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## Contents

### WORLD INTELLECTUAL PROPERTY ORGANIZATION

- Working Group on the Intellectual Property Aspects of Folklore Protection.  
Second Meeting (Paris, February 9 to 13, 1981) . . . . . 111
- **Costa Rica.** Accession to the WIPO Convention . . . . . 117

### NATIONAL LEGISLATION

- **Australia.** Copyright Amendment Act 1980 (No. 154 of 1980) . . . . . 118

### CORRESPONDENCE

- Letter from Morocco (**Abderraouf Kandil**) . . . . . 161

### BOOK REVIEWS

- Les institutions spécialisées du système des Nations Unies et leurs membres  
(**Antoine H. Zarb**) . . . . . 163

### CALENDAR OF MEETINGS . . . . . 163

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# World Intellectual Property Organization

## Working Group on the Intellectual Property Aspects of Folklore Protection

### Second Meeting

(Paris, February 9 to 13, 1981)

### Report

#### Introduction

1. Pursuant to the deliberations of the Executive Committee of the International Union for the Protection of Literary and Artistic Works (Berne Union) and the Intergovernmental Committee of the Universal Copyright Convention at their sessions from February 5 to 9, 1979, and to the decisions of the respective governing bodies of Unesco and WIPO, the Secretariat of Unesco and the International Bureau of WIPO convened a Working Group on the Intellectual Property Aspects of Folklore Protection which met in Geneva from January 7 to 9, 1980, to study a draft of Model Provisions intended for national legislation as well as international measures for the protection of works of folklore. In conclusion, this Working Group recommended, in respect of the said Model Provisions that a revised draft of Model Provisions for National Laws on the above subject and Commentary thereon should be prepared by the two Secretariats and presented for further consideration at a subsequent meeting. Accordingly, the Secretariat of Unesco and the International Bureau of WIPO prepared the relevant texts and jointly convened the second meeting of the Working Group on the Intellectual Property Aspects of Folklore Protection composed of the same group of experts from nineteen countries for consideration of the same. This second meeting of the Working Group was held at Unesco Headquarters at Paris from February 9 to 13, 1981. Seventeen of the nineteen experts invited participated in the meeting in their personal capacity. The meeting of the Working Group was also attended by representatives of two intergovernmental and eleven international non-governmental organizations as observers. The list of participants is annexed to this Report (Annex II).

2. The documentation available to the Working Group consisted of the "Revised Model Provisions for National Laws on the Protection of Expressions of Folklore" (document: UNESCO/WIPO/WG.II/FOLK/2) and Commentary on the said Revised Model Provisions (document: UNESCO/WIPO/WG.II/FOLK/3) prepared by the Secretariat of Unesco and the International Bureau of WIPO.

#### Opening of the Meeting

3. The meeting was opened on behalf of the Director-General of Unesco by Miss Marie-Claude Dock, Director of the Copyright Division, and on behalf of the Director General of WIPO by Mr. Claude Masouyé, Director, Public Information and Copyright Department, who welcomed the participants.

#### Election of Officers

4. For this second meeting the Working Group unanimously confirmed the previous officers, namely Dr. J.O. Alende (Argentina) as Chairman and Mr. P. Banki (Australia) and Dr. E.P. Gavrilov (Soviet Union) as Vice-Chairmen.

#### General Discussion

5. The experts in the Working Group congratulated the two Secretariats on the preparation of the documents. The Revised Model Provisions for National Laws on the Protection of Expressions of Folklore and the Commentary on the same were generally held to be of high quality, reflecting a realistic as well as pragmatic balance of various approaches developed by the experts in the first meeting of the Working Group. The approach to the new concept of determining the subject matter of the Model Provisions and the concern for further development of folklore were particularly appreciated.

6. The experts agreed that:

- (i) the preamble to the Revised Model Provisions should be optional, in view of the fact that various national legislators do not incorporate preambles in the national legislations;
- (ii) relationship between the protection of expressions of folklore and the protection under intellectual property should be dealt with in the Commentary in a more detailed manner and appropriate mention of the intellectual creativity character of folklore should be made in the preamble;
- (iii) exceptions complying with the developing countries' needs for use of expressions of folklore should be considered in a broader sense;
- (iv) general guidance should be provided on the reasons for which authorization for the utilization of the expressions of folklore may be refused;
- (v) contemporary aspirations with regard to interchange of expressions of folklore amongst different communities should be kept in mind; and
- (vi) the international protection of intellectual aspects of the expressions of folklore should be given high priority and the Model Provisions should serve as a basis for further efforts aiming at regional and international regulation of such protection.

#### **Discussion of the Revised Model Provisions Section by Section**

7. The general discussion was followed by elaborate examination, section by section, of the Revised Model Provisions. The experts made a number of observations as well as proposals amending the proposed text and adding new sections to it. In conclusion the Working Group adopted the Model Provisions for National Laws on the Protection of Expressions of Folklore as annexed to this Report (Annex I).

8. In the course of the discussions the experts also considered the Commentary on the Revised Model Provisions. As regards the changes made in the said Provisions, the following observations and suggestions were made by one or more experts, in order to be reflected in the new version of the above-mentioned Commentary to be prepared by the Secretariats on the Model Provisions as adopted.

#### *ad Section 2 (Draft Section 1):*

- (i) the subject matter of the Model Provisions has been determined in a way so as to allow national legislators to decide whether the law would apply only to folklore origina-

ting in the country or also to foreign folklore; consequently a new provision was adopted to this end under Section 15;

- (ii) the protection in respect of musical instruments concerns the design of such instruments;
- (iii) the protection of architectural forms should be optional.

#### *ad Section 3 (Draft Section 2):*

- (i) the following three criteria and their combinations were considered as regards rendering the utilization of expressions of folklore subject to authorization: gainful intent; whether the utilization was made by members or non-members of the community where the expression used is derived from; utilization outside the context of the traditional or usual use of the expression concerned;
- (ii) utilizations with gainful intent outside their traditional or usual contexts were made subject to authorization, allowing for utilization with gainful intent within its traditional or usual context, but requiring authorization also for utilization by members of the community of origin of the expression used, if made outside such a context;
- (iii) besides reproduction and distribution of copies, publication of the expression was also explicitly mentioned as a form of utilization which may be subject to authorization.

#### *ad Section 4 (Draft Section 3):*

Utilization of expressions of folklore should be free for all educational purposes in general and not restricted to utilization by way of illustration in the course of teaching.

#### *ad Section 5 (Draft Section 4):*

The origin of the expression of folklore utilized shall be indicated by mentioning the community and/or the geographical place from which that expression has been derived, since it may be difficult to determine where it originates from.

#### *ad Section 6 (Draft Section 5):*

- (i) both the minimum and maximum of the applicable fine or imprisonment should be fixed;
- (ii) denaturation of expressions of folklore should be made punishable only if committed on purpose;
- (iii) failure to apply for authorization to utilize expressions in cases where such utilization is subject to authorization should be sanctioned also by payment of the fee provided for the corresponding authorization;

- (iv) penal sanctions should be applied without prejudice to damages or other civil remedies: to this end a new provision (Section 9) was added to the Model Provisions.

*ad Section 7 (Draft Section 6):*

- (i) detailed explanations should be given in the Commentary concerning the alternative proposals adopted in the Model Provisions, with regard to countries whose legislation does not provide for seizure or where it is not consistent with their constitution; and corresponding other legal institutions should be mentioned;
- (ii) possible implements subject to seizure should be specified in the Commentary;
- (iii) the meaning of the term "object" should be defined so as to cover not only artefacts, but also documents and other materials.

*ad Section 8 (Draft Section 7):*

- (i) one expert proposed to limit the duration of protection of expressions of folklore in cases where they were published;
- (ii) it was felt, however, that the protection should not be limited in time;
- (iii) notwithstanding the fact that the protection of expressions of folklore was not limited in time, it appeared, to several experts, advisable not to declare this in view of the continuous changes in living tradition; this aspect should be explained in the Commentary;
- (iv) concerning time factor in the protection of expressions of folklore, national legislation should be confined to prescription as regards penal actions in view of offences.

*ad Section 9:*

The possibility to apply civil remedies, including damages, along with penal sanctions should be explained in detail in the Commentary.

*ad Section 10 (Draft Section 8):*

- (i) with regard to differences in the public law or private law system from one country to the other, the Model Provisions do not go into any detail concerning designation and competences of "competent" and "supervisory" authorities;
- (ii) the Commentary on these provisions should, however, draw the attention to the necessity of considering the intermediary role of such authorities, between the user of expressions of folklore and the community of origin of the expressions used; the authorities concerned should be designated on the basis of representativeness of the communities developing and maintaining folklore; the Commentary should also underline the important position which the communities should hold in the composition of these authorities;

- (iii) the Commentary should enumerate possible tasks and competences of such authorities (besides authorizing and controlling the use of expressions of folklore, *inter alia*, also to initiate or maintain registers of them, to provide for the control of authenticity of reproduced expressions, to organize the employment of the fees resulting from authorized uses of expressions of folklore, etc.).

*ad Section 11 (Draft Section 9):*

- (i) legislation should provide, besides individual authorization, also for blanket authorization of qualified users;
- (ii) authorization should also serve the purpose of preventive protection against denaturation of expressions of folklore, thus, it should not be obligatorily made subject to payment of fees;
- (iii) not all communities have an appropriate system for administering the employment of fees which may result from the use of their expressions of folklore; thus their direct participation in such returns should be made optional for national legislation: the reasons should be explained in the Commentary;
- (iv) some experts were in favour of a delay of 60 days for decision on applications for authorization; others preferred, however, 15 or 30 days, not to hamper envisaged uses of expressions of folklore; an expert wished that a delay of 10 days, to be computed from the date of the decision, be provided for in order to enable the authority to explain the reasons therefor;
- (v) replacing authorization by a system of optional "clearance" should also be considered in the Commentary; this system could function as an action against infringements and in practice offer certain administrative advantages.

*ad Section 15:*

The Model Provisions should pave the way for subregional, regional and international protection.

**Conclusion**

9. In conclusion, the Working Group recommended that the adopted Model Provisions and the Commentary to be prepared thereon by the Secretariats should be presented for further consideration at a meeting of Governmental Experts to be convened jointly by Unesco and WIPO in 1982.

**Adoption of the Report and Closing of the Meeting**

10. This Report was unanimously adopted.
11. After the usual thanks, the Chairman declared the meeting closed.

## ANNEX I

**Model Provisions for National Laws on the Protection of Expressions of Folklore**

[Considering that folklore represents an essential part of the living cultural heritage of the nation, developed and maintained by the communities within the nation;

Considering that the dissemination of various expressions of folklore may lead to improper exploitation of the cultural heritage of the nation;

Considering that any abuse of commercial or other nature or any denaturation of folklore is prejudicial to the cultural and economic interests of the nation;

Considering that expressions of folklore constituting manifestation of intellectual creativity deserve to be protected in a manner inspired by the protection provided for literary and artistic works;

The following provisions shall be given effect:]

**Section 1***Principle of Protection*

Expressions of folklore originating in [insert the name of the country] shall be protected by this [law] against illicit exploitation and other prejudicial actions.

**Section 2***Protected Expressions of Folklore*

1. For the purposes of this [law], "folklore" means the totality of the traditional artistic heritage developed and maintained by a community of [name of the country].

2. For the purposes of this [law], "expressions of folklore" mean creations consisting of characteristic elements of folklore, including:

- (i) verbal expressions, such as folk tales, folk poetry and riddles;
- (ii) musical expressions, such as folk songs and instrumental music;
- (iii) expressions by action, such as folk dances, plays and artistic forms of rituals;

whether or not reduced to a material form; and

- (iv) material expressions, such as:

- (a) productions of folk art, including in particular drawings, paintings, carvings, sculptures, pottery, terracotta, mosaic, woodwork, metalware, jewelry, basket weaving, needlework, textiles, carpets, costumes;
- (b) musical instruments;
- [(c) architectural forms].

**Section 3***Utilizations Subject to Authorization*

Subject to the provisions of Section 4, the following utilizations of the expressions of folklore are subject to authorization by the competent authority mentioned in Section 10, paragraph 1, when they are made with gainful intent outside their traditional or usual context:

- (i) any publication, reproduction and any distribution of copies of expressions of folklore;
- (ii) any public recitation or performance, any transmission by wireless means or by wire, and any other form of communication to the public, of expressions of folklore.

**Section 4***Exceptions*

1. Section 3 shall not apply in the following cases:

- (i) utilization for purposes of education;
- (ii) utilization by way of illustration in the original work of an author, provided that the extent of such utilization is compatible with fair practice;
- (iii) borrowing of elements of expressions of folklore for creating an original work of an author, provided such utilization is compatible with fair practice.

2. Section 3 shall not apply also where the utilization of the expressions of folklore is incidental. Incidental utilization includes, in particular:

- (i) utilization of any expression of folklore that can be seen or heard in the course of a current event for the purposes of reporting

on that event by means of photography, broadcasting, or sound or visual recording, provided that the extent of such utilization is justified by the informatory purpose;

- (ii) utilization of objects containing the expressions of folklore which are permanently located in a place where they can be viewed by the public, if the utilization consists in including their image in a photograph, in a film or in a television broadcast.

## Section 5

### *Acknowledgement of Source*

1. In all printed publications, and in connection with any communications to the public, of any identifiable expression of folklore, its origin shall be indicated in an appropriate manner, by mentioning the community and/or geographic place from where the expression utilized has been derived.
2. The requirement set forth in paragraph 1 shall not apply to utilizations referred to in Section 4, paragraphs 1(iii) and 2.

## Section 6

### *Offences*

1. Any person not complying with the requirement provided for in Section 5 shall be liable to a fine of a minimum of . . . and a maximum of . . .
2. Any person who, without the authorization of the competent authority referred to in Section 10, paragraph 1, utilizes an expression of folklore in violation of the provisions of Section 3, shall be obliged by the competent authority to cease such utilization. Besides the payment of the fees provided for under Section 11, paragraph 4, he shall be liable to a fine of a minimum of . . . and a maximum of . . . If he fails to comply with this injunction he shall be liable to a fine of a minimum of . . . and a maximum of . . .
3. Any person purposely deceiving others in respect of the origin of objects made or marketed by him, or in respect of public recitations or performances given or organized, broadcast or otherwise communicated to the public by him, presenting such objects, or the subject matter of such recitation or performances, as expressions of folklore of a certain community, where in fact they do not so originate, shall be punishable [by a fine of a minimum of . . . and a maximum of . . .] [by imprisonment not exceeding . . .] [by a fine of a minimum of . . . and a maximum of . . . and imprisonment not exceeding . . .].

4. Any person who makes for public distribution, distributes or offers for sale objects, publicly recites or performs, or organizes the public recital or performance of, or broadcasts or otherwise communicates to the public expressions of folklore in a way that such objects, recitals or performances purposely denature the same in a manner prejudicial to the cultural interests of the community concerned, shall be punishable [by a fine of a minimum of . . . and a maximum of . . .] [by imprisonment not exceeding . . .] [by a fine of a minimum of . . . and a maximum of . . . and imprisonment not exceeding . . .].

## Section 7

### *Seizure or other Actions*

Any object which was made in violation of this [law] and any receipts of the person violating it and corresponding to such violations, as well as any implements used mainly or solely for perpetrating the violation, shall be subject to [seizure] [applicable actions and remedies].

## Section 8

### *Prescription*

No action can be instituted concerning any offence under Section 6, after the lapse of . . . years following the date on which the offence has been committed.

## Section 9

### *Civil Remedies*

The sanctions provided for in [Section 6] [Sections 6 and 7] shall be applied without prejudice to damages or other civil remedies as the case may be.

## Section 10

### *Authorities*

1. For the purpose of this [law], the expression "competent authority" means . . .
2. For the purpose of this [law], the expression "supervisory authority" means . . .

**Section 11***Authorization*

1. Individual or blanket authorization of any utilization of expressions of folklore subject to authorization under this [law] has to be applied for [in writing] with the competent authority.

2. In the application, the applicant has to indicate his name, professional activity and address, specification and source of the expression of folklore intended to be utilized and the manner of the utilization intended. In the case of intended reproduction, the proposed number of copies and territory of distribution of the reproduced copies have also to be indicated. As regards recitals, performances and other communications to the public, the nature and number of them, as well as the territory to be covered by the authorization, have to be specified.

3. The decision of the competent authority shall be communicated to the applicant in written form within [15] [30] days following the receipt of the application; any denial of authorization shall be accompanied by the reasons therefor. If no decision is made within the said time limit, the authorization shall be regarded as granted.

4. Where the competent authority grants authorization it may fix in its decision the amount of and collect fees corresponding to a tariff [established] [approved] by the supervisory authority. The fees collected shall be used for the purpose of promoting or safeguarding national [culture] [folklore]; [a share of . . . % in the fees collected shall be granted to the community from which the expressions of folklore for the utilization of which the fees were paid originate]. [The competent authority is entitled to deduct from the fees collected a part corresponding to its costs arising from the administration of this Section.]

5. Appeals against the decisions of the competent authority are admissible by the person applying for the authorization and the representative of the interested community.

**Section 12***Jurisdiction*

1. Appeals against the decisions of the [competent authority] [supervisory authority] are admissible to the Court of . . .

2. In case of any offence under Section 6, the Court of . . . has jurisdiction.

**Section 13***Relation to Other Forms of Protection*

This [law] shall in no way limit or prejudice any protection applicable to expressions of folklore under the copyright law, the law protecting performers, producers of phonograms and broadcasting organizations, the laws protecting industrial property, or any other law or international agreement to which the country is party. It shall in no way prejudice other forms of protection provided for the safeguard and preservation of folklore, either.

**Section 14***Interpretation*

The protection granted under this [law] shall in no way be interpreted in a manner which could hinder the normal use and development of expressions of folklore.

**Section 15***Protection of Expressions of Folklore of Foreign Countries*

Expressions of folklore developed and maintained by a community of a foreign country are protected under this [law],

- (i) subject to reciprocity, or
- (ii) on the basis of international treaties or agreements.

**ANNEX II****List of Participants****I. Members of the Working Group**

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Mr. Dan Awodoye  
Principal Cultural Officer, Departement of Culture, Federal  
Ministry of Youth and Culture, Lagos (Nigeria)

Dr. Brigitte Bachmann-Geiser  
Présidente de la Société suisse des traditions populaires,  
Berne (Suisse)

Mr. Peter Banki  
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M. Jean Carbonnier  
Professeur à l'Université de droit de Paris II, Paris (France)

Dr. Mihály Ficsor  
Director General, Hungarian Bureau for the Protection of  
Authors' Rights (ARTISJUS), Budapest (Hungary)

Dr. Edouard Gavrilov  
Head, Legal Departement, Copyright Agency of the USSR  
(VAAP), Moscow (USSR)

Mr. Alan Jabbour  
Director, American Folklife Center, Library of Congress,  
Washington, D. C. (USA)

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Président, Comité culturel national, Ministère des affaires  
culturelles, Tunis (Tunisie)

Mr. Narayana Menon  
Director, National Centre for the Performing Arts, Bombay  
(India)

M. Ndéné Ndiaye  
Directeur général, Bureau sénégalais du droit d'auteur,  
Dakar (Sénégal)

Mme Maria Ariadna Niedzielska  
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Sr. Juan Manuel Terán Contreras  
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cación Pública, México (México)

*Adviser*

Sra. Madeleine Thomas

Asesora del Director General del Derecho de Autor,  
Secretaría de Educación Pública

## II. Intergovernmental Organizations

**African Intellectual Property Organization (OAPI):** P. N'Goma. **Arab Educational, Cultural and Scientific Organization (ALECSO):** A. Derradji.

## III. International Non-Governmental Organizations

**European Broadcasting Union (EBU):** W. Rumphorst. **International Association for the Protection of Industrial Property (AIPPI):** T. Mollet-Viéville. **International Confederation of Professional and Intellectual Workers (CITI):** G. Poulle. **International Confederation of Societies of Authors and Composers (CISAC):** M. Pickering. **International Copyright Society (INTERGU):** G. Halla; J. Kuckertz. **International Federation of Film Producers Associations (FIAPF):** A. Brisson. **International Federation of Translators (FIT):** R. Haeseryn. **International Literary and Artistic Association (ALAI):** A. Françon; R. Castelain. **International Music Council (IMC):** T. van Khê. **International Publishers Association (IPA):** J. A. Koutchoumow. **International Writers Guild (IWG):** E. Le Bris.

## IV. Secretariat

**World Intellectual Property Organization (WIPO)**

C. Masouyé (*Director, Public Information and Copyright Departement*); G. Boytha (*Head, Copyright Law Division*).

**United Nations Educational, Scientific and Cultural Organization (UNESCO)**

M.-C. Dock (*Director, Copyright Division*); A. M. N. Alam (*Legal Officer, Copyright Division*); E. Guerassimov (*Legal Officer, Copyright Division*).

## COSTA RICA

### Accession to the WIPO Convention

The Government of the Republic of Costa Rica deposited, on March 10, 1981, its instrument of accession to the Convention Establishing the World Intellectual Property Organization (WIPO).

The Convention Establishing the World Intellectual Property Organization will enter into force, with

respect to the Republic of Costa Rica, three months after the date of deposit of its instrument of accession, that is, on June 10, 1981.

WIPO Notification No. 116, of March 12, 1981.

## National Legislation

AUSTRALIA

# Copyright Amendment Act 1980

No. 154 of 1980

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### An Act to amend the *Copyright Act 1968*

[Assented to 19 September 1980]

BE IT ENACTED by the Queen, and the Senate and the House of Representatives of the Commonwealth of Australia, as follows:

#### Short title, &c.

1. (1) This Act may be cited as the *Copyright Amendment Act 1980*.
- (2) The *Copyright Act 1968*<sup>1</sup> is in this Act referred to as the Principal Act.

#### Commencement

2. (1) Sections 17, 18 and 19 shall come into operation on the day on which this Act receives the Royal Assent.
- (2) The remaining provisions of this Act shall come into operation upon a date to be fixed by Proclamation.

#### Copyright not to subsist except by virtue of this Act or the Designs Act

3. Section 8 of the Principal Act is amended—
  - (a) by omitting from sub-section (1) “the next succeeding sub-section” and substituting “section 8A”; and
  - (b) by omitting sub-section (2).

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<sup>1</sup> See *Copyright*, 1970, pp. 178, 218, 247 and 267.

*Copyright Amendment No. 154, 1980*

4. After section 8 of the Principal Act the following section is inserted:

**Prerogative rights of the Crown in the nature of copyright**

“8A. (1) Subject to sub-section (2), this Act does not affect any prerogative right or privilege of the Crown.

“(2) Where a right or privilege of the Crown by way of copyright subsists in a work or published edition of a work, a person does not infringe that right or privilege by doing, or authorizing the doing of, an act in relation to the work or edition without the licence of the Crown if, assuming that that right or privilege of the Crown did not subsist in the work or edition, but copyright subsisted under this Act in the work or edition and was owned by a person other than the Crown, he would not infringe the copyright of that owner in the work or edition by doing, or by authorizing the doing of, that act without the licence of the owner.

“(3) Nothing in sub-section (2) shall be taken to limit the duration of the right or privilege of the Crown by way of copyright in a work or published edition of a work.”.

**Interpretation**

5. Section 10 of the Principal Act is amended—

(a) by inserting after the definition of “adaptation” the following definition:

“ ‘archives’ means—

(a) archival material in the custody of—

- (i) the Australian Archives;
  - (ii) the Archives Office of New South Wales established by the *Archives Act 1960* of the State of New South Wales;
  - (iii) the Public Record Office established by the *Public Records Act 1973* of the State of Victoria; or
  - (iv) the Archives Office of Tasmania established by the *Archives Act 1965* of the State of Tasmania;
- or

(b) a collection of documents or other material to which this paragraph applies by virtue of sub-section (4);”;

(b) by inserting after the definition of “author” the following definition:

“ ‘authorized officer’, in relation to a library or archives, means the officer in charge of that library or archives or a person authorized by that officer to act on his behalf;”;

(c) by inserting after the definition of “calendar year” the following definition:

“ ‘central records authority’ means a body, whether incorporated or unincorporated—

(a) which is established for the purpose of holding records that are deposited with it under section 203B or 203G in

*Copyright Amendment No. 154, 1980*

respect of copies of works and parts of works made by educational institutions in reliance on section 53B and by institutions assisting handicapped readers in reliance on section 53D; and

- (b) which is declared by the regulations to be a central records authority for the purposes of this Act;”;
- (d) by inserting after the definition of “drawing” the following definition:

“‘educational institution’ means—

- (a) a school or similar institution at which full-time primary education or full-time secondary education is provided or both full-time primary education and full-time secondary education are provided;
- (b) a university, a college of advanced education or a technical and further education institution;
- (c) an institution, other than an institution referred to in paragraph (a) or (b), that conducts courses of primary, secondary or tertiary education by correspondence or on an external study basis;
- (d) an institution (other than an institution referred to in paragraph (a), (b) or (c)) which has, as its principal function, the provision of courses of study or training for the purpose of general education or of preparation for a particular occupation or profession and is declared by the regulations to be an institution to which this paragraph applies; or
- (e) any other institution which has, as its sole or principal function, the furnishing of material to educational institutions included in a class of educational institutions referred to in paragraphs (a), (b), (c) and (d) of this definition for the purpose of assisting the institutions in their teaching purposes and is declared by the regulations to be an institution to which this paragraph applies,

but does not include an institution that is conducted for the profit, direct or indirect, of an individual or individuals;”;

- (e) by inserting after the definition of “future copyright” the following definition:

“‘handicapped reader’ means—

- (a) a blind person;
- (b) a person suffering severe impairment of his sight;
- (c) a person unable to hold or manipulate books or to focus or move his eyes; or
- (d) a person suffering from a perceptual handicap;”;

*Copyright Amendment No. 154, 1980*

- (f) by inserting after the definition of “infringing copy” the following definition:
- “ ‘institution assisting handicapped readers’ means—
- (a) an educational institution; or
  - (b) any other institution, not being an institution conducted for the profit, direct or indirect, of an individual or individuals, that has as its principal function, or one of its principal functions, the provision of literary or dramatic works to handicapped readers and that is declared by the regulations to be, for the purposes of this Act, an institution assisting handicapped readers;”
- (g) by inserting after the definition of “manuscript” the following definition:
- “ ‘officer in charge’ means—
- (a) in relation to archives—the archivist or other person having, for the time being, immediate care and control of the collection comprising the archives;
  - (b) in relation to a central records authority—the person having, for the time being, immediate care and control of the records deposited with the authority; and
  - (c) in relation to a library—the librarian or other person having, for the time being, immediate care and control of the collection comprising the library;”
- (h) by omitting “and also includes the administration of a Territory” from the definition of “the Crown” and substituting “and the Crown in right of the Northern Territory and also includes the Administration of a Territory other than the Northern Territory”; and
- (j) by adding at the end thereof the following sub-sections:
- “(2) Without limiting the meaning of the expression ‘reasonable portion’ in this Act, where a literary, dramatic or musical work is contained in a published edition of that work, being an edition of not less than 10 pages, a copy of part of that work, as it appears in that edition, shall be taken to contain only a reasonable portion of that work if the pages that are copied in the edition—
- (a) do not exceed, in the aggregate, 10% of the number of pages in that edition; or
  - (b) in a case where the work is divided into chapters—exceed, in the aggregate, 10% of the number of pages in that edition but contain only the whole or part of a single chapter of the work.
- “(3) In this Act, unless the contrary intention appears—
- (a) a reference to the body administering an educational institution, an institution assisting handicapped readers or a central records authority shall be read as—
    - (i) in a case where the institution or authority is a body corporate—a reference to the institution or authority, as the case may be; or

*Copyright Amendment No. 154, 1980*

- (ii) in any other case—a reference to the body or person (including the Crown) having ultimate responsibility for the administration of the institution or authority, as the case may be;
- (b) a reference to the body administering a library or archives shall be read as a reference to the body (whether incorporated or not), or the person (including the Crown), having ultimate responsibility for the administration of the library or archives;
- (c) a reference to a copy of a sound recording shall be read as a reference to a record embodying a sound recording or a substantial part of a sound recording being a record derived directly or indirectly from a record produced upon the making of a sound recording;
- (d) a reference to the copying records of an educational institution or an institution assisting handicapped readers shall be read as a reference to the collection of—
  - (i) the relevant records in respect of copies of articles and other works made by or on behalf of the body administering the institution in reliance on section 53B; and
  - (ii) the relevant records in respect of copies of articles and other works made by or on behalf of the body administering the institution in reliance on section 53D, other than any such records as have been duly destroyed by, or by authority of, the body administering that institution;
- (e) a reference to the Crown in right of a State shall be read as including a reference to the Crown in right of the Northern Territory;
- (f) a reference to the custodian in charge of the copying records of an educational institution or an institution assisting handicapped readers shall be read as a reference to the person having responsibility for the day-to-day administration of the institution;
- (g) a reference to the making, by reprographic reproduction, of a copy of a document, or of the whole or a part of a work, shall be read as a reference to the making of a facsimile copy of the document or the whole or that part of the work, being a facsimile copy of any size or form;
- (h) a reference to a handicapped reader's copy of a work, or of a part of a work, shall be read as a reference to—
  - (i) a record embodying a sound recording of the work, or of the part of the work, being a record that was made by, or on behalf of, the body administering an institution assisting handicapped readers for use by a handicapped reader for the purpose of research or study that he is undertaking or proposes to undertake or for the purpose of instructing himself on any matter; or

*Copyright Amendment No. 154, 1980*

- (ii) a Braille version, large-print version or photographic version of the work, or of the part of the work, being a Braille version, large-print version or photographic version, as the case may be, made by, or on behalf of, the body administering the institution assisting handicapped readers for use by a handicapped reader for the purpose of research or study that he is undertaking or proposes to undertake or for the purpose of instructing himself on any matter;
- (j) a reference to a microform copy of the whole or a part of a work shall be read as a reference to a copy of the whole or a part of the work produced by miniaturizing the graphic symbols of which the work is composed;
- (k) a reference to a periodical publication shall be read as a reference to an issue of a periodical publication and a reference to articles contained in the same periodical publication shall be read as a reference to articles contained in the same issue of that periodical publication;
- (l) a reference to a record embodying a sound recording shall be read as a reference to—
  - (a) a record produced upon the making of a sound recording; or
  - (b) another record embodying the sound recording directly or indirectly derived from a record so produced;
- (m) a reference to a relevant record, or a relevant declaration, in relation to the making, in reliance on a particular section—
  - (i) of a copy, or a handicapped reader's copy, of the whole or a part of a work; or
  - (ii) of a copy of a sound recording,shall be read as a reference to any record or declaration of a kind referred to in that section that is required by this Act to be made in relation to the making of that copy; and
- (n) a reference to a State shall be read as including a reference to the Northern Territory and a reference to a Territory shall be read as not including a reference to the Northern Territory.

“(4) Where—

- (a) a collection of documents or other material of historical significance or public interest that is in the custody of a body, whether incorporated or unincorporated, is being maintained by the body for the purpose of conserving and preserving those documents or other material; and
- (b) the body does not maintain and operate the collection for the purpose of deriving a profit,

paragraph (b) of the definition of ‘archives’ in sub-section (1) applies to that collection.”

*Copyright Amendment No. 154, 1980*

6. After section 39 of the Principal Act the following section is inserted:

**Infringing copies made on machines installed in libraries and archives**

“39A. Where—

- (a) a person makes an infringing copy of, or of part of, a work on a machine for the making, by reprographic reproduction, of copies of documents, being a machine installed by or with the approval of the body administering a library or archives on the premises of the library or archives, or outside those premises for the convenience of persons using the library or archives; and
- (b) there is affixed to, or in close proximity to, the machine, in a place readily visible to persons using the machine, a notice of the prescribed dimensions and in accordance with the prescribed form,

neither the body administering the library or archives nor the officer in charge of the library or archives shall be taken to have authorized the making of the infringing copy by reason only that the copy was made on that machine.”

**Fair dealing for purpose of research or study**

7. Section 40 of the Principal Act is amended—

- (a) by omitting “private”; and
- (b) by adding at the end thereof the following sub-sections:

“(2) For the purposes of this Act, the matters to which regard shall be had, in determining whether a dealing with a literary, dramatic, musical or artistic work or with an adaptation of a literary, dramatic or musical work, being a dealing by way of copying the whole or a part of the work or adaptation, constitutes a fair dealing with the work or adaptation for the purpose of research or study include—

- (a) the purpose and character of the dealing;
- (b) the nature of the work or adaptation;
- (c) the possibility of obtaining the work or adaptation within a reasonable time at an ordinary commercial price;
- (d) the effect of the dealing upon the potential market for, or value of, the work or adaptation; and
- (e) in a case where part only of the work or adaptation is copied—the amount and substantiality of the part copied taken in relation to the whole work or adaptation.

“(3) Notwithstanding sub-section (2), a dealing with a literary, dramatic or musical work, or with an adaptation of such a work, being a dealing by way of the copying, for the purposes of research or study—

- (a) if the work or adaptation comprises an article in a periodical publication—of the whole or a part of that work or adaptation; or
- (b) in any other case—of not more than a reasonable portion of the work or adaptation,

shall be taken to be a fair dealing with that work or adaptation for the purpose of research or study.



*Copyright Amendment No. 154, 1980*

“(4) Sub-section (3) does not apply to a dealing by way of the copying of the whole or a part of an article in a periodical publication if another article in that publication, being an article dealing with a different subject matter, is also copied.”.

**Reproduction for purpose of judicial proceedings or professional advice**

8. Section 43 of the Principal Act is amended by adding at the end thereof the following sub-section:

“(2) A fair dealing with a literary, dramatic, musical or artistic work does not constitute an infringement of the copyright in the work if it is for the purpose of the giving of professional advice by a legal practitioner or patent attorney.”.

9. Section 48 of the Principal Act is repealed and the following section substituted:

**Interpretation**

“48. In this Division, a reference to an article contained in a periodical publication shall be read as a reference to anything (other than an artistic work) appearing in such a publication.”.

10. Sections 49 and 50 of the Principal Act are repealed and the following sections substituted:

**Copying by libraries and archives for users**

“49. (1) A person may furnish to the officer in charge of a library (not being a library that is conducted for the profit, direct or indirect, of an individual or individuals) or the officer in charge of archives—

- (a) a request in writing to be supplied with a copy of an article, or a part of an article, contained in a periodical publication or of the whole or a part of a published literary, dramatic or musical work other than an article contained in a periodical publication; and
- (b) a declaration signed by him stating—
  - (i) that he requires the copy for the purpose of research or study and will not use it for any other purpose or, if he is a member of a Parliament and the copy is being requested from the person in charge of a library the principal purpose of which is to provide library services for members of that Parliament, that he requires the copy for the performance of his duties as such a member and will not use it for any other purpose; and
  - (ii) that he has not previously been supplied with a copy of the same article or other work, or the same part of the article or other work, as the case may be, by an authorized officer of the library or archives.

“(2) Subject to this section, where a request and declaration referred to in sub-section (1) are furnished to the officer in charge of a library or archives, an authorized officer of the library or archives may, unless the declaration

*Copyright Amendment No. 154, 1980*

contains a statement that to his knowledge is untrue in a material particular, make, or cause to be made, the copy to which the request relates and supply the copy to the person who made the request.

“(3) Where a charge is made for making and supplying a copy to which a request under sub-section (1) relates, sub-section (2) does not apply in relation to the request if the amount of the charge exceeds the cost of making and supplying the copy.

“(4) Sub-section (2) does not apply in relation to a request for a copy of, or parts of, 2 or more articles contained in the same periodical publication unless the articles relate to the same subject matter.

“(5) Sub-section (2) does not apply to a request for a copy of the whole of a literary, dramatic or musical work (other than an article contained in a periodical publication), or to a copy of a part of such a work that contains more than a reasonable portion of the work unless—

- (a) the work forms part of the library or archives collection; and
- (b) before the copy is made, an authorized officer has, after reasonable investigation, made a declaration stating that he is satisfied that a copy (not being a second-hand copy) of the work cannot be obtained within a reasonable time at an ordinary commercial price.

“(6) The copyright in an article contained in a periodical publication is not infringed by the making, in relation to a request under sub-section (1), of a copy of the article, or of a part of the article, in accordance with sub-section (2) unless the copy is supplied to a person other than the person who made the request.

“(7) The copyright in a published literary, dramatic or musical work other than an article contained in a periodical publication is not infringed by the making, in relation to a request under sub-section (1), of a copy of the work, or of a part of the work, in accordance with sub-section (2) unless the copy is supplied to a person other than the person who made the request.

“(8) The regulations may exclude the application of sub-section (6) or (7) in such cases as are specified in the regulations.

**Copying by libraries or archives for other libraries or archives**

“50. (1) The officer in charge of a library may request, or cause another person to request, the officer in charge of another library to supply the officer in charge of the first-mentioned library with a copy of an article, or a part of an article, contained in a periodical publication, or of the whole or a part of a published literary, dramatic or musical work other than an article contained in a periodical publication—

- (a) for the purpose of including the copy in the collection of the first-mentioned library; or
- (b) for the purpose of supplying the copy to a person who has made a request for the copy under section 49.

“(2) Subject to this section, where a request is made by or on behalf of the officer in charge of a library to the officer in charge of another library

*Copyright Amendment No. 154, 1980*

under sub-section (1), an authorized officer of the last-mentioned library may make, or cause to be made, the copy to which the request relates and supply the copy to the officer in charge of the first-mentioned library.

“(3) Where, under sub-section (2), an authorized officer of a library makes a copy of the whole or a part of a work and supplies it to the officer in charge of another library in accordance with a request made under sub-section (1)—

- (a) the copy shall, for all purposes of this Act, be deemed to have been made on behalf of an authorized officer of the other library for the purpose for which the copy was requested; and
- (b) an action shall not be brought against the body administering that first-mentioned library, or against any officer or employee of that library, for infringement of copyright by reason of the making or supplying of that copy.

“(4) Subject to this section, where a copy of the whole or a part of an article contained in a periodical publication, or of any other published literary, dramatic or musical work, is, by virtue of sub-section (3), to be deemed to have been made on behalf of an authorized officer of a library, the copyright in the article or other work is not infringed by the making of the copy.

“(5) The regulations may exclude the application of sub-section (4) in such cases as are specified in the regulations.

“(6) Where a charge is made for making and supplying a copy to which a request under sub-section (1) relates, sub-section (4) does not apply in relation to the request if the amount of the charge exceeds the cost of making and supplying the copy.

“(7) Sub-section (4) does not apply to or in relation to a copy of the whole or a part of an article or other work that is, by virtue of sub-section (3), to be deemed to have been made on behalf of an authorized officer of a library for a purpose referred to in sub-section (1) unless, as soon as practicable after the request was made, an authorized officer of the library made a declaration that set out particulars of the request (including the purpose for which the copy was requested) and stated—

- (a) in a case where a copy of the whole or a part of the article or other work had previously been supplied, in accordance with a request under sub-section (1), for the purpose of inclusion in the collection of the library—that the copy so supplied had been lost, destroyed or damaged, whichever was appropriate; and
- (b) in a case where the copy was a copy of the whole of a literary, dramatic or musical work (other than an article contained in a periodical publication) or of a part of such a work that contains more than a reasonable portion of the work—that, after reasonable investigation, he was satisfied that a copy (not being a second-hand copy) of the work could not be obtained within a reasonable time at an ordinary commercial price.

“(8) Sub-section (4) does not apply to a copy of, or of parts of, 2 or more articles that are contained in the same periodical publication and that have been requested for the same purpose unless the articles relate to the same subject matter.

*Copyright Amendment No. 154, 1980*

“(9) In this section, a reference to a library shall be read as a reference to a library other than a library that is conducted for the profit, direct or indirect of an individual or individuals, and as including a reference to archives.”.

**Copying of unpublished works in libraries or archives**

**11.** Section 51 of the Principal Act is amended—

- (a) by omitting from paragraph (b) of sub-section (1) “a library or other place” and substituting “the collection of a library or archives”;
- (b) by omitting from paragraph (b) of sub-section (1) “that library or other place” and substituting “that collection”;
- (c) by omitting from paragraph (c) of sub-section (1) “private”;
- (d) by omitting paragraph (d) of sub-section (1) and substituting the following paragraph:
  - “(d) by the making of a copy of the work by, or on behalf of, the officer in charge of that library or archives if the copy is supplied to a person who satisfies the officer in charge of that library or archives that he requires the copy for the purpose of research or study or with a view to publication and that he will not use it for any other purpose.”; and
- (e) by omitting sub-section (2) and substituting the following sub-section:
  - “(2) Where a manuscript, or a copy, of a thesis or other similar literary work that has not been published is kept in a library of a university or other similar institution or in an archives, the copyright in the thesis or other work is not infringed by the making of a copy of the thesis or other work by or on behalf of the officer in charge of the library or archives if the copy is supplied to a person who satisfies an authorized officer of the library or archives that he requires the copy for the purpose of research or study.”.

**12.** After section 51 of the Principal Act the following section is inserted:

**Copying of works for preservation and other purposes**

“51A. (1) Subject to sub-section (4), the copyright in a work that forms, or formed, part of the collection of a library or archives is not infringed by the making, by or on behalf of the officer in charge of the library or archives, of a copy (including a microform copy) of the work—

- (a) if the work is held in manuscript form or is an original artistic work— for the purpose of preserving the manuscript or original artistic work, as the case may be, against loss or deterioration or for the purpose of research that is being, or is to be, carried out at the library or archives in which the work is held or at another library or other archives;
- (b) if the work is held in the collection in a published form but has been damaged or has deteriorated—for the purpose of replacing the work; or
- (c) if the work has been held in the collection in a published form but has been lost or stolen—for the purpose of replacing the work.

*Copyright Amendment No. 154, 1980*

“(2) The copyright in a work that is held in the collection of a library or archives is not infringed by the making, by or on behalf of the officer in charge of the library or archives, for a purpose other than a purpose for which a copy may be made under sub-section (1), of a single microform copy of the work so held.

“(3) Sub-section (2) does not apply in relation to the making of a microform copy of a work held in the collection of a library or archives unless, as soon as practicable after the copy is made, the work from which the copy is made is destroyed.

“(4) Sub-section (1) does not apply in relation to a work held in published form in the collection of a library or archives unless an authorized officer of the library or archives has, after reasonable investigation, made a declaration stating that he is satisfied that a copy (not being a second-hand copy) of the work cannot be obtained within a reasonable time at an ordinary commercial price.

“(5) The making of a copy, under sub-section (1) or (2), of an unpublished work does not, for any purpose of this Act, constitute the publication of the work.”.

**Application of Division to illustrations accompanying articles and other works**

13. Section 53 of the Principal Act is amended—

- (a) by omitting from paragraph (b) “or section 51” and substituting “, section 51 or 51A”; and
- (b) by inserting in paragraph (d) “section 51A or” after “a reference in”.

14. After Division 5 of Part III of the Principal Act the following Divisions are inserted:

***“Division 5A—Copying of works in educational institutions***

**Multiple copying of insubstantial portions of works**

“53A. (1) Subject to this section, copyright in a literary or dramatic work is not infringed by the making, on the premises of an educational institution, by any person, for the purposes of a course of education provided by the institution, of a copy or copies of a page or pages of the work in an edition of the work, or of works that include the work.

“(2) Sub-section (1) does not apply to—

- (a) the making of a copy or copies of the whole of a work; or
- (b) the making of a copy or copies of more than 2 of the pages of a work in an edition of the work, or of works that include the work, unless—
  - (i) 1% of the total number of pages in the edition exceeds 2 pages; and
  - (ii) the total number of pages so copied does not exceed 1% of the total number of pages in the edition.

“(3) Where a person has made or caused to be made on an occasion a copy of a part of a work contained on a page or pages in an edition of the work, or of works that include the work, in reliance on this section, sub-section (1) does

*Copyright Amendment No. 154, 1980*

not apply to the making, by or on behalf of that person, on a subsequent occasion less than 14 days after the day on which the previous copying took place, of a copy of any other part of that work.

**Multiple copying under statutory licence by educational institutions**

“53B. (1) Subject to this section, the copyright in an article contained in a periodical publication is not infringed by the making of copies of the whole or a part of that article, by or on behalf of the body administering an educational institution—

- (a) in a case where the educational institution is not a resource centre—for the teaching purposes of that institution; and
- (b) in any other case—for the teaching purposes of an educational institution other than a resource centre.

“(2) Subject to this section, the copyright in a work, other than an article in a periodical publication, is not infringed by the making of copies of the whole or a part of that work, by or on behalf of the body administering an educational institution—

- (a) in a case where the educational institution is not a resource centre—for the teaching purposes of that institution; and
- (b) in any other case—for the teaching purposes of an educational institution other than a resource centre.

“(3) Without limiting the meaning of the expression ‘for the teaching purposes of an institution’, a copy of a work shall be taken to have been made for the teaching purposes of an institution if—

- (a) it is made in connection with a particular course of instruction provided by that institution; or
- (b) it is made for the purpose of inclusion in the collection of a library of that institution.

“(4) Sub-section (1) does not apply in relation to copies of, or of parts of, 2 or more articles contained in the same periodical publication unless the articles relate to the same subject matter.

“(5) Sub-section (2) does not apply in relation to copies of, or of more than a reasonable portion of, a work that has been separately published unless the person who makes the copies, or causes the copies to be made, for or on behalf of the body administering the educational institution, is satisfied, after reasonable investigation, that copies (not being second-hand copies) of the work cannot be obtained within a reasonable time at an ordinary commercial price.

“(6) Sub-section (1) does not apply to copies of the whole or a part of an article contained in a periodical publication, being copies made, by or on behalf of the body administering an educational institution, for the teaching purposes

*Copyright Amendment No. 154, 1980*

of an educational institution, unless there is made, by or on behalf of that body, as soon as practicable after the making of those copies, a record of the copying setting out—

- (a) if the International Standard Serial Number in respect of the periodical publication is recorded in the periodical publication—that number;
- (b) if the International Standard Serial Number in respect of the publication is not so recorded—the name of the periodical publication;
- (c) the title or description of the article;
- (d) the name of the author of the article (if that name is known);
- (e) the volume, or volume and number, as the case requires, of the periodical publication containing the article;
- (f) the page numbers of the pages in that volume, or in that number of that volume, that have been copied, or, in a case where a page so copied does not bear a page number, such description of the page as will enable it to be identified;
- (g) the date on which those copies have been made;
- (h) the number of copies made; and
- (j) particulars of such other matters as are prescribed.

“(7) Sub-section (2) does not apply to copies of the whole or a part of a work (not being an article contained in a periodical publication), being copies made, by or on behalf of the body administering an educational institution, for the teaching purposes of an educational institution, unless there is made, by or on behalf of that body, as soon as practicable after the making of those copies, a record of the copying setting out—

- (a) if the International Standard Book Number in respect of the work is recorded in the edition of the work copied—that number;
- (b) if the International Standard Book Number in respect of the work is not so recorded—
  - (i) the title or description of the work;
  - (ii) the name of the publisher of the edition of the work; and
  - (iii) the name of the author of the work (if that name is known);
- (c) the page numbers of the pages in the edition of the work that have been copied, or, in a case where a page so copied does not bear a page number, such description of the page as will enable it to be identified;
- (d) the date on which those copies have been made;
- (e) the number of copies made; and
- (f) particulars of such other matters as are prescribed.

“(8) For the purposes of sub-sections (6) and (7) a record of the copying of a work or a part of a work—

- (a) may be kept in writing or in any other manner prescribed by the regulations; and
- (b) if it is kept in writing, shall be in accordance with the prescribed form.

*Copyright Amendment No. 154, 1980*

“(9) Where copies of, or of part of, a work, other than an article in a periodical publication, made as provided in sub-section (2) by or on behalf of an educational institution for the teaching purposes of an educational institution—

(a) are made for distribution to persons undertaking a correspondence course, or an external study course, provided by the educational institution for the teaching purposes of which those copies are made, otherwise than as a part of the lecture notes prepared in connection with that course; and

(b) do not contain more than a reasonable portion of the work,

the record made in relation to them in accordance with sub-section (7) may state that they are copies to which this section applies.

“(10) Where copies of, or of part of, a work consisting of an article in a periodical publication made, as provided in sub-section (1), by or on behalf of the body administering an educational institution for the teaching purposes of an educational institution are made for distribution to persons undertaking a correspondence course, or an external study course, provided by the educational institution for the teaching purposes of which those copies are made, otherwise than as a part of the lecture notes prepared in connection with that course, the record made in relation to them in accordance with sub-section (6) may state that they are copies to which this sub-section applies.

“(11) Where copies of the whole or a part of a work, not being copies stated in the record to be copies to which sub-section (9) or (10) applies, are made by or on behalf of the body administering an educational institution and, by virtue of this section, the making of those copies does not infringe copyright in the work, that body shall, if the owner of the copyright in the work makes a request, in writing, at any time during the prescribed period after the making of the copies, for payment for the making of the copies, pay to the owner such an amount by way of equitable remuneration for the making of those copies as is agreed upon between the owner and the body or, in default of agreement, as is determined by the Copyright Tribunal on the application of either the owner or the body.

“(12) Where the Copyright Tribunal has determined the amount of equitable remuneration payable to the owner of copyright in a work by the body administering an educational institution in relation to copies of the whole or a part of that work that have been made by or on behalf of that body in reliance on this section, the owner may recover that amount from the body in a court of competent jurisdiction as a debt due to him.

“(13) Nothing in this section affects the right of the owner of copyright in a work to grant a licence authorizing the body administering an educational institution to make, or cause to be made, copies of the whole or a part of the work without infringement of that copyright.

“(14) In this section, a reference to a resource centre shall be read as a reference to an institution that, for the purposes of the definition of ‘educational



*Copyright Amendment No. 154, 1980*

institution' in section 10, is declared by the regulations to be an institution to which paragraph (e) of that definition applies.

**Application of Division to illustrations accompanying articles and other works**

“53C. Where an article or other literary, dramatic or musical work is accompanied by an artistic work or artistic works provided for the purpose of explaining or illustrating the article or other work, the preceding sections of this Division apply as if—

- (a) where any of those sections provides that the copyright in the article or other work is not infringed—the reference to that copyright included a reference to any copyright in that artistic work or those artistic works;
- (b) a reference in section 53A or 53B to a copy of an article or other work included a reference to a copy of the article or other work together with a copy of that artistic work or those artistic works;
- (c) a reference in section 53A or 53B to a copy of a part of an article or other work included a reference to a copy of that part of the article or other work together with a copy of the artistic work or artistic works provided for the purpose of explaining or illustrating that part;
- (d) a reference in section 53A to a copy of a page of a literary, dramatic or musical work in an edition of the work or of works that include the work included a reference to a copy of a page in such an edition that contained that work and an artistic work or artistic works provided for the purpose of explaining or illustrating that part of that work; and
- (e) a reference in section 53A to a copy of pages of a literary, dramatic or musical work in an edition of that work or of works that include that work included a reference to a copy of pages in such an edition that contained a part of that work and an artistic work or artistic works provided for the purpose of explaining or illustrating that part of that work.

**“Division 5B—Copying of works in institutions assisting handicapped readers**

**Multiple copying under statutory licence by institutions assisting handicapped readers**

“53D. (1) The copyright in a literary or dramatic work that has been published is not infringed by the making, by or on behalf of the body administering an institution assisting handicapped readers, of a record embodying a sound recording of the work or of a part of the work, for use by a handicapped reader for the purpose of research or study that he is undertaking or proposes to undertake, or for the purpose of otherwise instructing himself on any matter.

“(2) The copyright in a literary or dramatic work that has been published is not infringed by the making, by or on behalf of the body administering an institution assisting handicapped readers, of a Braille version, a large-print version or a photographic version, of the work or of a part of the work, for use

*Copyright Amendment No. 154, 1980*

by a handicapped reader for the purpose of research or study that he is undertaking or proposes to undertake, or for the purpose of otherwise instructing himself on any matter.

“(3) Where a sound recording of a work has been published, sub-section (1) does not apply to the making of any record embodying a sound recording of the work (including a record that is a copy of that first-mentioned sound recording) for or on behalf of the body administering an institution assisting handicapped readers unless the person who makes that record, or causes that record to be made, is satisfied, after reasonable investigation, that no new record that embodies only a sound recording of the work can be obtained within a reasonable time at an ordinary commercial price.

“(4) Where a Braille version of a work has been separately published, sub-section (2) does not apply to the making of a Braille version of the work, or of a part of the work, unless the person who makes that version, or causes that version to be made, for or on behalf of the body administering an institution assisting handicapped readers is satisfied, after reasonable investigation, that no new copy of a Braille version of the work, being a version that has been separately published, can be obtained within a reasonable time at an ordinary commercial price.

“(5) Where a large-print version of a work has been separately published, sub-section (2) does not apply to the making of a large-print version of the work, or of a part of the work, unless the person who makes the version, or causes the version to be made, for or on behalf of the body administering an institution assisting handicapped readers is satisfied, after reasonable investigation, that no new copy of a large-print version of the work, being a version that has been separately published, can be obtained within a reasonable time at an ordinary commercial price.

“(6) Where a photographic version of a work has been separately published, sub-section (2) does not apply to the making of a photographic version of the work, or of a part of the work, unless the person who makes the version, or causes the version to be made, for or on behalf of the body administering an institution assisting handicapped readers is satisfied, after reasonable investigation, that no new copy of a photographic version of the work, being a version that has been separately published, can be obtained within a reasonable time at an ordinary commercial price.

“(7) Sub-sections (1) and (2) do not apply to the reproduction of the whole or a part of an article contained in a periodical publication by way of the making, by or on behalf of the body administering an institution assisting handicapped readers, of a handicapped reader's copy of the article or of that part of the article unless there is made, by or on behalf of that body, as soon as practicable after the making of that copy, a record of the copying setting out—

- (a) if the International Standard Serial Number in respect of the periodical publication is recorded in the periodical publication—that number;
- (b) if the International Standard Serial Number in respect of the publication is not so recorded—the name of the periodical publication;

*Copyright Amendment No. 154, 1980*

- (c) the title or description of the article;
- (d) the name of the author of the article (if that name is known);
- (e) the volume, or volume and number, as the case requires, of the periodical publication containing the article;
- (f) the page numbers of the pages in that volume, or in that number of that volume, that have been copied, or, in a case where a page so copied does not bear a page number, such description of the page as will enable it to be identified;
- (g) the date on which the copy has been made;
- (h) the form in which the copy has been made; and
- (j) particulars of such other matters as are prescribed.

“(8) Sub-sections (1) and (2) do not apply to the reproduction of the whole or a part of a work (not being an article contained in a periodical publication) by way of the making, by or on behalf of the body administering an institution assisting handicapped readers, of a handicapped reader’s copy of the work or of that part of the work unless there is made, by or on behalf of that body, as soon as practicable after the making of that copy, a record of the copying setting out—

- (a) if the International Standard Book Number in respect of the work is recorded in the edition of the work copied—that number;
- (b) if the International Standard Book Number in respect of the work is not so recorded—
  - (i) the title or description of the work;
  - (ii) the name of the publisher of the edition of the work; and
  - (iii) the name of the author of the work (if that name is known);
- (c) the page numbers of the pages in the edition of the work that have been reproduced, or, in a case where a page so reproduced does not bear a page number, such description of the page as will enable it to be identified;
- (d) the date on which the copy has been made;
- (e) the form in which the copy has been made; and
- (f) particulars of such other matters as are prescribed.

“(9) For the purposes of sub-sections (7) and (8), a record of the copying of a work or a part of a work—

- (a) may be kept in writing or in any other manner prescribed by the regulations; and
- (b) if it is kept in writing, shall be in accordance with the prescribed form.

“(10) Where a handicapped reader’s copy of the whole or a part of a work is made by or on behalf of the body administering an institution assisting handicapped readers and, by virtue of this section, the making of that copy

*Copyright Amendment No. 154, 1980*

does not infringe copyright in the work, that body shall, if the owner of the copyright in the work makes a request, in writing, at any time during the prescribed period after the making of the copy, for payment for the making of the copy, pay to the owner such an amount by way of equitable remuneration for the making of that copy as is agreed upon between the owner and the body, or, in default of agreement, such amount as is determined by the Copyright Tribunal on the application of either the owner or the body.

“(11) Where the Copyright Tribunal has determined the amount of equitable remuneration payable to the owner of copyright in a work by the body administering an institution assisting handicapped readers in relation to a handicapped reader’s copy of the whole or a part of that work that has been made by or on behalf of that body in reliance on this section, the owner may recover that amount from the body in a court of competent jurisdiction as a debt due to him.

“(12) Notwithstanding any other provision of this Act, copyright shall not vest in the maker of the handicapped reader’s copy by reason of his making that copy.

“(13) Nothing in this section affects the right of the owner of copyright in a work to grant a licence authorizing the body administering an institution assisting handicapped readers to make, or cause to be made, sound recordings of, or Braille, large-print or photographic versions of, the whole or a part of the work without infringement of that copyright.

“(14) For the purposes of this section, a record, or a Braille version, a large-print version or a photographic version, of a work shall be taken to be a new record, or a new Braille version, a new large-print version or a new photographic version, of the work, as the case may be, if it is not a second-hand record, or a second-hand Braille version, a second-hand large-print version or a second-hand photographic version, of the work, as the case may be.

“(15) In this section, a reference to a photographic version of a work or a part of a work shall be read as a reference to a copy or copies of the work or a part of a work produced as a film-strip or series of separate transparencies designed to meet the needs of handicapped readers.”.

15. Section 104 of the Principal Act is repealed and the following section substituted:

**Acts done for purposes of judicial proceeding**

“104. A copyright subsisting by virtue of this Part is not infringed by anything done—

- (a) for the purpose of a judicial proceeding or a report of a judicial proceeding;
- (b) for the purpose of seeking professional advice from a legal practitioner or patent attorney; or
- (c) for the purpose of, or in the course of, the giving of professional advice by a legal practitioner or patent attorney.”.

*Copyright Amendment No. 154, 1980*

16. Section 112 of the Principal Act is repealed and the following section is substituted:

**Reproductions of editions of work**

“112. The copyright in a published edition of a work or works is not infringed by the making of a reproduction of the whole or a part of that edition if that reproduction is made in the course of—

- (a) where the edition contains one work only—
  - (i) a dealing with that work, being a dealing that does not, by virtue of section 40, 41, 42, 43 or 44, infringe copyright in that work; or
  - (ii) the making of a copy (including a handicapped reader's copy) of the whole or a part of that work, being a copy the making of which does not, by virtue of section 49, 50, 51A, 53A, 53B, 53D or 182A, infringe copyright in that work; or
- (b) where the edition contains more than one work—
  - (i) a dealing with one of those works or dealings with some or all of those works, being a dealing that does not, or dealings that do not, by virtue of section 40, 41, 42, 43 or 44, infringe copyright in that work or those works; or
  - (ii) the making of a copy (including a handicapped reader's copy) of the whole or a part of one of those works or the making of copies (including handicapped readers' copies) of the whole or parts of some or all of those works, being a copy the making of which does not, or copies the making of which do not, by virtue of section 49, 50, 51A, 53A, 53B, 53D or 182A, infringe copyright in that work or in those works.”.

**Offences**

17. Section 132 of the Principal Act is amended by adding at the end thereof the following sub-sections:

“(7) Prosecutions for offences against this section may be brought in the Federal Court of Australia or in any other court of competent jurisdiction.

“(8) Jurisdiction is conferred on the Federal Court of Australia to hear and determine prosecutions for offences against this section.”.

**Penalties**

18. Section 133 of the Principal Act is amended—

- (a) by omitting sub-sections (1) and (2) and substituting the following sub-sections:

“(1) A contravention by a person of sub-section (1) or (2) of section 132 is an offence punishable upon summary conviction—

- (a) if it is his first conviction of an offence by reason of a contravention of that section and the article or each article to which the contravention relates is an infringing copy of a work other

*Copyright Amendment No. 154, 1980*

than a cinematograph film—by a fine not exceeding \$150 for the article, or for each article, to which the offence relates;

- (b) if it is his first conviction of an offence by reason of a contravention of that section and the article or each article to which the contravention relates is an infringing copy of a cinematograph film—by a fine not exceeding \$1,500 for the article, or for each article, to which the offence relates;
- (c) if it is not his first conviction of an offence by reason of a contravention of that section and the article or each article to which the contravention relates is an infringing copy of a work other than a cinematograph film—by a fine not exceeding \$150 for the article, or for each article, to which the offence relates or by imprisonment for a period not exceeding 6 months; and
- (d) if it is not his first conviction of an offence by reason of a contravention of that section and the article or each article to which the contravention relates is an infringing copy of a cinematograph film—by a fine not exceeding \$1,500 for the article, or for each article, to which the offence relates or by imprisonment for a period not exceeding 6 months.

“(2) Where a fine is imposed upon a person by virtue of sub-section (1)—

- (a) if the person is prosecuted before the Federal Court of Australia—it shall not exceed \$10,000 in respect of articles comprised in the same operation or transaction; and
- (b) if the person is prosecuted before any other court—it shall not exceed \$1,500 in respect of articles comprised in the same operation or transaction.”;
- (b) by omitting from paragraph (a) of sub-section (3) “Two hundred dollars” and substituting “\$1,500”;
- (c) by omitting paragraph (b) of sub-section (3) and substituting the following paragraph:
  - “(b) in any other case—by a fine not exceeding \$1,500 or by imprisonment for a period not exceeding 6 months,”; and
- (d) by inserting in sub-section (4) “or recording equipment” after “plate”.

19. After section 144 of the Principal Act the following sections are inserted:

**Disclosure of interests by members**

“144A. (1) Where a member is, or is to be, the Tribunal, or a member of the Tribunal, as constituted for the purposes of a proceeding and he has or acquires any interest, pecuniary or otherwise, that could conflict with the proper performance of his functions in relation to that proceeding—

- (a) he shall disclose the interest to the parties to the proceeding; and
- (b) except with the consent of all the parties to the proceeding, he shall not take part in the proceeding.

*Copyright Amendment No. 154, 1980*

“(2) Where the President becomes aware that a member is, or is to be, the Tribunal, or a member of the Tribunal, as constituted for the purposes of a proceeding and that the member has, in relation to that proceeding, such an interest as is mentioned under sub-section (1)—

- (a) if the President considers that the member should not take part, or should not continue to take part, in the proceeding—he shall give a direction to the member accordingly; or
- (b) in any other case—he shall cause the interest of the member to be disclosed to the parties to the proceeding.

“(3) In this section—

- (a) a reference to a proceeding shall be read as a reference to a proceeding by way of an inquiry by, or an application or reference to, the Tribunal under this Act; and
- (b) a reference to a party to a proceeding, being an inquiry conducted by the Tribunal in pursuance of section 148, shall be read as a reference to a person or organization recognized by the Tribunal as a party to the inquiry.

**Removal from office for failure to disclose interest**

“144B. Where the Governor-General is satisfied that a member has failed, without reasonable excuse, to make a disclosure that he is, under sub-section 144A (1), required to make, the Governor-General shall remove that member from office.”.

20. After section 149 of the Principal Act the following section is inserted:

**Applications to Tribunal for determination of remuneration payable to owner of copyright for copies made under statutory licence**

“149A. (1) This section applies where application is made to the Tribunal in pursuance of sub-section 53B (11) or sub-section 53D (10) for the determination of an equitable remuneration to be paid to the owner of the copyright in a work for the making of copies or of a handicapped reader’s copy, as the case requires, of the whole or of a part of that work.

“(2) The parties to an application in relation to which this section applies are—

- (a) the owner of the copyright in a work; and
- (b) the body by which, or on behalf of which, the copies or the handicapped reader’s copy referred to in sub-section (1) were or was made.

“(3) Where an application in relation to which this section applies is made to the Tribunal, the Tribunal shall consider the application and, after giving the parties to the application opportunities of presenting their cases—

- (a) shall make an order determining the amount that it considers to be equitable remuneration to the owner of the copyright for the making of the copies or of the handicapped reader’s copy, as the case requires; and
- (b) may, subject to the regulations, make such order as to costs as the Tribunal thinks fit.

*Copyright Amendment No. 154, 1980*

“(4) Where the Tribunal makes, under sub-section (3), an order that one party to an application pay an amount by way of costs to the other party to the application, the first-mentioned party shall pay that amount to the other party and, in default of payment, the first-mentioned party may recover that amount from the other party in a court of competent jurisdiction as a debt due to him.”.

21. After section 159 of the Principal Act the following sections are inserted:

**Attorney-General may make application for suspension order**

“159A. (1) Subject to sub-section (2), upon application made to it by the Attorney-General, the Tribunal may, in its discretion, make an order suspending the application of sub-sections 53B (1) and (2) in relation to the body administering an educational institution, being a body that has been convicted of 2 or more offences against sub-section 203A (2) in relation to the retention of records or declarations relating to copies of the whole or parts of works made in reliance on section 53B.

“(2) The Tribunal shall not make an order under sub-section (1) if it is satisfied that the body in relation to which the order is sought has taken all reasonable steps to ensure that no further contravention of sub-section 203A (2) will occur in relation to the retention of records or declarations relating to copies made or to be made by or on behalf of the body.

“(3) For the purposes of sub-section (1), a conviction of the custodian in charge of the copying records of an educational institution for a contravention of sub-section 203A (2), not being a conviction for a contravention in relation to which the body administering the educational institution has also been convicted, shall be taken to be a conviction of the body administering the educational institution.

“(4) The parties to an application under sub-section (1) in relation to a body administering an educational institution are—

- (a) the Attorney-General; and
- (b) that body.

**Application to revoke suspension orders**

“159B. (1) The body administering an educational institution may, at any time, make application to the Tribunal for the revocation of an order under section 159A suspending the application of sub-section 53B (1) in relation to it.

“(2) Where the Tribunal is satisfied, upon application made under sub-section (1), that the body making the application has taken all reasonable steps to ensure that no further contravention of sub-section 203A (2) will occur in relation to the retention of records or declarations relating to copies made or to be made in reliance on section 53B, the Tribunal may revoke the order to which the application relates.



*Copyright Amendment No. 154, 1980*

“(3) The parties to an application under sub-section (1) for the revocation of an order made in relation to the body administering an institution are—

- (a) that body; and
- (b) the Attorney-General.”.

**22.** After section 163 of the Principal Act the following section is inserted:

**Application may be made to Tribunal by the agent of the copyright owner**

“163A. (1) An owner of copyright may make an application to the Tribunal under this Act by his agent.

“(2) Two or more owners of copyright may jointly make a single application to the Tribunal by the same agent against the same person or body.”.

**23.** After section 182 of the Principal Act the following section is inserted:

**Copyright in statutory instruments and judgments, &c.**

“182A. (1) The copyright, including any prerogative right or privilege of the Crown in the nature of copyright, in a prescribed work is not infringed by the making, by reprographic reproduction, of one copy of the whole or of a part of that work by or on behalf of a person and for a particular purpose.

“(2) Sub-section (1) does not apply to the making, by reprographic reproduction, of a copy of the whole or a part of the work, where a charge is made for making and supplying that copy, unless the amount of the charge does not exceed the cost of making and supplying that copy.

“(3) In sub-section (1), ‘a prescribed work’ means—

- (a) an Act or State Act, an enactment of the legislature of a Territory or an instrument (including an Ordinance or a rule, regulation or by-law) made under an Act, a State Act or such an enactment;
- (b) a judgment, order or award of a Federal court or of a court of a State or Territory;
- (c) a judgment, order or award of a Tribunal (not being a court) established by or under an Act or other enactment of the Commonwealth, a State or a Territory;
- (d) reasons for a decision of a court referred to in paragraph (b), or of a Tribunal referred to in paragraph (c), given by the court or by the Tribunal; or
- (e) reasons given by a Justice, Judge or other member of a court referred to in paragraph (b), or of a member of a Tribunal referred to in paragraph (c), for a decision given by him either as the sole member, or as one of the members, of the court or Tribunal.”.

**Use of copyright material for the services of the Crown**

**24.** Section 183 of the Principal Act is amended by adding at the end thereof the following sub-section:

“(11) The copying of the whole or a part of a work for the teaching purposes of an educational institution of, or under the control of, the Commonwealth,

*Copyright Amendment No. 154, 1980*

a State or the Northern Territory shall, for the purposes of this section, be deemed not to be an act done for the services of the Commonwealth, that State or the Northern Territory.”.

25. Before section 196 of the Principal Act the following section is inserted in Part X:

**Interpretation**

“195A. (1) In this Part, ‘officer in charge’ means—

- (a) in relation to archives—the person holding, or performing the duties of, the office or position in the service of the body administering the archives the duties of which involve that person having direct responsibility for the maintenance of, and the provision of services in relation to, the collection comprising the archives;
- (b) in relation to a central records authority—the person holding, or performing the duties of, the office in the service of the body administering the authority the duties of which involve that person having direct responsibility for the maintenance of, and the provision of services in relation to, the records deposited with the authority; and
- (c) in relation to a library—the officer holding, or performing the duties of, the office or position in the service of the body administering the library the duties of which involve that person having direct responsibility for the maintenance of, and the provision of services in relation to, the collection comprising the library.

“(2) In this Part, a reference to the prescribed retention period after the making of a copy of the whole or a part of a work that was made in reliance on section 49, 50, 51A, 53B or 53D shall be read as a reference to such period as is declared by the regulations to be the prescribed retention period for the purposes of this Part.”.

**Use of works and broadcasts for educational purposes**

26. Section 200 of the Principal Act is amended by inserting in paragraph (a) of sub-section (1) “or an appliance capable of producing a copy or copies by a process of reprographic reproduction” after “copies”.

27. After section 203 of the Principal Act the following sections are inserted in Part X:

**Retention of records and declarations in relation to copies made by libraries, archives or institutions**

“203A. (1) Where, at any time before the expiration of the prescribed retention period after the making of a copy of the whole or a part of a work in reliance on section 49, 50 or 51A by an authorized officer of a library or archives, a relevant declaration in relation to the making of the copy is not retained in the records of the library or archives—

- (a) the body administering the library or archives concerned; and

*Copyright Amendment No. 154, 1980*

(b) the officer in charge of the library or archives concerned, are each guilty of an offence punishable, upon conviction, by a fine not exceeding \$500.

“(2) Subject to sub-section (3), where, at any time before the expiration of the prescribed retention period after—

- (a) the making of a copy of the whole or a part of the work in reliance on section 53B by or on behalf of the body administering an educational institution; or
- (b) the making of a handicapped reader’s copy of the whole or a part of a work in reliance on section 53D by or on behalf of the body administering an institution assisting handicapped readers,

a relevant record in relation to the making of the copy is not retained in the records of the institution concerned—

- (c) the body administering the institution concerned; and
- (d) the custodian in charge of the copying records of the institution concerned,

are each guilty of an offence punishable, upon conviction, by a fine not exceeding \$500.

“(3) Sub-section (2) does not apply to a relevant record relating to the making of a copy of the whole or a part of a work by or on behalf of the body administering an institution at any time while—

- (a) the record is being conveyed from the institution to a central records authority of the institution for deposit with that authority;
- (b) the record is deposited with a central records authority of the institution; or
- (c) the record is being conveyed from a central records authority of the institution to the institution or to another central records authority of the institution.

“(4) A body or person is not liable to be convicted twice of an offence against sub-section (1) with respect to the retention of the same declaration or against sub-section (2) with respect to the retention of the same record.

“(5) It is a defence to a prosecution of the officer in charge of a library or archives for an offence against sub-section (1) in relation to the retention of a declaration or to a prosecution of the officer in charge of the copying records of an institution for an offence against sub-section (2) in relation to the retention of a record if the person prosecuted (in this sub-section referred to as the ‘defendant’)—

- (a) satisfies the court that the record or declaration relates to the making of a copy of a work or a part of a work before the date upon which the defendant became the officer in charge of the library or archives or the custodian in charge of the copying records of the institution and

*Copyright Amendment No. 154, 1980*

was not in the possession of the body administering the library or archives, or the institution, as the case requires, at that date; or

- (b) satisfies the court that—
- (i) the contravention was due to the act or default of another person or to some other circumstance beyond the control of the defendant; and
  - (ii) he took all reasonable precautions and exercised due diligence to avoid the contravention.

**Certain institutions may elect to deposit copying records with central records authorities**

“203B. (1) The body administering an educational institution may, by instrument in writing furnished to the Attorney-General, elect to deposit the records of the institution relating to any copying done in reliance on section 53B and the records of the institution relating to any copying done in reliance on section 53D with the central records authority specified in the notice and, upon the making of that election, the central records authority so specified becomes, for the purposes of this Act, the central records authority of the institution.

“(2) The body administering an institution assisting handicapped readers (not being an institution that is also an educational institution) may, by instrument in writing furnished to the Attorney-General, elect to deposit the records of the institution relating to copying done in reliance on section 53D with the central records authority specified in the notice and, upon the making of that election, the central records authority so specified becomes, for the purposes of this Act, the central records authority of the institution.

“(3) An election by the body administering an institution referred to in sub-section (1) or (2) to deposit records of the institution with a central records authority is of no effect unless the central records authority in respect of which the election is made is a body corporate, or, if it is not a body corporate, is administered by the body making the election.

“(4) Where the body administering an institution is the Crown in right of the Commonwealth or of a State, an election under sub-section (1) or (2) may be signed on behalf of the Crown by the Minister of the Commonwealth or of the State responsible for the institution, or by a person authorized by that Minister to sign elections under this section.

“(5) Where the body administering an institution makes an election under sub-section (1) or (2) to deposit the records of the institution relating to copying done under section 53B or 53D with a central records authority—

- (a) the custodian in charge of the copying records of the institution shall—
- (i) cause any such copying records that were in the possession of the institution or of another central records authority immediately before the election is made to be deposited with the officer in charge of the first-mentioned central records authority as soon as practicable after the election is made; and

*Copyright Amendment No. 154, 1980*

- (ii) cause the relevant record in respect of each copy of a work or a part of a work made by or on behalf of that body after the election is made to be deposited with the first-mentioned central records authority as soon as practicable after the making of the copy and before the expiration of the period prescribed for the purposes of this sub-section after the making of the copy; and
- (b) the body administering the institution shall—
  - (i) if there were relevant records of the institution in existence immediately before the election is made—as soon as practicable after paragraph (a) has been complied with in respect of those records; or
  - (ii) in any other case—as soon as practicable after the election is made,

cause a copy of the election to be published in the *Gazette*.

“(6) If the custodian in charge of the copying records of an institution fails to comply with sub-section (5) in relation to a relevant record of a copying made in reliance on section 53B or 53D after the making of the election, the custodian and the body administering the institution are each guilty of an offence against this sub-section punishable, upon conviction, by a fine not exceeding \$500.

“(7) Where a central records authority is the central records authority of an institution, an election by the body administering the institution to deposit the relevant records of the institution relating to copying done in reliance on section 53B or 53D with another central records authority is of no effect unless—

- (a) the body administering the institution has delivered to the body administering the first-mentioned central records authority a notice under sub-section 203G (1) revoking the election made by it in respect of that central records authority;
- (b) the body administering the first-mentioned central records authority has delivered to the body administering the institution a notice under sub-section 203G (2) of its intention to return the copying records of that institution to that institution; or
- (c) the Attorney-General has delivered to the body administering the institution a copy of a notice under sub-section 203G (6) requiring the return to that institution of the copying records of that institution.

**Retention of copying records by central records authorities**

“203c. (1) Subject to sub-section (2), where, at any time after the relevant record of an institution in respect of the making of a copy (including a handi-capped reader’s copy) of the whole or a part of a work in reliance on section 53B or 53D has been deposited with a central records authority of the institution under section 203B or 203G but before the expiration of the prescribed retention period after the making of that copy, that record is not in the possession of the central records authority—

- (a) the body administering the central records authority; and

*Copyright Amendment No. 154, 1980*

(b) the officer in charge of the central records authority, are each guilty of an offence punishable, upon conviction, by a fine not exceeding \$500.

“(2) Sub-section (1) does not apply in relation to the retention, by a central records authority, of a relevant record relating to the making of a copy of the whole or a part of a work by or on behalf of the body administering an institution if the relevant record has been forwarded by the central records authority to that institution or to another central records authority in pursuance of sub-section 203G (5) or (9).

“(3) A body or person is not liable to be convicted twice of an offence against sub-section (1) with respect to the retention of the same record.

“(4) It is a defence to a prosecution of the officer in charge of a central records authority (in this sub-section referred to as the ‘defendant’) for an offence against sub-section (1) in relation to the retention of a record deposited with the authority if the defendant—

- (a) satisfies the court that the record was so deposited before the defendant became the officer in charge of the authority and was not in the possession of the authority at the time the defendant became the officer in charge of the authority; or
- (b) satisfies the court that—
  - (i) the contravention was due to the act or default of another person or to some other circumstance beyond the control of the defendant; and
  - (ii) he took all reasonable precautions and exercised due diligence to avoid the contravention.

**Arrangement of declarations and records**

“203D. (1) Where the declarations that relate to the making of copies of the whole or parts of works by an authorized officer of a library or archives in reliance on any of the following sections, namely, sections 49, 50 and 51A, and that are retained in the records of the body administering the library or archives are not arranged in chronological order according to the dates on which the declarations were made—

- (a) the body administering the library or archives, as the case may be; and
- (b) the officer in charge of the library or archives, as the case may be, are each guilty of an offence punishable, upon conviction, by a fine not exceeding \$500.

“(2) Where the copying records of an educational institution, or an institution assisting handicapped readers, are not arranged in such a manner as to allow a person to inspect all of those records that relate to works by the same author without having to inspect any such records that relate to works by another author, the body administering the institution and the custodian

*Copyright Amendment No. 154, 1980*

in charge of the copying records of the institution are each guilty of an offence punishable, upon conviction, by a fine not exceeding \$500.

“(3) Sub-section (2) does not apply to or in relation to an institution that is required by this Act to deposit the copying records of the institution with a central records authority.

“(4) Where the copying records of an educational institution, or of an institution assisting handicapped readers, that are deposited with a central records authority are not arranged in such a manner as to allow a person to inspect all the records of that institution that relate to works by the same author without having to inspect any records of that institution that relate to works by another author, or any copying records of another institution that are deposited with that authority, the body administering the central records authority and the officer in charge of the central records authority are each guilty of an offence, punishable, upon conviction, by a fine not exceeding \$500.

**Inspection of records and declarations retained by libraries, archives or institutions**

“203E. (1) The owner of the copyright in a work, or the agent of such an owner—

- (a) may notify the officer in charge of a library or archives, in writing, that he wishes to inspect—
  - (i) all the relevant declarations retained in the records of the library or archives that relate to the making, in reliance on section 49, 50 or 51A, of copies of works or parts of works; or
  - (ii) such of those declarations as relate to the making, in reliance on section 49, 50 or 51A, of copies of works or parts of works and were made during a period specified in the notice, on a day specified in the notice, being an ordinary working day of the library, archives or institution not less than 7 days after the date of the giving of the notice; and
- (b) may, if the notice related to the making of copies of works or parts of works in reliance on section 51A, state in the notice that he also wishes to inspect, on the day so specified, the collection of the library or archives.

“(2) The owner of the copyright in a work, or the agent of such an owner, may notify the custodian in charge of the copying records of an educational institution or an institution assisting handicapped readers (not being an institution which deposits its copying records with a central records authority), in writing, that he wishes to inspect—

- (a) all the relevant records of the institution that relate to the making, in reliance on section 53B or 53D, of copies, or handicapped readers' copies, of works or parts of works; or
- (b) such of those records as relate to the works of a specified author, on a day specified in the notice, being an ordinary working day of the institution not less than 7 days after the date of the giving of the notice.

*Copyright Amendment No. 154, 1980*

“(3) The owner of the copyright in a work, or the agent of such an owner, may notify the officer in charge of a central records authority, in writing, that on a day specified in the notice, being an ordinary working day of the authority not less than 7 working days after the date of the giving of the notice, he wishes to inspect—

- (a) all the relevant records of all institutions of which the authority is the central records authority, or all the relevant records of a specified institution of which the authority is the central records authority, that are deposited with the authority and relate to the making, in reliance on section 53B or 53D, of copies, or handicapped readers’ copies, of works or parts of works; or
- (b) such of the records of all institutions of which the authority is the central records authority, or such of the records of a specified institution of which the authority is the central records authority, as are deposited with the authority and relate to the works of a specified author.

“(4) Where a person gives notice, under sub-section (1), to the officer in charge of a library or archives that he wishes to inspect certain declarations on a particular day, that person may, during the ordinary working hours of the library or archives, on that day, but not earlier than 10 a.m. or later than 3 p.m., inspect the declarations to which the notice relates and, where the notice relates also to the inspection of the collection of the library or archives, may also during those hours on that day inspect that collection, and, for that purpose, may enter the premises of the library or archives.

“(5) Where a person gives notice under sub-section (2) or (3) to the custodian in charge of the copying records of an institution or to the officer in charge of a central records authority that he wishes to inspect certain records on a particular day that person may, during the ordinary working hours of the institution or authority on that day, but not earlier than 10 a.m. or later than 3 p.m., inspect the records to which the notice relates and, for that purpose, may enter the premises of the institution at which the copying records of the institution are kept or the premises of the authority, as the case requires.

“(6) Where a person who attends at the premises of a library or archives for the purpose of exercising the powers conferred on him by sub-section (4) is not provided with all reasonable facilities and assistance for the effective exercise of those powers—

- (a) the body administering the library or archives, as the case may be; and
  - (b) the officer in charge of the library or archives, as the case may be,
- are each guilty of an offence punishable, upon conviction, by a fine not exceeding \$500.

“(7) Where a person who attends at the premises of an educational institution, an institution assisting handicapped readers or a central records



*Copyright Amendment No. 154, 1980*

authority for the purpose of exercising the powers conferred on him by sub-section (5) is not provided with all reasonable facilities and assistance for the effective exercise of those powers—

- (a) the body administering the institution or central records authority, as the case may be; and
  - (b) the custodian in charge of the copying records of the institution or the officer in charge of the central records authority, as the case may be,
- are each guilty of an offence, punishable, upon conviction, by a fine not exceeding \$500.

**Additional offences in relation to the making and retention of records and declarations**

“203F. (1) A person shall not, under section 49, 50, 51A, 53B or 53D, make a declaration or record that is false or misleading in a material particular.

Penalty: \$500.

“(2) A person shall not wilfully dispose of or destroy, or cause to be disposed of or destroyed, any relevant declaration or record in relation to the making of a copy of the whole or a part of a work in reliance on section 49, 50, 51A or 53B or in relation to the making of a handicapped reader’s copy of the whole or a part of a work in reliance on section 53D unless the prescribed retention period in respect of the declaration or record has expired.

Penalty: \$500.

“(3) Where the body administering a central records authority fails to publish in the *Gazette* a copy of an election made by it under section 203B in accordance with the requirements of sub-section (5) of that section, the body administering that central records authority is guilty of an offence, punishable, upon conviction, by a fine not exceeding \$500.

“(4) Where the body administering a central records authority causes a notice to be published in the *Gazette* under sub-section 203G (9) that is false or misleading in a material particular, the body administering that central records authority is guilty of an offence, punishable, upon conviction, by a fine not exceeding \$500.

**Return of copying records deposited with a central records authority**

“203G. (1) A body that has made an election under sub-section 203B (1) or (2) to deposit its copying records with a central records authority may, at any time, by notice in writing furnished to the body administering the central records authority, revoke the election on a date specified in the notice, being a date not less than 30 days after delivery of the notice to the body administering the central records authority.

“(2) The body administering the central records authority of an institution may, at any time, by notice in writing furnished to the body administering the institution, inform the body administering the institution that as soon as practicable after a date specified in the notice, being a date not less than 30 days after delivery of the notice to the body administering the institution, it intends to cause the copying records of the institution retained by the authority to be returned to the institution.

*Copyright Amendment No. , 1980*

“(3) A body shall, as soon as practicable after it causes a notice to be delivered to another body under sub-section (1) or (2), cause a copy of the notice to be delivered to the Attorney-General.

Penalty: \$500.

“(4) Where the body administering an institution is the Crown in right of the Commonwealth or of a State, a notice under sub-section (1) or (2) may be signed on behalf of the Crown by the Minister of the Commonwealth or of the State responsible for the institution, or by a person authorized by that Minister to sign elections under this section.

“(5) Where—

- (a) the body administering an institution, by notice in writing furnished to the body administering a central records authority, revokes an election made under section 203B in relation to that central records authority; or
- (b) the body administering a central records authority of an institution, by notice in writing furnished to the body administering the institution, informs the body administering the institution that it intends to cause the copying record of the institution deposited with the authority to be returned to the institution,

the body administering the central records authority shall, as soon as practicable after the revocation of the election under sub-section (1) or the date specified in the notice given under sub-section (2), cause the copying records of the institution deposited with it—

- (c) unless paragraph (b) applies—to be returned to the custodian in charge of the copying records of the institution; or
- (d) if the body administering the institution informs the body administering the central records authority, by notice in writing, that it has made an election to deposit the copying records of the institution with another central records authority—to be forwarded to the officer in charge of that other central records authority.

Penalty: \$500.

“(6) If, at any time, the Attorney-General is satisfied that a central records authority is not being administered in a manner consistent with the requirements of this Act, the Attorney-General may, by notice in writing furnished to the body administering the central records authority, require the body to cause the copying records of each institution of which it is the central records authority to be returned to the custodian of the copying records of that institution on or before a date specified in the notice.

“(7) Application may be made to the Administrative Appeals Tribunal for the review of a decision by the Attorney-General, under sub-section (6), to require the body administering a central records authority to cause the copying records of each institution of which it is the central records authority to be returned to the custodian of the copying records of that institution.

*Copyright Amendment No. 154, 1980*

“(8) As soon as practicable after a notice is delivered to the body administering a central records authority under sub-section (6), the Attorney-General shall cause a copy of the notice to be delivered to the body administering each institution of which the authority is the central records authority.

“(9) The body administering a central records authority shall—

- (a) as soon as practicable after receipt of a notice under sub-section (6), cause the copying records of each institution deposited with it—
  - (i) unless sub-paragraph (ii) applies—to be returned to the custodian in charge of the copying records of the institution, or, if the institution is no longer in existence, to be deposited with such person or body as is nominated by the Attorney-General; or
  - (ii) if the body administering the institution informs the body administering the central records authority, by notice in writing, that it has made an election to deposit the copying records of the institution with another central records authority—to be forwarded to the officer in charge of that other central records authority; and
- (b) as soon as practicable after it has complied with paragraph (a), cause a notice to be published in the *Gazette* stating that it has complied with that paragraph on a specified day and setting out the manner in which it has complied with that paragraph.

Penalty: \$500.

“(10) Upon the publication, by the body administering a central records authority that is the central records authority of an institution, of a notice of the kind referred to in paragraph (9) (b) in relation to the copying records of that institution, that central records authority shall, by force of this sub-section, be deemed to have ceased to be the central records authority of that institution.

“(11) Where—

- (a) the body administering an institution gives a notice under sub-section (1) to the body administering a central records authority;
- (b) the body administering an institution receives a notice under sub-section (2) given by the body administering a central records authority; or
- (c) the body administering an institution receives a copy of a notice furnished by the Attorney-General, under sub-section (6), to the body administering the central records authority of that institution,

nothing in section 203B shall be taken to require the custodian in charge of the copying records of the institution to deposit with that central records authority any relevant records relating to copying done by or on behalf of the body administering that institution.

“(12) Where—

- (a) under sub-section (9), the Attorney-General causes the copying records of an institution that is no longer in existence to be deposited with

*Copyright Amendment No. 154, 1980*

such person or body as is nominated by the Attorney-General for the purpose; and

- (b) a relevant record that is so deposited ceases to be in the possession of that person or body at any time before the expiration of the prescribed retention period after the making of the copy to which the record relates,

the person or body is guilty of an offence, punishable, upon conviction, by a fine not exceeding \$500.

“(13) It is a defence to a prosecution of a person or body (in this sub-section referred to as the ‘defendant’) for a contravention of sub-section (12) if the defendant satisfies the court that—

- (a) the contravention was due to the act or default of a person other than the defendant or to some other circumstance beyond the control of the defendant; and
- (b) the defendant took all reasonable precautions and exercised due diligence to avoid the contravention.

**Notation of copies and handicapped readers’ copies**

“203H. (1) In proceedings against a person or body for infringement of copyright in a work in connection with the making, by or on behalf of an institution, of a copy of the whole or a part of that work, the person or body is not entitled to rely on section 49, 50, 51A or 53B as justification for the making of that copy unless, at or about the time the copy was made, there was made on the copy a notation stating that the copy was made on behalf of that institution and the date on which it was made.

“(2) In proceedings against a person or body for infringement of copyright in a work in connection with the making, on behalf of an institution assisting handicapped readers, of a handicapped reader’s copy of the whole or a part of that work, being a Braille, large-print or photographic version of the whole or a part of that work, the person or body is not entitled to rely on section 53D as justification for the making of that handicapped reader’s copy unless, at or about the time the copy was made, there was made on the copy a notation stating that the copy was made on behalf of that institution and the date on which it was made.

“(3) In proceedings against a person or body for infringement of copyright in a work in connection with the making, on behalf of an institution assisting handicapped readers, of a handicapped reader’s copy of the whole or of a part of that work, being a copy consisting of a record embodying a sound recording of that work or of a part of that work, the person or body is not entitled to rely on section 53D unless, at the time the record was made, there was embodied on the record, immediately before the commencement of that sound recording, a sound recording of the following message:

‘This record, embodying a sound recording of *(name of work)* was made in reliance on section 53D of the *Copyright Act 1968* on *(date on which record made)* by *(name of person who made the record)* on

*Copyright Amendment No. 154, 1980*

behalf of (*name of institution assisting handicapped readers on behalf of which the record was made*). Copyright may subsist in that work and, if it does, the making of a record embodying this sound recording, otherwise than with the permission of the owner of the copyright in the work or in reliance on a provision of the *Copyright Act 1968*, constitutes an infringement of copyright in the work.’.

“(4) A person shall not—

- (a) make, on a copy of the whole or a part of a work, a notation referred to in sub-section (1) or (2) that contains a statement that is false or misleading in a material particular; or
- (b) cause to be embodied on a record embodying a sound recording a message referred to in sub-section (3) that contains a statement that is false or misleading in a material particular.

Penalty: \$500.

“(5) For the purposes of sub-sections (1), (2) and (3)—

- (a) where a copy of the whole or a part of the work is made by an authorized officer of a library of an institution, the copy shall be deemed to have been made on behalf of the institution;
- (b) where a copy of the whole or a part of a work is made by an authorized officer of a library that is not a library of an institution—
  - (i) the copy shall be deemed to have been made on behalf of the person or body administering the library; and
  - (ii) those sub-sections apply as if references in those sub-sections to an institution included references to that person or body; and
- (c) where a copy of the whole or a part of the work is made by or on behalf of the body administering an institution, the copy shall be deemed to have been made on behalf of the institution.

“(6) The production, in any proceedings—

- (a) for infringement of copyright in a work;
- (b) before the Copyright Tribunal on application made under sub-section 53B (11) or 53D (10); or
- (c) for a contravention of a provision of this Act,

of a copy of the whole or a part of a work (including a Braille, large-print or photographic version, of the whole or of a part of the work) bearing a notation of the kind referred to in sub-section (1) or (2), whichever is applicable, is *prima facie* evidence of the matters stated in the notation.

“(7) For the purposes of sub-section (6), where a copy of the whole or a part of a work bears a notation of a kind referred to in sub-section (1) or (2), whichever is applicable, the notation shall, unless the contrary is proved, be deemed to have been made on the copy at or about the time the copy was made.

*Copyright Amendment No. 154, 1980*

“(8) The production, in any proceedings of a kind referred to in sub-section (6), of a record embodying a sound recording of the whole or a part of a work, being a record that also embodies a sound recording of a message of the kind referred to in sub-section (3), is *prima facie* evidence of the matters stated in the message.

“(9) For the purposes of sub-section (8), where a record embodying a sound recording of the whole or a part of a work also embodies a sound recording of a message of the kind referred to in sub-section (3), the message shall, unless the contrary is proved, be deemed to have been embodied on the record at the time the record was made.”.

**Further amendments**

**28.** The Principal Act is further amended as set out in the Schedule to this Act.

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Copyright Amendment No. 154, 1980

SCHEDULE

Section 28

PART I

AMENDMENTS RELATING TO COPIES OF SOUND RECORDINGS

Provision	Omit—	Substitute—
Section 10—(paragraph (b) of the definition of “infringing copy”)	a record embodying the recording	a copy of the sound recording
Section 14 (1) . . . .	, or to a record embodying a sound recording, shall be read as including a reference to a reproduction, adaptation or copy of a substantial part of the work or to a record embodying a substantial part of the sound recording	shall be read as including a reference to a reproduction, adaptation or copy of a substantial part of the work
Section 85 . . . . .	a record embodying the recording	a copy of the sound recording
Section 87 . . . . .	a record embodying such a recording	a copy of such a sound recording
Section 107 (1) . . . . .	a record embodying the recording (twice occurring)	a copy of the sound recording
Section 107 (2) . . . . .	a record if the record	a copy of a sound recording if the copy
Section 107 (3) . . . . .	further records embodying the recording record (first occurring) record (second, third and fourth occurring)	further copies of the sound recording copy of a sound recording copy
Section 107 (5) . . . . .	record (first occurring) any of the records record (second occurring) all the records	copy of a sound recording any of the copies copy all the copies
Section 111 (2) . . . . .	a record embodying such a recording	a copy of such a sound recording
Section 111 (3) . . . . .	a record embodying such a recording	a copy of such a sound recording
Section 136 (1) (definition of “licence”)	a record embodying the recording a record embodying the recording	a copy of the sound recording a copy of the sound recording
Section 150 (1) . . . . .	a record embodying the recording	a copy of the sound recording
Section 150 (2) . . . . .	the recording the record	the sound recording the copy of the sound recording
Section 150 (3) . . . . .	the record	the copy of the sound recording

## Copyright Amendment No. 154, 1980

## SCHEDULE—continued

## PART II

## FORMAL AMENDMENTS

1. The following provisions of the Principal Act are amended by omitting the words “of this Act” and “of this section” (wherever occurring):

Section 10 (definition of “international organization to which this Act applies”), 14 (2), 28 (3), 29 (2) and (7), 47 (3), 63 (2), 65 (1), 68, 69, 70 (3) and (5), 80, 81 (3), 95 (2), 101 (3) and (4), 107 (3) and (5), 109 (1), (3) and (5), 119, 120 (1), 122, 123, 124, 125, 136 (1) (definition of “party”), (definition of “proceeding”) and (3), 146 (3), 148 (1), 152 (4), (6), (7), (10), (11), (12), (13), (14), (15) and (17), 155 (9), 156 (3), 157 (6), 158 (3), 159 (3) and (6), 161 (5) and (9), 174 (3), 181, 183 (3), (4), (5) and (7), 194 (2), 200 (3), 204 (1), 206 (3), 213 (8), 214, 219 (5) and (6), 225, 229, 239 (5) and 240 (3).

2. The Principal Act is further amended as set out in the following table:

Provision	Omit—	Substitute—
Section 10— (definition of “calendar year”) (definition of “prospective owner”) (definition of “the minimum royalty”)	twelve months commencing on the first day of January sub-section (1) of section 197 of this Act sub-section (5) of section 56, and sub-paragraph (i) of paragraph (b) of section 57, of this Act or, if those provisions are affected by regulations made for the purposes of section 58 of this Act	12 months commencing on 1 January sub-section 197 (1) sub-section 56 (5) and sub-paragraph 57 (b) (i) or, if those provisions are affected by regulations made for the purposes of section 58
(definition of “the royalty”)	sub-section (1) of section 56 of this Act or, if that sub-section is affected by regulations made for the purposes of section 58 of this Act	sub-section 56 (1) or, if that sub-section is affected by regulations made for the purposes of section 58
Section 29 (2) . . . . .	paragraph (a) of the last preceding sub-section	paragraph (1) (a)
Section 31 (1) . . . . .	sub-paragraphs (i) to (v), inclusive, of this paragraph	sub-paragraphs (i) to (v), inclusive
Section 31 (2) . . . . .	sub-paragraph (i) of paragraph (a) of the last preceding sub-section sub-paragraph (vi) of that paragraph	sub-paragraph (1) (a) (i) sub-paragraph (1) (a) (vi)
Section 33 (1) . . . . .	sub-section (2) of the last preceding section	sub-section 32 (2)
Section 33 (2) . . . . .	the next succeeding section	section 34
Section 33 (3) . . . . .	fifty	50
Section 33 (5) . . . . .	fifty	50
Section 33 (6) . . . . .	fifty	50
Section 34 (1) . . . . .	fifty	50
Section 44 (2) . . . . .	two	2
	five	5
Section 47 (5) . . . . .	twelve	12
Section 51 (1) . . . . .	fifty	50
	seventy-five	75
Section 55 (3) . . . . .	Sub-paragraph (i) of paragraph (d) of sub-section (1) of this section sub-paragraph (i) or sub-paragraph (ii) of paragraph (a) of sub-section (1) of this section sub-paragraph (iii) or (iv) of paragraph (a) of sub-section (1) of this section	Sub-paragraph (1) (d) (i) sub-paragraph (1) (a) (i) or (ii) sub-paragraph (1) (a) (iii) or (iv)



Copyright Amendment No. 154, 1980

SCHEDULE—continued

Provision	Omit—	Substitute—
Section 55 (5)	paragraph (d) of sub-section (1) of this section	paragraph (1) (d)
Section 56 (1)	five per centum	5%
Section 57	two (wherever occurring)	2
Section 58 (4)	five	5
Section 58 (5)	sub-section (1) of section 56 of this Act sub-section (5) of section 56, and sub-paragraph (i) of paragraph (b) of section 57, of this Act	sub-section 56 (1) sub-section 56 (5) and sub-paragraph 57 (b) (i)
Section 59 (1) (b)	sub-section (1) of section 55 of this Act	sub-section 55 (1)
Section 59 (1) (e)	paragraph (b) of sub-section (1) of section 55 of this Act	paragraph 55 (1) (b)
Section 59 (4)	paragraph (d) of sub-section (1) of section 55 of this Act and paragraph (e) of sub-section (1) of section 55 of this Act	paragraph 55 (1) (d) and paragraph (1) (e)
Section 59 (5)	paragraph (d) of sub-section (1) of section 55 of this Act	paragraph 55 (1) (d)
Section 62 (2)	paragraph (e) of sub-section (1) of section 55 of this Act	paragraph (1) (e) Sub-section 55 (1)
Section 63 (1)	paragraph (a) of that sub-section the first day of July, One thousand nine hundred and twelve paragraph (a) and sub-paragraph (i) of paragraph (d) of sub-section (1), and sub-sections (3) and (4), of section 55, paragraph (d) of sub-section (1) of section 59, section 61 and sub-section (2) of section 62 of this Act	paragraph 55 (1) (a) 1 July 1912 paragraph 55 (1) (a), sub-paragraph 55 (1) (d) (i), sub-sections 55 (3) and (4), paragraph 59 (1) (d), section 61 and sub-section 62 (2)
Section 63 (2)	paragraph (d) of sub-section (1) of that section the first day of July, One thousand nine hundred and twelve	paragraph 59 (1) (d) 1 July 1912
Section 63 (3)	two	2
Section 64	sections 55 and 59 of this Act	sections 55 and 59
Section 70 (5)	twelve	12
Section 77 (2)	fifteen paragraph (d) of the last preceding sub-section	15 paragraph (1) (d)
Section 79	sub-section (2) of section 34 of this Act	sub-section 34 (2)
Section 81 (1)	two (wherever occurring)	2
Section 81 (2)	two	2
Section 81 (3)	fifty	50
Section 82 (1)	two Sub-section (2) of section 35 of this Act	2 Sub-section 35 (2)
Section 83	two sub-section (2) of section 44 of this Act	2 sub-section 44 (2)
Section 92 (1)	two	2
Section 93	fifty	50
Section 94 (1)	sub-section (1) or sub-section (2) of section 90 of this Act	sub-section 90 (1) or (2)
Section 94 (2)	fifty sub-section (3) of section 90 of this Act	50 sub-section 90 (3)
Section 95	fifty	50
Section 96	fifty (wherever occurring) twenty-five	50 25

## Copyright Amendment No. 154, 1980

## SCHEDULE—continued

Provision	Omit—	Substitute—
Section 99 . . . . .	sub-paragraph (iii) of paragraph (a) or sub-paragraph (iii) of paragraph (b) of section 91 of this Act	sub-paragraph 91 (a) (iii) or 91 (b) (iii)
Section 105 . . . . .	sub-section (3) of section 89 of this Act	sub-section 89 (3)
Section 107 (5) . . . . .	twelve	12
Section 108 (3) . . . . .	paragraph (b) of sub-section (1) of this section	paragraph (1) (b)
Section 109 (6) . . . . .	paragraph (c) of the last preceding sub-section	paragraph (5) (c)
Section 110 (1) . . . . .	fifty	50
Section 113 (1) . . . . .	sub-section (2) of section 110 of this Act	sub-section 110 (2)
Section 127 (1) . . . . .	sub-sections (4), (5) and (6) of section 35 of this Act	sub-sections 35 (4), (5) and (6)
Section 128 . . . . .	fifty	50
Section 129 (2) . . . . .	paragraphs (a) and (b) of the last preceding sub-section	paragraphs (1) (a) and (b)
Section 131 . . . . .	sub-section (3) of section 98 of this Act	sub-section 98 (3)
Section 133 (3) . . . . .	sub-section (3) or sub-section (5) of the last preceding section	sub-section 132 (3) or (5)
Section 135 (3) . . . . .	five	5
Section 136 (2) . . . . .	sub-section (5) of section 132 of this Act	sub-section 132 (5)
Section 138 . . . . .	five	5
Section 140 . . . . .	five	5
Section 141 . . . . .	seven	7
Section 146 (3) . . . . .	two	2
Section 146 (8) . . . . .	two	2
Section 147 . . . . .	sub-section (3) of the last preceding section	sub-section 146 (3)
Section 149 (1) . . . . .	sub-section (3) of section 47, or sub-section (3) of section 70, of this Act	sub-section 47 (3) or 70 (3)
Section 150 (1) . . . . .	sub-section (3) of section 107 of this Act	sub-section 107 (3)
Section 151 (1) . . . . .	sub-section (1) of section 108 of this Act	sub-section 108 (1)
Section 152 (1) . . . . . (definition of "broadcaster")	sub-paragraph (iii) of paragraph (a) or sub-paragraph (iii) of paragraph (b) of section 91 of this Act	sub-paragraph 91 (a) (iii) or 91 (b) (iii)
Section 152 (8) . . . . .	the thirtieth day of June	30 June
Section 152 (9) . . . . .	one per centum	1%
	the thirtieth day of June (wherever occurring)	30 June
Section 152 (15) . . . . .	the thirtieth day of June	30 June
Section 152 (16) . . . . .	sub-section (6) of this section	sub-section (6)
Section 153 (1) . . . . .	paragraph (b) of sub-section (3) of section 59 of this Act	paragraph 59 (3) (b)
Section 156 (2) . . . . .	fifteen (first occurring)	15
	twelve	12
	fifteen (second occurring)	15
	three	3
Section 156 (5) . . . . .	Sub-sections (3), (4) and (6) to (10), inclusive, of the last preceding section	Sub-sections 155 (3), (4), and (6) to (10) inclusive
Section 159 (4) . . . . .	sub-section (1), sub-section (2) or sub-section (3) of section 157 of this Act	sub-section 157 (1), (2) or (3)
Section 159 (5) . . . . .	sub-section (4) of section 157 of this Act	sub-section 157 (4)

Copyright Amendment No. 154, 1980

SCHEDULE—continued

Provision	Omit—	Substitute—
Section 166 (2) . . . . .	section 148 of this Act section 156 of this Act sub-section (3) of section 161 of this Act	section 148 section 156 sub-section 161 (3)
Section 172 (3) . . . . .	section 161 of this Act One thousand dollars or imprisonment for three months	section 161 \$1,000 or imprisonment for 3 months
Section 173 . . . . .	paragraph (b) of sub-section (2) of section 163 of this Act One thousand dollars or imprisonment for three months	paragraph 163 (2) (b) \$1,000 or imprisonment for 3 months
Section 180 . . . . .	fifty (wherever occurring)	50
Section 181 . . . . .	fifty	50
Section 183 (6) . . . . .	sub-section (1) of this section	sub-section (1)
Section 183 (8) . . . . .	sub-section (1) of this section	sub-section (1)
Section 184 (1) . . . . .	sub-paragraph (iii) of paragraph (a) or sub-paragraph (iii) of paragraph (b) of section 91 of this Act	sub-paragraph 91 (a) (iii) or 91 (b) (iii)
Section 185 (4) . . . . . (definition of "the relevant provision of this Act")	section 32 of this Act	section 32
Section 186 (1) . . . . .	two (wherever occurring)	2
Section 187 (2) . . . . .	fifty	50
Section 188 (2) . . . . .	fifty	50
Section 188 (3) . . . . .	two	2
Section 199 (7) . . . . .	twenty-five sub-paragraph (iii) of paragraph (a) of section 91 of this Act sub-paragraph (iii) of paragraph (b) of section 91 of this Act	25 sub-paragraph 91 (a) (iii) sub-paragraph 91 (b) (iii)
Section 200 (4) . . . . .	sub-sections (1) and (2) of this section	sub-sections (1) and (2)
Section 201 . . . . .	One hundred dollars	\$100
Section 209 (1) . . . . .	sub-section (5) of section 29 of this Act thirty fourteen	sub-section 29 (5) 30 14
Section 209 (2) . . . . .	sub-section (7) of section 29 of this Act	sub-section 29 (7)
Section 210 (2) . . . . .	Division 5 of this Part	Division 5
Section 211 (1) . . . . .	Sub-section (1) of section 32 of this Act	Sub-section 32 (1)
Section 211 (2) . . . . .	Sub-section (2) of section 32 of this Act	Sub-section 32 (2)
Section 211 (3) . . . . .	Sub-section (2) of section 32 of this Act	Sub-section 32 (2)
Section 211 (4) . . . . .	paragraph (e) of that sub-section Sub-section (3) of section 32 of this Act	paragraph 32 (2) (e) Sub-section 32 (3)
Section 212 . . . . .	Sub-section (6) of section 33 of this Act sub-section (2) of section 32 of this Act	Sub-section 33 (6) sub-section 32 (2)
Section 213 (1) . . . . .	fifty Sub-sections (4) and (6) of section 35 of this Act	50 Sub-sections 35 (4) and (6)
Section 213 (2) . . . . .	Sub-section (5) of section 35 of this Act	Sub-section 35 (5)
Section 213 (3) . . . . .	sub-section (4), sub-section (5) or sub-section (6) of section 35 of this Act sub-section (2) of section 35 of this Act	sub-section 35 (4), (5) or (6) sub-section 35 (2)

## Copyright Amendment No. 154, 1980

## SCHEDULE—continued

Provision	Omit—	Substitute—
Section 215 (2) . . . . .	sub-section (1) of section 5 of this Act, sub-sections (2) to (7), inclusive, of section 19 of the Copyright Act, 1911	sub-section 5 (1) of this Act, sub-sections 19 (2) to (7), inclusive, of the Copyright Act, 1911
Section 216 . . . . .	section 68 of this Act	section 68
Section 217 . . . . .	section 66 of this Act	section 66
Section 219 (4) . . . . .	sub-section (2) of section 73 of this Act	sub-section 73 (2)
Section 220 (1) . . . . .	paragraph (a) of sub-section (1) of this section	paragraph (1) (a)
Section 220 (2) . . . . .	Sub-section (1) of section 89 of this Act	Sub-section 89 (1)
Section 220 (3) . . . . .	Sub-section (2) of section 89 of this Act	Sub-section 89 (2)
Section 221 . . . . .	Section 93 of this Act	Section 93
Section 222 (1) . . . . .	section 89 of this Act	section 89
Section 223 . . . . .	fifty	50
Section 224 . . . . .	section 90 of this Act	section 90
Section 226 . . . . .	section 204 of this Act	section 204
Section 227 . . . . .	section 10 of this Act	section 10
Section 232 (2) . . . . .	section 91 of this Act	section 91
Section 233 . . . . .	section 92 of this Act	section 92
Section 234 . . . . .	Section 115 of this Act	Section 115
Section 235 (1) . . . . .	sub-section (1) of section 5	sub-section 5 (1)
Section 235 (2) . . . . .	section 157 of this Act	section 157
Section 236 (1) . . . . .	Sub-section (2) of section 180 of this Act	Sub-section 180 (2)
Section 236 (2) . . . . .	sub-section (3) of that section	sub-section 180 (3)
Section 237 (1) . . . . .	Section 181 of this Act	Section 181
Section 237 (2) . . . . .	sections 178 and 181 of this Act	sections 178 and 181
Section 237 (3) . . . . .	sections 178 and 181 of this Act	sections 178 and 181
Section 238 (1) . . . . .	section 204 of this Act	section 204
Section 239 (3) . . . . .	sub-section (1) of section 180, of this Act	sub-section 180 (1),
Section 239 (4) . . . . .	sub-section (1) of section 222 of this Act	sub-section 222 (1)
Section 240 (1) . . . . .	sub-section (2) of section 180 of this Act	sub-section 180 (2)
Section 241 . . . . .	section 233 of this Act	section 233
Section 242 . . . . .	Sub-section (1) of section 187 of this Act	Sub-section 187 (1)
Section 243 (1) . . . . .	Sub-section (2) of section 187 of this Act	Sub-section 187 (2)
Section 243 (2) . . . . .	Sub-section (1) of section 188 of this Act	Sub-section 188 (1)
Section 243 (3) . . . . .	Sub-section (2) of section 188 of this Act	Sub-section 188 (2)
Section 243 (4) . . . . .	Sub-section (3) of section 188 of this Act	Sub-section 188 (3)
Section 244 (1) . . . . .	section 190 of this Act	section 190
Section 244 (2) . . . . .	paragraphs (b) and (c) of sub-section (1) of that section	paragraphs 190 (1) (b) and (c)
Section 245 (1) . . . . .	sub-section (1) of section 197 of this Act	sub-section 197 (1)
Section 245 (2) . . . . .	sub-section (1) of this section (wherever occurring)	sub-section (1)
Section 246 . . . . .	twenty-five	25
Section 247 (1) . . . . .	Section 198 of this Act	Section 198
Section 247 (2) . . . . .	Section 201 of this Act	Section 201
Section 248 . . . . .	the first day of July, One thousand nine hundred and twelve	1 July 1912
Section 249 . . . . .	Division 2 of this Part	Division 2
Section 250 (1) . . . . .	sub-section (1) of section 239	sub-section 239 (1)
Section 250 (2) . . . . .	sub-section (1) of section 24	sub-section 24 (1)
Section 251 . . . . .	One hundred dollars	\$100

## Correspondence

### Letter from Morocco

#### The Protection of the Rights of Performers, Producers of Phonograms and Broadcasting Organizations in Morocco

Abderraouf KANDIL \*

In Morocco, performers are not protected either by copyright or by a comparable right. The same is true of the makers of phonograms and of the radio and television broadcasting organization, although the latter does in fact enjoy certain prerogatives.

The legislator considered that they could not be given the status of authors.

While their contribution is of course necessary for the disclosure, performance and reproduction and ultimately the very life of the work, they are in no way the "genitors," or creators in the full sense of the word. They do not intervene until the work is completed.

As in many other countries, however, the question has arisen whether such "auxiliaries" of literary and artistic creation could not claim the exercise of a recognized, specific right in their performance, in view of the contribution of their personalities and the influence of that contribution on the destiny of the work.

Such a special right would, firstly, assure them of effective protection against any wrongful use of their performances and, secondly, enable them to avoid or mitigate their competition with themselves, as it were, which could be caused by the recording of their own performances and by the repeated retransmission of the recordings so made, notably by radio and television broadcasting organizations.

For their part, the producers of phonograms are concerned about competition from the broadcasting organization. It can indeed be readily appreciated that the proliferation of programs of recorded music has the effect of obstructing trade in their products. That is the reason why they are claiming rights in those products.

Finally, radio and television broadcasting organizations, which produce broadcasts of their own

making, at great expense or otherwise, are legitimately demanding protection against the inappropriate exploitation of their broadcasts by third parties, either by recording or by simultaneous retransmission.

All these concerns of the auxiliaries of literary and artistic creation have already been taken into consideration in certain countries which have legislated in their favor in accordance with the provisions of the Rome and Geneva Conventions. Morocco is not party to those Conventions: it considers that auxiliaries already enjoy, under ordinary legal provisions, sufficient legal protection by way of contractual arrangements and civil and commercial law, especially the law on unfair competition. The Moroccan radio and television organization escapes the effects of this rule to some extent, however, as it in fact does enjoy special protection comparable to a specific right.

#### (a) Performers

The 1970 Law on Literary and Artistic Property does not mention performers. No other specific legal provision is applicable to them. Only ordinary legal provisions grant them some guarantees in relation to their performances. A performer may for instance take civil liability action against a third party that makes wrongful use of his performance. In all probability a judge would rule in favor of a dramatic actor who objected to his stage performance being recorded and re-used for commercial or other purposes without his consent.

If Moroccan legislation has hitherto not considered it appropriate to grant a specific right to the performer, this is no doubt because sufficient resources are available in ordinary law, but also because any risk of the two concepts of creator and performer being wrongly assimilated has to be avoided.

\* Director General of the Moroccan Copyright Office, Rabat.

It should not be overlooked moreover that, apart from stage or cinema performers, who represent a numerically small body, a great majority of Moroccan performers, particularly singers, are also authors, and thus owners of copyright, which to a certain extent guarantees their performers' rights.

Of course the present situation may yet evolve in the future and justify the introduction of a right for performers, at least in principle, as there seems to be no prospect for a long time either of setting up a neighboring rights collecting body or of entrusting such a task to the Moroccan Copyright Office.

*(b) Producers of Phonograms*

This is an industrial and commercial activity. Even if the producer performs technical feats to obtain the best quality for his phonograms, legislation cannot accord either authorship to him or the status of work of art to his product.

The fact remains, however, that producers are showing grave concern at violations, such as the pirating and abuse of phonograms, by radio and television, which are detrimental to the commercial exploitation of their products.

There is no doubt that the protection of the producers of phonograms is inadequate at present and that only slight relief is available under ordinary law considering the plundering that is risked or already suffered.

Ratification of the Geneva Convention, which in fact is already being considered by Morocco, and the grant of a specific national right to the producers of phonograms are called for as necessary prerequisites for the completion and strengthening of the action already undertaken by the competent governmental authorities and by the Moroccan Copyright Office with a view to combating piracy (the Copyright Office acting only on behalf of its mandators). However, it is up to the phonogram producer to bring these prerequisites to the notice of the governmental authorities first.

*(c) Radio and Television Broadcasting Organization*

Unlike the other potential beneficiaries of neighboring rights, the national radio and television organization already has a legal status affording protection to the broadcasts made by it that is comparable to a specific right.

This situation is explained by the nature of the organization itself: it is a State body. In that capacity, it enjoys special rights that derive logically from its monopoly. The purpose of its prerogatives is to offset any competitive effects of the rights of authors, who

for their part are in a theoretically strong position, as their rights are governed by very complete legislation and managed by a body that is also under governmental control.

We would point out that no mention is made in the 1970 Law of the other auxiliaries of creation, whereas the broadcasting organization does receive a mention.

The protection of the broadcasting organization is derived from the provisions of the Rome Convention; that means that it can prohibit any reproduction of its broadcasts made without its consent, or the use of authorized reproductions for purposes other than those for which the authorization was given. It also enjoys the right to authorize or prohibit the public retransmission of its television broadcasts when such retransmission entails payment of an admission charge. As we see, then, the Moroccan radio and television organization enjoys exclusive rights comparable to those of authors.

Like other developing countries, Morocco still has only limited radio and television broadcasting facilities, and it is both necessary and logical that such a privileged means of communication should be entirely State-controlled. In addition to these material considerations there are necessities that are inherent in national cultural and educational policy, which embodies special requirements and priorities.

The national radio and television broadcasting organization has thus been given exclusive rights in order that it may have all the freedom of action it requires in the task incumbent on it: the rights of authors concerned by its broadcasts are limited, and it is not bound to consider the claims of the producers of phonograms.

The foregoing shows how, as no doubt in many other countries, the potential owners of neighboring rights have common areas of concern when it comes to the recognition of the right they claim in their performance, phonographic production or radio or television broadcast. However, in our present national context, the interests of these auxiliaries of creation often conflict with each other and make our country's accession to the Rome Convention inadvisable for the time being. Be that as it may, such accession would sooner or later entail the provision of structures for the management of neighboring rights and the collection of royalties, which would be liable to upset the operation of copyright, which itself has yet to consolidate its foundations, improve its efficiency and become better assimilated by our users and public opinion generally.

*(WIPO translation)*

## Book Reviews

**Les institutions spécialisées du système des Nations Unies et leurs membres** (The specialized agencies of the United Nations system and their members), by *Antoine H. Zarb*. One volume of XI-598 pages. Editions A. Pedone, Paris 1980.

The United Nations "family" today has fifteen members, all designated by the well-known term "specialized agency," as each of these organizations has its specialized area of concern corresponding to one of a number of sectors of contemporary international life, and each of them is, in its own specific field, a striking demonstration of the international cooperation without which the development of the world would be an empty phrase. This "system," which came into being after the last world war, has its own structures, its own peculiar features, its own history and its own legal status; it is an amalgam of political, diplomatic, economic and legal elements that deserves to be known.

None would appear better qualified than Antoine H. Zarb to guide the reader with a taste or desire for information on the subject through the labyrinth of the different origins and jurisdictions of the specialized agencies that revolve round the United Nations. His profound knowledge of the subject, his experience and his competence make this a remarkably rich contribution to legal literature. Antoine H. Zarb leaves a work to posterity that is first class for the exceptional wealth of documentation that supports his assertions, for his elegant turn of phrase and the clarity of his facts, and for the science of the great lawyer that he shows in the presentation of his comments.

In his preface to the book Mr. René-Jean Dupuy, Professor at the Collège de France and Secretary General of the International Law Academy of The Hague, pays a well-deserved tribute to the author when he mentions his "carrière vouée tout à la fois à l'action et à la réflexion." Antoine H. Zarb was a senior international civil servant for many years and, in the post of Legal Counsel to the World Health Organization, he witnessed the creation and development of the United Nations system, with all its vicissitudes

and its peculiarly fascinating evolution. His retirement from international civil service gave him the opportunity of using his experience and learning for the benefit of the university teaching in which he has been continuously engaged for some fifteen years at Nice University's Institut du droit de la paix et du développement. It is in the light of this constantly-renewed experience that Antoine H. Zarb considers, from an essentially legal angle, each of the United Nations specialized agencies with respect to its first beginnings, the circumstances of its creation, its objectives and its structure.

He then devotes long and interesting chapters to the legal status of the specialized agencies and also to the status of government representatives and international civil servants. He completes his very thorough study with a detailed account of the conditions of membership of the intergovernmental organizations and of the rights and obligations of member States.

The World Intellectual Property Organization is of course included in this all-embracing panorama of the international community. Antoine H. Zarb traces the history of its foundation starting with the two international Conventions which, in Paris in 1883 and in Berne in 1886, established the basis for relations between States in the industrial property and copyright fields, respectively. After having described the circumstances prevailing at the time of the establishment of the International Bureau responsible for administering, under the supervision of the Swiss Government, these two Conventions and the other treaties that subsequently came into being, he gives an account of the evolutionary process that led to the replacement of BIRPI by WIPO and to the latter being granted the status of specialized agency. Detailed explanations are also given of the structure of WIPO and of its budgetary and financial procedures, notably the system of contributions from member States.

Antoine H. Zarb's book is unquestionably an invaluable source of reference for anyone who professes an interest in the United Nations system, and it deserves to be received in a manner befitting its author's standing.

C. Masouyé

## Calendar

### WIPO Meetings

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

#### 1981

**May 25 to 29 (Geneva) — Berne Union and Universal Copyright Convention — Group of Independent Experts on the Impact of Cable Television in the Sphere of Copyright** (convened jointly with Unesco)

**June 15 to 26 (Geneva) — Permanent Committee for Patent Information (PCPI) — Working Group on Search Information**

- June 29 to July 3 (Geneva) — International Patent Cooperation (PCT) Union — Assembly (Extraordinary Session)
- September 7 to 10 (Geneva) — Permanent Committee for Patent Information (PCPI) — Working Group on Patent Information for Developing Countries
- September 10 to 18 (Geneva) — Permanent Committee for Patent Information (PCPI) — Working Group on Planning
- September 24 and 25 (Nairobi) — Treaty on the Protection of the Olympic Symbol — Diplomatic Conference
- September 28 to October 24 (Nairobi) — Revision of the Paris Convention — Diplomatic Conference
- November 9 to 13 (Geneva) — Permanent Committee for Patent Information (PCPI) and PCT Committee for Technical Cooperation
- November 11 to 13 (Geneva) — Rome Convention — Intergovernmental Committee (convened jointly with ILO and Unesco)
- November 16 to 24 (Geneva) — Governing Bodies (WIPO General Assembly, Conference and Coordination Committee, Assemblies of the Paris, Madrid, Hague, Nice, Lisbon, Locarno, IPC, PCT, Budapest, TRT and Berne Unions; Conferences of Representatives of the Paris, Hague, Nice and Berne Unions; Executive Committees of the Paris and Berne Unions; Committee of Directors of the Madrid Union; Council of the Lisbon Union)
- November 30 to December 7 (New Delhi) — Berne Union — Executive Committee — Extraordinary Session (sitting together, for the discussion of certain items, with the Intergovernmental Committee of the Universal Copyright Convention)
- December 7 to 11 (Geneva) — International Patent Classification (IPC) — Committee of Experts

## UPOV Meetings

### 1981

- May 6 (Geneva) — Consultative Committee
- May 6 to 8 (Geneva) — Administrative and Legal Committee
- June 2 to 4 (Wädenswil) — Technical Working Party for Vegetables
- June 23 to 25 (Edinburgh) — Technical Working Party for Agricultural Crops
- September 22 to 25 (Wageningen) — Technical Working Party for Fruit Crops
- October 6 to 8 (Antibes) — Technical Working Party for Ornamental Plants
- October 13 (Geneva) — Consultative Committee
- October 14 to 16 (Geneva) — Council
- November 9 to 11 (Geneva) — Technical Committee
- November 11 to 13 (Geneva) — Administrative and Legal Committee

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

### Non-Governmental Organizations

#### 1981

- International Federation of Translators (FIT)**  
Congress — May 6 to 13 (Warsaw)
- International Federation of Producers of Phonograms and Videograms (IFPI)**  
Council — June 2 and 3 (Copenhagen)
- Internationale Gesellschaft für Urheberrecht (INTERGU)**  
Congress — September 21 to 25 (Toronto)
- International Federation of Actors (FIA)**  
Executive Committee — September 23 to 25 (Copenhagen)

#### 1982

- International Literary and Artistic Association (ALAI)**  
Study Session — April 26 to 30 (Amsterdam)