

Published monthly  
Annual subscription:  
145 Swiss francs  
Each monthly issue:  
15 Swiss francs

# Copyright

23<sup>rd</sup> year — Nos. 7-8  
July-August 1987

Monthly Review of the  
World Intellectual Property Organization (WIPO)

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ISSN 0010-8626

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## Notifications Concerning Treaties

### Phonograms Convention

#### Accession

#### REPUBLIC OF KOREA

The Director General of the World Intellectual Property Organization (WIPO) has informed the Governments of the States invited to the Diplomatic Conference on the Protection of Phonograms that, according to the notification received from the Secretary-General of the United Nations, the Government of the Republic of Korea deposited, on July 1, 1987, its instrument of accession to the Convention for the Protection of Producers of Phonograms

Against Unauthorized Duplication of Their Phonograms.

The said Convention will enter into force, with respect to the Republic of Korea, three months after the date of the notification given by the Director General of WIPO, that is on October 10, 1987.

*Phonograms Notification No. 46, of July 10, 1987.*

## Studies

### **Audiovisual Works Under the French Law of July 3, 1985**

André KEREVER\*













**Correspondence**

**Letter from Israel**

**Legislation for the Establishment of Cable Television**

Victor HAZAN\*















## Activities of Other Organizations

### International Confederation of Societies of Authors and Composers (CISAC)

#### Legal and Legislation Committee

(Warsaw, May 20 to 23, 1987)

The Legal and Legislation Committee of the International Confederation of Societies of Authors and Composers (CISAC) met in Warsaw from May 20 to 23, 1987, at the invitation of the Polish authors' society, ZAIKS (*Stowarzyszenie Autorow*). WIPO was represented by Mr. Mihály Ficsor, Director, Copyright Law Division.

In addition to information about developments in the member countries, the Committee heard, in particular, presentations by some of its members on the following subjects:

- The relations of hierarchy between the international conventions and the national copyright laws (Prof. G. Koumantos, Greece),
- Data banks and copyright (Prof. A. Françon, France),
- Explicit recognition of a "right of destination" for authors in respect of their works (Mr. T. Desurmont, France),

- Socialist laws on authors' rights in works created under commission and employment (Mr. G. Pálos, Hungary),

- Conclusions of the "Satellites-Cable TV" Working Group (Mr. W. Dillenz, Austria),

- Conflict of laws which may result from the application of Article 11(II) of the CISAC Model Contract of Reciprocal Representation between Public Performance Rights Societies (Mrs. P. Schepens, Belgium),

- Conclusions of the "Salaried Authors" Working Group (Mr. D. de Freitas, United Kingdom).

Each of the above presentations was followed by a lively discussion, in the course of which the Committee was also informed of activities by WIPO in the fields of copyright and neighboring rights.

## International Literary and Artistic Association (ALAI)

### Study Days, Executive Committee and General Assembly

(Sorrento, June 1 and 2, 1987)

At the invitation of the Italian National Group of ALAI and the Italian Society of Authors and Publishers (*Società Italiana degli Autori ed Editori*, SIAE), the International Literary and Artistic Association (ALAI) held Study Days in Sorrento on June 1 and 2, 1987. They were chaired by Professor Georges Koumantos (Greece), President of ALAI, and were attended by some 100 participants. WIPO was represented by Mr. Mihály Ficsor, Director, Copyright Law Division.

In the framework of the Study Days, two topics were discussed. The first one was direct broadcasting by satellite, where the discussions were based on a paper entitled "Direct Broadcasting by Satellite (DBS): the Implications for Copyright," presented by Mr. Michael Freegard (United Kingdom). The second topic included various questions of the protection of cinematographic films discussed on the basis of three papers: "The Introduction of Advertisements During the Television Broadcasting of Cinematographic Works and the Protection of Authors' Moral Rights," by Professor Mario Fabiani (Italy), "The Sequence of Exploitation of Cinematographic Films from the Viewpoint of Copyright and of Competition Law," by Professor Paolo Spada (Italy) and the "Theatrical Exhibition of Cinematographic Films," by Mr. Francesco Paolo Regoli (Italy).

On the occasion of the Study Days, the Executive Committee of ALAI met twice on June 1 and 2. Besides noting and discussing the reports of Professor André Françon (Secretary General of ALAI) on past and planned activities of ALAI and of Mrs. Denise Gaudel (Treasurer of ALAI) on the finances thereof, the Executive Committee adopted, as the result of the discussions in the framework of the Study Days, the following resolution on the questions of direct broadcasting by satellite:

The International Literary and Artistic Association (ALAI)

*Taking note* that the transmission by satellite of programme-carrying signals for the purpose or with the foreseeable effect of direct reception by the public is already taking place and is expected to develop further;

*Noting also* that, notwithstanding the provisions of the radio regulations of the International Telecommunications Union aimed at limiting the extent of "overspill," the "footprint" of direct broadcasting satellites will, in many cases, unavoidably extend over several national territories;

*Recalling* that at its Aegean Sea Congress of April 1983, in the course of its resolution on "Copyright and Space Satellites," ALAI affirmed that direct broadcasting by satellite constitutes broadcasting for the purposes of the international copyright conventions and national copyright legislation;

*Considers* that responsibility towards the authors and any other right holders falls upon the originating broadcasting organization, namely the organization that decides what programs will be carried by the signals to be transmitted to the satellite, and that this applies not only to broadcasting services specifically intended for direct public reception but also to other transmissions by satellite of which that is the foreseeable effect;

*Considers further* that, since some members of the public will not receive the broadcast signals directly but only through the intermediary of a cable system, the responsibility of the operators of such systems should be clearly defined in accordance with the provisions of Article 11<sup>bis</sup>(1)(ii) of the Berne Convention, as recommended in ALAI's resolution of May 1982 in Amsterdam;

*Underlines* that, in all cases, the negotiations regarding the remuneration of the authors should take account not only of the potential audience in the country in which the broadcasts are originated but of the entire audience within the "footprint" of the satellite;

*Recognizes* that certain questions, relating to the possible applicability of the laws of countries other than that of the originating broadcasting organization and to the competent jurisdictions, remain to be clarified; and

*Recommends* that the study of such questions be continued by the appropriate international organizations and by the organizations representing all the interested parties.

On June 2, 1987, ALAI held its General Assembly in Hotel Sorrento Palace. The General Assembly noted reports of the Secretary General on past and planned activities of the Association, as well as of the Treasurer on its finances.

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<sup>1</sup> See *Copyright*, 1987, p. 263.

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### Book Reviews

**Direito de Autor. Princípios Fundamentais**, by Antônio Chaves. One volume of XII-538 pages. Forense, Rio de Janeiro, 1987.

This book about the basic principles of copyright law is written by a well-known and internationally recognized copyright specialist, Professor Antônio Chaves, former Director of the Faculty of Law of the University of São Paulo and now, *inter alia*, President of the Interamerican Copyright Institute (IIDA).

The volume is the first one in a planned series of eight which is intended to give a comprehensive description of the status of the law on copyright and neighboring rights in Brazil. The plan for the complete work is impressive. From what can be seen on the basis of this first volume, the complete series will have every possibility of being a real *magnum opus* and a standard work in this field of law. The series will, according to the publication plan as indicated in this volume, cover not

only the substance of copyright and neighboring rights law but also the infrastructure for its implementation, as well as administrative provisions and fiscal matters of importance in this context.

As its title indicates, the first volume deals with the fundamental principles of copyright. It consists of three parts. Part I deals with the nature, importance and development of copyright law in general and in Brazil in particular. Part II concerns questions relating to the ownership of copyright. Part III treats the subject matter for protection insofar as original works are concerned (derivative works will be dealt with in the second volume).

In each of the three parts the author discusses the various aspects of the subject matter concerned in great depth and with frequent and well-chosen references to legislation and court cases both from Brazil and from other countries, and to statements of other copyright specialists. The author's style is fluent and lively and the book easy to read. It is particularly interesting because of all the illustrative practical examples given in the text, something which gives the work not only a scientific value but also the dimension of a comprehensive practical manual on the fundamentals of copyright law.

Part I, which is the shortest in the book, deals in particular with the various legal theories concerning the nature of copyright law and with its historical development both internationally and in Brazil. This part also discusses the importance of copyright law. A number of examples are given for instance on royalties and other remunerations which famous authors today can receive for licensing their rights.

In Part II of the book the author deals with the beneficiaries of copyright protection, i.e., the concept of "author" insofar as original works are concerned. The author discusses the characteristic elements of authorship and the problems in defining who the author is in various situations (collective works, anonymous or pseudonymous works, commissioned works, "ghostwriters," works created under employment contract, etc.). Also the question of the protection of folklore is dealt with in this context.

Part III, which is the major part of the book, deals with original works as subject matter for protection. This part contains six chapters. The first one concerns the concept of "work" and discusses both general aspects (various categories of works, originality as a requirement for protection, etc.) and more special elements (for instance, the rights of the persons dealt with in a work, etc.).

Other chapters of Part III of the book deal with various categories of original works. Thus the second chapter deals particularly with choreographic works and pantomimes and the third one with figurative works, both two and three-dimensional (works of fine art, photographic works, cinematographic works, works of applied art, works created for advertisement, etc.). The fourth chapter in this part is devoted to works expressed orally or in writing (books, brochures, letters, articles in newspapers and magazines, sermons, speeches, etc.). The fifth chapter concerns essentially musical works with or without accompanying text. The author discusses here the various elements constituting a musical work, including cases of contemporary music created with the help of computers and other electronic devices. In this context also, the particular problems in relation to dramatic and dramatico-musical works are dealt with. The sixth chapter, finally, covers scientific works. Among other things, two aspects are discussed here which are particularly important concerning such works, namely the relations between, on the one hand, the protection of the inventor for his invention and, on the other hand, the protection of the author for his work describing an invention or other scientific matter. The differing approaches to the protection, viz. novelty versus originality, are discussed, as well as, for instance, questions concerning the protection of ideas.

As mentioned at the outset, this volume is, quite naturally, primarily based on Brazilian law and jurisprudence but the various questions are dealt with in a much wider context. The international perspective in which the author discusses these questions makes the work particularly interesting also for an international public. The book, as well as the whole series of which it is a part, will therefore certainly be greatly welcomed both by those who want to familiarize themselves with Brazilian law and practice in this field and by those who participate in the international discussions on the various problems which copyright is faced with in today's world.

H.O.

**Rettslig vern av EDB-programmer og databaser**, by *Tarjei Stensaasen*. One volume of 312 pages. TANO A.S., Oslo, 1987.

The Norwegian title of this book means in English "Legal Protection of Computer Programs and Data Bases." The author examines in depth the different aspects of the legal protection in the two fields concerned. The point of departure is the Norwegian law and the law of the other Nordic countries but the book contains also extensive references to developments in other countries.

The book is composed of three parts. The first one contains general introductory considerations and deals mainly with the technology involved, the need for protection and a

delimitation of the areas to be covered in the book. The second part deals with the protection of computer programs and the third one with the protection of data bases.

As regards the protection of computer programs the author discusses the various legal means available for obtaining protection (exclusive rights, protection under the law on unfair competition, on patents, on designs and also under contract law). WIPO's "Model Provisions on the Protection of Computer Software" are extensively discussed in this context.

The part dealing with data bases starts with a survey of the data base market and of the technical conditions for the establishment of such bases. The author then deals with two major problem areas in this context. One is the protection against unauthorized access to a data base and the subsequent use of the information obtained. The other problem area concerns the protection of the data base itself, both as regards the different works stored in the base and as regards the base as an entity.

The discussion in the book shows that the author is well acquainted with the problems. In addition to offering a comprehensive survey of the various aspects of the legal protection in this field, he also submits a number of interesting suggestions on how to fill certain of the gaps existing in the present international and national rules. The book mainly focuses on the problems in the Nordic countries, but it also contains much that is of interest to a public far outside that area of the world.

H.O.

## Calendar of Meetings

### WIPO Meetings

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

1987

- September 3 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 2 to 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 6 to 8 (Geneva) — Technical Committee
- October 8 and 9 (Geneva) — Administrative and Legal Committee
- October 12 and 13 (Geneva) — Meeting with International Organizations
- October 14 (Geneva) — Consultative Committee
- October 15 and 16 (Geneva) — Council

1988

- June 7 to 9 (Edinburgh) — Technical Working Party on Automation and Computer Programs
- June 14 to 17 (Wageningen) — Technical Working Party for Vegetables
- June 20 to 24 (Melle) — Technical Working Party for Ornamental Plants and Forest Trees
- June 28 to July 1 (Hanover) — Technical Working Party for Fruit Crops, and Subgroups
- July 5 to 8 (Surgères) — Technical Working Party for Agricultural Crops

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

### Non-Governmental Organizations

#### 1988

March 21 to 25 (Locarno) — International Copyright Society (INTERGU): Congress

June 12 to 17 (London) — International Publishers Association (IPA): Congress

October 6 and 7 (Munich) — International Literary and Artistic Association (ALAI): Study Days



