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World Intellectual Property Organization

The World Intellectual Property Organization in 1982 *

WIPO and Development Cooperation Activities in the Fields of Copyright and Neighboring Rights

I. Membership of WIPO

Saudi Arabia, Mali and Somalia deposited instruments of accession to the Convention Establishing the World Intellectual Property Organization in February, May and August 1982, respectively. On November 18, 1982, when the accession of Somalia entered into force, the number of members of WIPO was 100 (Algeria, Argentina, Australia, Austria, Bahamas, Barbados, Belgium, Benin, Brazil, Bulgaria, Burundi, Byelorussian SSR, Cameroon, Canada, Central African Republic, Chad, Chile, China, Colombia, Congo, Costa Rica, Cuba, Czechoslovakia, Democratic People's Republic of Korea, Denmark, Egypt, El Salvador, Fiji, Finland, France, Gabon, Gambia, German Democratic Republic, Germany (Federal Republic of), Ghana, Greece, Guinea, Holy See, Hungary, India, Indonesia, Iraq, Ireland, Israel, Italy, Ivory Coast, Jamaica, Japan, Jordan, Kenya, Libya, Liechtenstein, Luxembourg, Malawi, Mali, Malta, Mauritania, Mauritius, Mexico, Monaco, Mongolia, Morocco, Netherlands, Niger, Norway, Pakistan, Peru, Philippines, Poland, Portugal, Qatar, Republic of Korea, Romania, Saudi Arabia, Senegal, Somalia, South Africa, Soviet Union, Spain, Sri Lanka, Sudan, Suriname, Sweden, Switzerland, Togo, Tunisia, Turkey, Uganda, Ukrainian SSR, United Arab Emirates, United Kingdom, United States of America, Upper Volta, Uruguay, Viet Nam, Yemen, Yugoslavia, Zaire, Zambia, Zimbabwe). Of these, 16 States were members of WIPO alone (Barbados, Byelorussian SSR, China, Colombia, El Salvador, Gambia, Jamaica, Mongolia, Peru, Qatar, Saudi Arabia, Somalia, Sudan, Ukrainian SSR, United Arab Emirates, Yemen).

* This article is the first part of a report on the main activities of WIPO in general and in the fields of copyright and neighboring rights. Activities in the field of industrial property are covered in a corresponding report in the review *Industrial Property*.

The first part deals with the activities of WIPO as such and with development cooperation activities in the fields of copyright and neighboring rights. The second part will deal with other activities in those fields.

In addition, 19 States, which had not yet become members of WIPO, were members of one or more of the Unions administered by WIPO (Cyprus, Dominican Republic, Ecuador, Guatemala, Haiti, Iceland, Iran, Lebanon, Madagascar, New Zealand, Nicaragua, Nigeria, Panama, Paraguay, San Marino, Syria, Tanzania, Thailand, Trinidad and Tobago).

Therefore, the total number of States which are members of WIPO, of one or more of the Unions administered by WIPO or of both WIPO and one or more of such Unions was, at the end of 1982, 119.

Acceptance of Treaty Amendments. In 1979, the Governing Bodies concerned decided to change from the then existing system of triennial and annual programs and budgets to a system of biennial programs and budgets for WIPO and the nine Unions which have independent budgets. The said change was effected by the unanimous adoption of the necessary amendments to the relevant administrative provisions of the treaties concerned and of a resolution providing for the provisional application of the said amendments pending their entry into force. They will enter into force one month after written notifications of acceptance have been received from three-fourths of the States entitled to vote. By the end of 1982, the following 46 States had notified their acceptance of the amendments: Australia, Bahamas, Brazil, Bulgaria, Canada, Chile, Czechoslovakia, Denmark, Egypt, Finland, France, German Democratic Republic, Germany (Federal Republic of), Greece, Holy See, Hungary, India, Ireland, Israel, Italy, Jordan, Kenya, Liechtenstein, Luxembourg, Malawi, Mexico, Monaco, Niger, Norway, Portugal, Qatar, Republic of Korea, Romania, Soviet Union, Spain, Sudan, Suriname, Sweden, Switzerland, Tunisia, Turkey, United Arab Emirates, United Kingdom, United States of America, Upper Volta, Zambia. Similar amendments adopted by the Assembly of the Budapest Union in 1980 have been accepted by the following States: German Democratic Republic, Hungary, Spain, Switzerland. No State has yet accepted the similar amendments adopted by the Assembly of the TRT Union in 1980.

The decision, referred to above, by the Governing Bodies in 1979 was adopted subject to the understanding that the provisional application of the said amendments would have effect only until the 1985 ordinary sessions of the Governing Bodies and that, if by that time the conditions required by the conventions, treaties and agreements for the entry into force of the said amendments were not fulfilled, the matter would be placed on the agendas of the said ordinary sessions.

II. Governing Bodies

The Governing Bodies of WIPO and of the Unions administered by WIPO held their *thirteenth series of meetings* in Geneva in November 1982. The following three Governing Bodies held sessions:

WIPO Coordination Committee, sixteenth session (13th ordinary)

Paris Union Executive Committee, eighteenth session (18th ordinary)

Berne Union Executive Committee, twentieth session (13th ordinary).

Delegations from 67 States participated in the meetings. Six intergovernmental organizations were represented by observers. The list of participants appears on page 53 of this issue.

A summary of the main decisions follows.

Approval of Agreements with Intergovernmental Organizations. The WIPO Coordination Committee approved agreements between WIPO and the Federation of Arab Scientific Research Councils and between WIPO and the International Union for the Protection of New Varieties of Plants.

Preparation of the Draft Agendas for the 1983 Ordinary Sessions of the Governing Bodies. The Governing Bodies approved items for the draft agendas of the 1983 sessions of the WIPO General Assembly and Conference and the Paris Union and Berne Union Assemblies. In reply to interventions made by various delegations, the Director General said that in respect of WIPO's contribution to the efforts of the United Nations for maintaining peace and increasing international cooperation he would report to the WIPO General Assembly in 1983 on the pertinent resolutions of the United Nations and the contributions that WIPO has made or should make in this regard, and noted the desire of several delegations that the proposals for the 1984 and 1985 budget should avoid, to the extent possible, increases in contributions.

Activities and Accounts; Reports of the United Nations Joint Inspection Unit. The Governing Bodies reviewed and noted with approval reports by the Director General on the activities of WIPO, from November 1981 to November 1982, and the Auditors' report on the accounts for 1981. A number of delegations expressed satisfaction with the accomplishments of the International Bureau since the 1981 sessions of the Governing Bodies, and underlined the constant increase in the activities, particularly in the field of development cooperation for the benefit of developing countries, despite budgetary constraints. Several delegations praised the clarity and completeness of the reports submitted by the Director General. Several delegations expressed the intention of their countries to continue and, if possible, to increase their contribution to the development cooperation activities of WIPO. Certain delegations also referred to assistance provided by their Governments to developing countries under bilateral arrangements. Attention was drawn in particular to the usefulness of training activities, of cooperation among developing countries through the provision by such countries of facilities and experts, and of medium-term planning in cooperation between WIPO and the States concerned.

III. Development Cooperation Activities in the Fields of Copyright and Neighboring Rights

Objective

The objective of the activities provided for in the approved program of WIPO is to be useful to developing countries in five different respects:

- (i) training specialists,
- (ii) creating or modernizing domestic legislation,
- (iii) establishing or developing appropriate infrastructure,
- (iv) stimulating creative activity,
- (v) facilitating access to foreign works protected by copyright owned by foreigners.

Activities

Development, in developing countries, of general awareness and knowledge of the law and the practical implications of copyright and neighboring rights (Training)

In 1982, WIPO received 91 applications for training in the fields of copyright and neighboring rights from 40 developing countries, from the United Nations High Commissioner for Refugees (UNHCR), from the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA) and from the Economic Community of the Countries of the "Grands Lacs" (CEPGL). Thirty-eight of these

applications, from the following 28 countries, and from the CEPGL, were accepted and led to the completion of training courses: Algeria, Angola, Bahamas, Bangladesh, Benin, Brazil, Cameroon, Chile, Colombia, Congo, Ethiopia, Fiji, Ghana, Guinea, India, Indonesia, Madagascar, Malawi, Mali, Mexico, Niger, Papua New Guinea, Tanzania, Tunisia, Upper Volta, Zaire, Zambia, Zimbabwe.

The training arranged in 1982 took the following forms:

(a) for 10 trainees, a Specialized Training Course on the Administration of Copyright and Neighboring Rights, in *Zurich* in May 1982, organized by WIPO in collaboration with the Swiss Society for Authors' Rights in Musical Works (SUISA); the participants came from Algeria, Benin, Brazil, Colombia, Guinea, Mali, Mexico, Upper Volta, Zaire and CEPGL; the lectures were given by officials of SUISA and WIPO; this course was followed by a visit to WIPO headquarters and, for some of the trainees, practical training in the copyright organizations of Algeria and France;

(b) for seven trainees, a Specialized Training Course on the Administration of Copyright and Neighboring Rights, in *Stockholm* in June 1982, organized by WIPO in cooperation with the Ministry of Justice of Sweden; the participants came from Ethiopia, Fiji, Indonesia, Malawi, Mexico, Tanzania and Zambia; the lectures were given by officials of the Swedish Ministry of Justice, the Swedish Confederation of Authors, the Swedish Performing Rights Society, the Union of Swedish Musicians, the Swedish Group of the International Federation of Producers of Phonograms and Videograms, the Swedish Broadcasting Organization and WIPO; this course was followed by a visit to WIPO headquarters;

(c) for 17 trainees, a General Introductory Course on Copyright and Neighboring Rights, in *Budapest* in October and November 1982, organized by WIPO in cooperation with the Hungarian Bureau for the Protection of Authors' Rights (ARTISJUS); the participants came from Algeria, Angola, Bahamas, Bangladesh, Brazil, Cameroon, Congo, Ghana, Guinea, India, Madagascar, Mexico, Niger, Papua New Guinea, Tunisia, Zambia and Zimbabwe; the lectures were given by WIPO officials, officials of Artisjus, invited guest speakers and representatives of the International Confederation of Societies of Authors and Composers (CISAC), the International Federation of Producers of Phonograms and Videograms (IFPI) and the European Broadcasting Union (EBU). The course was followed by practical training in copyright and neighboring rights in the following countries: Belgium, France, Germany (Federal Republic of), Hungary, India, Netherlands, Senegal, Switzerland, United Kingdom, and by a visit to WIPO headquarters.

(d) for four trainees, from Chile, Tanzania, Tunisia and Upper Volta, a practical training course in copyright and neighboring rights in one of the following countries: *Argentina, Belgium, German Democratic Republic, Italy*. In addition, *Mexico* agreed to receive trainees, but at the last moment the selected trainees were not able to attend.

Wherever possible, the arrangements for training in 1982 included visits to WIPO headquarters.

Taking together the training program in the field of industrial property and that in the field of copyright and neighboring rights, the total number of applications received in 1982 was 425 from 98 countries, from UNHCR, from UNRWA, from the African Intellectual Property Organization (OAPI) and from the CEPGL, as compared with 380 applications in 1981 from 103 countries and two territories, from UNHCR, from UNRWA, from OAPI and from the African National Congress (ANC). A total of 181 applications were accepted and led to the completion of training courses from 74 countries, UNHCR, UNRWA, OAPI and CEPGL; in 1981, 173 applications were accepted from 82 countries and one territory, UNHCR, UNRWA, OAPI, and ANC. In 1982, 52 applications were accepted (28.7% of total acceptances) from 21 countries regarded as least developed among the developing countries, and 62 were accepted in respect of women (only 49 of the said acceptances (27.1% of the total) led to the completion of training courses). In 1982, nine developing countries (Algeria, Argentina, Brazil, Egypt, India, Israel, Mexico, Philippines, Senegal) and OAPI contributed to promoting cooperation among developing countries by receiving 39 trainees.

The following 10 countries and three national organizations contributed in full or in part to the payment of the travel and subsistence expenses of the trainees: Algeria, Belgium, France, German Democratic Republic, Hungary, India, Italy, Mexico, Netherlands, United Kingdom, the Musical Performing and Mechanical Reproduction Rights Society (GEMA), the Swedish International Development Authority (SIDA) and SUISA.

The remainder of the cost was borne by the budget of WIPO.

Courses and seminars

In *China*, a *Copyright Course* was organized in *Beijing* in May 1982 by WIPO at the request of the National Publishing Administration of China. About 150 Chinese officials, from many parts of the country, participated in the course, which lasted for two weeks. Fourteen lectures were given by the Director General, by a senior government official from the United Kingdom, by the head of the Hungarian Bureau for the Protection of Authors' Rights, by a professor of law from the United States of America

and by three members of the staff of WIPO. The lectures were followed by questions put by the participants and answers given by the lecturers.

The texts of the lectures given at the *Conakry Training Course on Copyright and Neighboring Rights* (organized by WIPO in cooperation with the Government of Guinea in November 1981) were published in February 1982.

The Proceedings of the *Regional Seminar on Copyright for English-Speaking Caribbean States*, organized jointly with Unesco at Kingston in October 1981, were published in May 1982.

Development, in developing countries, of legislative activities in the fields of copyright and neighboring rights

WIPO continued to cooperate, on request, with governments or groups of governments of developing countries on the adoption of new laws and regulations, or the modernization of existing ones, in the fields of copyright and neighboring rights. In 1982, such cooperation was pursued with the following countries:

Barbados. In October 1982, the Government authorities requested and received assistance from WIPO for the preparation of regulations under the new copyright law, prepared with the assistance of WIPO, which entered into force on October 1, 1982.

Chile. In August 1982, at the request of WIPO, the Director General of the Swiss Society for Authors' Rights in Musical Works (SUISA) visited the Departamento del Pequeño Derecho de Autor (DAIC) in Santiago in order to assess needs and priorities for a cooperation program, requested by DAIC from WIPO.

China. WIPO organized a lecture course on copyright in Beijing in May 1982 (see above). During a mission to Beijing in November 1982, the Director General of WIPO had discussions with the Director General of the (Chinese) Publishing Administration, part of the Chinese Ministry of Culture. The said Administration is studying the possibilities of introducing legislation on copyright in China.

Colombia. In July 1982, a WIPO official gave a lecture on the new copyright law of Colombia and the Berne Convention at a Seminar on the said law organized in Bogota by the Higher School of Public Administration and the Copyright Department of the Government. There were almost 300 participants, mainly judges, magistrates, government officials, representatives of authors, of performers, of phonogram producers and of broadcasting organizations, and private lawyers.

Congo. In October 1982, the Government authorities informed WIPO that a new law on copyright

and neighboring rights, prepared with the assistance of WIPO, had been adopted by the National Assembly.

Mauritius. In September 1982, WIPO was requested by the Government to comment on a draft copyright bill.

Saudi Arabia. At the request of the Government, contacts were made with the competent authorities in order to advise them on the drafting of a new copyright law.

Suriname. A translation into the Dutch language of draft legislation on copyright and neighboring rights, prepared by WIPO at the request of the Government, was prepared by WIPO and sent in May 1982.

Zaire. In August 1982, the Government requested and WIPO sent comments on a draft law on copyright and neighboring rights.

Economic Community of the Countries of the "Grands Lacs" (CEPGL). In April 1982, an agreement on the establishment of working relations and cooperation between WIPO and the CEPGL was signed by the Director General of WIPO and the Executive Secretary of the CEPGL, as approved by the WIPO Coordination Committee at its session in November 1981. The working relations dealt with in the agreement include such relations in the field of copyright.

African Intellectual Property Organization (OAPI). An official of WIPO participated, and delivered three lectures, in a *Round Table on Copyright* organized in Yaoundé in September 1982 by the African Intellectual Property Organization (OAPI) in cooperation with WIPO, Unesco and the African Cultural Institute (ACI). There were about 20 participants, including experts from OAPI, WIPO, Unesco and ACI and from Cameroon, Ghana, Guinea, Kenya and Mali, as well as members of the staff of OAPI.

The meeting followed the entry into force, in February 1982, of the Bangui Agreement Relating to the Creation of an African Intellectual Property Organization (constituting a Revision of the Libreville Agreement Relating to the Creation of an African and Malagasy Office of Industrial Property). That Agreement widens the tasks of OAPI by including among them copyright and the protection of the cultural heritage. The aim of the Round Table was to explore guidelines for the role and activities of OAPI in the said fields.

The Round Table discussed the following themes, considered in the light of the situation prevailing in Africa: copyright and developing countries; situation of copyright laws and conventions; economic and social problems affecting copyright; administration

of copyright; information needs; inter-African cooperation in the field of copyright; problems related to the cultural heritage.

After a wide-ranging and fruitful exchange of views, the Round Table adopted recommendations concerning objectives for priority actions by OAPI in the fields of information and documentation, training and inter-African cooperation.

WIPO Permanent Committee (Copyright and Neighboring Rights)

The *WIPO Permanent Committee for Development Cooperation Related to Copyright and Neighboring Rights* consists of all States members of WIPO which have informed the Director General of their desire to be members. During 1982, five States (Fiji, Mali, Peru, Somalia, Turkey) became members of the Permanent Committee, bringing the membership to 58 States (Australia, Austria, Barbados, Belgium, Benin, Brazil, Bulgaria, Cameroon, Canada, Central African Republic, Chile, Congo, Czechoslovakia, Denmark, Egypt, El Salvador, Fiji, Finland, France, German Democratic Republic, Germany (Federal Republic of), Ghana, Guinea, Hungary, India, Israel, Italy, Ivory Coast, Japan, Kenya, Malawi, Mali, Mauritius, Mexico, Morocco, Netherlands, Niger, Norway, Pakistan, Peru, Philippines, Poland, Portugal, Romania, Senegal, Somalia, Soviet Union, Spain, Sudan, Suriname, Sweden, Switzerland, Togo, Turkey, United Kingdom, United States of America, Upper Volta, Yemen).

Joint International Unesco-WIPO Service for Access by Developing Countries to Works Protected by Copyright

In May 1982, letters were sent by WIPO and Unesco jointly to States and to publishers in developing countries, drawing attention to the assistance available from the Joint International Service. In 1982, five requests or enquiries from publishers in developing countries were received and were being handled, either by WIPO or by Unesco.

In November 1982, WIPO and Unesco convened jointly a meeting in Geneva of a *Working Group on Model Contracts Concerning Co-publishing and Commissioned Works*, as part of the program of work of the Joint Consultative Committee of the Service. The participants were seven experts from Algeria, India, Mexico, Senegal, Soviet Union, Switzerland and United States of America. Discussions were based on preliminary draft model contracts prepared with the assistance of the expert from Algeria. The Working Group made a number of suggestions which will be taken into account in preparing the revised model contracts to be submitted to the said Committee.

IV. Management and Supporting Activities

Missions and visits to WIPO

In 1982, the Director General undertook missions to Austria, Belgium, China, Democratic People's Republic of Korea, France, Germany (Federal Republic of), India, Italy, Japan, Netherlands, Soviet Union, Sri Lanka, United States of America and the headquarters of the United Nations.

The missions to the Democratic People's Republic of Korea, Germany (Federal Republic of), India and the Soviet Union were "official visits," the Director General being the guest of the Government and received by the Head of State and/or by several Government Ministers.

On the occasion of his two visits to China in 1982, the Director General was received by a Vice-Premier of the State Council and by a State Councillor and Vice-Chairman of the Central Advisory Commission of the Communist Party, and discussed matters of mutual interest concerning patents, trademarks and copyright.

Missions were undertaken by Deputy Directors General to Austria, Belgium, Brazil, Germany (Federal Republic of), Honduras, Hungary, India, Italy, Morocco, Netherlands, Republic of Korea, Romania, Soviet Union, Spain, Sri Lanka and Zimbabwe.

During the mission to the Republic of Korea, Mr. Klaus Pfanner, Deputy Director General, was received by the Prime Minister and decorated by him with the Order of Diplomatic Service Merit (Heung-In Medal).

In addition to the missions referred to above, the following countries were visited by other officials or by consultants of WIPO: Algeria, Australia, Austria, Bangladesh, Belgium, Benin, Bolivia, Botswana, Brazil, Burma, Cameroon, Canada, Chile, China, Colombia, Congo, Cyprus, Democratic People's Republic of Korea, Denmark, Ecuador, El Salvador, Fiji, France, Gabon, Germany (Federal Republic of), Greece, Grenada, Guatemala, Haiti, Honduras, Hungary, India, Indonesia, Iraq, Italy, Ivory Coast, Jamaica, Jordan, Kenya, Kuwait, Malaysia, Maldives, Mali, Mauritania, Mongolia, Nepal, Netherlands, Pakistan, Panama, Papua New Guinea, Paraguay, Peru, Philippines, Portugal, Republic of Korea, Samoa, Senegal, Singapore, Solomon Islands, Spain, Suriname, Sweden, Thailand, Togo, Trinidad and Tobago, United Kingdom, United States of America, Upper Volta, Uruguay, Vanuatu, Venezuela, Viet Nam, Yemen, Zaire and Zimbabwe.

During the period covered by this report, officials of China, of the Democratic People's Republic of Korea, and of the Republic of Korea worked with WIPO officials at the International Bureau for periods of several months, in order to familiarize themselves with the work of WIPO in general or on

particular questions. Officials of other governments visited WIPO for shorter periods for specific negotiations or discussions, e.g., on draft legislation, or in the context of the training programs.

United Nations

The Director General and other officials of WIPO participated in the work of a number of intersecretariat bodies of the United Nations system established for the purpose of facilitating coordination of the policies and activities of the organizations of the system. These bodies included the Administrative Committee on Coordination (ACC), composed of the executive heads of all the organizations and programs of the system under the chairmanship of the Secretary-General of the United Nations, which met in Rome in April, in Geneva in July and in New York in November 1982, its joint meeting with the Committee on Programme and Coordination in Geneva in July 1982, its Organizational Committee, its Consultative Committees on Substantive Questions (Programme) and (Operations) (CCSQ(Prog) and CCSQ(Ops)) and on Administrative Questions (Personnel) and (Finance and Budget) (CCAQ(Per) and CCAQ(FB)) (the WIPO representative was elected Chairman of CCAQ(FB) for 1983), and other subsidiary bodies of the ACC, task forces, working groups and inter-agency meetings convened to deal with various matters of common interest, including long-term development objectives, procurement of goods and services, periodicals, fellowships, information systems, public information, science and technology, and future work resulting from the UN Conferences on New and Renewable Sources of Energy, on the Least Developed among the Developing Countries and on the Law of the Sea. WIPO was represented at a meeting between the secretariats of the Organization of African Unity and of the organizations of the United Nations system in Geneva in April 1982. WIPO participated in the work of the UN Joint Staff Pension Board, and was represented at meetings of the Standing Committee of the Board in Nicosia in February and of the Board in Geneva in August 1982.

WIPO was represented at various meetings of United Nations bodies at which questions of direct interest to WIPO were discussed, including the thirty-seventh session of the General Assembly, held from September to December 1982 in New York, and the session of the Economic and Social Council held in July 1982 in Geneva. WIPO attended also a session of the Advisory Committee on Administrative and Budgetary Questions (ACABQ), a subsidiary body of the General Assembly, in Geneva in April 1982. The Director General was represented at special meetings held in Geneva in March and in November 1982 for the observance of International

Days for the Elimination of Racial Discrimination and of Solidarity with the Palestinian People, respectively.

WIPO was also represented at sessions of the Interim Committee of the UN Conference on an International Code of Conduct on Transfer of Technology, convened by the UN Conference on Trade and Development (UNCTAD) in Geneva in May and September 1982, at sessions of the Trade and Development Board of UNCTAD in Geneva in March, May, June, September and October 1982, at an UNCTAD Group of Governmental Experts on the Economic, Commercial and Development Aspects of Industrial Property in February 1982, at a Working Party on UNCTAD's Medium Term Plan and the Programme Budget in May 1982, and at the UNCTAD Committee on Transfer of Technology in Geneva in November and December 1982.

WIPO was represented at a session of the Industrial Development Board of the United Nations Industrial Development Organization (UNIDO) and a session of its Permanent Committee, both in Vienna in May 1982, and at inter-agency meetings convened by UNIDO in Vienna in March 1982 to discuss preparations for the fourth General Conference of UNIDO and the implementation of the Industrial Development Decade for Africa.

WIPO was represented at sessions of the Governing Council of the United Nations Development Programme (UNDP), held in Geneva in May and June 1982, of its Budget Committee in Geneva in May 1982, at informal inter-agency meetings convened by the UNDP in Geneva in May and June 1982 and at an Inter-Agency Consultative Meeting in New York in December 1982. WIPO was also represented at the fifth regional meeting of UNDP Resident Representatives in Africa, held in Lomé in June and July 1982, and at a meeting on Technical Cooperation among Developing Countries convened by the UNDP in Libreville in August 1982.

WIPO was represented at a Meeting of Heads of Science and Technology Agencies of Developing Countries in New Delhi in May 1982.

WIPO was also represented at the World Health Assembly in Geneva in May 1982, during consideration of an item concerning the World Health Organization's policy on patents.

WIPO contributed to reports prepared for various UN bodies and organs on such subjects as cooperation with the League of Arab States and its Specialized Agencies, cooperation with the Organization of the Islamic Conference, cooperation with Namibia, cooperation with the Organization of African Unity, assistance to the Palestinian people, assistance to refugees, activities for the least developed countries, activities in support of technical cooperation among developing countries, various development cooperation matters, and statistics.

Joint Inspection Unit

As decided by the WIPO General Assembly in November 1981, the Director General notified to the Secretary General of the United Nations in December 1981 the acceptance by WIPO of the Statute of the Joint Inspection Unit (JIU) with effect from January 1, 1982.

During the period covered by this report, the following reports of the JIU were received, concerning, among other organizations, WIPO:

JIU/REP/82/1 "Report on the Economic Commission for Africa: Regional Programming, Operations, Restructuring and Decentralization Issues";

JIU/REP/82/3 "Second Report on the Career Concept";

JIU/REP/82/4 "Status of Women in the Professional Category and Above: Second Progress Report";

JIU/REP/82/6 "Communications in the United Nations System."

Copies of the said reports were distributed to, among other States, all the States members of WIPO by the United Nations, on behalf of the United Nations and of other organizations, under a procedure agreed in 1978 between the JIU and the Administrative Committee on Coordination (ACC).

In accordance with Article 11, 4(e) of the Statute of the JIU, representatives of the Director General took part in consultations within the framework of the ACC for the preparation of joint comments on the said JIU reports.

The said joint comments are distributed by the United Nations to member States in the form of documents submitted to the General Assembly of the United Nations. The Director General had no separate comments to make, in addition to the said

joint comments, on matters concerning WIPO contained in the reports of the JIU.

Public information, publications, etc.

Lectures on WIPO and its activities, in general or related to particular topics, were given by WIPO officials, often in conjunction with visits by organized groups to WIPO's headquarters. Such groups included in particular groups of diplomats organized by the United Nations Institute for Training and Research (UNITAR) and groups of university students from various countries.

Interviews were given to newspaper and radio correspondents. WIPO officials participated in the regular press briefings given in the United Nations Office in Geneva. WIPO was represented at the regular meetings in Geneva of the Circle of International Information Officers; its representative was reelected Chairman for 1982 and 1983.

Updated versions of the WIPO General Information brochure were published in German in November 1981, in Arabic in March 1982 and in Spanish in July 1982. A revised version ("1982/1983 Edition") of the said brochure was published in English in October 1982.

A revised catalogue of WIPO publications was issued in July 1982. "Newsletters" were published in January, June and October 1982 (in Arabic, English, French, Portuguese, Russian and Spanish).

WIPO publications were exhibited at book fairs held in New Delhi in February, in Leipzig in March, in Warsaw in May, and in Frankfurt in October, and at the International Fair of Milan in April and the *Salon des inventions* in Geneva in November 1982.

WIPO service stamps were issued by the Swiss postal authorities in May 1982.

Governing Bodies of WIPO and the Unions Administered by WIPO

Thirteenth Series of Meetings

(Geneva, November 22 to 26, 1982)

NOTE *

The thirteenth series of meetings of the Governing Bodies of the World Intellectual Property Organization (WIPO) and the Unions administered by WIPO took place in Geneva from November 22 to 26, 1982.

The list of the three Governing Bodies which held meetings, the main items discussed and the decisions taken are reported on in "The World Intellectual Property Organization in 1982" (see above).

The list of participants in the Governing Bodies meetings appears below.

LIST OF PARTICIPANTS **

I. States

Algeria 1, 2: B. Ould-Rouis; B. Saci; M. Mati.
Argentina 1, 2: F. Jiménez Dávila; J.T. Pereira.
Anstralia 1, 3: F.J. Smith; J. Cowcher.
Austria 1, 2: O. Leberl; F. Trauttmansdorff.
Belgium 1, 3: C.-A. Funes-Noppen; L. Engelen; J. Degavre.
Brazil 1, 2: A. Gurgel de Alencar; E. Cordeiro.
Bulgaria 1, 3: R. Kazandjiewa; I. Kotzev.
Cameroon: F.-X. Ngoubeyou; W. Eyambe; D. Ekani.
Canada 1, 3: F. Hay; R. Théberge; J. Lynch; R. Ballhorn; A. Swabey.
Chile 1, 3: L. Gillet; P. Barros.
China 1: Shen Yaozeng; Kung Hsi.
Congo 1, 3: D. Ganga-Bidié; M. Ebarra.
Cuba 1, 2: L. Solá Vila; A.V. Gonzáles Perez.
Czechoslovakia 1, 3: M. Bělohávek; J. Prošek.
Democratic People's Republic of Korea: Ri Tchun Seung; Pak Chang Rim.
Denmark: K. Skjødt.
Egypt 1, 2: M. Daghash.
El Salvador: C. Barahona Rivas.
Finland 1, 3: E. Wuori; M. Huhta; I. Uusitalo.
France 1, 3: G. Vianès; M. Hiance; L. Nicodème; J.-M. Momal.
German Democratic Republic 1, 3: D. Schack; M. Foerster; H.-W. Mattern.
Germany (Federal Republic of) 1, 2: A. Krieger; F. Lam-bach; B. Ziese; A.A. Schaefers.

Ghana 1, 2: A.J. Bisansu McCarthy.
Hungary 1, 2: G. Pusztai; S. Horváth.
India 1, 3: M. Dubey; K. Thairani; L. Puri.
Indonesia: A. Harsono; N. Wisnoemoerti.
Ireland: J. Quinn.
Israel: M.M. Shaton.
Italy 1, 2: G.L. Milesi-Ferretti; R. Brunetti; N. Faiel Dattilo.
Ivory Coast 1, 3: B. Aka; K.F. Ekkra.
Japan 1, 2: I. Shamoto; T. Ogawa; S. Ono; K. Ishimaru.
Jordan: K. Abdul-Rahim.
Kenya 1, 2: S. K. Muchui.
Luxembourg: F. Schlessler.
Madagascar: S. Rabearivelo.
Mexico 1, 3: F.J. Cruz González; M.A. Arce.
Morocco: M. Halfaoui.
Netherlands: J.J. Bos; J.W. Weck.
New Zealand: R.M. Richards; H. Riddell.
Nigeria 1, 2: G. Ashiwaju; T.O. Oseni.
Norway: A.G. Gerhardsen; S.H. Røer; B. Bye.
Pakistan: S. Bashir.
Poland 1, 2: R. Farfal; B. Rokicki.
Portugal 1, 2: J. Mota Maia; R. Morais Serrão; A.M. Pereira.
Republc of Korea: Choi Tae-Chang.
Romania: M. Bichir; P.-P. Gavrilescu.
Saudi Arabia: M. Al Mussfer; N. Kanan.
Senegal 1, 3: A. Sène; S.C. Konate; M.M. N'Diaye.
Somalia: F. Eno-Hassan.
Soviet Union 1, 2: L.E. Komarov; V. Zubarev; A. Ruban; S. Birioulev; E. Dapkounas; M. Oussov.
Spain: J. Delicado Montero-Ríos; E. Rúa Benito; A. Casado Cerviño.
Sweden: G. Borggård; I. Schalin; B. van der Giessen.
Switzerland 1, 2, 3: J.-L. Marro; J.J. Manz; J.-M. Souche.
Syria: A. Saker; M. Sayadi.
Tanzania 1, 2: E.E.E Mtango.
Thailand: C. Veerasa.
Tunisia 1, 3: M. Ben Slama; M. Ben Khelifa.
Turkey 1, 3: E. Apakan.
Ukrainian SSR: V. Batiouk.
United Kingdom 1, 2: T.W. Sage; J. Richards.
United States of America 1, 2: G.J. Mossinghoff; H.J. Winter; M.K. Kirk; L. Schroeder; G. Dempsey.
Uruguay 1, 2: C.A. Fernández Ballesteros.
Viet Nam: Nguyễn Thuong; Truong Phap.
Yugoslavia: D. Bošković.
Zaire: Esaki Ekanga Kabeya; Osil Gnok.
Zambia: A.R. Zikonda.
Zimbabwe: M. E. Kahari.

II. Intergovernmental Organizations

United Nations (UN): A. Djermakoye; R. Dhanjee; E. Bonev. **International Labour Organisation (ILO)**: J. Perret. **United Nations Educational, Scientific and Cultural Organization (UNESCO)**: A. Amri. **Council for Mutual Economic Assistance (CMEA)**: I. Tcherviakov. **European Patent Office (EPO)**: J.C.A. Staehelin.

* Prepared by the International Bureau.

** A list containing the titles and functions of the participants may be obtained from the International Bureau.

¹ WIPO Coordination Committee.

² Paris Union Executive Committee.

³ Berne Union Executive Committee.

III. Officers

WIPO Coordination Committee

Chairman: O. Leberl (Austria). *First Vice-Chairman:* M. Ben Slama (Tunisia). *Second Vice-Chairman:* L.E. Komarov (Soviet Union).

Paris Union Executive Committee

Chairman: G.L. Milesi-Ferretti (Italy). *Vice-Chairmen:* L. Solá Vila (Cuba); A.J.B. McCarthy (Ghana).

Berne Union Executive Committee

Chairman: M. Bělohávek (Czechoslovakia). *Vice-Chairmen:* M. Huhta (Finland); D. Ganga-Bidié (Congo).

IV. International Bureau of WIPO

A. Bogsch (*Director General*); K. Pfanner (*Deputy Director General*); M. Porzio (*Deputy Director General*); L.E. Kostikov (*Deputy Director General*); C. Masouyé (*Director, Public Information and Copyright Department*); R. Harben (*Director, Public Information Division*); G. Ledakis (*Legal Counsel*); T.A.J. Keefer (*Director, Administrative Division*).

GUATEMALA

Accession to the WIPO Convention

The Government of the Republic of Guatemala deposited, on January 31, 1983, 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 Guatemala, three months after the date of deposit of its instrument of accession, that is on April 30, 1983.

WIPO Notification No. 121, of February 2, 1983.

National Legislation

BARBADOS

Copyright Act, 1981-1982

(of January 22, 1982) *

An Act to reform and modernise copyright law and the law governing similar or related matters

(Articles 1 to 29)

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2. Definitions
3. Purposes
4. Application of Act

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8. Transfer of rights
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* Published in the *Supplement to Official Gazette* of January 28, 1982; coming into force on October 1, 1982.

Citation*Short title*

1. This Act may be cited as the *Copyright Act, 1981*.

Interpretation*Definitions*

2. In this Act,

“author” refers to an author within the meaning of section 7;

“audio-visual work” refers to a work described in section 20;

“broadcast” refers to a broadcast within the meaning of section 6;

“broadcaster” means a person in the business of making, or who on a regular basis makes broadcasts of any literary, artistic or scientific work;

“fixation” means the embodiment of sounds, images or both in a material form sufficiently permanent or stable to enable the sounds, images or both, as the circumstances require, to be perceived, reproduced or otherwise communicated during a period of more than a transitory duration;

“folklore” refers to folklore within the meaning of section 13;

“recording” means a fixation of any sounds or images or both by means of any disc, tape, perforated roll or other device or other means from or by which the sounds or images or both are capable of being reproduced;

“sound-recording” refers to such a fixation of only sounds other than the sound track associated with an audio-visual work;

“transfer” refers to transfer within the meaning of subsection (3) of section 8.

Purposes

3. The purposes of this Act are

- (a) to protect, regardless of quality, the proprietary interests in original works of a literary, artistic or scientific character and the proprietary interests established by Part II in other works derived from or related to literary, artistic or scientific works; and
- (b) to replace the present copyright law of Barbados with laws that will accord with the obligations of Barbados under the Berne Convention for the Protection of Literary and Artistic Works as revised at Paris on July 24th 1971, hereinafter referred to as the “Berne Convention.”

Application of Act

4. This Act applies

- (a) to a literary, artistic or scientific work first published, performed or broadcast in Barbados;
- (b) to a literary, artistic or scientific work of which a citizen of Barbados or an individual who is a permanent resident of Barbados within the meaning of the *Immigration Act* is the author, whether or not the work is published, performed or broadcast;
- (c) to a literary, artistic or scientific work of a foreign author first published in a State that has acceded to the Berne Convention;
- (d) to a literary, artistic or scientific work, whether or not it has been published, performed or broadcast, the author of which
 - (i) is not a citizen or permanent resident of Barbados within the meaning of the *Immigration Act*, but
 - (ii) is a national or resident of a State whose laws, pursuant to treaty or otherwise, make provisions similar to this Act in respect of authors who are citizens or residents of Barbados; and
- (e) to such other matters as are provided for by Part II.

PART I**COPYRIGHT****Authors and Works***Literary, artistic and scientific works*

5. Literary, artistic and scientific works include
- (a) books, pamphlets and other written works;
 - (b) lectures, addresses, sermons and works of a like nature;
 - (c) dramatic and dramatico-musical works;
 - (d) musical works, whether or not in writing or accompanied by written or unwritten words;
 - (e) choreographic works and pantomimes;
 - (f) cinematographic and other audio-visual works;
 - (g) works of drawing, painting, architecture, sculpture, engraving, lithography and tapestry;
 - (h) photographic works, including works expressed by processes analogous to photography;
 - (i) works of applied art whether handicraft or produced on an industrial scale; and
 - (j) illustrations, maps, plans, sketches and three-dimensional works relating to geography, topography, architecture or science.

Publication, performance and broadcast

6. (1) A literary, artistic or scientific work is published when copies of the work are produced by any means and supplied or made available for supply to the public generally or to any section of the public.

(2) A performance of a literary, artistic or scientific work occurs when the work is performed, communicated or delivered to and in the presence of the public or any section of the public or is performed, communicated or delivered in the circumstances referred to in subsection (3) of section 30 for later delivery to the public.

(3) A broadcast of a literary, artistic or scientific work occurs when the work is transmitted, for reception by the general public, over a distance by means of radio, television, electro-magnetic emissions, light beams or other means, or by wire or cable or other means.

(4) A reference in this Act to any work being lawfully made public means, in relation to a particular work, that the work has been published, performed or broadcast with the consent of the author of the work or otherwise in accordance with any authority under this Act to publish, perform or broadcast the work.

Author

7. (1) For the purposes of this Act, the author of a literary, artistic or scientific work is the creator or maker of the work; and, in particular, includes,

- (a) in relation to a literary work, the author of the work;
- (b) in relation to a musical work, the composer of the music and in relation to accompanying words, if any, the author of the accompanying words;
- (c) in relation to an artistic work other than a photograph, the artist;
- (d) in relation to a photograph, the photographer; and
- (e) in relation to any other work, the individual who creates the work, however that function is termed.

(2) A reference to author's rights in a work refers, in relation to a particular work, to all the rights vested under this Act in the author in respect of that work, but subject to subsection (3).

(3) Author's rights in relation to a work include any rights that are lawfully transferred to any other person from the author, or from a person lawfully claiming under the author, to publish, perform or broadcast that work or otherwise to exercise any of the rights of the author in the work other than the right vested under section 11.

Transfer of Author's Rights*Transfer of rights*

8. (1) Subject to subsection (2), the rights vested in an author by this Act in respect of a work are transferable by the author.

(2) The rights vested in an author under section 11 in respect of a work are not transferable otherwise than by succession.

(3) For the purposes of this Act, "transfer" extends to every mode (whether direct or indirect, voluntary or involuntary, absolute or conditional) of disposing of or parting with any right vested under this Act or of any interest in any such right, including retention of title to the right or interest as security for any obligation.

Transfer formalities

9. (1) To be valid, the transfer of the rights vested in an author by section 10 in respect of a work must be in writing and signed by the person who is transferring the rights or any part of the rights in respect of the work; but this subsection does not prevent a transfer of those rights by operation of law.

(2) The transfer of the ownership in an original work, or in one or more copies of a work, does not transfer to the new owner of the original or copy any of the author's rights in the work.

Author's Rights*Economic rights*

10. Subject to sections 24 to 29, the author of an original literary, artistic or scientific work has the exclusive right to do, or to authorise another person to do, any of the following acts in relation to the entire or any portion of his original work, that is to say:

- (a) to reproduce the work;
- (b) to translate, adapt, arrange or otherwise transform the work; or
- (c) to communicate the work to the public by publication, performance, broadcast or by any other means.

Moral rights

11. The author has, in respect of his work, the exclusive right

- (a) to claim authorship of his work;
- (b) subject to section 25, to demand that his authorship be indicated in connection with any of the acts mentioned in section 10; and

- (c) to object to and to have relief from any distortion, mutilation or other modification of or any derogatory act committed in relation to his work, if the distortion, mutilation, modification or derogatory act is likely to have an adverse effect on his character or reputation.

Translators, compilers, arrangers

12. (1) A person who

- (a) makes a work by translation, adaptation, arrangement or other transformation of any literary, artistic or scientific work; or
- (b) compiles, as a work, a collection of literary, artistic or scientific works that, because of the selection and arrangement of its contents, constitutes an intellectual creation such as (by way of example but without limiting the generality of this paragraph) encyclopaedias and anthologies,

if his work is original, has, in relation to his work, the rights of an author under sections 10 and 11.

(2) Subsection (1) does not affect any author's rights that exist under this Act in respect of any work used in the making or compiling of a work described in that subsection.

Folklore

13. (1) In respect of folklore, that is to say, all literary and artistic works that

- (a) constitute a basic element of the traditional and cultural heritage of Barbados;
- (b) were created in Barbados by various groups of the community; and
- (c) survive from generation to generation,

the author's rights vest in the Crown to the same extent as if the Crown had been the original creator of the folklore.

(2) The rights of the Crown in respect of folklore are enforceable at the instance of the Attorney General.

Method of determining copyright entitlement

14. In determining the person vested with author's rights in respect of a literary, artistic or scientific work, the following principles apply:

- (a) if one individual was the author of the work, the rights vest in that individual;
- (b) if two or more individuals were the authors of the work, the rights vest in them jointly; and
- (c) if there is no evidence to the contrary, the author of a work is the individual whose name is indicated on the work as its author.

Employed author

15. Subject to any enactment relating to contracts of employment and to the terms of any specific contract of service or for services, when a work is created by an author

- (a) in the course of his employment for the Crown, a body corporate or another individual; or
- (b) under a contract for services with, or as a work commissioned by, the Crown, a body corporate or another individual,

then, in respect of that work, the author's rights under sections 10 and 11 vest in the Crown, body corporate or other person who employed the author or commissioned the work.

Public benefit works

16. (1) No author's rights vest in any person in respect of the following works:

- (a) laws enacted by Parliament and published by the Government;
- (b) statutory instruments made under the laws of Barbados and published by the Government;
- (c) decisions by courts or tribunals that are made in the administration of justice in Barbados;
- (d) reports made by any body established in Barbados to make a public inquiry into any matter and published by the Government;
- (e) translations made at public expense of any works referred to in paragraphs (a) to (e); and
- (f) news, that is to say, the reporting of fresh events or new information, whether published in written form, by broadcast or communicated to the public by other means.

(2) The Crown is the trustee for the public of the works described in paragraphs (a) to (f) of subsection (1); and the Crown may, in respect of those works, apply to the High Court for the purpose of objecting to and obtaining relief, by way of injunction, from any distortion, mutilation or other modification of or derogatory act committed in relation to any of those works, if the distortion, mutilation or other modification or derogatory act is likely to cause a breach of the peace or to be a dishonest artifice amounting to a fraud on the public.

Duration of Author's Rights

Duration: economic rights

17. (1) Unless expressly otherwise provided in this Act, the author's rights vested under section 10 in respect of a work exist for the life of the author and for the fifty calendar years immediately following the year of his death.

(2) When the author's rights under section 10 in a work are vested jointly in more than one author, the rights exist for the life of the last surviving author and for the fifty calendar years immediately following the year of his death.

(3) When, under section 15, the author's rights under sections 10 and 11 in a work are vested in the Crown, a body corporate or an individual, the rights exist for the life of the individual who made or created the work and for the fifty calendar years immediately following his death; or, if the work was made or created by two or more individuals, the rights exist for the life of the last survivor of those individuals and for the fifty calendar years immediately following his death.

Duration: moral rights

18. The author's rights vested under section 11 exist for the same period as that prescribed by sections 17, 19, 20 or 21 for the rights vested in the author under section 10, except that the rights of an author under section 11 are enforceable by the author or his successors in title whether or not the rights vested in the author by section 10 are still vested in the author or his successors.

Duration: anonymous authors

19. Where a work is published anonymously or under a pseudonym, the author's rights in the work exist for the fifty calendar years immediately following the year in which the work was first published; but, if during that period the identity of the author of the work is revealed or his identity is no longer in doubt, the rights exist, for such period specified under section 17, as the circumstances require.

Duration: audio-visual works

20. (1) When a work is an audio-visual work, the author's rights in the work exist for the fifty calendar years immediately following the year in which the work was first made available to the public; but if the work is not made available to the public within the first fifteen calendar years after the work was completed, the author's rights to the work cease at the end of that fifteenth calendar year.

(2) An audio-visual work is the aggregate of a series of related visual images, together with any accompanying sounds, capable of being shown as a moving picture by means of a mechanical, electronic or other device and irrespective of the nature of the material support in which the visual images, and any accompanying sounds, are embodied.

Duration: photographic works

21. (1) When a work is a photographic work, the author's rights in the work exist for the fifty calendar years immediately following the year in which the work was first made available to the public.

(2) A photographic work is a work that is produced by any process analogous to photography including photo-lithographic work but does not include within its ambit any part of an audio-visual work.

Duration: folklore

22. The rights vested in the Crown under section 13 in respect of folklore exist in perpetuity.

Duration: public benefit

23. The right of the Crown under section 16 exists

- (a) in respect of laws, statutory instruments and decisions of courts or tribunals whether of a judicial or administrative nature, for the period during which those laws, instruments or decisions are relevant to the administration of justice in Barbados; and
- (b) in respect of other works mentioned in section 16, for a period of ten calendar years immediately following the year in which the work was published.

Limitation of Author's Rights

Permitted uses of works

24. (1) The use of a literary, artistic or scientific work, either in the original language or in translation, as described in paragraphs (a) to (h), is not an infringement of the author's rights in that work and does not require the consent of the author of the work, namely:

- (a) the reproduction, or the translation, adaptation, arrangement or other transformation of the work for the user's personal use only, if the work has been lawfully made public;
- (b) subject to subsection (2), the inclusion, with mention of the source and the name of the author, of quotations from the work in another work, including quotations from articles in newspapers or periodicals in the form of press summaries, if the work from which the quotations have been taken has been lawfully made public;
- (c) subject to subsection (3), the use for teaching of the work by way of illustration in publica-

tions, broadcasts or recordings or, to the extent justified for the purpose, for the communication for teaching purposes of the work by way of a broadcast for use in schools, universities, professional training or public education, if the work has been lawfully made public;

(d) in the case of

- (i) an article published in one or more newspapers or in one or more periodicals on current economic, political or religious topics, or
- (ii) any broadcast on current economic, political or religious topics,

the reproduction of the article or broadcast in the press or the communication of the article or broadcast to the public, if the source of the article or broadcast when so used is clearly indicated, unless the article or broadcast, when first published or made, was accompanied by an express condition prohibiting its use without consent;

(e) the reproduction or making available to the public by means of photographic works, audio-visual works or other communication means of any work that can be seen or heard in the course of the reporting of the fresh event or new information, if

- (i) the work was reproduced or made available for the purpose of reporting by a news medium of fresh events or of new information; and
- (ii) the use of the work does not extend beyond that justified by the purpose of keeping the public informed of current events;

(f) the reproduction of works of art or of architecture in an audio-visual work for cinema or television or in a broadcast by television and the communication to the public of any of those works of art or architecture so produced, if those works

- (i) are permanently located in a place where they can be viewed by the public, or
- (ii) are included in an audio-visual work for cinema or television by way only of background or as incidental to essential matters represented;

(g) subject to subsection (4), the reproduction in the news media or the communication to the public of

- (i) any political speech delivered in public,
- (ii) any speech delivered in public during legal proceedings, or
- (iii) any lecture, address, sermon or other work of a similar nature delivered in public,

if the use by reproduction or communication to the public is exclusively for the purpose of reporting fresh events or new information;

(h) subject to subsection (5), the reproduction, by recordings, photography or similar process by public libraries, non-commercial documentation centres, scientific institutions and education establishments, of literary, artistic or scientific works that have been lawfully made public before the reproduction is made.

(2) Paragraph (b) of subsection (1) does not apply in respect of any particular quotations unless the quotations described in that paragraph are compatible with fair practice and the extent of the quotations does not exceed that justified for the purpose of the work in which the quotations are used.

(3) Paragraph (c) of subsection (1) does not apply in respect of any particular work unless the use described in that paragraph is compatible with fair practice and the source of the work used and the name of the author are mentioned in the relevant publication, broadcast or recording.

(4) Paragraph (g) of subsection (1) does not apply unless the reproduction therein described and the number of copies made of the reproduction are limited to the need.

(5) Paragraph (h) of subsection (1) does not apply in respect of any particular establishments mentioned in that paragraph unless the reproduction and copies made thereof

- (a) are limited to the needs of the activities of that establishment;
- (b) do not conflict with the normal exploitation of the work reproduced; and
- (c) do not unreasonably affect the author's rights in the work.

News reports: saving

25. Author's rights in a work are not infringed by the accidental or incidental inclusion of the work in the reporting by a news broadcast of fresh events or of new information.

Ephemeral recordings

26. (1) When a work is lawfully broadcast by a broadcaster, the broadcaster may, by means of his own facilities, make, for the purpose of his own broadcast, a recording of the broadcast and produce one or more copies of the recording for his own use.

(2) Subject to subsection (3), the recording authorised by subsection (1), and all the copies made of it, shall be destroyed by the broadcaster within six months from the date on which the recording was made.

(3) If the recording authorised by subsection (1) is of an exceptional documentary character, a copy of the recording may be preserved for presentation to the official archives of Barbados.

(4) The preservation under this section of a copy of a recording of the broadcast of a work for the official archives of Barbados does not otherwise affect the author's rights in the work that was broadcast.

(5) Whether a recording of a broadcast is of an exceptional documentary character is a question of fact to be determined after having regard to all the circumstances and, in particular, to the need for the enhancement of the historical and cultural aspects of life in Barbados.

Non-contractual translation licences

27. A person may, without the consent of the author of a work, translate the work into the English language and publish the work of translation in Barbados under a licence which may be granted by the Minister in accordance with the rules set out in the First Schedule for that purpose.

Non-contractual reproduction licences

28. A person may, without the consent of the author of the work, reproduce the work and publish

in Barbados a particular edition of the work by reproduction under a licence, which may be granted by the Minister in accordance with the rules set out in the Second Schedule for that purpose.

Permissible recordings

29. (1) Subject to subsection (2), where, in respect of a musical work, a sound-recording has been made of the performance of the work with the consent of the author of the music and of the accompanying words, if any, and the recording has been made in Barbados or a copy of it has been imported into Barbados, a person may, without the consent of the author of either the music or of any accompanying words, make a new recording of a performance of the same musical work.

(2) When a sound-recording is made in Barbados pursuant to subsection (1) of the performance of a musical work, the person who made the recording shall pay to the author of the music and of the accompanying words, if any, such remuneration, or remuneration, at such rate, as the Minister may, particularly or generally, prescribe by order.

(3) The making of a recording pursuant to this section does not otherwise affect the author's rights in the musical work or in the accompanying words, if any.

(To be continued)

Correspondence

Letter from Austria

Robert DITTRICH *

In *Copyright*, 1981, on page 81, I reported, among other things, on the 1980 Copyright Amendment Law. As I mentioned at the time,¹ it was based

on a substantially more extensive Government Bill,² of which the Judicial Committee of the National Council,³ in a "report and motion," had previously

* DDr., Honorarprofessor, Ministerialrat, Federal Ministry of Justice, Vienna.

¹ pp. 81 *et seq.*

² 385 in the annexes to the Verbatim Minutes of the National Council, 15th Legislature.

³ 422 in the annexes to the Verbatim Minutes of the National Council, 15th Legislature.

retained only a part which, while still significant with respect to content, was not too cumbersome in terms of size. Since then the remainder of the Government Bill has become law (BGBl. No. 295/1982): it came into force on July 1, 1982.⁴

By virtue of legislative decisions taken by the National Council on the same date, Austria also became party to the Paris Act of the Berne Convention (BGBl. No. 319/1982) with effect from August 21, 1982, likewise to the Paris text of the UCC (BGBl. No. 293/1982) with effect from August 14, 1982, to the Geneva Convention for the Protection of Producers of Phonograms Against Unauthorized Duplication of Their Phonograms (BGBl. No. 294/1982) with effect from August 21, 1982, and to the Brussels Convention Relating to the Distribution of Programme-Carrying Signals Transmitted by Satellite (BGBl. No. 335/1982) with effect from August 6, 1982.

1. There are two ways in which an author can authorize another person to use his work in one, some or all of the ways that normally are reserved to the author himself: he can grant him authorization to use the work or an actual license to use the work. In both cases the person so authorized is entitled to use the work either without limitation or limitations as to time, place or content; the distinction lies in the fact that the authorization to use the work confers only a contractual claim that may be exercised against the author, whereas the license to use the work is an absolute right. Where the author has issued an authorization to use the work, he is of course bound to allow the other party to use the work, at least within limits specified in the agreement; in other words, he cannot exercise any of the protection rights conferred on him by the Copyright Act against the person to whom he has granted the authorization to use the work; he does however retain the exclusive right to exploit the work without any restriction in terms of time, place or content; moreover, he is not prevented from granting to third persons further authorizations or even licenses to use the work, even where the latter are concurrent with authorizations to use the work granted earlier. If on the other hand the author grants a license, the licensee thereby acquires an exclusive right to use the work under agreed conditions of time, place and content. Even the author himself has then to refrain from exploiting the work, in so far as the licensee has acquired the exclusive right to do so; in this respect the author is in the same position as any other person, against whom the right to use the work operates as an exclusive right. All the author is still

entitled to do is bring civil and criminal action against any person who uses the work without authorization, and then even against the wishes of the person to whom the exclusive license to use the work has been granted.

Where the author or licensee of the work has first granted an authorization to use the work, but then granted or transferred a right to use the work to another person, the question arises whether the authorization to use the work granted earlier lapses when both right and authorization are identical in terms of time, place and content. In the light of the conceptions underlying the Copyright Act, one would presume that the authorization to use the work cannot be asserted against the person who has acquired the right to use the work. And yet this is unfair. Legal writers⁵ have therefore taken it that the person who acquires a right to use the work — whether by transfer from another licensee or by direct grant on the part of the author — becomes party to the contractual relations with the holder of the authorization to use the work that were established by the author or the new licensee's predecessor.⁶ In the interests of legal security, the new paragraph (2) of Article 24 of the Copyright Act clarified this question in a manner corresponding to the opinion that the legal writers had already expressed in relation to the current law.⁷

2. The special rules on commercially produced cinematographic works (Copyright Act, Articles 38 to 40) previously made no provision for any presumption of authorship corresponding to Article 12 of the same Act. Now, in accordance with the principle of Article 15(2) of the Paris Act of the Berne Convention, such a presumption has been inserted in Article 38(3) of the Copyright Act; the new paragraph reads as follows:

In the absence of proof to the contrary, the person who is designated in the usual manner as the producer on the copies of a cinematographic work by mention of his true name, of his company or of a pseudonym or company designation that he is known to use, shall be presumed to be the producer of the film. The same shall apply to the person designated as the producer in the above-mentioned way in the case of a public performance or a broadcast of the cinematographic work, except where the assumption made in the preceding sentence suggests that the film producer is another.

3. Until now it was possible, under Article 49 of the Copyright Act, to record small portions of works expressed in words, when publicly delivered or performed, for news reports on sound and image recordings; they could be multiplied, distributed and, within

⁴ Cf. the report of the Judicial Committee (973 in the annexes to the Verbatim Minutes of the National Council, 15th Legislature. The English translation of the Amendment Law was published in the September 1982 issue of this review.

⁵ Peter, *Das österreichische Urheberrecht*, p. 81; Dittrich, *Das österreichische Verlagsrecht*, p. 99.

⁶ Cf. Article 33 of the Copyright Act of the Federal Republic of Germany.

⁷ Cf. Commentary, pp. 11 *et seq.*

the framework of such newsreels, used for public deliveries or performances and for broadcasts. Small portions of works expressed in words, when publicly delivered or performed, could also be broadcast within the framework of news reports. Under Article 52(2) of the Copyright Act, this provision applied analogously to musical works.

The two expressions newsreel and news report were not expressly defined in Article 49 of the Copyright Act. The Supreme Court made broadcast reports on current events exactly equivalent to newsreels on such events, and expressed the view that, likewise in the case of broadcast news reports, fair use included not only live broadcasts but also broadcasts made by means of prior recording on videograms or phonograms.⁸

This situation, considered in the light of the Supreme Court decision referred to, has been found unsatisfactory in many respects:⁹

(a) Fair use related only to works of literature and music, and not to works of three-dimensional art and cinematography, even though the latter two can be perceived by the public in the reporting of current events, this being the case, for instance, of a painting at an art exhibition included in the State visit of a foreign head of State, or a still picture from a cinematographic work shown at the prizegiving ceremony of a film festival.

(b) It was considered unsatisfactory that only small portions of a work should come under the heading of fair use, and not also complete works, especially those of small size. It should for instance be permissible to reproduce a short poem which might be recited by a child presenting a bouquet of flowers to welcome a foreign head of State to a rural area.

(c) Reporting in newspapers and periodicals has been made equivalent to radio and television reporting. According to the Committee Report,¹⁰ the new provision is also of special benefit to weekly newspapers.

If these loopholes are closed, it has been considered necessary in the interest of authors, in conformity with Article 10^{bis}(2) of the Paris Act of the Berne Convention, to limit fair use to the extent justified by the purpose. That extent is the reporting of current events.

In order to demarcate this fair use, which is now written into Article 42a of the Copyright Act, the Commentary, rightly in my opinion, states the following:¹¹

Where it is not the news of a current event but the use of the work that is in the foreground in the conception of the broadcast, the newly created fair use does not apply.

The current event concept is again not specified. It is to be construed as an event that arouses interest on account of its topicality; it includes also cultural events. In the reporting of cultural events, however, one should not lose sight of the fact that it is no longer possible to speak of an informatory purpose when the report gives a cross-section through the work such as can to a large extent be substituted for enjoyment of the original work. Yet even the complete recording of a single, self-contained portion of a certain length — overture, aria, duet, monologue, ensemble, finale — will be unlawful. An occurrence retains the character of a current event as long as the reporting of it is objectively still considered to be a report on the present. There must therefore be no reporting of an exhibition at the time of its opening; that can just as well be done at any time up to the closing of the exhibition. And yet it cannot be permissible, for any sporting event taking place in the present, to incorporate — taking an extreme case — the opening of the 1936 Olympic Games together with the fanfare music played at the time.

The reporting of a current event always has to be a true representation of a real-life occurrence. That is why this fair use does not cover the inclusion of a report on current events in a feature film.

4. The declarations of reciprocity made up to now have come up against difficulties in international relations, because the States involved — Austria among them — have made their declarations of reciprocity dependent on the other State already practising reciprocity. In this way national declarations became practically impossible as a result of the “prior performance” obligation on the other party. International treaties of legislative rank are not a desirable way of resolving these problems however, owing to the burden that they would place on legislative bodies. This situation has now been remedied by the introduction of the possibility of concluding international treaties of regulatory rank. The new wording of Articles 58(1), 96(1), 97(2) and 99(3) provides the material basis for this.

It should be mentioned here that the amendment of the introductory words of Article 96 of the Copyright Act is not a substantive amendment; the German phrase “im Ausland erschienene Werke” includes also “works . . . not published in this country.” That was the essence of a drafting oversight in the text that dated back to the 1953 Copyright Amendment Law, BGBl. No. 106. This oversight has now been made good in that Article 96 of the Copyright Act is addressed to works that are not already protected under Article 94 or Article 95 of the Copyright Act.

5. In the explanatory notes on the original (Geneva) version of the Universal Copyright Convention, BGBl. No. 108, 1957,¹² the following is said of Article IV:¹³

¹² 53 in the annexes to the Verbatim Minutes of the National Council, 8th Legislature, 25 *et seq.*

¹³ Abbreviations in the text according to current practice and emphasis added.

⁸ January 31, 1970, ÖBl. 1970, 132.

⁹ Commentary, p. 14.

¹⁰ Page 1.

¹¹ Commentary, p. 14.

Whereas the Berne Convention provides for a term of protection of 50 years counted from the death of the author or of the last surviving co-author, a minimum term of protection of 25 years was agreed upon in the drafting of the UCC; countries that afford protection to photographic works and works of applied art are bound to recognize a minimum term of protection of ten years for such works. The term of protection should as a general rule begin on the death of the author, although countries whose legislation calculate the term of protection from another event (first publication, registration prior to first publication) at the time of entry into force of the UCC can retain that method of calculation. Where a Contracting State has provided for a term of protection longer than 25 years, that State is bound, by virtue of the national term of protection, to protect works whose authors are nationals of a Contracting State or which have been published for the first time in such a State for as long as they enjoy protection in that Contracting State, but no longer. That is the only case in which the UCC departs from the principle of full national treatment in favor of the principle of material reciprocity. *National implementing legislation is required in order to make use of this faculty to shorten terms of protection.*

It was in line with this conception that the Federal Law of November 7, 1956, BGBl. No. 109/1957, on the implementation of the Universal Copyright Convention, was enacted on the occasion of the ratification of the UCC in its original version. The Law empowered the Federal Minister of Justice, pursuant to Article IV.4, first paragraph, of the Convention, to shorten by decree the term of protection of works protected in Austria solely by virtue of the Universal Copyright Convention "in so far as such shortening is necessary for the safeguarding of Austrian interests in the State concerned." No use has ever been made of this power to date.

In very few countries was at the time this set of questions subjected to detailed study. In the meantime Ulmer¹⁴ has given a convincing demonstration of the incorrectness of this opinion, then prevalent in Austria:

His critical textual analysis shows that the various, equally binding texts make use partly of treaty style and partly of legislative style for the same provision, and that these two styles also vary within a language. No clear-cut conclusion can therefore be drawn from their linguistic wording. In substance, it is a question of limiting an obligation. Where States, by ratification, comply with the obligation of the international treaty, in case of doubt this occurs only to the extent that the obligation exists. There is no right of retortion. It is rather a legal thinking based on the nature of the subject matter. There is no intrinsic reason for protecting works that have fallen into the public domain in the country of origin itself. The work is domiciled in the country of origin, and the latter's legislation determines its fate in the first instance. If that State allows reproduction, there is no cause, in other member States, for it to be still subject to the author's consent. For instance, if a novel has fallen into the public domain in the United States of America, it can be filmed there at will. In countries with longer terms of protection, on the other hand, if one disregards the comparison of terms of protection, not only

the filming could be prohibited; even the hiring and showing of the American film would come up against the opposition of the owner of the right. Those are obstacles that there is no reason to erect. This idea is the decisive one, not the idea of a retaliatory measure, taken in defense of the interests of the authors of one's own country.¹⁵

In the light of this opinion, which is now regarded as the correct one, no reason was seen, at the time of accession to the Paris version, for the enactment of legal provisions comparable to the Federal Law mentioned. Article 96(2) of the Copyright Act now provides expressly for the making of a comparison of the terms of protection where the protection of foreign authors in Austria is based (only) on the Universal Copyright Convention in either its original or its revised form.

According to the Committee Report¹⁶ there is no need for a provision of identical content in the Berne Convention, as for it the immediate application of the comparison of terms of protection provided for in it has never been questioned.

6. The original Article 61(4) of the Copyright Act was a formal and legal delegation of authority. This provision was repealed when the Federal Constitution was brought back into force (December 19, 1945).¹⁷ The decree enacted by virtue of this delegation of authority, BGBl. No. 171/1936, during the time of the legitimate existence of this enabling provision, has therefore not lapsed, but rather continues to belong to the Austrian legal order as an independent decree with the rank of a Federal law.¹⁸

For reasons of legal rationalization it was incorporated in the Copyright Act itself. The following amendments were made at that time:¹⁹

(a) The responsibility for the keeping of the Register of Authors passed to the Federal Minister of Justice by virtue of the 1973 Law on Federal Ministries, BGBl. No. 389. Allowance was made for this.

(b) The reference to the obligation to pay fees was deleted because the obligation follows directly from the provisions on fees.

(c) Under Article II(4) of the Introductory Law to the Laws on Administrative Procedure, the General Law on Administrative Procedure is to be applied to the official procedure of all Federal ministries wherever those ministries act in the first instance. Thus the applicability of Section 13 of the General Law on Administrative Procedure does not need to be provided for specially.

¹⁵ E.g. Commentary, p. 16.

¹⁶ Page 2.

¹⁷ VfSlg. thought to be "Verfassungssammlung" = collection of constitutional texts.

¹⁸ VfSlg. 1837, 2977, *inter alia*.

¹⁹ Cf. Commentary, p. 19.

¹⁴ *Der Vergleich der Schutzfrist im Welturheberrechtsabkommen*, GRUR Int. 1960, 257.

(d) There is no need for special regulation of the administrative charge; provision is made for this in tariff items 2, 3 and 5 of the 1968 Decree on Administrative Charges.

(e) The provision to the effect that the Federal Ministry of Justice has to ascertain whether the application meets current provisions was not retained, as this is self-evident.

(f) The provision to the effect that registration is to be refused when it is apparent from the application that it does not relate to any literary, musical or artistic work, that the copyright in the work submitted has already lapsed owing to expiry of the term of protection or that the work does not enjoy any copyright protection in Austria for other reasons is contrary to the spirit of the prohibition on examination under the current Article 61(3) of the Copyright Act. It is moreover inadvisable to allow double standards to be created in the examination of eligibility for protection, as they could result in divergent decisions on the part of the administrative courts and the Supreme Court. The corresponding provision was therefore not retained.

(g) In other respects the provisions underwent (mere) drafting improvements.

7. The performer and the entertainment organizer have the exclusive right to fix a recital or performance — provided that there is no fair-use qualification — on a videogram or phonogram; this applies also in the case of the broadcasting of the recital or performance. Recitals or performances may only be broadcast with the consent of the performer and the entertainment organizer; broadcasts made by means of videograms or phonograms are excepted, unless the videogram or phonogram cannot be used for the purpose by virtue of an express legal prohibition, for instance because it has been manufactured or distributed without the consent of the performer or entertainment organizer, or because it has been manufactured for private, personal purposes by virtue of the rules of fair use. Finally recitals and performances that take place live may be communicated to the public by loudspeaker or another technical contrivance, outside the place — theater, hall, park, garden — in which they occur, only with the consent of the performer and the entertainment organizer. However, only the entertainment organizer is protected against the communication to the public of a recital or performance effected by means of a videogram or phonogram outside the place in which it occurred, for instance against the relaying of the disc concert from a holiday hotel into the hotel grounds. In the case of communication to the public and broadcasting, which cannot be prevented by any right of prohibition belonging to the performer, the

— which the entertainment organizer does not have. latter does have a claim to equitable remuneration

In the explanatory notes on the Basic Law it is stated²⁰ that the entertainment organizer cannot be granted any exploitation right in the performances of the performer; the Law does however have to protect him against others who might take advantage of the recitals and performances painstakingly and expensively organized by him without his consent. For that reason the Basic Law has not set any term on the protection of the entertainment organizer. Legal writers maintain²¹ that the entertainment organizer does not have any right of exploitation in the technical sense, but that he does have a particular kind of protection right that operates against third parties and which is not limited in time like the exploitation rights. It can be argued against this view²² that copyright and the protection rights in performances do not recognize any protection that is unlimited in time. The incorporation of the protection of the entertainment organizer in that of the performer rather indicates that his protection too is limited in the same way as that of the performer.²³ Such express limitation has now been specifically incorporated in Australian law in the form of Article 67(5) of the Copyright Act. For that reason the legal texts were systematically better arranged, in so far as they related to the protection of the entertainment organizer, without any alteration as to substance.²⁴

One kind of fair use was an exception to the otherwise ill-arranged protection of performers and entertainment organizers as described, namely the one that relates to the reporting of current events, corresponding to Articles 49 and 52(2) of the hitherto applicable version of the Copyright Act in the field of copyright protection in the stricter sense: it was permissible to record "small portions" of public recitals or performances on videograms or phonograms without the consent of the performer, or of the entertainment organizer if any, for the purpose of newsreels on current events, and to multiply and distribute those recordings; the performers could not demand under such circumstances that their name be mentioned on the videogram or phonogram (Copyright Act, Article 69(1)). It was moreover permissible to broadcast by radio "small portions" of public recitals or performances of literary or musical works in the course of radio news reports on current events (Copyright Act, Article 70(2), second sentence). This provision likewise did not take sufficient account of the information requirements of the general public.

²⁰ See Peter, *Das österreichische Urheberrecht*, 602.

²¹ Peter, *op. cit.*, 170.

²² Commentary, p. 20.

²³ Cf. Article 82 of the Copyright Act of the Federal Republic of Germany.

²⁴ Commentary, p. 20.

Now there is a provision corresponding to the new version of Article 42a of the Copyright Act.

8. Until now, a provision corresponding to Article 42a of the Copyright Act has been lacking in the field of the protection of photographs, phonograms and broadcasts. One has now been inserted (reference to Article 42a of the Copyright Act in Articles 74(7), 76(6) and 76a(5)).

9. Where a commercially manufactured phonogram is lawfully used for a broadcast (Article 17) or communication to the public, the user has to pay equitable compensation to the manufacturer of the phonogram. Performers have a claim on the manufacturer for a share in this compensation. In the absence of agreement with the entitled parties, this corresponds to half the compensation remaining with the manufacturer after deduction of the cost of collection. Both the manufacturer's claim on the user and the performer's claim on the manufacturer for participation by mutual arrangement can in future only be asserted by (various) collecting societies or (collectively) by a single society. The entertainment organizer and the broadcaster cannot after all be expected to enter into dealings with every individual entitled party.²⁵

10. The protection of the news, written into Article 79 of the Copyright Act, has proved inadequate; it has for instance happened that, immediately after the presentation of news in a newspaper or periodical authorized to do so by the collector of the news, the same news has been reproduced in another newspaper or periodical. In future this protection does not end at the time of presentation in a newspaper or periodical authorized to do so by the collector of the news, but only 12 hours thereafter.

Article 79 of the Copyright Act does not protect the news as such, but only the news report written by a so-called "collector" of news. So when a news item comes from another source, for instance from a newspaper that has done its own research, that news can be disseminated without further formality and without Article 79 of the Copyright Act being violated thereby.²⁶

The purpose of the proposed new provision, in terms of legal policy, is merely to preserve the news collector's economic basis for his demanding activity; he should be protected against the risk of others preying on his work without contributing to its cost by paying a subscription fee. It is therefore compatible with the freedom to receive news written into Article 19 of the Universal Convention on Human Rights.²⁷

Of course, the provision should apply only to those institutions for the dissemination of news to the public that are legally able to determine the content of the news they disseminate.²⁸

The insertion of the words "for consideration" qualifying "or other" is merely a clarification; even the historical legislator writing the Basic Law²⁹ had those undertakings in mind that charged agency fees.³⁰

11. In the opinion presented collectively by a large number of associations and unions on September 13, 1976, on the draft of a law to amend the Patent Act, which was later to become the Federal Law, BGBl. No. 349/1977, the following was said on the subject of the proposal to draft Article 147(1) of the Patent Law in such a way that it corresponded to the first sentence of Article 81(1) of the Copyright Act:

According to the text ... the burden of proof should bear on the plaintiff in the case of preventive injunctions not only to avert the risk of infringement but also to forestall repetition, in other words where the patent has already been infringed. The latter would be contrary to consistent practice. The Supreme Court should therefore make the appropriate correction to the provision in Article 81(1) of the Copyright Act that corresponds to Article 147(1) of the draft in such a way that, when there has already been an infringement of copyright, it is not for the plaintiff to prove a risk of repetition, but rather for the defendant to prove that the risk has ceased to exist.

As it happens, this very requirement of the risk of repetition has been discussed in depth recently, and the possibility has not been excluded of the judiciary reverting to the letter of the law. It should therefore be made clear in the text of the Law itself that the interest in the protection of rights has to be proved by the plaintiff only in the case of a preventive injunction, whereas as in the far commoner cases, in which the possible repetition of an infringement of rights already committed has to be dealt with, it is for the defendant to prove the absence of the interest in legal protection, or so-called risk of repetition ...

This proposal was taken up in the legislative procedure and reflected in the wording of the new Article 147(1) of the Patent Act. It therefore differs from the first sentence of Article 81(1) of the Copyright Act. The reversion to the letter of the law brought about by the above collective opinion, far from being not ruled out for the field of copyright, in fact went even further, as legal writers³¹ deduced from the different wording for the principles underlying the claim in an injunction action that the action was subject to different conditions according to the wording in the part of the law concerned.

In order to prevent the risk, which was strongly emphasized in the collective opinion, of unfair dis-

²⁵ Commentary, p. 20.

²⁶ Commentary, p. 20.

²⁷ Commentary, pp. 20 *et seq.*

²⁸ Commentary, p. 21.

²⁹ Cf. the EB of the Basic Law in Peter, *op. cit.*, p. 618.

³⁰ Commentary, p. 21.

³¹ Schuster-Bonnot, JBl. 1974, 169.

tribution of the burden of proof, the first and second sentences of Article 81(1) of the Copyright Act were adapted to Article 147 of the Patent Act.³²

12. Article 85 of the Copyright Act, which has to do with the publication of rulings of the civil courts, was reworded on the lines of the amendments made to Article 25 of the Unfair Competition Law by the Unfair Competition Amendment Law, BGBl. No. 120/1980. The following details of the change deserve a mention:

(a) As before, the manner of publication has to be set out in the judgment (Copyright Act, Article 85(1), first sentence). Also as before, however, there is the possibility for the court to specify the type of medium for publication, due account being taken of the purpose of the publication. It is left to the discretion of the judge to balance the interest of the party who has been granted the right to have the judgment published against the interest of those involved in the publication.³³ Publication of the text of the judgment generally achieves the intended purpose, which is to eliminate the effect of the violation as far as possible by appropriate information of the public. Little use has been made in modern practice of the possibility of seeking an award that goes beyond the mere publication of the text of the judgment.³⁴ The first sentence of Article 85(2) of the Copyright Act therefore says that publication — as a general rule — comprises the text of the judgment. Yet the wording of the text of the judgment can be such that the material result of the procedure is not apparent. In that case the aim of providing appropriate information cannot be achieved by reproduction of the text of the judgment alone. The possibility available previously of publishing the grounds underlying the judgment as well as the judgment itself does not always help in such cases; on one hand, the publication can in certain circumstances become very long thereby and consequently be both difficult to examine and often a direct economic burden for the losing party in the publication, who has to pay the costs; on the other hand, even the grounds underlying the judgment do not always present the results necessary for the information of those not party to the case in a manner that is readily comprehensible for them. In order to achieve the purpose of publication, therefore, the second sentence of Article 85(2) of the Copyright Act gives the court the additional possibility of ordering, at the request of the prevailing party, a short account, to form part of the publica-

tion to which the latter is entitled, of the essential findings of the procedure that is accessible to parties not involved, or even — especially when the text of the judgment or individual parts of it would otherwise be not sufficiently informative — of substituting such an account for the text of the judgment. Such a reformulation can at the same time be substantially shorter, for instance through omission of elements included in the text of the judgment such as rulings on costs, or the representation of the parties. According to prevailing judicial practice in civil procedure, it is for the prevailing party to provide a prior outline of the wording in which he wishes to have the right of publication, to which the award has entitled him, set down in writing. In its decision, the court will have to address itself to the purpose of publication — which in any event is clearly apparent from the Act — in such a way that no additional specific explanation of the judicial decision is necessary.³⁵

(b) In many cases the parties will not be able, before they have knowledge of the judgment, to determine whether mere publication of the text of the judgment — which after all what they have been striving for — is in fact sufficient to achieve the purpose; still less, on occasion, can it be judged what wording is necessary to achieve that aim in the publication that completes or replaces the text of the judgment. The successful party should therefore be granted the possibility of applying, within a maximum of four weeks after the judgment has become final, for an order concerning the content of the publication that departs from the rule, namely the publication of the text of the judgment (Copyright Act, Article 85(2), third and fourth sentences). The start of the four-week period is to be determined according to general provisions; moreover, the enforcement of a judgment that is no longer subject to appeal does not become binding until the judgment has been served on the party, that is, the party entitled to the publication. Should other parties to this action appear, the period will begin to run separately for each of them, except in the case provided for in Article 14 of the Code of Civil Procedure,³⁶ which in fact is difficult to imagine here.

(c) Any obligation on the part of media operators regarding publication has hitherto been lacking. Article 85(4) of the Copyright Act now expressly states that publication required by a final decision or any other enforcement order has to be carried out by the media operator without unnecessary delay.

13. Article 87(3) of the Copyright Act has always contained a special feature in connection with dam-

³² Commentary, p. 21.

³³ Commentary on the Government Bill of the Unfair Competition Amendment Law, 249 in the annexes to the Verbatim Minutes of the National Council, 15th Legislature, p. 7.

³⁴ *Op. cit.*, p. 7.

³⁵ *Op. cit.*, p. 7.

³⁶ *Op. cit.*, p. 7.

ages, namely the provision that the injured party whose authorization should have been obtained may demand double the amount of appropriate remuneration as indemnity for the pecuniary damages culpably inflicted on him, if no greater damage can be proved. Hitherto this provision has applied only when a literary or artistic work has been unlawfully recited, performed or presented to the public or broadcast, or the recital or performance of a literary or musical work broadcast or communicated to the public contrary to Articles 66(7), 69(3), 70 or 71 of the Copyright Act, where a photograph has been presented to the public or broadcast contrary to Article 74 of the Copyright Act, where a phonogram has been used for a broadcast or for communication to the public contrary to Article 76(2) or (4) of the Copyright Act or where a broadcast has been transmitted or communicated to the public contrary to Article 76a of the Copyright Act; it has now been extended to apply to all violations of the Copyright Act.

14. Until now case law has allowed claims for the rendering of accounts only under the conditions laid down in Article 87(4) of the Copyright Act, in other words in cases of improper business practice, but not also as a preparatory measure in the assertion of claims for damages. Moreover, there is likewise no obligation to render an account when a person has a claim to appropriate remuneration or equitable compensation. This shortcoming has been frequently and rightly complained about.³⁷ Therefore, in line with the Patent Act (Article 151) and the Trademark Act (Article 56 in conjunction with Article 151 of the Patent Act), express provision has been made in a new Article 87a for such a claim for a rendering of accounts (which in my opinion could already be deduced, even before the entry into force of this provision, by analogy with the provisions already mentioned). According to the Committee Report,³⁸ the concept of the rendering of accounts covers the provision of all such information by the party responsible as the claimant may require for the purpose of effective legal prosecution. In particular this includes all information needed by the claimant, who has proved the violation of his rights, in order to determine the extent of that violation.

15. The so-called events of everyday life, for which the general civil code provides a short, three-year prescription period, are no longer fully covered, in view of the conditions of modern life. The argument for a short period, notably the fact that it is not customary to keep evidentiary material for a long time, applies in principle also to the performer's and

the record manufacturer's claim to equitable compensation for the use of commercially manufactured phonograms for a broadcast or communication to the public. The normal prescription period is therefore too long. Where the claims are to a certain extent also directed against traders, who have to keep their account books for seven years, still no decision was taken on a new, specific prescription period, but rather a three-year period was provided also for the lapse of claims for equitable compensation. The demands of individual claimants or groups of claimants against the collecting society now lapse, without any regard being had to the claimant's knowledge of the circumstances surrounding the collecting society's obligation to pay, within three years following that point.

There is no transitional rule for this provision, from which it follows, in my opinion — which is contrary to prevailing doctrine³⁹ — that the entry into force of the 1982 Copyright Amendment Law will cause all claims for equitable compensation to lapse in so far as the new, three-year prescription period, the start of which is to be calculated according to the earlier law, has already expired or expires on that date.

16. Paragraphs (1) to (4) of Article 91 of the Copyright Act have been adapted to the Criminal Code in accordance with the rules of the Criminal Law Adaptation Act.

Since January 1, 1975, according to the Criminal Procedure Adaptation Act, the jurisdiction over acts punishable under Article 91 of the Copyright Act has been shifted from the first-instance law court to the district court. However, owing to the uncommon and complex nature of the subject matter, this shift has been found undesirable.⁴⁰ Now therefore Article 91(5) of the Copyright Act provides that such cases are to be heard by the judge of first instance sitting singly.

17. Article 99(4) of the Copyright Act incorporated the Geneva Convention for the Protection of Producers of Phonograms Against Unauthorized Duplication of Their Phonograms in Austrian law (by enactment of a law); from now on, foreign producers of phonograms who are nationals of a State party to the above Convention enjoy (fully) the protection granted in Article 76(1), (2) and (4) to (6) of the Copyright Act.

18. Contrary to the proposal written into the Government Bill of the Copyright Amendment Law, the Brussels Convention Relating to the Distribution

³⁷ See in particular Torggler, in *Öbl.* 1972, 81.

³⁸ Page 2.

³⁹ Klang, *Kommentar zum ABGB*, 2nd edition, I 73 and 79.

⁴⁰ Commentary, p. 22.

of Programme-Carrying Signals Transmitted by Satellite was not made law by means of a specific extension of the broadcasters' protection right written into Article 76a of the Copyright Act; the Judicial Committee of the National Council was rather of the opinion that its application could be assigned to the

⁴¹ Committee Report, 977 in the annexes to the Verbatim Minutes of the National Council, 15th Legislature, p. 1.

law on telecommunications, which in its present form is entirely suited to the purpose. The Federal Ministry of Transport and Communications will only issue communication licenses under the current telecommunications law for the operation of antennas with which signals subject to the Convention can be received when the authorization of the originating organization has been obtained.⁴¹

(WIPO translation)

Letter from Barbados

Commentary on the Intellectual Property Laws of Barbados

Lewis S. HUNTE *

Introductory

The Parliament of Barbados during its final session for 1981 enacted four new intellectual property statutes thereby ushering in a new era in the history of ownership of intellectual property in Barbados. The four statutes comprise a new Copyright Act, a new Patents Act, a new Trade Marks Act and a new Industrial Designs Act. These statutes are not yet in operation and so, for the time being, the old law is still in force.¹

Historical

It must be pointed out that Barbados was uninhabited when it was settled by the British in the year 1627; it had its first Parliament in the year 1639 but remained a British colony until the year 1966 when it became an independent State. It is, therefore, what lawyers refer to as a common law country. That is to say, its legal system has its roots in the British common law as opposed to civil law countries which have a system of law based on the Roman civil law.

In the year 1979, the Government of Barbados, in answer to the crying need for greater protection of the country's authors, composers, musicians, performers and producers set up an Inter-Ministerial Com-

mittee comprising 12 persons drawn from various areas of the public sector "to examine the existing copyright and industrial property laws of the country with a view to reforming them."² The Committee was empowered to advise Government respecting the need for "outside assistance" if necessary.

Accordingly, the Committee recommended that Government should seek the assistance of the World Intellectual Property Organization (WIPO) based in Geneva. The WIPO's assistance was sought and in the November of that year two experts from WIPO visited Barbados and carried out a survey to determine the country's needs. By the end of the December of that year Barbados had received from WIPO four draft model laws which formed the basis of the new legislation under discussion. Incidentally, the visit by the WIPO experts also heralded the beginning of a period of close friendship and cooperation between WIPO and Barbados that seem to get closer as the years roll on. To mention discussions and seminars (national and regional) is but to name two ways in which this association with WIPO has grown.

The Copyright Legislation

Broadly speaking, the copyright law of Barbados was contained in the British Copyright Act, 1911.³ However, the Copyright Act, 1905⁴ which predates

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¹ This "Letter" was written in 1982. In the meantime, the Copyright Act entered into force on October 1, 1982. As for the part relating to industrial property, it will be published in the WIPO monthly review *Industrial Property (Editor's Note)*.

² The terms of reference of the Inter-Ministerial Committee.

³ 1 & 2 Geo V C 46.

⁴ Chapter 300 of the Revised Laws of Barbados.

the British Act of 1911 was never repealed and has therefore coexisted with the British Act. This was obviously an anomaly.

The new Copyright Act in section 54 removes the anomaly by repealing the 1905 Act of the Barbados Parliament and providing that the British Act of 1911 ceases to have effect in respect of Barbados.

When the new Copyright Act comes into operation it will, for the first time, bring the law of Barbados into harmony with the Berne Convention.

General Arrangement of the Copyright Act, 1981

The new Act is divided in three Parts and two Schedules. Part I provides protection for copyright proper. Part II affords protection for those off-shoots of copyright which in civil law systems are called "neighbouring rights" but is drafted to permit them to be termed "copyright" as they are referred to in common law systems. Part III makes provision for a number of miscellaneous matters including sanctions.

Part I is prefaced by sections 1 to 4 which contain the short title of the Act, the definitions of expressions used in the Act, a statement as to the purposes of the Act and the scope of application of the Act. The rest of the Part is, broadly speaking, arranged as follows:

- (a) works,
- (b) rights,
- (c) duration of rights,
- (d) limitation of rights.

The periods of protection accorded an author under Part I of the Act are contained in sections 17 to 23 and are as follows:

- (a) economic rights in a work exist for life of its author and for fifty years after his death (section 17(1));
- (b) in the case of joint authors, the economic rights exist for the life of the last surviving author and for fifty years after his death (section 17(2));
- (c) moral rights in a work exist for fifty years after the death of the author (section 18);
- (d) rights in respect of an anonymous work, exist for fifty years after the year of first publication of the work; but as soon as the identity of the author is known, the principle relating to known authors applies (section 19);
- (e) rights in respect of an audio-visual work exist for fifty years immediately following the year in which the work first became available to the public; but if it is not so made available within fifteen years after its completion the rights cease at the end of the fifteenth year (section 20);
- (f) rights in respect of photographic works exist for fifty years immediately following the year

in which the work was first made available to the public (section 21);

- (g) rights in respect of folklore vest in the Crown in perpetuity (section 22);

"Crown" in this case means the Crown in right of its Government of Barbados; Barbados being a British Commonwealth country.

Part II, as mentioned earlier, is concerned with "Neighbouring Rights." The expression "neighbouring rights," though not of common law origin, is understood by the common law system and is used as a heading, guide or signpost to indicate to the reader the contents of the Part although the expression itself does not appear in any of the sections. Therefore, it cannot be said that the expression has been directly introduced into the legal system of Barbados since it is found only in a heading and headings are not read as part of a statute.

The various neighbouring rights are as follows:

- (a) performer's rights (section 30);
- (b) producer's rights (section 35); and
- (c) broadcaster's rights (section 41).

The sections that contain exceptions to the general principles are placed as near as is logically possible to the sections that contain the general principles.

The contents of Part III apply to both Parts I and II and are conveniently headed "administration." The Part is subdivided into sections 44 to 48 which contain the criminal sanctions, section 49 which sets out the civil sanctions and sections 50 to 56 which deal with a number of miscellaneous matters.

The contents of the First and Second Schedules would, in a normal case, be placed in regulations. However, the detail they contain is of a substantive nature and it was thought best to make them part of the Act. The Schedules have to do with licences and the First Schedule sets out the principles respecting the issuing of translation licences while the Second Schedule sets out the principles respecting the issuing of reproduction licences.

Summary

The four Acts, therefore, are intended to provide the legal framework

- (a) to provide for an up-to-date intellectual property administration in Barbados; and
- (b) to provide the necessary clearance for Barbados to subscribe to the proper Unions that have been created for the protection of owners of intellectual property throughout the world.

Calendar

WIPO Meetings

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

1983

- March 16 to 18 (Geneva) — WIPO Worldwide Forum on the Piracy of Broadcasts and of the Printed Word
- March 21 to 25 (Geneva) — Consultants Meeting on Questions of Cable Distribution (convened jointly with ILO and Unesco)
- April 18 to 22 (Geneva) — Permanent Committee on Patent Information (PCPI) — Working Group on General Information
- April 25 to 29 (Geneva) — International Patent Cooperation (PCT) Union — Committee for Administrative and Legal Matters
- May 2 to 6 (Geneva) — Committee of Experts Concerning Joint Inventive Activity
- May 26 to June 3 (Geneva) — Permanent Committee on Patent Information (PCPI) — Working Group on Special Questions and Working Group on Planning
- June 6 to 17 (Geneva) — Permanent Committee on Patent Information (PCPI) — Working Group on Search Information
- June 13 to 17 (Geneva) — Committee of Experts on the Legal Protection of Computer Software
- June 20 to 24 (Geneva) — Permanent Committee on Patent Information (PCPI) — Ad Hoc Working Group on the Revision of the Guide to the IPC
- July 4 to 8 (Geneva) — Joint Unesco-WIPO Consultative Committee on the Access by Developing Countries to Works Protected by Copyright (convened jointly with Unesco)
- September 12 to 20 (Geneva) — International Patent Classification (IPC) Union — Committee of Experts
- September 14 to 16 (Paris) — Forum of International Non-Governmental Organizations on Double Taxation of Copyright Royalties (convened jointly with Unesco)
- September 19 to 23 (Geneva) — Permanent Committee on Patent Information (PCPI) and PCT Committee for Technical Cooperation (PCT/CTC)
- September 26 (Geneva) — Paris Union — Celebration of the Centenary of the Paris Convention for the Protection of Industrial Property
- September 26 to October 4 (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)
- October 17 to 21 (Geneva) — Committee of Governmental Experts on Model Statutes for Institutions Administering Authors' Rights in Developing Countries (convened jointly with Unesco)
- November 21 to 25 (Geneva) — Permanent Committee on Patent Information (PCPI) — Working Group on General Information
- November 28 to December 2 (Geneva) — Permanent Committee on Patent Information (PCPI) — Working Group on Special Questions and Working Group on Planning
- December 5 to 7 (Geneva) — Berne Union, Universal Copyright Convention and Rome Convention — Subcommittees on Cable Distribution of the Executive Committee of the Berne Union, of the Intergovernmental Copyright Committee and of the Intergovernmental Committee of the Rome Convention (convened jointly with ILO and Unesco).
- December 8 and 9 (Geneva, ILO Headquarters) — Rome Convention — Intergovernmental Committee (convened jointly with ILO and Unesco)
- December 12 to 16 (Geneva) — Berne Union — Executive Committee — Extraordinary Session (sitting together, for the discussion of certain items, with the Intergovernmental Committee of the Universal Copyright Convention)

UPOV Meetings

1983

April 26 and 27 (Geneva) — Administrative and Legal Committee

April 28 (Geneva) — Consultative Committee

May 30 to June 2 (Saragossa) — Subgroup and Technical Working Party for Vegetables

June 7 to 10 (Tystofte, Skaellskør) — Subgroups and Technical Working Party for Agricultural Crops

September 20 to 23 (Rome or Santa Cruz, Tenerife) — Subgroup and Technical Working Party for Fruit Crops

September 27 to 29 (Conthey or Wädenswil) — Technical Working Party for Ornamental Plants and Forest Trees

October 3 and 4 (Geneva) — Technical Committee

October 11 (Geneva) — Consultative Committee

October 12 to 14 (Geneva) — Council

November 7 and 8 (Geneva) — Administrative and Legal Committee

November 9 and 10 (Geneva) — Hearing of International Non-Governmental Organizations

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

1983

Non-Governmental Organizations

Council of the Professional Photographers of Europe (EUROPHOT)

Congress — October 6 to 13 (Munich)

International Confederation of Societies of Authors and Composers (CISAC)

Legal and Legislation Committee — May 2 to 5 (Washington)

International Federation of Library Associations and Institutions (IFLA)

Congress — August 21 to 28 (Munich)

International Federation of Musicians (FIM)

Executive Committee — June 27 to 30 (Amsterdam)

Congress — September 19 to 23 (Budapest)

International Federation of Phonogram and Videogram Producers (IFPI)

Council — June 1 and 2 (Venice)

International Literary and Artistic Association (ALAI)

Congress — April 13 to 20 (Aegean Sea)