic works, musical works.

4. The Committee of Governmental Experts, for which tbe present document has been prepared, is invited to deal with two of the eight categories of works, namely, dramatic and choreographic works on the one band and musical works on the other.

5. The purpose of this document is to summarize and discuss the various copyright and so–called neighboring rights issues in relation to dramatic, choreographic and musical works for the purpose of arriving at certain "principles" whicb, together with the comments, could serve as a guidance for governments when they have to deal with those 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 Governmental Experts—have or will have any binding force on anyone. They are merely intended to indicate directions whicb seem to be reasonable in the search of solutions which, 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 so–called 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, the use of protected works, performances, etc.

6. The principles proposed are believed to provide for an efficient and appropriate protection of intellectual

property rights in respect of the various types of uses of dramatic, choreographic and musical works. Dealing with those uses seems to be particularly timely since in today's media environment 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." It should be stressed that everything that is desirable cannot be obtained free of charge and without regard for the interest of those who create or own the goods that the public wishes to enjoy.

7. The Committee of Governmental Experts for which the present document has been prepared is the fourth in the series of meetings mentioned in paragraphs 2 and 3 above. During these meetings, new uses and other new technological developments are discussed in detail in connection with those categories of works where such new uses and other developments are most typical. The documents on other categories of works—for the sake of avoiding repetition—usually simply refer to the documents which contain detailed analyses on those questions.

8. In respect of the categories of works covered by the present document there is from a practical point of view only one previous meeting whose results are relevant: namely the meeting of the Committee of Governmental Experts on Audiovisual Works and Phonograms which was held in Paris in June 1986. The results of that meeting have been taken into account in two ways: firstly, this document, in connection with audiovisual works and phonograms, only deals with the copyright and so-called neighboring rights questions which refer to the inclusion of dramatic, choreographic and musical works into such productions but, in general, does not deal with the questions concerning the utilization of audiovisual works and phonograms. In relation to those questions the document prepared for the Committee of Governmental Experts on Audiovisual Works and Phonograms and the results of the discussions at the meeting of that Committee are applicable. Secondly, in the case of certain questions—such as piracy, home taping, rental and public lending, cable distribution and satellite broadcasting—that were discussed in detail at the above-mentioned meeting (because they concern audiovisual works and phonograms most typically), this document only discusses some aspects of those questions that are specific for dramatic, choreographic and musical works; as regards other aspects of those questions this document simply declares that the relevant principles contained in the document on audiovisual works and phonograms should be applied *mutatis mutandis*.

9. There is an important common feature of the categories of works covered by this document, namely that they can become available to the public—at least in their full esthetic functions—only if they are performed by performing artists. This very important role of performers makes it necessary to deal with performers' rights with great attention in this document. It should also be taken into account that performers sometimes interpret works in a creative way and this element raises specific questions concerning the borderline between protection under copyright and under so-called neighboring rights.

10. At the same time, it follows from the direct or *mutatis mutandis* applicability of the working document for and the results of the Committee of Governmental Experts on Audiovisual Works and Phonograms mentioned in paragraph 8 above that in the framework of this document there is no need to deal with the other two categories of so-called neighboring rights (the rights of phonogram producers and of broadcasting organizations).

11. In spite of the similarities mentioned in paragraph 9 above, dramatic and choreographic works, on the one hand, and musical works, on the other, are dealt with in the present document separately—and in that way in keeping with the programs of WIPO and Unesco referred to in paragraph 1 above—because their creation, performance and utilization raise questions which are different in respect of these categories of works.

*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 Dramatic, Choreographic and Musical Works at the headquarters of Unesco in Paris from May 11 to 15, 1987.*

*Report 2. The purpose of the meeting was to discuss the various copyright issues arising in relation to dramatic, choreographic and musical works with a view to devising certain "principles" which, together with commments, could afford guidance to governments when they had to deal with those issues.*

*Report 3. Experts from the following 41 States attended the meeting: Bangladesh, Bolivia, Brazil, Burundi, Cameroon, Canada, China, Colombia, Costa Rica, Côte d'Ivoire, Denmark, Egypt, Finland, France, German Democratic Republic, Germany (Federal Republic of), Guatemala, Guinea, Holy See, Hungary, India, Italy, Jordan, Kenya, Lebanon, Mexico, Morocco, Panama, Portugal, Saudi Arabia, Soviet Union, Spain, Sweden, Switzerland, Thailand, Togo, Tunisia, Turkey, United Kingdom, United States of America, Yemen.*

*Report 4. A representative of the African National Congress (ANC) attended the meeting as an observer.*

*Report 5. One intergovernmental organization —the Arab Educational, Cultural and Scientific Organization (ALECSO)—also attended the meeting.*

*Report 6. Also participating in the meeting were observers from 13 international non-governmental*

*organizations: Broadcasting Organizations of the Non–Aligned Countries (BONAC), European Broadcasting Union (EBU), International Bureau of Societies Administering Recording and Mechanical Reproduction Rights (BIEM), International Confederation of Free Trade Unions (ICFTU), International Confederation of Societies of Authors and Composers (CISAC), International Federation of Actors (FIA), International Federation of Musicians (FIM), International Federation of Phonogram and Videogram Producers (IFPI), International Literary and Artistic Association (ALAI), International Publishers Association (IPA), International Secretariat for Arts, Mass Media and Entertainment Trade Unions (ISETU), International Theatre Institute (ITI), Max Planck Institute for Foreign and International Patent, Copyright, and Competition Law.*

*Report 7. The list of participants follows this report.*

*Report 8. Mr. Michel de Bonnecorse, Deputy Director–General of Unesco, opened the meeting and welcomed the participants on behalf of Unesco. Dr. Arpad Bogsch, Director General of WIPO, welcomed the participants on behalf of WIPO.*

*Report 9. Mr. Jukka Liedes (Finland) was unanimously elected Chairman of the meeting.*

*Report 10. The Committee adopted the Rules of Procedure contained in document UNESCO/WIPO/CGE/DCM/2 Prov. It was decided that the Committee should elect two Vice–Chairmen and that the tasks of the Rapporteur should be fulfilled by the Secretariat.*

*Report 11. Mr. György Boytha (Hungary) and Mr. Adolfo Loredo Hill (Mexico) were unanimously elected Vice–Chairmen of the meeting.*

*Report 12. The provisional agenda of the meeting of the Committee, as appearing in document UNESCO/WIPO/CGE/DCM/1 Prov., was adopted.*

*Report 13. Discussions were based on the Memorandum on Questions Concerning the Protection of Copyright and the Rights of Performers in Respect of Dramatic, Choreographic and Musical Works prepared by the Secretariats (document UNESCO/WIPO/CGE/DCM/3).*

*Report 14. The participants who took the floor in the general discussion congratulated the Secretariats for the excellent quality of the document. They expressed their approval, in general, of the principles and comments contained in the document and said that they would make comments only on specific issues.*

*Report 15. One delegation raised the question of the nature of the "principles" suggested in the document and their relations to the obligations under the copyright conventions. It suggested that the word "shall" should be used instead of the word "should" in certain principles to indicate that such principles reflected what was in fact obligations under the international conventions.*

*Report 16. The Secretariats said that, as indicated in paragraph 5 of the document, the principles, as proposed to or as emerging from the discussions of the Committee of Experts, could not be binding on any country, since international obligations could only result from treaties and not from committees of experts. That was why the expression "should" rather than the expression "shall" was used in the wording of the proposed principles. The Secretariats added that the purpose of the series of meetings, of which the present meeting was one, was not to modify existing international obligations. The purpose of such meetings was: first, to create an international awareness of the topical issues of copyright law, particularly issues caused by technological development, and secondly, that when countries wished to modernize their copyright legislation, they could do so in the light of what they had learned through participation in the exchange of views that took place between experts from a great number of countries on the basis of working documents prepared by the Secretariats.*

*Report 17. Another delegation said that certain characteristics of the document should be observed which followed from its objectives: the set of principles should extend to questions of the exercise of rights not only in the field of collective administration of rights in musical works, but also as regards the rights in dramatic and choreographic works. In addition to the problem of remuneration also such further questions should be dealt with as, for instance, the scope of rights necessary for the user to make the work available to the public. No revision of the copyright conventions was in sight, therefore, the correct interpretation of their provisions under the changing circumstances was particularly important. An agreement was necessary about some basic principles, for instance, about the implications of the concept of authors' rights which were conceived under the conventions as right to authorize a certain use of a work rather than a mere right to use the work. It should be clarified whether it was necessary to assign the right of authorization to the user or if it was enough for him to obtain the necessary exclusive right to use the work by virtue of an authorization based on the author's right. The delegation referred*

*to the fact that 120 copyright laws contained more or less detailed provisions on authors' contracts and suggested that some guiding principles should also be elaborated in this field, in consideration of the largely varying national solutions.*

*Report 18. Still another delegation stated that, while, in general, in agreement with the suggestions of the document, it felt that the questions of exercising rights, such as the calculation of remunerations and collective administration should not be dealt with in principles intended as guidance for legislators. The solution of those questions should, generally, be left to negotiations between the parties concerned. Even if in certain countries, legislative measures were found desirable, those measures would necessarily differ from country to country. Therefore, it would not be realistic to try to establish generally acceptable norms in this field.*

*Report 19. An observer from an international non-governmental organization, while appreciating that the document emphasized the outstanding role of performers in respect of dramatic, choreographic and musical works, stated, with reference to paragraph 9, that performers always peformed works in a creative way and that there was no need and no basis for a categorization of performers in this context.*

## II. DRAMATIC AND CHOREOGRAPHIC WORKS

### Creations To Be Protected as Dramatic and Choreographic Works

12. It was as early as in the original 1886 text of the Berne Convention that "dramatic and dramatico-musical works" were mentioned in the non-exhaustive list of works to be protected hy the Convention as "literary and artistic works" (Article 4). "Choreographic works and entertainments in dumb show" were included in the non-exhaustive list at the 1908 Berlin revision conference (Article 2), with the condition, however, that for them to enjoy protection, the "acting form" had to be fixed in writing or otherwise. Tbat condition was maintained in the subsequent Acts of the Berne Convention and it was only aholished at the 1967 Stockholm revision conference. This condition was not an exception to the rule of protection without formality, but was inserted more because fixation was considered necessary for evidentiary purposes. It was thought that only a hallet notation or similar fixation allowed one to clearly identify a dance to be protected. Cinematographic films allowed easy and reliable fixation. At the same time, the possihility of including a choreographic or pantomimic work (the latter expression is used bereafter instead of "entertainment in dumb show") into a film and later in a television production as well as the possibility of its diffusion live by television raised other questions. Some countries found it necessary to protect choreographic and pantomimic works in respect of such uses irrespective of whether they had been previously fixed or not. Therefore, fixation as a necessary condition of the protection of such works was eliminated. It does not mean, however, that making protection conditional of fixation became incompatible with the Berne Convention, hccause the same Stockholm conference adopted a new paragraph (2) of Article 2 according to which it is "a matter for legislation in the countries of the Union to prescribe that works in general or any specific categories of works shall not be protected unless they have been fixed in some material form."

13. Article I of the Universal Copyright Convention contains a less detailed non-exhaustive list of protccted works than the one contained in Article 2(1) of the Berne Convention. It only mentions "literary, scientific and artistic works, including writings, musical, dramatic and cinematographic works, and paintings, engravings and sculpture." It seems to be a correct interpretation of this provision, however, that it covers all forms of theatrical works including dramatico-musical, choreographic and pantomimic works.

14. Several national laws do contain provisions by which the expression "dramatic works" is defined just in such a wide manner (that is, also to include choreographic and pantomimic works). Other laws use the expressions "dramatic and dramatico-musical works" on the one hand and "choreographic and pantomimic works" on the other side hy side. Still other national laws apply a more general term such as "theatrical works," "theatrical or scenic works," "works created for stage" to cover both dramatic and dramatico-musical works and choreographic and pantomimic works as well as any other works created for stage.

15. In the present document, the expression "dramatic and choreographic works" is used in such a wide sense. It includes all works created for stage, such as dramatic works, dramatico-musical works (operas, operettas, musicals, etc.), choreographic works (ballets, etc.), pantomimes, etc. When it is not indicated otherwise in the document all the principles and comments are applicable to all those sub-categories of dramatic and choreographic works.

16. The first separate question that seems to concern only some of those sub-categories is just the question of fixation as a possihle condition of tbe protection of such works. Some national laws have maintained that condition in the case of choreographic and pantomimic works, while in other national laws it does not exist. Therefore, in the following Principle DC1 the fixation as a condition of eligibility for protection is mentioned only as a possihle option.

17. It is stated ahove that this question *seems* to concern only some sub-categories of dramatic and choreographic works. In certain national laws fixation as a condition of protection is mentioned only in the case of choreograpbic and pantomimic works. This does, however, not necessarily imply the *a contrario* conclusion that, as far as

dramatic and dramatico-musical works are concerned, also unfixed such works enjoy protection by such laws. These works are fixed as a rule nearly without any exception. It can, therefore, be taken for granted that in countries where choreographic works and pantomimes are only protected when they are fixed, fixation as a condition of protection is not mentioned explicitly in respect of dramatic and dramatico-musical works just because it is thought to follow from their very notion that they are fixed. Therefore, in Principle DC1 the possibility of prescribing fixation as a condition of eligibility for protection is provided for all dramatic and choreographic works and not only for some of the sub-categories covered by this expression.

18. On the basis of the foregoing, the following principle is offered for consideration:

**Principle DC1. (1) "Dramatic and choreographic works" mean all works created for stage, such as dramatic works, dramatico-musical works (operas, operettas, musicals, etc.), choreographic works (ballets, etc.) and pantomimes (entertainments in dumb show).**

**(2) Dramatic and choreographic works should be protected under the general rules of copyright law.**

**(3) The protection of dramatic and choreographic works may be restricted to works that are fixed in writing or in any other material form.**

19. The present document—like the other documents that have been produced so far concerning other categories of works (audiovisual works and phonograms, works of visual art, works of architecture) in the framework of the series of meetings of committees of governmental experts mentioned in paragraphs 2 and 3 above—does not cover all details of copyright protection (such as the term of protection, the question of formalities, the status of works created under employment contract, etc.). In those respects the general provisions of national laws should be applied in keeping with the international conventions to which the countries concerned are party. The present document only discusses questions which need particular consideration in the case of the categories of works covered by it.

*Report 20. In the course of the discussion, approval was expressed for the general approach outlined in this part of the document.*

*Report 21. Some delegations expressed doubts whether it was right to include in the definition of "dramatic and choreographic works" contained in Principle DC1(1), that they were created for stage. Some examples were mentioned (such as artistic gymnastics, figure skating, synchronized swimming) to indicate that certain bordeline questions should be studied.*

*Report 22. One delegation was of the opinion that no substantive definition was necessary. It was enough to give a non-exhaustive list of the most typical dramatic and choreographic works, and the decision about certain disputed cases would be taken by the national legislator.*

*Report 23. Another delegation said that in Principle DC1(2) it was not enough to only refer to the general rules of copyright. There were some national laws which also contained certain specific provisions which were relevant in respect of dramatic and choreographic works; Principle DC1(2) should consequently refer to both general and relevant special provisions. The other possibility could be simply to state that dramatic and choreographic works are protected by copyright.*

## Special Features of Dramatic and Choreographic Works and Performances of Such Works. The Impact of the New Technologies

20. A dramatic work in the narrower sense of this expression (defined in the WIPO Glossary of Terms of the Law of Copyright and Neighboring Rights as "a compilation of connected actions and discourses of one or usually more persons, to be performed on stage and reflecting reality through play") may be—and fairly frequently is—enjoyed in written form published in a book or otherwise. But even in the case of a dramatic work in such a form, it cannot be said that enjoying it through reading is its final purpose and original function. Its final purpose and original function is that it be performed on stage thus "reflecting reality through play."

21. The use of dramatic works in written form has so far been influenced by the new technologies only in one way, namely, that widespread reprography has also concerned published dramatic works. (The question of reprography will be dealt with in detail in the present series of meetings in the framework of the Committee of Governmental Experts on the Printed Word planned to be held in Geneva from December 7 to 11, 1987.) New technologies and certain social developments have on the other hand influenced the utilization of dramatic and choreographic works in their original functions—"to be performed on stage and reflecting reality through play"—in several important aspects.

22. The first and most obvious impact of the new technological developments is that theatrical performances—in addition to the audience present in the theater itself—may become available to an ever wider circle of people. The performances of such works were first transmitted live by radio and then by television and they could be included into cinematographic films and then in fixed television productions, and nowadays they can also be transmitted by satellites and by cable networks and recorded in audiovisual cassettes.

23. In addition to the above-mentioned direct impact of the new technologies, they also make their impact felt in a less direct way: audiovisual works can, by means of either theatrical presentation or television transmission or cable distribution or just by means of privately used videograms, fulfill practically the same functions as dramatic and choreographic works used to fulfill in the past: "reflecting reality through play." Those new developments have changed public behavior towards dramatic and choreographic works. The changes do not only mean that the demand for theatrical productions has decreased (it has in many countries, even if the decrease has not been as dramatic as was predicted at the advent of cinema and television), but rather that the functions of dramatic and choreographic works in relation to the puhlic have changed. Similar developments have taken place—even if to lesser extent—as in the case of fine arts with the advent of photography. The direct reflection of reality as a function has been taken over by new forms of creation and traditional genres have turned towards more abstract means of expression. (That development was less significant in the case of those sub-categories of dramatic and choreographic works (such as operas, ballets, pantomimes) whose means of expression are necessarily of more abstract nature.)

24. The quest for new ways of expression has not only led to the creation of dramatic and choreographic works that contain a great number of new features but also to the transformation of the relationship between the written work and its performance and through that to the increased role of theater directors *[metteurs en scène]*. The latter development has been supported by the existence of directors of audiovisual works *[réalisateurs]* who have become the most decisive factor of the creation of such works. In the case of dramatic and choreographic works, this new role of directors—especially the fact that they tend to interpret those works in ever more liberal ways, sometimes not only leaving out some parts of them but also changing their order or even adding to them certain new elements—has led to conflicts of interests, strains and horderline questions between copyright and so-called neighboring rights which will be dealt with in the following chapter of the present document.

*[Report 23bis. No particular comment was made in this respect.]*

## The Authors of Dramatic and Choreographic Works. The Status of Theater Directors

25. Neither the Berne Convention nor the Universal Copyright Convention contains a direct definition of "author," hut it is obvious on the basis of the context of the provisions of the two conventions that an "author" is a person who creates a work. The same applies to the concept "author" at the national level (another matter is that certain national laws use the technique of legal fiction and extend the scope of authorship to others than creators, for example employers, publishers of collective works, etc.).

26. If the author is the person who creates a work then, of course, it is the notion of work which determines who may qualify as author. The Berne Convention and the Universal Copyright Convention do not offer a definition of what a "work" is. They make it clear, however, that protected works should belong to the literary, scientific or artistic domain and they give a non-exhaustive list of the most typical and most frequent kinds of works. Some national laws follow the same method. In such cases, the context of the provisions—comhined with the usual methods of interpretation—provide further elements of the notion of "work," viz. that only original intellectual creations are protected as works; ideas are not protected but only creations expressed in concrete reproducihle form are; the quality of the creation is irrelevant for the protection, etc. National laws which offer more detailed elements for the definition of works lead to the same result as the above-mentioned interpretation. It is another prohlem that national laws vary significantly concerning the key notion of originality. In certain laws (first of all in the laws of countries with Anglo-Saxon legal traditions) originality is often equivalent to anything in a production that is not a result of an infringement (plagiarism) of a preexisting work; everything is protected in the field of literature, sciences and arts whose creation needs skill and labor. The national laws of other countries demand a comparatively high level of intellectual creativity as a condition of eligihility for protection.

27. From the viewpoint of the subject matter, it is particularly important that under the international copyright conventions and national copyright laws not only preexisting original works but also derivative works, such as translations, adaptations and arrangements, are protected (see Article 2(3) of the Berne Convention and Article IV*bis*.1 of the Universal Copyright Convention).

28. As is stated in Principle DC4 below, the authors of dramatic and choreographic works should enjoy the right of adaptation, that is it should be their exclusive right to authorize or prohibit adaptation of their works. Therefore, if an adaptation of a dramatic or choreographic work is created and used without the authorization of the author of that work, it is an infringement of the right of adaptation. It is important to state, however, that if the adaptation is of original nature the fact that it is the result of an infringement does not change its quality as a derivative work. Therefore, if the adaptation is used hy a third person without the authorization of the person who created the adaptation, it is an infringement of the latter's copyright.

29. Creativity can be manifested not only in the form of the creation of original literary and artistic works but also in other forms. The hasic purpose of certain types of works, such as, first of all, dramatic, choreographic and musical works, is that they be performed and made available to the puhlic hy means of performances. Those works—depending on the nature of the genres in question—allow more or less freedom for differing interpretations. Creativity may also be manifested in that field. There are hrilliant artists who are able to reveal new esthetical qualities or to offer new interpretations of the works performed hy them. It is, therefore, understandahle that

the demand for an intellectual property type protection of such productions arose when the new tecbnologies rendered their transmission and fixation possible. The first reaction was to try to turn to copyright as an existing protection system. There were some attempts in certain national laws, for example, at protecting performances as "adaptations." However, it became evident fairly soon that this was not an appropriate solution. A performance is a presentation of a work hy action such as playing, reciting, singing or dancing and if this performance is of original nature its originality is manifested by the original interpretation of the work and not by the modifications which may have taken place hy means of the performance. Therefore, there is no real hasis to protect performances as derivative works. That was recognized fairly soon and after the failure in trying to use the umbrella of copyright, the protection of performances was estahlished in the framework of the so–called neighboring rights.

30. The reference above to some basic principles of delimitation between authors and works, on the one hand, and performances and performers, on the other, is necessary first of all for clarifying the intellectual property status of theater directors. Are they performers or are they authors like their "colleagues," the directors of audiovisual works? The status of certain other contributors to theatrical productions such as those of the creators of sceneries (decorations) and costumes should also be clarified.

31. When theater directors claim that they are authors like directors of audiovisual works are, they claim nothing less than that the relationship between a dramatic or cboreographic work and its theatrical production is the same as that between a scenario and the audiovisual work produced on the basis of it. Such an allegation, however, is bardly appropriate. An audiovisual work is not a presentation of a scenario but something which is of a completely new quality in relation to it. The creators of an audiovisual work—first of all the director—transform the scenario into another artistic language, into the language of images where dialogues and everything else that the scenario may contain are only mere contributions—maybe important ones—to a new artistic unity. An audiovisual work still does not exist in the stage of a scenario; it comes into existence by the activity of the director and the other contributors to its creation. In the case of dramatic and cboreographic works, the situation is different. Those works do exist before they are staged. Dramatic works contain not only dialogues but—as a rule—a series of more or less detailed instructions concerning the scenery, the characteristics, costumes and movements of the actors, etc. It follows from the nature of dramatico–musical works (operas, operettas, etc.), choreographic works and pantomimes that their contents are determined hy their creators (lihrettists, composers, cboreographers, etc.) in an even more detailed manner.

32. The authors of dramatic and choreographic works create with the intention that those works be staged and performed in the form which the authors have given them. If their intention is realized, the contribution of a director could hardly be qualified as the creation of a new *work* (either an independent work of new quality or an adaptation of the work staged and performed). What he produces is a performance of the work. The work may allow somewhat differing interpretations; however, if the director chooses one of the interpretations inherent in the work, he does not become the author of any independent or derivative work. Small changes, deletions, certain movements which are not mentioned or are differently described in the written version of the work, the actualization of the scenery or the costumes, some "gags," etc., may be parts of the contribution of the director, but, in general, it can hardly be said about them that they are new, original, creative elements and thus may qualify together as an adaptation.

33. Usually theater directors are ready to serve the works and to stage them in keeping with the intentions of their authors, and the question whether they themselves are authors does not emerge. Certain directors, however, have greater amhitions. They would like to simply use the work—what they sometimes call "raw material"—to produce something else. Their productions very frequently involve extensive deletions from the text, the leaving out of some roles, the change in order of parts, placing events into completely different circumstances than the ones described hy the author and thus changing the meaning of the dialogues, adding new elements (even if not necessarily a new text hut, for example, new designs of decorations and costumes, new movements, etc.) which lead to "interpretations" never intended by the author. *Summa summarum*, in sucb a case the dramatic or choreographic work is staged in a basically modified version.

34. Is the claim justified in such cases that the theatrical production is a new quality in relation to the dramatic or choreographic work and, consequently, that the theater director is the original author of the new creation (the same way as the director of an audiovisual work is not an "adaptor" of the scenario but an author of a work of new quality, that is the audiovisual work)? There is a test question: could the author of the original work himself delete certain parts of the text, leave out some roles, change the order of acts, give instructions for different scenery, costumes, movements of actors, etc.? The obvious answer is that he could. Consequently, a theatrical production in such a case is different from the original work not because theatrical productions represent a new quality of such works but simply because it is not the original work which has been put on stage but a modified version of it. A modified version of a work is an adaptation. Consequently, a director may enjoy copyright protection not because he is a director, but because he is an adaptor (unless the author recognizes the latter as coauthor).

35. In the case of a work in the public domain or an expression of folklore, an original adaptation is protected without any further condition (except that in countries where the "right of respect" extends in some form to works in the public domain, adaptations conflicting with sucb rights may qualify as infringements). The protection of such adaptations does not mean, of course, that the work in the public domain or the folklore expression can no longer be performed in its original form or in the form of other adaptations (provided, of course, that those adaptations are independent creations and not plagiarized from the previous one).

36. If the original work is still protected, the authorization of the original author is necessary for any adaptation. Without it, the adaptation and its performance is an infringement. If, however, an unauthorized adaptation is used by a user—for example, a theater—the lack of authorization from the original creator does not eliminate the user's copyright obligations towards the adaptor–director.

37. In the case of choreographic works and pantomimes, there may be different persons—different from the creators of the original choreography or the pantomimes and different from the directors of the productions—who give instructions concerning the elements of movement and direct the dancers and pantomime actors. Concerning their role and intellectual property status, the considerations about the role and status of directors apply *mutatis mutandis*. (That is, certain changes introduced by them may not go beyond the notion of performance while creative changes qualify as adaptations, except when they create completely new works where only some basic ideas are used from the preexisting works.)

38. Theatrical productions may have certain further contributors, such as those who prepare the sceneries (decorations) or costumes. If the sceneries and costumes are of original artistic nature they may enjoy protection as works of fine art. If the director gives only some general ideas about the scenery and costumes but does not take part in their creation, he cannot qualify as an author; if he participates in the creation itself he should also enjoy the protection of such works as author or coauthor.

39. On the basis of the foregoing considerations the following principle is suggested:

**Principle DC2. (1) The authors of dramatic and choreographic works are the persons (playwrights, composers, choreographers, etc.) whose creative contributions establish such works.**

**(2) Theatrical productions of dramatic and choreographic works should be considered as performances of such works and not works themselves. The directors of such productions should be protected as performers and not as authors. If the director modifies the work in an original manner, his contribution, in that respect, should be protected as an adaptation without prejudice to the copyright in the original work. The creation and use of such an adaptation is subject to the right of adaptation of the author of the original work according to Principle DC4(1)(iv). If, however, an adaptation is used which has been created without the authorization of the author of the original work, the lack of this authorization does not exempt the user from the obligation of full respect of the adaptor's copyright in the adaptation.**

**(3) Certain contributions to theatrical productions such as sceneries (decorations) and costumes may enjoy separate protection according to the relevant copyright provisions, e.g. as works of fine art, if they are of original nature.**

*Report 24. Some delegations mentioned that the question of the protection of the right of theater directors was under consideration in their countries, and that the ideas and arguments contained in the document might be useful in that respect.*

*Report 25. Several participants expressed the view that it was not enough to protect theater directors as performing artists; very often they deserved protection also as authors. Some participants were of the opinion that directors could only enjoy copyright protection as adaptors or as coauthors, as it was suggested in the document. Some other participants said that they would find also an independent copyright protection of "scenic creations" justified, including the right of directors to have their names associated with a specific production. The latter participants stressed that the text of a dramatic work and the instructions by the author did not fully determine all aspects of the scenic version of the work; there was always more or less room for the director's creative contribution.*

*Report 26. One delegation drew attention to the fact that, in several countries, fixation was a pre–condition for copyright protection and stressed that, very frequently, the instructions given by theater directors were not in a fixed form.*

*Report 27. An observer from an international non–governmental organization said that it would be justified to grant the same copyright status to theater directors as to film directors.*

*Report 28. Several delegations gave examples to support that consideration should be given not only to the protection of the rights of theater directors but also to the protection of the authors' rights permitting to oppose certain modifications that were completely alien to their works and distorted the message they intended to communicate to the public. It was suggested that the questions of the protection of moral rights in works whose authors had died should be further studied.*

*Report 29. Several comments were made on the last sentence of Principle DC2(2).*

*Report 30. Some delegations expressed doubts whether the authors of unauthorized adaptations, who were infringers of the copyright in the original work, would really deserve copyright protection. One delegation estimated that this would be absolutely inequitable, and it proposed to delete this sentence.*

*This proposal was supported by an observer from an international organization.*

*Report 31. One delegation analyzed the legal status of unauthorized adaptations more in detail. It recognized that copyright laws and practices did not seem to explicitly deprive the maker of an unauthorized adaptation of copyright in his adaptation. However, it was possible to proceed to an injunction and to request the cessation of any infringing action. Originally, Article 6 of the 1886 Act of the Berne Convention provided that only "lawful translations" should be protected as original works. During the 1908 Berlin revision conference, it was held that the reproduction even of unlawful translations and adaptations should be prevented since it would cause additional harm to the author of the original work. Thus, according to the new text (now Article 2(3) of the Paris Act), any translations or adaptations or arrangements of music "shall be protected as original works without prejudice to the copyright in the original work." It appeared, however, that the recognition of the infringing adaptor's copyright necessarily involving also the right to authorize the performance of his unauthorized adaptation, would be prejudicial to the right of the author of the original work, and the user would become a contributory infringer. Altering or destroying any—material or immaterial—goods of another person without legal justification amounted to conversion prohibited under the law of torts. The infringing adaptor might only enjoy protection against reproduction or communication to the public of his adaptation, but he should not enjoy a right to authorize its use, which would follow from copyright. Thus, the last sentence of paragraph (2) should be either deleted or modified so that it would end by reading "...the lack of this authorization does not deprive the adaptor of the right to prevent the use of his adaptation by a third person and to acquire copyright in it if the author of the adapted work subsequently authorizes the adaptation."*

*Report 32. Several other delegations supported the statement included in the last sentence of Principle DC2(2). It was stressed that the author of an adaptation was an author even if the adaptation had not been authorized by the author of the original work. Not all infringements were committed willfully. No user could lawfully use an unauthorized adaptation without the authorization of the author of the original work. However, if the user had not sought or received authorization from the author of the original work and he still used the work in the adapted version, this did not mean that he did not, in using the adaptation without the adaptor's consent, infringe also the latter's copyright in his adaptation. The sentence under discussion and paragraph 36 connected to it said no more than that. The modification proposed by the delegation mentioned in the preceding paragraph would not change the legal relationship between the adaptor and the actual user.*

*Report 33. An observer from an international non-governmental organization suggested that the question of the copyright status of theater directors and that of unauthorized adaptations should not be dealt with in the framework of specific principles but rather only in the commentary.*

## Moral Rights in Dramatic and Choreographic Works

40. Article 6$^{bis}$(1) of the Berne Convention provides that "Independently of the author's economic rights, and even after the transfer of the said rights, the author shall have the right to claim authorship of the work and to object to any distortion, mutilation or other modification of, or other derogatory action in relation to, the said work, which would be prejudicial to his honor or reputation." The Universal Copyright Convention contains no provisions concerning moral rights. It is desirable that such rights be guaranteed under national laws for authors, *inter alia*, for the authors of dramatic and choreographic works.

41. The right to claim authorship means, in practice, that the authorship of the creators of such works should be recognized and their names should be indicated on the copies of the written versions of those works (such as the published versions of dramatic works) on the playbills (programs) announcing theatrical performances, and they should also be mentioned—in a reasonable way—in connection with any utilization of the work (for example, by means of broadcasting).

42. National copyright laws differ to a large extent concerning the scope of the so-called "right of respect" on the basis of which the author can oppose modifications—or at least certain modifications—of his work. The above-quoted provision of the Berne Convention does not aim at prohibiting all kinds of changes but only such actions mentioned in the provision which would be prejudicial to the author's honor or reputation. Some copyright laws go much further, however, than the minimum protection of moral rights provided for by the above-quoted provision of the Berne Convention: sometimes authors can oppose, in principle, any modification of their works. In the case of theatrical presentations of dramatic and choreographic works, such an absolute moral right may come into conflict with the realities of the theater. It is a general practice that during the staging of a dramatic or choreographic work, the director and other contributors to the production make several minor modifications—some of them are described in paragraph 32 above—that do not amount to adaptations and do not distort the original work, but rather contribute to its fuller interpretation. The existence of the "right of respect" should not be an obstacle to making such modifications.

43. The following principle is suggested for the protection of moral rights:

**Principle DC3. (1) Independently of the authors' economic rights and even after the transfer of the said rights, the authors of dramatic and choreographic works should have the right to**

**(i) claim authorship and have their names indicated on the copies of their works, on the playbills (programs) announcing theatrical performances and, as far as is practicable, mentioned in connection with any utilization of their works;**

**(ii) object to any distortion, mutilation or other modification of, or other derogatory action in relation to, the said work, which would be prejudicial to their honor or reputation.**

**(2) The scope of modifications to which the author should have the right to object may be determined in a more extensive manner in national laws than is defined in paragraph (1)(ii) above; however, it should not extend to the possibility of objecting to modifications that are normally necessary for the staging of dramatic and choreographic works.**

*Report 34. One delegation proposed that the second part of the Principle DC3(2), starting with the word "however," should be deleted. It was right to make a reference to the possibility of a more generous protection of moral rights but it was not justified to restrict the freedom of national legislators in that respect. This delegation expressed the view that authors should have the right to object to any modifications and not only to those that might be prejudicial to their honor or reputation.*

*Report 35. Another delegation supported the proposal for the deletion of the second part of the paragraph because it felt that the expression "modifications that are normally necessary for the staging of dramatic and choreographic works" was not clear and could lead to extensive interpretations.*

*Report 36. Some other participants expressed hesitation concerning the above-mentioned proposal and found the approach of the document acceptable. They stressed that the principle should not suggest a more extensive protection of the moral rights than the one defined by Article 6bis of the Berne Convention. They found it appropriate that Principle DC3(2) referred to the possibility of extending the moral right so as to cover also a right to object to other modifications than those following from Article 6bis of the Berne Convention. They were, however, of the opinion that the second part of the paragraph—which limited the extension of such protection in recognizing other justified interests—was also necessary. It was suggested, in that context, that such modifications should be allowed "to which the author could not reasonably object." Furthermore, it was stressed that any substantial modification of the work would amount to an adaptation of the same work.*

## Economic Rights in Dramatic and Choreographic Works

44. Dramatic and choreographic works are among those categories of works which may be used in the most varied ways where, consequently, nearly all economic rights under copyright law may come into play. A detailed analysis of the application of all those rights—with all the possible exceptions to them—would make the present document extremely voluminous. Therefore, the document first gives a comprehensive list of economic rights which could apply to dramatic and choreographic works without particular details. Then comes a discussion of those rights in a more detailed manner only insofar as the special features of dramatic and choreographic works and their utilization justify it.

45. The following principle on economic rights is offered for consideration:

**Principle DC4. (1) The authors of dramatic and choreographic works should have the exclusive right to authorize at least the following acts:**

**(i) the reproduction of the written or otherwise fixed version of the work in any manner or form (right of reproduction);**

**(ii) the rental and public lending of the copies of the musical part of a dramatico-musical or choreographic work reproduced in the form of sheet music and the sound recordings containing a dramatic or choreographic work (right of rental and public lending);**

**(iii) the translation of the work (right of translation);**

**(iv) making adaptations, arrangements or similar alterations of the work (right of adaptation);**

**(v) the public performance of the work (right of public performance);**

**(vi) any communication to the public of the work including its communication by wire in a cable-originated program (right of communication to the public);**

**(vii) the broadcasting of the work, any communication to the public by wire (by cable), or by rebroadcasting, of the broadcast of the work, when this communication or rebroadcasting is made by an organization other than the original one, and the public communication by loudspeaker or any other analogous instrument trans-**

**mitting the broadcast of the work (right of broadcasting and related rights);**

**(viii) the cinematographic adaptation and reproduction of the work and the distribution of the work thus adapted or reproduced (cinematographic rights).**

**(2) The right of the authors of the dramatic and choreographic work to authorize the acts mentioned in paragraph (1) above should not be restricted but in the cases and to the extent allowed under the international copyright conventions.**

46. The above–mentioned rights and the availability of limitations on them are regulated by Articles 8, 9, 10, 10$^{bis}$, 11, 11$^{bis}$, 12 and 14 of the Berne Conveotion. Articles I and IV*bis* of the Universal Copyright Coovention do not contain sucb a detailed regulation of the rights of authors aod the possible limitations oo them. However, Article IV*bis*.2 stipulates in geoeral form that any State whose domestic legislation provides for exceptions from the protectioo of the rights of reproductioo, public performance and broadcasting shall nevertheless accord a reasooable degree of effective protectioo to each of those rights.

47. Io addition to the basic priociples of the protection of economic rights in dramatic and choreographic works mentioned in Principle DC4 above, the following comments and the consideration of the following more detailed principles seem to be desirable.

*Report 37. One delegation suggested that Principle DC4(1)(i) should be worded in a more general manner so as to cover also reproduction of protected non–fixed works.*

*The Right of Rental and Public Lending*

48. This right is discussed in detail io paragraphs 131 and 132 below in respect of musical works. The considerations discussed in these paragraphs apply *mutatis mutandis* to such rights in dramatico–musical and choreographic works.

*Report 38. Some participants supported Principle DC4(1)(ii) concerning rental and public lending. One delegation suggested that the scope of the principle should be widened so as to cover a general right of distribution.*

*Report 39. Some delegations said that in their countries there were doubts whether the recognition of a rental and/or public lending right was really justified. One delegation stressed that even if such a right were recognized it should be a mere right to remuneration rather than a right of authorization.*

*Report 40. Some participants drew attention to the difference in nature between rental which was a business activity and public lending which was a service offered free of charge or at a nominal price. Some other participants said that the regulation of rights in relation to rental should also be differentiated according to the types of works involved. They referred to the rental of the music material of operas as one example where the recognition of a rental right seemed to be justified.*

*Report 41. One delegation stated that according to its national law a distinction was made between the copies produced exclusively for rental and those produced exclusively for sale. In the latter case, if the copies were sold the right of distribution was exhausted. Therefore, in that delegation view, the right of rental and public lending could not be applied in respect of those copies.*

*The Right of Public Performance*

49. Public performance is the original and most important way of communicating dramatic and choreographic works to the public.

50. As is explained in paragraph 23 above, the role of theatrical performances on stage has changed receotly. They have lost their exclusive role in expressing reality through play and even their social and cultural functions have been transformed in certain aspects.

51. It was partly in coooection with the above–meotiooed developments that theatrical exploitatioo of works has become more difficult also from the viewpoint of economic coosiderations. Theaters are faced with a difficult choice wheo setting the price of tickets. Either they have high eoough prices to cover all costs of a productioo and then may run the risk that many people cannot afford expensive tickets and the production fails because of lack of interest, or they set prices at a more reasonable level but then they cannot recover their expenses whicb can lead to the bankruptcy of the theater. Theaters can avoid such difficult situatioos in two ways. Either they do oot take any risk and coocentrate on certain popular works—sometimes in taking over successful productions from other theaters—or they cover their deficits from subsidies by the State or by private organizations. Subsidizing theaters from the public budget is a fairly widespread phenomeoon in many countries which follows from the general cultural policy of those countries; they fiod subsidizing necessary for ensuring to the widest possible public the access to valuable theatrical productioos.

52. Under the above–meotioned circumstances, there are two serious daogers meoacing the real value of the economic rights of authors. The first is that for the sake of "easing the burdens of theaters" authors' fees are restricted by legal provisions. This does not necessarily mean a formalized ooo–voluntary licensing system because the authors can deny authorization if they find the limits defined by law uoacceptable; nevertheless, such a system poses dangers to the exclusive nature of authors' rights. The

exclusive right to authorize performances is intended to be realized in practice hy the means of free negotiations between users and authors. In the field of theatrical performances the problem—which is discussed in the part on musical works in this document—that may emerge in the case of the centralized administration of the non–theatrical performing rights in musical works does not exist. In the majority of cases individual authors conclude contracts with theaters even if such contracts may be hased on guidelines provided by collective agreements or model contracts between authors' societies (or other similar organizations) and bodies representing theaters. Therefore, in general, there is no need to set up a special machinery (for example copyright trihunals) to eliminate the alleged danger of misusing the "monopolistic" situation of copyright owners.

53. A particularly dangerous version of legal limitations on the fees of authors of dramatic and choreographic works is that which follows the usual system of calculating such fees—on the basis of certain percentages of the box–office income—without taking into account the effect of subsidies. The price of the tickets is kept below their real value and the deficit is covered by suhsidies. The result is that everybody is subsidized in the theater: the producer, the director, the actors, even the ushers; there is only one exception: the author. The author is not subsidized because his fees are calculated on the basis of the box–office income from the selling of the tickets below their real value. Such discrimination is unjustified. If theater productions are subsidized, authors should receive a reasonable share not only from the box–office income hut also from the suhsidy (or some other solution should be found, for example a matching increase of the percentage from the box–office income).

54. Another danger for unjustified restrictions of the authors' exclusive rights in dramatic and choreographic works is that free use is allowed in too wide a circle invoking that such works are performed without profit–making purposes. Authors' economic rights are linked to the use as such of their works and not to the profit–making use of them. If works are made availahle to the public free of charge, the author may be requested to authorize the performance without the obligation of payment. But it should be the author who decides about that; the non–profit nature of the production is not an acceptable hasis for depriving him of his economic rights. At the Brussels (1948) and the Stockholm (1967) revision conferences of the Berne Convention, it was declared that certain "small exceptions" are allowed to national laws in the case of the right of public performance and certain exceptions are also possible on the basis of Article IV*bis*.2 of the Universal Copyright Convention. It follows, however, from the details of the above–mentioned declaration (only very few examples were mentioned) that a generalized exception for non–profit performances would be incompatihle with the Beroe Convention. It remains questionahle whether such an exception would be compatihle with Article IV*bis*.2 of the Universal Copyright Convention.

55. The following principle is offered for consideration:

**Principle DC5. (1) The fees of the authors of dramatic and choreographic works for the authorization of public performance of such works should he determined on the hasis of negotiations and they should be related to the real market value of the right of puhlic performance. If such fees are calculated as a share from the income of the theater and the theater is suhsidized, not only the hox–office income hut also the suhsidies should he duly taken into account for the calculation of fees.**

**(2) Exceptions to the right of public performance may be allowed in certain specific cases (for example, in the case of the performance of a dramatic work by an amateur group of a school for an audience restricted to those who helong to the same school and, at most, to their closest relatives if there is no entry fee, the participants do not receive any payment and the performance does not serve profit even in an indirect way) hut the mere non–profit nature of a performance should not be a basis for allowing, under the law, such performances of dramatic and choreographic works without the author's authorization.**

*Report 42. One delegation expressed its support to Principle DC5(1), but suggested that further principles should be elaborated concerning the exercise of the rights mentioned in Principle DC4. The basic idea of freedom of contracts should be coupled with guarantees for the fundamental fairness of contracts which, in this field, should necessarily mean guarantees protecting individual authors as the economically weaker parties in contracts to be concluded with users. The notion of the "real market value" of authors rights should be more precisely defined considering also certain provisions existing in national copyright laws.*

*Report 43. Another delegation supported the view that the conditions of contracts should be dealt with in detail and mentioned the practice in its country where standard contracts regulated all the significant details of authors' contracts. Such standard contracts were obligatory to the extent that in individual contracts no stipulations could be used that were less favorable to authors. It referred to the conditions prevailing in countries with planned economy where such a detailed regulation was indispensable. It stressed, however, that in such countries the source, the nature and the purpose of subsidies were also different than in market economy countries. Therefore, the second sentence of Principle DC5(1) did not seem to be applicable in those countries; at least it could not be applied in its country. It suggested the deletion of that sentence. It added that the first sentence of Principle DC5(1) could also be applied only with*

*some modifications. Negotiations should mean collective negotiations between the organizations representing authors, on the one hand, and users on the other, with the participation of the competent authorities. The last part of the first sentence after the word "negotiations" should be deleted.*

*Report 44. Several other delegations were of the opinion that after the word "negotiations" the rest of Principle DC5(1) should be deleted, but for another reason than the one referred to in the preceding paragraph. Those delegations supported the idea of freedom of contract and did not find that the problem of the participation of the authors should be settled by means of legislative intervention. In respect of the suggestion that principles should be worked out concerning the conditions of contracts, those delegations were not against certain studies to be made in the future; they expressed, however, doubts whether principles could be adopted in this respect which were more than some very few generalities, taking into account the differences in legal, economic and social systems.*

*Report 45. Several participants supported the ideas expressed in the second sentence of Principle DC5(1) concerning the need for the authors' participation in the subsidies. One delegation stated that it would seem preferable not to take into account the whole amount of the subsidy, but to use the form of a lump-sum payment to be agreed with the representatives of the authors.*

*Report 46. One delegation said that the wording of Principle DC5(2) was too restrictive and that a wider scope of free use should be provided for in favor of amateur groups.*

*Report 47. Another delegation was of the opinion that Principle DC5(2) was well balanced and that it offered a realistic example of possible free uses. It added that the most important element of the principle was its last part which made it clear that the mere non-profit nature of a performance should not be a basis in itself for allowing free use.*

*Report 48. An observer from an international non-governmental organization stated that, if an exception was allowed to the right of performance in favor of school groups, such an exception should be restricted to dramatic schools with respect to performances in the framework of educational activities of such schools.*

*The Right of Broadcasting*

56. Under Article 11$^{bis}$(2) of the Berne Convention, the exclusive right of the author to authorize the broadcasting of the work can be replaced by a non-voluntary licensing system. Without going into details of the considerations about such a system, it is important to state that it follows from the basic principles of copyright protection that such licensing should be avoided whenever possible and the exclusive nature of the right of broadcasting should be preserved. The application of compulsory licenses may only be justified when the broadcasting organizations use a great number of works, in the case of which individual exercise of rights is difficult or impossible, and there is no appropriate alternative available in the form of blanket licensing by collective administration bodies.

57. The broadcasting of dramatic and choreographic works can be easily authorized by individual contracts on the basis of the exclusive right of authors. Therefore there is no reason in the case of such works to introduce or apply a system of compulsory licenses. Such licenses could completely destroy the market for the theatrical performances of dramatic and choreographic works: if, for example, a local television station had the right to broadcast a theatrical production without the authorization of the author, it could lead to a drastic decrease in the audience and the number of subsequent performances; or, if the broadcast of the performance were made available to the public of another region where a theater planned to stage the same work, that theater would probably have to abandon that plan.

58. Therefore, the following principle is offered for consideration:

**Principle DC6. Non-voluntary licenses, as a rule, should not be applied instead of the exclusive right of the authors to authorize the broadcasting of their dramatic and choreographic works.**

*[Report 48bis. No particular comment was made in this respect.]*

*Satellite Broadcasting and Cable Distribution*

59. The working document discussed by the Committee of Governmental Experts on Audiovisual Works and Phonograms, mentioned in paragrapb 8, contained a detailed analysis of the protection of audiovisual works in connection with direct broadcasting by satellites, transmission by fixed-service satellites, cable distribution of cable-originated programs, the simultaneous and unchanged cable distribution of broadcast programs as well as the cable distribution of programs transmitted by fixed-service satellites. All what is contained about those uses in that document concerning audiovisual works (the principles as well as the comments) is applicable *mutatis mutandis* also in respect of dramatic and cboreographic works.

*[Report 48ter. No particular comment was made in this respect.]*

## The Rights of Performers of Dramatic and Choreographic Works

60. According to Article 3(a) of the Rome Convention "performers" means actors, singers, musicians, dancers, and other persons who act, sing, deliver, declaim, play in, or otherwise perform literary or artistic works."

61. It has been made clear in the General Report of the 1961 Diplomatic Conference which adopted the Rome Convention that the expression "literary and artistic works" mentioned in the above-quoted definition has the same meaning as in the Berne Convention and the Universal Copyright Convention and it includes in particular dramatic, choreographic and musical works. At the same time, it is without importance for the question of the protection of the rights of performers whether the work performed is or is not protected hy copyright. (It should be added—even if it does not follow directly from the Rome Convention—that it is justified to grant the same protection to the performers of expressions of folklore.)

62. The English text of the Rome Convention only uses the word "performer," while in the French text the expression "*artiste interprète ou exécutant*" is used. The latter differentiates between "*artistes interprètes*" and "*artistes exécutants.*" It is fairly clear that there are certain performing artists (such as conductors, directors, etc.) whose role is the interpretation of works and the giving of instructions to other artists who directly produce performances ("executing" the instructions of the author and/or the interpreting artist). In the case of other artists the elements of interpretation and the execution of instructions are represented in other proportions.

63. Above, in paragraph 29, it has been already discussed what decisive role performers play in relation to dramatic and choreographic works and why it is necessary to protect their rights even if not by copyright (which would be alien to the nature of their contrihutions) but under so-called neighboring rights.

64. In identifying the principles to be applied for the protection of the rights of performers of dramatic and choreographic works, it seems to be preferahle not to use the provisions of the Rome Convention directly as a basis but rather the Model Law Concerning the Protection of Performers, Producers of Phonograms and Broadcasting Organizations adopted hy the Second Extraordinary Session of the Intergovernmental Committee of the Rome Convention held in Brussels in May 1974 (which is, naturally, based on the Rome Convention). The principles deal with the basic situations where the performers' authorization shall be required and contain statements on the interpretation of contracts.

65. With certain necessary minor changes, the relevant provisions of the Model Law are reproduced in the following principles:

**Principle DC7. (1) At least in respect of the following acts no person should be entitled to do them without the authorization of the performers:**

**(a) the hroadcasting of their performance, except where the broadcast:**

**(i) is made from a fixation of the performance other than a fixation made according to Principle DC8(2); or**

**(ii) is a rebroadcast authorized by the organization initially broadcasting the performance;**

**(b) the communication to the public of their performance, except where the communication:**

**(i) is made from a fixation of the performance; or**

**(ii) is made from a hroadcast of the performance;**

**(c) the fixation of their unfixed performance;**

**(d) the reproduction of a fixation of their performance, in any of the following cases:**

**(i) where the performance was initially fixed without their authorization;**

**(ii) where the reproduction is made for purposes different from those for which the performers gave their authorization;**

**(iii) where the performance was initially fixed in accordance with Principle DC8 but the reproduction is made for purposes different from any of those referred tn in that principle.**

**(2) In the absence of any contractual agreement to the contrary or of circumstances of employment from which the contrary wonld normally be inferred:**

**(a) the authorization to broadcast does not imply an authorization to license other broadcasting organizations tn hroadcast the performance;**

**(b) the authorization to broadcast does not imply an authorization to fix the performance;**

**(c) the authnrization tn hroadcast and fix the performance does not imply an authorization to reproduce the fixation;**

**(d) the authorization to fix the performance and to reproduce the fixation does not imply an authorization to broadcast the performance from the fixation or any reproduction of such fixation.**

**Principle DC8. (1) Principle DC7(1) should not apply where the acts referred to in that principle are made for:**

**(a) private use;**

**(h) the reporting of current events, provided that no more than short excerpts of a performance are used;**

**(c) use solely for the purposes of teaching or scientific research;**

**(d) quotations in the form of short excerpts of a performance provided that such quotations are**

**compatible with fair practice and are justified hy the informatory purpose of such quotations;**

**(e) such other purposes as would constitute exceptions from the requirement of authorization in respect of works protected hy copyright.**

**(2) The requirements for authorization under Principle DC7 for making fixations of performances and for reproducing such fixations, shall not apply where the fixation or reproduction is made hy a hroadcasting organization hy means of its own facilities and for its own broadcasts, provided that:**

**(a) in respect of each hroadcast of a fixation of a performance or of a reproduction thereof made under this snbparagraph, the broadcasting organization has the right to broadcast the particular performance; and**

**(b) in respect of any fixation made under this subparagraph or any reproduction thereof, the fixation and any reproduction thereof, are destroyed within the same period as applies to fixations and reproductions of works protected by copyright, except for a single copy which may be preserved exclusively for archival purposes.**

66. The terminology used in paragraph (1) of Principle DC7 parallels the wording of Article 7.1 of the Rome Convention as closely as possible. Except in certain cases of rebroadcasting and fixations for broadcasting purposes, where special considerations apply as described below, the minimum rights prescribed in Principle DC7(1) are the same as those explicitly mentioned in Article 7.1 of the Rome Convention. Thus, in general, the performer's rights with respect to broadcasting and public communication are limited to performances not already fixed or broadcast; his rights with respect to fixations are limited to unfixed performances; and his rights of reproduction from fixations are limited to the three situations specified in clauses (i), (ii) and (iii) of Article 7.1(c) of the Rome Convention.

67. Principle DC7 in speaking of the basic rights of performers of dramatic and cboreographic works, uses similar phraseology as the Rome Convention uses with respect to phonogram producers and broadcasting organizations: without authorization, "no person should do" any of certain specified acts. It sbould be noted, however, that the language of the corresponding Articles in the Rome Convention is different; Article 7 gives performers "the possibility of preventing" certain acts, while Articles 10 and 13 refer to the rights of producers of pbonograms and broadcasting organizations "to authorize or prohibit" certain acts, i.e. it provides for exclusive rights. The reason for this difference in the Convention was a wisb to make it possible for certain countries to join the Convention. Those laws adopt a penal approach, under which certain unauthorized uses of performances constitute punishable offenses, tbough the performer is not granted an assignable property right. Principle DC7(1) is worded in sucb a way that it expresses the need for a high enough level of protection of performers rights, but still allows the penal approach to be adopted for tbe protection of those rights.

68. Paragraph 1 of Article 7 of the Rome Convention, in listing the minimum rights to be accorded to performers, does not include protection against rebroadcasting, fixation for broadcasting purposes, and the reproduction of such fixation for broadcasting purposes in the cases where the performer had consented to the broadcast. Under paragraph 2(1) of Article 7, these rights are made matters for each Contracting State to regulate under its domestic law. Principle DC7 deals with rebroadcasting in two related ways. Under paragraph (1)(a)(ii), performers should be given statutory protection against "pirate broadcasters"—that is, broadcasters who are rebroadcasting their live performance without authorization from the organization that initially broadcast the performance. Moreover, under paragraph (2)(a) of the same principle, it is made clear that a performer's authorization to a particular broadcasting organization to broadcast his live performance does not, without the performer's further consent, entitle that organization to license other broadcasters to broadcast the performance.

69. With respect to the prohlem of the so-called "ephemeral recordings" and other fixations for broadcasting purposes, the present document contains related provisions in Principle DC7(1)(a)(i), (2)(b) and (d), and Principle DC8(2). These provisions are all based on the approach that the relations between performers and broadcasting organizations with regard to the use of performances are essentially matters to be regulated by contract and that fixations made by broadcasters without authorization by the performers are allowed only in very limited cases.

70. The limitations on protection contained in Principle DC8 are parallel to those allowed in Article 15.1 of the Rome Convention. In addition, paragrapb 2 of Article 15 allows Contracting States to provide the same kinds of limitations as they provide in their domestic laws "in connexion with the protection of copyright in literary and artistic works," on condition that "compulsory licences may be provided for only to the extent to whicb they are compatible with this Convention."

71. The questions of the protection of the rights of performers of dramatic and choreographic works in respect of using phonograms published for commercial purposes or reproduction of sucb phonograms are not discussed in the present document because those questions were covered by the document prepared for the discussion at the meeting of the Committee of Governmental Experts on Audiovisual Works and Phonograms mentioned in paragraph 8 above. The principles and comments included in that document concerning the uses of audiovisual works and phonograms in connection with the new technologies apply directly to the rights of performers of dramatic and choreographic works included in audiovisual works and phonograms. Certain principles and comments apply *mutatis mutandis* also to the live performances of dramatic and choreographic works and the rights of performers concerned by tbem, such as the principles and comments on

piracy ("bootlegging," that is, the unauthorized recording of performances for commercial purposes which is particularly prejudicial to the basic rights and interests of performers), home taping (private reproduction of performances), satellite broadcasting and cable distribution.

72. Attention is also drawn to the Recommendation concerning the Status of the Artist adopted by the General Conference of Unesco at its 21st session in October 1986.

*Report 49. One delegation stated its approval of Principle DC7 and suggested that the right of reproduction mentioned in paragraph (d) of that principle should apply also to cases where the initial fixation was made with their authorization and not only, as suggested in (i) of that paragraph, where the initial fixation was made without their authorization.*

*Report 50. Several participants spoke about the need for further studying the question of the application of the rights of performers in relation to certain uses, such as rebroadcasting, satellite broadcasting and cable distribution. Some delegations referred to their national laws where those questions either were already regulated or were under consideration.*

*Report 51. The question was raised whether direct broadcasting by satellites was covered by the notion of broadcasting and whether cable-originated programs were covered by the notion of communication to the public. The observer from one international non-governmental organization stressed that such was the case. It was furthermore questioned whether the notion of broadcasting covered also rebroadcasting. It was suggested that these questions should be made clear in the commentary.*

*Report 52. One delegation said that if a broadcast program was retransmitted with a certain delay because of the difference in time zones, the retransmission should still be deemed to be simultaneous rebroadcasting. Another delegation expressed its disagreement with that view and insisted that what was not in fact simultaneous should not be deemed to be simultaneous. Reference was in this context also made to the fact that deferred broadcasting necessitated a recording.*

*Report 53. One delegation suggested that certain basic notions, such as rebroadcasting, cable distribution, etc., should be defined so as to make the meaning of the suggested principles absolutely clear.*

*Report 54. Some participants proposed that the principles should be extended to cover also the moral rights of performers.*

*Report 55. One delegation drew attention to the fact that Principle DC8(1)(a) referred to the possibility of the same type of exception to the right of reproduction as the one which was allowed under Article 9(2) of the Berne Convention in respect of copyright. It suggested, therefore, that the application of such an exception should be made dependent on the same conditions that were defined by that Article of the Berne Convention, namely that some exceptions should be allowed only in certain special cases, and only if they did not conflict with a normal exploitation of the performance or otherwise would not unreasonably prejudice the performer's legitimate interests.*

*Report 56. An observer from an international non-governmental organization stressed that there was no need to differentiate between "artistes interprètes" and "artistes exécutants" as it was mentioned in paragraph 62 of the document. What was important was that the contributions of all performing artists necessarily contained creative elements.*

*Report 57. The same observer expressed the view that the rights of performers to control the use of their performances should be extended to all types of secondary uses of such performances.*

*Report 58. An observer from another international non-governmental organization emphasized that the Rome Convention and the Model Law mentioned in paragraph 64 of the document are the result of a delicate compromise between the various interested parties. A unilateral extension of performers' rights would seriously endanger this balance.*

*Report 59. An observer from still another international non-governmental organization suggested that a principle should be worked out to emphasize that no principle on the rights of performers should be applied in a way that would prejudice the legitimate interests of authors.*

### The Rights of the Producers of Theatrical Performances

73. In paragraph 51 above, the present document refers to the economic problems with which theaters and other producers of theatrical productions are faced, while paragraph 57 deals with the question of compulsory licensing from the viewpoint of the rights and interests of authors. The lack of a right to oppose the broadcasting or other communication to the public of the performance can in certain cases seriously endanger the interests of producers (if the performance becomes available, for example, by means of television, many people who otherwise would come to the theater and buy tickets do not do so). In this field, the interests of the producers on the one hand and

those of the authors and performers on the other are, in general, common and the question of other uses of the performance may be—and frequently is—the subject of contracts betweeo them. However, there may be situatioos where theater producers have a justified ioterest—independently of possible cootractual stipulatioos—in being able to oppose the broadcasting or other communication of their theatrical performances at certain times or to a certain puhlic, takiog into accouot the need of recovering their investmeots.

74. Therefore, the following priociple is offered for consideration:

**Principle DC9. Theaters and other producers of performances of dramatic and choreographic works should have the right to prevent**

**(a) the broadcasting or other communication to the public, without their consent of such performances, except where the performance used in the broadcast or the public communication is itself already a broadcast performance or is made from a fixation;**

**(b) the fixation, withont their consent, of the unfixed performance.**

75. The above–meotiooed right of theater producers does not supersede or replace the oeed for authorization hy other cootributors (authors, performers). It just means that io respect of certain uses *also* the authorizatioo of the producer is required. Therefore, the question whether the producer could authorize such uses alone without the agreemeot of the authors and performers (an agreemeot which of course can be given also in contracts with the producers, iocluding employmeot contracts) does not emerge.

*Report 60. Some participants were of the view that Principle DC9 was not necessary.*

*Report 61. Several delegations stressed that while the need for the recognition of special rights in favor of producers of theatrical performances could not be excluded, further studies would be necessary in this respect before formulating any principles on the issue. Among the possible subjects to be studied, the following were mentioned: the definition of such producers, the relationship of the rights of the owner of the theater building and the rights of the person who was the organizer and manager of the production, the relations to other rights involved in the production, the international implications, etc. Nevertheless, these delegations expressed doubts whether a separate principle about the rights of theater producers was really justified.*

*Report 62. One delegation fully supported Principle DC9 which, in its view, reflected reality and general practice. Theater producers, in general, had such rights based on the fact that they could control the access to the venue where the performance took place and that they were able to determine certain conditions in that respect.*

## III. MUSICAL WORKS

### Creations To Be Protected as Musical Works

76. The Berne Conveotion mentioned "musical compositions with or without words" already in its original 1886 text and the refereoce to these works has remaioed the same until the last 1971 Paris Act of the Coovention (Article 2(1)). The Universal Copyright Convention also mentioos musical works in the oon–exhaustive list of works (Article I). At the level of national laws there is no doubt either about the copyright protection of musical works.

77. In cooventioos and national laws, there is oo detailed definition of musical works. Io copyright literature sometimes attempts are made at such definitions. For a long time melody, rhythm and harmony were said to be the necessary elemeots of musical works. New types of compositioos, however, proved the necessity of a more general approach. The WIPO Glossary of Terms of the Law of Copyright aod Neighboring Rights, for example, cootains the following definition: "Such works comprise all kinds of combinatioos of sounds (composition) with or without text (lyrics or libretto), to be performed by musical instrumeots and/or the human voice." That defioition is general enough hut we shall see in paragraphs 81 to 83 that eveo the performance hy musical instruments and/or by human voice is oot a oecessary element of the notioo of musical works (for example io the case of "concrete music," or "tape music").

78. Dramatico–musical works have two faces: they are dramatic works and at the same time musical works. Music is also ao important element of choreographic works. The present document deals with dramatico–musical and choreographic works exclusively in part II uoder the title "Dramatic and Choreographic Works" because from the viewpoint of copyright and so–called neighboring rights what is primarily important is that they are created for stage. The present part III of the document on musical works only touches some borderline questions in respect of dramatico–musical and choreographic works (the delimitation of the so–called "small rights" and "grand rights"), otherwise it is restricted to non–dramatical musical works and to their performances.

79. Traditional musical works exist first in the form of scores (sheet music). Thus their protectioo does not raise aoy problem in countries where fixatioo is a coodition of copyright protection. It happens, however, ever more frequeotly that musical works are not fixed in a visually perceivahle manner and their fixation exists only in the form of sound recordings (differeot types of experimeotal music, certain kinds of popular music, etc.). Musical cre-

ations also exist even without any fixation whatsoever (jazz, concrete performed versions of aleatoric musical works (see paragraph 103), etc.). Therefore, in the interest of the widest possible protectioo of musical works it is an advantage if national laws do not make the protection of such works conditional upon their fixation, otherwise many of them remain unprotected. At least sound recording should be accepted as a form of fixation.

80. On the basis of the foregoiog consideratioos, the following principle is suggested:

**Principle MW1. (1) "Musical works" mean all kinds of original combinations of sounds (compositions) with or without text (lyrics or libretto). In the context of the present document, however, dramatic and choreographic works with music (dramatico–musical works, etc.) are considered as dramatic and choreographic works (see Principle DC1) rather than musical works.**

**(2) Musical works should be protected under the general rules of copyright law.**

**(3) The protection of musical works may be restricted to works that are fixed in material form (scores, sound recordings, etc.); such a restriction, however, should be avoided as far as possible.**

81. Paragraph 19 above—about the fact that the present document does not cover all details of copyright protection—is valid also in respect of musical works. Consequently, this part of the document deals only with such copyright issues which are of special relevance for musical works and oeed particular consideration in this context.

*Report 63. Some delegations expressed their full support for Principle MW1.*

*Report 64. One delegation said that Principle MW1(2) either should also refer to the relevant specific provisions in copyright laws or it should only state that musical works "are" protected by copyright.*

*Report 65. One delegation referred to the copyright law of its country where fixation is a condition for copyright protection, and proposed that the last clause of Principle MW1(3) (from the words "such a restriction, however") should be deleted. Another delegation mentioned that under the copyright legislation of its country, protection is also restricted to works fixed in a material form. Certain new developments in the field of composition of music—that are also mentioned in the document—might, however, justify the reassessment of certain traditional provisions in that respect. Therefore, it did not oppose Principle MW1(3) in its present form.*

## New Forms of Musical Composition. The Use of Computers and Other Equipment for the Creation of Musical Works

82. "Experimental music," "concrete music," "tape music," "electroacoustic music," "synthetic music," "electronic music." A lot of expressions exist reflecting new trends in music. The present document is not intended to discuss the musicological aspects of those new kinds of musical works; it concentrates only on new developments that are relevant from the viewpoint of the protection of copyright and the rights of performers.

83. The first such development is that "experimental" musical works ("experimental" being an adjective to cover all the above–mentioned new categories of musical works) are very frequently created directly io the form of sound recordings. Certain elements of "concrete music" are recorded by micropbone from natural sources and included directly into the sound recording constituting the composition. "Tape music" includes sounds produced by traditional musical instruments—sometimes together with natural sounds—manipulated electronically. "Electronic music" (that is, pure electronic music, because electronic processing is also involved in other kinds of experimental music) is composed of sounds of electronic origin produced by means of generators. The new kinds of musical compositions mentioned above exist only rarely in absolutely pure form. Musical elements created by means of those new methods of composition may form part of the same works and are frequently applied together with traditional musical elements.

84. All those new ways of composition (includiog the last–mentioned hybrid creations) are sometimes referred to jointly as "electroacoustic music" and have the common characteristic that, in general, they only exist in the form of sound recordings and, as a whole, they cannot be performed by traditional instruments. In addition to the question of fixation as a condition of protection—which was discussed in paragraph 78 above—interesting questions emerge in respect of the copyright and neighboring rights protection of such productions. For example, the question may be raised whether the person who creates a work directly on tape is only an author or at the same time—because he makes the work available in an audible manner—he is also a performing artist and/or a producer of a phonogram.

85. It happens frequently not only in respect of experimental music but also in more traditional fields of music composition that the person who creates the musical work sings and/or plays it at the same time (contemporary popular music provides many such examples) and that the work is only fixed in a sound recording. (It is another matter that such works can be performed subsequently—as a rule—independently of their first production in the form of a sound recording.) It is fairly obvious that in such a case the composer should enjoy protection as a performer already on the first occasion when he creates/performs the work and, if it is he who fixes the sounds of the performance, also as phonogram producer. It is highly probable that the same can be said about artists who produce

improvisations qualifying as protected musical works (see paragraphs 98 to 100) (what is actually questioned, in general, in respect of interpretations is not whether they are performances hut rather whether they are creations eligible for copyright protection). An improvisation is one step closer to "tape music" because the work and its presentation in the form of sounds are frequently inseparable and the same work may not suhsequently be made available to the public except if it has been recorded. One can say that there is no significant difference between the above-mentioned examples and an "electroacoustic" ("tape") music creation; consequently, the creator of such a piece of music is not only an author but also a performer.

86. The opposite view is, however, also justified. It can be said that "electroacoustic" music is created so directly and inseparably on tape that there is no room for interpretation or execution of anything; there is nothing to be performed. It is probable that the answer to the question, whether the creator of such music is also a performer differs from country to country according to the interpretation at the national level.

87. It is easier to answer the question whether the composer of "electroacoustic" music is also a phonogram producer. The answer does not depend on whether the production qualifies as a performance, because under Article 3(c) of the Rome Convention " 'producer of phonograms' means the person who, or tbe legal entity which, first fixes the sounds of a performance *or other sounds*" (emphasis added). Therefore, if the author himself fixes the work on tape he also qualifies as pbonogram producer.

88. The other characteristic of "experimental music" is the wide utilization of devices (synthesizers, computers) in the process of the creation of musical works.

89. A synthesizer can produce a given sound from its constituting elements (frequencies; intensities, durations, etc.). It follows from the notion of synthesis that it sbould be preceded hy an analysis; that is, hy the identification and study of the constituting elements. In the case of music it is done most frequently by producing a sonogram, a graphic image—a sort of "fingerprint"—of the sound. The analysis and then the synthesis of such sonograms is often facilitated by computers, the more so because the parameters of a sonogram can also be expressed numerically. Composers are thus able to use the identified constituting elements of music to create—by means of synthesizers and computers—new musical works. Different methods are used in the process of the creation of sucb "synthetic music." Optical signals—newly created "sonograms"—or other schematic drawings as well as numerical parameters can be converted into electroacoustic signals, that is into music directly recorded on tape. The expression of such music in scores (sheet music) is sometimes very difficult; there are no generally accepted standards for new types of music notations and even the best notations are bardly enough for the performance of such works.

90. Computers are used by composers also in other ways. They may help the creators in the development of an idea of composition, in the systematic exploration of a range of possible combinations and structures and in studying the possible results and selecting from them. Computer programs are frequently used for the creation of musical works. They—as a rule—do not define a unique work but a series—a "family"—of works composed according to the same principles. For the production of a unique work, certain further input data are necessary which may be added simply by chance.

91. It does not seem necessary to suggest a particular regulation in regard of music created by means of computers and synthesizers. Nevertheless, the question of the ownership of copyright may arise, first of all in the case where works are directly created by means of computer programs. In this connection, it is useful, for the sake of clarification, to recall the results of the work of the Unesco/WIPO Committees of Governmental Experts that met to consider the copyright problems arising from the use of computers for access to or the creation of works (December 1980 and June 1982, both in Paris), and in particular the recommendation adopted by the second Committee of Experts.

92. As regards the use of computer systems for the creation of works, the recommendations which are relevant are the following (paragraphs 13 to 17 of Annex I of the report):

> "13. Tbese recommendations do not deal with or affect the protection of computer software or programs as sucb whicb may enjoy protection under national laws (e.g. copyright, patent, unfair competition or trade secrets).
>
> "14. Where computer systems are used for the creation of works, States should basically consider them as a technical means used in the process of creation for achieving the results desired by human beings.
>
> "15. In order to be eligible for copyright protection, the work produced with the help of computer systems must satisfy the general requirements for such protection estahlished hy the international conventions and national laws on copyright.
>
> "16. In the case of works produced with the use of computer systems, the copyright owner in such works can basically only be the person or persons who produced the creative element without which the resulting work would not be entitled to copyright protection. Consequently, the programmer (the person who created the programs) could be recognized as coauthor only if he or she contributed to the work by sucb a creative effort.
>
> "17. When a computer system is used in the case of commissioned works or in the case of works by a person or persons under an employment contract the matter of attrihution of copyright ownership should be left to national legislation."

93. It seems to be useful to reproduce here two of the recommendations quoted above in a form adapted to musical works and referring not only to the use of computers hut also to that of other equipment (first of all to synthesizers):

**Principle MW2. When computer systems and/or other equipment (synthesizers, etc.) are used for the creation of musical works, such systems and equipment should be considered only as technical means in the process of creation for achieving the results desired by human beings.**

**Principle MW3. In the case of works produced with the use of computer systems and/or other equipment (synthesizers, etc.) the copyright owners in such works are the persons who produced the creative element without which the resulting works would not be entitled to copyright protection. Consequently, programmers (persons who created the programs for such systems) and technicians (sound engineers, etc.) can be recognized as coauthors (or single authors as the case may be) only if they contributed to the work by such a creative effort.**

*Report 66. Several participants expressed their full support for Principles MW2 and MW3.*

*Report 67. One delegation said that there were certain further questions emerging with the ever more rapid development of computer technology; for example, the question of the protection of translations prepared by computers. In that respect, another delegation referred to the copyright law of its country according to which slavish, literal translations were not protected, and expressed the view that computer-made translations should necessarily come under that category.*

## Adaptations and Arrangements of Musical Works. Translations of the Texts of Musical Works

94. According to Article 2(3) of the Berne Convention and Article IV*bis*.1 of the Universal Copyright Cooven-tion, certaio derivative works, such as adaptations, arrangements and translations, are also protected by copyright without prejudice to the protection of copyright in the original works.

95. The words "adaptation" and "arrangement" are not used with a uniform meaning in national laws, in copyright literature and in practice. The WIPO Glossary of Terms of the Law of Copyright and Neighboring Rights defines these two expressions as follows: "Adaptation: generally understood as the modification of a pre-existing work from one genre of work to another, such as cinematographic adaptations of novels or musical works. Adaptatioo may also consist in altering the work within the same genre to make it suitable for different conditions of exploitation .... Adaptation also involves the composition of the work, unlike translation, which transforms only the form of expression thereof." "Arrangement of music: generally understood as meaning the adjustment of the form of expression of a musical work to special purposes, according to the requirement of a given orchestra or musical instrument or the actual range of a singer's voice, etc. It mostly consists of recordation or transportation in a different key and does not necessarily imply creation of a derivative work." According to the above-quoted definitions, "adaptation" means a more substantive modification of a work; in the case of a musical work, for example, a variation—which includes the modification of the melody line—may be qualified as adaptation; while "arrangement" is used for less important alterations, for example, for reorchestrations and transcriptions. Sometimes, however, the word "arrangement" has a wider meaoing, practically as a synonym of "musical adaptation" to cover all kinds of alterations of musical works that may be protected as derivative works. The present document uses the words "adaptations" and "arrangements" side by side—as Article 2(3) of the Berne Convention does—aod those two words jointly are intended to cover all alterations of musical works that may be protected as derivative works.

96. Adaptations and arrangements of musical works should be protected by copyright if they are of original nature. The notion of originality differs from country to country hut the level of origioality needed for protection should be the same regardless of whether the adaptation is based on a protected work or on a work in thc public domain.

97. It is another matter that in the case of adaptations of works which are still protected, the adaptor and/or arranger cannot authorize the use of a derivative work alone without the authorization of the author of the original work. It should be added, however, as is discussed in paragraph 28 above, that if the adaptation is original in nature the fact that it is the result of an infringement does not change its character as a derivative work. Therefore, if the adaptation is used by a third person without the authorization of the adaptor, it is an infringement of the latter's copyright.

98. The following principle is offered for consideration:

**Principle MW4. Adaptations and arrangements of musical works and the translations of the texts related to such works should be protected by copyright—without prejudice to the copyright in the original works—if they are original in nature. Such adaptations, arrangements and translations are subject to the right of adaptation and the right of translation, respectively, of the author of the original work according to Principle MW8(1)(iii) and (iv). If, however, an adaptation, an arrangement or a translation is used that has been created without the authorization of the author of the original work, this lack of authorization does not exempt the user from the obligation of full respect for the adaptor's copyright in the adaptation.**

*Report 68. Some delegations expressed their agreement with the contents of Principle MW4.*

*Report 69. It was understood that opinions expressed by the participants in respect of the unauthorized adaptations of dramatic and choreographic works (Principle DC2(2), last sentence) were also relevant, mutatis mutandis, in respect of the unauthorized adaptations of musical works (Principle MW4, last sentence).*

*Report 70. One observer from an international non-governmental organization said that in the first sentence of Principle MW4, the original nature of adaptations and arrangements as a condition for copyright protection seemed to be a subjective criterion and that instead of such a qualitative notion, some quantitative elements should be applied, such as the proportion of the new contribution in relation to the original work.*

*Report 71. One delegation expressed its disagreement with the proposal mentioned in the preceding paragraph. It pointed out that originality—or as it is defined in its country, the existence of a personal, intellectual creation—was an inevitable condition for copyright protection. It stressed the necessity of the appreciation of certain qualitative features, without extending that appreciation to the merit of the work.*

## Improvisatious. Aleatoric Musical Works

99. There are different kinds of musical improvisations from the viewpoint of copyright protection. There are improvisative elements that cannot be deemed original (for example, certain commonplace elements in popular music). They are simply parts of the performance of a musical work and are not protected by copyright. Some other improvisations are practically the variations of preexisting protected works and therefore—if they are really of original nature—can be protected as adaptations, suhject to the right of adaptation of the author of the original work. It is also possible that the artist completely detaches himself from the preexisting work or uses his own musical motives; in such cases an improvisation of original nature may be protected as an independent original work.

100. There are two basic conditions for the protection of improvisations at the national level. The first is that only original creations are eligible for protection and the notion of originality differs from country to country. If an improvisation meets the conditions of originality in the country concerned, it would be unjustified not to grant copyright protection to it on the mere basis that it was not an author who created it but an artist whose main task is to perform the work. There is, furthermore, another condition for copyright protection in certain countries as is discussed in paragraph 16 above: the fixation of the work. The particularly high value of certain improvisations (for example, in the field of jazz) may serve as a further argument for the elimination of fixation as a condition for protection or, where such a condition exists, at least for the recognition of sound recordings as fixations.

101. Improvising artists, of course, should also be protected as performers.

102. The following principle is offered for consideration:

**Principle MW5. Musical improvisations may be protected—according to the level of their dependence on preexisting works—as adaptations or independent works provided that they are of an original nature. The protection of such improvisations may depend on their fixation according to Principle MW1(3). In respect of improvisations protected as adaptations, Principle MW4 also applies.**

103. Improvisations are special manifestations of the creativity of certain artists. Recently, a new form of musical composition has been developed: aleatoric music, where composers themselves offer possihilities to performers to provide creative contributions.

104. Aleatoric music is a form of music where the composer does not determine the musical work in its final form but leaves room for the creative initiative of performers which may be manifested in the choice among some alternatives, in repetitions, in the combination of certain elements, in determining the speed or intensity of music and even in finalizing the melodic line by means of improvisation according to certain more or less detailed parameters. The aleatoric composition is a kind of scenario to be finalized by somebody else.

105. In the case of aleatoric music, it could be considered that the composer includes in the work the authorization—and in a way the invitation—to performers to finalize his work or to modify it in certain respects. If the performer's contribution is of original nature, it may be protected—depending on its relationship to the existing elements of the work—as an adaptation or as part of a joint work (even if not at the same time, but as a matter of fact created jointly by the composer and the performing artist himself).

106. What is said in paragraph 99 above applies necessarily here, too. Consequently, it depends on the notion of originality prevailing in a national copyright system, whether contributions produced during the performance of aleatoric works can really enjoy copyright protection. Furthermore, the protection of such contributions may also be made conditional on their fixation.

107. National laws differ regarding the status of coauthors. In some countries coauthors—in certain cases, at least—cannot use their contrihutions separately. In the

case of the possible coauthorship of the composer and performer of an aleatoric musical work, such a rule should never be applied to the composer's contribution. It follows from the very nature of such "scenario"-works—and from the instructions of their composers—that they may be developed into several parallel concrete variations.

108. It goes without saying that the performer of an aleatoric work—in addition to the possible copyright protection—should also enjoy protection as a performer.

109. The principle suggested below has some common elements with Principle MW5 above, on musical improvisations:

**Principle MW6. (1) Aleatoric musical works mean compositions where the composers leave room to the creative contributions of performers authorizing and inviting them to make certain choices (concerning the intensity, duration and other elements of sound or melodic units, the repetition or combination of some parts of the work, etc.) or finalizing the works in certain respects on the basis of parameters and instructions given by the composer.**

**(2) The contributions by performers to aleatoric works may be protected—according to the nature of their relations to the aleatoric works as created by the composers—as adaptations or as contributions to a joint work. The protection of such contributions may depend on their fixation according to Principle MW1(3).**

*Report 72. In general, there was an agreement about Principles MW5 and MW6.*

*Report 73. One delegation underlined the possibility mentioned in Principle MW6(2) that the performer of an aleatoric work might qualify as a coauthor of the final version of the work because the work took its complete form only as the result of the contribution of the performer.*

*Report 74. One observer from an international non-governmental organization stressed that the performers of aleatoric works, even if they might enjoy copyright protection as adaptors or coauthors, should also be protected as performers.*

## Moral Rights in Musical Works

110. The considerations in paragraphs 40 to 42 concerning the moral rights in dramatic and choreographic works are also applicable, *mutatis mutandis*, in respect of musical works (with the obvious exception that the problem of changes made during the staging of dramatic and choreographic works does not emerge in respect of musical works). Therefore, the application of the following principle is suggested:

**Principle MW7. Independently of the authors' economic rights and even after the transfer of the said rights, the authors of musical works should have the right to**

**(i) claim authorship and have their names indicated on the copies of their works (including sound recordings) and, as far as is practicable, mentioned in connection with any utilization of their works;**

**(ii) object to any distortion, mutilation or other modification of, or other derogatory action in relation to, the said work, which would be prejudicial to their honor or reputation.**

111. In the case of popular music, it happens fairly frequently that only the name of the performer is mentioned, for example, in broadcast programs. The failure to indicate the names of the authors of the works performed in such cases is an infringement of the author's moral right mentioned in point (i) above.

112. In connection with the other moral right, the "right of respect" defined in point (ii) above, the following comment should be made: as mentioned in paragraph 42, the provision does not aim at prohibiting all kinds of changes of works but only such actions mentioned in the provision which would be prejudicial to the author's honor or reputation. If the author himself authorizes the use of his work on the basis of his exclusive right of authorization, he can take care of the protection of this moral right. In the case of the so-called "*petits droits*," uses of musical works (see the chapter entitled "Performing Rights" below), however, users receive blanket authorization for the use of—practically—the whole world repertoire. Individual authors are not in a position to take steps at the stage of authorization for the protection of their moral rights, but it does not mean that those rights do not enjoy full protection. A special case of the infringement of the author's "right of respect" may be the use of his work in a certain context (for example, in the framework of a pornographic production or for certain advertisements). It is obvious that the authors should have the right to object to such prejudicial uses even if they have taken place on the basis of blanket licensing.

*Report 75. Several participants expressed their agreement with Principle MW7(i) and, particularly, with the suggestion that the author's right to be named should only be applied "as far as it is practicable." At the same time, some of those participants pointed out that the obligation of mentioning the name of the author in broadcast programs was not practicable. Some other participants expressed other views; they stressed that in the case which was described in paragraph 111 of the document—namely, where the name of the performer is mentioned—some realistic solutions might, in general, be found for also mentioning the author's name. Fi-*

*nally, it was agreed that the statement contained in paragraph 111 should be made more flexible; this can be attained, for example, by replacing the words "is an infringement" by the words "may be an infringement."*

*Report 76. Some participants emphasized the importance which the authors attach to their right to be named as authors in connection with their works.*

*Report 77. It was suggested that the questions of the exercise of the right to be named as author in broadcast programs should, preferably, be settled in agreements between authors' societies and broadcasters.*

*Report 78. Even if it was understood that the views expressed by the participants concerning the "right of respect" of authors of dramatic and choreographic works (Principe DC3(1)(ii) and (2)) were, in general, also relevant as regards authors of musical works (Principle MW7(ii)), some comments were repeated and certain questions were discussed again.*

*Report 79. Some participants proposed that the words "which would be prejudicial to their honor or reputation" should be deleted. In that way, it would be recognized that the author should always be able to decide about any modifications of his work, which in a way was an expression of his personality. One delegation put forward an alternative proposal according to which, instead of the deletion of the last clause of Principle MW7, a new paragraph should be added to this principle. This new paragraph should, mutatis mutandis, correspond to Principle DC3(2), except that—as it was proposed by the same delegation—its second part from the word "however" should be deleted.*

*Report 80. Some other participants disagreed with the proposals mentioned in the preceding paragraph. They stressed that the principle should not go beyond the minimum obligations required by Article 6bis of the Berne Convention.*

## Economic Rights in Musical Works

113. Musical works are used in extremely varied ways and practically all economic rights under copyright law are applicable also with regard to such works, just as it is described in paragraph 44 above concerning dramatic and choreographic works. Therefore, this part of the document applies the same approach as the one explained in paragraph 44 above. It first only gives a comprehensive list of economic rights without particular details and after that it discusses those rights in a more detailed manner only where the special features of musical works and their utilization justify it.

114. The following principle on economic rights is offered for consideration:

**Principle MW8. (1) The authors of musical works should have the exclusive right to aothorize at least the following acts:**

**(i) the reproduction of the work in any manner or form, particularly in the form of sheet music (score and printed text of the work) and in the form of sound recording (right of reprodoction);**

**(ii) the rental and public lending of the copies of the work reproduced in the form of sheet music and in the form of sound recordings containing the work (right of rental and public lending);**

**(iii) the making of adaptations and arrangements of the work (right of adaptation);**

**(iv) the translation of the text of the musical work (right of translation);**

**(v) the public performance of the work (right of public performance);**

**(vi) any communication to the puhlic of the work, including its communication by wire in a cable-originated program (right of communication to the public);**

**(vii) the broadcasting of the work, any communication to the public by wire (by cable), or by rebroadcasting, of the broadcast of the work, when this communication or rehroadcasting is made by an organization other than the original one, and the public communication by loudspeaker or any other analogous instrument transmitting the hroadcast of the work (right of hroadcasting and related rights);**

**(viii) the cinematographic adaptation and reproduction of the work and the distribution of the work thus adapted and reproduced (cinematographic rights).**

**(2) The exclusive right of the author of the musical work to authorize the acts mentioned in paragraph (1) above should not be restricted but in the cases and to the extent allowed under the international copyright conventions.**

115. The above-mentioned rights and the availability of limitations on them are regulated by Articles 8, 9, 10, 10bis, 11, 11bis, 12, 13 and 14 of the Berne Convention. Article IV*bis* of the Universal Copyright Convention does not contain such a detailed regulation about the rights of authors and the possible limitations on them, but it provides in general form, as was mentioned in paragraph 46 above, that "a reasonable degree of effective protection" must be accorded under national legislation. There is one exception: the right of rental and public lending which may only flow from a fairly generous interpretation of the scope of the right of reproduction (Article 9 of the Berne

Convention, Article IV*bis* of the Universal Copyright Conveotion) (but it should be added that even if that interpretation is not accepted, the granting of such a right seems desirable at the national level for an adequate protection of authors' economic rights and interests).

116. In addition to the basic principles of the protection of economic rights in musical works mentioned in Principle MW8 above, the following comments and tbe consideration of the following more detailed principles seem to be desirable.

*Report 81. In general, there was an agreement about the catalog of rights included in Principle MW8.*

*Report 82. One delegation stressed that the rental and public lending rights in music should also be extended to music embodied in videograms, possibly by an interpretation of the notion of distribution mentioned in MW8(1)(viii), and videograms should also be considered in paragraph 132 of the document.*

*The Right of Reproduction in Respect of Sheet Music. Reprography*

117. Sheet music right (the right of reproduction in respect of tbe score and/or the lyrics of the musical work) may not apply to certain new kinds of popular music (because scores simply do not exist), but it is still an important element of the rights of the authors in other musical areas. In music publishing contracts, an agreed percentage of the actual sale price of the sheet music is determined as copyright paymeot to the author. Such rights are—as a rule—administered by the publisher.

118. The score is often indispensable for the performance of a musical work (at least in traditional musical areas, first of all in the field of serious music). The production of certain scores is very expeosive. Thus, it is in the interest of music publishers that the work be performed as frequently as possible. They undertake, in geoeral, agency activities for the promotion of the performances of musical works published by them and, on the basis of the publishing contracts, they receive a certain percentage from the performing rights and mechanical rights royalties.

119. The ever more sophisticated reprographic devices cause serious problems in the field of the exercise of reproduction and other rights in relation to sheet music. If expensive scores (such as complete orchestral sets) are not bought or rented but simply copied, the author's right of reproduction becomes seriously eroded and the music publishers cannot recover their investments.

120. In the preseot series of meetings of committees of governmental experts, the problems of reprography in general will be discussed by the Committee on tbe Printed Word mentioned in paragraph 21 above. There are, however, certain special considerations in respect of musical works. Article 9(2) of the Berne Convention provides that no exception should be allowed to the right of reproduction if it would conflict with a normal exploitation of tbe work, or would unreasonably prejudice the legitimate interests of the author and Article IV*bis* of the Universal Copyright Convention states that exceptions should not conflict with the spirit and provisions of the Convention and that if exceptions are made the Contracting State should nevertheless grant "a reasonable degree of effective protection" to each of the rights to which exception has been made. Irrespective of the result of the forthcoming discussions on reprography the special situation of musical works in this regard would call for a special regulation. The following principle is offered for consideration:

> **Principle MW9. The right of reproduction should not be restricted in respect of the reprographic reproduction of sheet music if such reproduction would directly or indirectly serve the public performance of the musical work concerned.**

121. It goes without saying that, otherwise, Principle MW8(2) applies also in respect of the reproduction (reprograpbic or other) of sheet music. For example, on the basis of Article 10(2) of the Berne Convention, short musical works or short excerpts of longer ones in the form of sheet music may be used by way of illustration for teaching provided tbat this is compatible with fair practice.

*Report 83. One delegation expressed its support for Principle MW9.*

*Report 84. At the question of an observer from an international non-governmental organization, it was clarified that—as was explained in paragraph 120 of the document—the problems of reprography would be discussed in detail by the Committee of Governmental Experts on the Printed Word. Principle MW9 would receive its full meaning only in the context of the results of the meeting of that Committee. In respect of reprographic reproduction, in some countries free use was allowed in certain cases, while in other countries, some type of non-voluntary licensing was applied. It would be further discussed in which cases such restrictions of the right of reproduction might be justified and in which cases it would be unacceptable. What Principle MW9 said in that respect was only that if, as regards reprography, any restriction of the right of reproduction (either as free use or on the basis of compulsory licensing) might be found justified by the forthcoming Committee on the Printed Word, those restrictions should* not *be applied to the reprographic reproduction of sheet music,* at least *not in the case mentioned in the principle (when the reproduction would directly or indirectly serve the public performance of the musical work concerned). It could be decided only on the basis of the results of the meeting of the Committee on the Printed Word whether other restrictions than the*

*ones mentioned in paragraph 121 of the document were justified.*

*The Right of Reproduction in Respect of Sound Recordings. Piracy. Home Taping*

122. The right to authorize the production of records and tapes—the so-called "mechanical rights"—is one of the most important rights of the owners of copyright in musical works. ("Mechanical rights" also cover the production of music boxes, piano rolls which were the first fields where these rights became important; the expression "mechanical rights" is actually from the era when only those uses existed.)

123. In many countries, mechanical rights are administered by authors' societies whicb—on the basis of reciprocal agreements between each other—represent a very big percentage of the world repertoire. The practice of mechanical rights societies is partly different from that of the societies administering musical performing rights (for example—as a rule—reciprocal agreements do not allow deductions from the royalties for general cultural and social purposes as in the case of performing rights), otherwise, however, the principles and comments below on the collective administration of musical performing rights apply *mutatis mutandis* to tbe collective administration of "mechanical rights."

124. According to Article 13(1) of the Berne Convention: "Eacb country of the Union may impose for itself reservations and conditions on the exclusive right granted to the author of a musical work and to the author of any words, the recording of which together with the musical work has already been authorized by the latter, to authorize the sound recording of that musical work, together with such words, if any; but all such reservations and conditions shall apply only in the countries whicb have imposed them and shall not, in any circumstances, be prejudicial to the rights of these authors to obtain equitable remuneration which, in the absence of agreement, shall be fixed by competent authority." Several countries apply—on the hasis of this provision—compulsory licensing for "mechanical rights" in music (and it covers not only musical works in the meaning as this expression is used in this part of the document but also dramatico-musical works).

125. The above-quoted provision has existed in the Berne Convention, in more or less its present form, since the 1908 Berlin Act, though the 1967 Stockholm revision conference made an important amendment. Previously, each country of the Union had the power to provide for a system of compulsory licensing covering not only the recording but also the public performance of the works in question hy means of using such records. It became clear with the increasing public use of records and by the fact that public performance by this means was almost invariahly covered by contracts, that there was no looger any need for compulsion, and the scope of compulsory licensing could be confined to the act of recording. This was done in Stockholm in 1967.

126. Recently, it has been questioned at least in some industrialized countries whether the application of such compulsory licenses is really justified. The Government of the United Kingdom, for example, expressed its intention to abolish the statutory recording license system (which now exists under Section 8 of the 1956 Copyright Act) in the so-called White Paper (entitled "Intellectual Property and Innovation") presented to Parliament in April 1986. The White Paper contains the following arguments in favor of the abolition of this system: "Statutory licensing systems conflict with the normal copyright principle that a copyright owner should be able to control the use made of his material, and can only be justified where there are special circumstances. The conditions which SRL [statutory recording license] was designed to meet have long since changed and the breakdown of the consensus in its favour strongly reinforces douhts expressed in the 1981 Green Paper. The principal danger cited hy supporters of SRL—that without it large music puhlishing groups might restrict recording of their repertoire to in-house labels, thus depriving the public of the variety of versions it has come to expect—seems unlikely to occur on a significant scale. There is now a very large number of recording companies. Diversity is an established feature of the market and the success of a particular recording is not necessarily predictable. Publishing groups are thus unlikely to put their own commercial interests at risk by restricting exposure in this way. Nor does it seem reasonable to suppose, as has been suggested, that royalty rates would be raised to the point of creating widespread loss of sales and unemployment. The rights owners would damage their own interests by such action as much as those of the record companies." Those arguments seem to be relevant in general and also in other countries having such compulsory license systems. Compulsory recording licenses were introduced to encourage the growth of the infant recording industry. That industry has grown up; the reasons for compulsory licensing seem to have lost their validity.

127. It is important to state that even if compulsory recording licenses are applied, they sbould not, in any circumstances, be prejudicial to the rights of authors to ohtain equitable remuneration. Any remuneration can only be called equitable if it reflects the real market value of the rights involved. The market value of mechanical rights can be identified very easily on the basis of existing contracts in other countries between "mechanical rights" societies and phonogram producers.

128. On the hasis of tbe foregoing considerations, the following principle is suggested:

**Principle MW10. (1) The application of compulsory licenses for the recording of mnsical works once the authors have already authorized their recording is not incompatible with the international copyright conventions; however, consideration shonld he given to their elimination in countries where the protection of the phonogram industries does not justify such licenses any more.**

**(2) In conntries where compnlsory licenses mentioned in paragraph (1) are applied, the re-**

**muneration of the authors should be fixed according to the full market value of the right of reproduction in this field.**

129. The problem of piracy of phonograms was discussed in detail at the meeting of the Committee of Governmental Experts on Audiovisual Works and Phonograms mentioned in Paragraph 8. The principles and comments contained in the working document prepared for that meeting apply necessarily to musical works included in phonograms. A special form of piracy is "hootlegging" when live performances are recorded without authorization and included in phonograms produced for commercial purposes. The above-mentioned principles and comments on piracy of phonograms apply *mutatis mutandis* to such cases of unauthorized use.

130. Home taping, that is reproduction for private purposes, was also discussed in detail in respect of phonograms at the meeting and the working document mentioned in paragraph 129 and the principles and comments contained in that document also apply to musical works included in phonograms. Home taping can, however, be done not only on the basis of phonograms of musical works hut also on the basis of e.g. a hroadcast. The prejudice caused to authors hy such private recordings also exists in such a case (such private recording decreases the market for the right of reproduction). Therefore the principles and comments mentioned above apply *mutatis mutandis* to such cases.

*Report 85. One delegation said that even if in its country compulsory licensing was applied for the recording of musical works, it found Principle MW10 acceptable because it referred to the need for considering the elimination of such licenses if the protection of the phonogram industries did not justify their application any more. The delegation added that in its country the application of compulsory licensing was still deemed to be justified for the protection of phonogram industries.*

*Report 86. One other delegation expressed the view that it did not find the notion of "full market value" used in Principle MW10(2) clear enough. It would be more appropriate to state that the remuneration should be calculated as a function of the reproduced copies and its level should correspond to the internationally established practice. Paragraph 127 referred to the existing contracts in other countries between "mechanical rights" societies and phonogram producers as a possible basis for identifying the market value of mechanical rights. It would be more accurate to refer to the internationally established usual level of remuneration than to the contracts themselves in which that level was applied.*

*Report 87. An observer from an international non-governmental organization disagreed with the statement mentioned in the previous paragraph according to which the remuneration of the author should be calculated in function of the reproduced copies. It was an established international practice that royalties were calculated on the basis of the copies on sale and not on that of the copies manufactured. The observer referred to the fact that phonogram industries could live with the system of exclusive "mechanical rights," but emphasized the advantages of compulsory licensing from the viewpoint of protecting phonogram producers against excessive demands.*

### *The Right of Rental and Public Lending*

131. Music puhlishers frequently utilize their sheet music puhlications not hy selling hut hy making them availahle for rental. This is the case first of all with the very expensive orchestral sets. If authors and—on the hasis of their contracts with authors—puhlishers did not have the right of rental and puhlic lending, one of the most essential ways of utilization of such works would not be covered hy copyright. Such an ahsence of protection would not only lead to serious prejudice to authors' rights hut would also completely destroy the market for music puhlishers and it would force them to give up the puhlishing of such material.

132. The need for a right of rental and puhlic lending in regard of phonograms was discussed in detail hy the meeting of the Committee of Governmental Experts on Audiovisual Works and Phonograms mentioned in paragraph 8 above. The principles and comments contained in the working document prepared for that meeting apply directly to musical works included in phonograms and *mutatis mutandis* to the rental and puhlic lending of sheet music. In fact, providing for an exclusive right in respect of rental and puhlic lending is particularly important in the field of sheet music.

*Report 88. It was understood that the views expressed in the discussion on the questions of the right of rental and public lending in respect of dramatic and choreographic works were also relevant, mutatis mutandis, concerning such possible rights in musical works.*

*Report 89. One delegation repeated its earlier proposal also in this context, according to which the right of rental should also be explicitly recognized in respect of videograms.*

*Report 90. Another delegation stressed that the recognition of the right of rental was not equally justified in relation to all categories of works. It said that in its country, such a right was recognized in respect of sound recordings; at the same time, the legislators had not found it justified to extend the same right to videograms.*

*Report 91. Still another delegation insisted that as mentioned in paragraph 41, a distinction should be made between copies produced exclusively for rental and those produced exclusively for sale.*

*Report 92. Some participants suggested that a general right of distribution should be recognized to cover sale, importation, rental, lending, etc.*

*"Performing Rights"*

133. The so-called "performing rights" are the most widely utilized rights in musical works and, consequently—besides "mechanical rights"—the most important economic rights of the authors of such works. This expression is used in connection with certain uses of non-dramatical musical works and in connection with the same non-theatrical uses of excerpts from dramatico-musical works (for example the public performance of an aria from an opera at a concert). The rights exercised in the above-mentioned scope of uses are frequently referred to as "*petits droits*" (in contrast with "*grands droits*," the latter meaning the rights involved in the full performances and other full utilizations of dramatico-musical works).

134. In the above-mentioned context, "performing rights" is used in practice to include not only the right of public performance but also the right of communication to the public and the right of broadcasting and related rights as defined in Principle MW8 above. For example the Model Contract of Reciprocal Representation between Public Performance Societies adopted by the International Confederation of Societies of Authors and Composers (CISAC) contains the following definition: "Under the terms of the present contract, the expression '*public performance*' includes all sounds and performances rendered audible to the public in any place whatever within the territories in which each of the contracting Societies operates, by any means and in any way whatever, whether the said means be already known and put to use or whether hereafter discovered and put to use during the period when this contract is in force. 'Public performance' includes in particular performances provided by live means, instrumental or vocal; by mechanical means such as phonographic records, wires, tapes and sound tracks (magnetic or otherwise); by processes of projection (sound film), of diffusion and transmission (such as radio and television broadcasts, whether made directly or relayed, retransmitted, etc.) as well as by any process of wireless reception (radio and television receiving apparatus, telephonic reception, etc. and similar means and devices, etc.)."

135. The exercise of "performing rights" is, generally speaking, impossible on an individual basis. There is a large number of users using certain works virtually at the same time and a large number of works used by one and the same user. Consequently, authors are unable to control and authorize all uses of their works separately and it is not possible for users to search for each author every time they intend to use his works. Therefore, authors form authors' societies for the administration of such rights. Those societies conclude reciprocal contracts between each other and are in the position to authorize the use of practically the whole world music repertoire by means of blanket licenses given to users. Authors' societies collect royalties from users and distribute them among authors.

136. Collective administration of musical performing rights implies great advantages for users also. They can easily and in an efficient way obtain the authorization for such uses of an exclusive repertoire. It is obvious that where such collective system exists no compulsory licensing is justified. Therefore, for example, no compulsory licenses should be applied in respect of broadcasting of musical works.

137. The collective administration of performing rights involves a wide range of legal and practical problems that cannot be all discussed in the framework of the present document. In the following paragraphs, only those questions are covered that should be discussed for outlining the conditions of an appropriate protection of the rights involved.

138. It should be borne in mind in regard of all aspects of the collective administration of performing rights that those rights are *exclusive rights* of the authors to authorize certain acts. There is no basis in the international conventions to restrict them, for example, by introducing in the framework of their collective administration conditions that would degenerate such administration to the level of compulsory licensing,

139. The exclusive nature of the rights involved imply certain particular considerations in respect of collective administration.

140. All decisions concerning any important aspects of the administration of such exclusive rights (such as the methods of collection and distribution of royalties, the tariff system, etc.) should be taken by the owners of those rights or bodies representating them. It means that even in organizations other than real authors' societies which administer performing rights (such as state copyright organizations which, in general, have many other functions) a special machinery should be applied for such decisions. All procedures according to which other persons or bodies could decide about the exercise of the performing rights than the authors or bodies composed of their representatives would be incompatible with the exclusive nature of those rights.

141. Authors represented by an authors' society (or other organization fulfilling the role of such a society) should be in the position to have regular, full and detailed information about all the activities of the society concerning the administration of their rights. Without it, no right to participate in the decisions about all important questions can be exercised appropriately.

142. Societies administering performing rights should be non-profit organizations. Nothing else can be deducted from the royalties collected by them than the actual expenses of the administration of the rights involved. Exceptions to that rule can only be made if the owners of rights

concerned have approved—directly or by means of bodies representing them—the deduction of some amounts for certain specific purposes (for example for cultural or social purposes). No deduction can be made from the royalties of owners of copyright who or whose representative bodies have not approved such deductions. Any deductions in excess of those necessary to cover the expenses of administration and the deductions explicitly approved by the owners of copyright or the bodies representing them would amount to depriving the copyright owners concerned of their royalties and such a practice would be in conflict with the basic principles of copyright protection.

143. Authors' societies may also undertake other activities than the administration of performing rights (for example, agency activities for the promotion of certain works in their repertoire or the administration of other rights). Such additional activities show very frequently significant deficits. The use of any amount from performing rights royalties for covering such deficits should be deemed as deductions on which the same considerations would apply as described in the preceding paragraph.

144. The full amount collected by the society for the use of performing rights—after the deductions of the expenses of administration and other potential deductions authorized according to the preceding paragraphs—should be distributed among individual owners of rights in proportion to the actual uses—as far as such uses can be identified—of their works.

145. Foreigners should enjoy the same treatment as the members of the society. In addition to the application of the same rules regarding decision-making, deductions and distribution, an equal treatment should necessarily involve the provision of full and transparent information on the activities of the societies concerned to the societies of other countries whose repertoire they administer on the basis of reciprocal agreements.

146. Tariffs for various uses should be established in a way which is not in conflict with the exclusive nature of such rights. If the authors' society and users cannot reach an agreement, an independent body should determine the tariffs to be applied according to their real market value.

147. The functions of collective administration of performing rights can only be fulfilled if such administration is centralized at the national level (with some exceptions, only one society exists in each country). Such societies should as far as possible be exempted from antitrust restrictions; the only guarantee that is necessary for avoiding the theoretical danger of misusing the exclusive position of such societies is the involvement of a copyright tribunal-type body in the disputes about tariffs and other conditions of blanket licensing.

148. The above-mentioned considerations are summarized in the following principle which is offered for consideration:

**Principle MW11. (1) In the context of the present principle**

**(i) "performing rights" mean the right of public performance, as well as the right of communication to the public and the right of broadcasting and related rights as defined in Principle MW8(1) above, all in relation to the use of musical works and the non-theatrical use of excerpts from dramatico-musical works (in other words the so-called "petits droits");**

**(ii) "collective administration" means the administration of the above-mentioned rights by authors' societies or other organizations fulfilling the same functions (hereafter referred to as "authors' societies") on behalf and on the basis of the authorization of the authors who are their members or whom they represent according to reciprocal agreements with other (foreign) authors' societies; the functions involve the control and the issuing of blanket authorizations for use of the rights administered by them as well as the collection of royalties for such use and their distribution among the owners of rights whose works have been used under such blanket authorization.**

**(2) The collective administration of performing rights by authors' societies should be promoted. Such societies should as far as possible be exempted from restrictions under antitrust legislation. Measures to be applied for protecting users against potential misuse of a de facto monopolistic position of such societies should be restricted to the settling of disputes concerning the conditions of blanket authorizations (first of all about the tariffs to be applied) by an independent body in case the authors' society and users are unable to settle such disputes through free negotiations.**

**(3) Compulsory licenses, as a rule, should not be applied in respect of musical performing rights.**

**(4) The exclusive nature of musical performing rights should not be restricted in the framework of their collective administration. Therefore,**

**(i) all decisions concerning any important aspects of collective administration should be taken by the authors whose rights are involved or by bodies representing them;**

**(ii) the authors should receive regular, full and detailed information about all the activities of the authors' society that may concern the exercise of their rights;**

**(iii) the tariffs and other conditions for the blanket authorizations mentioned in paragraph (i)(b) should—wherever it is possible— be agreed on the basis of negotiations with users; in the case of failure to reach an agreement, the**

**independent body mentioned in paragraph (2) should decide, bnt it should establish the tariff according to the real market value of the right involved;**

**(iv) withont the authorization of the anthors concerned (given directly or by the bodies representing them according to point (i) above) no proportion of the royalties collected by the authors' society should be used for any other purposes (for example for cnltural or social purposes, or for financing other activities) than the covering of the actual costs of administering performing rights in the musical works involved and the distribntion of royalties among owners of copyright;**

**(v) the amounts of royalties collected for the blanket anthorization for the use of performing rights—after the dednction of the actual costs of collective administration and other potential dednctions that the owners of copyright may anthorize according to point (iv) above—should be distributed among individual owners of copyright in proportion to the actual frequency of the use of their works.**

**(5) The members of foreign anthors' societies represented by an anthors' society in a certain country should enjoy the same treatment as the members of the anthors' society concerned in keeping with paragraphs (1) to (4) of the present principle. Foreign anthors' societies should receive regular, full and detailed information abont all the activities of the authors' society representing their repertoire in a certain country that may concern the exercise of the rights of the members of such foreign authors' society.**

*Report 93. Some delegations expressed their support for Principle MW11.*

*Report 94. One delegation suggested that in connection with the definition of performing rights, Principle MW11(1)(i) should explicitly refer to those subparagraphs of Principle MW8(1) which defined the right of public performance, the right of communication to the public and the right of broadcasting and related rights understood as performing rights.*

*Report 95. One delegation, while agreeing with the definition of "performing rights" and "collective administration," suggested that also the notion of "public performance" should be defined. It acknowledged that paragraph 134 of the document referred to a definition of "public performance" as applied by the member societies of CISAC but, perhaps, a more general approach would be necessary. The definition could, for example, take into account the following elements: performances in places open to the public; performances in places which were not open to the general public, but where a substantive number of people was present; transmission to the places now mentioned; transmission to the public at large whether to the same or separate places, etc.*

*Report 96. Several delegations emphasized the importance of collective administration of rights which was, in general, applicable where the individual exercise of rights was impossible or impractical. One delegation added that authors' societies existed and were necessary also in other fields, where the rights could be, and were, exercised individually, as the societies would give assistance in representing the authors' collective interests in advising them about their rights and about the most appropriate exercise of those rights in undertaking certain elements of the administration of rights (for example, the collecting of royalties, etc.).*

*Report 97. One delegation and the observer from an international non-governmental organization expressed their disagreement with Principle MW11(2). They said that in case of disputes between authors' societies and users regarding tariffs or other conditions of their contracts, it should always be the courts which should decide and not copyright tribunals or other arbitration bodies. In their opinion a recourse to any system of obligatory arbitration should be avoided.*

*Report 98. The Secretariats stated in answer to the comments mentioned in the preceding paragraphs that Principle MW11(2) covered only the case of a possible misuse of a monopolistic situation.*

*Report 99. Some delegations informed the Committee about arbitration systems which were applied in their countries and which functioned, in general, to the satisfaction of both authors and users. Several participants were of the opinion that Principle MW11(2) was important and should be kept—even if with some modifications—in the set of principles.*

*Report 100. In respect of paragraphs (4) and (5) of the Principle, some delegations said that in their countries authors were not necessarily members of the collective administration bodies; they just gave authorization to those bodies for the administrtion of their rights.*

*Report 101. It was proposed that the adjective "blanket" should be deleted in relation to the authorization given by the authors' societies because other forms of authorization were also conceivable.*

*Report 102. One delegation mentioned that in its country, authors' societies were, in general,*

*non–profit organizations, but this was not a condition of their existence.*

*Report 103. It was suggested that in paragraph (4)(v), criteria other than the frequency of the use of the works (such as the capacity of the place where the works were performed, the length of the works, the income related to the use of the works, etc.) should also be taken into account for the distribution of royalties.*

*Report 104. Several participants emphasized the importance of paragraph (5) which contained basic guarantees for the protection of the rights of foreign owners of rights.*

*Report 105. One delegation was of the opinion that what was contained in Principle MW11 should rather be part of the commentary. Another delegation suggested that only paragraphs (4) and (5) should be transferred into the commentary. An observer from an international non–governmental organization proposed the same concerning paragraph (2). Other participants were in favor of maintaining Principle MW11 in its present structure, even if with some modifications.*

*Satellite Broadcasting and Cable Distribution*

149. The working document discussed by the Committee of Governmeotal Experts on Audiovisual Works and Phonograms mentiooed in paragraph 8 cootained a detailed analysis of the protection of phonograms in connection with direct hroadcasting hy satellites, transmission by fixed–service satellites, cable distrihution of cable–originated programs, the simultaneous and unchanged cahle distribution of broadcast programs as well as the cahle distribution of programs transmitted hy fixed–service satellites. All what is said about those types of use in that document concerning phonograms (the priociples as well as the commeots) is also directly applicable to musical works included in phonograms and *mutatis mutandis* to musical works used in the framework of such uses hy means of live performances.

*Report 106. No particular comment was made in this respect.*

*"Synchronization Right"*

150. As it is mentioned in Principle MW8(1)(viii) above the authors of musical works also enjoy the right of cinematographic adaptation. In the case of musical works this means that producers cannot include such works in audiovisual works without the authorizatioo of their authors. This right is called "synchronization right" in practice and it covers both specially commissiooed and preexistiog musical works.

*Report 107. No particular comment was made in this respect.*

**The Rights of Performers of Musical Works**

151. Paragraphs 60 to 72 above apply *mutatis mutandis* also in respect of the performers of musical works. Coosequeotly, Principle DC7 can be applied without changes to the performers of musical works:

**Principle MW12. Principle DC7 is also applicable in regard of the performers of musical works.**

152. As in the case of the performers of dramatic and choreographic works, the rights of performers of musical works in respect of using phonograms published for commercial purposes or reproduction of such phonograms are not discussed in the present document, because those questions were covered hy the working document prepared for the meetiog of Governmental Experts on Audiovisual Works and Phonograms mentioned in paragraph 8 above. The principles and comments included in that document concerning uses of phonograms in connection with the oew technologies also apply directly to the rights of performers of musical works included in phonograms. Certain principles and comments contained in that document apply *mutatis mutandis* also to live performances of musical works and the right of performers concerned hy them, such as the principles and comments on piracy ("bootlegging," that is the unauthorized recording of performances for commercial purposes is a form of piracy which is particularly prejudicious to the basic rights and interests of performers), home taping (private reproduction of performances), satellite hroadcasting and cahle distrihution.

*Report 108. It was understood that the comments made in respect of the rights of performers of dramatic and choreographic works were also relevant, mutatis mutandis, to the rights of performers of musical works.*

## IV. MISCELLANEOUS

**Conclusion**

*Report 109. The Committee noted that the Secretariats would report on the results of the meetings to the next sessions of the Executive Committee of the Berne Convention and the Intergovernmental Committee of the Universal Copyright Convention.*

**Adoption of the Report and Closing of the Meeting**

*Report 110. The Committee unanimously adopted this report and, after the usual thanks, the Chairman declared the meeting closed.*

## V. LIST OF PARTICIPANTS

### I. States

**Bangladesh**: M.F. Amin. **Bolivia**: J. Aparicio Otero. **Brazil**: J. de Souza Rodrigues. **Burundi**: G. Ntagabo. **Cameroon**: H. Fouda. **Canada**: B. Couchman. **China**: Qi Yanfen. **Colombia**: F. Zapata Lôpez. **Costa Rica**: F. Ramirez–Barrantes; Y. Bourillon de Rickebusch. **Côte d'Ivoire**: E. Miezan Ezo. **Denmark**: L. Hersom. **Egypt**: A. El–Boraï. **Finland**: J. Liedes; S. Lahtinen; T. Koskinen; P. Westman. **France**: M. Bouleau; M.–C. Rault. **German Democratic Republic**: W. Lange. **Germany (Federal Republic of)**: M. Möller. **Guatelamala**: G. Putzeys Alvarez; J.C. Castro Quiñones. **Gninea**: K. Condé. **Holy See**: L. Frana; R.V. Blaustein; M.–S. de Chalus. **Hungary**: G. Boytha. **India**: P. Singh. **Italy**: G. Catalini; M. Fabiani. **Jordan**: Z. Obiedat. **Kenya**: J. King'Arui. **Lebanon**: J. Sayegh. **Mexico**: A. Loredo Hill. **Morocco**: A. Badry. **Panama**: J. Patiño. **Portugal**: A. Gomes. **Saudi Arabia**: N. Kanan; M. Alwan. **Soviet Union**: M. Voronkova. **Spain**: E. de la Puente García; F. Aguilera Oribuel; F. Galindo Villoria. **Sweden**: A. Mömer; B. Rosén. **Switzerland**: A. Bauty. **Thailand**: S. Povatong; A. Otrakul–Sales. **Togo**: S. Zinsou; S. Gbodui; K. Grodui. **Tunisia**: S. Zaouche. **Turkey**: C. Türkeroğlu; H. Sezgin; N. Sümer. **United Kingdom**: D. Irving. **United States of America**: L. Flacks. **Yemen**: A. Saleh Sayyad.

### II. Observers

*(a) African Liberation Movements*

**African National Congress (ANC)**: T. Moema.

*(b) Intergovernmental Organizations*

**Arab Educational, Cultural and Scientific Organization (ALECSO)**: F. Ammar.

*(c) International Non–Governmental Organizations*

**Broadcasting Organizations of the Non–Aligned Countries (BONAC)**: R. Mihailović. **European Broadcasting Union (EBU)**: M. Burnett. **International Bnrean of Societies Administering Recording and Mechanical Reprodnction Rights (BIEM)**: J.–A. Ziegler. **International Confederation of Free Trade Unions (ICFTU)**: J. Vertenelle. **International Confederation of Societies of Authors and Composers (CISAC)**: J.–A. Ziegler; N. Ndiaye; J. Horovitz; R. Abrahams; T. Desurmont; P.–H. Lamauve. **International Federation of Actors (FIA)**: Y. Burckhardt. **International Federation of Musicians (FIM)**: Y. Burckhardt. **International Federation of Phonogram and Videogram Producers (IFPI)**: G. Davies. **International Literary and Artistic Association (ALAI)**: A. Françon; D. Gaudel. **International Publishers Association (IPA)**: J.–A. Koutcboumow; D. Duclos; S. Wagner. **International Secretariat for Arts, Mass Media and Entertainment Trade Unions (ISETU)**: J. Vertenelle. **International Theatre Institute (ITI)**: A.–L. Perinetti. **Max Planck Institute for Foreign and International Patent, Copyrigbt and Competition Law**: S. Schlatter–Krüger.

### III. Secretariat

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

M. de Bonnecorse *(Deputy Director–General)*; T. Keller *(Assistant Director–General a.i., General Programmes and Programme Support Sector)*; A. Amri *(Director a.i., Copyright Division)*; E. Guerassimov *(Legal Officer, Copyright Division)*.

**World Intellectual Property Organization (WIPO)**

A. Bogsch *(Director General)*; H. Olsson *(Director, Copyright and Public Information Department)*; M. Ficsor *(Director, Copyright Law Division)*.

# Studies

## What About the Publisher's Rights?

Franca KLAVER*

# Correspondence

## Letter from the USSR

### New Developments in Soviet Copyright

E.P. GAVRILOV*

# Calendar of Meetings

## WIPO Meetings

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

### 1987

**June 29 to July 3 (Geneva) — Committee of Experts on Biotechnological Inventions and Industrial Property (Third Session)**

**July 1 to 3 (Geneva) — Rome Convention: Intergovernmental Committee (Ordinary Session)** (convened jointly with ILO and Unesco)

**September 7 to 11 (Geneva) — Permanent Committee on Patent Information (PCPI) and PCT Committee for Technical Cooperation (PCT/CTC)**

**September 14 to 19 and 22 (Geneva) — Consultative Meeting on the Revision of the Paris Convention (Fourth Session)**

**September 21 to 30 (Geneva) — Governing Bodies (WIPO General Assembly, Conference and Coordination Committee; Assemblies of the Paris, Madrid, Hague, Nice, Lisbon, Locarno, IPC, PCT, Budapest, TRT, Vienna and Berne Unions; Conferences of Representatives of the Paris, Hague, Nice and Berne Unions; Executive Committees of the Paris and Berne Unions; Committee of Directors of the Madrid Union; Council of the Lisbon Union): Ordinary Sessions**

**October 5 to 9 (Geneva) — Committee of Governmental Experts on Works of Applied Art** (convened jointly with Unesco)

**November 2 to 6 (Geneva) — Committee of Experts on the Harmonization of Certain Provisions in Laws for the Protection of Inventions (Fourth Session)**

**November 23 to December 4 (Geneva) — Permanent Committee on Patent Information (PCPI): Working Group on Search Information**

**December 3 and 4 (Geneva) — Joint Unesco–WIPO Consultative Committee on the Access by Developing Countries to Works Protected by Copyright** (convened jointly with Unesco)

**December 7 to 11 (Geneva) — Committee of Governmental Experts on the Printed Word** (convened jointly with Unesco)

## UPOV Meetings

### 1987

**October 13 and 14 (Geneva) — Technical Committee**

**October 15 and 16 (Geneva) — Administrative and Legal Committee**

**October 17 (Geneva) — Subgroup on Biotechnology**

**October 19 (Geneva) — Consultative Committee**

**October 20 and 23 (Geneva) — Council**

**October 21 and 22 (Geneva) — Meeting with International Organizations**

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

### Non–Governmental Organizations

### 1987

July 20 to 22 (Cambridge) — International Association for the Advancement of Teaching and Research in Intellectual Property (ATRIP): Annual Meeting

**1988**

March 21 to 25 (Locarno) — International Copyright Society (INTERGU): Congress
June 12 to 17 (London) — International Publishers Association (IPA): Congress