

Copyright

Monthly Review of the United
International Bureaux for the Protection
of Intellectual Property (BIRPI)

4th year - No. 9

September 1968

Contents

	Pages
INTERNATIONAL UNION	
— Cyprus. Declaration of continued adherence by the Republic of Cyprus (Rectification)	194
— Committee of Experts on the Photographic Reproduction of Protected Works (Paris, July 1 to 5, 1968)	195
NATIONAL LEGISLATIONS	
— Pakistan. Orders concerning the application of sections 53 and 54 of the Copyright Ordinance, 1962 (of March 13, 1968)	201
— United States of America. Public Law 90-416 (90 th Congress, S. J. Res. 172) (of July 23, 1968). Joint Resolution extending the duration of copyright protection in certain cases	203
GENERAL STUDIES	
— The scope of application of the Berne Convention as revised at Stockholm on July 14, 1967 (eligibility criteria and country of origin) (Xavier Desjeux)	203
— The assimilation of televisual works to cinematographic works and the régime of cinematographic works in the Stockholm Act of the Berne Convention (Denise Gaudel-Gruyer)	205
CALENDAR	
— BIRPI Meetings	207
— Meetings of Other International Organizations Concerned with Intellectual Property	207
Vacancy for a Post in BIRPI	208

© BIRPI 1968

Any reproduction of articles and translations of laws, published in this periodical, is authorized only with the prior consent of BIRPI

INTERNATIONAL UNION

CYPRUS

Declaration of continued adherence by the Republic of Cyprus (Rectification)

Notification of the Swiss Government to the Governments of Union Countries

In accordance with the instructions addressed to them on April 24, 1964, the Swiss diplomatic missions sent to the Ministries of Foreign Affairs of the Member States of the Berne Union for the Protection of Literary and Artistic Works a copy of a letter of February 24, 1964, addressed to the Embassy of Switzerland at Beirut, by which the Ministry of Foreign Affairs of the Republic of Cyprus had communicated to the Swiss Government a declaration of continued adherence in respect of Cyprus remaining a party to the Berne Convention for the Protection of Literary and Artistic Works of September 9, 1886, as revised at Brussels on June 26, 1948. This declaration confirmed a notification previously made by the United Kingdom of Great Britain and Northern Ireland in accordance with Article 26(1) of the Berne Convention.

In response to the notification by the Swiss Government, which took place in accordance with its instructions of April 24, 1964, a Member State subsequently expressed the opinion that a declaration of continued adherence by Cyprus could be effective only for the Berne Convention in its text revised at Rome on June 2, 1928.

With reference to the foregoing, the Federal Political Department brings to the attention of the States concerned the fact that the Government of the Republic of Cyprus, having been invited to express its view on the question, has informed the Embassy of Switzerland at Tel Aviv, by a note of June 18, 1968, from the Ministry of Foreign Affairs of Cyprus (a copy of which it attached), that *the Republic of Cyprus continues to apply on its territory the Berne Convention for the Protection of Literary and Artistic Works of September 9, 1886, as revised at Rome on June 2, 1928*. The Ministry added that the reference in the declaration of continued adherence contained in its note No. 18332/A.3/27, Aa.3 of February 24, 1964, to the Berne Convention as revised at Brussels on June 26, 1948, was

the result of a misunderstanding, in that it had been assumed that the United Kingdom had declared the Brussels text applicable to Cyprus before the latter's accession to independence, which was not the case.

Berne, September 10, 1968.

Republic of Cyprus
Ministry of Foreign Affairs
No. A.3/27

The Ministry of Foreign Affairs of the Republic of Cyprus presents its compliments to the Embassy of Switzerland and with reference to the Embassy's Note Verbale of April 9, 1968, has the honour to state that the Republic of Cyprus continues to apply on its territory the Berne Convention for the Protection of Literary and Artistic Works of September 9, 1886, as revised at Rome on June 2, 1928.

The declaration of continuity contained in the Ministry's Note No. 18332/A.3/27, Aa.3 of February 24, 1964, addressed to the Swiss Legation in Beirut to the effect that Cyprus applies the Berne Convention as revised at Brussels on June 26, 1948, is the result of a misunderstanding that the United Kingdom had extended the Brussels text to Cyprus before independence whereas it had never done so.

The Ministry wishes to inform the Embassy on this occasion that the Cyprus Government intends in due course to amend its Copyright Law and accede to the Berne Convention in its Brussels text.

The Ministry of Foreign Affairs of the Republic of Cyprus avails itself of this opportunity to renew to the Embassy of Switzerland the assurances of its highest consideration.

Nicosia, June 18, 1968.

The Embassy of Switzerland,
Tel Aviv

Committee of Experts on the Photographic Reproduction of Protected Works

(Paris, July 1 to 5, 1968)

GENERAL REPORT *)

I. Introduction

1. In application of resolution 5.121, paragraph (d), adopted by the Unesco General Conference at its fourteenth session (Paris, 1966) and in conformity with the views expressed by the Intergovernmental Copyright Committee and by the Permanent Committee of the International Union for the Protection of Literary and Artistic Works (Berne Union) at their 1961, 1963 and 1965 sessions, a Committee of Experts on the Photographic Reproduction of Protected Works met at the Unesco Permanent Headquarters in Paris from July 1 to 5, 1968, under the joint auspices of Unesco and of the United International Bureaux for the Protection of Intellectual Property (BIRPI).

2. The purpose of the meeting was to examine copyright problems raised by the reproduction of protected works by photography or by processes analogous to photography and to formulate recommendations for possible solutions.

3. The participants were specialists in the field either of copyright or of photographic documentation requirements, and were nationals of twelve Member States of Unesco and BIRPI; they were invited in a private capacity by the Director-General of Unesco and the Director of BIRPI. Observers of international non-governmental organizations particularly interested in the questions under study also attended. A specialist in existing practice in the matter was attached to the Secretariat of the meeting as consultant. The list of participants is annexed to this report (Annex D).

4. The meeting was opened by Mr. H. Saba, Representative of the Director-General of Unesco, who extended a most cordial welcome to all the participants.

He pointed out that the problem arising in the face of the development of modern techniques for the reproduction of works of the intellect was to conciliate in an equitable manner the vital need for the widest possible dissemination of thought, the rules imposed by legislation on copyright, the interests of the public and in particular of research, and the interests of publishers.

He stressed that as early as 1961, the International Federation for Documentation and the International Federation of Library Associations had recommended that Unesco should study these questions in view of their international aspects and be recalled the work done in this field by the Intergovernmental Copyright Committee and by the Berne Union Permanent Committee.

Finally, he expressed the hope that the results achieved by the Committee of Experts would enable mankind to benefit from the enormous possibilities of the new instruments of dissemination.

*) Report prepared by the Secretariats of Unesco and BIRPI due to the absence of H. E. Dr. Boutros Dib, Ambassador, Permanent Delegate of Lebanon to Unesco, Rapporteur.

5. Professor G. H. C. Bodenhausen, Director of BIRPI, in the name of his Organization, joined in the welcome addressed to the experts, the consultant and the observers. He thanked the Director-General of Unesco and his distinguished collaborators for the kind hospitality extended to the meeting and expressed the hope that the participants would arrive at positive proposals for the solution of the complex problems to be discussed.

6. The participants then elected their officers by acclamation.

Chairman: Mr. Torwald Hesser, Justice of the Supreme Court, Sweden.

Vice-Chairman: Dr. Ricardo Tiscornia, Director of the National Register of Intellectual Property, Argentina.

Rapporteur: H. E. Mr. Boutros Dib, Ambassador, Permanent Delegate of Lebanon to Unesco.

7. The meeting unanimously adopted document RP/Inf.3 which contained its working programme and immediately began examination of the various items on the agenda, on the basis of the documentation prepared by the Secretariat of Unesco and BIRPI listed in Annex A of this Report.

II. Summary of the discussions

A. General considerations

8. Certain experts, in particular those from Argentina, Japan, Netherlands and Spain, pointed out that the revision of their national legislation was presently being carried out or foreseen and they explained that specific provisions concerning the photographic reproduction of protected works would probably be included in the new legislation.

9. Mr. Nimmer, for his part, thought that photographic reproduction should in no case be totally exempt from copyright. The difficulties which might arise, for instance in contacting the author, would be solved if national legislations were to make photocopies subject to the system of legal licence.

10. A few experts, in particular those from France, Japan and Czechoslovakia, thought that it should be possible for reproductions to be made freely by non-commercial undertakings if restricted to a few pages and intended for the personal use of the copyist. If reproductions of this kind were to be made subject to the payment of royalties, the resulting increase in costs would make the task of those engaged in research more difficult and would prevent much work from being successfully completed.

11. Mr. Raya Mario, after having recalled that the exclusive right of the author remained the fundamental principle, expressed the view that reproductions made for personal use and reproductions made by libraries to complete their collections or for purposes of conservation or security, should be permissible. Moreover he added that the cost of

photographic reproductions should be higher than the purchase price of the works in the bookshop and that the difference could include the remuneration of the authors. He asked whether the affixing of a stamp would not prove an adequate solution.

12. Mr. Schwan stressed that, in his view, it was in any event necessary to reach an agreement on a general legal framework. He recalled that, at the international level, only the Berne Convention revised in Stockholm contained a text dealing expressly with the right of reproduction and its limitations (Article 9).

13. Mr. Tiscornia expressed the opinion that the meeting which had been called was meant to overcome the limitations resulting from the international conventions based on the principle of respect for the exclusive rights of the author. He therefore hoped that a balanced solution could be found to cover the use of protected works by libraries, education centres and scientific institutes.

14. Mr. Sophar pointed out that, in general, a distinction should be made between total reproduction and partial reproduction of periodicals as opposed to books, and explained that users in general were not interested in copying the whole of either work, but in copying a chapter or an article, and that it is exactly this kind of copyright infringement which damages the potential sale of either work. As regards periodicals, he stressed that the economic implications were greater for the periodical itself than for the author and greater for the periodical than the book.

15. The observer from the International Federation for Documentation, after having recalled the requirements of and the progress made in documentation, thought that it was desirable that the legal position of authors and publishers should be conciliated with the needs of documentation.

16. The observer from the International Publishers Association stated that a distinction should be made between the press and books, between libraries and industrial firms, and between various reproduction methods.

17. Mr. Strnad drew the Committee's attention to the need to be able, in certain exceptional cases, to reproduce existing material, deposited in archives, which, with the consent of the author, had not been made accessible to the public. He also emphasized the special problems of countries whose language is not used internationally. Finally, he drew attention to the essential needs of developing countries, which should be helped to accede to the culture of industrialized countries without being required to assume too heavy a financial burden.

18. In this connection Mr. Saba, representing the Director-General of Unesco, regretted that the absence of experts from the Congo (Kinshasa), India and Nigeria affected the representation of the developing countries on the Committee, and hoped that the Committee's discussions would take account of the essential requirements of these countries.

19. Concluding this preliminary exchange of views, the Committee decided to continue its work on the basis of the series of items listed in Annex B to this report, and by examining the suggestions contained in the Annex to document RP/4.

B. Reproduction for personal use

20. The Committee began by stating its views that the legal measures to be considered should relate to the right of photographic reproduction and all other processes analogous to photography. It considered that such reproduction could be legal, provided that it was for personal use. The Committee had earlier rejected by six votes to two, with two abstentions, a proposal by Mr. Nimmer that all reproductions should be subject to payment to the copyright owner under a statutory (or legal) licence, for the reason that the amount of the payment due might vary according to whether it was a reproduction for personal use, for internal use in a particular firm, or for use by libraries or other institutions. The Committee had also discussed whether the notion of reproduction for personal use should not be limited to reproduction done by the actual user. Mr. Schwan had pointed out that in this case other conditions should also be taken into account, for example the number of copies and their circulation. The Committee preferred to confine itself to the general principle of reproduction for personal use.

C. Reproduction by libraries

21. The Committee then addressed itself to reproduction by libraries and first to the question whether photographic reproductions done by profit-making and those done by non-profit libraries should be submitted to different regulations.

22. Some participants, including the Netherlands and United States experts, and Mr. Barker, consultant to the Secretariats of Unesco and BIRPI, pointed out that it was difficult to establish such a distinction.

23. Miss Galliot considered that it was not essential to distinguish between different types of libraries; what was important was the number of reproductions made.

24. Mr. Nomura and Mr. Raya Mario recalled that their national legislation was currently being revised. They informed the Committee that the new texts would probably contain a list of institutions authorized to reproduce copyright works by photography or analogous processes.

25. The majority of the experts concluded in favour of setting up different systems for profit-making and non-profit-making libraries.

26. Mr. Strnad added that restrictions might be necessary for works in which copyright had ceased to subsist, but which were of recent publication. He also emphasized the importance of defining the meaning of a "non-profit-making library". In any case, the facilities granted to non-profit-making libraries should not be extended to libraries belonging to industrial or commercial firms.

D. Reproductions for users made by non-profit-making libraries

27. The Committee then discussed under what conditions non-profit-making libraries might make photographic reproductions of protected works. Proposals were made by Mr. Nimmer and Mr. Strnad.

28. Mr. Nimmer proposed that the following rules should be observed: (1) limitation to one copy for each user; (2) a

maximum limit on reproduction, of one article from a periodical, or a reasonable proportion of a book; (3) no necessity for prior authorization by the copyright owner, but an obligation by the user to pay for such reproduction under a legal licence; (4) the reproduction of minor extracts should be subject to the principle of "fair use". Mr. Nimmer expressed the view that unless all of these points were respected, including particularly the imposition of a legal or compulsory licence, the interest of authors and copyright owners would be gravely impaired by present and potential library practices in photographic reproduction. This motion was rejected by four votes to three with two abstentions.

29. Mr. Strnad considered that: (1) there should be no restrictions on the reproduction of articles from periodicals or of brief extracts from books; (2) the reproduction in full of a book or periodical might be governed by a system of legal licences for which a fee would be charged; (3) all of other types of use would require the consent of the author or his successors in title; (4) profit-making libraries should however obtain the author's consent in all cases.

30. Mr. Schwan noted that different provisions might be laid down according to the use made of the reproduction.

31. Mr. Partov pointed out that in Iran the draft of the proposed copyright law contained an article authorizing libraries and documentation centres to make photographic reproductions under certain conditions.

32. In conclusion, the Committee recommended that libraries should have the right to provide one copy free of copyright for each user provided that such copy, in the case of a periodical, shall not be more than a single article and, in the case of a book, not more than a reasonable proportion of the said book. It was agreed that this should not prevent libraries making a certain charge, provided that this charge did not exceed the total of the actual costs of reproduction.

33. Mr. Desbois, the observer from the International Literary and Artistic Association (ALAI), drew the attention of the Committee to the risk run by the authors of scientific and technical articles and the publishers of specialized reviews, that library users might obtain reproductions without payment of any kind to the authors and publishers.

34. Mr. Barker commented that the situation would be quite different according to whether one copy, a specific number of copies, or an unlimited number was issued for each user. A system of legal licensing should apply in the two latter cases or the author's consent should be required.

35. Mr. Strnad emphasized that any form of use based on a legal licence should be subject to a restrictive interpretation, and the exclusive right of the author should be the fundamental principle. He suggested that a solution might be found in a system of collective contracts between authors and publishers on the one hand, and libraries on the other.

36. The Committee then considered certain modalities of the general principles it had adopted in paragraph 32. Mr. Raya Mario put forward a number of ideas with the object of helping the Committee to deduce certain guidelines in the matter. These recommendations are contained in document RP/8.

37. (1) As regards the proposal to reserve the author's right to prohibit photographic reproduction of his works, the Committee considered that it would be difficult to arrive at standard solutions in this connection, in view of the fact that such a faculty came under the idea of moral right, in particular the right of the author to change his text.

38. (2) As regards the proposal to exclude certain works from the regulations on photographic reproductions the Committee considered this would be desirable for certain groups of works, for instance cinematographic works, single (occasional) photographic works and paintings, as well as any other works which would similarly justify such an exception. Nevertheless, their photographic reproduction may be authorized in a given case when it constituted an illustration of the printed text.

39. (3) The Committee further recommended that it should be illegal without the explicit authorization of the author to make copies of a work which was deposited in the archives of a library and had not previously been made available to the public.

40. In this connection Mr. Tiscornia emphasized the varying interpretations in national legislations of the idea of publication and availability to the public.

E. Reproduction for the internal needs of libraries for non-profit purposes

41. The Committee of Experts then considered the problems posed by photographic reproduction for the internal needs of libraries for non-profit purposes. It first of all noted that libraries might wish to make photocopies for the purpose of conserving works or completing collections, or for use by other libraries.

(i) Conservation of works

42. The Committee of Experts expressed the opinion that libraries should be authorized to make "microform" copies of periodicals and of works in their collections for purposes of conservation which were out of print, provided that such copies could not be obtained from the publisher himself (or from specialized firms to which the latter had granted the right to make them). The Committee also considered that libraries should use the copies so made for reproduction only within the limits and under the conditions which it had laid down under paragraph 32 above. On this latter point, several experts, including those from Argentina, France and the United States of America, pointed out that the fact that libraries were authorized to obtain a "microform" copy should not enable them to reproduce it in a large number of copies.

43. Mr. Nomura said that, according to the Japanese bill, libraries could make photocopies of rare books which were not easily obtainable on the market.

44. The Committee then discussed the conditions under which libraries would be entitled to make full size duplicates of works in their collections. It considered that three conditions could be agreed upon: (1) the observation of a time-limit allowed to the copyright owner for announcing its intention with regard to permission to reproduce or to the possibility

of a new edition; (2) the assurance that the work was really out of print; (3) the limitation of the number of copies which the library could be authorized to reproduce.

45. With regard to the first point, Mr. Strnad observed that the publisher should be given the opportunity to supply the copies required himself, which might be a cheaper solution than a new edition. As for the second condition, Mr. Schwan suggested that a reference to the impossibility of obtaining the work through normal commercial channels should be substituted for the requirement that it should be out of print.

46. After some discussion on the time-limit to be observed the Committee expressed the view that the library should be allowed to copy for purposes of conservation any work copies of which are no longer available through normal trade channels if, within a reasonable period after inquiry (for example 60 days), it had received no reply from the author or the publisher, or if the latter had indicated that they did not intend to produce a new edition. In cases where the author or publisher announced their intention of producing a new edition, that should be done within a reasonable time (for example 2 years), failing which the library could, at the expiry of that period, reproduce the work unless the author refused consent by virtue of his moral right.

47. As for the number of copies which the library could reproduce, it should not exceed the number of copies of the work originally in the library collections which must be replaced for conservation purposes.

(ii) *Completion of collections*

48. The Committee unanimously recognized that libraries should be freely entitled to make the reproductions necessary to replace mutilated or missing pages in certain works or periodicals, not exceeding one article in a periodical or a reasonable proportion of a book, and that in other cases the above rules concerning the conservation of works should remain applicable, with the reservation that the number of copies made should not exceed the number of copies of works of that type normally held by the library.

(iii) *Use by other libraries*

49. The Committee noted that this use might have both national and international implications.

50. At the national level, it considered that the rules governing photographic reproductions made for the purpose of conserving works or completing collections should be applicable in the case of use by other libraries, but that certain restrictions should nevertheless be imposed on the use of the reproductions by the recipient library. For example, a recipient library might not have the right to further reproduce copies of articles or reasonable proportions of books theretofore furnished to it, and with respect to a book no longer available through normal trade channels a recipient library might not be entitled to make or obtain more copies than the number of copies which it possesses of a similar type of work.

51. At the international level, Mr. Strnad pointed out that problems might arise when a reproduction made in a country party to an international copyright convention was imported into another country in which there was no protection. He

suggested that steps be taken (contractual agreements for example) to avoid the proliferation of copies in countries in which the work was not protected, since this might prejudice free competition on the publishing market.

52. Mr. Saba, representing the Director-General of Unesco, emphasized that the particular situation of developing countries might call for special provisions. Mr. Bodenhausen, Director of the United International Bureaux for the Protection of Intellectual Property (BIRPI), supported this remark and suggested that the rules applicable to international relations with these countries should be less strict.

53. The Committee considered that international implications, including catering for the needs of developing countries, called for more thorough study at a later date.

F. Reproductions made by libraries conducted for profit

54. Certain experts, particularly those from Japan, Netherlands, Spain and the United States raised the interlocutory question of the definition of profit-making libraries and non-profit-making libraries. The Committee was of the opinion that the definition should be left to national legislations.

55. The Committee then discussed the provisions which should apply to profit-making libraries. It was in favour of the complete respect of copyright within the framework of either collective agreements or a system of legal licences. Miss Galliot, however, was opposed to a system of legal licences. Mr. Rohmer and certain experts suggested that governments should be recommended to encourage the conclusion of collective or professional agreements and emphasized the accessory nature of legal licences, which should only be applicable in the absence of such agreements.

56. Mr. Poindron, Observer for the International Federation for Documentation, pointed out that it was not appropriate to lay down different rules for libraries which were or were not conducted for profit. It appeared that a commercial enterprise should be able to obtain reproductions from a public library on more favourable terms than those on which an individual research worker could obtain them from a commercial library.

57. Mr. Géranton, Observer for the International Publishers Association, supplied detailed information on the efforts made by publishers, especially in France, to conclude collective agreements with libraries conducted for profit, but regretted that it had not yet been possible to come to any such agreement with commercial reproduction firms.

G. Reproductions for educational purposes

58. The Committee decided, by 5 votes against 4 and an abstention, that the facilities accorded under paragraph 32 of this report in favour of libraries, should be extended to educational and training enterprises with a non-commercial aim, it being understood that reproductions could only be made by such establishments upon an individual request, for the exclusive and personal use of teachers and students, and subject to the limitations and conditions laid down for reproductions under chapter F of this report.

59. The basic principles of copyright will remain applicable to all cases in which no special exception is indicated in favour of libraries.

60. Mr. Strnad emphasized that in the socialist countries, school textbooks were usually distributed free of charge. He also pointed out that, under legal licence, extracts or relatively short works could be freely reproduced in material intended for teaching purposes.

H. Reproductions for the users themselves

61. After discussion, a certain number of experts considered that the limitations imposed on libraries should also apply to reproductions made by the users themselves for personal use.

62. Some experts also considered that the manufacturers of photocopying machines should be required to include in their selling prices or rental charges a levy to be collected for the benefit of the copyright proprietor, as provided for in the German Law (Article 53(5)).

I. Conclusions

63. At the end of its discussions, the Committee of Experts adopted a certain number of recommendations which are reproduced in an annex to the present report (Annex C).

64. Mr. Raya Mario, on behalf of the experts, thanked the two host organizations, congratulated their Secretariats on the quality of the preparatory documentation and paid tribute to the Chairman of the Committee for the skill with which he had directed the proceedings.

65. Mr. Saba, in the name of Unesco and BIRPI, thanked the experts for their contributions to the search for solutions of the problem which confronted them, and expressed his satisfaction at the results obtained. He thought that the important work accomplished by the Committee was nevertheless only the first stage, and expressed the wish that the exchanges of views on which a start had been made in the Committee should be continued in further meetings.

66. The Chairman, after once more thanking the experts present and the two Secretariats, declared the meeting closed.

ANNEX A

List of Working Documents

- RP/1 Agenda
- RP/2 Rules of Procedure
- RP/3 Photographic Reproduction
- RP/4 Reproduction by Processes analogous to Photography - Reproduction effected by Commercial Firms - Reproduction effected for Commercial Purposes
- RP/5 Photocopying Practices in the Federal Republic of Germany
- RP/6 Photocopying Practices in the United Kingdom
- RP/7 Photocopying Practices in the United States of America
- RP/8 Proposal by Mr. José Raya Mario

NOTE

The experts from the United States of America pointed out that the following works also existed in this field:

1. *The Determination of Legal Facts and Economic Guideposts with Respect to the Dissemination of Scientific and Educational Information as it is Affected by Copyright - A Status Report.*
Published December, 1967, by the Committee to Investigate Copyright Problems, 2233 Wisconsin Avenue, N.W. Washington, D. C. 20007.
2. *Project: New Technology and the Law of Copyright: Reprography and Computers.*
Volume 15, U. C. L. A. Law Review (April 1968) Published by University of California. Los Angeles Law Review, Los Angeles, California.

ANNEX B

Works

1. *Legal situation*
 - accessible or not to the public
2. *Kind of work*
 - periodicals
 - books
 - musical works
3. *Extent*
 - the whole work
 - chapters
 - short excerpts or fragments

Reproduction

1. *Methods*
 - handwritten
 - modern proceedings
2. *Purpose*
 - personal or private use
 - internal use
 - educational purposes
 - for commercial use
3. *Organisms*
 - private persons
 - (i) made personally
 - (ii) made by a third person
 - public libraries or administrations
 - specialized enterprises
 - commercial enterprises
4. *Users*
 - private persons
 - libraries, centres of documentation, etc.
 - commercial or industrial enterprises
5. *Conditions*
 - with or without benefit

ANNEX C

Recommendations

The Committee of Experts on the Photographic Reproduction of Protected Works, meeting in Paris from July 1 to 5, 1968,

Considering that thanks to the development and perfecting of photocopying equipment, photographic reproduction is tending to become an extremely simple, rapid and inexpensive process,

Considering that research workers and institutions which service research and teaching (libraries, documentation centres, educational, scientific or cultural institutions) are making increasing use of the technical possibilities thus offered them,

Considering that a large majority of the works reproduced are protected by copyright legislation which usually requires prior authorization by the author before such works can be reproduced,

Considering that it is desirable to strike a balance between safeguarding the rights of authors and publishers, in such a way that their works

should not suffer competition on the market, and adjusting the right to reproduce works to the extent to which this was necessary for the promotion of research and culture.

Considering that it is for national legislation to lay down conditions for the photographic reproduction of works protected by copyright, and in so doing to aim at a fair balance between the interests concerned,

After adopting a report summarizing the results of its deliberations, Recommends that the following principles be taken into account:

1. To assimilate processes analogous to photography with photographic reproduction;
2. To authorize for the personal use of the reproducer photographic reproduction of published works;
3. To allow non-profit-making libraries to provide one copy free of copyright for each user provided that such copy, in the case of a periodical, shall not be more than a single article and, in the case of a book, not more than a reasonable proportion of said book, it being understood that the authorization could not be extended to cinematographic works, single (occasional) photographic works and paintings, as well as any other works which would similarly justify such an exception. Nevertheless, their photographic reproduction may be authorized in a given case when it constitutes an illustration of the printed text;
4. To authorize the photographic reproduction of unpublished works deposited in library archives only on condition that their author has given his explicit consent;
5. To allow non-profit-making libraries to make microform reproductions for purposes of conservation of periodicals or of works in their collections which are out of print, in so far as such reproductions cannot be obtained from the publisher;
6. To allow non-profit-making libraries to make full size duplicates of works in their collections provided that:
 - (a) reasonable time should be allowed for the copyright owner:
 - (i) to announce his intentions with regard to the authorization of the reproduction or the issuing of a new edition;
 - (ii) to produce a new edition if such is his intention;
 - (b) there be full guarantee that the work is really out of print;
 - (c) the number of copies which the library could reproduce from the microform reproduction does not exceed the number of copies of the work originally in the library collections which must be replaced for conservation purposes;

in any case, the microform reproduction so made should be used to make reproductions for third parties only within the limits and under the conditions laid down for personal use;
7. To authorize non-profit-making libraries, in order to complete their collections, freely to make the reproductions necessary to replace mutilated or missing pages of certain works or periodicals not exceeding one article in a periodical or a reasonable proportion of a book, and for this same purpose to make any other reproduction provided that the rules laid down above for the conservation of works should remain applicable, with the reservation that the number of copies made should not exceed the number of copies of works of that type normally held by the library;
8. To authorize, under the same conditions, reproductions intended for the use by other libraries, but imposing certain restrictions on the use of the reproductions by the recipient libraries;
9. To allow profit-making libraries to make photographic reproductions of works protected by copyright only in the case of complete respect of copyright within the framework of either collective agreements or a system of legal licences;
10. To apply to reproductions made for teaching purposes in educational and training enterprises with a non-commercial aim the regulations laid down for non-profit-making libraries (paragraph 3 above), it being understood that reproductions could only be made by such establishments upon an individual request, for the exclusive and personal use of teachers and students and subject to the limitations and conditions laid down for the reproductions made by profit-making libraries.

ANNEX D

List of Participants

The names and titles in this list are reproduced as handed in to the Secretariats of Unesco and BIRPI.

I. Experts

- M. N. K. Chtereve, Rédacteur de photographie, Centre d'information et de propagande photographique auprès de la Direction générale de la photographie, Bulgarie.
- S. Exc. le Dr Boutros Dih, Ambassadeur extraordinaire, Délégué permanent du Liban auprès de l'Unesco, Liban.
- M^{lle} S. Galliot, Conservateur, Bibliothèque nationale, France.
Conseiller: M. Ch. Rohmer, Administrateur civil chargé des questions du droit d'auteur du Ministère des affaires culturelles.
- Mr. T. Hesser, Justice of the Supreme Court, Sweden.
- Licenciada Helena Mata Rivera, Sub-Directora General de Derecho de Autor de la Secretaría de Educación Pública, México.
- Mr. M. Nimmer, Professor of Law, U. S. A.
Conseiller: Mr. G. Sophar, Executive Director, Committee to Investigate Copyright Problems, Inc.
- Mr. Y. Nomura, Member of the Government Copyright Council, Ministry of Education, Japan.
Adviser: Mr. B. Sano, Chief, Copyright Section, Cultural Affairs Bureau, Ministry of Education.
- Mr. Manoutchehr Partow, Under-Secretary, Ministry of Justice, Iran.
- Sr. José Raya Mario, Secretario General, Dirección General de Archivos y Bibliotecas, España.
- M. J. A. W. Schwan, Ministère de la Justice, Pays-Bas.
Adviser: M. H. J. G. Pieters, Conseiller, Division des affaires législatives et juridiques, Ministère des affaires économiques.
- Dr. Vojtěch Strnad, Director of the Supraphon Disks Edition, Czechoslovakia.
Adviser: Dr. Jiří Kordač, Director of the legislative Division, Ministry of Culture and Information.
- Dr. R. Tiscornia, Director, Registro Nacional de la Propiedad Intelectual, Argentina.

II. International Organizations

International Confederation of Societies of Authors and Composers (CISAC)

Mr. P. F. Devaux, Delegate of CISAC.

International Congress on Reprography (ICR)

Dr. R. Schulte, Regierungsdirektor, German Patent Office.

International Federation for Documentation (FID)

Mr. P. Poindron, Secretary-General, French Committee for Documentation.

M^{me} J. Fritz, Librarian.

Internationale Gesellschaft für Urheberrecht (INTERGU)

Mr. Walter Jost, Delegate of INTERGU for France.

International Literary and Artistic Association (ALAI)

Mr. H. Desbois, Professor at the Faculty of Law and Economics of Paris, Permanent Secretary of ALAI.

Mr. J. Duchemin, Member of the Executive Committee of ALAI.

Miss R. Blaustein, Administrative Secretary of ALAI.

International Publishers Association (IPA)

M. Hjalmar Pehrsson, Secretary-General.

M. A. Géranton, Head, Legal Section, Syndicat français des éditeurs.

III. Consultant

Mr. R. Barker, Secretary, The Publishers Association, United Kingdom.

IV. Inviting Organizations

United Nations Educational, Scientific and Cultural Organization (Unesco)

Mr. H. Saba, Assistant Director-General for International Standards and Legal Affairs, Representative of the Director-General.

Mr. S. Tucker, Head, Copyright Division.

Miss M. C. Dock, Lawyer, Copyright Division.

Mr. Y. Matveev, Assistant Lawyer, Copyright Division.

United International Bureaux for the Protection of Intellectual Property (BIRPI)

Professor G. H. C. Bodenhausen, Director.

Mr. C. Masouyé, Counsellor, Head of the Copyright Division.

V. Board of the Meeting

Chairman Mr. T. Hesser.

Vice-Chairman Dr. R. Tiscornia.

Rapporteur H. E. Dr. Boutros Dib.

NATIONAL LEGISLATION

PAKISTAN

I

Order concerning the application of section 54 of the Copyright Ordinance, 1962

(S. R. O. 709(K)/68) ¹

In exercise of the powers conferred by section 54 of the Copyright Ordinance, 1962 (XXXIV of 1962) ², the Central Government is pleased to make the following Order, namely:

The International Copyright Order, 1968

1. (1) This Order may be called the International Copyright Order, 1968.

(2) It shall come into force at once.

2. In this Order, unless there is anything repugnant in the subject or context.—

(a) “country of the Berne Copyright Union” means a country mentioned in Part I of the Schedule;

(b) “country party to the Universal Copyright Convention” means a country mentioned in Part II of the Schedule; and

(c) “Schedule” means the schedule to this Order.

3. Subject to the provisions of paragraph 4, all the provisions of the Copyright Ordinance, 1962 (XXXIV of 1962) hereinafter referred to as “the Ordinance”, other than those of Chapter IV thereof and those which apply exclusively to Pakistani works, shall apply—

(a) to any work first published in a country mentioned in the Schedule in like manner as if it was first published within Pakistan;

(b) to any work first published in a country other than a country mentioned in the Schedule, the author of which was at the date of such publication, or where the author

was dead at that date, was at the time of his death, a subject or citizen of a country party to the Universal Copyright Convention in like manner as if the author was a citizen of Pakistan at that date or time;

(c) to an unpublished work, the author whereof was at the time of the making of the work, a subject or citizen of, or domiciled in, any country mentioned in the Schedule in like manner as if the author was a citizen of, or domiciled in, Pakistan; and

(d) in relation to a body incorporated under any law of a country mentioned in the Schedule, in like manner as if it was incorporated under a law in force in Pakistan.

4. Notwithstanding anything contained in paragraph 3,—

(a) the term of copyright for a work shall not exceed that enjoyed by it in its country of origin; and

(b) the Ordinance or any part thereof shall not apply to a work published before the commencement of this Order in a country party to the Universal Copyright Convention or a country of the Berne Copyright Union.

Explanation. — In this paragraph, “country of origin” means.

(a) in the case of a work first published in a country of the Berne Copyright Union or a country party to the Universal Copyright Convention, that country;

(b) in the case of a work published simultaneously in a country of the Berne Copyright Union and a country which is not a country of the Berne Copyright Union, the former country;

(c) in the case of a work which is published simultaneously in a country party to the Universal Copyright Convention

¹ Published on March 13, 1968, by the Ministry of Education (Copyright Office) of Pakistan.

² See *Copyright*, 1967, pp. 91 and 112.

and a country which is neither a country of the Berne Copyright Union nor a country party to the Universal Copyright Convention, the former country;

(d) in the case of a work which is published simultaneously in several countries of the Berne Copyright Union, the country whose laws give the shortest term of copyright in such a work;

(e) in the case of a work which is published simultaneously in several countries parties to the Universal Copyright Convention, the country whose laws give the shortest term of copyright in such a work; and

(f) in the case of an unpublished work or a work first published in a country other than a country of the Berne Copyright Union or a country party to the Universal Copyright Convention, the country of which the author was a subject or citizen or the country in which he was domiciled at the time of making the work or a substantial part of it or, as the case may be, at the time of its first publication, whichever gives the longer term of copyright.

5. All Orders in Council made under Copyright Act, 1911 (1 & 2 Geo. 5C. 46), so far as they form part of the law of Pakistan, are hereby repealed.

Provided that where, by virtue of any such Order in Council, copyright subsisted in a work immediately before the commencement of this Order, and copyright does not subsist therein under this Order, it shall continue to subsist therein as if such Order in Council had not been repealed.

THE SCHEDULE [See paragraph 3(a)]

PART I

Countries of the Berne Copyright Union

Australia	Congo (Kinshasa)
Nauru, New Guinea, Papua and Northern Territory	Cyprus
Argentina	Czechoslovakia
Austria	Dahomey
Belgium	Denmark
Brazil	Finland
Bulgaria	France
Cameroon	Overseas Departments and Territories
Canada	Gabon
Ceylon	Germany (Fed. Rep.)
Congo (Brazzaville)	Greece

Holy See (Vatican City)
 Hungary
 Iceland
 India
 Ireland
 Italy
 Ivory Coast
 Japan
 Lebanon
 Liechtenstein
 Luxembourg
 Madagascar
 Mali
 Mexico
 Monaco
 Morocco
 Netherlands
 Surinam and Netherlands Antilles
 New Zealand
 Niger

Norway
 Pakistan
 Philippines
 Poland
 Portugal
 Rumania
 Senegal
 Spain
 Sweden
 Switzerland
 Thailand
 Tunisia
 Turkey
 United Kingdom
 Colonies, Possessions and certain Protectorate Territories
 Upper Volta
 Uruguay
 Yugoslavia

PART II

Countries Parties to the Universal Copyright Convention

Andorra	Lebanon
Argentina	Liberia
Austria	Liechtenstein
Belgium	Luxembourg
Brazil	Malawi
Cambodia	Mexico
Canada	Monaco
Chile	New Zealand
Costa Rica	Nicaragua
Cuba	Nigeria
Czechoslovakia	Norway
Denmark	Pakistan
Ecuador	Panama
Finland	Paraguay
France	Peru
Germany (Fed. Rep.)	Philippines
Ghana	Portugal
Greece	Spain
Guatemala	Sweden
Haiti	Switzerland
Holy See	United Kingdom
Iceland	United States of America
Italy	Venezuela
Japan	Yugoslavia
Kenya	Zambia
Laos	

II

Declaratory Order concerning the application of section 53 of the Copyright Ordinance, 1962

(S. R. O. 710(K)/68)¹)

In exercise of the powers conferred by sub-section (1) of section 53 of the Copyright Ordinance, 1962 (XXXIV of 1962)²), the Central Government is pleased to declare that

the said section shall apply to the following organizations, namely:—

- (a) The United Nations Organization,
- (b) Specialized Agencies of the United Nations Organization.

¹) See note 1 *supra*.

²) See note 2 *supra*.

UNITED STATES OF AMERICA

Public Law 90-416 (90th Congress, S. J. Res. 172)

(Of July 23, 1968)

Joint Resolution extending the duration of copyright protection in certain cases

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That in any case in which the renewal term of copyright subsisting in any work on the date of approval of this resolution, or the term thereof as extended by Public Law 87-668, by Public Law

89-142, or by Public Law 90-141 (or by all or certain of said laws), would expire prior to December 31, 1969, such term is hereby continued until December 31, 1969.

Approved July 23, 1968.


GENERAL STUDIES

**The scope of application of the Berne Convention as revised at Stockholm on July 14, 1967
(eligibility criteria and country of origin) ***

Introduction

The Stockholm Conference made important amendments to Articles 4, 5 and 6 of the Brussels text. It established a general principle of protection in the new Article 5(1) (part I below) and determined the scope of application of the Convention regarding both the works protected (the new Articles 3(1) and (2), and 4(a)) and the countries in which it is applicable (the new Article 5(4)(c) and 5(4)(c)(i)) (part II below).

I. Principles of protection granted by the Convention

(a) The new Article 5(1) provides that authors shall enjoy, in respect of works for which they are protected under this Convention, in countries of the Union other than the country of origin, the rights which their respective laws do now or may hereafter grant to their nationals, as well as the rights specially granted by this Convention.

In other words, the authors whose works are protected by the Convention shall enjoy:

- the principle of assimilation to national authors,
- and *jus conventionis* in countries of the Union other than the country of origin of the work.

(b) The Brussels text provided for a much more complex set of rules and distinguished between several hypotheses:

(1) The author who publishes his work in a country of which he is a national enjoys:

- the principle of assimilation to national authors.
- *jus conventionis*

in all the countries of the Union other than that which is the country of origin (Article 4(1)).

(2) The author who publishes his work in a country of the Union other than that of which he is a national enjoys:

- the principle of assimilation in that country (Article 5),
- and *jus conventionis* in the other countries of the Union.

(3) The author who is a national of one of the countries of the Union enjoys, for his unpublished works, in the countries other than the country of origin of the work:

- the principle of assimilation to national authors,
- and *jus conventionis* (Article 4(1)).

(4) The author who is not a national of one of the countries of the Union enjoys:

- the principle of assimilation to national authors in the country of origin,
- and *jus conventionis* in the other countries of the Union.

With regard to this complex system in the Brussels text, the new Article 5(1) shows some simplification.

II. The scope of application

It should be examined successively which works are protected by this Convention (the new Articles 3(1) and (2), and 4(a)) and in which countries the Convention applies (the new Article 5(4)(c) and 5(4)(c)(i)).

*A. Works protected by the Convention
(study of the eligibility criteria)*

1. The Stockholm text modifies or adds to the earlier provisions essentially with regard to the following two points:

*) This study was presented as a report to the General Assembly of the International Literary and Artistic Association (ALAI), on April 23, 1968. It is printed here with the kind permission of the author and of the President of ALAI.

- (a) it extends the criterion of nationality (Article 3(1) and (2)),
- (b) subject to the special rules enacted for cinematographic works (Articles 4(a) and 5(4)(c)(i)).

(a) *Extension of the criterion of nationality.* — All works of authors who are nationals of a country of the Union are protected by the Convention whatever the place of their publication may be.

There is no distinction any more between published and unpublished works.

From now on even works published outside the Union are protected by the Convention as soon as the author is a national of a country of the Union.

This new provision regarding the principle of nationality of the author as a general eligibility criterion is a fortunate innovation. It corresponds to the universal purpose of the Convention and brings it into harmony with:

- the majority of national legislations giving protection to their own authors irrespective of the place where they publish their works,
- the Universal Copyright Convention, which also has adopted the principle of nationality as a general rule.

(b) *Special rules for cinematographic works.* — The Stockholm text establishes a third eligibility criterion with regard to cinematographic works (an additional one to that of nationality and that of first publication): the country where the maker has his headquarters or habitual residence (Article 4(a)).

When a cinematographic work is a joint international production, it may not have been first published in one of the countries of the Union, and some co-producers may not be nationals of one of the countries of the Union. Will such work be protected under the Convention? The Convention does not give an answer to that question; accordingly, its solution remains within the competence of national legislations. It is desirable to protect the work.

2. The Brussels text was providing for a double distinction:

- (a) according to whether a work had been published or not,
- (b) and according to whether it had been published in one of the countries of the Union or outside the Union.

(a) The works protected were the works:

- first (or simultaneously) published in one of the countries of the Union, whether or not the author is a national of one of the countries of the Union (criterion of territoriality),
- not published (i. e. not yet published anywhere), on condition that the author is a national of one of the countries of the Union (criterion of nationality).

(b) Thus the works of an author who was a national of one of the countries of the Union were not protected if published outside the Union (if there was no simultaneous publication in a country of the Union).

This gap is now filled by the Stockholm text, which retains the criterion of nationality as the general principle of protection.

B. Countries to which the protection provided for by the Convention applies (the country of origin excluded)
(Article 5(4))

It is essential to determine the country of origin of a work in order to know the scope of the protection enjoyed by such work.

The Stockholm text (a) repeats entirely the provisions of the Brussels text, (b) but adds two new provisions.

(a) The Brussels text has not been amended with regard to:

(1) Works first published in one of the countries of the Union: the new Article 5(4)(a) recalls that the country of first publication in that case is the country of origin.

(2) Unpublished works: the new Article 5(4)(c) recalls that the country of origin is the country of the Union of which the author is a national.

(b) On the other hand, two new rules have been introduced in the Stockholm text:

(1) A country of origin is recognized for works published outside the Union: the country of the Union of which the author is a national (Article 5(4)(c)).

This is of interest for two reasons:

- it makes it possible to calculate the term of protection when a comparison of terms is to be made between the country of origin and the country where protection is claimed;
- and, especially, it excludes the protection *jure conventionis* in the country of origin; consequently, an author will not be tempted to have his work published in a country outside the Union in order to enjoy the protection *jure conventionis* in his own country.

(2) The second innovation concerns essentially cinematographic works:

Article 5(4)(c)(i) introduces a third notion of the country of origin: if a cinematographic work has not been published or has been first published in a country outside the Union, the country of origin will be the country of the Union where the maker has his headquarters or his habitual residence.

Xavier DESJEUX
Chargé de Cours at the Faculty of Law
and Economics, Nancy

The assimilation of televisual works to cinematographic works and the régime of cinematographic works in the Stockholm Act of the Berne Convention *)

I. The assimilation of televisual works to cinematographic works

Televisual works are assimilated to cinematographic works in Article 2(1) which contains in the list of protected intellectual works the following clause:

“cinematographic works to which are assimilated works expressed by a process analogous to cinematography;”.

However, under paragraph (2) of the same Article 2, the countries of the Union have the option of not giving any protection to televisual broadcasts which are not recorded.

It might have been clearer to adopt the solution proposed in the Programme of the Conference, where the problem was solved by a special paragraph of Article 2 (then paragraph (2)), drafted as follows:

“For the purpose of this Convention, works expressed by a process producing visual effects analogous to those of cinematography and fixed in some material form shall be considered to be cinematographic works.”

In fact, this wording removed any uncertainty concerning the scope of assimilation and the characteristics of the works to which it applied.

II. The régime of cinematographic works

While the Programme of the Stockholm Conference assimilated to cinematographic works pre-existing works adopted for cinematography and regulated these works together in Article 14, the new text of the Convention treats the two categories of works differently: pre-existing works are governed by Article 14 and cinematographic works are governed by Article 14^{bis}.

A. Provisions of Article 14

This text reproduces almost entirely paragraphs (1), (3) and (4) of Article 14 of the Brussels Act. It has the virtue of eliminating authors of pre-existing works called “classic authors” from the presumption of legitimation applied in the case of authors of a cinematographic work, called “authors of modern contributions”. By contrast, Article 14 of the Programme of the Conference extended the burden of this presumption equally to authors of pre-existing works.

It would perhaps have been desirable to add broadcasting to the different methods of exploitation and adaptation which have to be authorized by the original author; but hopefully those who interpret the Stockholm Act will follow the spirit rather than the strict wording of the text and close this gap.

B. Provisions of Article 14^{bis}

This text provides the legal provisions for authors of cinematographic works.

*) This study was submitted to the General Assembly of the International Literary and Artistic Association (ALAI), held on April 23, 1968, as a report of the subcommittee consisting of Mr. Castelain, Mr. Desbois, Mr. Dupuis, Mr. Rouart and Mrs. Gaudel-Gruyer as Rapporteur. It is reproduced here with the kind permission of the Rapporteur and of the President of ALAI.

In paragraph (1) it recognizes that the owners of copyright have an absolute monopoly in the work.

In paragraph (2) it gives to the maker the enjoyment of one or more of the rights recognized in paragraph (1):

- (a) by leaving it to the national legislations to determine the owners of copyright, who — in the system of “film copyright” or of the *cessio legis* — may be the maker;
- (b) by establishing, in countries where creators of works are still owners of copyright, a presumption of assignment giving the maker, at the expense of the creator, the benefit of the rights brought into play by the normal exploitation of a cinematographic production.

In paragraph (3) it provides for important exceptions to the principle set forth in paragraph (2).

At the outset, it should be noted that attention is given for the first time to copyright owners rather than authors and that the Convention largely ensures protection to the maker.

With this point emphasized, the presumption of assignment established in paragraph (2)(b), (c) and (d) of Article 14^{bis} calls in turn for some additional comments.

1. The rights that the author is presumed to have assigned are those involved in the normal exploitation of a cinematographic production, although the right of authorizing the broadcast of a cinematographic work has been added to them and although there is a question about the scope to be given to the expression “communication to the public”.

2. For the presumption to apply it is sufficient for the authors to have undertaken to bring their contributions to the making of the work.

3. The presumption in question is a presumption *juris tantum* which can be rebutted by proving that the authors have retained the rights enumerated in paragraph (2)(b) by a contrary or special stipulation.

Paragraph (2)(d) prescribes that “by ‘contrary or special stipulation’ is meant any restrictive condition which is relevant to the aforesaid undertaking”. However, it may be questioned whether the explanations given in the text are of much value because the interpretation given to the contrary or special stipulations is self-evident. Indeed, it would be better to state that the expression “contrary stipulation” should be understood as a condition rebutting the presumption while the phrase “special stipulation” only permits some of the rights covered by paragraph (2)(b) to be exempt from the presumption.

4. The Convention itself does not require that an author’s undertaking to contribute to the making of a cinematographic work be in any particular form; that results in the applicability of the presumption as soon as the authors show their intention to participate in the combined production. No other manifestation is necessary.

But paragraph (2)(c) reserves to the legislation of the countries of the Union the right to decide that such an under-

taking could take the form of a written agreement or a written act of the same effect.

This text thus demonstrates the care of the drafters of the Stockholm Act to offer to authors the largest possible guarantee of seeing their rights fixed by a legal instrument.

Indeed, it lays down the principle that the maker should be left to the legislation of the country of origin of the work, i. e. of the country where the maker has his headquarters or habitual residence. It also prescribes that the country where protection is claimed has, for its part, the right to provide that the undertaking shall be in a written agreement or a written act of the same effect, subject to notification to the Director General of the World Intellectual Property Organization; authors are thus offered an additional opportunity of circumventing the presumption in the absence of a written act where the country of origin does not give them such a guarantee.

The meaning to be given to the expression "written act of the same effect" has been defined by Professor Bergström in his Report on the work of Main Committee I in the following terms:

By "written act of the same effect" is meant a legal instrument in writing defining sufficiently adequately the conditions of the engagement of persons bringing contributions to the making of the cinematographic work. This notion applies, for example, to a collective employment contract or to a general settlement to which those persons have agreed.

Although Article 14^{bis} establishes the principle of a presumption of assignment for the benefit of the maker, the scope of this text appears singularly limited by the provisions of paragraph (3), which can be analyzed in the following manner:

1. The rule prescribed by this subparagraph excepts from the presumption authors of scenarios, dialogues and musical works, as well as the principal director.

2. However, the national legislations may provide to the contrary.

3. As far as the director is concerned, the provisions of paragraph (3) will apply to him only if the countries of the Union notify the Director General that their legislation does not include provisions subjecting him to the presumption, which means in his case applying paragraph (2)(b), subject to an exceptional application for his benefit of paragraph (3).

Furthermore, Article 14(3) presents a somewhat surprising anomaly. In fact, this text results in excepting from the presumption of assignment the principal authors of a cinematographic work, among whom are in the first place literary authors represented by authors of scenarios and dialogues; but if, in the majority of cases, the literary contributions brought to a cinematographic work actually take the form of a scenario or a dialogue (it is unfortunate that commentators of documentary films have been omitted), the situation is not the same in the field of television. There, broadcasts assume multiple forms and often the literary text does not have the form of a dialogue, be it a report, a lecture, a comment or a poetic development. Consequently, it should be noted that some of the most important authors of televisual works will not be able to benefit from Article 14^{bis}(3) and will have to undergo the hardship of paragraph (2)(b), along with minor authors.

In the final analysis, although one might regret its complexity which is certainly not designed so as to facilitate the international circulation of intellectual works, Article 14^{bis} preserves in a large measure the rights of the principal authors of cinematographic works by the provisions of paragraph (3). Only minor authors such as the cameraman, director of photography, or assistant director, whose contributions are essentially technical and creative only when the director does not assume his obligations, remain subject to the presumption of assignment provided for in paragraph (2)(b). Similarly, the set and costume designers, who are always creative, but whose contributions have a secondary character, remain subject to the presumption.

Such a system is acceptable because it is both essential to safeguard the rights of those who make an important contribution to the combined production, and desirable not to paralyze the exploitation of the work by multiplying the number of authors liable to oppose the maker's initiatives by exercising the absolute prerogatives conferred on them by literary and artistic property.

Furthermore, if we look again at Article 14(4) of the Programme of the Conference, we can see that the text of the Stockholm Act offers to authors guarantees which are far superior. Thus, the Programme of the Conference provided for the application of the presumption both to authors of pre-existing works and to co-authors of a cinematographic work, without establishing a particular régime comparable to that in paragraph (3) of Article 14^{bis}. Furthermore, it reserved in vague terms to the countries of the Union the right to provide that the undertaking involving the presumption could be given by a written agreement or something having the same force (an imprecise expression likely to allow all kinds of abuse).

But this is an uncertain victory for authors, which has been won only by a complicated combination of exceptions and references to national legislation. The principle of investing the makers with the authors' rights or of granting makers the enjoyment of such rights has now been sanctioned by the Convention. While there is no mention of a presumption of assignment, which would at least have the moral merit of recalling to mind that the assigned rights come into existence for the benefit of authors, there is a presumption of legitimation, a formula which emphasizes that it is *a priori* admitted that the maker is qualified to take hold of the rights of authors and that there is a readiness to sanction that state of facts.

It is to be feared that the way is now open to further restrict authors' rights at future revisions of the Convention. The task will be relatively easy; it will suffice simply to maintain the principle already expressed in the Stockholm Act while abolishing the exceptions that make it inapplicable today.

In conclusion, it has been found that Articles 14 and 14^{bis} of the Stockholm Act still ensure to co-authors of cinematographic and televisual works a certain protection, but that they provide the basis of a system which is definitely unfavorable to authors, by facilitating for makers the exploitation of audio-visual works.

**ANNOUNCEMENT OF A VACANCY
FOR A POST IN BIRPI**

COMPETITION No. 69

Applications are invited for the following post:

Head of the Copyright Division

Category and Grade: P. 5

Principal duties:

The appointee will be responsible for the implementation of BIRPI's program on Copyright and Neighbouring Rights.

His duties will include:

- (a) Direction of the Copyright Division.
- (b) Writing of legal studies.
- (c) Acting as editor of *Copyright* and *Le Droit d'Auteur*.
- (d) Representation of BIRPI at meetings concerning Copyright and Neighbouring Rights and preparation of working papers for and reports on such meetings.
- (e) Directing the work of maintaining up to date a collection of Copyright and Neighbouring Rights legislation.

Qualifications:

- (a) University degree in law or equivalent legal qualifications.
- (b) Wide experience in the field of Copyright and Neighbouring Rights, including its international aspects.
- (c) Excellent knowledge of one of the official languages (English and French) and at least a good knowledge of the other. Additional languages would be an advantage.

Nationality:

Candidates must be nationals of one of the member States of the Paris or Berne Unions. Qualifications being equal, preference will be given to candidates who are nationals of States of which no national is on the staff of BIRPI.

Age limit:

The candidate designated must be less than 55 years of age at date of appointment.

Date of entry on duty:

As mutually agreed.

Application forms and full details regarding the conditions of employment may be obtained from the Head of Personnel, BIRPI, 32, chemin des Colombettes, 1211 Geneva, Switzerland.

Application forms, duly completed, should reach BIRPI not later than December 2, 1968.