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Contents

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Notifications Concerning Treaties

WIPO Convention

Accession

MALAYSIA

The Government of Malaysia deposited, on October 1, 1988, its instrument of accession to the Convention Establishing the World Intellectual Property Organization (WIPO), signed at Stockholm on July 14, 1967.

The said Convention, as amended on October 2, 1979, will enter into force with respect to Malaysia on January 1, 1989.

WIPO Notification No. 144, of October 3, 1988.

WIPO Meetings

Committee of Governmental Experts on the Evaluation and Synthesis of Principles on Various Categories of Works

(Geneva, June 27 to July 1, 1988)

Editor's Note. In this issue, the publication starts of the documents of the Committee of Governmental Experts on the Evaluation and Synthesis of Principles on Various Categories of Works. Those documents consist of the *preparatory document* (hereinafter: the memorandum) that the International Bureau of WIPO and the Secretariat of Unesco (hereinafter: the Secretariats) prepared and the *report* of the Committee. In this issue, the first part of the memorandum is published. This first part includes the introduction to the memorandum and draft principles on four categories of works (audiovisual works, phonograms, works of architecture, works of fine art) as well as comments on those principles. In the November 1988 issue, the second part of the memorandum—including draft principles on four other categories of works (dramatic and choreographic works, musical works, works of applied art, the printed word) and comments on them—and an addendum to the memorandum (on photographic works) will be published. Finally, in the December 1988 issue, the publication of the documents of the Committee will be completed by the publication of the report of the Committee.

Evaluation and Synthesis of Principles on the Protection of Copyright and Neighboring Rights in Respect of Various Categories of Works

MEMORANDUM PREPARED BY THE SECRETARIATS

Part I

Introduction

1. The Governing Bodies of the United Nations Educational, Scientific and Cultural Organization (UNESCO) and the World Intellectual Property Organization (WIPO) responsible for establishing the programs of the two Organizations (see in particular, as far as Unesco is concerned, Approved Programme and Budget for 1986–1987 (23 C/5 Approved), paragraph 15115, and as far as WIPO is concerned, document AB/XVI/2, Annex A, item PRG.04 and document AB/XVI/23, paragraph 105) provided for a new approach regarding copyright questions of topical interest in the 1986–87 biennium.

2. Whereas the discussions in the 1984–85 biennium concentrated on the *new uses* (mainly, cable television, private copying, rental and lending, direct broadcast satellites) affecting the owners or other beneficiaries of copyright and the rights of performing artists, phonogram producers and broadcasting organizations (hereinafter referred to as "neighboring rights"), the specific questions discussed in the 1986–87 biennium were grouped according to the main *categories of works*. In connection with each category, the various uses of works of that category, including in particular the uses based on new technology, and the interests of all the various kinds of owners and beneficiaries of copyright and neighboring rights in such works were considered.

3. According to the decisions mentioned above, the Secretariat of Unesco and the International Bureau of WIPO (hereinafter referred to as "the Secretariats") had to prepare, convene and service meetings of committees of governmental experts on the following eight categories of works: printed word, audiovisual works, phonograms, works of visual art, works of architecture, works of applied art, dramatic and choreographic works, musical works.

4. In order to reduce the number of meetings and since certain of the eight categories of works mentioned in paragraph 3 above were closely related to each other, one committee of governmental experts dealt both with audiovisual works and with phonograms and another committee of governmental experts dealt both with dramatic and choreographic works and with musical works.

5. Thus, the following six committees of governmental experts were convened:

— Committee of Governmental Experts on Audiovisual Works and Phonograms (Paris, June 2 to 6, 1986);
— Committee of Governmental Experts on Works of Architecture (Geneva, October 20 to 22, 1986);
— Committee of Governmental Experts on Works of Visual Art (Paris, December 16 to 19, 1986);
— Committee of Governmental Experts on Dramatic, Choreographic and Musical Works (Paris, May 11 to 15, 1987);
— Committee of Governmental Experts on Works of Applied Art (Geneva, October 5 to 9, 1987);
— Committee of Governmental Experts on the Printed Word (Geneva, December 7 to 11, 1987).

6. Government delegations from 76 countries (namely from Algeria, Angola, Argentina, Australia, Austria, Bangladesh, Bolivia, Brazil, Burundi, Cameroon, Canada, Central African Republic, Czechoslovakia, China, Colombia, Costa Rica, Côte d'Ivoire, Democratic Kampuchea, Denmark, Djibouti, Ecuador, Egypt, Finland, France, German Democratic Republic, Germany (Federal Republic of), Ghana, Guatemala, Guinea, Holy See, Hungary, India, Iran, Israel, Italy, Japan, Jordan, Kenya, Kuwait, Lebanon, Madagascar, Mali, Mexico, Morocco, Nepal, Netherlands, Nicaragua, Nigeria, Norway, Oman, Panama, Paraguay, Peru, Philippines, Poland, Portugal, Republic of Korea, Saudi Arabia, Senegal, Soviet Union, Spain, Sri Lanka, Sweden, Switzerland, Syria, Tanzania, Thailand, Togo, Tunisia, Turkey, United Kingdom, United States of America, Uruguay, Venezuela, Yemen and Yugoslavia) and observers from the African National Congress (ANC) and from the Palestine Liberation Organization (PLO) participated in the meetings of one, more or all committees of governmental experts.

7. Observers from eight intergovernmental organizations (African Intellectual Property Organization (OAPI), Agency for Cultural and Technical Co-operation (ACCT), Arab Educational, Cultural and Scientific Organization (ALECSO), Commission of the European Communities (CEC), International Bureau for Informatics (IBI), International Labour Organisation (ILO), League of Arab States (LAS), Organization of African Unity (OAU)) and from 36 international non-governmental organizations (Broadcasting Organizations of the Non-Aligned Countries (BONAC), European Broadcasting Union (EBU), European Tape Industry Council (ETIC), Inter-African Union of Lawyers (UIAA), International Alliance for Distribution by Cable (AID), International Association for the Advancement of Teaching and Research in Intellectual Property (ATRIP), International Association of Sound Archives (IASA), International Association of Art (IAA), International Bureau of Societies Administering the Rights of Mechanical Recording and Reproduction (BIEM), International Catholic Organization for Cinema and Audiovisual (OCIC), International Chamber of Commerce (ICC), International Confederation of Free Trade Unions (ICFTU), International Confederation of Societies of Authors and Composers (CISAC), International Confederation of Professional and Intellectual Workers (CITI), International Copyright Society (INTERGU), International Council on Archives (ICA), International Federation of Actors (FIA), International Federation of Associations of Film Distributors (FIAD), International Federation of Film Producers Associations (FIAPF), International Federation of Journalists (IFJ), International Federation of Musicians (FIM), International Federation of Newspaper Publishers (FIEJ), International Federation of Phonogram and Videogram Producers (IFPI), International Federation of Translators (FIT), International Film and Television Council (IFTC), International Group of Scientific, Technical and Medical Publishers (STM), International Literary and Artistic Association (ALAI), International Music Council (IMC), International Publishers Association (IPA), International Secretariat for Arts, Mass Media and Entertainment Trade Unions (ISETU), International Theatre Institute (ITI), International Union of Architects (IUA), Latin-American Federation of Performers (LAFP), Law Association for Asia and the Western Pacific (LAWASIA), Max Planck Institute for Foreign and International Patent, Copyright and Competition Law, World Crafts Council (WCC)) participated in the meetings of one, more or all committees of governmental experts.

8. Discussions by the committees of governmental experts were based on memoranda (one for each committee) prepared by the Secretariats (documents UNESCO/WIPO/CGE/AWP/3, UNESCO/WIPO/CGE/WA/3, UNESCO/WIPO/CGE/VAR/3, UNESCO/WIPO/CGE/DCM/3, UNESCO/WIPO/CGE/AAR/3 and UNESCO WIPO/CGE/PW/3-I and II, respectively).

9. The memoranda summarized the various copyright and neighboring rights issues in relation to the above-mentioned eight categories of works and suggested certain "principles" which, together

with the comments accompanying them, were intended to serve as guidance for governments when they had to deal with those issues. It was stressed that the principles—neither as they were proposed nor as they emerged as the result of the deliberations of the committees of governmental experts—had any binding force on anyone. They were merely intended to suggest solutions which, by safeguarding the rights of the authors and other holders of rights in literary and artistic works and in other productions protected by copyright or neighboring rights, gave them fair treatment and promoted creative activity eminently necessary for cultural development of every nation. At the same time, the proposed solutions were intended to facilitate, from both the creators' and the users' viewpoint, the use of protected works, performances, etc.

10. The memoranda and the committees of governmental experts followed two differing approaches in respect of the eight categories of works mentioned in paragraph 3 above. In the case of audiovisual works, of phonograms and of the category of the printed word, only certain topical questions—mainly the ones raised by the new technologies—were discussed. That approach was followed for two reasons: first, because those categories had been the focus of attention for a long time and, thus, all the other significant questions of copyright protection concerning those categories had been dealt with and, second, because the topical questions concerning those categories—piracy, reprography, home taping, rental and lending, cable distribution, satellite broadcasting, etc.—in themselves offered very extensive material to be discussed. The other four categories of works were discussed on the basis of a more complete approach. Many questions concerning the protection of those works had not been on the agenda for a fairly long time because they were not closely connected to the most important new technological developments. Therefore, the meetings of the committees of governmental experts on those categories of works dealt with practically all significant aspects of the protection of copyright and neighboring rights.

11. Certain questions emerged in connection not only with one but with two or more of the eight categories. For the sake of avoiding repetition, such questions were, in general, only discussed in detail in the framework of the category of works in respect of which they seemed to be the most typical and the most important, and the memoranda on other categories of works simply referred to the memoranda which contained detailed analyses on those questions.

12. The participants in the meetings of the six committees of governmental experts, while appreciating the quality of the memoranda and stating that the principles and the comments included in them were, in general, acceptable to them, made several observations and proposals concerning certain principles and comments. Those observations and proposals are reflected in the reports of the meetings (documents UNESCO/WIPO/CGE/AWP/4, UNESCO/WIPO/CGE/WA/4, UNESCO/WIPO/CGE/VAR/4, UNESCO/WIPO/CGE/DCM/4, UNESCO/WIPO/CGE/AAR/4 and UNESCO/WIPO/CGE/PW/4, respectively).

13. The Secretariats submitted to the twenty-seventh session (10th extraordinary) of the Executive Committee of the Berne Union and the seventh session of the Intergovernmental Committee of the Universal Copyright Convention held in Geneva in June 1987—where those two Committees (hereinafter referred to as "the Copyright Committees") were sitting together—a progress report (document B/EC/XXVII/10 – IGC(1971)/VII/13) about the committees of governmental experts whose meetings had been held until that time and about the preparation of the meetings of the further committees of governmental experts. In the document, the Secretariats also informed the Copyright Committees about the intentions of Unesco and WIPO to convene the Committee of Governmental Experts for which the present memorandum has been prepared for re-examination, perfection and consolidation of the principles on various categories of works.

14. The Copyright Committees noted the information communicated to them. The Secretariats were commended for the new approach to the questions of copyright and neighboring rights. It was found that this approach was very useful and fruitful and that it would contribute to the harmonization of national legislations.

15. In respect of the Committee of Governmental Experts for which the present memorandum has been prepared, it was underlined that the memorandum to be discussed by the Committee should reflect all the views and interests involved and it was also suggested that the memorandum should deal with all new developments in technology and practice.

16. The eleventh ordinary session of the Intergovernmental Committee of the Rome Convention, which was held in Geneva in July 1987, was also informed, orally, about the meetings of the committees of governmental experts on various categories of works as well as about the intention of the Secre-

tariats to convene the Committee of Governmental Experts for which the present memorandum has been prepared. The Intergovernmental Committee noted the information communicated to it. The Secretariat was commended for the quality of the principles on the protection of copyright and neighboring rights in respect of various categories of works. It was stated that the principles "offered enormously important material full of new ideas" concerning both copyright and neighboring rights.

17. The Governing Bodies of Unesco and WIPO responsible for establishing the programs of the two organizations (see in particular, as far as Unesco is concerned, Approved Programme and Budget for 1988–1989 (24C/5 Approved), paragraph 15115, and as far as WIPO is concerned, document AB/XVIII/2, Annex A, items PRG.03(4) and document AB/XVIII/14, paragraph 173) took two decisions concerning the continuation of the program for the elaboration of principles on various categories of works. First, it was decided that a committee of governmental experts should be jointly convened on a further category of works, namely on photographic works and, second, a decision was taken about the joint convocation of the Committee of Governmental Experts for which the present document has been prepared. Concerning the terms of reference of this Committee, it was stated that the purpose of the Committee is the evaluation and synthesis of the principles of protection elaborated in respect of eight categories of works in the course of the 1986–87 biennium, and in respect of photographic works in 1988, and that at the meeting of the Committee those principles will be re-examined, perfected and consolidated (wording used in the WIPO program) which will represent a follow-up to the conclusions by the committees of governmental experts (wording used in the Unesco program).

18. The present memorandum offers the evaluation and synthesis—in the sense described in the preceding paragraph—of the principles in respect of the eight categories of works discussed in the 1986–87 biennium. The Committee of Governmental Experts on Photographic Works will be held in Paris in April 1988. A separate memorandum about that category of works will, in May or June 1988, be prepared and distributed as an addendum to the present document.

19. The revised set of principles on the eight categories of works mentioned above is contained in Part II of the present memorandum. The memoranda prepared for, and the reports of, the committees of governmental experts concerned (see paragraphs 8 and 12) are not annexed because all those documents have been previously distributed. In any case, those memoranda and reports are available on request.

20. The present memorandum follows the order in which the eight categories of works were discussed (see paragraph 5) rather than the order in which they were mentioned in the programs of Unesco and WIPO referred to in paragraph 1. The structure of the principles has been preserved as much as possible so as to make references to previous versions, and to the comments and discussions about them, easier.

21. Part III of the memorandum gives the reasons for the changes suggested in the text of the principles (except those which do not consist of more than simple corrections), and it also refers to some proposals which emerged at the meetings of the committees of governmental experts but which, for various reasons, do not seem to justify changes. In general, no reference is made to suggestions which, as the reports of the meetings concerned indicate, did not receive substantial support or which were discussed but rejected. When in respect of a certain category of works, reference is made to the "meeting of the Committee of Governmental Experts" or simply to "the meeting," it means the meeting of the Committee of Governmental Experts (mentioned in paragraph 5 above) which dealt with the category of works concerned; when in respect of a certain category of works, reference is made to "the memorandum," it means the memorandum (mentioned in paragraph 8 above) prepared by the Secretariats for the Committee of Governmental Experts which dealt with the category of works concerned; and when in respect of a certain category of works reference is made to "the report," it means the report (mentioned in paragraph 12 above) adopted by the Committee of Governmental Experts which dealt with the category of works concerned.

22. For the convenience of the users of the memorandum, a table of contents is annexed to the present Part indicating the principles in Part II and the comments in Part III of the memorandum relating to the same subjects.

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Part II

Draft Principles

AUDIOVISUAL WORKS

Piracy

Principle AW1. (1) Piracy of audiovisual works is

(a) the manufacturing, or the preparation of manufacturing, of copies of audiovisual works on a commercial scale and without the authorization of the owners of copyright in such works and of the performers, phonogram producers and broadcasting organizations whose rights may be concerned (hereinafter referred to as "pirate copies"); and/or

(b) the packaging or the preparation of packaging, the exportation, importation and transit, the offering for sale, rental, lending or other distribution, the sale, rental, lending or other distribution, and the possession with the intention of doing any such acts, of pirate copies, provided that such acts are committed on a commercial scale and without the authorization of the owners of copyright in the audiovisual works and of the performers, phonogram producers and broadcasting organizations whose rights may be concerned.

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

(3) States should take efficient measures to eliminate piracy which appropriately match its illegal, criminal and antisocial nature. Such measures should include at least the following:

(a) strong and unconditional public condemnation of piracy;

(b) granting copyright protection that corresponds, at least, to the provisions of the Berne Convention and the Universal Copyright Convention, and that also takes fully into account the new uses of literary and artistic works;

(c) provision for criminal sanctions of sufficient severity to punish and deter piracy (including fines and/or—preferably—imprisonment terms equivalent to those which are to be applied for other serious thefts of property in the States concerned);

(d) provision for seizure and for the further destination—including the possible destruction—of pirate copies and of the equipment used in their production;

(e) provision for full compensation for damages;

(f) prompt and effective enforcement of the sanctions and measures mentioned in points *(c)*, *(d)* and *(e)*;

(g) procedures to facilitate the detection and proof of piracy, including pre-trial seizure of copies, equipment and documents, freezing of assets, funding and provision of sufficiently effective enforcement agencies and introduction of presumptions in favor of plaintiffs in respect of copyright ownership;

(h) prompt and effective measures to prevent distribution, exportation and importation of pirate copies;

(i) the promotion of international cooperation between police and customs authorities.

(4) States which are not yet party to the conventions mentioned in paragraph (3)*(b)* should actively consider the adherence to those conventions.

Private Copying ("Home Taping")

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

Principle AW3. Under the present circumstances, the most appropriate way of mitigating the prejudice mentioned in Principle AW2 is the introduction of a charge on recording equipment and/or blank material supports (tapes, cassettes). The charge should be paid by the manufacturers or importers and collected by organizations responsible for the collective administration of the rights in question, and it should not be used for purposes (such as fiscal purposes) other than the mitigation of the prejudice mentioned in Principle AW2. The buyers of recording equipment and/or blank material supports in respect of which the charge has been paid are entitled to reproduce audiovisual works for private purposes by means of such equipment and/or material supports.

Principle AW4. Recording equipment and material supports exported to another country should be exempt from any charge in the country of manufacture. Exceptions to the obligation to pay the charge may also be justified in respect of copying for certain educational purposes and for handicapped people provided that such copying does not serve commercial purposes.

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

Principle AW6. Without the authorization of the owners of copyright concerned, or of the bodies representing them, the amounts collected by the collective administration organizations should not be used for purposes (for example, for general cultural, social purposes) other than those defined in Principle AW5.

Principle AW7. In States party to the Berne Convention or the Universal Copyright Convention, foreign owners of copyright in audiovisual works should enjoy the same rights as national ones. The collective administration organizations should distribute the amounts collected to foreigners on the same basis as to nationals. Principle AW6 also applies to foreign owners of copyright: without the authorization of the collective administration organizations representing such owners of copyright, the amounts due to them should not be used for purposes other than those mentioned in Principle AW5.

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

also in the case of performers, phonogram producers and broadcasting organizations.

Rental

Principle AW9. The owners of copyright in audiovisual works should have an exclusive right of authorization of the rental of copies of such works, as long as the said works are protected by copyright.

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

Satellite Broadcasting

Direct Broadcasting by Satellite

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

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

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

Principle AW14. Under the Berne Convention, the Universal Copyright Convention and the Rome Convention, all of which provide for national treatment, the national laws both of the country of emission and of the "footprint" countries should be respected. *Alternative A:* If the national laws concerned do not grant the same kind or degree of protection, the highest level of protection should be applied. *Alternative B:* In general, the law of the country of emission should be applied; if, however, in the country of emission the owners of copyright in audiovisual works or the performers, phonogram producers and broadcasting organizations whose rights may be concerned do not enjoy protection (because there is no protection in general, or there is free use allowed in a particular case, or the term of protection has expired) and in a "footprint" country they enjoy such protection, or if in the country of emission their right is limited to a mere right to remuneration (non-voluntary licensing) and in the "footprint" country they have an exclusive right of authorization, the law of the "footprint" country should be applied.

Fixed Service Satellites

Principle AW15. (1) In the case of fixed service satellites, the entire process of transmission of programme-carrying signals (emission, "up-leg," "down-leg," transmission from the earth station further to the public) should be considered as one act of broadcasting composed of different phases, provided that the entire process is definitely decided and scheduled at the time of emission of the signals towards the satellite (hereinafter referred to as "broadcasting through fixed service satellite"). If audiovisual works are broadcast through fixed service satellite in this way, the owners of copyright in such works as well as performers, phonogram producers and broadcasting organizations whose rights may be concerned should enjoy the same rights as in the case of traditional broadcasting (by earth stations).

(2) If the transmission of the programme-carrying signals from the earth station further to the public is still conditional on decisions to be taken later, either by the originating broadcasting organization or by the broadcasting organization transmitting the program from the earth station further to the public, such transmission of signals should not be considered broadcasting (but a mere technical transmission of signals).

Principle AW16. Both the broadcasting organization originating the program and the broadcasting organization transmitting it from the receiving earth station further to the public are—separately and jointly—responsible towards the owners of copyright in audiovisual works and towards performers, phonogram producers and broadcasting organizations whose rights may be concerned as far as the final phase of broadcasting (from the earth

station further to the public) is concerned. The originating organization alone is responsible towards the owners of rights for the phases preceding the final phase of broadcasting.

Principle AW17. Broadcasting through fixed service satellite takes place both in the country from where the programme-carrying signals are emitted towards the satellite (hereinafter: "country of emission") and in all the countries where earth stations transmit the signals further to the public (hereinafter: "countries of the final phase of broadcasting").

Principle AW18. Under the Berne Convention, the Universal Copyright Convention and the Rome Convention, all of which provide for national treatment, in the case of broadcasting through fixed service satellite, the laws both of the country of emission and of the countries of the final phase of broadcasting should be taken into account. *Alternative A:* If the owners of rights exercise their rights towards the organization transmitting the signals from the receiving earth station further to the public, the law of the country of the final phase of broadcasting should be applied. If the owners of rights choose to exercise their rights towards the organization emitting the signals towards the satellite, and if the law of the country of emission and the law of the country of the final phase of broadcasting do not grant the same kind or degree of protection, the highest level of protection should be applied. *Alternative B:* In general, the law of the country of the final phase of broadcasting should be applied; if, however, in the country of the final phase of broadcasting the owners of copyright in audiovisual works or the performers, phonogram producers and broadcasting organizations whose rights may be concerned do not enjoy protection (because there is no protection in general, or there is free use allowed in a particular case, or the term of protection has expired) and in the country of emission they enjoy protection, the law of the country of emission should be applied.

Principle AW19. If a fixed service satellite transmits signals which are receivable by the general public by means of receiving equipment normally used by such public, such transmission should not be considered as broadcasting through fixed service satellite, but it should be considered as direct broadcasting by satellite.

Cable Distribution

Principle AW20. Authors or other owners of copyright should have the exclusive right of authorizing any distribution by cable of the broadcast of their works protected by copyright.

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

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

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

Principle AW24. Where an organization of authors as referred to in Principles AW22 and AW23 cannot agree with the broadcaster or the cable distributor, through negotiations conducted in good faith, on the conditions of authorizing distribution by cable of a broadcast of the work, such conditions should be fixed by a court, another impartial body designated by law or appointed to that effect by the government, or an arbitration tribunal whose chairman should, unless the parties agree on his person, be appointed by the government, and should ensure the protection of the moral rights of the author. Before the fixation of such conditions, the said court, another designated body or arbitration tribunal should give an occasion to the authors' organization and the broadcaster or cable distributor to be heard.

Principle AW25. Any remunerations collected for authorizations mentioned in Principle AW24 should, after the deduction of related administrative expenses, be due to the authors whose works protected by copyright were actually used in distribution by cable of broadcasts, with due regard to the extent of the use and the importance of the works of each author, whether domestic or foreign.

However, those authors who have expressly delegated the exercise of their rights to an organization administering authors' rights, may decide upon exceptions to the said principle of distribution, without affecting the rights of those authors who did not expressly delegate the exercise of their rights to that organization.

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

Principle AW27. Authors or other owners of copyright should have the exclusive right of authorizing the distribution of their works protected by copyright in the framework of cable–originated programs.

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

Principle AW29. Performers should have the right to equitable remuneration for the distribution by cable of the broadcast of their performances protected by law.

Principle AW30. Principle AW26 applies *mutatis mutandis* to distribution by cable of the broadcast of performances.

Principle AW31. Performers should have, at least, a right to equitable remuneration where their protected performances are incorporated in audiovisual works and distributed by cable in the framework of cable–originated programs.

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

Principle AW33. Broadcasters should have the exclusive right to authorize simultaneous and unchanged distribution by cable of their broadcasts as well as the use of their broadcasts in the framework of cable–originated programs.

Principle AW34. (1) Principle AW26 applies *mutatis mutandis* to simultaneous and unchanged distribution by cable of broadcasts.

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

Cable Distribution of Programs Transmitted by Fixed Service Satellites

Principle AW35. If audiovisual works transmitted through fixed service satellite—in the final phase of the communication to the public—are distributed by cable, such distribution should be considered as a distribution in the framework of a cable–originated program. Consequently, Principles AW27, AW28, AW31 to AW33 and AW34(2) should be applied.

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

Principle AW37. When communication to the public (transmission for public reception) is effected through fixed service satellite—and then, as a continuation of it, by cable—communication takes place both in the country from where the programme–carrying signals are emitted towards the satellite (hereinafter: "country of emission") and in all the countries where the signals are distributed by cable (hereinafter: "countries of cable distribution").

Principle AW38. Under the Berne Convention, the Universal Copyright Convention and the Rome

Convention, all of which provide for national treatment, in the case of cable distribution of programs transmitted by fixed service satellite, the laws of both the country of emission and of the countries of cable distribution should be taken into account. *Alternative A*: If the owners of rights exercise their rights towards the organization distributing the signals by cable, the law of the country of cable distribution should be applied. If the owners of rights choose to exercise their rights towards the organization which emitted the signals towards the satellite, and if the law of the country of emission and the law of the country of cable distribution do not grant the same kind or degree of protection, the highest level of protection should be applied. *Alternative B*: In general, the law of the country of cable distribution should be applied; if, however, in the country of cable distribution the owners of copyright in audiovisual works or the performers, phonogram producers and broadcasting organizations whose rights may be concerned do not enjoy protection (because there is no protection in general, or there is free use allowed in a particular case, or the term of protection has expired) and in the country of emission they enjoy protection, the law of the country of emission should be applied.

PHONOGRAMS

Piracy

Principle PH1. (1) Piracy of phonograms is

(a) the manufacturing, or the preparation of manufacturing, of copies of phonograms on a commercial scale and without the authorization of the phonogram producers and of the authors of literary and artistic works and performers whose works and performances, respectively, are included in phonograms (hereinafter referred to as "pirate copies"); and/or

(b) the packaging or the preparation of packaging, the exportation, importation and transit, the offering for sale, rental, lending or other distribution, the sale, rental, lending or other distribution, and the possession with the intention of doing any such acts, of pirate copies, provided that such acts are committed on a commercial scale and without the authorization of the phonogram producers and of the authors of literary and artistic works and performers whose works and performances, respectively, are included in the phonograms.

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

(3) States should take efficient measures to eliminate piracy which appropriately match its illegal, criminal and antisocial nature. Such measures should include at least the following:

(a) strong and unconditional public condemnation of piracy;

(b) granting protection to the owners of copyright in literary and artistic works and to performers and phonogram producers that corresponds, at least, to the provisions of the Berne Convention, the Universal Copyright Convention, the Rome Convention and the Phonograms Convention, and that also takes fully into account the new uses of literary and artistic works, performances and phonograms;

(c) provision for criminal sanctions of sufficient severity to punish and deter piracy (including fines and/or—preferably—imprisonment terms equivalent to those which are to be applied for other serious thefts of property in the States concerned);

(d) provision for seizure and for the further destination—including the possible destruction—of pirate copies and of the equipment used in their production;

(e) provision for full compensation for damages;

(f) prompt and effective enforcement of the sanctions and measures mentioned in points *(c)*, *(d)* and *(e)*;

(g) procedures to facilitate the detection and proof of piracy, including pre-trial seizure of copies, equipment and documents, freezing of assets, funding and provision of sufficiently effective enforcement agencies and introduction of presumptions in favor of plaintiffs in respect of copyright ownership;

(h) prompt and effective measures to prevent distribution, exportation and importation of pirate copies;

(i) the promotion of international cooperation between police and customs authorities.

(4) States which are not yet party to the conventions mentioned in paragraph (3)*(b)* should actively consider the adherence to those conventions.

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

Principle PH2. If phonograms published for commercial purposes, or reproductions of such phonograms, are used for broadcasting or for other communications to the public, performers whose performances are included in phonograms and phonogram producers should have, at least, a right to equitable remuneration.

Private Copying ("Home Taping")

Principle PH3. Widespread reproduction of phonograms for private purposes prejudices the legitimate interests of the owners of copyright in literary and artistic works included in phonograms. It is an obligation of States party to the Berne Convention to mitigate such prejudice.

Principle PH4. Under the present circumstances, the most appropriate way of mitigating the prejudice mentioned in Principle PH3 is the introduction of a charge on recording equipment and/or blank material supports (tapes, cassettes). The charge should be paid by the manufacturers or importers and collected by organizations responsible for the collective administration of the rights in question, and it should not be used for purposes (such as fiscal purposes) other than the mitigation of the prejudice mentioned in Principle PH3. The buyers of recording equipment and/or blank material supports in respect of which the charge has been paid are entitled to reproduce phonograms for private purposes by means of such equipment and/or material supports.

Principle PH5. Recording equipment and material supports exported to another country should be exempt from any charge in the country of manufacture. Exceptions to the obligation to pay the charge may also be justified in respect of copying for certain educational purposes and for handicapped people provided that such copying does not serve commercial purposes.

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

Principle PH7. Without the authorization of the owners of copyright concerned, or of the bodies representing them, the amounts collected by the collective administration organizations should not be used for purposes (for example, for general cultural, social purposes) other than those defined in Principle PH6.

Principle PH8. In States party to the Berne Convention or the Universal Copyright Convention, foreign owners of copyright should enjoy the same rights as national ones. The collective administration organizations should distribute the amounts collected to foreigners on the same basis as to nationals. Principle PH7 also applies to foreign owners of copyright: without the authorization of the collective administration organizations representing such owners of copyright, the amounts due to them should not be used for purposes other than those mentioned in Principle PH6.

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

Rental

Principle PH10. The owners of copyright in literary and artistic works included in phonograms should have an exclusive right of authorization of the rental of copies of such phonograms, as long as the works concerned are protected by copyright.

Principle PH11. National legislations should not oblige the owners of copyright to exercise their rental right by means of collective administration. It should be up to copyright owners to have recourse to collective administration if they find such administration desirable.

Principle PH12. Phonogram producers should have an exclusive right of authorization of the rental of copies of their phonograms, as long as the phonograms concerned are protected under the law. Principle PH11 applies *mutatis mutandis* regarding this right of phonogram producers.

Principle PH13. In the case of rental of phonograms, performers whose performances are included in phonograms should have, at least, a right to equitable remuneration.

Satellite Broadcasting

Direct Broadcasting by Satellite

Principle PH14. Broadcasting by direct broadcasting satellite is broadcasting under the Berne Con-

vention, the Universal Copyright Convention and the Rome Convention. Consequently, where phonograms are broadcast by such satellite, the owners of copyright in literary and artistic works and performers whose works and performances, respectively, are included in such phonograms, as well as the phonogram producers and also the broadcasting organizations whose rights may be concerned, should enjoy the same rights as in the case of traditional broadcasting (by earth stations).

Principle PH15. It is the broadcasting organization originating the direct broadcasting by satellite (giving the order for such broadcasting) which is responsible towards the owners of copyright, performers, phonogram producers and broadcasting organizations whose rights may be concerned.

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

Principle PH17. Under the Berne Convention, the Universal Copyright Convention and the Rome Convention, all of which provide for national treatment, the national laws both of the country of emission and of the "footprint" countries should be taken into account. *Alternative A*: If the national laws concerned do not grant the same kind or degree of protection, the highest level of protection should be applied. *Alternative B*: In general, the law of the country of emission should be applied; if, however, in the country of emission the owners of copyright, performers, phonogram producers and broadcasting organizations whose rights may be concerned do not enjoy protection (because there is no protection in general, or there is free use allowed in a particular case, or the term of protection has expired) and in a "footprint" country they enjoy such protection, or if in the country of emission their right is restricted to a mere right to remuneration (non-voluntary licensing) and in the "footprint" country they have an exclusive right of authorization, the law of the "footprint" country should be applied.

Fixed Service Satellites

Principle PH18. (1) In the case of fixed service satellite, the entire process of transmission of programme-carrying signals (emission, "up-leg," "down-leg," transmission from the earth station further to the public) should be considered as one act of broadcasting composed of different phases, provided that the entire process is definitely decided and scheduled at the time of emission of the signals towards the satellite (hereinafter referred to as "broadcasting through fixed service satellite"). If phonograms are broadcast through fixed service satellite in this way, the owners of copyright, as well as performers, phonogram producers and broadcasting organizations whose rights may be concerned should enjoy the same rights as in the case of traditional broadcasting (by earth stations).

(2) If the transmission of the programme-carrying signals from the earth station further to the public is still conditional on decisions to be taken later, either by the originating broadcasting organization or by the broadcasting organization transmitting the program from the earth station further to the public, such transmission of signals should not be considered as broadcasting (but as a mere technical transmission of signals).

Principle PH19. Both the broadcasting organization originating the program and the broadcasting organization transmitting it from the receiving earth station further to the public are—separately and jointly—responsible towards the owners of copyright, performers, phonogram producers and broadcasting organizations whose rights may be concerned as far as the final phase of broadcasting (from the earth station further to the public) is concerned. The originating organization alone is responsible towards the owners of rights for the phases preceding the final phase of broadcasting.

Principle PH20. Broadcasting through fixed service satellite takes place both in the country from where the programme-carrying signals are emitted towards the satellite (hereinafter: "country of emission") and in all the countries where earth stations transmit the signals further to the public (hereinafter: "countries of the final phase of broadcasting").

Principle PH21. Under the Berne Convention, the Universal Copyright Convention and the Rome Convention, all of which provide for national treatment, in the case of broadcasting through fixed service satellite, the laws both of the country of emission and of the countries of final phase of broadcasting should be taken into account. *Alternative A*: If the owners of rights exercise their rights towards the organization transmitting the signals from the receiving earth station further to the public, the law of the country of the final phase of broadcasting

should be applied. If the owners of rights choose to exercise their rights towards the organization emitting the signals towards the satellite, and if the law of the country of emission and the law of the country of the final phase of broadcasting do not grant the same kind or degree of protection, the highest level of protection should be applied. *Alternative B*: In general, the law of the country of the final phase of broadcasting should be applied; if, however, in the country of the final phase of broadcasting, the owners of copyright in literary and artistic works included in phonograms or the performers, phonogram producers and broadcasting organizations whose rights may be concerned do not enjoy protection (because there is no protection in general or there is free use allowed in a particular case or the term of protection has expired) and in the country of emission they enjoy protection, the law of the country of emission should be applied.

Principle PH22. If a fixed service satellite transmits signals which are receivable by the general public by means of receiving equipment normally used by such public, such transmission should not be considered as broadcasting through fixed service satellite, but it should be considered as direct broadcasting by satellite.

Cable Distribution

Principle PH23. Authors or other owners of copyright should have the exclusive right of authorizing any distribution by cable of the broadcast of their literary and artistic works protected by copyright and included in phonograms.

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

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

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

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

Principle PH28. (1) In respect of literary and artistic works included in phonograms to which neither Principle PH25 nor Principle PH26 applies, and in respect of which the experience in the country concerned shows that the broadcaster or the cable distributor cannot rely on obtaining the necessary authorization from the copyright owners concerned in due time, legislation may determine—in the public interest—the conditions which, in the absence of authorization by the copyright owner, the broadcaster or the cable distributor must satisfy to be able to use lawfully the work in the distribution by cable of broadcasts.

(2) The conditions referred to in paragraph (1) should provide for the safeguard of relevant moral interests of the authors and should include the payment of appropriate fees to the owners of copyright.

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

artistic works included in phonograms, in the same proportion as the number of recipients of the distribution by cable is to the number of recipients of the broadcast.

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

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

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

Principle PH31. Authors or other owners of copyright should have the exclusive right of authorizing the distribution of their literary and artistic works protected by copyright and included in phonograms, in the framework of cable-originated programs.

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

Principle PH33. Performers should have, at least, the right to equitable remuneration for the distribution by cable of the broadcast of their performances included in phonograms.

Principle PH34. Principle PH30 applies *mutatis mutandis* to distribution by cable of the broadcast of performances.

Principle PH35. Performers should have, at least, the right to equitable remuneration, where their protected performances are incorporated in phonograms and distributed by cable in the framework of cable-originated programs.

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

Principle PH37. Phonogram producers should have, at least, the right to equitable remuneration for the distribution by cable of the broadcast of their phonograms.

Principle PH38. Principle PH30 applies *mutatis mutandis* to distribution by cable of the broadcast of phonograms.

Principle PH39. Phonogram producers should have the same right as regards the distribution of their phonograms in the framework of cable-originated programs as they have in relation to the broadcast thereof.

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

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

Principle PH42. (1) Principle PH30 applies *mutatis mutandis* to simultaneous and unchanged distribution by cable of broadcasts.

(2) Limitations of copyright, except any kind of non-voluntary licenses, admitted under interna-

tional conventions and under applicable national law with regard to the broadcasting of protected works may be extended *mutatis mutandis* to the rights of broadcasters relating to distribution by cable of their broadcasts in the framework of cable-originated programs.

Cable Distribution of Programs Transmitted by Fixed Service Satellites

Principle PH43. If phonograms transmitted through fixed service satellite—in the final phase of the communication to the public—are distributed by cable, such distribution should be considered as a distribution in the framework of a cable-originated program. Consequently, Principles PH31, PH32, PH35, PH36, PH39 to PH41 and PH42(2) should be applied.

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

Principle PH45. When communication to the public (transmission for public reception) is effected through fixed service satellite—and then as a continuation of it, by cable—communication takes place both in the country from where the programme-carrying signals are emitted towards the satellite (hereinafter: "country of emission") and in all the countries where the signals are distributed by cable (hereinafter: "countries of cable distribution").

Principle PH46. Under the Berne Convention, the Universal Copyright Convention and the Rome Convention, all of which provide for national treatment, in the case of cable distribution of programs transmitted by fixed service satellite, the laws of both the country of emission and of the countries of cable distribution should be taken into account. *Alternative A*: If the owners of rights exercise their rights towards the organization distributing the signals by cable, the law of the country of cable distribution should be applied. If the owners of rights choose to exercise their rights towards the organization which emitted the signals towards the satellite, and if the law of the country of emission and the law of the country of cable distribution do not grant the same kind or degree of protection, the highest level of protection should be applied. *Alternative B*: In general, the law of the country of cable distribution should be applied; if, however, in the country of cable distribution, the owners of copyright, performers, phonogram producers and broadcasting organizations whose rights may be concerned do not enjoy protection (because there is no protection in general, or there is free use allowed in a particular case, or the term of protection has expired) and in the country of emission they enjoy protection, the law of the country of emission should be applied.

WORKS OF ARCHITECTURE

Creations To Be Protected as Works of Architecture

Principle WA1. (1) "Works of architecture" are buildings and similar constructions, provided they contain original creative elements as to their form, design or ornaments, irrespective of the purpose of buildings or similar constructions.

(2) "Works relative to architecture" are drawings and three-dimensional models on the basis of which works of architecture can be constructed.

Principle WA2. Works of architecture, as well as works relative to architecture, should be protected by copyright.

Economic Rights

Principle WA3. (1) The authors of works of architecture, as well as the authors of works relative to architecture, should enjoy the exclusive right of authorizing the reproduction, by any means and in any manner or form, of their works of architecture or works relative to architecture, respectively.

(2) The reproduction of works of architecture includes the construction of another work of architecture that is, in respect of some or all of the original elements, similar to the former work of architecture; it also includes the preparation, on the basis of works of architecture, of works relative to architecture.

(3) The reproduction of works relative to architecture includes construction, on the basis of those works, of works of architecture; it also includes the making of copies, in any manner or form, of the works relative to architecture.

Principle WA4. The authors of works of architecture should enjoy the exclusive right of authorizing alterations of their works, except alterations of a practical or technical nature which are necessary for the owners of the buildings or other similar constructions.

Moral Rights

Principle WA5. The authors of works of architecture or works relative to architecture should have the right to be named, as far as practicable and in the customary way, on their works as authors of those works.

Principle WA6. (1) The authors of works of architecture or of works relative to architecture should have the right to prohibit any distortion, mutilation or other modification of, or other derogatory action in relation to, the said works, which would be prejudicial to their honor or reputation.

(2) If any modification or other derogatory action of the kind referred to in paragraph (1) takes place without the authors' knowledge or against their prohibition, the perpetrator of such modification or action should be obliged to have the former state reinstated, or to pay damages, according to the circumstances of the case.

(3) Where their works have been altered without their consent, the authors of works of architecture should have the right to prohibit the association of their names with their works.

The Protection of the External Image of Works of Architecture

Principle WA7. The reproduction of the external image of works of architecture by means of photography, cinematography, painting, sculpture, drawing or similar methods should not require the authorization of their authors if it is done for private purposes or, even if it is done for commercial purposes, where the works of architecture are on a public street, road or square or in any other place normally accessible to the public.

WORKS OF FINE ART

Creations To Be Protected as Works of Fine Art

Principle FA1. (1) "Works of fine art" are, in particular, paintings, drawings, etchings, engravings, sculptures and works of similar kind.

(2) Works of fine art should be protected by copyright.

The Use of Computer Systems for the Creation of Works of Fine Art

Principle FA2. When computer systems are used for the creation of works of fine art, such systems should be considered as technical means in the process of creation for achieving the results desired by human beings.

Principle FA3. In the case of works produced by means of computer systems, the copyright owners in such works are the persons who produced the creative elements without which the resulting works would not be entitled to copyright protection. Consequently, programmers (persons who create the programs for such systems) can be recognized as coauthors (or single authors, as the case may be) only if they contribute to the work by such a creative effort.

Distinction Between Copyright in the Work and the Proprietary Right in the Physical Object Constituting the Work or in a Copy of the Work

Principle FA4. (1) The proprietary right in physical objects constituting works of fine art or in copies of such works and the copyright in the works are independent from each other.

(2) With the exception mentioned in Principle FA6(2), the transfer of the proprietary right does not involve the transfer of copyright, unless expressly stipulated in contract.

Moral Rights

Principle FA5. Independently of the authors' economic rights, and even after the transfer of the said rights and/or after the alienation of the physical objects constituting works of fine art or the copies of such works, authors should have the right to

(a) claim authorship and have their names indicated on the physical objects constituting their works or on the copies of their works or in other appropriate ways associated with their works;

(b) object to any distortion, mutilation or other modification of, or other derogatory action in relation to, their works, which would be prejudicial to their honor or reputation.

Economic Rights

Principle FA6. (1) The authors of works of fine art should have the exclusive right to authorize

(a) the making of reproductions of their works, that is, copies that are in every respect (material, color, dimensions) identical with the originals;

(b) the making of copies of sculptures by moulding and casting, and of etchings and engravings by contact-printing of the etched or engraved surface;

(c) the making of adaptations (derivative works) of their works;

(d) the making of pictures of their works by photography, cinematography or processes analogous to photography or cinematography;

(e) the showing of their works, or of copies, adaptations of pictures thereof, to the public in public exhibitions or any other public place, in motion pictures or television.

(2) If the authors (or their successors in title) transfer the proprietary right in the physical objects constituting their works or in copies of their works, it should be deemed, unless otherwise provided in contract, that the right to authorize the acts mentioned in paragraph (1)*(e)*, in respect of the physical objects constituting the works or of the copies concerned, is also transferred.

(3) The rights of the authors of the works of fine art mentioned in paragraph (1) should not be limited but in the cases and to the extent allowed under the international copyright conventions. Such a limitation may be, for example, that, where works or copies, adaptations or pictures thereof, have been made accessible to the public in public exhibitions with the authorization of the authors (or in the case mentioned in paragraph (2) with the authorization of the owners of the proprietary right) any person may be allowed to make pictures thereof for personal use, for the purpose of reporting current events or for criticism.

Droit de Suite

Principle FA7. The authors should, with respect to original copies of their works of fine art, enjoy the inalienable right to an interest (a certain percentage) in any sale of such copies subsequent to the first transfer by them of the proprietary right in such copies (*droit de suite*).

Part III

Comments on the Draft Principles

GENERAL COMMENTS

1. Before proceeding to the discussion of the revised set of principles contained in Part II, three general comments should be made which concern all categories of works.

2. The first comment refers to the nature—and, in this connection, to the wording—of the principles. It follows from the nature of the principles—that is, from the fact that they are only guidelines to national legislators and not model provisions—that, in all the principles, the word "should" is used and not the word "shall." During the first three meetings, no doubts or questions emerged in this respect. It was only at the fourth meeting, that is at the meeting of the Committee of Governmental Experts on Dramatic, Choreographic and Musical Works, that one delegation raised the question of the relationship between the principles in "should" form, on the one hand, and the obligations under the copyright conventions on the other. The delegation suggested that the word "shall" should be used instead of the word "should" in certain principles to indicate that such principles reflected what were, in fact, obligations under the international conventions (paragraph 15 of the report of the meeting). The representative of the Secretariats referred to the fact that in accordance with the programs of the two organizations, principles—and not model provisions—had been proposed and were discussed from which followed necessarily the "should" form, and he underlined that the purpose of the series of meetings was not to modify existing international obligations (paragraph 16 of the same report). (It can be added that, in the series of meetings, not only those countries participated which were party to one or both international copyright conventions but also other countries and, in respect of such countries, one of course cannot even speak about existing international obligations.) The answer of the representative of the Secretariats was accepted both by the delegation concerned and by the Committee and the "should" form of the principles was maintained throughout the whole series of meetings. In the set of principles included in Part II of the present memorandum, those principles which correspond to certain obligations under the international copyright conventions but are drafted in "should" form should be seen in the light of what is referred to above.

3. The second comment concerns the use and the meaning of the word "author." Some participants raised the question, at various meetings, whether, in certain principles, the word "author" only referred to individual creators or also to other possible original owners of copyright (for example, to employers) and to the authors' heirs and other successors in title. The answer was always positive. It should be underlined also in respect of the revised principles included in Part II of the memorandum

that the word "author" is used in the same manner and in the same meaning as in the international copyright conventions and in a great number of national laws, that is to also cover the heirs, successors in title and the persons other than individual creators (such as employers) who are recognized as original owners of copyright in certain national laws.

4. .Finally, the third comment is that it should be taken into account that certain principles have been formulated in accordance with the more detailed provisions of the Berne Convention.

AUDIOVISUAL WORKS

Piracy

5. Piracy was among those rare questions which were discussed in detail by more than one committee of governmental experts. The Committee of Governmental Experts on Audiovisual Works and Phonograms had a very detailed discussion on Principles AW1 and PH1 dealing with piracy of audiovisual works and phonograms, and in the framework of that discussion several comments and proposals were made. The Committee also adopted a separate Resolution condemning piracy and inviting States to take appropriate measures (several of which were referred to as examples in the Resolution) for combating piracy. The comments, proposals and the Resolution were taken into account when the Secretariats prepared the chapter on piracy in the memorandum for the Committee of Governmental Experts on the Printed Word. Therefore, Principle PW1 on piracy of the printed word was much more detailed than Principles AW1 and PH1.

6. At the meeting of the Committee of Governmental Experts on the Printed Word, the participants stated that they agreed on the main lines of the comments included in the chapter on piracy and emphasized the usefulness of Principle PW1 for the adoption and application, at the national level, of efficient measures against piracy. In respect of certain details of Principle PW1, some further proposals were, however, made whose main purpose was to make the list of measures against piracy fuller and more precise. Those proposals (reflected in paragraphs 24, 26, 27 and 31 of the report of the meeting) were, in general, accepted, and they are included in the new version of the principles on piracy.

7. Two more proposals were made at the same meeting. The first was that, in Principle PW1(2), the words "a form of theft" should be deleted and the second was that in the same paragraph the word "antisocial" should be deleted. The other participants in the meeting, however, opposed the changes, stressing that those words were necessary to underline the exceptionally dangerous and condemnable nature of piracy (see paragraph 25 of the report). Therefore, Principle PW1(2) has been reproduced without changes in the revised set of principles dealing with the printed word. This seems to be justified also because the text of Principle PW1(2) was the same as the text of Principles AW1(2) and PH1(2), and those principles were accepted without comments by the Committee of Governmental Experts on Audiovisual Works and Phonograms and even further supported by the separate Resolution mentioned in paragraph 5 above, where piracy was also qualified as theft (as the Resolution put it, a "serious theft").

8. Since Principle PW1—as further developed by the proposals mentioned in paragraph 6 above—is the final result of the discussions on the problems of piracy at the two meetings—that is, at the meeting of the Committee of Governmental Experts on Audiovisual Works and Phonograms and at the meeting of the Committee of Governmental Experts on the Printed Word—in the joint set of principles, Principles AW1 and PH1 are worded, *mutatis mutandis*, in the same way as Principle PW1.

9. Since the meeting of the Committee of Governmental Experts on the Printed Word further developments have, however, taken place which seem to justify certain additional changes in the definition of piracy included in paragraph (1) of the three principles concerned (that is, Principles AW1, PH1 and PW1): WIPO has convened a Committee of Experts on Measures Against Counterfeiting and Piracy (to be held in Geneva from April 25 to 28, 1988). The Committee will discuss draft model provisions containing definitions of acts of counterfeiting and piracy and proposals for measures to be taken against such acts. The draft model provisions have been prepared on the basis of a thorough analysis of the practical and legal problems of counterfeiting and piracy. In the framework of this analysis, which was completed at the time of the preparation of the present memorandum, certain elements of the definition of piracy were found to be relevant and applicable also in respect of Principles AW1, PH1 and PW1.

10. The changes which would seem to be desirable in the definition of piracy on the basis of the analysis mentioned in the preceding paragraph—and which have been included in the new version of Principles AW1(1), PH1(1) and PW1(1)—are as follows:

—The original version of Principles AW1(1) and PH1(1) used the word "unauthorized" and the original version of Principle PW1(1) used the word "unlawful" in respect of acts of piracy, without any further qualification, thus leaving open the significant questions: "unauthorized by whom" and "unlawful in what respect?" The essence of piracy is that pirate copies are manufactured and subsequently distributed without the authorization of the owners of copyright and neighboring rights concerned. This has been made clear in the new version.

—In the original version of the three definitions (that is, in Principles AW1(1), PH1(1) and PW1(1)), manufacture, sale and/or other distribution are mentioned side by side as acts of piracy provided they are unauthorized (unlawful) and of a commercial nature. This wording does not seem to be precise and might lead to an unintended extension of the notion of piracy because it could be interpreted as also covering cases of unauthorized commercial sale and/or distribution of copies other than pirate copies. The wording of these paragraphs has been changed in all the three principles so as to avoid such an interpretation.

—At the meeting of the Committee of Governmental Experts on Audiovisual Works and Phonograms, it was proposed that the possession of pirate copies for sale or other distribution should be included in the list of acts of piracy. The proposal was not opposed, yet this act was not included in the original version of the definition of the piracy of the printed word in Principle PW1(1), because it was considered that it concerned a detail which did not fit into the more general language of the definition. In the revised definition of piracy, however, this act has been included along with further acts, for two reasons. First, as a result of the proposals mentioned in paragraph 6 above, the list of measures against piracy has become fairly detailed, and now a more detailed definition of piracy fits better into Principles AW1, PH1 and PW1. Second, because the analysis mentioned in paragraph 9 above has shown that offering more details in this respect may be a useful guide to national legislators.

11. In respect of the list of acts of piracy, it should be noted that it includes certain acts (such as packaging, possessing of copies) which are not restricted acts under copyright and neighboring rights, as well as certain other acts (exportation, importation, rental, lending and other distribution) which, even if covered by copyright and/or neighboring rights in certain countries, are not generally recognized as restricted acts. Those acts should qualify as acts of piracy because they are parts of the commercial distribution of pirate copies and thus should be combated in the same way and with the same severity as the manufacture of pirate copies.

Private Copying ("Home Taping")

12. The majority of the participants in the meeting of the Committee of Governmental Experts on Audiovisual Works and Phonograms agreed upon the intention and the essence of the principles on private copying of audiovisual works and phonograms (Principles AW2 to AW8 and PH3 to PH9, respectively), but several changes were proposed in respect of certain elements of the principles.

13. Several participants proposed that the statement contained in paragraph 52 of the memorandum prepared by the Secretariats for that meeting—according to which governments were not entitled to use the income from the charge on recording equipment and/or blank material supports mentioned in Principle AW3 (and in Principle PH4) for other (in particular fiscal) purposes—should be transformed into a separate principle (see paragraph 43 of the report). This proposal is reflected in the new version of the second sentence of Principles AW3 and PH4 to which the following clause has been added: "and it should not be used for purposes (such as fiscal purposes) other than the mitigation of the prejudice mentioned in Principle [AW2][PH3]."

14. In Principles AW3 and PH4, one further change has been made; the following sentence has been added to those principles: "The buyers of recording equipment and/or blank material supports in respect of which the charge has been paid are entitled to reproduce [audiovisual works] [phonograms] for private purposes by means of such equipment and/or material supports." This change corresponds to a proposal made at the meeting (see paragraph 37 of the report) the reason for which was that Principle AW3 (as well as Principle PH4) had as a corollary such an entitlement of the buyers.

15. It was proposed by several delegations that reference should be made to the possibility of exceptions to the obligation to pay the charge in respect of copying for certain educational purposes and for handicapped people (see paragraphs 39 and 74 of the report). This reference is included in the new versions of Principles AW4 and PH5, but the condition is added that the exceptions should not

be extended to copying for commercial purposes because in such a case no exception seems to be justified.

16. Most of the participants in the meeting expressed the view that the word "if" (concerning the existence of prejudice) should be deleted from Principle AW8 as far as performers and phonogram producers were concerned, and a number of participants were of the opinion that the rights of performers and phonogram producers, on the one hand, and the rights of broadcasting organizations, on the other, should be dealt with separately. The representative of an international non-governmental organization emphasized, however, that broadcasters should be entitled to participate in the income from the charge mentioned in Principle AW3 in the same way as performers and phonogram producers were (see paragraph 40 of the report). The Secretariats have replaced the word "if" at the beginning of Principle AW8 by the expression "to the extent that" but have not introduced other changes in Principle AW8, in this respect, for the following reasons: concerning the reproduction of phonograms for private purposes, Principle PH9 does differentiate between performers and phonogram producers, on the one hand, and broadcasting organizations, on the other, from the viewpoint of whether their legitimate interests are prejudiced and, thus, whether they are entitled to a share of the charge or not. In respect of the reproduction of audiovisual works for private purposes, such a strong differentiation does not seem to be justified. It follows from the well-known special legal situation in the field of ownership of rights in audiovisual works and from the fact that this situation differs from country to country that, in Principle AW8, the more general wording "to the extent that" seems to be more appropriate in respect of all the three categories of neighboring rights owners.

17. One further change has been made in the texts of Principles AW2, AW3 and AW8 (and the parallel Principles PH3, PH4 and PH9). As proposed at the meeting (see paragraph 36 of the report), the verb "to eliminate" and the noun "elimination" were replaced in all those principles by the verb "to mitigate" and the noun "mitigation" in order to express better the actual result of the proposed system of charges.

18. A number of participants expressed the view that the concept of "private purposes" should be discussed at least in the commentary (see paragraph 38 of the report). This demand was met in the framework of the memorandum prepared for the Committee of Governmental Experts on the Printed Word where, in the chapter on reprography, a detailed analysis was given about the notions of "private use," "personal use" and "internal use" (see paragraphs 87 to 96 of that memorandum). What is discussed there in respect of reprography for private purposes also applies, *mutatis mutandis*, to reproduction of audiovisual works and phonograms for private purposes.

Rental

19. A great number of participants expressed their agreement on Principles AW9 and AW10 (as well as on the parallel Principles PH10 to PH13) on the recognition of an exclusive right in respect of rental of copies of audiovisual works, although some delegations said that their governments were not yet persuaded that a right of rental should be introduced.

20. Only one change was proposed in the principles mentioned in the preceding paragraph. Some delegations were of the view that the reference to public lending should be deleted from the principles—and thus they should be restricted to the question of rental—because the copyright and neighboring rights considerations were not the same in respect of public lending as in respect of rental (see paragraph 48 of the report). It was the memorandum prepared for a later meeting—for the meeting of the Committee of Governmental Experts on the Printed Word—which analyzed the questions of public lending right in detail (see paragraphs 249 to 277 of that memorandum). Several participants in that meeting—as mentioned in paragraph 235 below—were of the opinion that principles on public lending would be premature. While on public lending of books there is at least legal regulation in several countries, it is not the case in respect of public lending of audiovisual works and phonograms: thus, here, any principles would be even more premature. Therefore, the revised principles only cover rental.

Satellite Broadcasting

Direct Broadcasting by Satellite

21. At the meeting of the Committee of Governmental Experts on Audiovisual Works and Phonograms, a great number of participants emphasized that the objective of the principles on direct broadcasting by satellite in the memorandum prepared by the Secretariats "was very attractive and favorable for owners of copyright and so-called neighboring rights." Several participants expressed, therefore, full support for those principles and

stressed that they were "the only guarantees for the possibility of exercising the right to broadcast in the case of direct broadcasting satellites" (see paragraphs 51 and 52 of the report).

22. While there was full agreement in respect of Principles AW11 and AW12 (and of the parallel Principles PH14 and PH15) dealing with the notion of broadcasting and with the responsibility of the originating organizations, some reservations were expressed concerning Principles AW13 and AW14 (and the parallel Principles PH16 and PH17) which dealt with the questions of where the broadcasting takes place in the case of transmission by direct broadcasting satellites and, consequently, the law of which country should be applied.

23. Those who opposed the latter two principles did not raise any specific legal arguments at the meeting against what was stated in paragraphs 77 to 83 of the memorandum prepared by the Secretariats and what was reflected in Principles AW13, AW14, PH16 and PH17. Nevertheless, they were of the opinion that the application of those principles would raise legal and practical difficulties and, therefore, expressed the view that the law of the country of emission should be applied exclusively (see paragraph 52 of the report).

24. In the following paragraphs, first the fundamental question is analyzed again, namely, the question whether, on the basis of the existing provisions of the international conventions, it is justified or not to restrict the notion of broadcasting to the act of emission or whether satellite broadcasting should be considered as communication to the public, including all stages that the programme-carrying signals have to run through to make the program available to the public (as suggested in the memorandum mentioned above). After that analysis, the alleged legal and practical difficulties are discussed.

25. The theory that, in the field of copyright, broadcasting should be considered as a mere emission of signals seems to be based on the belief that the international copyright and neighboring rights conventions do not contain any definition of "broadcasting" and that, therefore, the definition of the Radio Regulations of the International Telecommunication Union (ITU)—under which broadcasting is said to be equal to emission of signals—should be applied. Such a belief seems unjustified. First, it could be seriously questioned whether even under the Radio Regulations, broadcasting, in general, and direct broadcasting by satellite, in particular, is considered to take place only at the point of emission. No analysis of the Radio Regulations is, however, necessary because the basic foundation for the emission theory itself can be contested; in fact, the international copyright and neighboring rights conventions do contain definitions of broadcasting. At least, the Berne Convention and the Rome Convention contain such definitions and those definitions do not justify the emission theory.

26. Article 11bis(1)(i) of the Berne Convention reads as follows: "Authors of literary and artistic works shall enjoy the exclusive right of authorizing ... broadcasting of their works or the communication thereof to the public by any other means of wireless diffusion of signs, sounds or images." The second part of the provision "or the communication [of works]...to the public by any *other* means of wireless diffusion" clearly indicates that under the Berne Convention broadcasting is *one kind of communication to the public by means of wireless diffusion* (the most typical one) in relation to which there are *other possible kinds of communication to the public by other means of wireless diffusion.*

27. That is what clearly emerges from the text of the Berne Convention and it would be difficult to accept any other definition of broadcasting even if the participants in the 1948 Brussels Revision Conference, which originally adopted the text of Article 11bis(1)(i) quoted above, had intended to suggest something else. But it seems fairly clear that they did not intend to suggest something else. The very first sentence of the report of the Sub-Committee on Broadcasting and Mechanical Instruments of the Brussels Revision Conference makes this clear: "The Sub-Committee unanimously considered that the exclusive right granted to authors by the Rome Conference 'of authorizing the *communication of their works to the public by broadcasting*' should remain inviolable." (That was a reference to Article 11bis(1) of the 1928 Rome Act of the Convention which reads as follows: "Authors of literary and artistic works shall enjoy the exclusive right of authorizing *the communication of their works to the public by* radio-diffusion [*broadcasting*]" (emphasis added).)

28. "*Communication of works to the public by wireless means.*" This is the essence of the definition of broadcasting under the Berne Convention. As a legal definition, that is complete and workable. There is no need to borrow any legal definition from an international instrument, such as the Radio Regulations, whose subject matter is other than intellectual property.

29. In this definition, there seems to be no basis for the emission theory. It is true that at a certain

point of the report of the Sub-Committee of the Brussels Revision Conference mentioned above, there is a statement according to which it should be indicated clearly that only the emission was determinative in broadcasting "*to the exclusion of reception and listening or viewing.*" However, it is impossible to build a complete theory on this not too clear statement in the report when the text of the Convention does not use the word "emission" anywhere; when the same text makes it clear that broadcasting is not a mere emission without the element of communication to the public but just the opposite, namely communication to the public; when the same report where this reference can be found does not leave any doubt that broadcasting continues to be communication to the public. The essence of the above-mentioned statement in the report where the word "emission" appears is not around this word but around the intention to clearly declare the exclusion of "reception and listening or viewing" from the definition of broadcasting. The exclusion of reception, etc. means nothing other than that broadcasting is considered communication to the public in the general meaning of this expression, that is, in the meaning that although the works should be made available to the public (that is, the signals should reach the area where the public can be found) but it is not a condition that the public actually receive, listen to and view the program. It is like in the case of a cable-originated program: it should be transmitted to the subscribers to qualify as a communication to the public, and communication to the public takes place not only where the head-end is situated but in the whole cable network; it is not a condition, however, for the qualification of such a transmission as a communication to the public that the subscribers actually receive and view the program.

30. In the Universal Copyright Convention, the right of broacasting is mentioned in Article IV*bis* without any definition. Since at the 1971 Paris Revision Conference, where this Article was inserted into the Convention, no statement was made with regard to the interpretation of the term "broadcasting," it is up to each State to interpret this term.

31. Under Article 3*(f)* of the Rome Convention, "broadcasting" means "the transmission by wireless means for public reception of sounds or of images and sounds." The notion of emission is not mentioned here either. This definition is in harmony with the notion of broadcasting used in the Berne Convention. The other convention which provides for a neighboring rights protection for broadcasters—namely the Satellites Convention (which, however, does not cover direct broadcasting satellites)—does not contain any definition of broadcasting.

32. One of the arguments of the advocates of the emission theory is that broadcasting should be considered as taking place at the point of emission and not also in the "footprint" of the satellite because it is a "traditional interpretation" of the notion of broadcasting to consider the point of the emission as the only place where broadcasting takes place. (This argument was raised at the meeting of the Unesco/WIPO Group of Experts on the Copyright Aspects of Direct Broadcasting by Satellite which was held in Paris in March 1985.)

33. The mere reference to "traditions" and "traditional interpretation" is, however, misleading in this context. In the overwhelming majority of cases, the country of the broadcaster, the country of the emission and the country where the communication to the public took place was the same in the case of traditional broadcasting; consequently, if one said that, for example, the law of the country of the emission should be applied, one was generally right, because that law was, at the same time, the law of the country to the public of which the program was communicated. Certain questions in relation to broadcasting emerged—or at least emerged in a significant manner—for the first time only when broadcasting satellites started to function. It is now that those questions—never asked before—should be answered. One cannot refer to relevant "traditions" in respect of shortwave radio broadcasting either (which are also very often intended for countries other than the country of emission). Shortwave radio programs include almost exclusively news and commentaries, on the one hand, and musical works, on the other, where such complex legal and economic problems do not arise, and markets cannot be destroyed in such a way as in the case of direct broadcasting by satellites of, for example, audiovisual and dramatic works. It should also be taken into account that news and commentaries are not, in general, protected by copyright and the broadcasting of, practically, the entire music repertoire of the world can be authorized in a simple way by "small rights" authors' societies. Although some legal problems could have been raised, they were neglected on the basis of the *de minimis* principle.

34. It is in the field of direct broadcasting by satellite where it can be seen more clearly than ever that broadcasting takes place where the communication to the public by wireless means takes place. Communication to the public starts with the emission of the programme-carrying signals towards the satellite, but it is not completed at the point of

emission. Communication to the public means that the program is made available to the public (without the further condition that the program is actually received by the public) and it cannot be said that at the point of the emission—when the programme-carrying signals just leave the earth station towards the satellite—the program is already made available (that is communicated) to the public. Communication to the public includes both the so-called up-leg (or up-link) phase and the down-leg (or down-link) phase. This whole process, consisting of various subsequent phases, should be considered as communication to the public by wireless means (by hertzian waves), that is, it should be considered as broadcasting.

35. Because the *de lege lata* legal situation is clear under the international copyright and neighboring rights conventions, all the alleged legal and practical difficulties in respect of the application of the definition of broadcasting as communication to the public might only serve as a basis for *de lege ferenda* proposals concerning possible future revision of the conventions but not as a ground for the denial of the validity of the existing definition. The application of the emission theory would only be justified if the international copyright and neighboring rights conventions were modified and the definition of broadcasting was modified accordingly.

36. The legal and practical difficulties concerning the principles proposed in the memorandum prepared by the Secretariats and referred to by certain participants in the meeting of the Committee of Governmental Experts on Audiovisual Works and Phonograms are enumerated in paragraph 52 of the report of that meeting. The first alleged difficulty is that "it would be hard to enforce the law of other countries if the case was brought before the court of the country of emission and this could give rise to problems of extraterritoriality." Such "difficulty" exists in a great number of cases where in a conflict of laws situation, under the principles of international private law, not the principle of *lex fori* (the law of the country of the court) but some other principles are applied. That happens fairly frequently because international private law consists of much more than the mere declaration that the *lex fori* should be applied; it often involves the need for application of foreign laws. Therefore, if there were any difficulties in applying foreign laws, those would only be the usual difficulties which may emerge when an international private law principle other than the principle of *lex fori* is applied.

37. The second difficulty mentioned in paragraph 52 of the report is this: "... if the case was decided by the court of a 'footprint' country, the enforcement of the decision against a broadcaster whose headquarters was in another country would be difficult ...." In respect of that alleged difficulty, three comments seem to be in order. First, it is not necessary that the case be decided by the court of a "footprint" country; the court of the country where, for example, the headquarters of the broadcasting organization can be found can also take into account the law of a "footprint" country. (The memorandum suggests that both the law of the country of emission and the law of the "footprint" country should be taken into account; the supposition that this principle may not be accepted in certain countries or even the possible fact that it is not accepted in certain countries does not prove in itself that it is wrong; a principle should be considered on the basis of its own merit.) Second, the same "difficulties" may emerge in the case of the application of the emission theory if the country where the headquarters of the broadcasting organization can be found is a country other than the country of emission. Third, as was underlined at the meeting of the Committee of Governmental Experts, the rights of the right holders can be enforced effectively in any country of the "footprint" if in that country the broadcasting organization concerned has some assets (which is very frequently the case taking into account the widening international relations in this field, including the advertising activities of broadcasters) (see paragraph 54 of the report).

38. The third difficulty referred to in paragraph 52 of the report is that "the comparison of the levels of protection of the country of emission and the 'footprint' country where protection was sought would not be easy." The existence of this difficulty may depend on the way the principles suggested by the memorandum are applied. As discussed in paragraphs 43 and 44 below, those principles can be applied in a realistic way without any significant difficulty.

39. The fourth and last difficulty mentioned in the same paragraph of the report is that "the notion of 'footprint' [is] not absolutely clear, taking into account the phenomenon of 'overspill.'" This is a question which should be settled by legislation or by case law, but it can be settled without major difficulties. Several factors can be taken into account when determining whether a country should be considered as belonging to the "footprint" or not (such as the intention of the broadcasting organization; the fact that the program can be received by means of receiving equipment normally used by the general public on the whole territory, or in an overwhelming part of the territory, of the "footprint"

country—which, of course, is even more evident if it can be proved that the program is actually received by the public; the unavailability of the program to the general public because of language reasons or because the program is encoded: the possible legal prohibition of the reception of the program although it could be received otherwise, etc.). One thing is certain, however, namely, that there are at least certain cases where it is evident, on the basis of all those factors, that a country does belong to the "footprint."

40. Although it was not raised at the meeting of the Committee of Governmental Experts on Audiovisual Works and Phonograms, there is one more "practical difficulty" which can be mentioned in respect of the application of the principles suggested in the memorandum, namely, that if broadcasting is considered to take place in all the "footprint" countries, it may create problems to the broadcasting organizations in respect of obtaining all the necessary authorizations for the program. (This possible difficulty was mentioned, for example, at the meeting of the Group of Experts mentioned in paragraph 32 above.)

41. In respect of that alleged difficulty, two comments should be made. First, the acquisition of rights with regard to several countries usually does not cause any practical difficulties since the owner of the right in the various countries is, in most cases, one and the same person, and where those rights are collectively administered they can generally be obtained for all countries from one and the same organization, namely, the organization of the country of the broadcaster since that organization usually represents also the organizations of the other countries concerned. Second, if the owner of the right does not wish to permit the transmission of a program for public reception in a country—for example, because he does not wish that television reception be possible in a country before theatrical exhibition has taken place there—he merely exercises the right he has. There is no basis to say that the justified interests of the owner of copyright should be ignored and his rights, although clearly established, should be denied just because the existence of such interests and rights creates some "problems" to the broadcaster. It may happen—albeit rarely—that rights are owned by different persons in different countries covered by the satellite broadcasting. In such a situation, the broadcaster will have to obtain the authorization of not one but two or more right holders. Such a situation, however, is not unique or characteristic for satellite broadcasting. It also exists in the case of other utilizations of works, and it is taken care of by means of appropriate contractual solutions. It can be done in the same way also in respect of satellite broadcasting, the more so because usually it is also in the interest of the copyright owner that his work be used in as wide a circle as possible, including by means of satellite broadcasting.

42. The analysis of the alleged difficulties in respect of the application of the principles suggested in the memorandum prepared by the Secretariats seems to prove fairly clearly that none of those difficulties is serious enough to justify the non-application of those principles. At the same time, the acceptance and application of the emission theory above—as the report of the meeting of the Committee of Governmental Experts put it—"would create not only certain practical problems, but could, and in many cases would, lead to the complete denial of the exclusive rights—or the rights in general—of copyright and neighboring rights owners: if, in the country of emission, there was no appropriate protection of those rights or there was no protection at all, the owners of rights would be left without any protection" (see paragraph 53 of the report).

43. It follows from the preceding paragraphs that no essential change seems to be necessary in the principles suggested in the memorandum prepared by the Secretariats in respect of direct broadcasting by satellites. Nevertheless, a new alternative (Alternative B) is proposed in the revised set of principles for the second sentence of Principle AW14 (and for the second sentence of the parallel Principle PH17). There are two reasons for this new alternative. First, the original second sentence of the principles concerned is of a very general nature: although its general meaning seems to continue being basically correct, it can hardly be applied directly in that form; the new alternative offers a set of factors on the basis of which the comparison of the various national laws concerned can be made easily and without ambiguity. Second, an interesting trend is taking place in the position of those advocating the emission theory: although they continue stating that the emission theory is correct, they implicitly accept certain elements of the principles proposed in the memorandum prepared by the Secretariats. Those elements added together become practically equal to accepting the essence of the principles proposed in the memorandum; the direction of that trend is even more evident if the new alternative of the second sentence of Principle AW14 (and of the parallel Principle PH17) is also taken into account.

44. The new alternative corresponds to what the Director General of WIPO said about the practical application of the principles proposed in the mem-

orandum at the meeting of the Committee of Governmental Experts. The relevant paragraph (paragraph 54) of the report of the meeting reads as follows:

> "The Director General of WIPO said that where the legislation of the country of emission gave an exclusive right of authorization, there was generally no practical need for looking at the legislation of the countries of the 'footprint' since any exclusive right implied the necessity of agreement and the agreement would take into account the size of the 'footprint.' On the other hand, where the country of emission provided for compulsory licensing or did not provide for any right, there was no possibility of negotiation between the right holders and the organization emitting the signals. It was in those cases that the laws of the countries of the 'footprint' became relevant and since, under the Berne Convention, 'broadcasting' meant transmission rather than mere emission, they should be taken into account."

45. The new alternative also corresponds to certain new developments—mentioned in paragraph 43 above—that seem to have taken place in the views of those advocating the emission theory. As the copyright implications of direct broadcasting by satellite are becoming clearer, on the basis of the discussions in various forums, the views of the opponents of the principles proposed in the memorandum prepared by the Secretariats seem to be changing and getting closer to those principles. Although certain opponents still state that, according to them, direct broadcasting by satellite takes place only in the country of emission and not also in the countries where the program is made available to the public, they recognize that, if there is no protection under the law of the country of emission and there is one under the law of the "footprint" country, the application of the latter law may be justified; some of them are also of the view that, if there is compulsory licensing in the country of emission and there is none in a country of the "footprint," no compulsory licensing can be applied (that is, also the laws of the countries of the "footprint" should be taken into account). Many of the opponents of the principles consider that the public of the "footprint" countries should be taken into account when calculating fees; some of them also suggest that it may be necessary to take into account the rights and interests of the right holders in the "footprint" countries other than the ones in the country of emission, etc. If the above-mentioned views are taken together, they may be considered to be a sort of practical acceptance of the principles proposed in the memorandum. It is important to emphasize, however, that those views can hardly be based on the pure emission theory; they seem to be a practical denial of the essence of that theory. There seems to be a contradiction in saying that a work is being used only in country A and at the same time proposing that the law of country B be taken into account; and it can hardly be said that a work is not being used in a country and then calculate the fees on the basis of the fact that it has been used (communicated to the public) in that country, etc.

Fixed Service Satellites

46. At the meeting of the Committee of Governmental Experts on Audiovisual Works and Phonograms, several participants explicitly stated their full support for Principles AW15 to AW19 (see paragraph 55 of the report of the meeting). There were, however, certain other participants who were of the opinion that the transmission of programs by fixed service satellites should not be qualified as broadcasting but rather as a mere technical transport of signals (paragraph 56 of the report).

47. The memorandum prepared by the Secretariats for that meeting indicates, in paragraphs 101 to 107, that the possibility of *direct* reception (which is an element of the definition of broadcasting under the ITU Radio Regulations) is not an element of the definition of broadcasting under the international copyright and neighboring rights conventions. According to those conventions, broadcasting is communication to the public by wireless means. On the basis of that definition, what really matters in respect of fixed service satellites seems to be whether the entire process of the distribution to the public of the program, carried by the signals, has been definitely decided and scheduled at the time of the beginning of the transmission, or, to the contrary, the reaching of the public, at that time, still remains conditional on decisions to be taken later, either by the originating organization or by the distributing earth station. Transmissions of programme-carrying signals for the mere purpose of storage and future communication to the public do not constitute broadcasting, even if the programs were produced for purposes of broadcasting. On the other hand, the transmission of programme-carrying signals in one single determined process, consisting of various subsequent phases aiming at reaching the public at large, should be considered broadcasting also as regards the initial emission of relevant signals not yet available to the public.

48. It follows from the preceding paragraph that there are two possible types of fixed satellite ser-

vices. One type should necessarily be considered as the first phase of a process of communication to the public, that is, as part of a broadcasting service; the other type is really nothing more than a mere technical transport of signals. This possible difference was not expressed in the original set of principles. In the new set of principles (particularly in the new version of Principle AW15 and of the parallel Principle PH18), that differentiation has been made.

49. As in respect of the application of the principles on direct broadcasting by satellite, certain practical difficulties were mentioned also in respect of the application of the principles on broadcasting through fixed service satellites (see paragraph 57 of the report). Whether such difficulties really exist or not depends on how Principle AW18 (and the parallel Principle PH21) is applied in practice. The last two sentences of that principle are kept as Alternative A, but a new Alternative B is also proposed to show the possibility of a simple and easy way of applying the essence of that principle. That essence is that, although the application of the law of the country where the final phase of broadcasting takes place—from the earth station further to the public—seems to be a realistic and practicable starting point, in certain situations (at least where there is no protection in the country of the final phase of broadcasting), the law of the country of emission should also be taken into account—as a sort of standby solution—and be applied instead of the law of the country where the final phase of broadcasting takes place. Contrary to Alternative B of the second sentence of Principle AW14 (and of Principle PH17), this Alternative B does not refer to compulsory licensing because in this case there are actually two organizations separately and jointly responsible towards the owners of rights, and because the owners of rights, in general, exercise their rights towards the organization transmitting the signals from the earth station further to the public. This may justify that the law of the country of emission be taken into account only if there is no protection in the country of the final phase of broadcasting. Nevertheless, the application of the law of the country of emission may be extended to the case where there is compulsory licensing in the country of the final phase of broadcasting and there is no such limitation in the country of emission.

Cable Distribution

50. Principles AW20 to AW34 (as well as the parallel Principles PH23 to PH42) were practically the reproduction—with some minor changes—of the corresponding Principles of the "Annotated Principles of Protection of Authors, Performers, Producers of Phonograms and Broadcasting Organizations in Connection with Distribution of Programs by Cable" adopted first by the Subcommittees of the Executive Committee of the Berne Union, the Intergovernmental Committee of the Universal Copyright Convention and the Intergovernmental Committee of the Rome Convention in Geneva in December 1983 and subsequently approved by the Executive Committee of the Berne Union, the Intergovernmental Committee of the Universal Copyright Convention and the Intergovernmental Committee of the Rome Convention also in Geneva in December 1983 (in both cases, with certain reservations by some participants).

51. No new arguments or proposals emerged at the meeting of the Committee of Governmental Experts on Audiovisual Works and Phonograms in addition to those that had been considered by the Subcommittees and the Committees mentioned in the preceding paragraph. Therefore, the new set of principles does not contain any changes in the principles on cable distribution.

Cable Distribution of Programs Transmitted by Fixed Service-Satellites

52. In respect of this chapter of the memorandum submitted to the Committee of Governmental Experts on Audiovisual Works and Phonograms and of the principles proposed on such distribution of programs, only the following statement is included in the report of the meeting of that Committee: "Since Principles AW35 to AW38 referred expressly to previous principles or contained practically the same solutions as the said previous principles, the views expressed concerning the latter were recognized to apply generally also to Principles AW35 to AW38" (see paragraph 64).

53. It follows from the lack of separate comments in respect of Principles AW35 to AW38 (and of the parallel Principles PH43 to PH46) and from the fact that—as indicated in the preceding paragraph—these principles are the adapted versions of the principles on fixed service satellites, that only those changes have been made in those principles which are in keeping with the changes made in the principles on fixed service satellites.

PHONOGRAMS

54. With the exception of one question (namely, the question of secondary uses of phonograms for broadcasting and for other communication to the

public), the principles and comments contained in the memorandum prepared by the Secretariats for the meeting of the Committee of Governmental Experts on Audiovisual Works and Phonograms covered the same questions in respect of phonograms as the ones discussed in the chapter on audiovisual works (piracy, private copying, rental and public lending, satellite broadcasting, cable distribution and cable distribution of programs transmitted by fixed service satellites), and the two sets of principles differed only in minor details. That is the reason why the meeting of the Committee of Governmental Experts held detailed discussions on those questions only in relation to audiovisual works. When, during the second part of the meeting, the same questions were touched upon in respect of phonograms, only general reference was made to what had been said about those questions in the discussions on audiovisual works, and it was stated in the report that the same applies *mutatis mutandis* also to phonograms (see paragraphs 69, 73, 76, 78, 81 and 82 of the report).

55. The above-mentioned structure of the memorandum and of the discussions at the meeting of the Committee of Governmental Experts have also determined the structure of the present memorandum in respect of audiovisual works and phonograms. In this chapter of the memorandum, only a brief reference is made to the paragraphs in the chapter on audiovisual works which cover the same questions.

56. There are, however, certain more general questions which were raised at the meeting of the Committee of Governmental Experts and which concerned the legal status of the protection of phonograms. These questions will be discussed below before the more special questions relating to their protection are considered.

The Legal Status of the Protection of Phonograms

57. As reflected in paragraph 67 of the report of the meeting, certain participants "expressed concern that the [memorandum] did not sufficiently emphasize the creative nature of [the activities of] phonogram producers on the basis of which the intellectual property laws of several countries provided copyright protection rather than neighboring rights protection, if any, to such producers." No changes were proposed in the principles concerning the protection of phonograms, on the basis of the remarks mentioned above, but it was requested by the said participants that "this point should be taken into account in any future work on the commentary."

58. The Secretariats have thoroughly studied the questions mentioned in the preceding paragraph and found that the concern expressed in respect of the memorandum does not seem to be justified.

59. The purpose of the memorandum was to deal with some topical questions concerning the protection of audiovisual works and phonograms. The questions of whether the protection of literary and artistic works (including audiovisual works), on the one hand, and performances, phonograms and broadcasts, on the other, should be protected or not, and, if they should be protected, for what reasons and on the basis of what kind of legal philosophy, were not covered by the terms of reference of the Committee. That is the reason why the memorandum did not deal with those questions either in respect of the owners of copyright in audiovisual works and in literary and artistic works included in phonograms or in respect of performers, phonogram producers and broadcasting organizations. That is, therefore, also the reason why the question of whether the activities of phonogram producers are of a creative nature or not was not discussed either.

60. Whether the activities of phonogram producers can be qualified as being of creative nature or not depends on what definition of "creation" should be taken into account, and the definition of "creation" depends on the context in which this definition is intended to be used. In the present case, the context is copyright protection, more precisely the question of the delimitation between copyright protection and neighboring rights protection. It also seems to be evident that the question of delimitation cannot be answered precisely without making it clear what is deemed to be copyright and what rights are deemed to be neighboring rights.

61. The word "copyright" has two meanings in national laws and legal writings.

62. The first meaning is the one which is equivalent to "*le droit d'auteur*" in French, to "*el derecho de autor*" in Spanish, to "*avtorskoye pravo*" in Russian, etc., that is, to the rights in literary, scientific and artistic works created by authors.

63. The Berne Convention and the Universal Copyright Convention use the word "copyright" in that narrower sense. That is obvious not only because, in the official French version of the Berne Convention, the expression that is equivalent to "copyright" is "*le droit d'auteur*" and in the official French and Spanish versions of the Universal Copyright Convention the expressions that are equivalent to "copyright" are "*le droit d'auteur*"

and "*el derecho de autor.*" respectively, but also because those conventions only protect literary, scientific and artistic works created by authors.

64. At the diplomatic conference which adopted the Universal Copyright Convention in Geneva in 1952, there were fairly detailed discussions about the list of works to be protected as well as about the notion of publication which seem to be relevant from the viewpoint of the copyright status of phonograms. In paragraphs 65 to 72 below, a short analysis by the Secretariat of Unesco is offered about those discussions.

65. At the time of drafting the initial text of the Universal Copyright Convention (which was then proposed for discussion by the Intergovernmental Copyright Conference), the Drafting Committee did not mention phonograms in Article I among examples of "literary, artistic and scientific works" to be protected under the Convention. It only mentioned "writings, musical, dramatic and cinematographic works and works of painting and sculpture" (see Records of the Intergovernmental Copyright Conference, Geneva, 18 August – 6 September 1952, published by Unesco, 1955, page 334).

66. Among works suggested by the delegates of States for inclusion in the non-exhaustive list of works during the discussion of the draft text of Article I to the Intergovernmental Copyright Conferenee were "oral works, works of architecture, engravings and national art, technical drawings and translations" (Report of the General Rapporteur, Records ..., page 74). Not a single delegate proposed phonograms for inclusion in Article I, and the fact that it was not accidental may be clearly understood from the discussion of the draft text of Article VI concerning the notion of "publication" of works.

67. The text of Article VI proposed for discussion by the Drafting Committee reads as follows: "'Publication', as used in the Convention, means the reproduction in tangible form, and the general distribution to the public of copies of a work from which it can be read or otherwise *visually* perceived" (emphasis added, Records ..., page 349). As is stated in the Report of the General Rapporteur of the Conference: "... some countries favored the inclusion in the definition of a reference to means whereby *works* may be orally perceived, so that the issue of gramophone records of a *work* in itself constitute publication of the *work*. They pointed out that many *works* were first made available to the public as gramophone records ..." (emphasis added, Records ..., page 82). Some other delegations "... indicated that they regarded records as *fixation* of performances ..." (emphasis added, Records ..., page 83). But having considered the practical effect of the definition of "publication" as covering gramophone records, it was concluded that such "extended" definition "would ... result primarily in the protection of *works* of nationals of non-Contracting States issued first as *records* in Contracting States" (emphasis added, Records .... page 83). Since that result could not be accepted by many States, the Conference adopted the wording of Article VI as proposed by the Drafting Committee.

68. If one reads the interventions of the delegates at the Conference, he will find more proof to the fact that phonograph records were not only not considered as belonging to the category of literary, scientific or artistic works but expressly excluded from the protection under the Convention (see Records .... pages 173 to 176).

69. For example, at the beginning of the discussion of Article VI in the Main Commission, the Chairman, when presenting the draft amendments submitted by Austria, Canada and Spain, resumed the purpose of the amendments as "to include phonographic edition in the concept of publication" of works. The Delegation of Canada stated that "phonograph records ... constituted tangible copies of a work ...." The Delegation of the United States of America made reference to a court decision in its country according to which "phonograph records were not copies but parts of a machine." The Delegation of Spain did not agree to the latter assertion nor was it possible for it "to accept the idea ... that a recorded 'adaptation' constituted a work different from the original work and enjoying separate protection"; it considered that "a record constituted the most exact reproduction of the composer's intention"; in its opinion, therefore, it was logical to consider "works reproduced in thousands of copies by means of records" as published; it affirmed that "the record was a form of reproduction, the content of which was the work itself."

70. As already mentioned, the Intergovernmental Copyright Conference decided not to mention "the phonographic edition" of works in the definition of publication. This decision has its legal consequence for the matter under consideration. Even if one still insists that the Universal Copyright Convention also applies with regard to the protection of phonograms, one can hardly answer the question which act would constitute publication of a phonogram. Any category of literary, scientific or artistic works may be published by means enabling the work "to be read or otherwise visually perceived" from the copies distributed to the public. But, if this defini-

tion (Article VI) is applied to phonograms as "works" *per se* they will always remain unpublished since phonograms cannot be read and there is nothing that could be visually perceived, except, of course, its external appearance. However, the latter does not constitute intellectual creation, unless it includes a separate work of fine art.

71. The question of the possibility of the protection of phonograms under the Universal Copyright Convention did not emerge at the diplomatic conference when the Convention was revised in Paris in 1971.

72. Thus, until the Universal Copyright Convention is correspondingly revised to include the protection of phonograms, the Secretariat of Unesco does not consider itself empowered to offer for consideration any principles concerning the copyright protection of phonograms.

73. What has been analyzed so far is the question of what the legal status of phonograms is according to the narrower meaning of "copyright"; that is, in the meaning in which this word is used in the international copyright conventions. The other meaning of "copyright"—as it is used mainly in the national laws of countries with Anglo–Saxon legal traditions—is wider. It also covers the protection of subject matter other than original literary, scientific and artistic works; for example, broadcasts, cable–originated programs, programme–carrying signals, typographical arrangements of published editions and it is, in general, in that wider meaning that, in certain national laws, "phonograms" are also protected by "copyright."

74. Because the two copyright conventions only involve the obligation to protect literary and artistic works created by authors and because phonograms are not considered to fall into this category, these conventions do not offer protection for phonograms at the international level. If the international copyright conventions offered such protection, there would not have been any need for the provisions on such protection in the Rome Convention and in the Phonograms Convention.

75. The Rome Convention and the Phonograms Convention do not use the expression "neighboring rights" (or "related rights"). They simply provide for the protection of phonogram producers, and the Rome Convention also for the protection of performers and broadcasting organizations. Therefore, it seems to be preferable to avoid using—at least in legal provisions—the expression "neighboring rights" (or "related rights") in connection with the rights of phonogram producers as well as in connection with the rights of performers and broadcasting organizations; it seems to be more appropriate to simply refer to the "rights of performers, producers of phonograms and broadcasting organizations."

76. The expression "neighboring rights" is, in general, used for the sake of brevity. Depending on the circle of rights intended to be covered, the expression "neighboring rights" may have a narrower and/or wider meaning but its essence is clear in all cases, namely that it refers to rights *other* than copyright in literary and artistic works (rights granted in respect of certain activities which, as a rule, are indispensable for the dissemination of literary and artistic works). (The classical—and the narrowest—meaning covers the protection of the rights of the beneficiaries of the Rome Convention, that is, of performers, phonogram producers and broadcasting organizations. There is a wider meaning of "neighboring rights" which, in addition to the protection of performances, phonograms and broadcasts also includes the protection of programme–carrying signals, cable–originated programs and the typographical arrangements of published editions. Finally, the widest meaning of the expression "neighboring rights" also extends to the protection of photographs other than photographic works, catalogs and compilations other than those which qualify as literary and artistic works and the like. The rights in the last category of productions are sometimes referred to as "related rights." This term, however, is also used, in certain countries, as a synonym of "neighboring rights.")

77. As discussed above, the expression "neighboring rights" (as well as the expression "related rights") makes sense only if it is opposed to copyright in the narrower meaning of that word, that is in the meaning of copyright in literary and artistic works. Therefore, the statement reflected in paragraph 67 of the report of the meeting of the Committee of Governmental Experts—namely that "the intellectual property laws of several countries provided copyright protection rather than neighboring rights protection"—could only be considered as correct if the laws of those countries to which reference was made protected phonograms as a category of literary and artistic works and granted to that category of works the minimum protection prescribed by the international copyright conventions to which those countries are party (including the obligation to apply the principle of national treatment). This seems, however, generally not to be the case.

78. There are really several countries—the overwhelming majority of which are countries following Anglo–Saxon legal traditions—where phonograms

are protected under the copyright acts and where this protection is called "copyright" protection. If, however, the relevant provisions in those national laws are analyzed, it can be seen that what is involved is not "copyright" protection in the narrower meaning of the word, that is, in the meaning in which the word "copyright" is used in the international copyright conventions, but "copyright" in quite a different—wider—meaning. In nearly all countries where phonograms are protected under the copyright acts, it is made clear in the list of subjects protected by "copyright" itself that phonograms are not literary and artistic works (but subjects other than works, or, although "works," other than literary and artistic works). Furthermore, in practically all cases, protection is not in keeping with the minimum conditions under the international copyright conventions: not all the rights are protected whose protection is an obligation on the countries party to those conventions and/or the term of protection is shorter than the one determined, for example, by the Berne Convention and/or national treatment is not applied, etc.

79. Because the expression "neighboring rights" means rights other than copyright in literary and artistic works, and because in the above-mentioned countries phonograms are not protected as literary and artistic works (and, as a consequence, their protection does not correspond to the minimum obligations under the international copyright conventions), the protection of phonograms in those countries can also be qualified as "neighboring rights" protection.

80. It can, of course, be said that although the statement reflected in paragraph 67 of the report of the meeting of the Committee of Governmental Experts—namely, that "the intellectual property laws of several countries provided copyright protection rather than neighboring rights protection"—does not seem to be justified in the generally accepted meaning of "copyright" and "neighboring rights," as discussed above, such a statement may still be justified on the basis that, in the countries concerned, the notion of "neighboring rights" is not recognized; what exists is called copyright also in respect of phonograms and, thus, it should be called what it is called by the law itself, that is, "copyright" protection; and it can be argued on that basis that, in those countries, phonogram producers do enjoy copyright protection rather than neighboring rights protection. If, however, only such a justification were to be behind the statement quoted above, it would be an unclear and misleading statement. It would be unclear and misleading because the expression "neighboring rights" means rights *other* than the rights in literary and artistic works in the meaning in which the word "copyright" is used in the international copyright conventions; thus, if it is said that a protection is not "neighboring rights" protection but "copyright" protection, it is implicitly suggested that phonograms are protected as literary and artistic works and that they enjoy copyright in the meaning in which the word "copyright" is used in the international copyright conventions; which, as discussed, is not the case either in the countries to which the statement refers.

81. Otherwise, it is also questionable whether it is justified to state that in the so-called "copyright" countries "neighboring rights" are not recognized. As discussed in paragraph 75 above, the expression "neighboring rights" does not appear in the texts of the international conventions, and it does not necessarily appear in the texts of the laws of the countries either in which the word "copyright" is not used in respect of the protection of phonograms. As has been pointed out, "neighboring rights" is an expression which is applied for the sake of brevity (and not on the basis of some kind of official recognition), and simply means rights other than copyright in literary and artistic works (that is, other than the rights protected by the international copyright conventions). In that generally accepted sense, the expression "neighboring rights" is also recognized and used in countries where phonograms—in a wider meaning—are protected by "copyright." For example, one of the most frequently quoted comparative law studies in this field published in a country with Anglo-Saxon legal traditions is Stephen M. Stewart's book entitled "International Copyright and Neighbouring Rights" (London, Butterworths, 1983). In that book, the expression "neighbouring rights" is also used in respect of the protection of phonograms by "copyright" (in a wider meaning) in countries with Anglo-Saxon legal traditions. For example, the title of Part II of the chapter on the United States of America (by Barbara Ringer, former Register of Copyrights) is "Neighbouring Rights in the United States of America" and the "copyright" protection of phonograms is also dealt with under that title. The expression "neighboring rights" also appears in official texts referring to the "copyright" protection of phonograms as subject matter other than literary and artistic works. For example, in the October 1985 Report of the Subcommittee on the Revision of Copyright of the House of Commons of Canada (published under the title: "A Charter of Rights for Creators"), after Part II, entitled "Works Protected by Copyright," Part III, entitled "Neighbouring Rights" follows in which sound recordings are mentioned as "subject matter of copyright" (in a wider meaning).

82. From certain statements of the representatives of phonogram producers, it can be deduced that they seem to find some advantages in emphasizing that, in certain countries, the protection granted to phonogram producers is copyright protection rather than neighboring rights protection because they believe that if the protection is called copyright protection, it tends to be more generous (it may be closer to the standards of the copyright protection of literary and artistic works). Such a belief seems unjustified. Legislators and governments will determine the level of protection on the basis of the nature of phonograms as productions and of the specific intellectual property considerations related to them under the concrete cultural, economic, social and legal conditions existing in the countries concerned, and will hardly be influenced by terminology alone, that is, by the fact that the rights involved are called "copyright" or "neighboring rights."

83. The relevant provisions in various national laws clearly prove this. For example, in Canada, Cyprus, Ghana, Kenya, Malawi, Malta, Nigeria, Uganda and the United States of America, where phonogram producers are declared to enjoy copyright (in a wider meaning of the word), the protection is restricted to the right of reproduction, while in Brazil, Chile, Colombia, Czechoslovakia, Finland, France, the German Democratic Republic, Germany (Federal Republic of), Iceland, Italy, Japan, Spain and Sweden, where the legislation itself makes it clear that phonograms are not protected by copyright—in any meaning of the word—the protection also extends, in addition to the right of reproduction, to a right in respect of broadcasting and, in several cases, also to a right in respect of public performance. It may be added that, so far, only so-called "neighboring rights" countries (Austria, Congo, Finland, France, Germany (Federal Republic of), Hungary, Iceland, Portugal, Spain, Sweden)—and no so-called "copyright" countries—have introduced a right to remuneration for phonogram producers in respect of "home taping." Furthermore, the term of protection of phonograms is shorter in many, what are called "copyright" countries (for example, Cyprus, Ghana, Kenya, Malawi, Nigeria: 20 years; Malta: 25 years) than in certain what are called "neighboring rights" countries (France, Sweden: 50 years; Guinea, Spain: 40 years; Chile, Italy: 30 years). Thus, it can hardly be said that the level of protection depends on whether the right is called "copyright" or not.

84. Because the statement that, in several countries, phonograms are protected by copyright rather than by neighboring rights does not seem to be justified, it seems unnecessary to deal separately with the arguments why phonograms have been granted "copyright" protection rather than neighboring rights protection in those countries (namely, whether as a recognition of the creative nature of the activities of phonogram producers or for other reasons).

85. The fact that phonogram producers do not enjoy copyright in their phonograms in the sense in which the word "copyright" is used in the international copyright conventions does not mean that they cannot be copyright owners in that sense for other reasons. They can be copyright owners in that sense too, as employers, in respect of the literary and artistic works included in their phonograms, in countries where copyright in such works created by employed authors is vested originally in the employers. Furthermore, copyright, at least in certain countries, can be assigned to them. The same prevails *mutatis mutandis* in respect of the ownership of the rights of performers.

86. It is important to emphasize that, totally irrespective of what terminology is used, there is a trend at the international level towards the recognition of the need for a more efficient and—in certain aspects—more generous protection of phonogram producers. That trend implies, *inter alia*, that protection is extended also to rights other than the mere right of reproduction and that the term of protection is increased. One result of the trend is that the difference between the level of copyright protection of literary and artistic works and the level of protection of phonogram producers is reduced. (The same trend can be, otherwise, recognized also in respect of the protection of performances.)

87. The facts mentioned in paragraph 83 above indicate clearly that what is important in the developments described in the preceding paragraph, from the viewpoint of the protection of phonograms, is not so much what the protection system is called; what is important is what rights are granted, under what conditions and for how long a term of protection. An appropriate, efficient protection can be granted irrespective of whether the protection is called "copyright" protection, in the wider meaning of "copyright" or it is called "neighboring rights" protection, and it may also happen under the heading of either of the two systems that the protection of phonogram producers is not yet sufficient. The Secretariats, in harmony with the trend mentioned in the preceding paragraph, want to continue concentrating on the promotion of an efficient protection of phonograms, particularly because it is felt that such a protection is necessary for a successful fight against piracy.

88. In the new set of principles, two consequences have been deduced from the results of the analysis above. First, it has been made even clearer in all principles, by means of some changes in the wording, whether they relate to the protection of copyright in literary and artistic works included in phonograms or to the protection of the rights of performers, phonogram producers and/or broadcasting organizations. Secondly, the expression "neighboring rights" has been replaced by a reference to the actual rights (rights of phonogram producers, etc.) involved in the very few principles where that expression still appeared in the original version of those principles.

Piracy

89. Concerning the changes made in, and the new version of, Principle PH1, see paragraphs 5 to 11 above.

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

90. At the meeting of the Committee of Governmental Experts, the representative of an international non-governmental organization recalled the doubts her organization had expressed many times in the past as to whether, in the case of broadcasting, it was justified to grant performers and/or phonogram producers any rights, even a right to equitable remuneration, and she expressed opposition to the approach of Principle PH2 and of the commentary which, in her view, did not reflect the options open to States under the provisions of the Rome Convention. The great majority of the participants, however, expressed their full support for Principle PH2 and the comments on it. Those participants stressed that the right of control of, or receiving equitable remuneration for, secondary uses of phonograms would become increasingly important in the future as a result of technical development. In view of this, no change has been made in Principle PH2.

Private Copying ("Home Taping")

91. Concerning the changes made in, and the new version of, Principles PH3 to PH9, see paragraphs 12 to 18 above.

Rental

92. Concerning the changes made in, and the new version of, Principles PH10 to PH13, see paragraphs 19 and 20 above.

Satellite Broadcasting

93. Concerning the changes made in, and the new version of, Principles PH14 to PH22, see paragraphs 21 to 49 above.

Cable Distribution

94. Concerning the proposed Principles PH23 to PH42, see paragraphs 50 and 51 above.

Cable Distribution of Programs Transmitted by Fixed Service Satellites

95. Concerning the changes made in, and the new version of, Principles PH43 to PH46, see paragraphs 52 and 53 above.

WORKS OF ARCHITECTURE

96. In the general discussion held at the meeting of the Committee of Governmental Experts on Works of Architecture, several delegations stated that, in general, the principles and comments contained in the memorandum prepared by the Secretariats were acceptable to their governments and that they would have comments to make only concerning certain details (see paragraph 16 of the report). As the following paragraphs reflect, relatively few comments were made which have made changes necessary in the text of the principles.

Creations To Be Protected as Works of Architecture

97. The word "creative" was inserted in Principle WA1(1) between the words "original" and "elements" because there was agreement among the delegations that, in respect of works of architecture, it was particularly desirable to emphasize that buildings and similar constructions should be of an original and creative nature in order to qualify as works (see paragraph 19 of the report).

98. One delegation proposed that, in Principle WA1(1), reference should also be made to the artistic nature of buildings and similar constructions as a further condition of copyright eligibility. It was considered by the other participants, however, that such an approach might introduce an element that was too subjective to constitute a condition of copyright protection (see paragraph 24 of the report).

Economic Rights

99. As far as the right of reproduction was concerned, the delegations participating in the meeting of the Committee of Governmental Experts expressed their agreemcnt on the contents of the memorandum and on the proposed Principle WA3, and no comments were made which would justify changes in the text of that principle.

100. At the meeting, there was more extensive discussion on the right of alteration and Principle WA4 covering that right. Finally, there was agreement about the need for the following two changes: first, the reference to alterations of great importance to the owner of the building or similar construction should be replaced by a reference to alterations of a practical or technical nature which is necessary to the owner of the building or other similar construction (so as to exclude any subjective elements from the principle). Sccondly, the last part of the principle—which referred to alterations amounting to distortions, mutilations, etc.—should be left out because that question is taken care of in Principle WA6(1) on the "right of respect" (see paragraph 37 of the report).

Moral Rights

101. There was agreement among the participants in the meeting of the Committee of Governmental Experts that, in Principle WA5 which dealt with the right to be named, it would be more appropriate (because it was of more objective nature) to refer to the customary way of exercising that right rather than to the condition that that right should be exercised in good faith. Consequently, the words "in the customary way" have been inserted into the first sentence of Principle WA5, after the words "have the right to be named," and the last two sentences have been left out.

102. No changes werc proposed in Principle WA6 which dealt with the "right of respect."

The Protection of the External Image of Works of Architecture

103. At the meeting of the Committee of Governmental Experts, two questions were raised in respect of Principle WA7, namcly, first, whether it should only cover the reproduction of the external image or also the internal elements of the work of architecture and, second, whether reproduction should be allowed, without any conditions, also for commercial purposes. However, no proposals for changes received sufficient support. Therefore, Principle WA7 has been reproduced without changes.

WORKS OF FINE ART

104. At thc meeting of the Committee of Governmental Experts on Works of Visual Art, several participants made comments on the expression "works of visual art." Some delegations were of the opinion that that cxpression was not clear because it might suggest that it covercd all works that were expressed visually and made perceptible to the public in that way (such as, for example, audiovisual works). The following expressions were suggested: "artistic works," "works of fine art," "graphic and plastic works" (see paragraph 26 of the report). In the revised set of principles, the expression "works of fine art" is used. The expression "artistic works" is at least as wide as the expression "works of visual art" while the expression "graphic and plastic works" seems to go into too much detail and refer to what can be deemed certain subcategories of the category of works to be covered; at the same time, the expression "works of fine art" is fairly widely accepted and seems to be suitable to describe the kind of works intended to be covered.

105. As a consequence of the new term mentioned above, the reference indications of the principles concerning works of fine art have also been changed; in the revised set of principles, the abbreviation "VA" has been replaced by the abbreviation "FA."

Creations To Be Protected as Works of Fine Art

106. It was agreed at the meeting of the Committee of Governmental Experts that, in paragraph (1) of Principle VA1 (now FA1), the word "include" should be replaced by the word "are" and that the following words should be added at the end of the paragraph: "and works of a similar kind" to express better that the enumeration was not exhaustive and, at the same time, to avoid making it unnecessarily open–ended (see paragraph 27 of the report).

107. The clause "according to the general provisions on the protection of literary and artistic works except where the following principles otherwise provide" has been deleted from paragraph (2) of Principle VA1 (now FA1) because, as was pointed out at the meeting of the Committee of Governmental Experts (see paragraph 29 of the report),

that part of the paragraph might have become a source of misunderstanding.

The Use of Computer Systems for the Creation of Works of Fine Art

108. The participants who intervened in the discussions on this subject agreed on Principles VA2 and VA3 (now FA2 and FA3) and the commentary accompanying them (see paragraph 30 of the report). No change was proposed in the text of those principles.

Distinction Between Copyright in the Work and the Proprietary Right in the Physical Object Constituting the Work or in a Copy of the Work

109. At the meeting of the Committee of Governmental Experts, a great number of participants stressed that the difference between copyright in a work, on the one hand, and the proprietary right in the physical object constituting the work or in its copy, on the other hand, should be made clear. Those participants were in favor of stating that the alienation of the proprietary right did not implicitly involve the alienation of copyright and that there should be no presumption in this respect. It was proposed and accepted by the Committee that a separate principle on this matter should be included after Principle VA3 (now FA3) and before the principles dealing with moral and economic rights. The new principle, on which there was agreement in the meeting, reads as follows: "(1) The proprietary right in the physical object constituting the work and the copyright in the work are independent from each other. (2) The transfer of the proprietary right does not involve the transfer of copyright unless expressly stipulated in the contract" (see paragraph 33 of the report).

110. In keeping with the above-mentioned agreement reached at the meeting, the new principle has been inserted in the revised set of principles as Principle FA4. In paragraph (1) of the above-quoted text of the principle, a minor change has been made, namely that the copies of the work have also been mentioned. Furthermore, in paragraph (2) of the principle, a reference has been made to an exception concerning the right of exhibition in respect of which there seemed to be agreement at the meeting (see paragraph 115, below).

Moral Rights

111. A great number of participants expressed their agreement on Principle VA4 (now FA5) and the commentary accompanying it. It was agreed, however, that at the end of point *(a)* (former (i)) of the principle, the following clause should be added: "or in other appropriate ways associated with the work" to make the application of the right to claim authorship more realistic and practicable.

Economic Rights

112. In the memorandum prepared by the Secretariats, two principles—Principles VA5 and VA6—covered economic rights. Principle VA5 dealt with the situation where the work exists in a single copy and Principle VA6 dealt with the situation where the work exists in several copies. Both principles enumerated the economic rights protected as well as the possible limitations on those rights and each of them contained two alternatives concerning the case where the ownership of the physical object constituting the work or of a copy of the work is transferred to a person other than the author (or the author's heir). Under Alternative A, the author (or his heir) was deemed to retain the economic rights, while according to Alternative B certain rights were deemed to be transferred to the owner of the copy, but in both alternatives, the possibility of providing otherwise in contract was left open.

113. At the meeting of the Committee of Governmental Experts, several proposals were made in respect of the structure and the substance of the principles mentioned in the preceding paragraphs.

114. As mentioned in paragraph 109 above, the participants in the meeting were in favor of a clear distinction between copyright in a work and proprietary right in a physical object constituting a work or in a copy of the work and were against a general presumption to the effect that the alienation of proprietary right would have been considered to involve the alienation of copyright unless otherwise provided in contract. The participants who took the floor on this subject said that they were in favor of Alternative A in Principles VA5 and VA6, and thus they opposed Alternative B. It was also stressed, however, that after having decided on the insertion of a new principle about the separation of proprietary right and copyright as mentioned in paragraphs 109 and 110 above, neither alternative was really necessary and that the economic rights and their limitations should only be mentioned in a separate principle (see paragraph 55 of the report).

115. However, it was also pointed out at the meeting that even if Alternative B was to be re-

jected, the special interests of the owners of copies and the practice prevailing at least in certain countries could and should be taken care of by establishing certain limitations to the author's rights and establishing special rights in favor of the owners of the copies. It was mentioned, as an example, that the owner of the physical object constituting the work or of a copy of the work should be granted the right to exhibit the work or the copy without the authorization of the author, and it was also proposed that that right should be recognized in a new paragraph (see paragraphs 56 and 57 of the report). In the new Principle FA6, in keeping with those proposals, a separate paragraph (paragraph (2)) is included which covers the right of the owner of the physical object constituting the work or of a copy of the work in respect of the exhibition of the copy.

116. All the participants who took the floor in the discussion were of the opinion that the fact that one or several copies existed was irrelevant from the viewpoint of the enjoyment and exercise of rights mentioned in Principles VA5(1) and VA6(1) and proposed that the two principles—which differed on the basis of that fact—should be merged into one principle (see paragraph 48 of the report). In accordance with those opinions, the new Principle FA6 is a new version of Principles VA5 and VA6 merged into one.

117. Although some reservations were expressed by certain delegations (see paragraphs 49 to 54 of the report), the participants in the meeting agreed on the list of economic rights included in paragraph (1) of Principles VA5 and VA6 to which Principle FA6 corresponds in the new version of principles (see paragraph 49 of the report).

118. There was a long and detailed discussion on the question of whether the "right of access" (that is, the right of the author to see and use the physical object constituting his work, or a unique or rare copy of his work, being the property of another person, in certain cases and under certain conditions) should be recognized in the principles or not. Several participants were in favor of the recognition of this right, several other participants, however, opposed the proposal to include a reference to that right in the principles, and even among those who supported the recognition of that right there was no agreement on whether it should be qualified as an economic right or as a kind of moral right (see paragraphs 19 and 36 to 42 of the report). It seems, therefore, premature to include a reference to such a right, if any, in the principles on works of fine art. The question of access can be settled appropriately by contracts in practice.

119. It was proposed at the meeting of the Committee of Governmental Experts that the reference to limitations of economic rights be made wider and dealt with in a separate paragraph (see paragraphs 57 and 58 of the report). In the revised set of principles, it is paragraph (3) of Principle FA6 which corresponds to those proposals. The same solution has been chosen which had been considered appropriate in respect of the limitation of economic rights concerning the category of works which is the closest one to the works of fine art, namely, the category of works of applied art (see paragraph (2) of Principle AA7 (former AA8)). The essence of the solution is that a general reference is made to limitations which should be in keeping with the international copyright conventions and, in addition to that, certain limitations are specifically mentioned which seem to be the most typical ones in respect of the category concerned. As regards works of fine art, those limitations seem to be the most typical ones which have now been included in Principle FA6(3) (second part of former VA5(1)(v)) and on which there was fairly general agreement at the meeting of the Committee of Governmental Experts.

Droit de Suite

120. Although some reservations were expressed by certain participants in respect of the possible detrimental effects on the market and of the problems of the practical implementation of the *droit de suite* (see paragraph 62 of the report), there was fairly general agreement in respect of the text of Principle VA7 (now FA7) and of the comments to it. As far as the alleged detrimental effects on the market and the difficulties of implementation were concerned, the delegations of the countries in which the *droit de suite* was applied stated that the application of the *droit de suite* had created no such problems. On the basis of the results of the discussions, Principle VA7 (now FA7) has not been changed.

(To be continued)

Studies

Some Private International Law Aspects of the Protection of Authors' Rights

György BOYTHA*

Private International Law and the Berne Convention

Georges KOUMANTOS*

Correspondence

Letter from Spain

Esteban DE LA PUENTE GARCIA*

Calendar of Meetings

WIPO Meetings

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

1988

November 7 to 22 (Geneva)

Committee of Experts on Intellectual Property in Respect of Integrated Circuits (Fourth Session)

The Committee will examine a revised version of the draft Treaty on the Protection of Intellectual Property in Respect of Integrated Circuits and studies on the specific points identified by developing countries.
Invitations: States members of WIPO or the Paris Union and, as observers, other States members of the Berne Union, as well as intergovernmental and non-governmental organizations.

November 14 to 22 (Geneva)

Preparatory Meeting for the Diplomatic Conference for the Conclusion of a Treaty on the Protection of Intellectual Property in Respect of Integrated Circuits

The Preparatory Meeting will decide what substantive documents should be submitted to the Diplomatic Conference—scheduled to be held in Washington, D.C. in May 1989—and which States and organizations should be invited to the Diplomatic Conference. The Preparatory Meeting will establish draft Rules of Procedure of the Diplomatic Conference.
Invitations: States members of WIPO or the Paris Union and, as observers, intergovernmental organizations.

December 5 to 7 (Geneva)

Madrid Union: Preparatory Committee for the Diplomatic Conference for the Conclusion of Two Protocols Relating to the Madrid Agreement for the International Registration of Marks

The Committee will make preparations for the Diplomatic Conference scheduled for 1989 (establishment of the list of States and organizations to be invited, the draft agenda, the draft rules of procedure, etc.).
Invitations: States members of the Madrid Union and Denmark, Greece, Ireland and the United Kingdom.

December 12 to 16 (Geneva)

Committee of Experts on the Harmonization of Certain Provisions in Laws for the Protection of Inventions (Fifth Session; Second Part)

The Committee will continue to examine a draft treaty on the harmonization of certain provisions in laws for the protection of inventions.
Invitations: States members of the Paris Union and, as observers, States members of WIPO not members of the Paris Union and certain organizations.

December 12 to 16 (Geneva)

Executive Coordination Committee of the PCIPI (Permanent Committee on Industrial Property Information) (Third Session)

The Committee will review the progress made in carrying out tasks of the Permanent Program on Industrial Property Information for the 1988-89 biennium. It will consider the recommendations of the PCIPI Working Groups and review their mandates.
Invitations: States and organizations members of the Executive Coordination Committee and, as observers, certain organizations.

December 9 (Geneva)

Information Meeting for Non-Governmental Organizations on Intellectual Property

Participants in this informal meeting will be informed about the recent activities and future plans of WIPO in the fields of industrial property and copyright and their comments on the same will be invited and heard.
Invitations: International non-governmental organizations having observer status with WIPO.

1989

February 20 to March 3 (Geneva)

Committee of Experts on Model Provisions for Legislations in the Field of Copyright

The Committee will work out standards in the field of literary and artistic works for the purposes of national legislation on the basis of the Berne Convention for the Protection of Literary and Artistic Works.
Invitations: States members of the Berne Union or WIPO and, as observers, certain organizations.

April 3 to 7 (Geneva)

WIPO Permanent Committee for Development Cooperation Related to Copyright and Neighboring Rights (Eighth Session)

The Committee will review and evaluate the activities undertaken under the WIPO Permanent Program for Development Cooperation Related to Copyright and Neighboring Rights since the Committee's last session (March 1987) and make recommendations on the future orientation of the said Program.
Invitations: States members of the Committee and, as observers, States members of the United Nations not members of the Committee and certain organizations.

May 1 to 5 (Geneva)

WIPO Permanent Committee for Development Cooperation Related to Industrial Property (Thirteenth Session)

The Committee will review and evaluate the activities undertaken under the WIPO Permanent Program for Development Cooperation Related to Industrial Property since the Committee's last session (May 1988) and make recommendations on the future orientation of the said Program.
Invitations: States members of the Committee and, as observers, States members of the United Nations not members of the Committee and certain organizations.

May 8 to 26 (Washington, D.C.)

Diplomatic Conference for the Conclusion of a Treaty on the Protection of Intellectual Property in Respect of Integrated Circuits

The Diplomatic Conference will negotiate and adopt a Treaty on the protection of layout-designs of integrated circuits. The negotiations will be based on a draft Treaty prepared by the International Bureau. The Treaty is intended to provide for national treatment and to establish certain standards in respect of the protection of layout-designs of integrated circuits.
Invitations: States members of WIPO or the Paris Union and, as observers, certain organizations.

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

Non-Governmental Organizations

1988

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