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Editor's Note

ZAIRE

Ordinance—Law on Protection of Copyright and Neighboring Rights (No. 86-033, of April 5, 1986)	Text I-01
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WIPO Meetings

Executive Committee of the International Union for the Protection of Literary and Artistic Works (Berne Union)

Twenty-Seventh Session (10th Extraordinary)

(Geneva, June 22 to 30, 1987)

REPORT

submitted by the International Bureau and adopted by the Committee

INTRODUCTION

Opening of the Session

1. The Executive Committee of the Berne Union (hereinafter referred to as "the Committee"), convened by the Director General of the World Intellectual Property Organization (WIPO), met in extraordinary session at the WIPO headquarters in Geneva from June 22 to 30, 1987.
2. Seventeen of the Committee's 19 member States were represented: Canada, Chile, Czechoslovakia, France, German Democratic Republic, Hungary, India, Mexico, Morocco, Netherlands, Senegal, Sweden, Switzerland, Tunisia, Turkey, United Kingdom, Venezuela (17).
3. The following member States of the Berne Union were represented by observers: Argentina, Australia, Austria, Brazil, Bulgaria, Cameroon, Denmark, Finland, Germany (Federal Republic of), Guinea, Holy See, Israel, Italy, Japan, Lebanon, Luxembourg, Pakistan, Philippines, Poland, Spain, Uruguay, Zaire (22).
4. As the Committee held joint meetings with the Intergovernmental Copyright Committee set up under the Universal Copyright Convention, the delegations of the following countries, which were taking part in the session held concurrently with the Intergovernmental Copyright Committee, also attended the Committee's meetings: Algeria, Colombia, Peru, Soviet Union, United States of America (5). In addition, the following States were also represented as observers: China, Jamaica, Oman, Qatar, Republic of Korea, Saudi Arabia, United Arab Emirates (7).
5. The representatives of two specialized agencies of the United Nations system of organizations (International Labour Organisation (ILO) and the United Nations Educational, Scientific and Cultural Organization (UNESCO)), attended the Committee's meetings. Five intergovernmental organizations (Agency for Cultural and Technical Cooperation (AGECOOP), Arab League Educational, Cultural and Scientific Organization (ALECSO), Council of Europe (CE), European Free Trade Association (EFTA), League of Arab States (LAS)), and 16 international non-governmental organizations (European Broadcasting Union (EBU), International Alliance for Distribution by Cable (AID), International Association of Conference Interpreters (AIIC), International Bureau of Societies Administering the Rights of Mechanical Recording and Reproduction (BIEM), International Confederation of Free Trade Unions (ICFTU), International Confederation of Societies of Authors and Composers (CISAC), International Copyright Society (INTERGU), International Federation of Film Producers Associations (FIAPF), International Federation of Journalists (IFJ), International Federation of Musicians (FIM), International Federation of Translators (FIT), 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/FIET), International Union of Architects (IUA)) were represented by observers.
6. The list of participants follows this report.
7. The representative of the Director General of WIPO opened the session of the Committee and also welcomed all the participants.

8. The session of the Committee being held together with the session of the Intergovernmental Copyright Committee, the representative of the Director-General of Unesco welcomed all the participants and thanked WIPO for acting as host to the current session of the Committee.

PART I: ITEMS CONCERNING THE COMMITTEE ALONE

Election of an Ad Hoc Chairman

9. The representative of the Director General of WIPO informed the Committee that the Chairman and the two Vice-Chairmen who had been elected in the September 1986 session of the Committee were unable to chair the meetings; thus, the Committee had to elect an *ad hoc* Chairman.

10. On the proposal of the delegation of France, supported by the delegations of Czechoslovakia, Hungary and Morocco, the Committee unanimously elected Mrs. Karin Hökborg (Sweden) as *ad hoc* Chairman.

Adoption of the Agenda

11. The Agenda proposed in document B/EC/XXVII/I Rev. was adopted.

Membership of the Paris Act (1971) of the Berne Convention

12. Discussions were based on document B/EC/XXVII/2.

13. The Committee was informed that 76 States were party to the Berne Convention, of which more than half were developing countries. Of these 76 States 60 had adhered to the Paris (1971) Act of the Convention. Fifty of these States had adhered to that Act in its entirety and the remaining 10 only to the administrative provisions and final clauses. Twenty-six States remained bound by earlier Acts. Two countries, namely India and Mexico, had renewed their declaration to the effect that they would avail themselves of the special provisions contained in Articles II and III of the Appendix to the Berne Convention, which declaration, unless renewed, would be valid until October 10, 1994. As regards the administrative provisions and final clauses of the Convention, 71 of the 76 member States had accepted the administrative reform adopted by the Stockholm Diplomatic Conference in 1967.

14. The delegation of Morocco informed the Committee that its country had deposited its instrument of ratification of the Paris (1971) Act of the Convention.

15. The delegation of the United States of America informed the Committee that the accession to the Berne Convention was currently under consideration in its country. The President had sent a message to the Senate on June 18, 1986, transmitting the text of the Convention and recommending that the Senate give its consent to the accession to the Convention. Furthermore, two bills proposing implementing legislation had been introduced in the Congress, one in the Senate by Senator Leahy and one in the House of Representatives by Representative Kastenmeier. Both bills dealt, although in somewhat differing ways, with certain questions which have to be solved in order to make the United States copyright law compatible with the Convention. Among these issues were the protection of architectural works, formalities, moral rights and compulsory licensing in respect of jukeboxes. One hearing had already taken place as regards the bill in the House of Representatives and more hearings were expected in both the House of Representatives and the Senate.

16. The delegation of the United Kingdom said that its government had announced on June 25, 1987, plans for legislation on intellectual property in the 1987-88 session of the Parliament which would include comprehensive restatement and reform of the law of copyright. One consequence of this legislation would be to make it possible for the United Kingdom to ratify the Paris (1971) Act of the Berne Convention.

17. The delegation of China said that its country was not party to any international copyright convention, but was stepping firmly towards the establishment of its copyright system in which it had got and was getting valuable assistance from WIPO and Unesco and from international non-governmental organizations as well as from many developed and developing countries, either in training personnel or in providing information. The delegation informed the Committee about recent developments in its country in the field of copyright. First, a governmental organization in charge of copyright and neighboring rights had been established. The State Council had given approval in July 1985 to the establishment of the National Copyright Administration of China (NCAC) whose main tasks were to organize the drafting of and supervise the enforcement of copyright laws and other related acts and regulations, to give guidance to the nationwide work of copyright administration, to handle exter-

nal copyright affairs on behalf of the government, to popularize knowledge of copyright and to train copyright personnel. NCAC was directly under the guidance of the State Council. Second, the examination of the draft of the Copyright Law had been included in the agenda of the Legislative Committee of the National People's Congress. On January 1, 1987, the General Principles of Civil Law of the People's Republic of China came into force which, in its section 3 of Article V on Intellectual Property, had confirmed the copyright enjoyed by a physical person or a legal entity in the People's Republic. The main points of a proposal by NCAC on the Chinese copyright law had been submitted to the Legislative System Bureau of the State Council for approval. The Legislative System Bureau had decided to submit the draft of the copyright law to the Legislative Committee of the National People's Congress. Third, more and more people were showing interest in and concern for copyright. Since the general principles of the Civil Law became effective, some authors and other copyright owners had taken active measures to defend their copyrights. The training and seminars on copyright organized by NCAC or the local copyright administrative bodies had attracted a lot of people working in the educational, scientific and cultural domains. More than 4,000 people had got brief introduction to copyright. The question of the adhesion to the international copyright conventions had not been decided yet in China. The majority of the people who had expressed their opinions are in favor of joining international conventions, but when and which one—the Berne Union, the Universal Copyright Convention (UCC) or both—had not been decided yet by the National People's Congress or its Standing Committee. The NCAC was now making special studies on this topic.

18. The observer from the International Union of Architects (IUA) drew attention to the importance of granting copyright protection to works of architecture and stressed that his Union would like to participate also in future work on this issue within WIPO and Unesco.

19. The Committee noted the information presented to it.

Information on the Commemoration of the Centenary of the Berne Convention

20. Discussions were based on document B/EC/XXVII/3.

21. The Committee was informed about details of the official celebration organized by the Govern-

ment of Switzerland which had taken place on September 11, 1986, in the *Bundeshaus (Palais fédéral)*, the same building in which the Berne Convention was signed; about other meetings, symposia, seminars and workshops held in various countries to celebrate the centenary of the Convention and about the book published by WIPO on that occasion.

22. The delegation of Sweden commended all the governments as well as international and national organizations which had contributed to the commemoration of the centenary of the Berne Convention.

23. The delegation of Japan stressed the importance of the events of celebration of the centenary in the promotion of a better awareness of the need for efficient protection of authors' rights.

24. The delegation of India drew attention to the fact that the Sub-regional Workshop on Copyright and Neighboring Rights held in New Delhi in November 1986 was also in commemoration of the centenary of the Berne Convention and should be included in the list of meetings held for this purpose as indicated in the document.

25. The Committee noted the information presented to it.

WIPO's Development Cooperation Program (Information About the Activities in 1985 and 1986)

26. The Committee took note with considerable appreciation and satisfaction of the report of the International Bureau of WIPO contained in document B/EC/XXVII/4. The Committee felt these activities had covered a wide and impressive range in the field of development cooperation in respect of legal and technical assistance to developing countries, including establishment or strengthening of the national infrastructures for copyright protection and in the holding of information meetings and seminars.

27. In introducing the document, the International Bureau of WIPO had drawn attention to the fact that during the first decade of its development cooperation activities in the field of copyright and neighboring rights, 58 courses and regional, sub-regional or national meetings had been organized, primarily designed to increase the awareness of copyright and neighboring rights, their role in development, the impact of new technologies and the desirability of increased multilateral cooperation in these areas. It was mentioned that these courses

and meetings had been attended by more than 3,000 participants from nearly 100 developing countries. The International Bureau expressed its grateful thanks to the governments of the industrialized, socialist and developing countries as also to the non-governmental organizations which had constantly supported the program by hosting training courses, regional and subregional meetings and seminars, making facilities available for individual training and for providing guest speakers and active participation in such programs.

28. A number of delegations expressed great appreciation at the variety of training programs and facilities provided in the field of copyright and neighboring rights which were of considerable benefit for the officials concerned; they hoped that WIPO will continue providing such training facilities.

29. Several delegations pledged their continued support to the program which they felt was making a valuable contribution in disseminating the message of copyright throughout the world.

30. Some delegations thanked WIPO for the assistance given in the formulation of copyright legislation. The Committee expressed its appreciation of the fact that a large number of countries had so far legislated in the field of copyright with the assistance of the International Bureau of WIPO.

31. Concerning the strengthening of infrastructural facilities in developing countries for effective protection of copyright, a number of delegations pledged their support to cooperate with this activity and commended the need for continual cooperation with concerned international organizations for the establishment and operation of such structures.

32. With regard to the training programs, the delegation of Hungary commended the usefulness of the system of bilingual courses which enabled various groups of developing countries with different approaches to copyright to come together and exchange their experiences. Its country would continue organizing each third year a bilingual course in Budapest in cooperation with WIPO; next time in 1988. The delegations of the Federal Republic of Germany and Sweden felt that while this might be desirable, it was also necessary to keep the extra financial implications in view.

33. The delegation of Australia said that the government of its country looked forward to hosting together with WIPO a program for the Asia and Pacific region in its country.

34. The delegations of Algeria and India said they had fully participated in this program by exchanging trainees, i.e. having their officials participate in these courses and receiving WIPO trainees in their countries.

35. The delegation of the United Kingdom, while fully supporting this program which it regarded as valuable and imaginative, stated that any sizable extension in the activities had to be studied in the context of financial implications.

36. The delegation of Italy while stressing the need for establishment of infrastructures for the implementation of copyright laws suggested associating experts also from non-governmental organizations in this effort.

37. The observer from the International Publishers Association (IPA) suggested that, in addition to the concerned officials from developing countries, such training activities should also extend to cover other interested circles including publishing officials, particularly in the field of collective management.

38. A number of delegations also expressed appreciation of the high quality and usefulness of the guides published by WIPO and other WIPO publications brought out in different languages.

39. The delegation of Japan drew attention to the fact that the *Glossary of Terms of the Law of Copyright and Neighboring Rights* also existed in a trilingual edition in English, French and Japanese.

40. The International Bureau of WIPO expressed satisfaction at the considerable interest shown by the Committee in these activities and thanked most warmly the various countries and organizations for their contributions to the training program of WIPO and noted the offer of certain delegations to continue receiving WIPO trainees.

Information on the WIPO International Forum on the Collective Administration of Copyrights and Neighboring Rights

41. Discussions were based on document B/EC/XXVII/5.

42. The Committee was informed about the discussions in, and the declaration adopted by, the Forum on the Collective Administration of Copyrights and Neighboring Rights held in Geneva in

May 1986, as well as about the intention of the International Bureau of WIPO to prepare, in cooperation with international non-governmental organizations concerned and with the help of consultants, a report on the collective administration of copyrights and neighboring rights in the forthcoming program period, that is in the 1988-89 bienium.

43. The delegation of Canada informed the Committee that the government of its country had introduced a bill to amend and modernize the Copyright Act. The proposed amendments represented the first stage of copyright reform in Canada and addressed a range of issues, including the collective administration of copyright. The proposed amendments covered in particular the following items:

— Recognizing that collective management of copyright benefits both owners and users, encouragement is provided to promote the creation of new collective administration bodies in all areas of copyright in addition to the existing musical performing rights societies.

— The jurisdiction of the Copyright Board will be extended to cover all collective administration systems.

— Explicit copyright protection is being extended to computer programs.

— Increased criminal penalties are to be enacted to deter piracy, providing for fines of up to one million dollars and prison terms of up to five years.

— The relationship between copyright and industrial design is to be clarified.

— Moral rights are to be expanded and protected as strictly as economic rights.

— All choreographic works, whether they have a dramatic plot or story line or not, are to be protected.

— Compulsory licenses for sound recordings are to be abolished.

— A new right, the right to exhibit artistic works in public, is being introduced.

These amendments would mark the first substantive changes to Canada's copyright legislation in more than 60 years. Further amendments would be introduced by the government as soon as legislative drafting was completed.

44. The delegation of the Federal Republic of Germany paid tribute to WIPO for having organized the Forum. It stressed the importance of well-functioning collective administration bodies in any copyright system and expressed the view that where the introduction and the development of

copyright laws were promoted in developing countries, it should also include the establishment of such bodies.

45. The delegation of Spain said that in the framework of the draft Law on Intellectual Property the provisions on collective administration of copyrights would also be revised. So far the General Society of Spanish Authors (*Sociedad General de Autores de España* (SGAE)) had been an organization in a kind of monopolistic position to administer authors' rights. The draft law provided for the possibility of establishing various collective administration bodies which met the conditions determined by the law. An Arbitration Committee would also be set up to decide in the case of disputes between such bodies and the associations of users of protected works.

46. The delegations of Bulgaria and Japan stressed the importance of the Forum on Collective Administration in promoting a better awareness of the indispensable nature of appropriate collective administration systems in all cases where works and other productions protected by copyright and neighboring rights were massively used.

47. In answering a question raised by the delegation of Bulgaria, the representative of the Director General of WIPO said that the report mentioned in paragraph 42 above would explore various aspects of collective administration of copyrights and neighboring rights but would not necessarily include yet principles to be offered as guidance for national legislators and governments. Such principles, however, had been already suggested in the framework of the memoranda prepared by the Secretariats for the meetings of the Committee of Governmental Experts on Audiovisual Works and Phonograms held in Paris in June 1986, and of the Committee of Governmental Experts on Dramatic, Choreographic and Musical Works held in Paris in May 1987, concerning the collective administration of certain rights in connection with those works. He stressed that neither those principles nor those which might emerge as a result of the report on collective administration would be of any binding nature for national legislators and governments.

48. The Committee noted the information presented to it and, particularly, the plans of the International Bureau of WIPO to prepare a report on the questions of collective administration of copyrights and neighboring rights.

PART II: ITEMS CONCERNING BOTH THE
EXECUTIVE COMMITTEE OF THE BERNE UNION
AND THE INTERGOVERNMENTAL
COPYRIGHT COMMITTEE

**Membership of the International Convention for the
Protection of Performers, Producers of Phonograms
and Broadcasting Organizations (Rome Con-
vention)**

49. Discussions were based on documents B/EC/XXVII/6 and 6 Add. – IGC(1971)/VII/9 and 9 Add.

50. The Committees were informed that since the 1985 sessions three States, Dominican Republic, France and Monaco, had deposited their instruments of accession, bringing to 31 the number of States party to the Rome Convention.

51. The delegation of the Netherlands stated that a bill was under consideration by relevant legislative bodies in its country, envisaging the ratification of the Rome Convention and that a decision would probably be taken in the near future.

52. The delegation of Spain said that the new Law on Intellectual Property would probably be adopted in some months' time. In addition to provisions on the protection of authors' rights, it would also contain provisions on the protection of neighboring rights. It added that when the new Law was adopted, the possibility of ratifying the Rome Convention would be studied.

53. The delegation of Japan indicated that a governmental committee was considering the possibility of ratifying the Rome Convention and that discussions were in their final stage.

54. The delegation of Australia mentioned that the Copyright Law Review Committee had been asked by the government to examine the question whether legislation should be introduced in its country dealing with the protection of performers. The delegation also noted that the Committee had completed its report in May 1987 and that the forthcoming federal elections had delayed the consideration of it by the government.

55. The Committees noted the information presented to them.

**Membership of the Convention for the Protection of
Producers of Phonograms Against Unauthorized
Duplication of Their Phonograms (Phonograms
Convention)**

56. The discussions were based on document B/EC/XXVII/7 – IGC(1971)/VII/10.

57. The Committees were informed that since their last joint sessions in 1985, the *status quo* had been maintained concerning the membership of the Phonograms Convention; the number of States having deposited their instruments of accession, ratification or acceptance had remained 39.

58. The delegation of the Netherlands stated that its country intended to ratify the Phonograms Convention and that the decision about the relevant bill would be taken in the near future.

59. The delegation of the United States of America emphasized the importance of the Phonograms Convention as an efficient instrument to fight against piracy. It said that the Secretariats should continue efforts to promote the ratification of the Convention by further States.

60. The Committees noted the information communicated to them.

**Membership of the Convention Relating to the Dis-
tribution of Programme-Carrying Signals Transmitted
by Satellite (Satellites Convention)**

61. Discussions were based on document B/EC/XXVII/8 – IGC(1971)/VII/11.

62. The Committees were informed that since their 1985 sessions one State, Panama, had deposited its instrument of accession to the Satellites Convention, bringing the number of States party to that Convention to 11.

63. The Committees noted the information communicated to them.

**Membership of the Multilateral Convention for the
Avoidance of Double Taxation of Copyright Royalties**

64. Discussions were based on document B/EC/XXVII/9 – IGC(1971)/VII/12.

65. The Committees were informed that since their last sessions in 1985, no instrument of accession to, or ratification or acceptance of, the Multilateral Convention for the Avoidance of Double Taxation of Copyright Royalties had been deposited.

66. The Committees noted this information.

Progress Report on the Committees of Governmental Experts on Different Categories of Works

67. Discussions were based on document B/EC/XXVII/10 – IGC(1971)/VII/13.

68. The Committees were informed about the Committees of Governmental Experts on various categories of works having been convened so far and to be convened in the rest of the 1986–87 biennium, and also about the intention of the Secretariats to amend the principles and the comments discussed by those Committees and submit the modified principles and comments to a Committee of Governmental Experts to be convened in the 1988–89 biennium for re-examination, perfection and consolidation.

69. The delegation of France stressed that the working document to be prepared for the planned Committee of Governmental Experts to be convened in the 1988–89 biennium should also deal with certain questions not yet discussed, taking into account certain new developments in technology and practice. It mentioned two such questions. The first was the existence of a new generation of satellites in the case of which the distinction between fixed service satellites and direct broadcasting satellites had become less clear. The second question concerned the ever more widespread practice of interrupting cinematographic films in television programs for advertisements and the implications of such a practice in regard of the protection of moral rights.

70. The delegation of Algeria commended the Secretariats for having a new approach to the questions of copyright and neighboring rights. It stressed the importance of the principles to be adopted in contributing to a better awareness of preferable solutions in the field of new uses emerging with technological development and to the harmonization of national laws.

71. The delegation of the United States of America expressed the opinion that the new approach to copyright problems in face of technological developments was very useful. It added that the document which would be prepared for the Committee of Governmental Experts to be convened in the 1988–89 biennium should reflect all the views and interests involved and should be transmitted to the member States well in advance to allow them to study it and make comments.

72. The delegation of Italy shared the opinion according to which the new approach to copyright problems was fruitful and would contribute to the

harmonization of national legislations. It also pointed out the problem of the protection of moral rights in cinematographic works when used in television.

73. The delegation of Australia said that its government followed with great interest the results of the meetings of Committees of Governmental Experts on various categories of works. A number of principles discussed by these Committees were relevant for possible future legislation in its country. This was particularly true in respect of the meeting on works of applied art because in that field possible changes in the law of its country were just under consideration.

74. The Committees noted the information communicated to them.

Development of Law and Practice Connected with the Transmissions by Cable of Television Programs

75. Discussions were based on documents B/EC/XXVII/11, 11 Add. and 11 Supp. – IGC(1971)/VII/14, 14 Add. and 14 Supp.

76. The Committees were informed that, in accordance with the wish reiterated at their 1985 sessions to continue to monitor new developments in the field of transmissions by cable of television programs, the Secretariats had collected information on the development of law and practice connected with this domain, which was reported in the documents mentioned above. The supplementary document contained extracts of national laws in relation with transmission by cable which had been promulgated since the 1985 sessions of the Committees.

77. The delegation of the Netherlands announced that after some court decisions by which cable diffusion had been qualified as a public communication within the meaning of the Copyright Act of the Netherlands, collective agreements had been concluded between owners of copyright and neighboring rights, on the one hand, and cable operators, on the other. Those agreements had been renewed recently. It stressed that the example of its country showed that contractual solutions were completely satisfactory in this field.

78. The delegation of Japan agreed with the proposal of the Secretariats to continue to follow new developments which could occur in relation with cable transmissions.

79. The observer from the International Confederation of Societies of Authors and Composers

(CISAC) suggested that in future documents more attention should be paid to the application and implementation of the rights concerned and that the international non-governmental organizations should also be contacted, as some of them had great experience in this field. The delegation of France supported this suggestion and said that in the future the Secretariats should send circular letters concerning cable retransmissions not only to governments, but also to international non-governmental organizations.

80. The Committees noted the information given to them and expressed the view that the studies in this field would continue as suggested by the Secretariats.

Examination of Draft Guiding Principles Concerning the Operation of "Droit de Suite"

81. Discussions were based on document B/EC/XXVII/12 – IGC(1971)/VII/15.

82. The Committees were informed of the latest developments in this field, particularly of the fact that since their sessions in 1985, the questions of the "*droit de suite*" had also been studied by the Committee of Governmental Experts on Works of Visual Art at its meeting held in Paris in December 1986.

83. The delegation of the Federal Republic of Germany commended the Secretariats for having taken up such a relatively important and, at the same time, fairly neglected subject. It added that in the future greater attention should be paid to the practical application of the "*droit de suite*" and the experience of collective administration bodies should be widely utilized.

84. The delegation of the United States of America informed the Committees that for the time being the "*droit de suite*" was only recognized in certain States of its country (for example, in California), but that during the last congressional period, a bill had been introduced for the recognition of this right at the federal level and that hearings had been held on this subject. It was highly probable that a new bill would be introduced in the near future in the new Congress.

85. The delegation of the Soviet Union said that the question of the introduction of the "*droit de suite*" was also discussed by the Commission which was dealing with the revision of the Soviet Copy-

right Law. It stressed that the most fundamental question that should be answered seemed to be the problem of practical application of such a right, particularly the method of monitoring transactions.

86. The delegation of the United Kingdom mentioned that the "White Paper" containing recent proposals of the government of its country concerning intellectual property legislation had rejected the idea of introducing the "*droit de suite*" because it had been thought that the undesirable influence of such a right on the market and the cost and complexity of its application would outweigh its possible advantages.

87. The delegation of Italy said that in its country the principle of extra value applied in respect of the "*droit de suite*" had not brought good results. It was foreseen that this principle would be eliminated and a new version of the "*droit de suite*" would be introduced which could be more flexible and could be applied with less difficulty. The delegation also expressed the fear that the lack of harmonization at the international level could lead to shifting certain transactions to foreign markets.

88. The delegation of the Netherlands stated that its government did not intend to propose the introduction of the "*droit de suite*" into the copyright legislation of its country because of the practical disadvantages of such rights.

89. The delegation of Australia said that there were no current plans to introduce the "*droit de suite*" into the legislation of its country, but the government had asked the Australian Copyright Council to examine whether such a step would be appropriate or not.

90. The delegation of Switzerland mentioned that during the recent legislative studies, the idea of introducing the "*droit de suite*" had been rejected for three reasons: first, because authors did not seem to be interested in such a right; second, because of the foreseeable practical difficulties of its application; and third, because of the fear that the market would be negatively influenced by the existence of such a right.

91. All the participants who took the floor on this item were of the opinion that it would be useful if the Secretariats could collect information on the practical application of the "*droit de suite*" and submit a report about this matter to the next sessions of the Committees.

Development of Law and Practice Connected with the Protection of Computer Programs

92. Discussions were based on documents B/EC/XXVII/13 and 13 Add. — IGC(1971)/VII/16 and 16 Add.

93. The attention of the Committees was drawn to the most important elements of the information contained in the two documents which had been based on answers received from governments to the circular letter issued by the Secretariats.

94. A number of participants stressed the importance of the question of copyright protection of computer programs and congratulated the Secretariats on having convened the Group of Experts dealing with it.

95. The delegation of the United States of America stated that there was a growing consensus at the international level that copyright was the most appropriate means for the protection of computer programs. It added that the experience of its country where computer programs had been protected as literary works by copyright for 20 years showed that copyright protection was really an efficient means for balancing various interests. Even if there were some litigations on certain details, this system was workable. It suggested that further efforts should be made to exchange information on the development of jurisprudence and to harmonize national laws on the basis of copyright. It should also be clarified how international copyright conventions were applicable.

96. The delegation of Canada said that there had been several court decisions recently which had declared that computer programs were protected by copyright even if one of the most important decisions was still under appeal. To make the legal situation completely clear, a bill was under consideration which would protect computer programs as literary works for the life of the authors plus 50 years. There were exceptions to authors' rights: the first was that the owners in lawful possession of copies of programs would be allowed to alter or adapt the programs to suit personal needs; and the second was to allow a limited making of back-up copies.

97. The delegation of India referred to the 1984 Amendment made to the copyright legislation of its country by which computer programs were qualified as literary works.

98. The delegation of Japan mentioned that on April 1, 1987, a new law had entered into force in

its country on the voluntary registration of computer programs.

99. The delegation of Sweden said that in its country in 1985 a committee for the revision of the copyright law had proposed that a mention of computer programs as a category of literary works should be added to the Copyright Act. The discussions were not, however, over on these matters; one of the questions was to determine whether or not private reproduction of computer programs should be prohibited, which also invoked the problem of the definition of private copying. The delegation added that the efforts to harmonize the laws in the Nordic countries in this field should also be taken into account and indicated that the new draft legislation would probably be submitted to Parliament in the first part of 1988.

100. The delegation of Algeria stated that no decision had been taken in its country to protect computer programs either by copyright or by industrial property. It stressed that computer programs could be considered as fitting within the notion of works protected by copyright, but could also be considered as technical instruments. It mentioned the possibility of *sui generis* protection as another system that could be a possible solution for its country.

101. The delegation of the Federal Republic of Germany stated that if computer programs are protected by copyright, the various criteria of copyright protection should be respected. The greatest problem was that of the appreciation of originality as a condition of protection by the courts. If the standards for determining what was original were set very high, there were necessarily fewer computer programs that would enjoy protection by copyright and this could lead to legal uncertainty. It added that it would be very interesting to follow the evolution of court decisions in other countries in this respect.

102. The delegation of Switzerland shared the opinion expressed by the delegation of the Federal Republic of Germany concerning the problem of originality in respect of computer programs and concerning the fact that the role of the courts to decide about this condition of protection might lead to legal uncertainty. For this reason, the possibility of a *sui generis* protection should also be taken into account in national legislation. It also emphasized that efforts should be made towards international harmonization of the protection of computer programs.

103. The delegation of Italy informed the Committees that there was no *expressis verbis* provision in the copyright law of its country on computer programs. Court decisions had nevertheless considered that computer programs were protected as scientific works and video games as cinematographic works. It added that a draft law on this question was under preparation by its government.

104. The delegation of the Soviet Union said that in its country specialists were studying the various ways of protecting computer programs and that there was no unanimous opinion for the time being, even if many experts thought that *sui generis* protection would be the best solution.

105. The delegation of Finland announced that a draft bill had been prepared in its country in April 1987, in which computer programs were considered as literary works. The draft is now in the hands of the Ministry of Education and a draft law would, foreseeably, be presented to the Parliament in 1988.

106. The delegation of Austria said that it would like to be provided with practical experiences of States having parallel protection of microchips and of computer programs embodied in the microchips.

107. The delegation of Australia supported the Secretariats' proposal to continue to follow the development of law and practice concerning computer programs. It asked whether it was appropriate to leave open the possibility of holding a meeting of governmental experts before the next joint sessions of the two Committees. In response it was noted by the Secretariats that no meeting was envisaged due to the fact that since the last such meeting held in Geneva in February–March 1985, the law and practice in this area had been continuing to develop without producing any new elements that would call for a new meeting in the forthcoming program period.

108. The observer from the International Publishers Association (IPA) pointed out that in this field practical experience should also be taken into account, especially as regarded the contractual aspects.

109. Several participants who took the floor congratulated the Secretariats on the informative document and stressed the need of continuing to follow new developments in this field at the national and international levels and to report on them to the Committees.

110. The Committees noted the information communicated to them and, particularly, the plans of the Secretariats to continue studying this question.

Model Provisions for National Laws on Publishing Contracts for Literary Works

111. Discussions were based on document B/EC/XXVII/14 – IGC(1971)/VII/17.

112. The Committees were informed about the discussions at the meeting of the Committee of Governmental Experts on Model Provisions for National Laws on Publishing Contracts for Literary Works held in Paris in December 1985. It was mentioned that the Committee had not agreed on the text of the draft model provisions prepared by the Secretariats, and had noted with approval that the Secretariats would not publish any text expressing the views of the Committee. It was also mentioned that, while several delegations had emphasized the importance of the role of draft model provisions, for example, for developing countries, several other delegations had opposed the attempts to draw up detailed model provisions and had stressed that the great differences in the legal, economic and social systems and conditions of various countries would make such an undertaking unrealistic.

113. The delegation of Hungary stressed the sensitive and controversial nature of the issue involved. It expressed the view, however, that the controversial nature of the subject did not deprive it of its topicality; on the contrary, it seemed to constitute one more reason for paying attention to authors' contracts. The meeting of the Committee in December 1985 had been attended by 61 governmental experts from 41 countries and by a great number of observers. The Committee had not dropped the issue; it had rather given new hints to the Secretariats as to the further development of the subject and had also noted in its report that the Secretariats intended, in due course, to seek the necessary authorization from their Governing Bodies to convene another session of the Committee of Governmental Experts which would further consider the matter and that the Secretariats would submit the report of that meeting of the Committee to the next joint sessions of the Committees of the two Conventions concerned. The delegation referred, in particular, to four legal facts evidencing the necessity of dealing with authors' contracts: first, that more than 120 countries had already legislated—even if in different ways—on minimum guarantees of authors' interests concerning their contracts with users; secondly, many countries hav-

ing already legislated on authors' contracts, considered further development of their relevant laws; thirdly, in countries which had not yet legislated on the subject, courts were increasingly requested to provide protection for authors against unfair conditions imposed on them under the umbrella of the freedom of contract; fourthly, the entire law of contracts had considerably developed on a worldwide scale from the 19th century's unqualified freedom of contract doctrine in the direction of ensuring just and reasonable balance of the freedom of the contracting parties, on the one hand, and minimum guarantees of fairness, on the other. The delegation suggested that governmental experts should explore certain basic principles of contracts to be concluded by authors with users who had in general stronger bargaining power. One should not forget that even collective administration had to be performed largely in consideration of individual contracts concluded by authors and music publishers. Finally, the delegation suggested that the document to be prepared for the December 1987 meeting on copyright aspects related to the printed word should also extend to questions of authors' contracts for publishing.

114. The delegations of Bulgaria and the Soviet Union and the observer from the International Confederation of Authors and Composers (CISAC) also stressed that some guidance for national legislators would be useful concerning copyright contracts and, particularly, in respect of publishing contracts, and that the regulation of certain aspects of such contracts was not a restriction of contractual freedom but just a guarantee for authors to be able to remain free to include in their contracts such conditions as they found appropriate and reasonable. They supported the proposal of the delegation of Hungary for the continuation of studies and for attempts at trying to work out some principles. The delegation of Bulgaria added that any principles that might be elaborated should not be too detailed and should be flexible enough.

115. The delegation of the Federal Republic of Germany expressed the view that one of the reasons for the failure of the December 1985 Committee on Model Provisions for Publishing Contracts was that the majority of the participants had thought that the legal regulation of contracts might be detrimental to the publishing business, and it drew attention to the fact that in its country such regulation was an old tradition without any detrimental impact on publishing. The delegation stressed, however, that any guidelines that might be adopted in this field should be of general and flexible nature without unnecessary details.

116. The delegation of Italy was also of the opinion that the main reason for the failure of the December 1985 Committee of Governmental Experts was that the proposed model provisions were unnecessarily detailed. The delegation stressed that the author, as the weaker partner in copyright contracts, should be protected by the law and by the courts; the steps necessary for such a protection differed, however, from country to country. This question could only be settled at the national level. At the international level, some general orientation might be useful, but the elaboration of model provisions was not a realistic program.

117. The delegation of Algeria, while accepting and supporting the idea that the authors' interests should be protected in the field of contractual practice, stressed that a unilateral approach which took into account only the authors' interests would not be justified. Without publishers, authors could not publish, therefore any legislation in this field should provide an appropriate balance between the interests of authors and those of publishers.

118. The delegations of Cameroon and Mexico stressed the importance of regulating certain conditions of authors' contracts in developing countries. The delegation of Cameroon added that in such countries, users were very frequently State-owned bodies and in relation to them authors might be completely defenseless if there were no legislative protection.

119. The delegation of Mexico informed the Committees that the Copyright Law of its country contained provisions on contracts for the publication of books and other printed works.

120. The delegations of France and the United States of America were of the opinion that model provisions for national laws could not reach the objectives they intended to achieve. Some provisions (such as some presumptions and general rules of interpretation of authors' contracts) might be useful, but it was only at the national level that one could decide what provisions were appropriate in the specific legal system, under the particular economic and social conditions.

121. The delegations of Australia, Switzerland and the United Kingdom also opposed the idea of any model provisions on authors' contracts for national legislations. The delegations of Australia and the United Kingdom said that no further studies seemed necessary in this field, while the delegation of Switzerland was of the view that some guidance might be useful for developing countries in the framework of the development cooperation program of Unesco and WIPO.

122. The observer from the International Publishers Association (IPA) stressed that if Unesco and WIPO intended to continue any activities in this field, the approach followed in the document prepared for the December 1985 Committee of Governmental Experts should be abandoned. Instead of trying to offer detailed model provisions for national legislators, it would be more realistic to restrict any possible study to some general principles. He added that one should also take into account that legislation was not the only possible means to protect authors' interests in the field of publishing contracts. In several countries, copyright agencies, authors' associations or similar bodies offered full guarantee for the efficient protection of those interests without any legislative intervention and it could not be alleged that publishers were in a stronger bargaining position than such agencies and associations were.

123. The observer from the International Confederation of Societies of Authors and Composers (CISAC) indicated that in the past CISAC and IPA had discussed certain questions concerning publishing contracts and found that the types of contracts differed from country to country. Nevertheless, CISAC had worked out certain model provisions which were available on request.

124. The Committees noted the information submitted to them and suggested that the Secretariats take into account the comments made by the participants for their possible future activities.

Model Provisions for National Laws on Employed Authors

125. Discussions were based on document B/EC/XXVII/15 – IGC(1971)/VII/18.

126. The Committees were informed about the results of the meeting of the Committee of Governmental Experts on Model Provisions for National Laws on Employed Authors held in Geneva in January 1986, and, particularly, about the fact that even if the Committee had adopted alternatives "A" and "B" of the model provisions, some participants in the meeting had expressed the belief that those model provisions were not yet ripe for dissemination.

127. The delegations of Bulgaria and Cameroon stressed the need for some legislative regulation in favor of employed authors who were, in general, in a weak position in relation to employers. The delegation of Bulgaria added that the model provisions adopted by the Committee of Governmental Ex-

perts should not be deemed as the only alternatives for national laws; further variants were also possible. The study of such further variants would be useful. The delegation drew the attention of the Committees to the fact that the questions of the status of employed authors and employed inventors would also be studied by a Committee in the framework of the program of the International Labour Organisation (ILO) in Geneva, in November 1987.

128. The delegation of Switzerland said that the model provisions worked out by the Committee of Governmental Experts had only outlined two basic solutions but that it was far from being sure that those were the only possible alternatives for national laws. The completely opposing nature of the two alternatives, at the same time, indicated that it would not be practical to try to elaborate some generally acceptable detailed model provisions in this field. The delegation of Austria and the observer from the International Confederation of Societies of Authors and Composers (CISAC) were of the same opinion and they also expressed the view that the model provisions were not suitable to be offered to national legislators as generally applicable guidance.

129. The delegation of Japan raised the question whether there was not any unnecessary duplication in this field between the activities of Unesco and WIPO, on the one hand, and those of ILO, on the other, taking into account the fact that ILO would organize a separate meeting on this subject in November 1987.

130. In answering this question, the Secretariat said that no duplication of activities existed in this field because Unesco and WIPO had studied the status of employed authors from the viewpoint of the protection of their rights under the copyright conventions and laws, while the ILO meeting would deal with the labor law aspects of the situation of employed authors and inventors.

131. The Committees noted the information presented to them.

PART III: OTHER ITEMS CONCERNING THE COMMITTEE ALONE

Date and Place of the Next Extraordinary Session

132. Referring to the practice of the Executive Committee of the Berne Union and the Intergovernmental Copyright Committee of holding some

of their meetings jointly and, in the absence of an invitation from a State, either at WIPO or Unesco headquarters, the representative of the Director-General of Unesco, noting that the current sessions had been held in Geneva, invited the two Committees to hold their next joint sessions at Unesco headquarters in Paris in 1989.

133. The Committees left it to their Secretariats to fix the most appropriate date in accordance with their respective Rules of Procedure.

Adoption of the Report

134. The Executive Committee of the Berne Union unanimously adopted this report.

Closing of the Session

135. After the usual thanks, the Chairman declared the session closed.

LIST OF PARTICIPANTS

I. States Members of the Committee

Canada: G.F. Redling; D. Guay. Chile: R. Sateler. Czechoslovakia: J. Karhanová; P. Murin; M. Jelinek; J. Kordač. France: A. Kerever; R. Lecat; M. Bouleau; N. Renaudin; S. Sayanoff-Levy. German Democratic Republic: E. Kubilus. Hungary: G. Boytha. India: M. Ahuja. Mexico: O. Garrido-Ruiz; V. Blanco Labra. Morocco: A. Kandil. Netherlands: L.M.A. Verschuur de Sonnaville. Senegal: B. Ndoye. Sweden: K. Hökborg; A. Mörner. Switzerland: C. Govoni. Tunisia: H. Boufarés. Turkey: A. Algan; F. Dogan. United Kingdom: D.M. Haselden; N. Steinitz. Venezuela: H.C. Azócar.

II. Observer States

Members of the Berne Union

Argentina: N. Fasano. Australia: R. Burns. Austria: R. Ditrach. Brazil: R. Stille. Bulgaria: Y. Markova; A. Angelov; G. Sarakinov. Cameroon: D.Y. Epacka. Denmark: B. Lidegaard. Finland: J. Liedes. Germany (Federal Republic of): M. Möller. Guinea: A. Diaby; O. Kaba; S. Kourouma. Holy See: O.J. Rouillet. Israel: R. Cohen. Italy: M.G. Fortini; G. Aversa; M. Fabiani. Japan: Y. Oyama. Lebanon: H. Hamdane. Luxembourg: F. Schlessler; E. Emringer. Pakistan: M.A. Khan. Philippines: D.P. Meñez. Poland: T. Drozdowska. Spain: M. Perez del Arco. Uruguay: R. González-Arenas. Zaire: M.-G. Engwanda; Y.K. Kuntala.

III. Other States

Algeria: S. Abada; L. Bounekraf. China: Shen Rengan; Qi Yanfen. Colombia: L.F. Paredes-Zapata. Jamaica: R.A.

Smith. Oman: F. Al-Ghazali. Peru: C. Medina. Qatar: Y. Darwish. Republic of Korea: Y.K. Cho; K.H. Lee. Saudi Arabia: M. Al Khudair. Soviet Union: R.M. Gorelik; S. Berzyny. United Arab Emirates: A.A. Al Madfaa; A.A. Al Burahma. United States of America: R. Oman; L. Flacks; D. Beier; M.T. Gerson.

IV. Specialized Agencies of the United Nations System of Organizations (Representatives)

International Labour Organisation (ILO): C. Privat. United Nations Educational, Scientific and Cultural Organization (UNESCO): A. Amri; E. Guerassimov.

V. Intergovernmental Organizations (Observers)

Agency for Cultural and Technical Cooperation (AGE-COOP): G.A. Agboton. Arab League Educational, Cultural and Scientific Organization (ALECSO): A. Derradji. Council of Europe (CE): A. Drzemczewski. European Free Trade Association (EFTA): L. Olafsdottir. League of Arab States (LAS): Z. Tili.

VI. International Non-Governmental Organizations (Observers)

European Broadcasting Union (EBU): M. Burnett. International Alliance for Distribution by Cable (AID): G. Moreau. International Association of Conference Interpreters (AIIC): J.-D. Katz. International Bureau of Societies Administering the Rights of Mechanical Recording and Reproduction (BIEM): A.J. Vacher-Desvernaix. International Confederation of Free Trade Unions (ICFTU): I. Robadey. International Confederation of Societies of Authors and Composers (CISAC): J.-A. Ziegler. International Copyright Society (INTERGU): V. Movsessian. International Federation of Film Producers Associations (FIAPF): A. Brisson. International Federation of Journalists (IFJ): S.O. Grønson. International Federation of Musicians (FIM): Y. Burckhardt. International Federation of Translators (FIT): J. Delpierre; M. Wieser. International Federation of Phonogram and Videogram Producers (IFPI): I.D. Thomas; G. Davies. International Literary and Artistic Association (ALAI): J.-A. Ziegler. International Publishers Association (IPA): J.-A. Koutchoumow; C. Clark. International Secretariat for Arts, Mass Media and Entertainment Trade Unions (ISETU/FIET): I. Robadey. International Union of Architects (IUA): J. Duret.

VII. Secretariat

World Intellectual Property Organization (WIPO)

A. Bogsch (*Director General*); H. Olsson (*Director, Public Information and Copyright Department*); S. Alikhan (*Director, Developing Countries Division (Copyright)*); M. Ficsor (*Director, Copyright Law Division*); P. Masouyé (*Legal Officer, Copyright Law Division*); H. Nguyen Quang (*Program Officer, Developing Countries Division (Copyright)*).

**Intergovernmental Committee
of the International Convention for the Protection of Performers,
Producers of Phonograms and Broadcasting Organizations
(Rome Convention, 1961)**

Eleventh Ordinary Session

(Geneva, July 1 to 3, 1987)

REPORT

submitted by the Secretariat and adopted by the Committee

Introduction

1. The Intergovernmental Committee of the International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations (Rome Convention, 1961) (hereinafter referred to as "the Committee"), convened in accordance with paragraph 6 of Article 32 of that Convention and Rule 10 of the Rules of Procedure of the Committee, held its Eleventh Ordinary Session at WIPO headquarters, in Geneva, from July 1 to 3, 1987.

2. Nine member States of the Committee (Austria, Czechoslovakia, Finland, Germany (Federal Republic of), Italy, Mexico, Norway, Sweden, United Kingdom) were represented. The government of one State party to the Rome Convention but not a member of the Committee (Denmark) and 15 States not party to the Rome Convention (Argentina, Australia, Bangladesh, Bulgaria, China, Côte d'Ivoire, Egypt, France, India, Japan, Lebanon, Netherlands, Spain, Turkey, United States of America) were represented by observers.

3. Nine international non-governmental organizations (European Broadcasting Union (EBU), International Alliance for Distribution by Cable (AID), International Bureau of Societies Administering the Rights of Mechanical Recording and Reproduction (BIEM), International Confederation of Societies of Authors and Composers (CISAC), International Federation of Actors (FIA), International Federation of Film Producers Associations (FIAPF), International Federation of Musicians (FIM), International Federation of Phonogram and Videogram Producers (IFPI), International Secretariat for Arts, Mass Media and Entertainment Trade Unions (ISETU/FIET)) attended the session as observers.

4. The list of participants follows this report.

Opening of the Session

5. Mrs. M. Möller, head of the delegation of the Federal Republic of Germany, as outgoing Chairman, opened the session.

6. The representative of the Director General of WIPO welcomed all the participants. The representatives of the Directors-General of ILO and Unesco also welcomed all the participants and thanked WIPO for acting as host to the current session of the Committee.

Election of Officers

7. Following a proposal made by the delegation of Austria and seconded by the delegation of Italy, Mr. M. Jelinek of the delegation of Czechoslovakia, was unanimously elected Chairman. Mr. J. Lienes, head of the delegation of Finland, and Mr. A. Arriazola, head of the delegation of Mexico, were elected Vice-Chairmen.

Adoption of the Agenda

8. The provisional agenda (document ILO/UNESCO/WIPO/ICR.11/1) was adopted unanimously by the members of the Committee.

Membership of the Rome Convention: State of Accessions, Ratifications and Acceptances; Consideration of Measures to Promote Wider Adherence to the Convention

9. Discussions were based on documents ILO/UNESCO/WIPO/ICR.11/2 and 2 Add.

10. The Secretariat drew attention to the accession of the Dominican Republic, France and Monaco to the Rome Convention which brought the total number of States party to it to 31. The draft memorandum to be distributed for the promotion of further accession to the Rome Convention was also introduced in detail.

11. The delegation of the Federal Republic of Germany stated its optimism as regards the prospects for future ratifications and ever wider acceptance of the Convention throughout the world even though the number of countries party to the Convention was still relatively low.

12. The delegation of Austria shared the optimism of the delegation of the Federal Republic of Germany and emphasized the "pioneer" nature of the Convention whose success could be measured on the basis of the fact that, since its adoption, a great number of countries had introduced adequate legislation under its influence.

13. The delegation of Italy stated that the number of countries party to the Rome Convention was not yet satisfactory; it grew too slowly and, paradoxically, while 18 developing countries had ratified it, only 13 industrialized countries had done so. One of the reasons for that fact might be the existence of too many possibilities for reservations under the Convention and the lack of homogeneity at the level of national laws which made adherence to the Convention less attractive. No revision of the Convention seemed to be advisable for the time being, but steps were necessary to make the application of the Convention more homogenous. The delegation suggested that the reasons for poor acceptance of the Rome Convention should be further studied by the Secretariat. The delegations of Argentina and Spain and the observers from the International Confederation of Societies of Authors and Composers (CISAC), the International Federation of Actors (FIA) and the International Federation of Musicians (FIM) supported this suggestion.

14. The delegation of Mexico, while emphasizing the important role of the Rome Convention, regretted that, in spite of the fact that nearly half of the countries party to the Rome Convention were Latin American, only two countries from the region took part in the work of the Intergovernmental Committee, and expressed the hope that the position would be rectified in the future.

15. The delegation of Italy also pointed out that for certain countries, which attach particular importance to the protection of folklore, adherence to the Convention could be valuable to safeguard artistic expressions of folklore and would in fact indirectly protect them against illicit reproduction and against distortion. By protecting recordings, protection is granted to the works and artistic contributions which are recorded, including expressions of folklore which in themselves are in the public domain.

16. The delegation of Argentina mentioned one reason which, at least in its country, had emerged as an obstacle to adherence to the Rome Convention. It was the strong resistance of authors' organizations to the idea of such adherence. The cause of the resistance was the fear that after the introduction of certain rights in favor of performers and phonogram producers, the income of authors would be decreased. The delegation added, however, that a change of attitude was now taking place and its government was considering adherence to the Rome Convention.

17. The observer from the International Confederation of Societies of Authors and Composers (CISAC) said that his organization had never prevented the adherence of any country to the Rome Convention, having neither the competence nor the power to do so. The only concern of his organization was that Article 1 of the Rome Convention according to which protection granted under the Convention should leave intact the protection of copyright in literary and artistic works should not be considered only as a simple statement of principle, but should also be fully respected.

18. The observer from the International Federation of Musicians (FIM) speaking also on behalf of the International Federation of Actors (FIA) said that in their view there are three main reasons for the slow development of acceptance of the Rome Convention. The first is that certain economic interests were overwhelmingly considered by governments; the second was a kind of fear of consumers whose influence was important in a number of countries and the third was that governments and legislators preferred certain simplistic solutions into which new rights for performers would not fit automatically. He expressed the view that even if a revision of the Convention might be premature some steps should be taken for increasing, updating and strengthening the international standard of the protection of performers and other beneficiaries of the so-called neighboring rights. An appropriate form for this could be the elaboration of a new version of the Model Law concerning the protection of

performers, producers of phonograms and broadcasting organizations adopted in 1974. The delegation of Finland supported the suggestion for updating of the Model Law.

19. The delegation of France expressed satisfaction that its country was now among those which were party to the Rome Convention and said that it was ready to actively promote the most appropriate protection of performers, producers of phonograms and broadcasting organizations both at the national and the international levels. Several delegations expressed their satisfaction with the recent adherence of France to the Convention and the hope that further countries would follow suit in the near future.

20. The delegation of Japan indicated that in its country a governmental committee was considering the possibility of ratifying the Rome Convention and that discussions were in the final stage.

21. The delegation of the Netherlands mentioned that a draft Bill had been introduced to the Parliament on the adherence of its country to the Rome Convention and also a Bill on the implementation of that Convention. Some questions had not been decided yet, such as the status of employed performers, the term of protection and the problem of retroactivity. The country would probably only make use of two reservations, namely under Article 16.1(a)(iii) and (iv) of the Convention. The delegation expressed the hope that the new legislation on this question would be adopted by the end of this summer.

22. The delegation of Australia said that in its country phonogram producers and broadcasting organizations enjoyed appropriate protection, but this was not yet the case in respect of performers. However, the Copyright Law Review Committee had been asked by the government to examine the question whether legislation should be introduced dealing with the protection of performers. The Copyright Law Review Committee had completed its report in May 1987, but the forthcoming federal elections had delayed the consideration of it by the government.

23. The delegation of Spain mentioned that the new draft Law on Intellectual Property had been adopted by the House of Representatives and would, hopefully, be adopted also by the Senate in September or October 1987. The draft of the new Law contained provisions on the protection of per-

formers, phonogram producers and broadcasting organizations which were even more generous than the minimum protection under the Rome Convention. Therefore, the adoption of the new Law would enable the country to consider, in due course, the possibility of adhering to the Rome Convention.

24. The delegation of Bulgaria informed the Committee that the revision of the copyright law of its country was under consideration which would include provisions for the protection of performers and phonogram producers. The broadcasting organizations were protected also under the present law. After the adoption of the new law, the possibility would be opened to consider adherence to the Rome Convention.

25. The delegation of Côte d'Ivoire emphasized the importance of appropriate protection of all creative efforts which is indispensable for cultural development. This also included an appropriate protection for performers and other owners of the so-called neighboring rights. A new legislation was under consideration in its country to guarantee such protection. After the adoption of the new legislation, the question of possible adherence to the Rome Convention might be considered.

26. The delegation of China stressed that performers, phonogram producers and broadcasting organizations were important disseminators of literary and artistic works whose rights should be adequately protected, and that the draft of the Chinese Copyright Law contained appropriate provisions to that effect. After the adoption of the new Chinese Copyright Law, the possibility of adherence to the international convention on neighboring rights would be duly considered.

27. The delegation of the United States of America stated that its country also supported the goals of the Rome Convention. It stressed the importance of adequate protection of phonograms whose producers added significant creative elements to the contributions of authors and performers and said that its country would support any efforts by the Secretariat to include the question of the protection of phonograms into the program of all copyright courses and seminars. That was desirable the more so because in many countries, like in the United States of America, the protection granted by the copyright law extended not only to literary and artistic works but also to phonograms as a special category of works.

28. The delegation of Sweden informed the Committee on recent legislative developments in its

country within the framework of which the term of protection of the so-called neighboring rights had been extended from 25 years to 50 years and the protection of phonograms had been fully recognized regardless of their origin.

29. The delegation of Norway stated that in its country a Bill to modify the copyright law, which would involve two important changes, would be introduced in Parliament in two or three months' time. The first change was the extension of the term of protection of the so-called neighboring rights from 25 years to 50 years and the second one was the increase of penal sanctions against piracy and other serious infringements. It was hoped that the Bill would be debated in the first half of 1988 and adopted by next summer.

30. The delegation of Czechoslovakia informed the Committee about a new draft law under preparation in its country. Payment of a levy was planned to be introduced on blank tapes and on recording equipment—as a compensation for widespread home taping—which should be distributed to the owners of copyright and neighboring rights concerned. The draft law would also establish new tariffs for the public secondary uses of performances.

31. The delegation of Finland said that in its country, the Committee dealing with the revision of the legislation on the so-called neighboring rights completed its work last month. The draft law proposed by the Committee included the extension of the term of protection from 25 years to 50 years, the extension of the right of remuneration in favor of performers and phonogram producers to public uses of performances other than the use within the framework of broadcast programs, and the full recognition of the protection of phonograms regardless of their origin.

32. All the participants who took the floor on this question—even those who made further comments—praised the quality of the draft memorandum prepared by the Secretariat and expressed the view that it would be very useful for the promotion of further adherences to the Rome Convention.

33. The delegation of Mexico suggested that the draft memorandum should not refer to the right to payment of phonogram producers but to the possibility of their receiving payment for the use of phonograms for communication to the public, in accordance with Article 12 which sets out three options for meeting that commitment: (a) payment to the performers, (b) payment to the phonogram producers or (c) payment to both.

34. The observer from the International Federation of Musicians (FIM) speaking also on behalf of the International Federation of Actors (FIA) drew attention to the part of the draft memorandum in which the following was said: "Quite legitimately, governments are concerned to know what the financial consequences are of the obligations they would undertake by adhering to the Rome Convention. In particular, the question is if there is a risk of a serious outflow of currency to other member States." He said that he understood the concern of governments about the possible outflow of currencies, but it should also be taken into account that those amounts were paid for the inflow of valuable and indispensable cultural material. He was of the opinion that it would perhaps be advisable to explain these considerations for a better balance in this part of the memorandum.

35. The observer from the International Federation of Phonogram and Videogram Producers (IFPI) supported the views expressed by the previous observer. He added that, in general, greater emphasis should be given in the memorandum to the important role that the protection of the performers, phonogram producers and broadcasting organizations played in the development of national culture. He also suggested that the need for a longer term of protection than the one which was defined as a minimum in the Rome Convention, and for more efficient measures for fighting piracy should be highlighted in the memorandum. Finally, he also proposed that the covering letter with which the memorandum would be distributed should invite comments and reactions from governments.

36. All the participants who took the floor on this issue were in favor of the quickest and widest possible distribution of the memorandum. The delegations of Finland, Mexico and the United Kingdom and the observer from the International Federation of Phonogram and Videogram Producers (IFPI) were of the opinion that the memorandum could also be sent to countries members of the United Nations which were not party to the Berne Convention or to the Universal Copyright Convention because they might consider the adherence to these Conventions and the Rome Convention at the same time.

List of States not Party to the Rome Convention but Party to the International Copyright Instruments Mentioned in Article 24 of that Convention

37. Document ILO/UNESCO/WIPO/ICR.11/3 was introduced by the Secretariat. In the case of France, the document had not yet mentioned the fact that this country had adhered to the Rome

Convention recently. The entry into force of the Convention in regard of this country was fixed for July 3, 1987.

38. No observations were made on this item.

Membership of the Convention for the Protection of Producers of Phonograms Against Unauthorized Duplication of Their Phonograms (Phonograms Convention) and of the Convention Relating to the Distribution of Programme-Carrying Signals Transmitted by Satellite (Satellites Convention): State of Accessions, Ratifications and Acceptances

39. Discussions were based on document ILO/UNESCO/WIPO/ICR.11/4.

40. The Secretariat drew attention to the fact that since the last session of the Committee no further States had adhered to the Phonograms Convention; the number of countries party to it had remained 39. Since that session of the Committee one more country, Panama, had adhered to the Satellites Convention and thus the number of countries party to that Convention was 11.

41. The delegation of the Netherlands mentioned that the Bill under discussion about adherence to the Rome Convention also included a proposal for adherence to the Phonograms Convention.

42. The observer from the International Federation of Phonogram and Videogram Producers (IFPI) pointed out that the Phonograms Convention was an indispensable means of fighting piracy. She said that the wide-ranging antipiracy program of her organization included the active promotion of adherence of further countries to this Convention and added that cooperation in that field between her organization and the Secretariat would be welcome.

Information on the Activities of the Three Organizations to Provide Assistance and Training for Developing Countries with a View to Promoting the Protection of Performers, Producers of Phonograms and Broadcasting Organizations

43. Discussions were based on document ILO/UNESCO/WIPO/ICR.11/5.

44. The Committee noted with considerable appreciation the activities undertaken by Unesco and WIPO and expressed the hope that the training activities and assistance to States in dissemination of information and for increasing the awareness of

the need to protect performers, producers of phonograms and broadcasting organizations should continue and be strengthened.

45. A number of delegations reiterated their support of this program.

46. The delegation of Côte d'Ivoire suggested the necessity of increased dissemination in developing countries of knowledge in this field; it emphasized the need to keep in view the geographical balance in respect of different regions of the world in the course of programs for such dissemination.

47. The delegation of Italy emphasized the need, while continuing to provide training and information, to strengthen the practical implementation of the law in this field; it furthermore considered that knowledge concerning contractual elements in this field should also be disseminated in the course of training programs and seminars.

48. The observer from the International Federation of Actors (FIA) stressed the need to cover in each training program and seminar both the aspects relating to the rights of authors and the rights of performers, producers of phonograms and broadcasting organizations.

49. The observer from the International Federation of Phonogram and Videogram Producers (IFPI) congratulated the Secretariat on a most impressive program of training and reiterated its readiness to cooperate with the Secretariat, including financially, in such training programs in the future, as in the past. She stressed the desirability of inviting international non-governmental organizations to participate in seminars, workshops and information meetings at the regional and sub-regional levels. She also offered to welcome participants in training courses at the headquarters of IFPI, as well as at the headquarters of its national groups and collecting societies. She stressed the need for regional workshops and seminars to inform enforcement agencies with particular reference to the urgently needed steps for countering commercial piracy. She fully supported the earlier remark during this meeting by the delegation of the United States of America which stressed the creative nature of the activities of phonogram producers and emphasized that phonograms are protected in the framework of copyright law of its country as in some other countries.

50. The observer from the International Confederation of Societies of Authors and Composers (CISAC) offered the cooperation and support of his organization to Unesco and WIPO in the field of

assistance to developing countries. It emphasized the need for strengthening of infrastructures for the implementation of copyright laws in developing countries.

Problems Arising With Regard to the Rome Convention Through Developments in Law and Practice Concerning Transmission by Cable and by Satellite

51. Discussions were based on documents ILO/UNESCO/WIPO/ICR.11/6 and 6 Add.

52. The representative of the Director General of ILO stated that the Organization was considering the publication, under its responsibility, of a study prepared with an important contribution from IFPI on the law and practice relating to the protection of performers and producers of phonograms in relation to transmission by cable and satellite.

53. The observer from the International Federation of Musicians (FIM), speaking also on behalf of the International Federation of Actors (FIA), welcomed the suggested publication of the material by ILO, which would hopefully specifically take up various contractual solutions. The delegation of Finland seconded the support for the publication of the ILO material.

54. The delegation of Norway, in a statement, gave information about the Norwegian legislation of June 1985. This legislation covered simultaneous and unchanged wireless transmission and transmissions by cable, regardless of whether the programs transmitted were national or foreign. It was based on the concept of an extension of the effects of a collective agreement between cable distributors, on the one hand, and a joint organization of copyright owners and performing artists, on the other hand, also to owners of rights outside the organization concluding the agreement. If a request for an agreement was rejected or an agreement was not concluded within six months from the start of the negotiations, either of the parties might require that the conditions for transmission should be determined by a special board. The board's decision was, under the law, binding for owners of rights outside the joint association. All claims for remuneration from owners of rights must be made to the joint association. The law provided that the right to remuneration should not be dependent on membership of the joint association. The rights of the broadcasting organizations as broadcasters—that means the right of retransmission of their signals—were not covered by these provisions. This system had been in function for about two years. Agreements had been reached concerning cable transmission of the

Swedish broadcast programs. Recently, the special board had taken its first decision according to the new provisions which referred to the interpretation of the term "make available to the public" in Article 2 of the Copyright Act. The board had settled the dispute by stating that cable transmission to more than 35 households normally should be regarded as transmission to the public and thus covered by copyright obligations. Furthermore, the board had stated that transmission to fewer than 15 households normally will be within the private sphere and therefore be exempted from copyright obligations. The copyright status as regards the zone between 15 and 35 connected households was uncertain, and the board had remarked that the solution in those cases should be considered individually. In the negotiations between the association of owners of rights and the National Association of Municipalities, no agreement had been reached on fixing the exact number of households within this zone between 15 and 35 connected households. This case, therefore, had been submitted to voluntary arbitration by the chairman of the special board. The decision in this case had been that distribution to more than 24 connected households should be subject to remuneration to the owners of rights.

55. The delegation of Japan recalled that a new legislation which entered into force on January 1, 1987, provided for a neighboring right also in respect of cable distributors.

56. The delegation of Finland stressed the importance of the follow-up action in relation to the study to be undertaken by the Secretariat and mentioned that in the analysis of the question also the result of the ongoing and future work on the guiding principles for national legislators should be taken into account.

57. The delegation of Italy drew attention to the importance of the forthcoming study by the Secretariat in view of the damaging impact for the right owners of the new technologies on the rights of the beneficiaries of the Rome Convention and mentioned that, in general, rights could and should be acquired initially by contracts and not through compulsory licensing or arbitration.

58. The observer from the International Federation of Actors (FIA) referred to the statement of the delegation of Norway and said that that legislation, like the ones in Finland and France, amounted to the introduction of a compulsory license "through a backdoor," which might invalidate the process of contractual arrangements.

59. The delegation of Denmark said that it had difficulty in understanding why compulsory licenses should always be considered as dangerous, because such systems provided the right owners with a fair amount of remuneration and avoided the problems included in individual negotiations.

60. The International Federation of Musicians (FIM) said, in response, that the remuneration resulting from such licenses was always much lower than that which would have been received for live performances over radio or television.

Admission as Observers of Representatives of the Beneficiaries Under the Rome Convention

61. Discussions were based on document ILO/UNESCO/WIPO/ICR.11/7.

62. No observations were made under this point and the Chairman concluded that the draft declaration contained in the document had been accepted by the Committee.

Other Business

63. In a statement in response to questions put by delegations, the representative of the Director General of WIPO explained certain elements of the proposed program and budget of WIPO for 1988-89, in particular the continued work on collective administration of copyrights and the rights of performers, producers of phonograms and broadcasters, and the work, together with Unesco, on a synthesis of the principles concerning the question of the protection of those rights in connection with nine categories of works. For the synthesis of those principles, a new working document would be prepared by the International Bureau of WIPO and the Secretariat of Unesco and discussed by a Committee of Governmental Experts which would meet in Geneva, in November 1988, for 10 days.

64. The delegation of Finland stated that the technological developments were now very rapid and affected profoundly the situation of the beneficiaries under the Rome Convention. The challenges for the appropriate protection of rights in this field were rapidly increasing. The Secretariat had responded to these developments by various activities, in particular by the work on the guiding principles—which offered enormously important material full of new ideas both in the field of copyright and as regards the rights of the beneficiaries of the Rome Convention—and the planned synthesis thereof. In the view of the delegation it was, how-

ever, not sufficient to hold sessions of the Committee every second year. It proposed that the Committee should be convened for an extraordinary session some time after the meeting on the synthesis of the guiding principles so that the result of that meeting as well as certain other questions concerning the promotion of wider acceptance of, and the application of, the Rome Convention could be considered. The study on cable and satellite transmissions to be published by the ILO could also be taken into account as useful background information by this meeting.

65. The representatives of the organizations providing the Secretariat drew the attention to the budgetary implications which had to be examined and to the fact that it had to be made clear what the purpose of, and the agenda for, the extraordinary session would be.

66. The delegation of the Federal Republic of Germany supported the idea of an extraordinary session provided it could be held in one day; preferably in the context of another meeting, for instance the one on the synthesis of the guiding principles. In the case of such a session, of course, not only the Rome Convention implications of the principles, but also other initiatives in this area, such as the follow-up to the memorandum, could be considered. The delegation of Finland said that it would be satisfied with such a solution.

67. The delegation of the United Kingdom expressed the view that if developments did occur to justify such a session, the suggestion of the delegation of the Federal Republic of Germany that it should be held in the context of another meeting, was to be supported. It was important that any such extraordinary session should be well prepared and focus on specific problems, not just on the challenges posed by advancing technology in general.

68. The delegation of Italy said that the budgetary realities should be accepted, but the possibility of an extraordinary session some time in the future should not be excluded either. It added that the future meeting of the Committee, either ordinary or extraordinary, should be thoroughly prepared.

69. The observers from the International Federation of Actors (FIA), the International Federation of Musicians (FIM) and the International Federation of Phonogram and Videogram Producers (IFPI) supported the idea of an extraordinary session while the observer from the International Confederation of Societies of Authors and Composers (CISAC) said that an extraordinary session should be convened only if there were an urgent need, which he did not feel existed.

70. At the end of the discussion it was agreed that the Secretariat should take note of the points made in the discussion, but that no decision on the holding of an extraordinary session should be taken for the time being. It was recalled, however, that under Rule 12 of the Rules of Procedure a majority of the members of the Committee could request the holding of such an extraordinary session.

Adoption of the Report

71. The Chairman and the Vice-Chairmen of the Committee had to leave the session before its closing. Therefore, Mr. N. Steinitz, head of the delegation of the United Kingdom, was elected *ad hoc* Chairman for the adoption of the report. The Committee unanimously adopted this report.

Closing of the Session

72. After the usual thanks, the *ad hoc* Chairman declared the session closed.

(b) Other States

Argentina: H. Retondo. Australia: R. Burns. Bangladesh: A.K.M. Jalaluddin. Bulgaria: Y. Markova; A. Angelov; G. Sarakinov. China: Shen Rengan. Côte d'Ivoire: B.G. Kadja. Egypt: N. Saad. France: M. Bouleau; N. Renaudin. India: A. Malhotra. Japan: Y. Oyama; S. Kamogawa. Lebanon: H. Hamdane. Netherlands: J. Meijer-Van Der Aa. Spain: E. de la Puente Garcia; E. Balmaseda. Turkey: A. Algan. United States of America: R. Oman.

(c) International Non-Governmental Organizations

European Broadcasting Union (EBU): M. Burnett. International Alliance for Distribution by Cable (AID): J. Geerts. International Bureau of Societies Administering the Rights of Mechanical Recording and Reproduction (BIEM): A.J. Vacher-Desvernais. International Confederation of Societies of Authors and Composers (CISAC): N. Ndiaye. International Federation of Actors (FIA): R. Rembe. International Federation of Film Producers Associations (FIAPF): A. Brisson. International Federation of Musicians (FIM): J. Morton; Y. Burckhardt. International Federation of Phonogram and Videogram Producers (IFPI): I.D. Thomas; G. Davies; E. Thompson; P. Fichet. International Secretariat for Arts, Mass Media and Entertainment Trade Unions (ISETU/FIET): I. Robadey.

III. Secretariat

LIST OF PARTICIPANTS

I. Member States of the Committee

Austria: R. Dittrich. Czechoslovakia: J. Karhanová; M. Jelinek; J. Kordač. Finland: J. Lienes; K. Rintala. Germany (Federal Republic of): M. Möller. Italy: G. Aversa. Mexico: A. Arriazola; V. Blanco Labra. Norway: J. Holland. Sweden: K. Hökborg; A. Mörner. United Kingdom: N. Steinitz.

II. Observers

(a) States Party to the Convention Which Are Not Members of the Committee

Denmark: J. Nørup-Nielsen; L. Hersom.

International Labour Organisation (ILO)

H. Sarfati (*Chief, Salaried Employees and Professional Workers Branch, Sectoral Activities Department*); C. Priva (*Sectoral Specialist, Salaried Employees and Professional Workers Branch, Sectoral Activities Department*).

United Nations Educational, Scientific and Cultural Organization (UNESCO)

A. Amri (*Director a.i., Copyright Division*).

World Intellectual Property Organization (WIPO)

H. Olsson (*Director, Copyright and Public Information Department*); S. Alikhan (*Director, Developing Countries Division (Copyright)*); M. Ficsor (*Director, Copyright Law Division*); P. Masouyé (*Lawyer, Copyright Law Division*); H. Nguyen Quang (*Program Officer, Developing Countries Division (Copyright)*).

Second International Congress on the Protection of Intellectual Property (of Authors, Artists and Producers)

(Bogotá, April 1 to 4, 1987)

The Second International Congress on the Protection of Intellectual Property (of Authors, Artists and Producers) was held in Bogotá, from April 1 to 4, 1987. It was organized by WIPO, the Government of Colombia and the University *Pontificia Universidad Javeriana* of Bogotá. About 600 persons from a number of Latin American countries participated in the Congress, among them a number of magistrates from Colombia. WIPO was represented by Mr. Henry Olsson, Director, Copyright and Public Information Department, and Mr. Carlos Fernandez-Ballesteros, Senior Counsellor, Development Cooperation and External Relations Bureau for Latin America and the Caribbean.

The Congress was opened by the Minister of Justice of Colombia, Dr. Eduardo Suescun Monroy,

and the inaugural speech, under the title "WIPO and the Protection of Intellectual Property," was delivered by Mr. Olsson. The discussions at the Congress were based on 16 lectures presented by outstanding specialists mostly from Latin America. The inaugural speech as well as the lectures are published in a book, which is reviewed on page 304, below.

The lectures were followed by interesting and lively debates. The Congress proved to be a useful opportunity for an exchange of information and for discussions about the developments of copyright and neighboring rights in general and about the current situation in this field in Latin America in particular.

National Seminar on Copyright

(Bangui, July 7 to 9, 1987)

1. A National Seminar on Copyright, organized by the Government of the Central African Republic in cooperation with WIPO, took place in Bangui from July 7 to 9, 1987, in the Conference Center of the Ministry of Foreign Affairs.

2. One hundred and fourteen persons took part in the Seminar. They were government officials, university professors, students, authors, artists and musicians, and representatives of various categories of users of protected works.

3. WIPO was represented by Mr. Henry Olsson, Director, Copyright and Public Information Department, and Mr. Ibrahima Thiam, Director, Development Cooperation and External Relations Bureau for Africa.

4. The Seminar was opened by Mr. Joaquim Da Silva Nzengue, Minister for Communications, Arts,

Culture and National Organizations, in the presence of two other members of the Government, namely Mr. Christophe Grelombe, Minister for Internal Affairs, and Mr. Justin Ndjapou, Minister for Commerce and Industry. In the course of the opening ceremony, addresses were also pronounced by Mr. Pierre Sammy-Mackfoy, Inspector General for National Education and Chairman of the Board of the Central African Copyright Bureau (BU-CADA), and Mr. Olsson on behalf of the Director General of WIPO.

5. Mr. Sammy-Mackfoy was Chairman of the Seminar. Six lectures were given, four by one of the WIPO officials on various aspects of national and international law on copyright and neighboring rights, one by Professor Yves Epacka, Director General, Cameroon Copyright Society (SOCADRA) on the experience of SOCADRA concerning collective administration of copyright and one by Dr. Ulrich Uchtenhagen, Director General, Swiss

Society for Authors' Rights in Musical Works (SUISA) on various issues of practical importance concerning collective administration. Furthermore, Mr. Jean Tubind, Director of BUCADA, gave an exposé of the activities of his Bureau. The various lectures were followed by discussions and a great number of questions were asked by the participants and responded to.

6. The closing session was presided over by Mr. Da Silva Nzengue in the presence of Mr. Ndjapou. A draft report and a set of recommendations, mainly concerning the future structure and operations of BUCADA, were adopted as well as two motions of thanks to H.E. Mr. André Kolingba, Head of State of the Central African Republic, and to WIPO.

Studies**Copyright in Cinematographic Works—
A Study of Comparative Law in Latin America**

Miguel Angel EMERY*



Correspondence

Letter from Mexico

Thirtieth Anniversary of the Copyright Directorate

Adolfo LOREDO HILL*

Books and Articles

Book Reviews

II Congreso Internacional sobre la Protección de los Derechos Intelectuales (del Autor, el Artista y el Productor). One volume of 196 pages. Pontificia Universidad Javeriana, Bogotá, 1987.

This volume contains the Spanish texts of the lectures presented at the Second International Congress on the Protection of Intellectual Property (of Authors, Artists and Producers) which was held in Bogotá (Colombia) in April 1987.¹

The lectures presented were:

"WIPO and the Protection of Intellectual Property," by an official of WIPO; "The Musical Production in Face of Future Technologies," by Ms. Gillian Davies (United Kingdom); "Publishing Contracts for Written and Musical Works," by Prof. Antônio Chaves (Brazil); "Contracts Concerning Performance of Dramatic Works," by Dr. Delia Lipszyc (Argentina); "Public Performance of Musical Works and Phonograms," by Dr. Guillermo Zea Fernández (Colombia); "Satellite Transmissions and Cable Television," by Lic. Carlos Corrales (Costa Rica); "The Protection of Computer Programs," by Dr. Carlos Alberto Villalba (Argentina); "Collective Administration of Intellectual Property Rights," by Dr. Ulrich Uchtenhagen (Switzerland); "Piracy of Written Works and Sound and Audiovisual Works," by Dr. Ricardo Antequera Parilli (Venezuela); "Private Copying of Written Works and Sound and Audiovisual Works," by Dr. Henry Jessen (Brazil); "The Exercise of Authors' Rights. Conditions and Possibilities in Latin America," by Dr. Vanisa Santiago (Brazil); "The Situation of Authors' Rights in Latin America," (two lectures by Lic. Martín Marizcurrena (Uruguay) and Dr. Carlos J. Díaz Marín (Colombia), respectively); "Procedural and Probatory Aspects in Relation to the Protection of Intellectual Property Rights," (three lectures by Colombian specialists, namely: "Penal Aspects," by Dr. Orlando Parra Castro, "Civil Aspects," by Dr. Gustavo Cuello Iriarte, "Administrative Aspects," by Dr. Fernando Zapata López); and finally "Colombia and the Berne Convention," by Dr. Arcadio Plazas Sierra (Colombia).

As can be seen from the titles of the contributions, the lectures deal both with issues of topical interest and with copyright and neighboring rights questions which are specific to Latin America. A number of topics are discussed on the basis of the prevailing situation in Colombia but the problems are generally seen in a wider perspective. The collection of lectures, therefore, provides a comprehensive survey of the situation in general as regards law and practice in the field of copyright and neighboring rights of great interest also outside Latin America.

H.O.

Copyright in Free and Competitive Markets. Edited by *W.R. Cornish*. One volume of 138 pages. Published for the International Literary and Artistic Association (ALAI) and the British Literary and Artistic Copyright Association (BLACA) by ESC Publishing Limited, Oxford, 1986.

The study session held in Oxford on April 11 and 12, 1985, at the invitation of the British National Group (British Literary and Artistic Copyright Association (BLACA)) of the International Literary and Artistic Association (ALAI) was on the theme of "Copyright in Free and Competitive Markets" (there is a report on the meeting on page 205 of the May 1985 issue of this periodical).

The work is edited by Professor W.R. Cornish, under the title "Copyright in Free and Competitive Markets," and it contains all the papers and other contributions made in the course of the two-day study session. Intellectual property experts interested in matters relating to the free movement of goods and the free rendering of services, and also in aspects of antitrust policy, will find in it the wherewithal to quench their thirst for information and knowledge.

Indeed several very important subjects are addressed: they include the implications for copyright of the caselaw of the Court of Justice of the European Communities, free trade and competition, the right of distribution and the principle of exhaustion, and antitrust policy and copyright (the United States experience). On reading this collection of papers, it is interesting to find in it quite a number of references to court decisions handed down in Europe in important cases (like *Musik-Vertrieb Membran v. GEMA*, the *Coditel* ruling and *Time-Limit*). The doctrinal developments added in the commentaries by certain contributing specialists in Community law, enable the reader on the one hand to understand better the evolution of the question of the exploitation of copyright works in countries with free and competitive markets, and on the other hand to grasp recent trends and the application of antitrust legislation to intellectual property. The view that is also afforded of the American situation, in which the Sherman Act and the historical function of antitrust law are explained, gives another dimension to this book, which is the product of a meeting in which there was a very pronounced international presence, as more than 90 participants from some 15 countries attended.

P.C.M.

Television by Satellite—Legal Aspects. Edited by *Stephen de B. Bate*. One volume of 146 pages. ESC Publishing Limited, Oxford, 1987.

The book is a collection of papers which were presented at conferences on satellite broadcasting in Paris in November 1984, and in London in February 1985, respectively. The dates are important because they indicate that both confer-

¹ See note on this meeting on p. 289.

ences took place before the March 1985 meeting in Paris of the WIPO/Unesco Group of Experts on the Copyright Aspects of Direct Broadcasting by Satellite. At that meeting, a set of principles concerning a modern interpretation of the notion of "broadcasting" and concerning the questions of the applicable laws in the case of direct broadcasting by satellite were advanced. Since then, discussions about those questions have been going on and have also influenced the discussions about other related topics such as the questions of fixed service satellites and the so-called satellite-to-cable programs.

The book, whose material is from a period just before the March 1985 meeting, cannot reflect certain new views and arguments which emerged in the above-mentioned discussions. Nevertheless, it is a useful source of information covering a large spectrum of legal and practical questions.

The first three papers deal with the telecommunication law aspects and the organizational framework of broadcasting in general and satellite broadcasting in particular, including information about the activities of the International Telecommunication Union (ITU) and the European Broadcasting Union (EBU) (by Jean Jipguep, Dr. Werner Rumphorst and Richard Colino, respectively).

Those papers are followed by five studies which concentrate on the system of contracts and on the special legal questions related to certain types of programs, covering such subjects as program acquisition agreements, contracts between program providers and cable operators, and agreements for the provision of transponder facilities (by Michael Flint), advertising on satellite television (by Scott Crosby), agreements about the production and distribution of programs (by Sally Davies), use of music on satellite (by Patrick Isherwood) and transmission of sporting events (by Stephen Townley).

Of the remaining five papers, three deal with the legal implications of satellite broadcasting in Europe and particu-

larly within the framework of the European Economic Communities (by Patrick Cox, Dr. Ulf Brühann and Professor Frank Gotzen, respectively), one presents the relevant legal provisions in the law of the United States of America (by Walter J. Josiah, Jr.) and, finally, there is a study by Dr. Adolf Dietz entitled "The Shortcomings and Possible Evolution of National Copyright Legislation in View of International Satellite Programme Transmission," which deals with the most fundamental copyright questions in relation to satellite broadcasting such as the interpretation of the definition of broadcasting under the new circumstances, the national law to be applied, the responsibilities of the originating organization and of the distributors, etc.

Dr. Dietz does not consider broadcasting to be the mere emission of programs (for which there would not be any basis in the international conventions) but as a unitary act which begins with the emission of signals, includes both the "upleg" and "downleg" stages and terminates where the program is made available to the public (although not necessarily received). It follows from this that in respect of distribution satellites, he is of the opinion that the application of the different copyright laws of the ground stations and/or cable systems of the "footprint" countries should be completed by at least a subsidiary liability of the originating organizations under their own national laws. In the case of direct broadcasting by satellite, he stresses that the traditional view concerning the exclusive application of the domestic law of the originating organization must be complemented by the idea of involving the copyright laws of all those countries whose coverage is directly intended or unavoidable. His study offers a series of arguments for such an interpretation of "broadcasting" and for the application of certain principles of international private law in this field which inevitably follows from that interpretation.

M.F.

Calendar of Meetings

WIPO Meetings

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

1987

- 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

- January 25 and 26 (Cannes) — International Association of Entertainment Lawyers: MIDEM International Lawyers Meeting
- March 21 to 25 (Locarno) — International Copyright Society (INTERGU): Congress

-
- May 9 to 11 (Tel Aviv) — International Confederation of Societies of Authors and Composers (CISAC): Legal and Legislative Committee
- June 12 to 17 (London) — International Publishers Association (IPA): Congress
- October 6 and 7 (Munich) — International Literary and Artistic Association (ALAI): Study Days
- November 14 to 20 (Buenos Aires) — International Confederation of Societies of Authors and Composers (CISAC): Congress

1989

- September 26 to 30 (Quebec) — International Literary and Artistic Association (ALAI): Congress

