Copyright

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NATIONAL LEGISLATION

GERMANY (Democratic Republic)

Copyright Act

(Of September 13, 1965) [1])

The fundamental cultural task, in the vast edification of socialism, is the intellectual development of the human beings of socialist society and the development of the socialist culture of the Nation.

Copyright supports and promotes the realisation of this task. It also serves to assure to all citizens of the German working and peasant State the fundamental right to protection and full development of personality, freed from exploitation and oppression, of their talents and creative capacities.

By its copyright law, the socialist State guarantees extensive protection to the rights of authors of literary, artistic and scientific works. It assures to writers, artists, men of science, and to all citizens, the prospect of devoting themselves in complete tranquility to their activities in the field of intellectual creation. At the same time, copyright protects and encourages the assimilation of art and science by all citizens, and their ever-increasing participation in the various aspects of cultural and intellectual life in the midst of socialist society.

Copyright contributes to the development, promotion and protection of international cultural exchanges on the basis of reciprocity.

FIRST PART

Copyright

FIRST SECTION

Principles

Article 1. — (1) The purpose of copyright is to promote and protect the creation of literary, artistic and scientific works. It safeguards the intellectual and material interests of the authors of these works. Copyright facilitates the extensive distribution and utilisation of literary, artistic and scientific works which serve in the progress of society, in the diffusion of humanistic ideas and in the safeguarding of peace and friendship between peoples. It thus creates a link between the personal interests of authors and the interests of society.

(2) The directors of State and Economic bodies, of cultural and scientific organisations, of publishing houses and enterprises, and of other organisations shall, within the field of their competence, assure that the rights of authors be realised, independently of the fact that a work was created within the framework of the artistic and scientific activity of citizens in the course of the exercise of a profession, or outside of such exercise. They shall encourage and assist all forms of collective work which contribute to the creation of literary, artistic and scientific works.

SECOND SECTION

The work

Literary, artistic and scientific works

Article 2. — (1) Copyright extends to literary, artistic and scientific works which assume an objectively perceptible form and which constitute an individual creation. Their creation can as well be the work of a collective. The means or processes by which works have been created are of no importance. Works may also take the form of sketches or plans.

(2) Works within the meaning of paragraph (1) may, for example, be:

(a) literary works (writings, speeches and lectures);
(b) musical works;
(c) theatrical works (dramatic, dramatico-musical and choreographic works and pantomimes);
(d) works of painting, sculpture, drawing, industrial drawing and applied art;
(e) cinematographic works;
(f) television works;
(g) radiophonic works;
(h) photographic works and works of photo-mounting;
(i) architectural works.

Parts of a work and titles

Article 3. — Copyright extends to a work in its entirety, to parts thereof, and to its title, to the extent that such title possesses the character of an individual creation.

Adaptations, translations, collections and publications

Article 4. — (1) Copyright arises equally from the fact of adaptation, including dramatisation or other modifications, and from the translation of a work.

(2) Copyright also subsists in collections, anthologies and publications, to the extent that they constitute, by their form or selection, the result of a work of individual creation.

News, laws and regulations

Article 5. — (1) No copyright shall subsist in items of news or in communications concerning topical events.

(2) Similarly, no copyright shall subsist in any kind of laws and regulations, court decisions and official announcements.

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[1]) *Gesetz über das Urheberrecht, vom 13. September 1965,* published in *Gesetzblatt der Deutschen Demokratischen Republik,* I, No. 14, p. 209, of September 13, 1965. English translation by BIRPI.

THIRD SECTION

The author

Author of a work or of an adaptation

Article 6. — (1) The author of a work is the person who created it (authorship).

(2) The author of an adaptation is the adapter, and the author of a translation is the translator.

(3) The rights of an author in respect of his work are not affected by the rights of the adapter or translator.

(4) When the name of the author is indicated in a published work, it is presumed that such person is the author of the work.

Works of collaboration

Article 7. — The copyright in a work which has been created by the efforts of several persons, and which constitutes an indivisible whole, belong, in common, to all the collaborators, co-authors, even if it is possible to distinguish the individual contributions. To the extent that the co-authors have not fixed their mutual relationships by an agreement, the general provisions of the civil law concerning partnership shall apply.

Independent works collected together

Article 8. — When independent works are collected into a single work, copyright in each of the parts so integrated remains reserved.

Editor

Article 9. — (1) Copyright in respect of collections, anthologies and other editions belongs to the editor; the rights of authors of the works so incorporated remain reserved. The editor and the author shall regulate their mutual relationships by an agreement.

(2) If a legal entity is designated as the publisher of a work, within the meaning of paragraph (1) above, such legal entity shall be deemed to be the owner of the rights in the edition.

Author of a cinematographic work and of a television work

Article 10. — (1) A cinematographic work or a television work is an independent work. It is the result of collaboration based upon separate and distinct creations and which, under the control of a director, and with the assistance of cinematographic or television techniques, has been created for the purposes of communication.

(2) When a cinematographic or television work has been produced within an enterprise, such enterprise has the exclusive right, and also the obligation, for all legal purposes, to control, in its own name, the rights of the collectivity of the authors of such work.

(3) The rights in respect of separate works which have been utilised in the production of a work, within the meaning of paragraph (1) above, as integrated portions of it and, in particular, rights relating to literary or musical works, shall not be affected by the provisions of paragraph (2) above.

Anonymous or pseudonymous publications

Article 11. — When a work is published without indication of the name of the author, or under a pseudonym, control of the rights of the author is vested in the person who first lawfully published the work — in so far as such rights, in order to preserve anonymity, are not exercised by the author himself.

Dissemination, publication

Article 12. — Within the meaning of the present law, a work is deemed to be disseminated as from such time as it has, with the authorisation of the author, been publicly recited, performed on stage or otherwise, broadcast, displayed, or in any other manner put into circulation, or has appeared. A work is deemed to have been published when, with the authorisation of the author, it has been put into circulation in a sufficient number of copies.

FOURTH SECTION

Rights of the author

Contents of copyright

Article 13. — Copyright is a personal socialist right. The author derives non-patrimonial rights therefrom (Articles 14 to 17) and economic rights (Article 18).

Recognition of authorship and mention of name

Article 14. — (1) The author of a work has the right to recognition of his authorship in respect of the work.

(2) He may require that the name selected by him shall be mentioned in connection with his work.

First publication

Article 15. — The author has the right to decide upon the publication of his work and upon the first public communication of the essence of its contents.

Inviolability of the work

Article 16. — (1) The author has the right to oppose any mutilation or deformation of his work.

(2) Any modifications made to the work necessitate the consent of the author. The present provision does not affect the provisions of Article 40.

Protection of reputation

Article 17. — The author has the right to prohibit the utilisation of his work in any manner capable of damaging his reputation as an artist or a scholar.

Rights of usage

Article 18. — (1) The author has the exclusive right of deciding whether his work shall be:

(a) reproduced or recorded;
(b) put into circulation for purposes of gain;
(c) publicly recited or performed on stage or otherwise;
(d) displayed, if it has not so far been published;
(e) the subject of a cinematographic adaptation or of a broadcast.

(2) The right of the author provided for in paragraph (1) above does not apply to the loan, with or without valuable consideration, of a copy of the work which has been put into circulation, or to the free utilisation of the work, or to legal licences.

(3) The author has the exclusive right of deciding whether adaptations or translations of his work may be utilised in accordance with paragraph (1) above.

Utilisation of a work by third parties

Article 19. — (1) Copyright is not assignable. The author may, in accordance with the provisions of the law governing authors' contracts, assign to third parties rights of utilisation in respect of his work.

(2) The author, in respect of any assignment of his rights, is entitled to a remuneration, in accordance with the socialist principle governing work performed. An express agreement is necessary in the case of any assignment without payment.

(3) In agreement with the social organisations and after consultation with the Minister of Finance, the Minister of Culture and, within his competence, the President of the State Broadcasting Committee, shall declare as compulsory upon all persons the directions issued by these organisations in the matter of remuneration, or shall issue provisions relative to the remuneration of authors (Rules relating to authors' fees).

Copyright and the employment relationship

Article 20. — (1) Copyright in respect of a work which has been created within an enterprise or a scientific institution in the fulfilment of obligations arising under an employment contract shall belong to the author of the work. The rights and obligations of the two parties as regards the exercise of copyright shall be fixed in the employment contract.

(2) The enterprises or institutions are entitled to utilise the work created by their collaborators under the conditions specified in paragraph (1), for purposes directly serving the accomplishment of their own objectives. In this respect, they shall exercise control over the rights of the author in an autonomous manner.

(3) In so far as no other considerations arise under the employment contract, or from any other manifestation of willing on the part of the two parties thereto, the right of remuneration, as well as the right of utilising the work for other purposes, shall belong also, in such cases, to the author.

FIFTH SECTION

Free utilisation of the work

Extent of free utilisation of a work

Article 21. — (1) In order to enable society in general to benefit from artistic and scientific values, and in order to assure the development of science and the arts, it shall be lawful, in accordance with the provisions of the present Section, to utilise works freely, without the consent of the authors and, with the exception of the cases specified in Article 24, paragraph (3), and Article 26, paragraph *(c)*, without payment of any remuneration to the authors (free utilisation of the work).

(2) To the extent which, in accordance with the provisions of Articles 24 to 26 and of Articles 29 and 30, reproduction is lawful, the putting into circulation, the public performance, or the public recitation, are equally lawful.

Free utilisation

Article 22. — The free utilisation of a work is lawful when it gives rise to a new work constituting an individual creation.

Reproduction for personal and professional use

Article 23. — The reproduction by any process of a published work is lawful when it serves personal or professional interest and when the reproduced copy is not released to the public. This provision does not apply to the reproduction of a work of architecture.

Reproduction for purposes of information and documentation

Article 24. — (1) It is lawful, for the purposes of information, to publish in the form of a brief summary the essential tenor of scientific, technical or literary works which have already appeared. In such a case, it is permissible to utilise, either as quotations or illustrations of the text, individual passages or short fragments of such text, as well as individual illustrations, pictures or other contributions.

(2) Brief summaries of scientific, technical and literary works which have been published in documentary publications, reports, bibliographies, etc., may be reproduced by other similar publications, for the information of a large circle of interested parties, but not for advertising or commercial purposes.

(3) Documentation services are authorised, for the purpose of conveying information to their users, to reproduce, in documentary publications or reports, as well as in bibliographical works, in original or in translation, in whole or in part, articles, essays, statements, tables, drawings and other published matter of a scientific, technical or literary nature contained in newspapers or periodicals.

(4) In a case of reproduction of the kind envisaged in paragraph (3) above, the author shall be entitled to a remuneration.

Reproduction of works displayed in streets and squares

Article 25. — (1) It shall be lawful to reproduce, by means of painting, drawing or photography, works which are located in a permanent manner in streets or public squares.

(2) As regards works of architecture, this provision only applies to their external aspect.

Quotations and collections

Article 26. — Reproduction is lawful when:

(a) individual passages or short fragments of a literary or musical work are, after their publication, quoted in an independent work;

(b) short individual articles, individual poems or short compositions, which have already appeared, are incorporated in an independant scientific work, in order to clarify its contents;

(c) individual poems or short compositions, which have already appeared, are incorporated in a collection which unites the works of a number of writers or composers, and which is intended for recitation or artistic performance;

(d) individual poems or short texts are distributed on the occasion of public manifestations designed exclusively for the information of listeners;

(e) brief individual essays, individual poems, short fragments of a literary work or short compositions, which have already appeared, are incorporated in a collection which unites the works of a number of writers or composers, and which is intended exclusively for purposes of teaching or for schools;

(f) individual works of painting, sculpture, drawing, industrial drawing, applied art and photography, which have already been published, or published fragments of a cinematographic, television or broadcasting work are incorporated in an independent scientific work or in a work intended for teaching or for schools, for the sole purpose of clarifying its contents.

Freedom to set to music and to set to words

Article 27. — (1) The setting to music of a literary work, particularly poems, is free, once they have appeared.

(2) Public performance and reproduction of a literary work in conjunction with a musical work requires the consent of both authors.

(3) The provisions of paragraphs (1) and (2) above apply, by analogy, to the setting to words of short compositions which have already appeared.

Indication of source

Article 28. — (1) Any person who makes use of the work of another person in accordance with the provisions of Articles 24 to 27 is required to indicate its source.

(2) When reproduction of a work of painting, sculpture, drawing, industrial drawing or applied art occurs, the name or any other designation of the author of the work must be applied to the reproduction in such a manner that no confusion with the original work can arise.

Reproduction of newspaper and magazine articles

Article 29. — (1) The reproduction, in other newspapers or magazines, of individual articles contained in newspapers or magazines is lawful, provided these articles do not bear an indication of a reservation of rights. When reproduction occurs, the source must be indicated.

(2) The reproduction of essays on a scientific, technical or entertaining subject contained in newspapers or magazines is unlawful without the authorisation of the owner, even in the absence of a mention of reservation of rights, unless the reproduction is intended to meet the needs of documentation recognised by this law.

Speeches and lectures

Article 30. — (1) Speeches and lectures delivered on the occasion of public manifestations or within the framework of the public activities of State organisations, as well as the written texts of such speeches and lectures, may be reproduced, except as publications in the form of a book, including a collection.

(2) The provisions of paragraph (1) above do not apply to manifestations of a scientific order.

Free public performances and recitations

Article 31. — (1) Public performances of a musical work which has already been published, or public recitations of an already disseminated literary work, are lawful when not effected with gainful intent, when the audience is admitted free of charge, and when the persons lending their assistance do not receive any remuneration.

(2) The provisions of paragraph (1) above do not apply to the stage performance of a musical work accompanied by a text. Equally, they do not apply to dramatic works, pantomimes or choreographic works.

SIXTH SECTION

Legal licences

Article 32. — (1) The Broadcasting and Television Organisations, the cinematographic studios belonging to the Nation, and the press, are authorised to broadcast, perform, reproduce or photograph published works without the consent of the author and without payment of any remuneration, when these works or fragments thereof are broadcast, performed or reproduced within the framework of reports of topical events intended for public information.

(2) The Broadcasting and Television Organisations are authorised to broadcast any published work without the consent of the author, and without making any modification, subject to the payment of remuneration in accordance with the State Regulations relating to authors' fees. In such cases, the name of the author must be indicated in the usual form; the author must be informed of the broadcast. The details of the application of this licence must be regulated by an agreement between the President of the State Broadcasting Committee and the social organisations of authors.

(3) Within the framework of the provisions of paragraphs (1) and (2) above, the recording and reproduction of the works are equally authorised.

SEVENTH SECTION

Duration of the protection of the auhor

Term of protection

Article 33. — (1) The protection of the rights of the author terminates 50 years after his death (term of protection). The period of 50 years commences from the expiration of the calendar year during the course of which the author died. In the cases specified in paragraphs (4) and (6), it commences with the expiration of the calendar year in the course of which the work was published.

(2) The rights of the author pass to his successors in title, in accordance with the general provisions of the law of succession.

(3) When the copyright in a work belongs to several persons in common, the period of protection of 50 years runs from the death of the last survivor.

(4) When the author's legal name is not indicated at the time of first publication of the work, and the author is not known, his rights terminate at the expiration of 50 years, calculated from publication.

(5) When the author's legal name is made known in the course of the period of 50 years, or if it is entered in the register which is kept for this purpose, the provisions of paragraph (1) above shall apply.

(6) When a legal entity is the owner of copyrigbt, the period of protection will expire 50 years after the first publication of the work.

Protection assured by society

Article 34. — (1) Socialist society guarantees, even after the expiration of the period of protection, the protection of the intellectual assets of the Nation.

(2) The competent State institutions or organisations will then assure the protection of the inviolability of tbe work and the safeguarding of tbe reputation of its author.

Protection of the legacy of eminent artists, writers and scholars

Article 35. — (1) The protection of the legacy of eminent writers, artists and scholars can, by decision of the Council of Ministers, be declared to be incumbent upon the Nation.

(2) In this decision, the control of the author's rigbts in respect of his legacy can be entrusted to a State organisation or to some other institution.

(3) The economic rights of the successors in title of authors in respect of the benefits derived from utilisation of the work during the term of protection remain reserved.

EIGHTH SECTION

Authors' contracts

First Sub-section

General provisions

Duties of cultural organisations

Article 36. — (1) The cultural organisations have the duty, whilst protecting the rights of the author, to seek to secure the widest possible distribution of the work.

(2) On the occasion of every utilisation of the work by a cultural organisation (publishing house, cinematographic studio, theatre, broadcasting, television, etc.), the author is entitled to participate, as a member of the collective, witb equal rights, in all questions affecting the work. The cultural organisations shall, in all their activities, encourage and assist the creative work of authors.

Contract for utilisation of the work

Article 37. — (1) Assignment of the rights of utilisation shall be effected by contract.

(2) The contracts referred to in paragraph (1) above must be concluded in writing. Oral agreement will be sufficient in respect of tbe public performance of a musical work, other than a stage performance, as well as for tbe public recitation of literary or scientific works and the publication of articles in newspapers and magazines.

Types of contracts

Article 38. — (1) Contracts relating to the utilisation of a work shall, in particular, comprise:

(a) the publishing contract, including the contract concerning contributions to newspapers and magazines;

(b) the contract for theatrical performance of a work and the contract for theatrical exploitation;

(c) the contract for cinematographic adaptation of a work, or for the creation and exploitation of the literary basis for a film, or the performance thereof;

(d) the contract for the production of a radio or television version of a work, or for the broadcast of a work by radio or television;

(e) the contract for the recording of a work on a phonogramme;

(f) tbe contract for the utilisation of works of figurative art, applied art or architecture;

(g) the contract for tbe utilisation of photographs, including photo-mountings;

(h) the contract for the non-theatrical public performance of musical works or for tbe recitation of a literary work.

(2) As regards details, the provisions of Articles 46 to 72 apply to the contracts specified in paragrapb (1) above.

Contents of contracts

Article 39. — Contracts for the assignment of the rights of utilisation must contain stipulations relating:

(a) to the manner and scope of the utilisation;

(b) to tbe contents and kind of any work still to be created;

(c) to the manner of any collaboration between the author and the organisation at the time of the creation and utilisation of the work [Article 36, paragraph (2)];

(d) to the date of the commencement of tbe utilisation;

(e) to the duration of the contract, or to the number of copies which are to be put into circulation, or to the number of performances or of broadcasts;

(f) to the remuneration of the author;

(g) to the conditions and form of any possible modifications of tbe contract or of its termination.

Modifications

Article 40. — (1) Modifications may not be made to a work without the consent of the autbor, unless they serve to provide correct communication of the work (correction of obvious errors).

(2) In the case of artistic interpretations of works, the extent of any modifications permitted must be stated in the contracts. The principle of faithful reproduction of the work shall thereby serve as the point of departure.

Model contracts

Article 41. — (1) As regards tbe contents of contracts referred to in Article 39, the Ministry of Culture and, in so

far as it is concerned, the Committee of State Broadcasting, shall, in collaboration with the social organisations of authors and the trade unions, draw up and publish model contracts. The provisions in model contracts relating to the minima and maxima remunerations, to other benefits granted to authors (for example, free copies), to periods of time, or to any declaration of withdrawal can be declared by the Minister of Culture or by the President of the State Broadcasting Committee, after consultation with the Minister of Justice and the Minister of Finance, as obligatory upon all.

(2) If a contract does not contain any of the stipulations specified in Articles 39 and 40, the provisions of the model contract shall be effective, as if forming part of the contract.

Contracts concerning future works

Article 42. — (1) A contract of the type envisaged in Article 37 can equally be concluded in respect of a determined work which still remains to be created. No right of remuneration accrues to the author until after the delivery of the work.

(2) Contracts by which an author undertakes engagements in respect of the utilisation of a future work, which is undetermined, shall be null and void, except in the case of employment relationships.

(3) In the case of a work which the author still has to create, the other party to the contract is required, after the delivery of the work, to inform the author, in writing, and within such period as may be fixed in the contract, of the acceptance of the work, or of its rejection on one of the grounds contained in the contract, or of the necessity for making modifications, indicating their nature in detail, to conform with the conditions of the contract. If no such information is forthcoming within the said period, the work shall be deemed to be accepted.

Rights of ownership of the original and of the work

Article 43. — (1) The original of the work delivered to the other party to a contract remains the property of the author, in so far as there is no agreement to the contrary.

(2) The assignment of the right of ownership of a work of painting, sculpture, drawing, industrial drawing, applied art, cinematography, broadcasting, television, photography, photo-mounting or architecture does not, in the absence of provision to the contrary, include assignment of the author's rights of usage.

(3) The proprietor of the original of a work is required, at the request of the author, to give the author access to his work.

(4) If, due to the behaviour of the owner, the original of a work is threatened with deterioration or destruction, the author has the right to re-purchase it at its current value.

Assignment to third parties of the rights of usage of a work

Article 44. — (1) The consent of the author is necessary to the assignment of the totality of the rights acquired by virtue of a contract for the utilisation of a work. Such consent is not necessary when a publishing house makes a global assignment of all or part of its publishing sphere of activity.

(2) In other respects, the provisions of Articles 36 to 43 and Article 45 are applicable, by analogy, when the person who, by virtue of a contract, has acquired rights of usage of the work from the author, assigns such rights to third parties.

Withdrawal

Article 45. — (1) When the owner of a right of usage, in default of his contractual obligations, fails to make the work accessible to the public, the author has the right of withdrawal.

(2) Exercise of the right of withdrawal results in the rights of usage which were assigned belonging, once again, exclusively to the author. Remuneration, co-related to his work, must be paid to the author. No restitution of any remuneration already paid, or any portion thereof, can be required. When the owner of the right of usage culpably fails in his obligations, the author can further claim damages. The same applies if the owner of the right of usage, by abandoning his field of activity, or by assigning such field of activity, wholly or in part, does not fulfil his contractual obligations towards the author.

(3) The provisions of paragraphs (1) and (2) above apply, by analogy, when the owner of the right of usage utilises the work in a manner contrary to the conditions of the contract.

(4) The owner of the right of usage can withdraw from the contract if the author:

(a) has not delivered the work within the period fixed in the contract;

(b) has not, in the case of a work to be created, executed it in accordance with the conditions specified in the contract;

(c) refuses to make modifications which have been requested of him, in the form and within the limits fixed by the contract.

The author is required to refund any remuneration he has received. In the case of a withdrawal of the kind referred to in paragraph *(b)* above, and when the author has not acted in a culpable manner, a remuneration co-related to his work shall be paid to him.

(5) Withdrawal as referred to in paragraphs (1) to (4) is subject to preliminary warning and to the fixing of an equitable period of time. It must be notified in writing.

(6) In contracts or in model contracts, the right of withdrawal may be regulated in derogation of the present provisions.

Second Sub-section

Publishing contract

Obligations arising from the contract

Article 46. — By the publishing contract, the author undertakes to deliver his work within the periods specified, and in the form appropriate to the purpose of the contract, or agreed upon. The publishing house undertakes, in accordance with the provisions of the contract and within the periods specified, to reproduce the work, at its own expense, and to put it into circulation, and to pay to the author the remuneration agreed.

Right of publication

Article 47. — (1) By virtue of the publishing contract, the publishing house acquires the exclusive right to reproduce the work and to put it into circulation (right of publication). In the case of a work to be created, the right of deciding as to its publication and to the first public communication of its essential contents remains reserved to the author.

(2) The right of publication can, in the contract, be limited in space, in time, or in any other manner.

Other rights of the author

Article 48. — In the absence of special agreements, the author retains the rights of public recitation and public performance of his work, of recording his work upon sound or visual devices, as well as the right of cinematographic adaptation, of its broadcast or exhibition, together with the right to authorise the utilisation of adaptations or translations (Article 18).

Obligations arising under contracts in connection with contributions to newspapers, magaziues and periodical collections

Article 49. — (1) When the contribution, in its form and contents, conforms with the provisions of the contract, and when it has been delivered within the periods specified, the publishing house is obliged to pay the remuneration.

(2) If it is agreed that the contribution must first be accepted, the same provisions shall apply if the publishing house has accepted the contribution. Every contribution that the publishing house has not refused within a period of three months following its delivery shall be deemed to be accepted.

(3) If a contribution has already been offered to another newspaper or magazine, or if a contribution has already been published, this must be mentioned in the offer.

Other rights appertaining to contributions to newspapers

Article 50. — (1) By virtue of the contract, and in the absence of agreement to the contrary, the publishing house acquires only the authorisation to reproduce the contribution once in the organ of the press for which it was intended in accordance with the provisions of the contract.

(2) When the author has assigned to the publishing house the exclusive right to reproduce the contribution in an organ of the press, he may not, in the absence of any agreement to the contrary, authorise its reproduction in another organ of the press: in the case of a contribution to a daily paper, reproduction may not occur until after the appearance of such paper, and in the case of a contribution to some other organ of the press, until six months after the appearance of the latter.

Withdrawal in connection with contributions to newspapers

Article 51. — When the publishing house is not under obligation, by virtue of the contract, to publish a contribution before a given date, and when the publication has not taken place within a period of six months following delivery of the contribution, the author has the right to withdraw from the contract without prior notice. When an agreed period for the publication of a contribution has been passed, the author may, after giving notice, withdraw from the contract within reasonable period. The author retains the right to the entire remuneration.

Commission and coutracts concerning orders

Article 52. — (1) When a publishing house commissions collaboration in an encyclopaedic work or in auxiliary or accessory works intended for use in a collection or in a work by a third party, the publishing house, in the absence of any special agreement concluded with the person who was commissioned, is not obliged to proceed to the reproduction and the putting into circulation of that person's contribution.

(2) The same applies when a commission has been issued for the execution of a work in accordance with a project in which the contents of the work, as well as the manner of its elaboration, are prescribed in such a manner that no creative activity is required of the person who was commissioned (contract concerning orders).

Third Sub-section

Contract for public performance or public recitation and contract for theatrical exploitation

Obligations arising under contracts for stage performance

Article 53. — (1) By the contract for stage performance, the author of a dramatic, dramatico-musical, choreographic or pantomimic work undertakes to deliver the work to the theatre or to a manager (hereinafter called the " theatre ") in a form appropriate to the agreed objective, and within the periods specified.

(2) The theatre undertakes to cause the work to be performed, at its own expense, in the form and for a number of performances, or within the periods agreed, and to pay to the author the remuneration agreed.

Right of stage performance

Article 54. — (1) By virtue of the contract relating to the stage performance of a work, the theatre acquires the right to perform the work in public in a given form, for a number of performances or within periods agreed upon.

(2) A right of exclusive performance must be the subject of an express agreement.

Contracts for other than stage performance or recitation

Article 55. — (1) The provisions of Articles 53 and 54 concerning stage performance apply, by analogy, to other contracts relating to the public performance of a musical work or the public recitation of a literary work.

(2) The author may, if not prohibited by the contract, conclude, in respect of the same work and the same place, further contracts which comply with paragraph (1) above.

Obligations arising under contracts for stage exploitation

Article 56. — (1) By the contract for stage exploitation, the author of a dramatic, dramatico-musical, choreographic or pantomimic work undertakes to deliver his work to the publishing house within the periods specified and in a form

appropriate to the production of material suitable for stage performance.

(2) The publishing house undertakes to organise the stage exploitation, to reproduce the work within the periods specified, in a form appropriate to stage performance, and in the necessary number of copies, to offer it in a permanent manner to theatres, to conclude contracts for performance and to make provision for remuneration in favour of the author and for its payment to him.

Right of stage exploitation

Article 57. — (1) By virtue of the contract for stage exploitation, the publishing house acquires the right, during the period of the contract and on the agreed territory, to conclude, in its own name, contracts for stage performance of the work and to control, in an autonomous manner, all the rights of the author arising under these contracts, as well as the powers necessary for their exercise. By virtue of the contract for stage exploitation, the publishing house is further authorised, for the purposes of performance, to reproduce the work in an appropriate form.

(2) It can be agreed in the contract that all the rights envisaged in paragraph (1) above belong exclusively to the publishing house, or that they are limited in space, in time, or in any other manner.

Payments for the loan of material

Article 58. — When the author or the publishing house supplies the material for the stage performance of the work, the author or the publishing house has the right, in the absence of any agreement to the contrary, to a special indemnity outside the remuneration due in respect of the performance.

Fourth Sub-section

Contract for the cinematographic adaptation of a work or for the performance of a cinematographic work

Obligations arising under contracts for cinematographic adaptation

Article 59. — (1) By the contract for the cinematographic adaptation of a work, the author of a literary or musical work, or other work referred to in Article 2, paragraph (2), undertakes to deliver his work to the film maker (hereinafter called the "maker") within the period prescribed, with the contents and in the form specified in the contract. The maker undertakes to pay the author the remuneration agreed.

(2) In the absence of agreement to the contrary, the maker is not obliged to utilise the work which has been delivered to him for the making of the film. The right of the author to receive remuneration remains reserved.

Right of cinematographic adaptation

Article 60. — (1) By virtue of the contract for the cinematographic adaptation of a work, the maker acquires the right to utilise the work for the making of a given film and, once the work is so incorporated in the film, to distribute the film and to perform it in public (right of cinematographic adaptation).

(2) The composer has the right to a remuneration for each public performance of the film accompanied by his music.

Right of world distribution

Article 61. — In the absence of any provision to the contrary in the contract for cinematographic adaptation, the maker acquires the right, without restriction in space or limitation in time, to distribute and to perform in public the film which has been realised with the utilisation of the work of the author; the film may also be synchronised and provided with sub-titles in a foreign language (right of world distribution).

Multiple cinematographic adaptation

Article 62. — During the term of the contract for cinematographic adaptation, the author may not, without the consent of the first maker, conclude a similar contract concerning the same work with any other maker.

Reversion of the right of cinematographic adaptation

Article 63. — If the maker fails to make the film within a period of ten years following the assignment of the right of cinematographic reproduction or adaptation, or if the film is not performed in public within a period of ten years following its making, the rights of cinematographic adaptation revert to the author. Either of these periods may be reduced by agreement. The provisions of Article 45, paragraph (2), apply by analogy.

Obligations arising from the contract for the performance of a film

Article 64. — By the contract for the public performance of a cinematographic work, the owner of the rights in the film undertakes to deliver the film to the exhibitor within the periods prescribed, at an agreed place, and in a form appropriate to public performance. The exhibitor undertakes to perform the film in public, in the form, for the term, and in the place agreed, and to pay the remuneration which has been fixed.

Right of performance

Article 65. — (1) By virtue of the contract, the exhibitor only acquires the right to perform the film in public in accordance with agreements. The owner of the rights in the film is obliged to assist him and to take all necessary steps in any case in which unauthorised third parties hinder or prevent the exercise of the right of performance which has been agreed.

(2) In the absence of agreement to the contrary, the owner of the rights in the film is also entitled to conclude other contracts for performance.

Fifth Sub-section

Contracts relating to the broadcast of the work by radio or television

Obligations arising from the contract

Article 66. — (1) By the contract relating to the broadcast of a work by radio or television (broadcasting contract), the author undertakes to deliver his work to the radio or television organisation for the purpose of broadcast. The radio

or television organisation undertakes to pay the author the agreed remuneration for each broadcast of his work.

(2) If the work is not broadcast, the author is only entitled, in accordance with the provisions of the model contract, to a remuneration for his work of elaboration.

Right of broadcast

Article 67. — (1) By virtue of the broadcasting contract, the radio or television organisation acquires the right to broadcast the work in the form and for the period agreed.

(2) A right of exclusive broadcast must form the subject of an express agreement.

(3) The radio or television organisation is entitled, for the purposes of broadcast, to record the work upon a visual or sound device and to utilise the reproductions thus made, for the purposes of rebroadcasting.

Sixth Sub-section

Contract for the recording of a work on phonogrammes

Obligations arising from the contract

Article 68. — By virtue of the contract for the recording of a work on phonogrammes or other like devices, the author undertakes to deliver the work to the producer within the periods prescribed, and in a form appropriate to the recording agreed. The producer undertakes to record the work, to manufacture, in accordance with the provisions of the contract, reproductions of these recordings, and to put them on sale, as well as to pay to the author the remuneration specified.

Right of recording and reproduction

Article 69. — (1) By virtue of the contract, the producer acquires the right to record the work in accordance with agreements, to manufacture reproductions, and to put them on sale.

(2) The exclusive right of the producer must form the subject of a contractual agreement.

Seventh Sub-section

Contract for the utilisation of works of figurative or applied art and photographs

Obligations arising from the contract

Article 70. — By the contract for the utilisation of a work of figurative art or of applied art, of photography and photo-mounting, the author undertakes to deliver the work or a copy thereof to the other party to the contract, within the periods specified and in the form agreed. The other party to the contract undertakes to pay the remuneration agreed. This party is not obliged to utilise the work, if this is not specified in the contract. This provision does not affect the contractual obligation to pay the author a remuneration.

Right of utilisation

Article 71. — (1) By virtue of the contract, the party to the contract only acquires the right to utilise the work once for the purpose specified. It can be provided otherwise in the contract.

(2) The author has the right to utilise the work elsewhere, if that does not hinder or prevent the realisation of the objective of the contract, in conformity with paragraph (1) above.

(3) If the work has been created to order, the right granted to the author in accordance with paragraph (2) above only belongs to him if expressly reserved, or if the other party to the contract has not utilised the work in the course of the year immediately following the delivery of the work.

Publishing contract in respect of figurative or applied art, photography and photo-mounting

Article 72. — When the reproduction of a work of painting, sculpture, drawing, industrial drawing, applied art, photography or photo-mounting forms the subject of a publishing contract, the provisions relating to publishing contracts shall be applicable.

SECOND PART

Related Rights

FIRST SECTION

Rights to the protection of performances

Utilisation of the performances of soloists and of groups

Article 73. — (1) The individual performance of an artist who, as a soloist, produces, or lends his support to, a public performance or public recitation may only be used with his consent:

(a) for a reproduction (recording), if this is for the purpose of the manufacture of reproductions intended to be placed on sale, performed or broadcast in public;

(b) for broadcast by radio or television;

(c) in connection with the making of a film.

(2) Paragraph (1) above applies, by analogy, to the performance of a group. The authorisation of the management of the group is sufficient for the lawful utilisation of such performance.

(3) When a performance of the kind envisaged in paragraphs (1) and (2) above takes place within the framework of an employment contract, the rights to the protection of prestations can only be exercised if they are compatible with the provisions of the labour law.

Protection of the art of soloists and groups

Article 74. — Soloists and groups are entitled to require that, after they have given their authorisation, their performances shall not be utilised in a manner prejudicial to their reputation as artists. In the case of a group, this right shall be exercised by the management of the group.

Recording of phonogrammes

Article 75. — The performances of enterprises which produce phonogrammes can only be utilised with the authorisation of these enterprises:

(a) for the re-recording of phonogrammes;

(b) for broadcast by radio or television;

(c) in connection with the making of a film.

Broadcasts

Article 76. — The broadcasts of a radio or television organisation may be utilised in public by third parties only with the authorisation of such organisation.

Photographs

Article 77. — Photographs which are not included among the artistic and scientific works referred to in Article 2, paragraph (1), may be utilised, put into circulation or displayed in public only with the authorisation of the photographer.

Geographical maps, plans, sketches, illustrations and three-dimensional representations

Article 78. — (1) The performed works of designers of:

(a) geographical maps and other geographical or analogous representations;

(b) plans and sketches intended for scientific or technical purposes;

(c) illustrations and three-dimensional representations of a scientific or technical nature,

may be reproduced, put into circulation, publicly displayed, performed, or utilised in connection with the production of a film, only with the consent of their designer.

(2) The rights resulting from the provisions of paragraph (1), sub-paragraph *(a)* above, do not affect the legal regulations governing co-ordination.

Assignment of the right of ownership

Article 79. — In the absence of agreement to the contrary, the assignment of the right of ownership of a photograph, of phonogrammes, geographical maps, plans, sketches, illustrations or three-dimensional representations does not include assignment of the right to the protection of the performed works.

Right to remuneration

Article 80. — As regards the utilisation of performances referred to in Articles 73 to 78, the owner of the right to the protection of such prestations is entitled to a remuneration. The nature and amount of such remuneration may be fixed by the Minister of Culture and, in so far as he is responsible, by the President of the State Broadcasting Committee, after consultation with the directors of the competent central State organs and the interested social organisations.

Authorisation

Article 81. — (1) The authorisation of the owner of the right to protection of performances shall be granted by contract. The provisions relating to the assignment of the author's rights of usage apply, by analogy, to this contract.

(2) On the occasion of the utilisation of the performance, the name of the owner or of the working collective shall, upon request, be mentioned in the usual manner.

(3) The provisions of Article 20 apply, by analogy.

Duration of the rights to the protection of performances

Article 82. — (1) The rights to the protection of performances continue for ten years.

(2) This period begins with the expiration of the calendar year in the course of which the performance occurred. In the cases referred to in Articles 77 and 78 it will, in consequence, expire ten years after the first publication, and at the latest ten years after the expiration of the calendar year in the course of which the person entitled hereunder has died.

(3) After the death of the entitled person, the rights to the protection of performances are exercised by his successors in title.

Free utilisation of the work and legal licences

Article 83. — The provisions relating to the free utilisation of the work, in accordance with Articles 22 to 24 and Article 26, as well as those relating to legal licences, in accordance with Article 32, apply, by analogy, to the rights to the protection of performances.

SECOND SECTION

Title of the work

Protection of the title

Article 84. — (1) When the risk of confusion exists, the title of a work, of a magazine or of a newspaper, which distinguishes the work from another work, or a similar or identical title, can only be used for another work with the authorisation of the author or of the editor.

(2) Generic terms, historical or technical designations, proper names or geographical names do not, in themselves, possess any power of distinction or differentiation within the meaning of paragraph (1) above, unless they are generally accepted in commerce as the title of a given magazine or newspaper.

(3) The protection of the title is granted independently of whether or not copyright in the title subsists under the terms of Article 3.

Duration of protection of title

Article 85. — The protection of the title continues for the duration of the period of protection of the work.

THIRD SECTION

Portraits of persons

Protection of portraits

Article 86. — (1) The portraits of persons must not be put into circulation or exhibited in public without the authorisation of the person portrayed.

(2) In the event of doubt, authorisation is deemed to have been granted when the person concerned has received a remuneration for having acted as a model.

(3) After the death of the person represented, the putting into circulation or the exhibition in public of his portrait is subject, for a period of ten years, to the authorisation of his nearest relatives. By "nearest relatives" is to be understood the surviving spouse and children. In the absence of these, an authorisation of the parents of the person portrayed is necessary.

Lawful utilisation

Article 87. — The following may be put into circulation or displayed in public, without authorisation:

(a) portraits of persons, for the purposes of public information on topical events;

(b) portraits of persons appearing in illustrations which serve scientific or artistic purposes, the putting-into-circulation or the exhibition of which would be of interest to society;

(c) portraits of persons produced by competent State organisations for the purposes of justice or State security.

Protection of personality

Article 88. — The utilisation of portraits of persons in accordance with Articles 86 and 87 must not damage the legitimate interests of the persons represented in such portraits.

FOURTH SECTION

Letters and diaries

Protection of confidential notes and communications

Article 89. — (1) Writings having a personal character, such as letters, private notes or diaries, which do not already enjoy the protection of copyright by virtue of the present law, may be published, reproduced, put into circulation or utilised in any other manner only with the consent of the author and, in the case of letters, without the consent also of the addressee.

(2) After the death of the author or the addressee, publication is conditional upon the consent of the surviving spouse and children. In the absence of such persons, the consent of the parents is necessary.

Duration of protection

Article 90. — The protection specified in Article 89 is granted for the life of the author and for a period of ten years after his death. As regards letters, the period is calculated from the date of death of the addressee, if his death is later than that of the author.

THIRD PART

Protection of Rights

Infringement of rights of an author

Article 91. — (1) When the rights of an author are infringed, he may require the re-establishment of the position to conform to the provisions of the present law. He can also require abstention from any further infringement, in so far as any such action can be expected, as well as an official appraisal, and the payment of remuneration in respect of the unlawful utilisation that has already been made of his work.

(2) If the infringement has been committed in a culpable manner, the author may, in addition to any remedies specified in paragraph (1) above, require compensation for any material damage he may have suffered.

(3) These provisions do not affect any more extensive claims that the author may make by reason of the general provisions of the civil law or of contractual agreements.

Infringement of the right to the protection of performances or to other rights

Article 92. — The provisions of Article 91 apply, by analogy, when there is an infringement of the right to the protection of performances, or to a title, or to rights in connection with a portrait, or writings of a personal character.

Distraint

Article 93. — (1) Neither the rights of the author nor those of the beneficiary of the protection of performances, or their successors in title, nor the work, nor the performance, can form the subject of distraint.

(2) The claims of authors or of the persons entitled to the protection of performances, which arise from the assignment of rights of utilisation, are subject to distraint, in accordance with general provisions.

(3) Funds to the credit of the author or the beneficiary of the protection of prestations, based upon utilisation of the work or upon the prestation shall, in the event of distraint or bankruptcy of the debtor, be treated as wages or salary credits.

Prescription

Article 94. — The general provisions of the civil law are applicable as regards the prescription of rights resulting from the present law.

FOURTH PART

Transitional and Final Provisions

Transitional provisions

Article 95. — (1) The provisions of the present law apply to any utilisation of a work or to any prestation occurring after this law has come into force.

(2) Any contracts existing at the date of the coming-into-force of the present law shall continue to be valid. In any case in which contracts contain stipulations contrary to the provisions of the present law, the provisions of the present law shall prevail.

Field of application

Article 96. — (1) The provisions of the present law apply to the authors or other persons entitled to rights hereunder who are citizens of the German Democratic Republic, irrespective of whether their works have or have not been disseminated, or of the place of dissemination.

(2) The present law applies also to works and to performances first disseminated in the German Democratic Republic, even if the author or the owner is the national of another State, or is a stateless person.

(3) As regards works and performances of nationals of other States or of stateless persons, which have been disseminated outside the German Democratic Republic, the present law shall apply in conformity with the provisions of international conventions to which the German Democratic Republic is a party. In the absence of such conventions, the protection of copyright and of performances will be granted on the basis of reciprocity.

(4) The provisions of paragraphs (1) to (3) above are applicable, by analogy, to legal entities.

Coming-into-force and abrogation

Article 97. —(1) The present law shall come into force on January 1, 1966.

(2) At the same time, the following are abrogated:

(a) Articles 57 to 60 of the law of June 11, 1870, concerning copyright in writings, illustrations, musical compositions and dramatic works (*Bundesgesetzblatt des Norddeutschen Bundes*, p. 339);

(b) Articles 17 to 19 of the law of January 9, 1876, concerning copyright in works of figurative art (*RGBl.*, p. 4);

(c) the law of June 19, 1901, concerning copyright in literary and musical works (*RGBl.*, p. 227);

(d) the law of January 9, 1907, concerning copyright in works of figurative art and photography (*RGBl.*, p. 7);

(e) the law of June 9, 1901, concerning the law of publication (*RGBl.*, p. 217);

(f) the law of May 22, 1910, giving application to the revised Berne Convention for the Protection of Literary and Artistic Works of November 13, 1908 (*RGBl.*, p. 793);

(g) the law of December 13, 1934, extending the periods of protection of copyright (*RGBl.*, II, p. 1395);

(h) the law of April 30, 1936, intended to facilitate cinematographic reports (*RGBl.*, I, p. 404);

(i) the law of May 12, 1940, extending the periods of protection of copyright in photographs (*RGBl.*, I, p. 758).

GENERAL STUDIES

International Double Taxation and Authors' Rights

I. The fight against double taxation

1. Authors' rights and fiscal law

Intellectual and artistic production resulting from man's creative activity needs to be given material form in a *corpus mechanicum* before it can have real physical and durable expression in order that the message it carries may be transmitted to or learned by the community. The manuscript, the score, the canvas, stone or wood will serve to fix in time and space the novel, the symphony, the painting or the statue.

Apart from that, however, once a work has been imagined or created in the mind of the author and been given material form in some shape or other, it needs to be communicated to the public. It is then that the literary and artistic creation acquires the nature of an economic asset, because the need exists which can be satisfied by the consumption or use of this asset which is now available to any agent who feels the need for it [1]). Until the writer publishes his novel or has the play he has written performed in a theatre, until the music which a composer has written is played at a concert, until the architect or the sculptor has exhibited or sold the design for the building or statue, the work, although already conceived, and although already given or in process of being given material shape, has only a potential economic value because it has not yet been made public and its economic exploitation has not yet begun.

That is why it has been agreed to consider the author's right as an intellectual right in the act of its literary or artistic creation which becomes a customer's right as soon as its economic exploitation begins [2]).

We still have to take account of the dualism which characterizes the author's right over his work. On the one hand we have a group of rights or faculties of an ethical character — moral rights; on the other hand we have the economic rights *(droits patrimoniaux)* which come very close to the *jus fruendi* of the right of property.

It is these economic rights which grant the author the exclusive right to exploit his work, that is to say, that either directly or by concession to a third party, they enable the work to be read, heard or seen by the general public.

Seeing that the author is the absolute master of his creation and seeing also that public access to works of art may have a monetary counterpart, the author has the right to require some payment, a price, for the spiritual pleasure, the artistic curiosity, the functional utility that his work is capable of awakening, producing or satisfying.

That is why literary or artistic work, in economic terms, constitutes an *asset*, capable of producing income.

Now fiscal law, by which the participation of the community in the expenditure of the State is regulated, can only be applied to economic assets [3]); that is why works of the mind are of no interest for taxation purposes until they produce an income, until they represent a value which can be measured in economic terms. That is also the reason why, in nearly all civilized countries, the income obtained by authors

[1]) Jean Marshal, *Cours d'économie politique*, 2nd ed., Paris, 1952, p. 395.

[2]) Henri Desbois, *Le droit d'outeur*, Paris, 1950, pp. 302-303.

[3]) P. Soares Martinez, "*A obrigoção tributária*", in *Ciêncio e Técnica Fiscol*, No. 51, p. 642.

from the use or exploitation of the works they produce is subject to payment of taxes, generally included under the heading of income taxes [4]).

2. *Double taxation in international law*

Literary and artistic works, by their universal characteristics, are destined to circulate throughout the entire world without regard for frontiers or geographical areas; and they circulate increasingly rapidly and widely as means of communication and processes for the broadcasting of ideas and culture continue to multiply.

Whereas, in order to achieve a wider circulation, a book needs to be translated into languages different from the original, the cinema, the radio, television and the gramophone convey artistic forms, especially music, dancing, pictures and the plastic arts to the furthest corners of the earth in rapid international movement. Electronics, now that it is being applied to the transmission of sound and light, brings increasing assistance to the development of the communication of the various forms of human expression.

Normally States, in establishing in their internal legislation fiscal rules for the taxation of income produced by the use and exploitation of literary and artistic works and in settling the system for payment of a tax, are guided by criteria of fiscal policy which differ from one country to another and as a consequence do not always coincide with one another: in one State, persons domiciled on the territory of the State are subject to tax; in another State only its nationals, wherever they may reside; in still another State the tax is applied to the income produced within the fiscal area of the State without regard to the destination or nationality or even the domicile of the subject taxed.

It may thus happen, although it may not be the deliberate intention of States, but merely the result of the exercise of their fiscal sovereignty [5]), and it frequently does happen, that an overlapping tax of this kind will be imposed on the same tax payer, in respect of the same taxable matter and of the same period of time. This is the phenomenon known in international law as double taxation.

Fundamentally, the groups of situations which can lead to double taxation of income are three in number [6]):

(a) where one State taxes the tax payer on the basis of his nationality, domicile or residence (personal taxation), and the other State taxes the income produced within the fiscal area (real taxation);

(b) where different criteria for personal taxation (nationality, domicile, residence) are applied by two States, or where the two States consider the same person as being domiciled or resident on their territory;

(c) where there is no similarity between the fiscal laws of two or more States because, although they are all based on the principle of real taxation, they adopt different criteria for determining the origin of the income (place of exercise of activity or country where the income is produced).

The possibility of two or more applications of tax to the same taxable matter being superimposed constitutes a serious obstacle to the circulation of assets and their earnings. And when this limitation of circulation applies to artistic or literary works, it is the authors who find the product of their brains or the expression of their sensitivity effected or diminished; it is culture itself which is thereby threatened. The injustice of international double taxation must be remedied by recourse to a principle analogous to that of *non bis in idem* in criminal law.

In a timely study by C. Masouyé [7]) it is very rightly observed that: " The special nature of authors' rights demands special taxation. While the solutions may vary according to the national legislations, this need is none the less evident on the one hand legally and on the other economically, on pain of seeing authors' interests seriously harmed. This injury will be all the more marked in the case of superposition of taxation not granting a favoured regime to authors' rights: this is what happens in the international order ".

3. *The elimination of double taxation*

Although the problem of double taxation of authors' rights is only one aspect of the vast problem of double taxation under fiscal law generally, it is all the more deplorable when this phenomenon, which we could call pathological, leads to restrictions on the spread of culture and reduction in the income of the producers of literary and artistic works, who are not normally wage earning but live by their intellectual or artistic efforts, and by one of the noblest forms of man's expression, which is inspiration.

There are two possible methods of preventing or eliminating double taxation and they are to establish in national legislation exemption from taxation of income which is already taxed in another State, or to deal with it by international convention.

The first system involves a risk for the State laying down such unilateral measure. Say, for example, the income of aliens residing or domiciled on the territory of the State in question were exempted from tax, it could happen that those same aliens, under their national law, were also exempted from taxation on income obtained outside their country. Such a situation would amount to tax evasion. Similar hypotheses may be imagined in cases where exemption from tax was granted according to the origin or destination of the income. It follows that that kind of system cannot advantageously be applied unless there is a reciprocity clause. Despite these drawbacks, cases of unilateral exemption are to be found in the income tax legislation of certain countries (Belgium, Netherlands, United Kingdom, United States) for the purpose of encouraging international investment [8]).

The attribution of fiscal jurisdiction by bilateral convention may be regulated by either of two principles: the system

4) We do not propose, in this study, to deal with the problem of double taxation by succession tax on the death of an author.

5) James Gilmer, "*La lutte contre les doubles impositions*", in *L'Observateur de l'OCDE*, No. 7, December 1963, p. 31. Claude Masouyé, "*Droit d'auteur et droit fiscal*", *RIDA*, XXVI, p. 46.

6) *Bulletin du droit d'auteur*, Vol. VII, No. 1, p. 28 and "Draft Double Taxation Convention on Income and Capital", OECD, Paris, 1963, p. 140.

7) *Op. cit., loc. cit.*, p. 44.

8) *Bulletin du droit d'auteur, cit.*, pp. 28-29.

of exemption or the system of allocation. Under the first system, the State to which the convention does not grant the right to tax the income of authors does not take that income into account when it fixes the rate of the tax to be levied on the remainder of the income (total exemption) or retains only the right to take into consideration the income exempted from tax for the purpose of determining the rate applicable to the remainder of the income (progressive exemption). Under the allocation system, the State calculates the tax on the basis of the total amount of the tax payers income, after deducting the tax paid in the other State [9]).

Whether by means of internal provisions or by means of bilateral conventions, an effort on the part of States is necessary, involving mutual concessions, in order to prevent double taxation. In the field of authors' rights, what is essential is to know which system is best adapted to the nature of these rights and to their holders and what the difficulties encountered in the fiscal legislation of the various countries are. The choice of systems lies fundamentally between the principle of taxation of income at source and taxation at the domicile of the tax payer. Naturally, neither of these principles can be accepted without a definition, which should be as precise as possible, of source and domicile, in order to prevent similar situations arising with further duplication.

Taxation by the State of domicile is the system most favoured by a great many writers [10]) and by the majority of existing conventions [11]). " Implying the intervention of one fiscal authority only, this solution is the most practical and the most logical. Inspired by the conception of the income tax, it is also the fairest, the taxation intervening at the tax payer's domicile when the revenue has effectively entered the patrimony. "

For the defence of authors and for a wider expansion of culture on a world scale, the principles which ought to be adopted both in internal legislation and in bilateral conventions should contain:

(a) a definition of the income of authors, or of their successors in title, which is to be taxed;

(b) a determination of the fiscal system in the author's country of domicile;

(c) a single tax with exemption for small incomes.

4. International action so far

On various occasions the attention of Governments has been directed to this problem either at international diplomatic conferences attended by Government representatives or at meetings of bodies concerned with the defence of author's rights.

The records of the 1948 Brussels Conference which carried out the last revision of the Berne Convention include the following resolution: " The Conference urges that agreements should be concluded between the countries of the Union as soon as possible providing that the authors of literary or artistic works shall not be subject to double taxation of income arising from the exercise of authors' rights in one of the countries of the Union " [12]).

The 1952 Geneva Conference, which drew up the Universal Copyright Convention said on the subject of this problem: " The Conference urges the various States, the United Nations and the United Nations Educational, Scientific and Cultural Organization to continue the studies which have already begun for the purpose of preventing double taxation of authors' rights " [13]).

At its very first session in 1946, in Paris, the Intergovernmental Copyright Committee urged the necessity for a thorough study of international double taxation of authors' rights, to be undertaken by the Unesco Secretariat in collaboration with the United Nations Secretariat and with the assistance of national societies of authors, in order to reduce or eliminate double taxation of authors and artists [14]). In Washington in 1957, the same Committee recommended governments to take whatever measures might be appropriate on the international level to reduce double taxation, either by means of national legislation or by means of international fiscal agreements [15]). The following year, in Geneva, the Committee again drew attention to the problem, the solution of which was declared to be a matter mainly for the United Nations [16]), and in Munich in 1959 it examined an up-to-date report on the situation [17]).

Since 1959, CISAC (through its Legislative Committee and its Congresses) and ALAI have more than once recommended the conclusion of bilateral agreements between States, in order to prevent double taxation of author's income [18]).

The number of treaties or international fiscal conventions, which go back to 1843, continued to increase between the two world wars, principally among European States; in 1954, there were close on 70 treaties in force on this subject. They did not, however, bear specifically on income deriving from the exploitation of literary and artistic works, which were included under the generic title of " royalties " or assimilated to income from the liberal professions or labour. Some treaties, however, such as that between Belgium and Luxembourg in 1932 or that between Hungary and Switzerland in 1942, made express mention of authors' rights. Sometimes, too, as in the Denmark—Finland Convention of 1937, authors' rights were assimilated to income from commercial exploitation [19]).

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9) Draft convention on double taxation, *op. cit.*, p. 140. In the view of R. Plaisant, J. Leblond and R. Blancher, *Droit fiscal de la propriété industrielle, littéraire et artistique*, Paris, 1958, p. 130, there are three systems: *(a)* division of the taxable matter (consisting in the determination of the income taxable in each State by assigning each element of income to a given State); *(b)* exemption (abolition of the tax in one of the countries); *(c)* deduction (levy of the tax in the two States subject to the proviso that one of them levies its own tax after deducting the tax paid in the other State).

10) For complete list, see C. Masouyé, *op. cit., loc. cit.*, p. 49.

11) *Bulletin du droit d'auteur, cit.*, pp. 41 *et seq.*

12) International Union for the Protection of Literary and Artistic Works, *Documents de la Conférence réunie à Bruxelles du 5 au 26 juin 1948*, Berne, 1951, pp. 427-428.

13) *Bulletin du droit d'auteur*, Vol. VI, No. 1, p. 97.

14) *Ibid.*, Vol. IX, No. 2, p. 249.

15) *Ibid.*, Vol. X, No. 2, pp. 276-277.

16) *Ibid.*, Vol. XI, No. 2, p. 228.

17) *Ibid.*, Vol. XII, No. 2, p. 292.

18) See " *Le 48e Congrès de l'ALAI* " (reports and resolutions), *RIDA*, Vol. XXV, pp. 168 and 175. See also *Recueil des décisions, délibérations et vœux* de la CISAC.

19) The *Bulletin du droit d'auteur, cit.*, Vol. VII, No. 1, pp. 27 *et seq.*, gives a systematic study of the treaties and bilateral conventions in force preceded by an explanatory statement of the problem. See also United Nations, *International Fiscal Conventions*, 3 volumes (ST/ECA/SER. C) which bear on the period 1843 to 1950.

If we take as a basis this series of bilateral conventions, we can summarise the situation as follows [20]):

(a) *The subject of taxation.* No clear distinction can be made between the author and the assignee of the author's rights; where the exercise of authors' rights is carried on through the medium of a permanent establishment, the author is treated in the same way as commercial and industrial enterprises.

(b) *The object of taxation.* Except in a very few conventions (Belgium—Luxembourg, Hungary—Switzerland) there is no very clear distinction between the rights earned by the authors of literary and artistic works and other royalties. In general, authors' rights are treated on the same basis as the income of the liberal professions or the earnings of labour, without " taking into account the author's prerogatives which constitute the source of the income, or the amount of the rights ".

(c) *The area of taxation.* It is here that the widest discrepancies are found between existing conventions; the criteria they adopt for taxation include fiscal domicile, residence, nationality, the State in which the taxable subject exercises his activities, or even the country where he possesses a permanent or stable establishment [21]).

5. Model conventions for the prevention of double taxation

Determination of the principles common to international conventions could not be achieved unless a multilateral treaty were adopted, and opened for ratification to the largest possible number of States. But, in view of the diversity of national legislation, it has been found preferable to begin by preparing a draft model convention to serve as a model for any bilateral conventions to be negotiated later. By this gradual unification of international fiscal law, it will then be possible to contemplate as a further milestone on the road to perfection the signature of a single convention which will regulate, in this domain, relations between a large number of States.

It was on the basis of this principle that the League of Nations Secretariat began the study of the problem of double taxation as far back as 1921, without however considering the special character of authors' rights, and during the ten years from 1929 to 1939 [22]), the Fiscal Committee of the League, by its studies on the methods of taxation adopted in different countries on income derived from literary and artistic works, prepared the way for the Regional Tax Conference which met at Mexico in 1943 and made it possible for the Conference to draft the text of a Model Bilateral Convention for the Prevention of Double Taxation of Income.

Paragraph 3 of Article X of the Mexico Model Convention provides that [23]) « Royalties derived from one of the Contracting States by an individual, corporation, or other entity of the other Contracting State, in consideration of the right to use a musical, artistic, literary, scientific or other cultural work or publication shall not be taxable in the former State ".

Thus, and as is indicated in the official commentary on the article [24]), income derived from literary and artistic works, whatever the place where it may have been obtained, is taxable exclusively in the country where the author, or his successor in title, has his tax domicile or permanent establishment, in derogation from the general principle laid down in the model convention whereby taxation should be levied in accordance with its immediate economic origin (deduction at source). This has led to the adoption of the residence of the tax payer as the criterion unless the income has been obtained at some fixed base belonging to the author situated in another State and considered as a permanent or fixed establishment for the purpose of the exercise of a liberal profession (architect's or sculptor's studio, for example).

At it 10th and last session, in London in 1946, the Fiscal Committee of the League of Nations drafted a fresh text for a model bilateral convention for the prevention of double taxation on income and capital. Paragraph 4 of Article X repeats the wording used in the Mexico Model Convention [25]). However, taking into account other provisions of the London model, if the income was paid by an undertaking in one of the Contracting States and if between the two undertakings there was a close economic link, this income could be subject to taxation in the State where the rights were exploited.

Several bilateral conventions concluded in the course of the following decade are based on these two models. However, " neither of these two model conventions was fully and unanimously accepted. Moreover, in respect of several essential questions, they presented considerable divergencies which had to be removed and certain gaps which needed to be filled in. What is more, since their appearance, the extension of taxation and the development of international economic relations have aggravated certain problems in the field of double taxation and have created new problems " [26]).

In 1958, the Fiscal Committee of the European Organization for Economic Co-operation (OECE) began to study the preparation of a new draft model convention for the elimination of double taxation on income and capital, seeing that it was essential to achieve some harmony in bilateral conventions between member countries of the Organization, in accordance with the principles, definitions, rules, uniform methods, and an interpretation which would receive the unanimous agreement of those same member countries.

In 1961, OECE having been transformed into the Organization for Economic Co-operation and Development (OECD), the instructions of the Fiscal Committee which, in 1963, sub-

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20) We have followed closely the above-mentioned study in the *Bulletin du droit d'auteur*, Vol. VII. No. 1, pp. 31-33. See also C. Masouyé, *La double imposition en matière de droit d'auteur*, Paris, 1953, pp. 59 *et seq.*

21) The above-quoted work by R. Plaisant and others, pp. 133 *et seq.*, includes a detailed and systematic study of the clauses to be found in the bilateral conventions concluded between France and other countries in force in 1958 for the purpose of preventing double taxation of income derived from the exercise of authors' rights. This study needs revision in view of the number of bilateral conventions concluded by France on the same subject in the course of the past eight years.

22) League of Nations. *Double Taxation and Fiscal Convention*, Geneva, 1928. and League of Nations, *Fiscal Committee, Copyright and Patents*, Geneva, 1930.

23) League of Nations, *Model Bilateral Conventions for the Prevention of International Double Taxation and Fiscal Evasion*, Geneva, 1945, Vol. II, p. 12.

24) *Ibid.*, p. 63.

25) League of Nations, *London and Mexico Model Fiscal Conventions*, Geneva, 1946, p. 69.

26) OECD, *Draft Convention, cit.*, p. 9.

mitted to the Council of OECD a draft model convention, were confirmed. By a recommendation of July 30, 1963, the Governments of member countries[27]) were recommended to pursue their efforts to conclude bilateral conventions or to revise existing conventions between them as officially interpreted by the commentaries thereto. The Governments of member countries which are also members of regional groupings were also recommended to examine, as and when appropriate, the feasibility of concluding within such groupings multilateral conventions based upon the Draft Convention[28]).

II. General principles of the OECD model convention

1. Field of application

Bilateral conventions concluded in accordance with the terms of the approved model should apply to individuals or entities resident in one of the Contracting States or in both, without distinction of nationality (Article 1). There is thus a departure from the criterion of applicability of the convention to nationals, even if not resident in one or other of the Contracting States.

A resident of a Contracting State is a person who, under the laws of that State, is subject to taxation in virtue of his domicile, residence or some other criterion of similar character. There may, however, arise a dispute over the question of residence and this issue has been settled in the following manner (Article 4, paragraph 2): if he has a permanent home available to him in both Contracting States, he shall be deemed to be a resident of the Contracting State with which his personal and economic relations are closest; if his centre of vital interests cannot be determined or if he has no permanent home available to him in either Contracting State, he shall be deemed to be a resident of the State in which he has his habitual abode; if this last mentioned criterion cannot be applied with certainty, then the criterion of nationality applies; if, finally, he is a national of both Contracting States or of neither of them, the competent authorities of the Contracting States shall settle the question by mutual agreement[29]).

The conventions apply, in principle, throughout the territory of each of the two Contracting States, either in their entirety or with any necessary modifications, to any part of the territory of one or the other State which is specifically excluded from the application of the convention, or to any other State or territory for whose international relations one or other of the States is responsible, which imposes taxes substantially similar in character to those to which the convention applies (Article 28).

2. Definition of income

Article 12, paragraph 2, lays down that the term "royalties" means payments of any kind received as a consideration for the use of, or the right to use, any copyright in a literary, artistic or scientific work, including cinematograph films.

This definition needs some clarification.

First of all, it should be noted that economic rights in literary, artistic or scientific works may be payable to the authors themselves, to their successors, or to third parties to whom they may have been transferred in one of the forms permitted by the various national legislations (sale, gift, bequest, expropriation, etc.).

Next, income from such works may be the result either of a use or concession (transfer of the right of reproduction, representation or performance, recording, broadcasting, cinematographic adaptation, etc.) the sale of the *corpus mechanicum* (in the case of an artistic work, such as a statue, picture or architectural design), or again of damages for counterfeiting, piracy of rights, or other unlawful act.

Since the model convention makes no distinction between any of the persons receiving the royalties or the nature or origin of such royalties, it naturally covers them all.

3. Exemption

Under paragraph 1 of Article 12, royalties arising in a Contracting State and paid to a resident of the other Contracting State shall be taxable only in that other State. For royalties the criterion has been adopted of taxation in the State of residence and not in the State of source, thereby making an exception to the general principle defined in the draft convention for income deriving from other sources such as dividends (Article 10) and interest (Article 11); the latter will therefore be taxed in the State where the income is produced and it is easy to understand why this should be. The economic rights of authors are much more closely connected with their authors than are dividends and interest with the person who receives them and, particularly from this standpoint, can be regarded as analogous to income from real property.

This, however, has been considered as an exemption. When the recipient of the royalties, being a resident of a Contracting State, has a permanent establishment in the other Contracting State in which the royalties arise with which the right is effectively connected, the royalties are taxed in the latter State (paragraph 3).

But what is to be understood by "permanent establishment"? According to Article 5, the term permanent establishment means "a fixed place of business in which the business of the enterprise is wholly or partly carried on", including, in particular, a management headquarters, a branch, an office, a workshop, that is to say, a *situs* directly connected with the source of the income to be taxed. Further, under the terms of this same Article 5, permanent establishment shall not be deemed to include the use of facilities solely for the purpose of storage, display or delivery of goods or premises used solely for the purpose of advertising, for the supply of information, for scientific research or for similar activities which have a preparatory or auxiliary character.

It is desirable that we should know what importance is to be attached to the definition of permanent establishment for the purpose of the application of the criterion of the Con-

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27) The following countries are at present members of OECD: Austria, Belgium, Canada, Denmark, France, Germany, Greece, Iceland, Ireland, Italy, Luxembourg, Netherlands, Norway, Portugal, Spain, Sweden, Switzerland, Turkey, United Kingdom, United States.

28) OECD, *op. cit.*, pp. 16-18.

29) Article 25 regulates procedure for the settlement by agreement of disputes of this character arising between the Contracting States.

tracting State where the tax is to be levied, as it affects authors' rights.

As we have just seen, royalties deriving from the exploitation or use of literary, scientific and artistic works may be received either direct by their authors, or by the descendants or successors of the authors, or by third parties to whom they have been transferred.

If we take the above definition of permanent establishment as drafted in paragraph 1 of Article 5 of the model convention, and explained at length in the commentary on the Article[30]), it is difficult to conceive, in respect of the production of literary and musical works, of an author who normally has a " permanent business establishment " for the exercise of his profession. Intellectual and artistic activity does not fit in whith the nature of a trade which has profits as its principle aim. Moreover, a writer (novelist, poet, playwright) does not possess as the centre of his literary activity, or at any rate not exclusively so, a headquarter, an office or a workshop.

The same argument does not apply in the case of the authors of three-dimensional works (architects, sculptors, painters) who normally exercise their activity in a permanent establishment, their studio. Some classes of artists of this group make a profession of their artistic activity; architects are a striking example; they come close to the liberal professions, to which they are very similar in character. Income derived from the exercise of a liberal profession is governed by Article 14 of the Draft Convention, where it is taxable in the State where the tax payer has his residence. If, however, he has a fixed base available to him in the other Contracting State for the exercise of his profession, the income may be taxed in the other Contracting State, but only so much of it as is attributable to that fixed base. The exercise of a liberal profession (as in the case of an architect) is not considered as being carried on in a permanent establishment, this term being reserved for commercial and industrial enterprises; that is why the convention speaks rather of a " fixed base ". Under paragraph 2 of Article 14, the term liberal professions includes independent scientific, literary and artistic activities but excludes performers, for whom, as we shall see, a different regime has been provided[31]).

In the case of the heirs of auhors, there is not the slightest doubt that the existence of a permanent establishment should never be admitted, for it is hard to conceive of a case where, as a consequence of the death of a number of relatives who were authors of literary and artistic works, a person might acquire so many rights that to deal with them and recover the respective royalties he would need to set up an office!...

On the other hand, there are enterprises which have as their object the exploitation of literary and musical works. Book and music publishers come into this category. In their case, it is appropriate to apply the criterion of the permanent establishment, since the profits of such enterprises constitute the income from acquired economic rights, profits which, by the terms of Article 7 of the model convention, are only taxable in the State where the enterprise has its headquarters, unless it carries on business in the other State through a permanent establishment, in conformity with Article 5.

Another question to be settled is whether the location of the headquarters of societies or associations for the collection of authors' royalties is a consideration which should lead us to change the residence of the authors whose rights they administer so as to make it coincide with the State of the headquarters of the societies or associations, or whether the royalties collected by them should rather be subject to tax in the State of source, in accordance with the criterion laid down in paragraph 3 of Article 12 of the model convention, considering the office of the societies as a permanent establishment. We would answer this question in the negative because the registered office and the delegates or representatives of societies or associations for the collection of authors' royalties cannot be regarded as the residence of the authors whose rights they deal with. « These bodies only intervene as agents, take no commercial profit and confine themselves to safeguarding the interests of their members, interests not only material but often also of a moral nature "[32]).

4. Additional income

Paragraph 4 of Article 12 of the model convention reads as follows: " Where owing to a special relationship between the debtor and the recipient or between both of them and some other person, the amount of the royalties paid, having regard to the use, right or information for which they are paid, exceeds the amount which would have been agreed upon by the debtor and the recipient in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In that case, the excess part of the payments shall remain taxable according to the law of each Contracting State, due regard being had to the other provisions of this convention ".

The purpose of this provision is to exclude from the application of the clauses relating to royalties those royalties which do not derive directly from the concession or use of authors' rights, even though they may arise therefrom indirectly. Take, for example, the case of a record-producing firm which, under contract, records the work of an author and subsequently grants the matrix for pressing to an enterprise with which it is associated and which has its registered office in another country. This latter enterprise will have to pay to the first enterprise a sum of money covering not only the reproduction rights due to the author but also rights for the matrix which was granted to it and with which i has manufactured the reproductions. Now whereas the income from the first source is subject to the general rule in Article 12, the income from the second source is the profits of the enterprise which are subject not to the rules of Article 12, but to those of Article 7.

The relations between debtor and recipient include not only those of control or association between themselves but even family relationships or any kind of relationship arising out of a community of interests outside the legal relationship which is the basis for the payment of royalties.

30) OECD, *op. cit.*, pp. 70 *et seq.*
31) OECD, *op. cit.*, p. 130.
32) C. Masouyé, *op. cit.*, *RIDA*, p. 50.

5. *The special case of the cinema*

Both the laws of different countries and existing bilateral conventions for the prevention of double taxation under international law establish two systems for hiring rights for cinematograph films: either income derived from the exploitation of films in cinemas or on television is included under the general heading of royalties, or it is regarded as subject to the regime governing industrial and commercial profits.

The problem, however, would appear to be of no further interest in view of the draft proposed in paragraph 3 of Article 12 of the model convention as incorporated in those treaties which have adopted or intend to adopt it.

Since the maker or distributor of cinematograph films must, in principle and in most cases, have a permanent establishment, the rules which apply to his income are those of Article 7 — the State which levies the tax is the State of the permanent establishment and not the State where the income arises.

In some countries authors also receive specified sums by way of royalty for the exhibition of cinematograph films in cinemas or on television such royalties being generally collected by societies for the collection of performing fees. For such royalties the rule applied is the general rule of place of residence of the author, unless the recipient of the royalties also falls within the rule in paragraph 3 through his possession of a permanent establishment in another State (in cases where the economic rights have been transferred to an enterprise).

6. *Exceptions and reservations*

Although the drafting of the model convention has earned the uniform approval of all the member countries of OECD, it has been found necessary on certain points to leave States a measure of freedom to exclude particular rules or to make reservations to the provisions contained in the text recommended, in the light of the legal position and the fiscal policy of each member country. Again, the admission of the United States and Canada to the Organization, at a time when OECE was changed into OECD, meant that these two countries were faced with the work of the Fiscal Committee when it had already reached a very advanced stage. Although they were able to agree in principle with the general scheme of the model convention, not only these two American countries but a number of other member countries also felt obliged to request a number of exceptions as well as reservations to Article 12 of the draft convention.

Greece, Luxembourg, Portugal and Spain declared that they were unable to abandon taxation at source entirely with respect to royalties from authors' rights produced in their territories and paid to residents of another State; they were, however, prepared to restrict deduction at source on such income to a maximum of 5 % of the gross amount of such royalties. The other States members of OECD had, in turn, stated their willingness to agree to this limited taxation in any conventions concluded, subject to reciprocity.

The following reservations have been made to Article 12 of the model convention:

(a) Austria reserves the right to include in any bilateral conventions it may conlude a clause enabling it to tax income deriving from authors' rights at source, at a rate not exceeding 10 %;

(b) Turkey is not prepared to accept a lower rate of tax than 20 %;

(c) Canada reserves its position on paragraphs 1 and 2 but is prepared to exempt from all tax income deriving from authors' rights, except for film rental charges for public exhibition or on television, when such income arises from sources within the territory of one of the Contracting States and is paid to a recipient of the other Contracting State;

(d) finally, Italy reserves the right to tax income in accordance with the provisions of its tax laws, in all cases where the recipient has a permanent establishment in Italy, even if the right or the income producing asset is not effectively linked to such an establishment.

7. *Income of performers*

Article 17 of the model convention lays down that the " income derived by public entertainers such as theatre, motion picture, radio or television artists and musicians (. . .), from their personal activities as such, may be taxed in the Contracting State in which these activities are exercised ".

The general principle laid down in the model convention for independent performers is that of taxation in the performer's State of residence. But in order to avoid the practical difficulties which frequently occur in taxation of the income of performers when they exercise their activity abroad, an exception to this general principle has been established and substituted for it whereby taxation is imposed in the State of source.

Where performers exercise their activity not as a liberal profession but rather as a subordinate employment, the Contracting States may, by mutual agreement, apply the regime laid down for salary-earning professionals, who are subject to the provision of Article 15 of the model convention whereby salaries, wages and other similar remuneration shall be taxable in the State where the person concerned has his residence, unless his activity is habitually exercised in the other Contracting State.

Two special cases are, however, noted:

(a) if the performer is present in the other State for a period or periods not exceeding in the aggregate 183 days in the fiscal year concerned, or

(b) if the remuneration is paid by an employer who is not a resident of the other State or is not borne by a permanent establishment in the other State,

it is still the State of residence of the performer which is entitled to collect the tax.

III. Conclusions

Although we are still a long way from preventing all the prejudice caused by the double taxation of royalties of the authors of literary and artistic works, there has nevertheless been evidence of a marked progress in recent years, principally in the form of the negotiation, ratification or entry into force of a number of bilateral conventions, especially between the countries of Europe or with European countries.

Since the publication of the first studies of the Fiscal Committee of OECD, more than thirty bilateral conventions have been concluded, either entirely new ones or replacements for others formerly in force. At the end of 1963, just between countries members of OECD, there were in force 85 bilateral conventions for the prevention of double taxation on income and capital, the greater part of which include a section applicable to royalties deriving from author's rights, and negotiations were still in progress for the signature of 28 further conventions [33]).

During the last two years, international legislative activity has further expanded; we may mention France's policy of concluding agreements of this type with the majority of countries with which it maintains diplomatic relations [34]).

Nearly 80 % of the new bilateral conventions recently ratified include either *in extenso* or in theory the text of the articles proposed in the OECD model convention, which clearly proves the importance, for the unification of international fiscal law, of the draft prepared in Paris which we have just analysed, a draft which may serve as a model even for those countries which do not belong to this international Organization.

Despite the exceptions from and reservations to this draft, it nevertheless represents a valuable means, without any great sacrifice of a country's fiscal sovereignty, of alleviating the burden of existing taxes on royalties due to authors for the use of their creative activities. It is by following this road that we shall arrive at greater freedom of international circulation of works of the mind or, it might be better to say, that we shall achieve an increasingly wide access to culture.

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33) J. Gilmer, *op. cit.*, *loc. cit.*, p. 34.

34) The text of these recent agreements has been published in *Le Droit d'Auteur* and in *Inter-Auteurs.*

The Historical Development of « Moral Right »

Copyright was not known as a special branch of law within the system of Roman law despite the high degree of development that system attained. However, although copyright did not exist in ancient times as it is now understood, there is definite evidence that intellectual creators were highly appreciated and that there was considerable recognition of their contribution to the creation of the general culture of contemporary society. Well-to-do patrons afforded them help and encouragement. But this form of support and recognition, which was to be regarded as a sign of great attention and respect, was not based on established rights but rather on the good will and the opinion of private individuals and the community. In return for their work authors received, in addition to material assistance, moral acknowledgment, glory and a crown of laurels [1]).

Nevertheless, although the personal (moral) elements of copyright were not founded in the positive law of the period they existed in the consciousness of the intellectual creators themselves and of men of letters in general. It was held, moreover, that " moral right " should not be prescribed by law. Yet there was also a firm conviction that there could be no patrimonial right unless expressly stated and governed by written law [2]). It was the Roman poet Virgil who pointed out two of the personal (moral) prerogatives of authors: the right to paternity, which the intellectual creator must be recognized to possess, and his right to repent *(jus poenitendi)*, or the right to withdraw a work from public circulation. When he wrote: " *Hos ego versiculos feci. Tulit alter honores* " [3]), Virgil was already stressing the importance of the name of the author which must be respected and connected indissolubly with his work. Thus the belief already existed that the name should be included among the essential personal attributes of authorship. Intellectual creation signified for the originator both a great honour and a serious responsibility. The knowledge that he had created a work persuaded the author that he enjoyed complete right of disposal over it and could decide independently if and when he might desire to divulge it by making it accessible to the public. It is also believed that just before his death Virgil, considering that his work was not yet completed, ordered that his *Aeneid* should be destroyed. Although this was the poet's last desire, it is related that Emperor Augustus opposed his will. Posterity has remained bounden to the Emperor for saving a work of lasting and incontestable literary value by this act directed against the author himself. In this instance, therefore, the personal (moral) right of the author suffered an immediate historical setback, although it was in the interests of the work itself, which can only be approved from a higher and more general viewpoint. However, this case goes to show that there are circumstances in which the right of intellectual creators should be protected against their own conduct.

Another well-known fact is that Cicero protested vigorously against Hermodore for failing to publish his work in a faithful and complete manner. The poet Martial's epigrams against Plagiarius, " a common thief ", have created a general

1) See Spaić: " The juridical nature of copyright ", in *Annuaire de la Faculté de droit de Sarajevo*, Vol. III, 1955, p. 208.

2) See Michaélides-Nouaros: *Le droit moral de l'auteur*, Paris, 1935, pp. 8 and 11.

3) " I created these lines and the honour belongs to others. " See Louis Vaunois: " *Le droit moral. Son évolution en France* ", in *Le Droit d'Auteur*, 1952, p. 63.

concept of literary " plagiarism ", which nowadays represents a serious infringement of the personal (moral) right of intellectual creators. But even before that time the first known legislator of ancient times, Lycurgus, had ruled that the most famous tragedies of the Greek authors should be deposited in special archives [4]), in order to safeguard their authentic integrity and to avoid any unauthorized insertion of new texts that might be harmful to their artistic value.

Even in the Middle Ages, a period that cannot lay claim to a progressive spiritual development, there were certain known instances of revolt against infringement of the personal (moral) privileges of authors. One case that occurred in the XIV[th] century may be quoted. A Spanish nobleman was a skillful author of very beautiful songs that were sung throughout the town. One day, to his great consternation, while walking past a stall he heard a cobbler bawling the most beautiful of his songs. In his indignation he rushed into the cobbler's stall, drew his sword and set about slashing shoes to pieces. The cobbler called for help; the police separated the two parties and led them before the King. When the cobbler had explained the damage he had suffered, the King asked the nobleman what he had to say in his defence. " If a cobbler has the right to ruin my song by singing it in so deformed a manner ", replied the nobleman, " why should I not also be entitled to cut his work about? " The King greeted this defence with roars of laughter and himself made good the cobbler's loss, warning him to refrain from singing this touchy composer's works in future [5]).

As we shall see below, one of the means of protecting the rights of authors and publishers in the XVI[th] century was through royal privileges. They protected authors against unauthentic and unsatisfactory publication of their works and publishers against unfair competition. Rabelais in particular obtained two such privileges: one from François I [6]) and the other from Henri II on August 6, 1550 [7]). These privileges recognize the protection of the personal (moral) interests of authors, one of them referring to the elements of personal (moral) right, that is to say protection in case of infringement. The deed of privilege states that Henri II grants it to his dear and well-loved Rabelais, doctor of medicine, as the publishers to whom Rabelais had given certain of his works in Greek, Latin and French for printing, had " deformed and mutilated them in several places ". They had also most scandalously printed some other books in his name that he had completely rejected as false and invented, " to his enormous displeasure, loss and shame ".

Rabelais appealed to the King to put an end to such practices. In acceding to his request, the King ordered that the books published in this mutilated fashion should be revised, corrected and republished. At the same time he forbade all other booksellers or printers within the territory of his Kingdom to print, have printed or sell the works of Rabelais without the author's consent or against his will, as new or old, for a period of ten years from the date of printing. Any violation of this order was to lead to confiscation of the books concerned.

Boileau (1636-1711) was also the victim of infringement of the personal (moral) right of authors. Because the publishers had failed to issue an authentic form of his works, he decided to have his *Satires* printed himself. In the preface he wrote in this connection, in his disgust over the ravages perpetrated in badly reproduced copies, he says that he had suffered for a long time from the bad copies of his *Satires* which had finally awakened his paternal tenderness towards his mutilated offspring [8]).

Shakespeare (1564-1616) was also very concerned for the faithful and genuine interpretation of his works. In Act 3, Scene 2 of *Hamlet* he makes the Prince of Denmark insist very strictly on the need for actors to interpret their roles correctly in order to give his works their full value and their true sense [9]).

The lawyer Marion spoke to the French Parliament in 1586 in terms of great conviction and force on the intellectual creator's right of paternity. He stressed the fact that any creator or inventor must be the master of what he does, invents and creates [10]); he insisted that the author is entirely free to dispose of his work in whatsoever way he pleases, that he can retain absolute right in his work, that he may restrict the framework of such right, that he may assign it to the community for unlimited use, and that he may, if he so chooses, renounce it entirely.

The three fundamental factors that have played a predominant role in the development of the personal (moral) prerogatives of authors are: the feeling and the concept born in the consciousness of individuals and of the social community jurisprudence, and the doctrine of copyright. In this connection special merit attaches to French jurisprudence. In the absence of any established rules governing copyright, the courts based their decisions on the provisions of ordinary civil law [11]).

From the time of the advent of printing, the history of " moral right " became identified with that of copyright in general [12]). Although copyright, by virtue of its personal component, reaches back to the distant past in certain respects, it falls within those branches of the law whose development is a matter of the more recent past, with regard to the establishment of legal standards. In order to examine its development

4) See Marcel Saporta: " *Des prérogatives de l'auteur connues sous le nom de 'droit moral'* ", in *Bulletin de l'ALAI*, 1948-50, p. 207.

5) See Saporta, *op. cit.*, p. 205.

6) See *Revue internationale du droit d'auteur (RIDA)*, April 1954, pp. 108-109. Privilege granted on September 19, 1545.

7) See Saporta, *op. cit.*, p. 205.

8) See L. Vaunois, *op. cit.*, p. 64.

9) " Speak the speech, I pray you, as I pronounced it to you, trippingly on the tongue; but if you mouth it, as many of your players do, I had as lief the town-crier spoke my lines. Nor do not saw too much the air with your hand, thus; but use all gently; for in the very torrent, tempest, and, as I may say, the whirlwind of passion, you must acquire and beget a temperance that may give it smoothness. O, it offends me to the soul, to hear a robustious periwig-pated fellow tear a passion to tatters, to very rags, to split the ears of the groundlings, who, for the most part, are capable of nothing but inexplicable dumb shows and noise... pray you, avoid it... Be not too tame neither, but let your own discretion be your tutor: suit the action to the word, the word to the action; with this special observance, that you o'erstep not the modesty of nature. "

10) See Michaélides-Nouaros, *op. cit.*, Foreword.

11) In particular on Article 1382 of the Civil Code (" Any act harmful to another shall render the person performing such act liable to make restitution »).

12) See Michaélides-Nouaros, *op. cit.*, p. 14.

more clearly it is necessary to consider briefly how copyright has evolved through history and what the characteristic features of its various stages of development were.

The idea of copyright really originated in the XVth century, when it became possible, as a result of the invention of printing, to reproduce the products of the human mind in large numbers. But this possibility of reproduction resulted in counterfeiting, or illicit reproduction which led to disputes between publishers. Although considered reprehensible, reprinting could not be prohibited because there were no laws forbidding it. In the absence of any such provisions privileges were granted by sovereigns by virtue of which particular publishers acquired the exclusive right to print and distribute the works of the human mind. In this way the protection of the privileged publishers was ensured, the authors being protected in a subsidiary fashion if at all. To a certain extent such privileges put a stop to disputes but essentially they represented an obstacle to the more rapid cultural progress of humanity that was to be expected after the invention of the printing press. However, such privileges played a part in the development of the idea of copyright [13]). Although conceived as a form of protection for publishers, these privileges were also granted to authors to enable them to print and sell their works. This was the case in particular during the period of humanism and the Renaissance. It was quite natural that an age of rebirth of science and art should devote greater attention to the personality of the author. At the same time publishers who had not been granted any such authorization participated in a movement aimed at the protection of intellectual creation by opposing publishers who enjoyed a monopoly as a result of the privileges in question.

Thus, copyright grew out of a conflict of interest: not between publishers and authors, but among publishers themselves. It did not stem from the desire for protection of authors' works but arose as a consequence of the struggle to obtain the right to exploit works. A legal form of such exploitation was to safeguard the contracts under which authors assigned their rights to publishers. Since their interests were not in fact the point at issue, authors had no merit in the movement that resulted in protection of their rights, because they did not participate in it either actively or deliberately. Nevertheless, the final outcome of the struggle was the suppression of the privileges and the issue of general provisions for the protection of the rights of all authors and publishers.

This came about as the result of a long drawn out and obstinate struggle. This is why copyright did not appear as a written concept until the XVIIIth century, notably in Great Britain, where the Copyright Act of 1709 was the first such provision to be issued. The first legislative enactments on the subject on the Continent appeared in France with the Revolution of 1789, which recognized authors' right to " literary and artistic property " following the suppression of all privileges. This was the beginning of contemporary copyright protection. It then spread to almost all the continents within a comparatively short time. This was the way in which copyright was created and developed.

13) See Spaić, *op. cit.*, p. 32.

As we have already seen, the origins of copyright as such do not go back beyond fairly recent times. Neither in ancient times nor in the Middle Ages was the science of copyright known in the present meaning of the term [14]). However, written documents prove that the products of the mind and of the human spirit were appreciated very highly even in the classical age. The remuneration which intellectual creators received for the public use of their works was of a moral and ideal character rather than of legal importance. It represented the recognition which individuals and the social community gave to the creative talent of authors. But the concepts of copyright were essentially false. It was considered that the work belonged to its author not because it was his intellectual creation but because he was the owner of the material on which the work was written [15]).

The XVIIIth century was of particular importance in the development of copyright, since it was then that the first laws on the subject were enacted.

The principle of the protection of the personal (moral) prerogatives was proclaimed in the report presented by Hell to the French Constituent Assembly in 1791. In this he stressed the principle of property in scientific and literary works. Although counterfeiters had deformed and altered the precision and the meaning of literary works, he declared, they had deprived authors of their honour. But Hell's principle was not confirmed by any enactment, and it was the courts which came to play an increasingly important part in this connection.

The oldest know judgment on the protection of personal (moral) right was given by the Civil Tribunal of the Seine on August 17, 1814, in the case of Billecocq v. Glendaz. The subject of the action concerned the amendment and editing of the author's text by the publishers. In the judgment it was said that none of the changes were considerable or capable of altering the substance of the work, or of causing any damage to the author or his literary reputation. It was further specified in the court's decision that a work sold to a printer or bookseller by the author and which was to bear the name of the author had to be printed in the state in which it was sold or delivered, if the author so required and unless an agreement to the contrary had been concluded [16]). According to Renouard, who wrote a commentary on this verdict, this meant that the printer or publisher to whom the author entrusted his work was only authorized to publish it and not to modify it by giving it some other form. Only a special agreement could permit changes to be made during the author's lifetime. Changes would not be acceptable even if they were such as to improve the artistic quality of the work. The same verdict also recognized the author's right to oppose any changes to his work even where justified and having no bearing on his fundamental thought. At the end of his commentary, Renouard refers to corrections made in works of the human mind by third parties. Changes that did not affect more than certain details in the work and were therefore not

14) See Michaélides-Nouaros, *op. cit.*, p. 8.
15) See Spaić, *op. cit.*, p. 31.
16) As quoted by L. Vaunois, *op. cit.*, p. 64. See also Michaélides-Nouaros, *op. cit.*, p. 17.

such as to deform the author's thoughts or to cause the slightest harm to his reputation could not provide grounds for prosecution of the party responsible for such changes because they would not be harmful to the author. Renouard concludes by saying that the courts should nevertheless support the author's right to object to such changes if they were undertaken against his desire [17]).

In the second volume of his *Traité des droits d'auteur* published in 1839, Renouard refers to the rights of an author in connection with the sale of his manuscript. He points out that, in view of its legal effect, such sale cannot be identified with the sale of an ordinary piece of property. The purchaser does not obtain an absolute right of disposal over the manuscript. A purchaser may neither rearrange nor alter a manuscript, he may neither extend it by inserting new matter nor reduce its length by deleting lines. Similarly, the purchaser may neither refrain from publishing nor destroy the manuscript. Consequently, the purchaser merely enjoys the right of usufruct while retaining the substance of the article.

These examples demonstrate how the authors' right to respect, to inviolability of his name and reputation has been crystallized through case law. By a judgment of March 30, 1835, a bookseller named Renault was sentenced to pay damages to the author Levanceau in respect of infringement of the right of name. Renault purchased a work by Levanceau; he authorized other persons to insert corrections, to add certain material and to issue it as a new publication under the name of another author. The case of the publisher Krabb is also a characteristic instance. He published a work called *Histoire des environs de Paris* by Touchard-Laffosse, and sold 2,500 copies of the work to the bookseller Philippe who infringed the copyright in the copies he purchased. He entirely altered the title page of the book, changed the date of publication and omitted the author's name, replacing it with the words: " by the author of *L'Histoire de Paris* ". The Commercial Tribunal sentenced the bookseller to payment of 300 francs damages; the Paris Royal Court subsequently increased this sum to 500 francs by its order of December 17, 1838 [18]).

A judgment of the Commercial Tribunal of Paris, dated May 6, 1828, in the sphere of dramatic art, should be mentioned; it concerned a play entitled *I am marrying my wife.* It was decided that the management of a theatre may not, in any circumstances, make use of its rights in such a way as to intentionally compromise the success of a work: the judgment forbade the announcement in advertisements of the fact that a performance is put on by order of the Court [19]).

The influence of the courts on the affirmation of the personal (moral) prerogatives of authors was particularly marked at the end of the XIX[th] century and the beginning of this century. Among the important cases concerning personal (moral) right, mention should be made of the order of June 9, 1883, of the Court of Cassation recognizing the right of authors to oppose the disclosure of writings they would prefer not to be published; this refers, for example, to the inviolability of letters. A judgment of the Tribunal of the Seine of May 9, 1890, relates to prohibition of communication of the contents of dramatic works before their performance. A judgment by the same Tribunal dated June 27, 1906, prohibits the attachment or seizure of uncompleted works [20]). The same Tribunal issued verdicts dated March 21, 1889, and May 10, 1899, condemning plagiarism, the usurpation of the thought and intellectual creation of others without indicating the name of the author. Plagiarism has sometimes been condemned by the Courts as if it were a partial counterfeiting. By its decision of February 12, 1897, the Tribunal of the Seine confirmed the right of co-authors to require their names to be printed at the beginning of the work. Judgments were also passed on actions brought respectively by authors of dramatic works and by artists against the persons who had acquired their works and had erased the name of the artist and replaced it with the name of someone else. At that time proceedings were frequently brought on such grounds. This was no doubt the reason for the passing on January 9, 1895, of an Act prohibiting fraud with regard to artistic creation and introducing penal sanctions in the event of violation of the provisions. But the Act remained incomplete because it failed to foresee all the possible instances that might occur [21]). An order of the Paris Court of Appeal of January 25, 1887, recognized the author's right to prosecute any person responsible for counterfeiting his work even if the author has been declared bankrupt and has thereby forfeited the right to engage in legal proceedings in defence of his patrimonial rights. By judgment of the Tribunal of the Seine dated December 9, 1893, authors were granted the same right even where they have entirely divested themselves of their reproduction rights. On December 17, 1906, the same Tribunal forbade assignees and publishers to make any change in works of the human mind in the course of public utilization, the authors of such works being empowered to institute proceedings against such persons in order to defend their personal (moral) rights. The Tribunal's decision of April 7, 1894, forbade the authorized depositaries to omit two cartoons from a series constituting a story in pictures. The Tribunal's verdict of December 29, 1896, prohibited the suppression in a picture of part of the landscape, and on December 16, 1899, the Tribunal forbade any change to any legend or dialogue on a drawing. All of these cases show the courts' insistence that the personal (moral) interests of intellectual creators should be protected.

The decision of the Paris Civil Tribunal dated June 2, 1904, goes even further, recognizing the author's right of supervision in order to prevent public dissemination of bad and inaccurate reproductions which deform his work. The same Court's judgment of February 24, 1894, acknowledges the right of an artist to obtain compensation by way of civil proceedings in respect of moral injury, even if the criminal courts have found against the plaintiff in counterfeit proceedings. The Civil Tribunal's judgment of May 4, 1903, recognized the right of artists to institute proceedings in respect of

17) As quoted by L. Vaunois, *op. cit.*, p. 64.
18) See Renouard: *Traité des droits d'auteur*, Vol. II, as quoted by L. Vaunois, *op. cit.*, p. 65.
19) See L. Vaunois, *op. cit.*, p. 65.
20) *Ibid.*
21) *Ibid.*

partial counterfeiting of their work acquired by the State and displayed in museums, because reproduction may alter the character of the work and thus infringe the author's personal (moral) right. The work that had been partly counterfeited in the particular instance was Bouguereau's *Mater Dolorosa*, in the museum of the Luxembourg Palace: the figure of the infant lying alongside the Virgin Mother's feet had been omitted from the painting without the artist's permission [22]).The Tribunal of the Seine found in its judgment of April 3, 1897, that the recipient of a sculpture, the plaster original of which was in the municipal museum, was entitled to have a bronze casting made for his tombstone. It was ruled that the sculptor had no right of objection but that he was entitled to institute expert legal examination proceedings to establish whether the reproduction was faithfully executed, that is to say, that it did not alter the artistic character of the work. By a decision dated January 12, 1893, the Tribunal of the Seine prohibited reproduction of a water-colour by the artist Régamey intended for advertising purposes in an institution for hydrotherapy [23]).

The French law of succession contains the institution of joint ownership of property of a married couple as a consequence of the marriage contract. This covers all goods acquired by either spouse at any period of their married lives, and in the event of divorce the jointly owned goods are equally shared. In the event of the death of one spouse, his or her heirs are entitled to share, together with the surviving partner, one half of the jointly owned property. By jointly owned property material and intellectual property is understood. In view of the nature of copyright, which is more firmly linked to the personality of the creator, this institution constitutes a juridical anomaly. It means in practice that the heirs of the deceased wife of an artist must share with him all the artistic works which he has created throughout the period of marriage. Thus, a legal paradox places the artist in an abominable position, whereby he has to allow persons he has never met in his life to take possession of works that are the fruit of his own unaided creative effort [24]). However, the courts have made it their business to protect the personal (moral) rights of authors in such circumstances. This is confirmed by an important order issued by the French Court of Cassation on June 25, 1902, in the proceedings concerning the composer Lecocq and his wife [25]). In contracting marriage under the system of joint ownership of acquired property, Lecocq had provided in his marriage contract that certain of his works should become joint property and that others should be his own property. However, no provision was made in the marriage contract regarding works created and published after his marriage. Seeing that the marriage was dissolved owing to the guilt of the wife, the notary did not include Lecocq's compositions subsequent to the conclusion of the marriage contract among the property jointly owned. When the divorced wife sued for possession, the Civil Tribunal of the Seine found in her favour, but this judgment was quashed by the Paris Court of Appeal. The latter court referred to the difficulties which would result from the inclusion of a private right in the joint ownership of property of a married couple since certain of the elements involved were of a personal (moral) and not a patrimonial character. It was further stated as follows: " The composer, whose moral rights are beyond dispute, even in compositions which he has assigned, could not adapt or improve his creation with the fruits of his labour or of the progress of his talent, nor could he destroy it if he found it no longer in keeping with the ideal which inspired him " [26]).

The Civil Chamber of the French Court of Cassation reversed the decision of the Court of Appeal, upholding the viewpoint expressed in the previous decisions. It ruled that joint ownership between the partners to a marriage should cover all material goods, including the patrimonial component in copyright, provided that the author-spouse should be allowed the free right of disposal over the personal (moral) component. The author had to be allowed those non-infringed rights closely connected with his person. In this way he would be enabled to make subsequent alterations to his work or to destroy it. However, in exercising his personal (moral) prerogatives, he was not authorized to violate the rights of his spouse or the spouse's representative (Order of June 25, 1902). The French courts continued to follow this line of argument for several decades. The decision in question was finally confirmed by the new Literary and Artistic Property Act of March 11, 1957 (Article 25).

As already mentioned, " moral right " began to develop in French jurisprudence from the first quarter of the XIXth century onwards. French legislation, however, lagged behind for a century and a half. The first French copyright enactments, passed immediately after the Revolution of 1789, contained no provisions concerning " moral right ". It was not until the passing of the Literary and Artistic Property Act of March 11, 1957, that this was brought within the scope of the law, but then the coverage was complete.

In a number of other countries, however, there was already legislative provision for " moral right ". I shall give a chronological survey of such action in certain countries.

First of all, legislation was passed in England on July 26, 1862, prohibiting alteration of works during the author's lifetime. It was also declared a punishable offence to place a signature other than that of the actual author on a work and thus wrongly to attribute the authorship of a work. Thus the United Kingdom became one of the first countries to protect " moral right " through its copyright legislation. This makes it particularly surprising that subsequently England joined those countries governed by the Anglo-Saxon system whose legislation fails to make specific provision for " moral right ". The same comment applies to the United States in view of the fact that its earlier legislation contained measures for the protection of " moral right ".

A Japanese enactment of March 3, 1889, recognized and confirmed " moral right " not only within the framework of

22) *Ibid.*

23) *Ibid.*

24) For the case of the artist Pierre Bonnard, see L. Vaunois, *op. cit.*, p. 67.

25) See Desbois: *Le droit d'auteur*, 1950, No. 228.

26) Quoted from Desbois, *op. cit.*, p. 269.

the protection period but also when the work comes within the public domain.

By legislation dated August 1, 1898, authors in Brazil were granted the right, at the time of each publication of any of their works, to correct, alter or add to such work. However, assignees and heirs were forbidden to alter the work (Article 5).

The German Copyright Act of June 10, 1901, prohibits any alteration unless it is specifically agreed otherwise (Article 9). Nevertheless, changes in respect of which authorization cannot be withheld in good faith are allowed. The same country's Act concerning Copyright in Works of Art and Photography of January 9, 1907, forbids the placing of an author's name or a sign on his work without his consent (Article 13).

In the United Kingdom an Act of December 11, 1911, required any person justifiably borrowing from the work of another to indicate the source from which the material in question is borrowed.

Legislation adopted in the Netherlands on September 23, 1912, contains a provision similar to that of the German Act of 1901. The Moroccan Act of June 23, 1916, recognized the author's right to repent (Article 13) [27]).

Protection of " moral right " is also laid down by legislation in the United States (March 4, 1909), Bolivia (October 25, 1909, Article 15), Greece (December 11, 1909, Article 5), Argentina (September 25, 1910), Denmark (April 1, 1911, Articles 9 and 12), Australia (November 20, 1912, Article 15) and Uruguay (March 25, 1912, Article 17) [28]).

Following the First World War quite a number of countries introduced new copyright laws providing for the protection of " moral right ": these included Greece (April 16, 1920), Hungary (December 31, 1931), Switzerland (December 7, 1922), Bulgaria (February 15, 1922) and Rumania (June 28, 1923). There was also the Syrio-Lebanese Decree of January 17, 1924, as well as laws in Italy (November 7, 1925), Poland (November 24, 1926), Portugal (May 17, 1927), the Soviet Union (May 16, 1928), Finland (June 3, 1927, as amended on January 31, 1930), Venezuela (June 28, 1928), Yugoslavia (December 26, 1929), etc.

Apart from the abundance of court decisions on the subject, writers have also contributed a considerable volume of thought to the development and recognition of the personal (moral) prerogatives of intellectual creators. Examination of the process of development involved shows that the XVIII[th] century deserves particular attention, allowing, of course, for the degree of culture of the period. In this connection the later fruitful efforts undertaken by experts on the subject for the development of the concept of copyright are most noteworthy. Mention must be made of Diderot's " Letter on the book trade ", Laboulaye and Guiffrey's *La propriété littéraire au XVIII[e] siècle*, 1859, as well as Renouard's *Histoire des droits d'auteur*, in the first volume of his *Traité des droits d'auteur*, 1838. The personal (moral) right of authors is also mentioned in André Morillot's *De la protection accordée aux œuvres d'art dans l'empire d'Allemagne* (1878) and his article on " The Personality of Copyright " in the *Revue critique* (1872-1873). He argues that the author enjoys full moral sovereignty over his work and that infringement of this right constitutes a violation of his personality. Alcide Darras also discussed the subject in his *Droit des auteurs et des artistes dans les rapports internationaux* (1887). Gustave Huard's treatise on intellectual property (1903) contains a chapter on " moral right ", in which he supports his arguments by means of numerous examples of legal decisions. Others who contributed to the considerable development of the theory of " moral right " include Ambroise Colin, Saleilles, Léon Bérard, Pierre Masse, Potu, Aussy, de Gorguette d'Argœuves, Cabrillac, Grunebaum-Ballin, Gesteranus and Silz.

The *Bulletin* of the International Literary and Artistic Association reported at considerable length on its congresses (Madrid, 1897; Heidelberg, 1899), dealing with matters relating to the personal (moral) right of authors. Shortly afterwards two remarkable theses for doctors' degrees were published on the same subject: *Essai critique sur l'idée de continuation de la personne* (1902), by Olivier Jellu, and *Le droit moral de l'auteur sur son œuvre* (1906), by Pierre Masse. In addition, a very noteworthy part has been played in the development of copyright by the monthly review *Le Droit d'Auteur (Copyright)*, the permanent publication of the Berne Union's International Office for the Protection of Literary and Artistic Works. Since it first appeared it has regularly reported not only on outstanding theoretical studies but also on all characteristic legal cases in the countries members of the Union.

These joint and simultaneous efforts on the part of the courts and of theoretical authorities resulted eventually in the legal recognition of the personal (moral) right of intellectual creators through international regulations adopted at the time of one of the most important revisions of the Berne Convention, the Rome Revision of June 2, 1928.

* * *

From the above survey it must be concluded that the evolution of the personal and patrimonial prerogatives inherent in copyright is marked by an inversely proportionate relationship. Whereas its personal (moral) elements derive from the distant past, the origin of its patrimonial elements goes back only to the fairly recent past. However, legislative regulation of the patrimonial elements came about much earlier — from the beginning of the XVIII[th] century. It was not until the first half of this century, in the text of the Rome revision of the Berne Convention undertaken in 1928, that the personal (moral) prerogatives were included within legal provisions. Thus, the legal personal elements were acknowledged much earlier than the patrimonial elements although they were not incorporated in the body of law until much later than the latter. The first rudimentary concepts of copyright in the particular historical circumstances of its emergence and its subsequent development tended to accentuate first one and then the other of its component elements. Consequently, if one of the elements was far more marked at a particular period in history, this does not mean that the

27) See Michaélides-Nouaros, *op. cit.*, p. 11.

28) See Jacques Lemoine: *La protection internationale du droit d'exécution des auteurs et compositeurs de musique*, Paris, 1936, p. 13.

other did not exist but simply that it was not given any particular prominence at the time.

Analysis of the development of personal (moral) prerogatives in copyright in the course of history reveals that the idea of the respect of such prerogatives existed generally at all periods of development. The idea was of course conceived in different terms according to the particular age; but it has undeniably existed in human consciousness at all times to a greater or lesser extent. " Moral right has existed at all times " to quote the words of Masse [29]). Although it had not yet been stated as written law, it existed as an idea and a conviction throughout entire generations. Moreover, it was considered that " moral right ", unlike patrimonial right, should not be laid down in precise terms, its existence being justified by the logic of pure reason [30]). Therefore it was regarded as unnecessary to decree legal standards with a view to the recognition of " moral right ". However justifiable this view may have been, it was only an ideal view and it finally revealed the weakness of " moral right " conceived in such terms without a genuine foundation in positive law.

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[29]) See Pierre Masse: *Droit moral de l'auteur sur son œuvre littéraire et artistique, Paris*, 1906, p. 35.

[30]) See Michaélides-Nouaros, *op. cit.*, pp. 8 *et seq.*

INTERNATIONAL ACTIVITIES

International Federation of Musicians (FIM)

(6th Ordinary Congress, Stresa, May 3-7, 1966)

The International Federation of Musicians held its 6th Ordinary Congress from May 3 to May 7, 1966, at Stresa, in *Palazzo dei Congressi*, under the chairmanship of Mr. Hardie Ratcliffe, President of the Federation.

The delegates of musicians' organizations from the following 18 countries took part in the work: Austria, Belgium, Czechoslovakia, Denmark, France, Germany (Fed. Rep.), Greece, Ireland, Israel, Italy, Netherlands, Norway, Poland, South Africa, Spain, Switzerland, United Kingdom of Great Britain and Northern Ireland, and Yugoslavia. The organizations of musicians from Sweden and the USSR had sent their observers. The International Labour Office (ILO) was represented by Miss Anna Fidler, of the Non-manual Workers Division, and BIRPI by Mr. Claude Masouyé, Counsellor, Head of the Copyright Division.

International non-governmental organizations had also delegated their observers: Mr. P. Chesnais for the International Federation of Actors (FIA), Mr. R. Zagar for the International Federation of Variety Artistes (FIAV), Mrs. M. Larrue for the European Broadcasting Union (EBU).

On the basis of the Report on the Activity, presented by the Executive Committee, the Congress considered several professional questions relating to commercial gramophone records, radio and television (the role of music, employment terms for musicians, utilization of sound tracks, etc.), and remuneration of musicians (working hours, conditions of employment, solidarity action, etc.). Among the essential items of the agenda was also the study of the problems set by the recognition of performers' rights and by application of the Rome Convention of 1961, as well as those set now by the prepared revision of the Berne Convention.

The following motion has been adopted by the Congress on the latter item, at the end of its deliberations:

" The 6th Ordinary Congress of the International Federation of Musicians, having heard the Report on the Executive Committee's activity in connection with the contemplated revision of the Berne Convention for the Protection of Literary and Artistic Works, has noted some of the proposals made for this revision. Congress is of opinion that the proposals intended to reduce the protection of authors are based upon restrictive principles that, if accepted, would be of disadvantage not only with regard to the recognized rights of authors but also to those of performers.

Congress urges each affiliated Union in a Contracting State to the Berne Union:

(1) to examine carefully the full and final proposals for revision, when they are available;
(2) to establish relations with the authors' organization(s) of its country and to support it in all endeavours made to maintain the existing authors' rights;
(3) to insist with its Government that it should, in its comments on the revision proposals as also at the Diplomatic Conference for the Revision of the Berne Convention in Stockholm (July, 1967), adopt if necessary a position opposed to:
   (a) any changes of the Berne Convention that would assimilate in whole or in part television productions to film productions;

(b) any changes of the Berne Convention authorizing film producers (or, as the case may be, television organizations) to use almost without limitation and in return for a single payment the works fixed in films (or broadcast in television programmes), on the grounds of presumed assignment or any similar principle;

(c) any amendment to the Berne Convention to the effect that a Government that regards its country as a developing country is afforded the possibility of restricting in respect of that country the rights of authors as emhodied in the Convention;

(4) to invite its Government to support the amendments to Articles 6 and 9 of the Berne Convention as proposed by FIM.

Congress approves of the action undertaken hy the Executive Committee in this respect, and requests the Executive Committee to take all steps it considers appropriate to have the rights of performers in film productions embodied in an international agreement."

At the end, the Congress of FIM proceeded to the election of the Executive Committee. Mr. Hardie Ratcliffe (Great Britain) was re-elected as President, and Mr. H. Grohmann (Austria) and Mr. M. Ferares (Netherlands) as Vice-presidents. Representatives of the following countries have also been elected as memhers of the Executive Committee: Denmark, Germany (Fed. Rep,), Italy, Spain, and Yugoslavia. Mr. R. Leuzinger, who — together with the Italian organizers — contrihuted to the success of this 6th Congress, remains Secretary-General of FIM.

POST OF A DEPUTY DIRECTOR AT BIRPI

Postponement of Recruitment

Action towards the filling of the ahove post for which applications were invited by a notice published in the March issuc of *Copyright* has been postponed in view of the fact that the post is not now expected to hecome vacant on January 1, 1967, hut at a later date.

Intending applicants are therefore requested to defer submission of their applications until the vacancy is announced again.

CALENDAR

Meetings of BIRPI

Date and Place	Title	Object	Invitations to Participate	Observers Invited
September 26 to 29, 1966 Geneva	Interunion Coordinatiou Committee	Program aud Bndget of BIRPI	Belgium, Brazil, Ceylon, Czechoslovakia, Denmark, France, Germauy (Fed. Rep.), Hnugary, India, Italy, Japan, Morocco, Netherlands, Nigeria, Portugal, Rumania, Spain, Sweden, Switzerlaud, Union of Soviet Socialist Repnblics, United Kingdom of Great Britain and Northern Ireland, United States of America, Yugoslavia	All other Member States of the Paris Uniou or of tbe Berne Union; United Nations
September 26 to 29, 1966 Geneva	Executive Committee of the Coufereuce of Representatives of the Paris Uniou (2nd Sessiou)	Program and Bndget (Paris Uniou)	Ceylon, Czechoslovakia, France, Germany (Fed. Rep.), Hungary, Italy, Japan, Morocco, Netherlands, Nigeria, Portugal, Spain, Sweden, Switzerland, Union of Soviet Socialist Republics, United Kingdom of Great Britain and Northern Ireland, United States of America, Yngoslavia	All otber Member States of the Paris Union; United Nations
October 30 to November 4, 1966 Budapest	East/West Iudustrial Property Symposium	Discnssion of practical questions of industrial property	Open. Registration required	
November 7 to 11, 1966 Geneva	Committee of Experts on a model law for developiug couutries concerning trademarks, trade names, iudicatious of source, and uufair competition	To draft a Model Law on Trademarks for developing countries	*Africa:* Algeria, Buruudi, Cougo (Leopoldville), Ethiopia, Gambia, Ghana, Guinea, Kenya, Liberia, Libya, Malawi, Mali, Morocco, Nigeria, Rwanda, Sierra Leoue, Somalia, Sudau, Tanzania, Togo, Tunisia, United Arab Republic, Uganda, Zambia *America:* Argeutina, Bolivia, Brazil, Chile, Colombia, Costa Rica, Cuba, Dominicau Republic, Ecnador, El Salvador, Gnatemala, Guiana, Haiti, Hondnras, Jamaica, Mexico, Nicaragua, Panama, Paraguay, Peru, Trinidad and Tobago, Uruguay, Veneznela *Asia:* Afghanistan, Burma, Cambodia, Ceylon, China (Taiwan), India, Indonesia, Iraq, Iran, Jordan, Korea, Kuwait, Laos, Lebanon, Malaysia, Maldive Islands, Mongolia, Nepal, Pakistan, Philippines, Saudi Arabia, Singapore, Syrian Arab Repnblic, Thailand, Viet Nam, Yemen *Others:* Cyprus, Malta, Western Samoa	United Nations; Council of Europe; Enropean Economic Commuuity; Latin American Free Trade Association; African and Malagasy Industrial Property Office; Internatioual Association for the Protection of Industrial Property; Iuternational Chamber of Commerce; Iuter-American Associatiou of Iudustrial Property; Interuational Federation of Patent Agents
December 13 to 16, 1966 Geneva	*Ad hoc* Conference of the Directors of National Industrial Property Offices and Committee of Directors of the Madrid Union	Adoptiou of the Transitioual Regulations of the Madrid Agreement (Trademarks)	All Member States of tbe Madrid Agreemeut (Trademarks)	All other Member States of tbe Paris Union

Meetings of Other International Organizations concerned with Intellectual Property

Place	Date	Organization	Title
The Hagne	October 10 to 21, 1966	Committee for International Cooperation in Information Retrieval amoug Examining Patent Offices (ICIREPAT)	6th Annnal Meeting
Hollywood	October 11 to 17, 1966	Internatioual Writers Guild (IWG)	1st Congress