

Published monthly
Annual subscription:
fr.s. 130.—
Each monthly issue:
fr.s. 13.—

Copyright

20th year — No. 2
February 1984

Monthly Review of the
World Intellectual Property Organization (WIPO)

Contents

WORLD INTELLECTUAL PROPERTY ORGANIZATION

The World Intellectual Property Organization in 1983. WIPO and Development
Cooperation Activities in the Fields of Copyright and Neighboring Rights . . . 39

BERNE UNION

Executive Committee. Twenty-Second Session (8th Extraordinary) (Geneva,
December 12 to 16, 1983) 55

NOTIFICATIONS

Nairobi Treaty on the Protection of the Olympic Symbol
Sri Lanka. Ratification 73

NATIONAL LEGISLATION

Madagascar. Ordinance amending certain provisions of Law No. 57-298 of
March 11, 1957, on Literary and Artistic Property (No. 82 031, of November 6,
1982) 74

GENERAL STUDIES

The Legal Protection of Works of Folklore (**E. P. Gavrilov**) 76

CORRESPONDENCE

Letter from France (**André Françon**) 81

ACTIVITIES OF OTHER ORGANIZATIONS

International Copyright Society (INTERGU). IXth Congress—Interamerican
Copyright Institute (IIDA). IVth Continental Conference (Santiago de Chile,
October 31 to November 4, 1983) 87

International Consultation on the Protection of the Rights of Performers in Social-
ist Countries (Prague, November 1 to 4, 1983) 89

CALENDAR OF MEETINGS 91

© WIPO 1984

Any reproduction of official notes or reports, articles and translations of laws or agreements,
published in this review, is authorized only with the prior consent of WIPO.

ISSN 0010-8626

World Intellectual Property Organization

The World Intellectual Property Organization in 1983

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

I. Intellectual Property Activities: Promotion of the Worldwide Recognition of and Respect for Intellectual Property; Promotion of Accessions to WIPO and to the Treaties Administered by WIPO

Objective

The objective is to promote the realization of the benefits of intellectual property—both industrial property and copyright—for the cultural and economic progress of any country. As a natural avenue leading to such benefits, the objective is also to promote accession to the treaties administered by WIPO by countries not yet party to them.

Activities

During the period covered by this report, the International Bureau continued to promote acceptance by States of the WIPO Convention and of the other treaties administered by WIPO. In addition to the activities referred to below in relation to specific treaties, discussions on such acceptance took place during WIPO missions to States, particularly missions for the purposes of development cooperation, in meetings with permanent missions of States in Geneva and in contacts with delegations of States at intergovernmental meetings. Notes concerning the advantages of acceptance of particular treaties for particular countries were prepared and sent to the competent authorities of the countries concerned.

* 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 article 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 general, the report follows the order in which activities are set out in the program for the 1982 and 1983 biennium, approved by the Governing Bodies of WIPO and the Unions administered by WIPO in 1981. It recalls, from the said program, the objectives of the activities described.

Convention Establishing the World Intellectual Property Organization. The following countries deposited their instruments of accession to the WIPO Convention: Guatemala in January 1983, Panama in June 1983, Haiti and Honduras in August 1983, Tanzania in September 1983 and Rwanda in November 1983. When, in February 1984, the accession of Rwanda entered into force, the number of members of WIPO was 106. They are the following: 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, Guatemala, Guinea, Haiti, Holy See, Honduras, 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, Panama, Peru, Philippines, Poland, Portugal, Qatar, Republic of Korea, Romania, Rwanda, Saudi Arabia, Senegal, Somalia, South Africa, Soviet Union, Spain, Sri Lanka, Sudan, Suriname, Sweden, Switzerland, Tanzania, 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, 17 States are members of WIPO alone (Byelorussian SSR, China, Colombia, El Salvador, Gambia, Honduras, Jamaica, Mongolia, Panama, Peru, Qatar, Saudi Arabia, Somalia, Sudan, Ukrainian SSR, United Arab Emirates, Yemen).

In addition, 18 States, which have not yet become members of WIPO, are party to one or more of the treaties administered by WIPO. They are the following: Cyprus, Dominican Republic, Ecuador, Equatorial Guinea, Ethiopia, Iceland, Iran (Islamic Republic of), Lebanon, Madagascar, New Zealand,

Nicaragua, Nigeria, Paraguay, San Marino, Syria, Thailand, Trinidad and Tobago, Venezuela.

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 is 124.

Treaties Providing for the Substantive Protection of Intellectual Property

Paris Convention for the Protection of Industrial Property. Rwanda deposited its instrument of accession to the Paris Convention in November 1983, choosing Class VII for the purpose of contributions. On the entry into force of the said accession in February 1984, the number of States members of the Paris Union was 93.

The Director General, accompanied by other officials of WIPO, represented WIPO at a ceremony celebrating the 100th anniversary of the signing of the Paris Convention, organized in May 1983 in Paris by the Government of France and the International Association for the Protection of Industrial Property (AIPPI). An article describing the said ceremony was published in the September 1983 issue of *Industrial Property*.

The centenary of the Paris Convention was celebrated in WIPO at Geneva in September 1983, on the first day of the 1983 sessions of the Governing Bodies of WIPO and the Unions administered by it. At a solemn meeting, speeches were made by the Chairman and the two Vice-Chairmen of the Assembly of the Paris Union, by representatives of the Swiss Confederation and of the Republic and Canton of Geneva and by the Director General of WIPO. The celebration was also the occasion of the publication of a book, and the inauguration of a stone fountain near to the entrance to the WIPO Building. The cost of the book and the fountain was covered from the funds spontaneously and generously donated by the Swiss postal authorities to WIPO in connection with the issuance of Swiss postal stamps bearing WIPO's name and drawings symbolizing WIPO's activities. The book contained messages sent by Heads of State or Government to the Director General extolling the merits of the Paris Convention for international cooperation and transfer of technology and for the industrial and commercial development of their countries during the past 100 years. The book also contained an article on the history of the Paris Convention, illustrated by pictures relevant to the aims and history of the Paris Union and the International Bureau. The book was accompanied by a collection of portraits of heads of national industrial property offices in office on the date of the centenary (March 20, 1983) of the Paris Convention.

On the same occasion, a volume on industrial property statistics was published, giving statistics, by country and cumulatively, for the hundred years 1883–1982 on the number of applications for, and registrations or grants of, patents for inventions, inventors' certificates, trademarks and service marks, industrial designs, utility models and new varieties of plants.

A more complete account of the centenary celebrations in Geneva was published in the December 1983 issue of *Industrial Property*.

Berne Convention for the Protection of Literary and Artistic Works. Barbados and Rwanda deposited instruments of accession to the Berne Convention, choosing Class VII for the purpose of contributions, in April and in November 1983, respectively, bringing the number of States members of the Berne Union to 76. Cyprus deposited its instrument of ratification of the 1971 (Paris) Act of the Berne Convention in April 1983, with a declaration under the Appendix to the said Act concerning the right of translation and choosing Class VII for the purpose of contributions.

Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations. Barbados and Panama deposited instruments of accession to the Rome Convention in June 1983, and Finland deposited its instrument of ratification in July 1983, bringing the number of States party to the Rome Convention to 26.

A note concerning the benefits of the Rome Convention, prepared by WIPO, was sent to the non-member States party to the Berne Convention, the Universal Copyright Convention or both by the joint secretariat (ILO, Unesco and WIPO) in May 1983.

The WIPO Guide to the Rome and Phonograms Conventions was published in Spanish in January 1983 and in Japanese in March 1983.

Geneva Convention for the Protection of Producers of Phonograms Against Unauthorized Duplication of Their Phonograms. Barbados deposited its instrument of accession to the Phonograms Convention in April 1983, bringing the number of States party to the Phonograms Convention to 37.

The WIPO Guide to the Rome and Phonograms Conventions was published in Spanish in January 1983 and in Japanese in March 1983.

Brussels Convention Relating to the Distribution of Programme-Carrying Signals Transmitted by Satellite. Morocco ratified the Satellites Convention in March 1983, bringing the number of States party to the Satellites Convention to eight.

Model domestic provisions to implement the Sattelites Convention were published by WIPO and Unesco in Arabic, English, French, Russian and Spanish in September 1983.

Nairobi Treaty on the Protection of the Olympic Symbol. Instruments of ratification or accession in respect of the Nairobi Treaty were deposited by Guatemala in January 1983, by the Congo in February 1983, by Tunisia in April 1983, by Qatar in June 1983, by Greece in July 1983, by India and Uganda in September 1983, and by Chile and Togo in November 1983. With the entry into force, in December 1983, of the ratification by Chile, the number of States party to the Nairobi Treaty was 13, namely, Chile, the Congo, Egypt, Equatorial Guinea, Ethiopia, Greece, Guatemala, India, Kenya, Qatar, Togo, Tunisia and Uganda.

The Nairobi Treaty was signed by Morocco and by Togo in March 1983, by Peru in May 1983 and by Benin, Colombia, Democratic People's Republic of Korea, India, Italy, Madagascar, Qatar and Uruguay in June 1983, bringing the total number of signatory States to 37 by June 30, 1983, the end of the period during which the Treaty was open for signature.

A note concerning the advantages of the Nairobi Treaty was sent, in March 1983, to States not yet party to the said Treaty.

In June 1983, the Director General received, during a meeting in Lausanne of the Executive Committee of the International Olympic Committee (IOC) and the international sports federations, from the hands of the President of the IOC, the silver medal of the IOC for merits connected with the establishment of the Nairobi Treaty.

In September 1983, the General Assembly of WIPO approved measures proposed by the Director General concerning the administration of the Nairobi Treaty.

*Treaties Providing for Simplified Possibilities
for the International Protection of Inventions,
Marks and Industrial Designs*

Patent Cooperation Treaty (PCT). Mauritania deposited its instrument of accession to the Patent Cooperation Treaty in January 1983. On the entry into force of the said accession in April 1983, the number of States party to the PCT was 33. In July 1983, the United Kingdom informed the Director General that the PCT shall be applicable to the Isle of Man.

For the purpose of encouraging accession to the PCT, discussions took place between WIPO officials and the Government authorities concerned during missions to the Republic of Korea in March 1983,

the Ivory Coast, Mali and Upper Volta in May 1983 and Bulgaria in July 1983. Discussions for the said purpose with the Government authorities of Italy continued during the period covered by this report.

Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure. Sweden deposited its instrument of ratification of the Budapest Treaty in June 1983 and Belgium in September 1983. When, in December 1983, the latter accession entered into force, the number of States party to the Budapest Treaty was 14.

Communications were received from the United Kingdom in January 1983 and from the United States of America in September 1983 concerning the acquisition of the status of International Depositary Authority by depositary institutions in the said member States. The said communications were published, respectively, in the March and November 1983 issues of *Industrial Property*. In December 1983, the number of International Depositary Authorities was 11, in five member States.

Madrid Agreement Concerning the International Registration of Marks. For the purpose of encouraging accession to the Madrid Agreement, discussions took place between a WIPO official and the Government authorities concerned during a mission to Bulgaria in July 1983.

Hague Agreement Concerning the International Deposit of Industrial Designs. In April 1983, the Federal Republic of Germany ratified the Hague Act (1960) of the Hague Agreement. That Act is not yet in force.

*Treaties Establishing International Classifications
in the Field of Inventions, Marks
and Industrial Designs*

Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks. The Geneva Act (1977) of the Nice Agreement was ratified by Luxembourg in September 1983 and by the United States of America in November 1983.

Vienna Agreement Establishing an International Classification of the Figurative Elements of Marks. The Vienna Agreement was ratified by Luxembourg in September 1983. The Agreement is not yet in force.

A note concerning the advantages of the Vienna Agreement and Classification was sent, in November 1983, to States members of the Paris Union not yet party to the said Agreement.

Treaty in the Field of Double Taxation

Madrid Multilateral Convention for the Avoidance of Double Taxation of Copyright Royalties. India acceded to the Madrid Convention in January 1983, with reservations to Articles 1 to 4 and 17 of the Convention. The Convention is not yet in force.

In September 1983, WIPO and Unesco organized jointly in Paris a consultation meeting of non-governmental organizations on the implementation of the Madrid Multilateral Convention for the Avoidance of Double Taxation of Copyright Royalties. The following organizations were represented: European Broadcasting Union (EBU), International Association of Art (AIAP), International Confederation of Societies of Authors and Composers (CIS-AC), International Copyright Society (INTERGU), International Federation of Phonogram and Videogram Producers (IFPI), International Group of Scientific, Technical and Medical Publishers (STM), International Literary and Artistic Association (ALAI), International Publishers Association (IPA), International Theatre Institute (IIT).

The meeting discussed in detail a number of points, concerning specific problems that may be raised in the course of implementing the Multilateral Convention and its Additional Protocol, including: the notions of copyright royalties, beneficiaries, State of residence of the beneficiary, State of source of royalties, fiscal sovereignty and equality of rights of States, exchange of information, means of implementation.

The participants adopted a recommendation requesting WIPO and Unesco to pursue all efforts, including the early publication of a brochure describing the Convention, to promote its wide acceptance, and requesting States to take measures for the avoidance of double taxation of copyright royalties.

In September 1983, the General Assembly of WIPO approved measures proposed by the Director General concerning the administration of the Madrid Multilateral Convention.

Acceptance of Treaty Amendments

In 1979, the WIPO Conference and the Assemblies of the Paris, PCT, Madrid, Hague, Lisbon, IPC, Nice, Locarno and Berne Unions decided to change from the then existing system of triennial and annual programs and budgets to a system of biennial programs and 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. Entry into force requires that written notifications of acceptance be received from three-fourths of the States that were entitled to vote on the amendments in the various (General) Assemblies. By December 31, 1983, the following 54 States had notified their acceptance of those of the amendments adopted in 1979 which concerned treaties in whose (General) Assemblies they had the right to vote: Algeria, Australia, Bahamas, Brazil, Bulgaria, Canada, Central African Republic, Chile, Congo, Czechoslovakia, Denmark, Egypt, Finland, France, German Democratic Republic, Germany (Federal Republic of), Greece, Holy See, Hungary, India, Iraq, Ireland, Israel, Italy, Jordan, Kenya, Liechtenstein, Luxembourg, Malawi, Mali, Mauritius, Mexico, Monaco, Niger, Norway, Portugal, Qatar, Republic of Korea, Romania, Soviet Union, Spain, Sudan, Suriname, Sweden, Switzerland, Tunisia, Turkey, Uganda, United Arab Emirates, United Kingdom, United States of America, Upper Volta, Viet Nam, Zambia. The similar amendments adopted by the Assembly of the Budapest Union in 1980 have been accepted by the following States entitled to vote: Bulgaria, Hungary, United States of America. The similar amendments adopted by the Assembly of the TRT Union in 1980 have been accepted by the Congo and the Soviet Union.

The required number of notifications (three-quarters of the States entitled to vote at the time of the adoption of the amendments) for each treaty concerned (followed, for each treaty, by the number received) is as follows: WIPO Convention: 64 (53); Paris Convention: 54 (47); Patent Cooperation Treaty: 18 (15); Madrid Agreement: 16 (16); Hague Agreement: 7 (7); Lisbon Agreement: 10 (10); IPC Agreement: 21 (22); Nice Agreement: 21 (21); Locarno Agreement: 12 (14); Berne Convention: 44 (36); Budapest Treaty: 4 (3); Trademark Registration Treaty: 4 (2).

The Director General notified in July 1983 the entry into force of the amendments concerning the Hague Agreement, the IPC Agreement, the Nice Agreement and the Locarno Agreement and, in December 1983, the entry into force of the amendments concerning the Madrid Agreement and the Lisbon Agreement. Furthermore, the Director General reminded the States which were entitled to vote on the relevant dates in respect of the amendments of the treaties concerned that they had not so far notified acceptance of the said amendments, and invited them to do so. They are the following:

- (i) as to the *WIPO Convention*: Austria, Belgium, Benin, Burundi, Byelorussian SSR, Cameroon, Chad, Cuba, Democratic People's Republic of Korea, El Salvador, Fiji, Gabon,

- Ghana, Ivory Coast, Jamaica, Japan, Libya, Malta, Mauritania, Mongolia, Morocco, Netherlands, Pakistan, Poland, Senegal, South Africa, Sri Lanka, Togo, Ukrainian SSR, Yemen, Yugoslavia, Zaire (32);
- (ii) as to the *Paris Convention*: Austria, Belgium, Benin, Burundi, Cameroon, Chad, Cuba, Gabon, Ghana, Ivory Coast, Japan, Libya, Madagascar, Malta, Mauritania, Morocco, Netherlands, Poland, Senegal, South Africa, Sri Lanka, Togo, Yugoslavia, Zaire (24);
- (iii) as to the *Patent Cooperation Treaty*: Austria, Cameroon, Chad, Gabon, Japan, Madagascar, Netherlands, Senegal, Togo (9);
- (iv) as to the *Berne Convention*: Austria, Belgium, Benin, Cameroon, Chad, Costa Rica, Fiji, Gabon, Ivory Coast, Japan, Libya, Malta, Mauritania, Morocco, Netherlands, Pakistan, Senegal, South Africa, Sri Lanka, Togo, Yugoslavia, Zaire (22);
- (v) as to the *Budapest Treaty*: France, Japan (2);
- (vi) as to the *Trademark Registration Treaty*: Gabon, Togo, Upper Volta (3).

The decision by the Governing Bodies in 1979, referred to above, 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 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. This decision still applies to the six treaties mentioned in the preceding paragraph.

II. Copyright and Neighboring Rights Activities of Particular Interest to Developing Countries

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 1983, WIPO received 143 applications for training in the fields of copyright and neighboring rights from 55 developing countries, from the United Nations High Commissioner for Refugees (UNHCR), the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA) and from the Pan Africanist Congress of Azania (PAC). Fifty-two of these applications, from the following 37 developing countries, and from UNRWA, were accepted and led to the completion of training courses: Algeria, Argentina, Bolivia, Brazil, China, Colombia, Congo, Costa Rica, Cuba, Ecuador, Egypt, Ethiopia, Guinea, Honduras, India, Indonesia, Jamaica, Madagascar, Mexico, Morocco, Nigeria, Pakistan, Panama, Papua New Guinea, Paraguay, Peru, Philippines, Saudi Arabia, Senegal, Somalia, Sudan, Thailand, Tunisia, Upper Volta, Uruguay, Zaire, Zambia.

The training arranged in 1983 took the following forms (listed in chronological order):

(a) for eight trainees, a Specialized Training Course (in English) on the Administration of Copyright and Neighboring Rights, in *Zurich* in May 1983, organized by WIPO in cooperation with the Swiss Society for Authors' Rights in Musical Works (SUISA); the participants came from Brazil, Egypt, India, Jamaica, Mexico, Pakistan, Philippines and Sudan; the course was opened by the Director General of SUISA and on behalf of the Director General of WIPO; lectures were given by officials of SUISA, the Mechanical Copyright Society Limited (MCPS) (London), the Hungarian Bureau for the Protection of Authors' Rights (ARTISJUS) (Budapest), the Swiss Society of Performing Artists (SIG) (Zurich), the International Federation of Phonogram and Videogram Producers (IFPI) and WIPO; this course was followed, for some of those concerned, by practical training in the copyright offices of Algeria and France; this course was followed by a visit to WIPO Headquarters;

(b) for 13 trainees, a Specialized Training Course (in Spanish) on Copyright and Neighboring Rights, in *Quito* in May and June 1983, organized by WIPO in cooperation with SUISA and the Government of Ecuador (Ministry of External Relations and the Casa de la Cultura Ecuatoriana); the participants came from Argentina, Bolivia, Colombia, Costa Rica, Cuba, Honduras, Mexico, Panama, Paraguay, Peru and Uruguay; the course was opened

by the President of the Casa de la Cultura Ecuatoriana, the Director General of SUIISA and on behalf of the Director General of WIPO; lectures were given by officials of SUIISA, the Copyright Office of Colombia, the Argentinian Center of the Inter-American Copyright Institute, the University of Chile and WIPO;

(c) for 15 trainees, a General Introductory Course (in English) on Copyright and Neighboring Rights, in *Munich* in October 1983, organized by WIPO in cooperation with the Carl Duisberg Gesellschaft (CDG) (Federal Republic of Germany); the participants came from China, Ethiopia, Honduras, India, Indonesia, Nigeria, Pakistan, Papua New Guinea, Philippines, Somalia, Sudan, Thailand, Zambia and UNRWA; the course was opened by a representative of the Ministry of Justice of the Federal Republic of Germany, a representative of the CDG and on behalf of the Director General of WIPO; lectures were given by officials of the Ministry of Justice, of institutions dealing with copyright in the Federal Republic of Germany, of the Max Planck Institute, of the International Confederation of Societies of Authors and Composers (CISAC), of the Society for the Administration of Neighboring Rights (GVL) (Hamburg), of the International Publishers Association (IPA), of the Publishers' and Booksellers' Association (Frankfurt), of the European Broadcasting Union (EBU), of the Swedish Ministry of Justice, of the British Copyright Council, of the International Federation of Musicians (IFM), of the International Federation of Phonogram and Videogram Producers (IFPI), of the Indian Ministry of Law, and of WIPO; this course was followed, for most of those concerned, by practical training in copyright and neighboring rights in the following countries: Germany (Federal Republic of), Hungary, India, Netherlands, Switzerland, United Kingdom;

(d) for 10 trainees, a General Introductory Course (in French) on Copyright and Neighboring Rights, in *Paris* in October and November 1983, organized by WIPO in cooperation with the Ministries of External Relations and of Culture of France and the Society of Authors, Composers and Music Publishers (SACEM); the participants came from Algeria, Congo, Guinea, Madagascar, Morocco, Saudi Arabia, Senegal, Tunisia, Upper Volta and Zaire; the course was opened by representatives of the Ministers of External Relations and of Culture, by the Director General of SACEM and on behalf of the Director General of WIPO; lectures were given by officials of French institutions dealing with copyright, the Director General of the Algerian National Office of Copyright (ONDA), by a counsellor of the CISAC for African matters, a representative of the International Federation of Phonogram and Video-

gram Producers, the International Federation of Actors and WIPO; this course was followed by practical training in copyright and neighboring rights in the following countries: Algeria, Belgium, France, German Democratic Republic, Senegal;

(e) for one trainee from China, a study tour comprising visits to and discussions at institutions in *Zurich* and *Budapest*, and at *WIPO*, in October and November 1983;

(f) for one trainee from Brazil, a study visit to *WIPO* Headquarters in December 1983;

(g) for four trainees from Colombia, Cuba, Ecuador and Mexico, a practical individual training course in copyright and neighboring rights in one of the following countries: *Argentina, Italy, Mexico*.

In most cases, the arrangements for training in 1983 included visits to WIPO Headquarters.

The following 11 countries and three national organizations have agreed to contribute in full or in part to the payment of the travel and subsistence expenses of the trainees: Algeria, Austria, Belgium, France, German Democratic Republic, Hungary, India, Italy, Mexico, Netherlands, United Kingdom, Carl Duisberg Gesellschaft (CDG) (Federal Republic of Germany), the Musical Performing and Mechanical Reproduction Rights Society (GEMA) (Federal Republic of Germany), SUIISA (Switzerland).

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

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 the period covered by this report was 550 from 92 countries, from UNHCR, from UNRWA, from OAPI, from ARCT, from AIDO, from FASRC and from PAC, as compared with 425 applications in 1982 from 98 countries, from UNHCR, from UNRWA, from OAPI and from the Economic Community of the Countries of the "Grands Lacs" (CEPGL). A total of 210 applications were accepted, and led to the completion of training courses, from 75 developing countries, UNHCR, UNRWA, OAPI, FASRC and PAC; in 1982, 181 applications were accepted, and led to the completion of training courses, from 74 countries, UNHCR, UNRWA, OAPI and CEPGL. In 1983, 38 applications were accepted (18.1% of the total acceptances) from 15 countries regarded as least developed among the developing countries, and 57 of the successful candidates were women (27.1% of the total acceptances). In 1983, nine developing countries (Algeria, Argentina, Brazil, Ecuador, Egypt, India, Israel, Mexico, Senegal) and OAPI contributed to promoting cooperation among developing countries by receiving 52 trainees.

Meetings

A Congress on the Intellectual Property Rights of Performers was organized in Buenos Aires in May 1983 by WIPO and the Latin American Federation of Performers (LAFP), with the cooperation of Unesco, under the auspices of the Ministry of Justice of Argentina. About 100 participants attended the working sessions of the Congress; they were performers, officials of performers' unions and of societies for the administration of rights, specialized lawyers and government officials; they came from Argentina, Brazil, Chile, Colombia, Mexico, Peru, Uruguay and Venezuela. Eight experts were invited by WIPO, at its expense, from six of the said countries.

Accounts were given by representatives of the associations members of LAFP of the situation of performers' rights in their countries, particularly as regards legislation and the administration of rights. Papers were presented by the invited experts and others on various aspects of performers' rights, and were discussed fully by the participants.

At the conclusion of the work of the Congress, detailed recommendations were adopted on the development, protection and exercise of performers' rights in the Latin American region, including a recommendation that governments of countries which have not yet ratified or acceded to the Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations should do so and should adopt the necessary national legislation.

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 the period covered by this report, such cooperation was pursued with the following countries:

Angola. In November 1983, a WIPO official and two WIPO consultants from Portugal, financed by their Government, undertook a mission to Luanda as the first step in responding to a request by the Government for assistance in all aspects of intellectual property. The purpose of the mission was to survey, with the Government authorities responsible for industrial property and for copyright, the needs and possibilities for cooperation, in order to permit recommendations to be made for the preparation of a project.

Barbados. A WIPO official visited the Government authorities in January 1983 and discussed accession to the Berne, Rome and Phonograms Conventions, following the adoption of a new law on copyright and neighboring rights, drafted with the assistance of WIPO.

Chile. Assistance to the Departamento del Pequeño Derecho de Autor (DAIC) continued, in cooperation with the Swiss Society of Authors Rights in Musical Works (SUISA), whose Director General paid a second visit to DAIC in Santiago in May 1983.

Colombia. A WIPO official visited the Government authorities in Bogota in April 1983 and discussed possible accession to the Berne Convention and training. A request received from the Government for advice on improving the copyright administration was discussed by a WIPO official in Bogota in May 1983.

Saudi Arabia. In March 1983, the authorities sent a draft copyright law in the original Arabic for comments and advice. The comments were conveyed to the Government in May 1983. Some aspects of these were discussed by the Legal Advisor to the Ministry of Information during a visit to WIPO in December 1983.

Sudan. After discussions during a mission by a WIPO official in April 1983, the Registrar General of the Office for the Protection of Intellectual Property (Copyright) and the Assistant Registrar visited WIPO in May and November 1983, respectively, for a general discussion on copyright questions.

Syria. During a mission to Damascus by a WIPO official in March 1983, the preparation of a new copyright law was discussed. The draft text (in Arabic) of a law on copyright and neighboring rights was prepared by WIPO and transmitted in December 1983.

Trinidad and Tobago. In October 1983, the authorities sent a draft law on copyright and neighboring rights for comments. The comments were prepared by WIPO and conveyed to the Government in November 1983.

Zimbabwe. In November 1983, WIPO sent to the Government, at its request, a draft law on copyright and neighboring rights.

Arab League. In August 1983, the Director General paid official visits to the headquarters in Tunis of the Arab Educational, Cultural and Scientific Or-

ganization (ALECSO) and the Arab States Broadcasting Union (ASBU), and discussed with their executive heads increased cooperation between WIPO and the said institutions and their member States. The discussions concerning cooperation with ALECSO were resumed during a visit by the Director General of ALECSO to WIPO later in August 1983, when an agreement of cooperation was signed (see document WO/CC/XVII/3).

*WIPO Permanent Committee
for Development Cooperation
Related to Copyright and Neighboring Rights*

The Permanent Committee consists of all States members of WIPO which have informed the Director General of their desire to be members. During the period covered by this report, three States (Guatemala, Honduras and Tunisia) became members of the Permanent Committee, bringing the membership to 61 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, Guatemala, Guinea, Honduras, 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, Tunisia, Turkey, United Kingdom, United States of America, Upper Volta, Yemen).

The Permanent Committee held its fifth session in January 1983 in *New Delhi* at the invitation of the Government of India.

Thirty-four States members of the Permanent Committee were represented at the session. Nine other States were represented by observers. One organization of the United Nations system and nine international non-governmental organizations were also represented by observers.

The session was inaugurated by the Minister for Education and Culture of the Government of India and by the Director General.

The Permanent Committee examined in detail recent and current activities under the WIPO Permanent Program for Development Cooperation Related to Copyright and Neighboring Rights, and made suggestions and recommendations for future activities under the said Program.

A number of delegations expressed considerable appreciation of and full support for WIPO's activities in *training* of developing country personnel in the fields of copyright and of neighboring rights. They felt that these training courses were most use-

ful and desired that this program be strengthened and continued.

Declarations concerning the continuation, strengthening or introduction of cooperation in the WIPO training program, through the hosting of training courses and accepting WIPO trainees, were made in particular by the Delegations of Algeria, Australia, France, German Democratic Republic, Germany (Federal Republic of), India, Israel, Italy, Japan, Sweden, the United Kingdom and the United States of America, and by the observer from the International Federation of Phonogram and Videogram Producers (IFPI); a number of suggestions were also made concerning the enlargement and the planning of the program.

The Permanent Committee approved the activities of WIPO in the field of training, and noted that the suggestions made in the discussion would be taken into account in planning future activities.

In a discussion of activities in the field of *national legislative and administrative infrastructures*, several delegations expressed their satisfaction at the advice and assistance given by WIPO in the preparation and updating of their copyright legislation, as well as in the setting up and/or modernization of their institutions and national administrative infrastructures. They expressed their appreciation of the fact that since the last session of the Permanent Committee several developing countries had enacted copyright legislation and, in some cases, legislation also on neighboring rights.

Several delegations underlined the usefulness of WIPO's publications including the Guides to the Conventions (Berne, Rome and Phonograms) and the Copyright Law Survey. Information was given by a number of delegations on current legislative activity and on their countries' needs for assistance.

A number of delegations, while referring to the problems raised by piracy, emphasized the necessity of taking better measures in countering it, in particular by making penal sanctions more severe.

The Permanent Committee noted with satisfaction the current activities in this field as well as information given by the various delegations.

The Permanent Committee expressed appreciation of WIPO's efforts in the organization of *regional and national seminars*, and wished this activity to be continued as such seminars were found most useful in the dissemination of knowledge in the fields of copyright and neighboring rights.

The Permanent Committee also noted with satisfaction WIPO activities and projects concerning *cooperation among developing countries*, including possible projects for regional training centers and seminars, and for cooperation in the collective administration of rights, both suggested by delegations and observers. The Permanent Committee en-

dorsed, after discussion, suggestions concerning the *promotion of indigenous intellectual creativity* in the context of the role of copyright in development.

The Permanent Committee discussed work in the field of the *protection of expressions of folklore* and expressed its satisfaction that model provisions for the said purpose are now at the disposal of national legislators. It noted that various suggestions made during the discussion, including the possibility of an international treaty, would be taken into account in the preparation of the future program of activities. A suggestion that the Executive Committee of the Berne Union constitute itself, together with the Intergovernmental Committee of the Universal Copyright Convention, into a subcommittee for a thorough study of the problems at the international level would be referred to the Executive Committee at its 1983 extraordinary session.

Progress was noted in the preparation of an African regional survey of the *application and practical administration of laws on copyright and neighboring rights*, together with a proposal by the International Bureau for a similar survey during the biennium 1984–1985 in respect of countries of Asia.

The Permanent Committee discussed a report on the *state of accessions to or ratifications of treaties on copyright and neighboring rights*, and commended WIPO for its initiatives to promote the acceptance of the various international instruments in the said fields. It invited the governments of States not yet party to one or the other of the conventions mentioned in this document to consider the possibility of adherence to the said conventions.

Proposals by the International Bureau for new activities within the framework of the Permanent Program were noted, having received the support of many delegations, several of which made specific suggestions, including suggestions concerning priorities to be allotted.

Finally, the Permanent Committee discussed the need for "*National Chambers of Copyright*" in developing countries, including proposals by the International Bureau concerning a possible study of the desirability and feasibility of such chambers. While several delegations warned that such chambers may, at least in some countries, unnecessarily duplicate existing organizations and that their financing would pose grave problems, the majority found the idea worth further exploration.

In conclusion, the Permanent Committee noted with approval the plan of the International Bureau of WIPO to submit to the Assembly of the Berne Union a proposal for a detailed study of the said questions, and that such study should take into account all the advice and views given in the present session of the Permanent Committee by the members and observers.

*Joint International Unesco–WIPO Service
for Facilitating the Access by Developing Countries
to Works Protected by Copyright*

For the purposes of a study recommended by the Joint Consultative Committee of the Joint Service, a WIPO official undertook fact-finding missions in January and February 1983 to Milan, Barcelona, London and Paris and interviewed publishers and literary agents on the economic conditions of publishing agreements.

The *Joint Unesco–WIPO Consultative Committee on the Access by Developing Countries to Works Protected by Copyright* held its second session in Geneva in July 1983. The 12 members of the Committee, appointed in a personal capacity by the Directors General of Unesco and WIPO, are leading figures in the fields of publishing, education and copyright and neighboring rights from Algeria, Argentina, China, Egypt, France, India, Mexico, Nigeria, Senegal, Soviet Union, United Kingdom and United States of America. Ten members attended the second session, with observers from the following 23 States: Angola, Australia, Bangladesh, Bolivia, Chile, China, Ecuador, Egypt, Gabon, Holy See, Honduras, Hungary, India, Italy, Japan, Madagascar, Malawi, Poland, Portugal, Republic of Korea, Sri Lanka, Turkey, United Kingdom. The following intergovernmental and international non-governmental organizations were also represented by observers: Arab Educational, Cultural and Scientific Organization (ALECSO); League of Arab States; International Association for the Advancement of Teaching and Research in Intellectual Property (ATRIP); International Association of Conference Interpreters (AIIC); International Bureau of Societies Administering the Rights of Mechanical Recording and Reproduction (BIEM); International Catholic Organization for Cinema and Audiovisual (OCIC); International Confederation of Societies of Authors and Composers (CISAC); International Copyright Society (INTERGU); International Federation of Phonogram and Videogram Producers (IFPI); International Literary and Artistic Association (ALAI); International Publishers Association (IPA).

The Committee discussed a report on the activities of the Joint International Unesco–WIPO Service for Access by Developing Countries to Works Protected by Copyright since its first session, and, in that context, reviewed the general outlook for 1984 and 1985. The discussions were based on documents prepared by WIPO and Unesco concerning the collection and dissemination of data, the establishment of recommended standards for obtaining the required clearances from foreign copyright owners, arrangements and machinery to achieve realistic economic conditions, a study on recommended pro-

cedures for settling disputes between users of works in developing countries and foreign copyright owners, and intellectual, technical and financial assistance to developing countries.

In the discussion concerning the collection and dissemination of data, the Committee encouraged the continuation of the preparation of inventories of the needs of developing countries for printed works and audio-visual materials, and the extension of this activity to regions not covered by the survey under consideration; it considered that a list of bibliographies published in member States, included in the documentation, was in general a useful instrument for the dissemination of information and should be made more widely known; having examined a list of works for which foreign copyright owners are willing to grant clearances to nationals of developing countries on special conditions, a large number of members of the Committee felt that this activity was particularly important for developing countries, and hoped that, by the next session of the Committee, the number of such offers would increase.

The Committee gave advice to the Secretariats on the preparation of new draft model contracts, on the basis of the report of the Working Group on Model Contracts Concerning Co-publishing and Commissioned Works which met in Geneva in November 1982, and of preliminary drafts of model contracts, discussed by the said Working Group, concerning the relations between an author and a publisher in respect of commissioned works, relations between a translator and a publisher in respect of commissioned translations and co-production of copies of a work by a publisher holding rights in the work and a publisher in a developing country. The Committee approved, in general, the findings of the Working Group, and discussed various proposals to be taken into account by the Secretariats in preparing new drafts to be submitted to the next session of the Committee.

At its first session, the Committee had requested a fact-finding study to supply information concerning the fees payable in developed countries and factors likely to influence the determination of fees; a report on the progress of the study, carried out mainly through interviews and correspondence, was approved by the Committee; suggestions were made for its further development, and it was noted that the work would be completed for submission to the Committee at its next session.

The Committee took note of information concerning procedures for settling disputes between contracting parties, including the texts of the Rules of Conciliation and Arbitration of the International Chamber of Commerce (ICC), the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL) and the Regula-

tion of International Arbitration in Case of Disputes Between Publishers of Different Countries of the International Publishers' Association (IPA). It made certain observations and suggestions to be taken into account by the Secretariats in their future work, for example in the preparation of model contracts.

The Committee discussed reports on intellectual, technical and financial assistance to developing countries, and noted with considerable satisfaction information about assistance provided through the Joint International Unesco-WIPO Service for Access by Developing Countries to Works Protected by Copyright.

III. Governing Bodies

The sixth session of the *WIPO Budget Committee* was held in Geneva in April 1983.

The following 13 States, members of the Budget Committee, were represented: Brazil, Cameroon, Cuba, Czechoslovakia, Egypt, France, Germany (Federal Republic of), India, Iraq, Japan, Soviet Union, Switzerland, United States of America.

In a general discussion of the *draft program and budget proposals for the 1984-1985 biennium*, the delegations of the developing countries members of the Budget Committee proposed that the Governing Bodies give thorough consideration to an increase of 20% in the amounts allocated for the activities of development cooperation. Other delegations stated that they could support such an increase only if it were to be covered by corresponding economies in other program activities.

Several delegations having indicated their interest in having certain further information provided, the Budget Committee made detailed recommendations in this respect for the documentation of the Governing Bodies. One or more delegations made specific comments, recorded in the report, on particular items contained in the draft program and budget proposals.

The Budget Committee also discussed, without making recommendations, proposals for the reconstitution of the working capital fund of the Paris Union and for the establishment of the working capital fund of the PCT Union.

The *Governing Bodies of WIPO and the Unions administered by WIPO* held their fourteenth series of meetings in Geneva in September and October 1983.

The following 22 Governing Bodies held sessions:

WIPO General Assembly, seventh session (6th ordinary);
 WIPO Conference, sixth session (6th ordinary);
 WIPO Coordination Committee, seventeenth session (14th ordinary);
 Paris Union Assembly, eighth session (6th ordinary);
 Paris Union Conference of Representatives, tenth session (6th ordinary);
 Paris Union Executive Committee, nineteenth session (19th ordinary);
 Berne Union Assembly, sixth session (6th ordinary);
 Berne Union Conference of Representatives, sixth session (6th ordinary);
 Berne Union Executive Committee, twenty-first session (14th ordinary);
 Madrid Union Assembly, twelfth session (5th ordinary);
 Madrid Union Committee of Directors, twelfth session (5th ordinary);
 Hague Union Assembly, seventh session (4th ordinary);
 Hague Union Conference of Representatives, seventh session (4th ordinary);
 Nice Union Assembly, seventh session (6th ordinary);
 Nice Union Conference of Representatives, sixth session (6th ordinary);
 Lisbon Union Assembly, fifth session (5th ordinary);
 Lisbon Union Council, twelfth session (12th ordinary);
 Locarno Union Assembly, seventh session (5th ordinary);
 IPC [International Patent Classification] Union Assembly, fifth session (4th ordinary);
 PCT [Patent Cooperation Treaty] Union Assembly, tenth session (4th ordinary);
 TRT [Trademark Registration Treaty] Union Assembly, third session (3rd ordinary);
 Budapest Union Assembly, fourth session (2nd ordinary).

Delegations of 90 States participated in the meetings. Sixteen intergovernmental organizations and eight international non-governmental organizations were represented by observers.

Accounts and Activities. The Governing Bodies reviewed and approved reports by the Director General on financial matters in 1981, 1982 and 1983 and on the activities of WIPO from November 1981 to September 1983. 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. Several delegations expressed the intention of their countries to continue and, if possible, to increase their contribution to the development cooperation activities of WIPO by concluding agreements for the provision of financial support or continuing such agreements, by providing training of officials from developing countries, by sending experts and furnishing state-of-the-art search reports to such countries and by hosting meetings organized by WIPO for the benefit of such countries. Several delegations expressed concern at the gap between the needs of developing countries and available resources, and urged that both funds and staff for development cooperation activities be increased. Delegations also underlined the great importance of the programs concerning patent information activities, the encouragement of inventiveness and joint inventive activity. It was agreed that the resolutions of the WIPO Worldwide Forums on Piracy, organized in 1981 and 1983, should be circulated to all member States as a recommendation for implementation of appropriate anti-piracy measures at the national level.

Program and Budget. The Governing Bodies approved by a vote (for: 55; against: three; abstentions: six) the program and budget of WIPO and the Unions for the 1984 to 1985 biennium. The budget for the "Program Unions," covered by contributions from member States, is 42,106,000 Swiss francs for the biennium, and that of the "Registration Unions," covered by fees paid by applicants for international registrations of trademarks and industrial designs and applicants filing international patent applications, is 44,163,000 Swiss francs, giving a total of 86,269,000 Swiss francs.

The main activities of the Program Unions approved by the Governing Bodies fall under the following headings. In the fields of *industrial property and patent information*: development cooperation with developing countries (training; legislative infrastructure; institution building; inventors, industry and commerce; licensing; development of the profession; access to technological information; etc.); information concerning industrial property (periodicals; collection of laws and treaties; surveys; statistics; etc.); industrial property questions of topical interest (joint inventive activity; computer programs, including integrated circuits; biotechnological inventions; various harmonization questions); cooperation in patent information; improvement of classifications. In the fields of *copyright and neighboring rights*: development cooperation with developing countries (training; legislative infrastructure; protection of authors in their own countries and in foreign countries; Joint International

Unesco-WIPO Service; etc.); information concerning copyright (periodicals; collection of laws and treaties; surveys); copyright questions of topical interest (cable television; employee-authors; the Rome Convention and new communication techniques; expressions of folklore; publishing contracts; private copying; rental of phonograms and videograms; computer software; direct broadcast satellites; electronic libraries; international register of audiovisual recordings). In the field of *intellectual property* generally: promotion of the worldwide recognition of and respect for intellectual property; promotion of accession to treaties; preparations for commemorating the centenary of the Berne Convention; cooperation with States and international organizations.

Working Agreement. The WIPO Coordination Committee approved a working agreement between WIPO and the Arab Educational, Cultural and Scientific Organization (ALECSO).

Election of the Members of the Executive Committees of the Paris and Berne Unions and of the Ad Hoc Members of the WIPO Coordination Committee. The Assembly and Conference of Representatives of the Paris Union and the Assembly and Conference of Representatives of the Berne Union elected, each as far as it was concerned, the members of the Executive Committees of the Paris and Berne Unions and the WIPO Conference designated the *ad hoc* members of the WIPO Coordination Committee. The resulting membership of those three Committees is as follows:

Paris Union Executive Committee

Ordinary Members: Algeria, Argentina, Austria, Brazil, Congo, Egypt, German Democratic Republic, Germany (Federal Republic of), Ivory Coast, Japan, Netherlands, Norway, Poland, Portugal, Soviet Union, Switzerland (*ex officio*), United States of America, Uruguay, Viet Nam, Yugoslavia, Zambia (21). *Associate Members:* Lebanon, Tanzania, Trinidad and Tobago (3).

Berne Union Executive Committee

Ordinary Members: Australia, Benin, Bulgaria, Canada, Chile, Costa Rica, Czechoslovakia, France, Hungary, India, Italy, Mexico, Morocco, Senegal, Switzerland (*ex officio*), Tunisia, United Kingdom, Zaire (17). *Associate Member:* Turkey (1).

Ad Hoc Members of the WIPO Coordination Committee

China, Colombia, Guatemala,* Mongolia, Qatar,** Sudan (6).

WIPO Coordination Committee

Algeria, Argentina, Australia, Austria, Benin, Brazil, Bulgaria, Canada, Chile, China, Colombia, Congo, Costa Rica, Czechoslovakia, Egypt, France, German Democratic Republic, Germany (Federal Republic of), Guatemala,* Hungary, India, Italy, Ivory Coast, Japan, Lebanon, Mexico, Mongolia, Morocco, Netherlands, Norway, Poland, Portugal, Qatar,** Senegal, Soviet Union, Sudan, Switzerland (*ex officio*), Tanzania, Trinidad and Tobago, Tunisia, Turkey, United Kingdom, United States of America, Uruguay, Viet Nam, Yugoslavia, Zaire, Zambia (48).

IV. Management and Supporting Activities

Missions. In the period covered by this report, the Director General undertook missions to and had conversations with high Government officials in China, Ethiopia, France, Greece, India, Italy, Ivory Coast, Malaysia, the Philippines, Spain, Sudan and Thailand. The mission to Sudan was a formal "official visit," the Director General being the guest of the Government and received by the Head of State and by several Government Ministers. In India and Thailand, he met with the Prime Ministers.

Missions were undertaken by Deputy Directors General to Argentina, Austria, Brazil, Bulgaria, Canada, China, Cuba, Democratic People's Republic of Korea, Ecuador, Fiji, France, Germany (Federal Republic of), Greece, Indonesia, Japan, Kenya, Mexico, the Philippines, Saudi Arabia, Soviet Union, Spain, Thailand, the United Kingdom, Yugoslavia, the United States of America and Zimbabwe.

In addition to the missions referred to above, the following countries were visited by other officials or by consultants of WIPO: Angola, Argentina, Austria, Bahrain, Bangladesh, Barbados, Benin, Bolivia, Botswana, Brazil, Cameroon, Chile, China, Colombia, Congo, Costa Rica, Democratic People's Republic of Korea, Ecuador, Egypt, El Salvador, Ethio-

* With effect from the date on which the number of members of WIPO, not members of any of the Unions, becomes 20.

** With effect from the date on which the number of members of WIPO, not members of any of the Unions, becomes 24.

pia, Fiji, France, Gambia, Germany (Federal Republic of), Greece, Guatemala, Honduras, India, Indonesia, Iraq, Italy, Ivory Coast, Japan, Kenya, Kuwait, Liberia, Luxembourg, Madagascar, Malawi, Malaysia, Mali, Mauritania, Mauritius, Mexico, Mongolia, Nepal, Netherlands, Oman, Pakistan, Panama, Paraguay, Peru, Philippines, Republic of Korea, Saudi Arabia, Senegal, Sierra Leone, Singapore, Soviet Union, Spain, Sri Lanka, Sudan, Syria, Tanzania, Thailand, Trinidad and Tobago, Tunisia, United Arab Emirates, United Kingdom, United States of America, Upper Volta, Uruguay, Venezuela, Viet Nam, Yugoslavia, Zaire, Zambia, Zimbabwe.

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 Paris in March 1983 and in New York in October 1983, and had joint meetings with the UN Committee on Programme and Coordination (CPC) and with the Bureau of the UN Economic and Social Council (ECOSOC) in Geneva in July 1983, its Organizational Committee and its Consultative Committees on Substantive Questions (Programme) and (Operations) (CCSQ (Prog) and CCSQ (Ops)) and on Administrative Questions (Finance and Budget) (CCAQ (FB)); the WIPO representative in the CCAQ (FB) served as its Chairman for the year 1983. Other subsidiary bodies of the ACC, task forces, working groups and *ad hoc* interagency meetings in which WIPO participated during the period covered by this report were convened to deal with various matters of common interest, including preparations for the International Conference on the Question of Palestine, consultations on the follow-up to the Substantial New Programme of Action for the Least Developed Countries, public information, science and technology for development, publications, procurement of supplies, fellowships and legal questions. WIPO was represented at meetings between the secretariats of the organizations of the United Nations system and of the Organization of African Unity, in Addis Ababa in April 1983, of the League of Arab States, in Tunis in June and July 1983, and of the Organization of the Islamic Conference, in Geneva in July 1983. WIPO was also represented at a session of the Board of the UN Joint Staff Pension Fund in London in July 1983 and, in New York in October 1983, at a meeting of secretaries of Staff Pension Commit-

tees and a session of the Standing Committee of the said Board.

WIPO attended a session of the Advisory Committee on Administrative and Budgetary Questions, a subsidiary body of the United Nations General Assembly, in New York in September 1983.

WIPO was represented at the session of ECOSOC held in Geneva in July 1983.

WIPO was also represented at the celebration of the International Day for the Elimination of Racial Discrimination in Geneva in March 1983, and at the European Regional Preparatory Meeting for the International Conference on the Question of Palestine in Geneva in July 1983, at the said International Conference in Geneva in August and September 1983, at the World Conference on Racism in Geneva in August 1983, and at a meeting to celebrate the International Day of Solidarity with the Palestinian People in Geneva in November 1983.

The Director General attended the ceremony for the inauguration of the new headquarters building of the International Maritime Organization (IMO) in London in May 1983. WIPO was represented at TELECOM 83 organized by the International Telecommunication Union (ITU), in Geneva in October 1983.

WIPO was represented by the Director General at the celebration of the 25th anniversary (Silver Jubilee) of the United Nations Economic Commission for Africa (ECA), which took place at the 18th session of the Commission and the ninth Conference of Ministers in Addis Ababa in April 1983 and was attended by several African Heads of State and the Secretary General of the United Nations. Also in Addis Ababa in April 1983, WIPO was represented at a Ministerial Conference of the Least Developed Countries in Africa.

WIPO was also represented at sessions of the Trade and Development Board of the UN Conference on Trade and Development (UNCTAD) in April and May 1983 and at the fifth Ministerial Meeting of the Group of 77 in preparation for UNCTAD VI, in Buenos Aires in March and April 1983.

WIPO was represented at the sixth session of the United Nations Conference on Trade and Development, held in Belgrade in June 1983. The Conference adopted a resolution on UNCTAD activities in the field of technology, with the title "Towards the technological transformation of developing countries." The passages of the said resolution which are of direct interest to WIPO are reproduced in the February 1984 issue of *Industrial Property*.

WIPO was also represented at the following other UNCTAD meetings, held in Geneva: an Intergovernmental Committee on Economic Cooperation among Developing Countries in September 1983; the Trade and Development Board in October

1983; the UN Conference (convened by UNCTAD) on an International Code of Conduct on Transfer of Technology in October 1983; the Intergovernmental Group of Experts on Restrictive Business Practices in November 1983.

WIPO was represented at sessions of the Governing Council of the United Nations Development Programme (UNDP) and its Budget and Finance Committee in New York in June 1983, and participated in the two other meetings convened by the UNDP during the period covered by this report: an interagency meeting concerning the harmonization of the procedures by the UN specialized agencies in the field of operational activities for development in Geneva in April 1983, and a Round Table Meeting on the Least Developed among the Developing Countries in the Asia and Pacific Region in Geneva in May 1983. A WIPO official undertook a training course in UNDP procedures in New York in November 1983.

Public Information, Publications, Meetings, 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 continued to serve as Chairman for 1983. A display panel concerning WIPO, the Paris Convention and the PCT was shown in the exhibition "A Century of French Inventions" in Paris from April to June 1983.

Updated versions of the WIPO General Information Brochure were published in French in January 1983, in English in March 1983 and in Russian in May 1983.

Issues of the WIPO Newsletter were published in March, July and November 1983 in Arabic, English, French, Portuguese, Russian and Spanish.

Reports of the Joint Inspection Unit. In 1983, one report of the JIU was received concerning, among other organizations, WIPO: JIU/REP/82/12: "United Nations System Co-operation in Developing Evaluation by Governments." Comments were prepared by the ACC, and issued, relating to report JIU/REP/82/6: "Communications in the United Nations System," issued in 1982. The Director General had no separate comments to

make on the said report. The JIU report and the ACC comments were noted by the WIPO General Assembly at its session in September and October 1983.

During the period covered by this report, WIPO provided to the JIU, at its request, general information concerning the implementation of United Nations resolutions on the restructuring of the social and economic sectors, support costs and the use of common services in Geneva, and detailed information and statistics concerning library services and publications, for the purpose of the preparation of JIU reports.

V. Development Cooperation Activities, 1981 to 1983: Summary Tables

The following tables summarize WIPO development cooperation activities during the period between the two last sessions of the WIPO Conference and General Assembly (from November 1981 to September 1983). It covers such activities both in the field of industrial property and in the fields of copyright and neighboring rights.

Table I lists the developing countries (and organizations of developing countries, and territories) which have participated in such activities during the said period, and shows, for each, the form or forms of such participation.

Table II lists the countries and organizations which have contributed, during the two-year period, to development cooperation activities by providing money, facilities, experts and services.

TABLE I

Country, organization, territory	Training programs	National seminars	Regional seminars	Advice and assistance: legislation, institution building	State-of-the-art search program
<i>AFRICA</i>					
Algeria	x	x		x	x
Angola	x				
Benin	x			x	
Botswana	x		x	x	
Burundi	x			x	
Cameroon	x		x	x	
Central African Republic	x			x	

Country, organization, territory	Training programs	National seminars	Regional seminars	Advice and assistance : legislation, institution building	State-of-the-art search program
Chad	x				
Congo	x			x	
Djibouti				x	
Egypt	x			x	x
Equatorial Guinea	x				
Ethiopia	x		x		
Gabon	x			x	
Gambia	x			x	
Ghana	x		x	x	x
Guinea	x		x		
Ivory Coast	x		x	x	
Kenya	x		x	x	
Lesotho	x				
Liberia	x			x	
Madagascar	x				
Malawi	x		x	x	
Mali	x		x	x	
Mauritania	x			x	
Mauritius				x	
Morocco	x			x	
Niger	x			x	
Nigeria	x		x	x	x
Rwanda	x			x	
Senegal	x		x	x	
Sierra Leone			x	x	
Somalia	x		x		
Sudan	x		x	x	x
Swaziland	x		x	x	
Tanzania	x		x	x	
Togo	x		x	x	
Tunisia	x			x	
Uganda	x		x	x	
Upper Volta	x			x	
Zaire	x			x	
Zambia	x		x	x	x
Zimbabwe	x		x	x	x
OAPI			x	x	x
ESARIPO			x	x	
ARCT					x
CEPGL	x				
<i>ASIA AND THE PACIFIC</i>					
Afghanistan			x	x	
Bangladesh	x		x	x	x
Bhutan			x		
Burma				x	
China	x	x	x	x	
Democratic People's Republic of Korea	x	x		x	
Fiji	x		x	x	
India	x	x	x	x	x
Indonesia	x	x	x	x	x
Malaysia	x	x	x	x	x
Maldives			x	x	
Mongolia	x			x	
Nauru			x		
Nepal	x		x	x	
Papua New Guinea	x				
Philippines	x				
Republic of Korea	x				
Samoa	x				
Singapore	x	x			
Solomon Islands					
Sri Lanka	x				
Thailand	x				
Tonga					
Vanuatu	x				
Viet Nam	x				
Hong Kong					
SPEC					
<i>EUROPE</i>					
Turkey	x				
Yugoslavia	x				
<i>LATIN AMERICA AND THE CARIBBEAN</i>					
Argentina	x				
Bahamas	x				
Barbados	x				
Bolivia	x				
Brazil	x	x			
Chile	x				
Colombia	x				
Costa Rica	x				
Cuba	x				
Dominican Republic					
Ecuador	x	x			
El Salvador	x				
Grenada					
Guatemala	x				
Guyana	x				
Haiti	x				
Honduras	x				
Jamaica	x	x			
Mexico	x				
Nicaragua	x				
Panama	x	x			
Paraguay	x				
Peru	x				
St. Vincent and the Grenadines					
Suriname					
Trinidad and Tobago					
Uruguay	x				
Venezuela	x				
Andean Group					

Country, organization, territory	Training programs	National seminars	Regional seminars	Advice and assistance: legislation, institution building	State-of-the-art search program
<i>WESTERN ASIA</i>					
Bahrain				x	
Democratic Yemen	x				
Iraq	x			x	x
Israel					x
Jordan	x				
Kuwait	x			x	
Oman	x				
Qatar	x			x	
Saudi Arabia	x			x	
Syria	x			x	x
United Arab Emirates				x	
Yemen	x			x	
FASRC	x			x	
AIDO					x
Total					
120	95	11	57	96	38

TABLE II

Country, organization	Project financing	Training facilities	Trainees' expenses	Experts, lecturers	State-of-the-art search program
Algeria		x	x		
Argentina	x	x		x	
Australia	x	x		x	x
Austria		x	x	x	x
Belgium		x	x	x	
Brazil	x	x	x	x	
Bulgaria			x		
Canada	x	x	x	x	
Chile				x	
Colombia				x	
Costa Rica				x	
Czechoslovakia			x	x	

Country, organization	Project financing	Training facilities	Trainees' expenses	Experts, lecturers	State-of-the-art search program
Denmark				x	
Ecuador		x			
Egypt		x	x		
Finland		x	x		x
France	x	x	x	x	
German Democratic Republic		x	x		x
Germany (Federal Republic of)	x	x	x	x	x
Ghana				x	
Hungary		x	x	x	
India		x	x		
Israel		x	x	x	
Italy		x	x	x	
Japan				x	
Mexico		x	x		
Netherlands		x	x		
Norway		x	x		
Philippines		x			
Senegal		x			
Soviet Union		x	x	x	x
Spain	x	x	x	x	
Sweden	x	x	x	x	x
Switzerland	x	x	x	x	
Tunisia				x	
United Kingdom		x	x	x	
United States of America	x	x	x	x	
Uruguay				x	
Zambia				x	
Benelux Trademark Office		x	x	x	
CEC			x		
EPO	x	x	x	x	
OAPI		x		x	
RITLA				x	
UNDP	x		x		
CISAC				x	
EBU				x	
IFPI				x	
CDG			x		
CELP		x		x	
Max Planck Institute				x	
GEMA			x	x	
MCPS				x	
SIG				x	
SUISA		x	x	x	

Berne Union

Executive Committee of the International Union for the Protection of Literary and Artistic Works (Berne Union)

Twenty-Second Session (8th Extraordinary)

(Geneva, December 12 to 16, 1983)

Report

submitted by the Secretariat and adopted by the Committee

Introduction

Opening of the Session

1. The Executive Committee of the Berne Union (hereinafter referred to as "the Committee"), convened by the Director General of the World Intellectual Property Organization (WIPO), met in extraordinary session at the WIPO Headquarters in Geneva from December 12 to 16, 1983.
2. Sixteen of the Committee's 19 member States were represented: Australia, Benin, Canada, Chile, Costa Rica, Czechoslovakia, France, Hungary, India, Italy, Mexico, Switzerland, Tunisia, Turkey, United Kingdom, Zaire (16).
3. The following member States of the Berne Union were represented by observers: Argentina, Austria, Belgium, Brazil, Cameroon, Central African Republic, Egypt, Finland, Gabon, Germany (Federal Republic of), Greece, Holy See, Israel, Ivory Coast, Japan, Luxembourg, Madagascar, Netherlands, Niger, Norway, Pakistan, Philippines, Romania, Sweden, Thailand, Uruguay, Yugoslavia (27).
4. As the Committee held joint meetings with the Intergovernmental Copyright Committee set up under the Universal Copyright Convention, the following delegations also attended as observers, as the meetings were held concurrently: Algeria, Angola, Burundi, China, Colombia, Dominican Republic, Iran (Islamic Republic of), Iraq, Jordan, Peru, Republic of Korea, Saudi Arabia, Soviet Union, Syria, Trinidad and Tobago, United States of America (16).
5. Five intergovernmental organizations and 21 international non-governmental organizations were represented by observers.
6. The list of participants is annexed to this Report.
7. The session was opened by Dr. Arpad Bogsch, Director General of WIPO, who welcomed all the participants to the sessions of the two Committees at WIPO's Headquarters. He informed the delegates that a new Executive Committee was elected by the Assembly and Conference of Representatives of the Berne Union at the recent meeting of the Governing Bodies of WIPO held in Geneva from September 26 to October 4, 1983.
8. The representative of the Director-General of Unesco thanked the Director General of WIPO for acting as host to the current session of the Intergovernmental Copyright Committee.

Part I: Items Concerning the Committee Alone

Election of Officers

9. On a proposal by the delegation of Australia, seconded by the delegation of the United Kingdom, the Committee unanimously elected as Chairman, Mr. M. Jelinek (Czechoslovakia), and as Vice-Chairmen, Mr. Carlos Corrales (Costa Rica) and Mr. Geraldo Aversa (Italy).

Adoption of the Agenda

10. The agenda proposed in document B/EC/XXII/1 Rev. 2 was adopted.

Developments Regarding the Paris Act (1971) of the Berne Convention

11. The Committee took note of the information contained in document B/EC/XXII/2 to which was added the fact that Rwanda had since notified its accession to the Paris Act (1971). Thus the number of States which had accepted the said Act was 57 and the number of those that had accepted the administrative reform adopted by the Stockholm Diplomatic Conference in 1967 was 70 out of the 76 Member States of the Berne Union.

12. The Committee was also informed that the International Bureau of WIPO had recently been informed by India that its ratification of the substantive clauses of the Paris Act (1971) as well as of the Appendix was under way and the notification to this effect is expected soon.

13. The Committee noted that as suggested by it at its last session in November–December 1981, in order to enable a larger number of countries especially from the Third World to join this important Convention, the Director General of WIPO had sent a circular letter on August 18, 1982, to all States that are not yet party to the Berne Convention, indicating in addition to its basic principles, its scope, its essential objectives, the main advantages of adhering to the Convention.

14. The delegation of Peru informed the Committee that its country had decided to accede to the Berne Convention and that the formal ratification procedure was under way.

WIPO's Development Cooperation (1981 to 1983): Evaluation and Planning

15. The Committee noted with considerable appreciation and satisfaction the report of the Interna-

tional Bureau of WIPO contained in documents B/EC/XXII/3, 4 and 5 concerning what the Committee felt was a wide and impressive range and record of activities of WIPO in the field of development cooperation which showed an understanding of problems faced by developing countries. The Committee was, in particular, appreciative of the extensive work done in the areas of fellowship programs and training, of legal and technical assistance to developing countries, including establishment or strengthening of the national infrastructure of copyright protection, and in the holding of information meetings and seminars.

16. A large number of delegations expressed appreciation of the variety of training programs and facilities made available in the field of copyright and neighboring rights which were of considerable benefit for their officials concerned; they hoped that WIPO will continue providing such training facilities.

17. The delegation of the Central African Republic pointed to the need for training of personnel from the least developed among the developing countries and expressed the wish that the International Bureau of WIPO make every effort to facilitate access to the WIPO training for such countries.

18. A number of delegations expressed gratitude to the countries and institutions that had regularly cooperated with WIPO in arranging the general introductory and specialized training courses, viz. France, Germany (Federal Republic of), Hungary, Sweden, United Kingdom and the Swiss Society for Authors' Rights in Musical Works (SUISA).

19. The delegation of Japan informed the Committee that its Government had received last year a trainee from the Republic of Korea for about six months.

20. The Committee noted with appreciation the offers of the delegations of Hungary, India, Italy, Mexico, to continue to receive individual trainees as in the past; and the offer of the delegations of Germany (Federal Republic of), Hungary and Sweden to support this activity in respect of organization of training courses.

21. The Committee also noted with satisfaction the possibility of the organization of a general introductory training course in London in 1984; and of the offer of the Government of Hungary to host such a course in Budapest in 1985.

22. The delegation of Israel offered to accept with the assistance of the Society of Authors, Composers and Publishers of Music (ACUM), one WIPO trainee in the field of copyright and neighboring rights on the same conditions as for trainees in the field of industrial property.

23. The delegation of Sweden stressed the need for organizing also courses at sub-regional levels; with regard to the latter, the delegation of Australia referred to its Government's support for WIPO in such sub-regional efforts in the field of training in the Asian and Pacific region.

24. The delegation of Czechoslovakia referred to a Seminar on Copyright and Neighboring Rights organized for representatives of Socialist countries in Prague in the beginning of November 1983. This Seminar was also attended by representatives of WIPO, Unesco and the International Federation of Musicians (FIM).

25. The delegation of Japan drew the attention of the Committee to a seminar on current copyright problems organized by the Copyright Research Institute of Japan, and held in Tokyo in February 1983, and expressed its thanks for the lecture given at this seminar by a WIPO official.

26. The delegations of a number of developing countries thanked WIPO for the assistance given to them in the formulation of their copyright legislation. The Committee expressed appreciation at the large number of countries that had so legislated with assistance from the International Bureau of WIPO.

27. A number of delegations expressed considerable appreciation of the "pioneering effort" of the WIPO Worldwide Forums on the Piracy of Sound and Audiovisual Recordings, and on the Piracy of Broadcasts and of the Printed Word convened in Geneva in March 1981 and March 1983 respectively, and of the impact of their deliberations; they felt these had provided a very good start in tackling a huge problem, and referred to recent legislation which had strengthened the legal sanctions against piracy.

28. Concerning publications, the delegation of Japan informed the Committee that the WIPO Copyright Law Survey, consisting of summaries of current copyright legislations of States, had been published in Japanese; also that it was planned to publish the WIPO Glossary of Terms of the Law of Copyright and Neighboring Rights in an English-French-Japanese trilingual edition in the near future.

Need for "National Chambers of Copyright" in Developing Countries

29. Discussions were based on document B/EC/XXII/5bis.

30. The delegations of the Central African Republic, Costa Rica and Israel welcomed the idea of a study to be conducted by WIPO on the feasibility of establishing such organs at the national level. The delegation of Costa Rica stressed that this study should, *inter alia*, also consider the field of neighboring rights.

31. The delegations of India and Sweden indicated that when such a study is undertaken, consideration should be given to questions such as composition, role, responsibilities and financing of such Chambers of Copyright.

32. The delegation of the Central African Republic requested WIPO to consider the need of the least developed among developing countries for special assistance in setting up of such Chambers.

33. Various questions had been raised in the course of the deliberations at the WIPO Permanent Committee for Development Cooperation Related to Copyright and Neighboring Rights which met in New Delhi in January 1983. With reference to these, a number of delegations requested a study in depth not only of the problems involved but also of their economic, financial and social impact.

34. The observer from the International Confederation of Societies of Authors and Composers (CISAC) recalled that his organization was responsible for having initially suggested such a study. He mentioned that the jurisdiction of the existing societies of authors and composers should include various functions of legal and social assistance as well as of promotion of cultural heritage, as had been provided for in the Model Statutes for Authors' Organizations that had recently been adopted. It, therefore, seemed to him appropriate and useful to think about the possibility of coordinating all these different activities under an overall coverage through the societies of authors which, where they exist, should in effect discharge all these functions as a 'Chamber' or 'Council' of Copyright. He further suggested that such National 'Chambers' or 'Councils' should, for the same reason, be located not only in the capital city but also in the various regions of the country concerned, which could serve as the nodal bases for the benefit of various categories of intellectual creators. He felt that WIPO was, therefore, correct in planning the study of this question.

35. The Committee endorsed the idea of a detailed study being undertaken by the International

Bureau of WIPO in connection with the setting up of such National Chambers of Copyright.

Part II: Items Concerning Both the Committee and the Intergovernmental Copyright Committee

Application of the International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations (Rome Convention)

36. Discussions were based on document B/EC/XXII/6 – IGC(1971)/V/6.

37. The Committees were informed that, since their 1981 sessions, three States, Barbados, Finland and Panama, had deposited their instruments of accession or ratification, bringing the number of States party to the Rome Convention to 26.

38. The delegation of India said that work was in progress for drawing up of legislation for the protection of performers; after the adoption of the necessary legislative provisions, the Government of India would consider the ratification of the Rome Convention.

39. The delegation of Hungary said that accession to the Rome Convention had been considered, but that for the time being it had been regarded as premature; consideration of the matter might however be resumed in 1986.

40. The delegation of Israel announced that the Bill on the protection of performers had just been approved on first reading by the Israeli Parliament, and that it was intended to ratify the Rome Convention after the final approval of the said Bill.

41. The delegation of Yugoslavia announced that a law on the protection of neighboring rights was under preparation which would allow for ratification of the Rome Convention after the new legislation had been approved.

42. The Committees noted the information presented to them.

Application of the Convention for the Protection of Producers of Phonograms Against Unauthorized Duplication of Their Phonograms (Phonograms Convention)

43. Discussions were based on document B/EC/XXII/7 – IGC (1971)/V/7.

44. The Committees were informed that, since their 1981 sessions, five States, Austria, Barbados, Costa Rica, Uruguay and Venezuela, had deposited

their instruments of accession or ratification, bringing the number of States party to the Phonograms Convention to 37.

45. The delegation of Netherlands stated that draft legislation was currently under consideration with a view to enabling the Netherlands to accede to the Phonograms Convention.

46. The delegation of Czechoslovakia announced that legislative work that would enable its country to accede to the Phonograms Convention had been completed, and that accession might, therefore, be expected in the near future.

47. The Committees noted the information presented to them.

Application of the Convention Relating to the Distribution of Programme-Carrying Signals Transmitted by Satellite (Satellites Convention)

48. Discussions were based on document B/EC/XXII/8 – IGC(1971)/V/8.

49. The Committees were informed that, since their 1981 sessions, two States, Austria and Morocco, had deposited their instruments of ratification of the Satellites Convention, bringing the number of States party to that instrument to eight.

50. After having recalled the decisions taken by the Committees at their previous session, the Secretariats announced the publication in Arabic, English, French, Russian and Spanish of model provisions for national legislation implementing the Convention Relating to the Distribution of Programme-Carrying Signals Transmitted by Satellite. This brochure, which also contains a commentary on the model provisions, was circulated to States and interested organizations in November 1983.

51. The delegation of the United States of America informed the Committees of the measures that its Government was in the process of taking with a view to accession to the Convention. It expressed its strong concern about the growth of piracy of programme-carrying satellite signals and expressed the hope that other States would move toward adherence to the Convention.

52. In reply to the delegation of the Netherlands, which had raised the question whether the future programs of the Secretariats provided for activities concerning direct broadcasting by satellite, the representatives of the Directors General of Unesco and WIPO said that their respective governing bodies had already decided to initiate studies on the legal problems raised, with respect to copyright and neighboring rights, by direct broadcasting satellites. It is planned to convene a working group for the purpose during the 1984–1985 biennium, the findings of which will be submitted to the Committees at their next sessions.

53. The Committees noted the information presented to them.

Development of the Multilateral Convention for the Avoidance of Double Taxation of Copyright Royalties

54. Discussions were based on document B/EC/XXII/9 – IGC(1971)/V/9.

55. The Committees were informed that, since their 1981 sessions, two States, Egypt and India, had acceded to the Multilateral Convention for the Avoidance of Double Taxation of Copyright Royalties, bringing the number of ratifications or accessions to four.

56. The Secretariats recalled that the Convention in question will enter into force after the deposit of the tenth instrument of ratification, acceptance or accession.

57. They also mentioned the holding, in September 1983, under the joint auspices of Unesco and WIPO, of a Consultation Meeting of the international non-governmental organizations which had been invited to send representatives to the International Conference of States that had adopted the texts of the Convention in Madrid in December 1979. They stated that, as a result of that meeting, and pursuant to decisions by their respective governing bodies, Unesco and WIPO were going to: (i) undertake a survey among member States with a view to gaining better knowledge of the operation of bilateral agreements in force, and (ii) draw up a brochure, publication of which could take place towards the end of 1985, for the purpose of promoting awareness of that instrument among States.

58. The attention of the Committees was also drawn to the progress of the Records of the Diplomatic Conference of Madrid, the manuscript of which had at present reached the printing stage.

59. The delegation of Italy thanked the Secretariats for the publication of the official Italian text of the Convention and of its Additional Protocol. It considered that the publication would be an encouragement for the Italian Government to accede to the instrument. It expressed the wish that the version in question might be widely distributed among interested circles.

60. The Committees noted the information presented to them.

Advisory Notes on the Implementation of the System of Translation and Reproduction Licenses for Developing Countries and the Copyright Conventions

61. Discussions were based on document B/EC/XXII/10 – IGC(1971)/V/10.

62. The Chairman recalled that the Committees, at their 1981 sessions, after having taken note of the guiding principles, drawn up by a Working Group that met in 1979 and 1980, covering the problems arising from the practical application, by developing countries, of procedures for the grant of translation and reproduction licenses and the copyright Conventions, had considered it necessary to convene a third session of that Working Group in order to specify certain aspects and put the text into its final form. He mentioned that that Working Group, which had met at the headquarters of Unesco from December 6 to 10, 1982, had amended certain paragraphs and also the title of the guiding principles in the light of the observations received from governments and international non-governmental organizations and the various suggestions made by its members.

63. The Secretariats, for their part, informed the Committees that the “Advisory Notes on the Implementation of the System of Translation and Reproduction Licenses for Developing Countries under the Copyright Conventions,” as adopted by the Working Group, had been communicated to the States party to the Universal Copyright Convention and to the Berne Convention by circular dated March 29, 1983.

64. The delegation of Hungary, which had presided over the 1982 Working Group, pointed out that the terms of reference of the Group were limited, because its only purpose was to put into final form suggestions intended merely to facilitate the implementation of Convention provisions, without establishing any official interpretation of them. It nevertheless considered that the Advisory Notes were a starting point for the application of the rele-

vant provisions of the Conventions, but that the provisions were not sufficient to help developing countries implement them at the practical level. It indicated that, thanks to the understanding and competence of the experts, the Group had been able to complete its task. Moreover, it stressed the terms of paragraph 4 of Annex I of the report of the Working Group, which stated that: "...the copyright owners of developed countries should as a general rule grant the rights of translation or reproduction to the applicants from developing countries and give them these rights at preferential rates fixed with due regard to the economic situation prevailing in the developing country concerned."

65. The delegation of Colombia stated that the copyright legislation promulgated in its country in 1982 provided for the system of translation and reproduction licenses in favor of developing countries, but that they were faced with certain difficulties regarding implementation of these provisions. It requested Unesco and WIPO to grant specific assistance to developing countries in that connection. It also emphasized the need to help developing countries to establish national copyright information centers capable of guiding interested parties in their research as also in facilitating their negotiations with copyright owners.

Recommendations for Settlement of Copyright Problems Arising from the Use of Computer Systems for Access to or the Creation of Works

66. Discussions were based on document B/EC/XXII/11 – IGC(1971)/V/11, which submitted to the Committees the report adopted by the second Committee of Governmental Experts on Copyright Problems Arising from the Use of Computers for Access to or the Creation of Works, at its meeting at Unesco House, Paris, from June 7 to 11, 1982.

67. The Committees took note, in that connection, of the contents of the recommendations formulated by the Committee of Experts, which had been addressed to the member States of Unesco and WIPO and also to interested organizations during October 1982. In these recommendations, which do not deal with or affect the protection of computer software or programs as such, the Committee of Experts considered that the use of computer systems for access to or the creation of works should be governed by the general principles of copyright protection, as defined notably in the international Conventions on the subject, and for the moment did not call for any amendments to those principles. Moreover, in order to assist States in their search for legal solutions to deal with the problems resulting from

the use of computer systems, the Committee of Experts had adopted recommendations that referred, with regard to access to works, to the subject matter to which they were applicable, to the rights concerned, to the acts concerned (input and output operations), to moral rights, to limitations on copyright protection and to the administration and exercise of rights. Recommendations dealing with the use of computer systems for the creation of protected works were contained in a second part.

68. The delegations of Algeria, Australia, Austria, Brazil, Canada, Finland, France, Germany (Federal Republic of), Hungary, Israel, Italy, Japan, the Netherlands, the Soviet Union, Sweden, Switzerland, the United Kingdom and the United States of America, and also the observer from CISAC, in turn emphasized the importance of the work accomplished by the second Committee of Governmental Experts. They moreover expressed their great appreciation of the recommendations drawn up by the Committee of Experts, which represented genuine and necessary progress in the direction of application of the international Conventions and national copyright laws to the rapid development of new technology and to the growing movement of data across frontiers. A number of the delegations were gratified that the recommendations were sufficiently flexible on the one hand to allow for the interests of authors and those of users, and on the other hand to allow developing countries the adaptations that corresponded to their needs. Consequently, they afforded guidance to national legislators having to contend with the problems raised by the increasing recourse to computer systems in the use of works protected by copyright. In that respect, Recommendation no. 6, which provided for the conferment on the author of an exclusive right to communicate his work to the public by means of computer systems, was regarded by the delegations of Switzerland and the United States of America as an interesting element worthy of closer study.

69. The delegation of the United Kingdom, while recognizing the usefulness of the recommendations drawn up, for its part expressed reservations concerning Recommendation no. 6, which envisaged the possibility of expressly recognizing the author's exclusive right to communicate his work to the public by means of computer systems capable of reproducing his work in a perceptible form. That, in the opinion of the delegation of the United Kingdom, was an area in which they wanted to reflect further. The delegation of Austria, without making any formal reservation concerning the text of the Recommendation, pointed out that the clause might not be satisfactory for its country. It indicated in that connection that application of the text, could, under

certain circumstances, not prove possible. Such circumstances might be the use of a data base that had no meaning unless access was afforded to all the necessary information.

70. The delegation of Sweden declared its support for the whole set of recommendations, nevertheless subject to some qualification, particularly with regard to the provisions concerning the use of computer systems for the creation of protected works.

71. The delegation of Israel considered that it would be useful to provide definitions that could serve as a guide for national legislators on the subject, particularly with regard to the concepts of publication, reproduction and copying.

72. At the request of the delegation of Italy, the Committees also considered it appropriate to draw special attention to paragraph 48 of the report of the Committee of Governmental Experts of June 1982, according to which "national legislation should require that anyone using protected works for storage in a computer must inform the societies of authors and other recognized organizations of the intended input operation as well as of the purposes of the computer use."

73. The great majority of delegations regretted that the recommendations of the Committee of Experts had not dealt with the protection of computer programs, and asked that studies be undertaken as a matter of urgency in order that such protection might be provided for within the copyright framework. The growth in piracy affecting computer programs was stressed. That state of affairs had moreover led the Congress in the United States of America to recognize that electronic software was within the purview of copyright. The delegations of Japan, France and Canada reported that work was in progress at the national level in this connection. The delegation of Hungary informed the Committees about the next Hungarian legislation which made it unambiguous that computer software be protected by copyright. The delegation of Japan referred to the Court decisions made in its country to the effect that computer program constitutes an intellectual work to be protected under copyright. The delegation of Australia referred to a judgment handed down by the Federal Court of its country according to which a computer program was not an original work within the meaning of Australian copyright law, and consequently could not enjoy protection under that law. Although that judgment had been appealed against, the Minister responsible for copyright had decided that his Ministry should apply itself to the problem and undertake an in-depth study.

74. A number of delegations stressed the necessity for a computer program to be the result of creative work if it was to enjoy copyright protection. In that respect a distinction was to be made between software that was confined to technical data enabling the computers or microprocessors to be operated and the programs that were used for the purpose of creating works.

75. In the opinion of the delegations of Algeria and Brazil and the observer from the International Confederation of Societies of Authors and Composers (CISAC), it would be difficult to assimilate software to literary and artistic works and to endeavor to protect them by copyright. A number of arguments were put forward in support of that view. First, the fact that software could not serve for several years and, therefore, not be protected throughout the term of copyright. Secondly, the very purpose of copyright, which was to protect a work with respect to its reproduction and communication to the public, but not to protect it against private use, the latter being the operation that would most often require an industrialist to defend himself against an unscrupulous competitor. In view of the fact that, according to the observer from CISAC, copyright could not apply to all acts that should ideally be covered, recourse should be had to specific legislation, the urgency of which could not be overemphasized.

76. The delegation of Finland said that, in its opinion, there were links between the recommendations adopted by the Committee of Governmental Experts of June 1982 and the protection of software which could be considered covered by Recommendation No. 4: there could be no use of a computer program without a computer input operation. The delegation of Finland was, therefore, in favor of the studies undertaken being continued in greater depth.

77. Despite Recommendation No. 13, the delegation of Canada was concerned that the wording of paragraph 1 of Annex I containing the Recommendations may be so broad as to be interpreted as applying to computer programs in their written form.

78. The delegation of the Netherlands considered that studies should continue not only within the sphere of copyright but also within that of industrial property. A joint exercise within the framework of both institutions, which would take into account all the work already accomplished and also the jurisprudence that already existed in the Netherlands and other countries, seemed necessary and desirable to it.

79. At that stage in the discussion, the delegation of Switzerland wondered what procedure would be followed for future work in the area concerned. In particular it raised the question whether the Committee of Governmental Experts on Copyright Problems Arising from the Use of Computer Systems for Access to or the Creation of Works and the one mandated to consider the question of the protection of software within the framework of industrial property were going to merge or proceed with their work separately. It referred, moreover, to the work carried on under the auspices of the OECD on the subject of the movement of computer data across frontiers, which affected the protection of software, and expressed the wish that the OECD work be taken into consideration and duplication avoided.

80. The representative of the Director-General of Unesco informed the Committees that her Organization's program and budget contained the necessary provision for a joint study with WIPO in 1984-1985 on the question of the protection of computer programs by copyright provisions. The meeting of a group of experts was envisaged for that purpose. The Committee of Governmental Experts on Copyright Problems Arising from the Use of Computers for Access to or the Creation of Works had completed its work, so that the Group of Experts would be a new one, mandated to consider the protection of software by copyright.

81. The representative of the Director General of WIPO subscribed to the statement by the representative of the Director-General of Unesco with regard to the study of the question concerned within the framework of copyright protection, as the WIPO program for 1984-1985 also provided for the convocation of a group of experts by Unesco and WIPO, whose work would be prepared with the aid of consultants. WIPO will pursue, in the framework of the Paris Union, the study of questions concerning computer programs falling under the régime of industrial property.

Problems Arising from the Transmission by Cable of Television Programs

82. The discussions were based on document B/EC/XXII/12 - IGC(1971)/V/12, the "Draft Annotated Principles of Protection of Authors, Performers, Producers of Phonograms and Broadcasting Organizations in Connection with Distribution of Programs by Cable," contained in document BEC/IGC/ICR/SC.2(Part II)/CTV/6 (hereinafter referred to as "the Annotated Principles") and the Report of the Subcommittees on Television by Cable (created by the Committees and the Intergov-

ernmental Committee of the Rome Convention), contained in document BEC/IGC/ICR/SC.2(Part II)/CTV/7 (hereinafter referred to as "the Report").

83. The delegations of Austria and the Federal Republic of Germany requested certain corrections. They are reflected in a corrigendum.

84. After a discussion in which the delegations of Austria, Canada, the Federal Republic of Germany, Hungary, Israel, Italy, the Netherlands and the United Kingdom took the floor, the Committees:

(i) took note of the documents referred to in paragraph 82, above, and approved the conclusions reached by their respective Subcommittees;

(ii) agreed that "the social and political conditions" mentioned in paragraph 149 of the Report should be understood so as to comprise also legislation and case law;

(iii) requested their respective Secretariats to officially transmit the Annotated Principles and the Report (containing the said corrections), always together, to all States members of Unesco, WIPO, the Berne Union or the Universal Copyright Convention.

85. During the adoption of this Report, the observer from the International Labour Office (ILO) requested that the opinion of the ILO should be recorded as follows: "The procedure according to which the Subcommittees of the Copyright Committees of Unesco and WIPO and the Subcommittee of the Intergovernmental Committee of the Rome Convention are sitting together raises some legal and practical problems. Therefore ILO considers that this procedure should not constitute a precedent for the future work." The Chairman asked the Committees whether they had any objection to recording this statement. After having ascertained that it was not so, the Chairman requested the Secretariats to reflect this in the Report.

Model Provisions Concerning Access by Handicapped Persons to Works Protected by Copyright

86. Discussions were based on document B/EC/XXII/13 - IGC(1971)/V/13.

87. The Chairman, after having recalled the conclusions of the previous session of the Committees on the subject, gave an account of the results achieved by the Working Group on Access by the Visually and Auditory Handicapped to Material Re-

producing Works Protected by Copyright, which met at Unesco headquarters from October 25 to 27, 1982.

88. After having noted the two solutions proposed by the Working Group, appearing in Alternatives A and B, the Chairman invited Mr. Ficsor, the delegate of Hungary, who had presided over the Working Group, to make comments on the results of its work. On that subject, the Chairman of the Working Group informed the members of the two Committees of his uneasiness concerning the conclusions reached by that meeting, and that he personally was not too satisfied with the Model Provisions adopted by it; this preferential treatment is a minimum and a more reserved attitude of representatives of authors would endanger the positive image of copyright and the public support for solving the fundamental problems of copyright protection.

89. A number of delegations and observers paid tribute to the results obtained by the Working Group thanks to the competence of its Chairman and members and the assistance of the Secretariats.

90. Referring to the declaration by the Chairman of the Working Group, the delegation of the United States of America agreed that owners of copyright should understand that the prerogatives conferred on them had to be accompanied by certain obligations if copyright were to retain its esteem in the eyes of the public, which is important to modernizing copyright laws.

91. A number of delegations and observers also drew the attention of the Committees to the humanitarian character and to the notions of justice, equity and social solidarity that militated in favor of the urgent integration of the handicapped in daily life and their participation in international cultural activity.

92. The great majority of the delegations that spoke considered that the Model Provisions, even if they did not cover all aspects of the problem (for instance the question of public performance and that of the freedom of dissemination of works in braille in the libraries of various countries), were a positive step towards assisting national legislators to become fully aware of the circumstances of handicapped persons and in effecting the adoption of provisions whereby they might be offered ready access to the materials that they needed.

93. The delegation of Brazil, considering that it was necessary for a wide range of solutions to be available to national legislators, expressed the wish

that the Committees should not express a preference for either Alternative A or Alternative B. The non-voluntary license provided for in both cases was capable of preventing delays in the use of works by the blind. Of course the fullest and the least costly access had to be found, and in that respect Alternative A seemed the most appropriate. However, the delegation fully understood that Alternative B might suit the conceptions of certain countries better.

94. The delegation of Italy expressed the view that it would be desirable not to offer two Alternatives to national legislators, but rather to reorganize the contents of the two Alternatives in such a way as to offer a range of possibilities.

95. The delegation of Colombia, while considering Alternatives A and B to be the two extremes, expressed the wish that views might be reconciled in order that a single formula could be suggested to national legislators. It pointed out that there was no recognition of the moral rights of the author in either of the two Alternatives. By way of compromise it proposed the adoption of Alternative A as the rule (completed with the obligation to give the author prior notice and with the safeguarding of moral rights), and, as an exception, the author's right to oppose the reproduction of the work for well-founded reasons which would be specified in the law, including, for instance, the fact of a publisher of works for the handicapped having already undertaken publication.

96. The delegation of the Soviet Union and the observer from the WCWB declared themselves in favor of maintaining Alternative A alone, since providing for a non-voluntary, non-remunerated license was the only means capable of resolving the problem under consideration, notably in developing countries. The delegation of the Soviet Union provided information in that connection on the provisions of Soviet legislation under which any work could be reproduced for the benefit of the handicapped, the sole condition being that the name of the author and the source of the borrowed material be mentioned. In that respect, this delegation as also that of Colombia, informed the Committees of its concern over the absence of any recognition of the moral rights of the author in Alternatives A and B.

97. The delegations of Australia, Austria, Israel, the Netherlands and Norway, and the observer from CISAC, chose Alternative B, which provided for a non-voluntary license but with equitable remuneration, where exception to the legislation is deemed necessary.

98. The delegations of Australia and Japan moreover informed the Committees of the legislative provisions in force in their countries with regard to the access of the handicapped to works protected by copyright. The delegation of Australia added that measures were at present under consideration regarding the possibility of using radio broadcasts for the handicapped without authorization from the holders of the rights.

99. With regard to the remuneration paid to the owner of the rights, the delegations of Finland and Norway said that in their countries it was the responsibility of the State.

100. The delegation of Norway emphasized the importance of maintenance of remuneration, even if this were only symbolic. The symbolic nature of the remuneration normally charged was also highlighted by the delegation of Austria.

101. The delegations of Finland, the Netherlands, the United Kingdom and the United States of America considered that exceptions to copyright were not necessary, as negotiations on a voluntary basis between the handicapped and the representatives of authors generally produced satisfactory solutions. Those delegations emphasized the need to promote the conclusion of such agreements. The delegation of the United Kingdom preferred to have only that practice continue as it was rather than adopt the Model Provisions. The delegation of the United States of America, for its part, considered that, even if the exceptions provided for in Alternatives A and B were minor, they did not correspond to the principles underlying certain legislations. After having mentioned the activities carried out by the Department for the Handicapped of the Library of Congress, that delegation expressed the view that the problems facing the handicapped did not stem mainly from copyright but rather from a lack of financial means, ignorance of existing provisions and the absence of appropriate equipment. The problem, according to that delegation, was to find ways and means by which authors and publishers could afford optimum protection to the handicapped. In that connection the delegation drew the attention of the Committees to the importance of the role of libraries and to the necessity to facilitate sharing materials for the handicapped among libraries in developed and developing countries. The delegation of Japan pointed out that, beyond exceptions provided in the law, agreements on a collective basis between the parties concerned might be effective.

102. The delegation of Brazil proposed, as a means of settling the question at the international

level, the drafting of model provisions for contractual agreements between authors and publishers.

103. The delegations of Austria, Brazil, Greece, Japan, the Netherlands, Norway, the Soviet Union and the United States of America, and also the observer from the WCWB, spoke in favor of the widest possible dissemination of the Model Provisions, in order that Governments might be made aware of the problems faced by the handicapped. The delegation of Japan suggested that, if that should prove necessary, a Committee of Governmental Experts should meet as a result of that dissemination.

104. All the delegations that took the floor indicated that the studies had related only to the visually handicapped, whereas those with auditory, motor and all other physical handicaps were faced with difficulties of access to intellectual works.

105. In that connection the delegations of Australia, Austria, Brazil, Canada, Finland, Hungary, the Netherlands and the United States of America considered it desirable to continue the studies in this field, broadening them to cover all categories of handicapped persons and referring them to all aspects of the problem.

106. In conclusion, the Committees emphasized the urgency and importance to the handicapped of the solution of the problems of access to intellectual works. They noted the Model Provisions drawn up by the Working Group that met in 1982, and recommended to their respective Secretariats that they be submitted to States for comment. They also recommended to the Secretariats that they continue their work in this field, taking *inter alia* due account of the various aspects concerning the use of works by the handicapped (public performances, libraries, etc.) and of the different categories of handicapped persons. The negotiations between owners of copyright and the handicapped and also the possibility of entering into collective agreements should likewise be subjected to thorough study. The Committees finally decided to keep the question on their agendas, and asked their respective Secretariats to report to them on the subject at the 1985 sessions.

Protection of Folklore

107. The Secretariats presented documents B/EC/XXII/14 – IGC(1971)/V/14, B/EC/22/15 – IGC (1971) /V/15 and B/EC/XXII/16 – IGC (1971)/V/16, all of which concerned this item of the agenda.

108. On the subject of the Model Provisions for National Laws on the Protection of Expressions of Folklore Against Illicit Exploitation and Other Prejudicial Actions, the International Bureau of WIPO summarized the reasons for striving to protect expressions of folklore in national legislation, by *sui generis*, intellectual property type protection, recapitulated the history of preparing the said Model Provisions and drew the attention of the Committees to their main features.

109. After having called the Committee's attention to the findings of the regional Committees of Experts of Bogota (1981), New Delhi (1983) and Dakar (1983), convened jointly by Unesco and WIPO, and to those of the Committee of Governmental Experts that met in February 1982 under Unesco auspices in order to investigate, on an interdisciplinary basis and within a global context, measures designed to safeguard the existence, development and authenticity of folklore and traditional culture and to protect them against risk of distortion, the representative of the Director-General of Unesco recalled the decisions adopted by the Executive Board of Unesco at its 116th session (spring 1983) and by the twenty-second session of the General Conference. She mentioned among other things that it emerged from the work undertaken by Unesco on the one hand and by Unesco and WIPO on the other hand that there were two possible approaches "concerning the method to be selected for establishing regulations on folklore. According to the first approach, the preservation of folklore could take place within the framework of instruments of a specialized nature such as, for instance, the adoption of international regulations on the intellectual property aspects of the protection of folklore, as called for by the regional expert committees of Bogota, New Delhi and Dakar. This would be one of a series of specific projects designed to develop the safeguarding of folklore step by step. The second approach considers that, since the different constituents of the preservation of folklore are closely interlinked, it is only in the framework of a consistent body of precepts and rules encompassing all the disciplines that folklore is liable to draw on that the preservation of this cultural heritage can be ensured."

110. She also informed the Committees that the Unesco Executive Board, after having taken note of the preliminary study on the technical and legal aspects of the safeguarding of folklore, which the Director-General had submitted in pursuance of resolution 21 C/5/03, had invited the Director-General to continue in 1984-1985 the study of the safeguarding of folklore on an interdisciplinary basis within the framework of an overall approach, as the

question of the desirability of adopting international provisions on the subject would not be submitted to the General Conference until its twenty-third session. The Executive Board had moreover recommended to the General Conference, which had noted the recommendation, that it invite the Director-General to take, jointly with the Director-General of WIPO, the requisite measures to look into the need for specific international regulations regarding the "intellectual property" aspects of the preservation of folklore, and to prepare such regulations. Finally the Executive Board had asked the Director-General to submit to it a report on all the matters in question at its 121st session (spring 1985).

A. "Intellectual Property" Aspects of the Protection of Expressions of Folklore

1. *Model Provisions for National Laws on the Protection of Expressions of Folklore Against Illicit Exploitation and Other Prejudicial Actions*

111. A number of delegations appreciated the development of the Model Provisions as a first step in establishing a *sui generis* system of intellectual property type protection of expressions of folklore and commended the Secretariats for this achievement; they found the Model Provisions a proper guidance for national legislation.

112. As regards definition of the subject of protection, the delegation of Italy proposed to further elaborate the criteria of considering an expression of folklore as an intellectual production, with special regard to the time factor involved. The delegation of India stressed, however, that the notion of expressions of folklore cannot be limited either in time or as to persons having created it, and it should be left to each community concerned to determine whether a production reflects its traditional artistic expectations. Moreover, folklore should be understood broadly enough so as to comprise also performances. The delegation of the Netherlands found the descriptive approach to the notion of expressions of folklore, as applied in the Model Provisions, successful. The delegation of Hungary emphasized the usefulness of having avoided the problem of definition. The delegation of the Soviet Union said that it is difficult to find a single definition for the diverse concept of folklore and that the question should be considered in its historical context, with regard to the different functions the protection of expressions of folklore may have in different countries. It is important to collect adequate knowledge of the subject to be protected in a given country before elaborating a relevant system of its protection.

113. The delegations of Hungary, India and Mexico referred to the importance of providing, in the Model Provisions, for the possibility of granting to the communities the right to control the use of their expressions of folklore. The delegation of Mexico stressed the necessity of recognizing the communities as the owners of their expressions of folklore; the delegation of India found it important to consider them both repositories and owners of such expressions. The delegation of Algeria requested in this context to pay more attention to the "moral preservation" of expressions of folklore by respecting their links with the communities from which they were derived.

114. The delegation of the United States of America focused on the diffusion of expressions of folklore across the frontiers and stressed the need for a proper balance between the protection of the traditional heritage of a community and the possibility of such a heritage becoming common property of the entire mankind.

115. The delegation of the Netherlands also emphasized the importance of the Model Provisions for countries using expressions of folklore derived from other countries.

116. The delegation of the Central African Republic stressed the necessity of assistance to developing countries in establishing proper infrastructure for the protection of their folklore.

117. The delegation of Finland emphasized the need for further studies on the protection of expressions of folklore with special regard to exploring possible solutions in the framework of copyright.

118. The observer from FIM requested that national legislation should define the notion of performers so as to cover also those who perform expressions of folklore.

119. The Committees noted with satisfaction that the Model Provisions would be published, along with the Commentary thereon, in form of a brochure early in 1984, under the joint auspices of Unesco and WIPO; and that the said publication will be distributed to all States members of the system of the United Nations and all international organizations interested in the subject.

2. *Present Status of the Work in Progress at Regional Level*

120. The delegation of Colombia felicitated the Secretariats for having convened, at the invitation

of its Government, a Committee of Experts from Latin American countries in Bogota, in October 1981, to study the means of implementation of the Model Provisions for national legislations on the protection of expressions of folklore. It found that the meeting was very useful and stressed the necessity of considering the protection of expressions of folklore also beyond the limits of a given country.

121. A number of delegations spoke with appreciation of the work of the Regional Committee of Experts for Asian and Pacific countries, convened by Unesco and WIPO in New Delhi, from January 31 to February 2, 1983, at the invitation of the Indian Government. The delegation of India emphasized that national legislation on the protection of expressions of folklore is but a first step which should be followed by international regulations which should contain special provisions for developing countries that were particularly vulnerable in respect of exploitation of their folklore.

122. The observer of the International Federation of Translators (FIT) proposed to convene a regional meeting on the protection of expressions of folklore also for European countries.

123. The Committees have been informed that it was proposed to convene, in 1984, a regional committee of experts to consider the protection of expressions of folklore in the Arab countries.

3. *Protection at the International Level of the Intellectual Property Aspects of the Protection of Folklore*

124. The majority of the delegations which took the floor in the discussion of questions relating to the protection of expressions of folklore emphasized the need for an international specific instrument that would provide for an intellectual property type protection on a multilateral basis; expressions of folklore require protection primordially against illicit commercialization abroad.

125. The delegation of Australia referred to the statement made by the expert from its country in the Regional Committee of Experts on Means of Implementation in Asia of Model Provisions on Intellectual Property Aspects of Protection of Expressions of Folklore, convened in 1983 in New Delhi, and which statement was reproduced in paragraph 7 of the Report of the said committee, attached to document B/EC/XXII/15-IGC(1971)/V/15 in Annex II; it agreed with the need for a specific international instrument in the field under consideration.

126. The delegations of Finland and the United States of America expressed doubts about the expediency of preparing an international instrument on intellectual property aspects of the protection of expressions of folklore. They stressed the need for further exploring the problem. The delegation of Finland also said that it was necessary to study the applicability of existing copyright conventions to the protection of expressions of folklore.

127. The Committees took note of the information given by their Secretariats that a Committee of Experts on the Intellectual Property Aspects of the Protection of Folklore at the International Level will be convened, jointly by Unesco and WIPO, in December 1984.

B. Global Study of the Protection of Folklore on an Interdisciplinary Basis

128. The delegations of Algeria, the Central African Republic, Colombia, Mexico, the Netherlands, the Soviet Union and the United States of America expressed satisfaction with the efforts made by Unesco towards the safeguarding of folklore. All the speakers acknowledged the extreme complexity and importance of the question.

129. The delegation of Colombia spoke in favor of the drafting of a set of provisions of international type and the continuation of the work on determining folklore characteristics specific to each region of the world.

130. The delegation of the Netherlands expressed its interest in the action carried on by Unesco, which had approached the question of the protection of folklore in a very broad manner. That way of approaching the problem interested not only developed but also developing countries whose traditional folk heritage was used in developed countries. In the opinion of that delegation, it was impossible to define folklore, and a descriptive approach seemed more appropriate to it. It pointed out moreover that specific examination of the "intellectual property" aspects of the protection of folklore was consistent with the aim of progressive development and safeguarding of folklore.

131. The delegation of the Soviet Union emphasized the various concepts in relation to which folklore was considered and also the difficulty of encompassing the notion as a whole. It mentioned the historical, cultural, ethnic, political and other aspects of that heritage, and the studies devoted to it by contemporary science. It referred in particular to the structuralist philosophy that highlighted the my-

thological forms underlying folklore. Consequently, in order to protect folklore its profound and most essential aspects had to be analyzed and understood. It mentioned that in the Soviet Union every aspect of folklore had long been subjected to study, and that the peoples of the Soviet Union engaged in free exchanges of their folklore. The question of the protection of folklore therefore could not arise within the Soviet Union, as it was a social phenomenon whose use outside the frontiers of the Soviet Union was the only thing that might call for protection.

132. The delegation of Mexico considered that there could be several approaches to folklore. The Committee of Governmental Experts convened by Unesco in February 1982 had clearly shown the differences that existed between countries and continents on the subject of what should be understood by folklore. However, in spite of minor divergences, agreement did seem possible regarding the fundamental bases for the safeguarding of folklore.

133. The delegation of Algeria considered that the work carried on by Unesco on an interdisciplinary basis had already enabled developing countries to have valuable information at their disposal with a view to the definition of the policies that they could implement in order to ensure the preservation of that traditional cultural heritage.

134. The delegation of the Central African Republic expressed the view that legislative provisions were not sufficient to ensure the protection of folklore, and that its protection called rather for concrete, practical measures. It laid stress on the necessity of training specialists in folklore and popular traditions. It also wished that international cooperation might develop not only at the level of training but also at the level of classification and archiving. Finally it considered essential that the legislative provisions concerning the "intellectual property" aspects of folklore protection be completed with measures for the preservation, conservation and development of folklore.

135. The delegation of the United States of America mentioned that it had always supported Unesco's efforts in the work intended to preserve, protect and identify folklore. It did however wish to draw the Committee's attention to a broader question, namely the desirable dissemination of folklore into societies other than those that engendered it, used without its subjective meaning. Consequently, the efforts made should be directed towards a search for balance between the stimulation of creativity arising out of global intercommunications and respect for the authenticity of folklore and the conceptions of the community that engendered it.

136. The observer from the AIR, after having considered that the definition of folklore given in paragraph 26 of document B/EC/XXII/16-IGC(1971)/V/16 was too broad, and declared himself in favor of an international undertaking that would protect countries that possessed a folklore heritage against its users, wondered whether the question was not outside the terms of reference of the Committees inasmuch as it was not a question of copyright or neighboring rights.

137. The observer from the FIM, referring to the protection of performers who performed works of folklore, insisted on the provisions to that effect in the Unesco Recommendation on the Status of the Performer being taken into consideration in the drafting of any normative text at the national, regional or international level.

138. The representative of the Director-General of Unesco said that she had noted the observations and suggestions of the Committees. She made it clear that the precise purpose of the work being carried on by Unesco on an interdisciplinary basis was to cover the identification, preservation and conservation aspects of folklore. She recalled that previous work had shown that the safeguarding of folklore entailed integration and synthesis within the framework of an overall approach to all the elements of the preservation of folklore, and that Unesco, in accordance with the decisions taken at the twenty-second session of the General Conference, would continue its studies with that in mind.

139. The Committees took note of the various items of information presented to them.

Copyright Problems Arising from the Rental of Materials Reproducing Protected Works and their Distribution

140. Discussions were based on document B/EC/XXII/17-IGC(1971)/V/17.

141. All the delegations that took the floor expressed their warm congratulations to the International Federation of Phonogram and Videogram Producers (IFPI) for its study, considering it to be a highly interesting study that reflected the present status of the market for the rental of videograms and phonograms and contained very accurate information on legislative and legal points. They expressed the opinion that the study was a good basis for discussion with a view to the work contemplated in that area.

142. The delegations of Canada, Hungary, Israel, Japan and the United States of America expressed

the wish that the IFPI study might be disseminated as widely as possible, and that at the same time States might be invited to comment on it.

143. The delegation of the United Kingdom, while subscribing to the congratulations addressed to IFPI and recognizing the usefulness of its study, pointed out that due account had to be taken of all categories of interests, and that it would among other things be desirable to mention the opinion of consumers. It pointed out that in the United Kingdom a process of consultation of interested circles was in progress, and that a very wide variety of opinions had been expressed, from those in favor of an exclusive right to those advocating the denial of any right at all; however, some had shown preference for the settlement of problems by contractual means. The delegation of the United Kingdom wondered whether it would not be desirable for consumer groups and representatives of dealers to be also invited to take part in the meetings contemplated on the subject.

144. The delegation of Austria, referring to the meeting of a group of experts scheduled in 1984, raised the question whether the experts in question would be governmental or non-governmental and, apart from that, what the terms of reference of the group would be. It stated its preference for a meeting open to all States party to the Copyright Conventions. As for the terms of reference, it suggested that the group should be asked to lay down guidelines for the benefit of national legislators.

145. The delegations of Czechoslovakia, Finland, Germany (Federal Republic of), Hungary, Israel, Italy, Sweden and the United States of America endorsed the view expressed by the delegation of Austria. With regard to taking the opinions of consumer groups into consideration, the delegation of the Netherlands considered that it was essentially on the studies relating to the question under review that the opinions of consumers and dealers should also be presented. The delegation of the Netherlands further drew attention to the relation between this question and the problems of private use and piracy which are aggravated by the rental of material support; finally, it observed that the question of remuneration for private use of phonograms and videograms was being studied in its country together with the question of public lending rights for books.

146. The observer from CISAC expressed some misgivings in that respect, considering that those opinions were widely known as far as the substance of the problem was concerned, and wondering, with regard to procedure, whether there existed organizations or consumer groups accredited with Unesco or

WIPO which had the observer status that would enable them to be invited to the meetings.

147. The delegation of the United States of America pointed out that, in general, the governmental delegations had to consider the opinions of consumers on the problems under consideration as they were politically accountable to them; and, in any event it was possible to include representatives of consumer interests in delegations when they were governmental.

148. The delegations of Finland, France, Hungary, Israel, and Italy referred to work currently in progress in their countries on the preparation of draft legislation introducing rights in favor of authors, performers and producers of phonograms with respect to the rental of the various materials.

149. The delegation of Canada noted that in the current revision of its copyright law, proposals for the enactment of commercial renting rights for films, videotapes and sound recordings are being actively considered.

150. The delegation of Japan informed the Committees that its Government had just adopted a special law relating to rental of phonograms, and that an amendment of the copyright law itself was under preparation in this respect.

151. In the course of the discussion a number of delegations, referring to the concept of exhaustion of rights, mentioned relevant provisions that existed in the national legislation in force in their countries.

152. The observer from IFPI pointed out that, at present the legal means available to the owners of rights were insufficient for there to be any effective control over the rental of phonograms and videograms. She pointed out that the study had been made by her organization at the beginning of 1983, and therefore deserved to be brought up to date and completed. She expressed satisfaction with the activities provided for in the Unesco and WIPO programs, and especially the convocation of experts in 1984 for an in-depth discussion of the various problems. She stated that her organization was always willing to cooperate with the Secretariats in the preparation of such a meeting.

153. The observer from FIM said that her organization was highly interested in the study of the question, as present practices with regard to the rental of phonograms and videograms were also prejudicial to musicians. She expressed the hope that guidelines would emerge that would enable national legislators

to take appropriate measures such as would protect the interests of performers better.

154. The Committees expressed their great appreciation of the study made by IFPI. They recommended that the document containing it be sent to the States party to the Copyright Conventions (Berne and Universal) for comment with a view to the preparation of the meeting of the Group of Experts scheduled for the end of 1984. They expressed the opinion that all the States mentioned should be able to take part, if they wished, in the work of that Group. Finally they recommended that, in the invitation to the meeting that would be circulated, the Secretariats specify that its terms of reference would be the copyright problems arising from the rental of materials embodying protected work and their distribution, and the establishment of guiding principles on the subject for the benefit of national legislators.

Implementation of the System of "Domaine Public Payant"

155. Discussions were based on document B/EC/XXII/18 – IGC(1971)/V/18, containing, in Annex, the Report of the Committee of Non-Governmental Experts on the "Domaine Public Payant," convened jointly by Unesco and WIPO at Geneva, from April 26 to 29, 1982.

156. The Director General of WIPO said that, in his view, the study of the question of "domaine public payant" should be ended by noting the said Report. Revenues collected under copyright laws should go to the authors and their successors in title. Copyright laws should not provide for payments for the use of works not protected by copyright since such provisions obscure the real justification of copyright. He said that the cultural aims financed from the revenues derived from the institution of "domaine public payant"—in countries in which such an institution existed—were fully respectable but such aims should be financed from sources other than a kind of tax on the use of literary and artistic works not protected by copyright.

157. The statement of the Director General of WIPO was supported by many delegations, in particular by those of Austria, France, Germany (Federal Republic of), Hungary, the Netherlands, Switzerland, the United Kingdom and the United States of America.

158. The delegation of Algeria said that, although the system of "domaine public payant" does not form part of the copyright system, it can be useful in

certain countries under certain conditions. The delegations of Hungary and Italy said that questions relating to “*domaine public payant*” should be considered as a matter of national competence. The delegation of Yugoslavia informed the Committees that, though the copyright law of its country allows for the establishment of a system of “*domaine public payant*,” such a system has not yet been introduced in Yugoslavia.

159. The Committees took due note of the document under consideration.

Implementation of “*Droit de Suite*”: Results of the Survey Undertaken by Unesco and WIPO in 1983

160. Discussions were based on document B/EC/XXII/19, 19 Annex, 19 Corr, 19 Add. and 19 Add.2, which contained the analysis made by the Secretariats of the replies received from 51 States to the survey undertaken by Unesco and WIPO in 1983, in accordance with the decisions of their governing bodies, in order to “discover what structures exist in the member States’ copyright laws to give effect to this institution.”

161. A number of delegations paid tribute to the welcome initiative taken by the two Organizations and to the wealth of information in the analysis made by the Secretariats on the basis of the information received concerning the status of the question in member States.

162. The delegation of France, after having mentioned that its country was very firmly attached to the principle of *droit de suite*, which was written into the French Law of 1957, emphasized the nature of that specific right, which was established by the national legislation of certain countries as constituting the just recompense of the creative effort of the authors of artistic works. It also mentioned that the survey undertaken by the two Organizations had revealed that a number of States were at present considering the possibility of enacting national legislation on *droit de suite*. To that end it proposed that the studies undertaken should continue and that model provisions should be drafted in order to assist such countries as so desired with the enactment of legislation on the subject.

163. The delegations of Algeria, Germany (Federal Republic of), Hungary, Israel, Italy and the United States of America, and also the observer from the International Literary and Artistic Association (ALAI), declared themselves in favor of the proposal by the delegation of France regarding the drawing up by the Secretariats of draft model provisions on the subject.

164. The delegations of Algeria and Italy added that the application of the provisions on *droit de suite* contained in their national legislation was coming up against a number of difficulties. The delegation of Italy referred in particular to the attitude of the circles concerned, which, for fear of seeing the market for works of art shifting towards countries in which no *droit de suite* existed, in the event of the relevant provisions of Italian law being strictly applied, were not pressing for the implementation of those provisions. They therefore requested that the study suggested by France might also deal with the practical aspect of the question, in order to ensure the better operation of the system where it already existed. That proposal received the support of the delegations of Hungary and of the observer from ALAI.

165. The delegation of Australia mentioned for its part that no need had been felt in its country for legislation on *droit de suite*, as the parties concerned had not sought any intervention on the part of the legislator.

166. The delegation of Canada wished to make a correction to the information concerning its country appearing in paragraph 3(a) of the Annex to document B/EC/XXII/19 Add. – IGC(1971)/V/19 Add. The desirability of introducing *droit de suite* is being reviewed in Canada’s current revision of its Copyright Act; however, as paragraph 3(a)(ii) of this document indicated, there are many reasons for not implementing such a system in Canada.

167. At the end of the discussion, the Committees requested their respective Secretariats to keep the matter on the agenda of their forthcoming sessions, and to that end to submit to them guiding principles on the operation of *droit de suite*.

Model Statutes for Authors’ Organizations

168. The Committees considered document B/EC/XXII/20 – IGC(1971)/V/20 and took note of the Model Statutes for public institutions and private societies, respectively, administering authors’ rights, as adopted by the Committee of Governmental Experts on the Drafting of Model Statutes for Institutions Administering Authors’ Rights in Developing Countries, convened by the Directors General of Unesco and WIPO in Geneva, from October 17 to 21, 1983.

169. The Committees also noted that the Secretariat of Unesco and the International Bureau of WIPO were to draw up a set of comments to accompany the said Model Statutes and that all these texts would be published together during 1984.

Copyright Ownership and its Consequences for the Relations Between Employers and Employed or Salaried Authors

170. Discussions were based on document B/EC/XXII/21 – IGC(1971)/V/21.

171. The delegations of Algeria, Australia, Austria, Canada, Germany (Federal Republic of), Israel, Italy, the Netherlands, Sweden, the United Kingdom and the United States of America considered that the report on the Consultation Meeting that was held in Geneva from September 1 to 3, 1982, was a document of high quality setting forth the main problems arising in the area concerned, the importance and also the complexity of which had been mentioned. However, the delegations of Australia, Italy, the Netherlands and the United Kingdom felt that this question was not a matter of priority, particularly at the international level.

172. The delegation of Sweden, supported by the delegations of Germany (Federal Republic of), Japan and the United States of America, expressed the view that the studies envisaged should also include the field of computer technology. The delegation of Sweden asked moreover whether it would not be desirable to extend such studies to include the position of performers.

173. All the delegations that took the floor supported the idea of proceeding with an in-depth examination of the various aspects of the question, and noted the Secretariat's plan to convene a group of experts in 1984. On the latter point, some of them expressed a preference for the holding of such a meeting rather in the autumn, so that the competent national authorities might be allowed a certain amount of time within which to engage in the appropriate consultations and studies.

174. The delegations of Canada, the Netherlands and the United Kingdom emphasized the importance of solutions of contractual type, independently of legislative provisions.

175. A number of delegations were of the opinion that the drafting of guidelines or guiding principles for the benefit of national legislators seemed somewhat too ambitious for the time being, and that action should be confined to endeavoring to give opinions or advice on the subject. Referring to the composition to the Group of Experts, some of the delegations expressed a preference for participation in the Group being open to all States party to the copyright conventions.

176. The delegation of Switzerland expressed the wish that an analysis be also made, under the heading of relations between employers and employed authors, of certain specific cases, such as those that arose in the making of collective works (anthologies, encyclopedias and dictionaries) or in the field of cinematographic production.

177. The delegation of the United Kingdom drew attention to the problems that also arose in the fields of graphic art and advertising.

178. The observer from the International Labour Office (ILO) informed the Committees that, as a result of its consideration of the report on the Consultation Meeting mentioned above, the Governing Body of the ILO, at its February–March 1983 session, had decided to invite the Director General of ILO, when he drew up his proposals for the program of meetings for the two-year period 1986–1987, to bear in mind the desirability of including in that program the holding of a tripartite meeting on the protection of the rights of salaried authors and inventors. She added that, if the Governing Body of the ILO approved the meeting, Unesco and WIPO would be invited to it, according to the usual practice.

179. The observer from IFPI stressed the complex nature of the problems involved, and expressed the opinion that, when the studies went ahead, they should not be confined to purely copyright aspects but that consideration should also be given to all other economic and social aspects related to labor law. She considered that, before any attempt was made to draw up guiding principles for national legislators, a full picture should be assembled in cooperation with the ILO authorities.

180. The representative of the Director-General of Unesco, in reply to a remark made on the position of salaried translators, recalled the terms of the Recommendation adopted by the General Conference of Unesco in 1976 concerning the legal protection of translators and translations and on the practical means of improving the position of translators.

181. The Director General of WIPO, referring to the information given by the observer from the ILO, said that, pending the results of the consultation that he intended to have with the ILO in order to clarify the respective roles of the two Organizations, he reserved WIPO's position.

Part III: Other Items Concerning the Committee Alone

Date and Place of the Next Extraordinary Session

182. Referring to the practice followed by the Executive Committee of the Berne Union and the Intergovernmental Committee of the Universal Copyright Convention, which held certain of their meetings jointly, and according to which the sessions were held either at the Headquarters of WIPO or at the headquarters of Unesco in the absence of any invitation by a State, the representative of the Director-General of Unesco, noting that the present sessions had taken place in Geneva, invited the Committees to meet in Paris in 1985.

183. With regard to the period during which the next sessions should be held, the representatives of the Directors General of Unesco and WIPO drew the Committees' attention to the advantage of their sessions being held as far as possible before those of their respective Governing Bodies which had to decide on the program and budget of each Organiza-

tion. With that in mind, they suggested that the convening of the Committees' sessions should be at the beginning of July 1985. Some delegations expressed reservations concerning this, whereas others expressed their preference for the suggestion.

184. The Committees left their Secretariats to set the most suitable date in accordance with their respective Rules of Procedure.

Adoption of the Report

185. The Committee unanimously adopted this Report.

Closing of the Session

186. After the usual thanks, the Chairman declared the session closed.

List of Participants

I. States Members of the Committee

Australia: C.C. Creswell. **Benin:** B.-Y. Saïbou. **Canada:** D.B. Watters; J. Keon. **Chile:** J. Bustos Franco; P. Barros. **Costa Rica:** E. Soley Soler; C. Corrales; J. Rhenan Segura. **Czechoslovakia:** J. Kanka; J. Karhanova; M. Jelinek. **France:** A. Gendron. **Hungary:** M. Ficsor. **India:** I. Rahman; L. Puri. **Italy:** G. Aversa; M. Fabiani. **Mexico:** H. Aguila de la Parra; J.E. Penaloza-Plascencia. **Switzerland:** J.-L. Marro. **Tunisia:** A. Khaled; M. Baati. **Turkey:** T. Tarlan; N. Akinci. **United Kingdom:** D.F. Carter; D.M. Haselden. **Zaire:** Lukusa Kayembe Nkaya.

II. Observer States Members of the Berne Union

Argentina: J. Pereira. **Austria:** R. Dittrich; F. Trauttmansdorff. **Belgium:** M. Lenoble. **Brazil:** E. Cordeiro. **Cameroon:** W. Eyambe. **Central African Republic:** M.N. Kombot-Naguemon; L. Yagao-Ngama. **Egypt:** M. Daghsh. **Finland:** J. Liedes. **Gabon:** J. Obounou Mbogo. **Germany (Federal Republic of):** M. Möller. **Greece:** C. Ivraakis; A. Soulovanni. **Holy See:** O.J. Roullet; A.P. Marelle. **Israel:** M. Gabay; V. Hazan. **Ivory Coast:** M. Capet. **Japan:** T. Jumonji; Y. Oyama; K. Sakamoto. **Luxembourg:** F. Schlessler. **Madagascar:** S. Rabearivelo. **Netherlands:** E. Lukacs; F. Klaver; P. van Moort. **Niger:** R. Mato. **Norway:** S. Gramstad. **Pakistan:** K. Niaz; S. Bashir. **Philippines:** A.L. Catubig. **Romania:** F. Barbu. **Sweden:** A.H. Olsson; E. Essen. **Thai-**

land: C. Satjipanon. **Uruguay:** C. Fernandez Ballesteros. **Yugoslavia:** L. Mladenovic.

III. Other States

Algeria: S. Abada. **Angola:** A.A. Dos Santos; F.M. Da Costa. **Burundi:** B. Seburyamo. **China:** H. Chen. **Colombia:** H. Charry-Samper; L.A. Luna; M. Correal; C. Arevalo. **Dominican Republic:** T. Mejia-Ricart; M. Alfonseca Bursztejn-Lavigne; A. Bonetti. **Iran (Islamic Republic of):** F. Anvar; A. Shojanoori. **Iraq:** M.A. Ibrahim. **Jordan:** H. Mahmoud. **Peru:** R. Villaran Koechlin; D. Linares Bazan; J.M. Pacheco-Nunez; R. Salmon de la Jara; A. Thornberry. **Republic of Korea:** Y.-M Kim; K.-Y. Chung. **Saudi Arabia:** N.S. Kanan; F. Al-Hajiri. **Soviet Union:** K. Dolgov; I. Nikouline; R. Gorelik; A. Protassanya. **Syria:** M. Sayadi. **Trinidad and Tobago:** H. Robertson; J. Sue Wing; D. de Freitas; J.H.C. Quamina. **United States of America:** H.J. Winter; D. Ladd; L. Flacks.

IV. Intergovernmental Organizations (Observers)

International Labour Organisation (ILO): R. Cuvillier. **United Nations Educational, Scientific and Cultural Organization (UNESCO):** M.-C. Dock; A. Amri. **League of Arab States (LAS):** O. El-Hajje. **Arab Educational, Cultural and Scientific Organization (ALECSO):** A. Derradji. **Organization of African Unity (OAU):** D. Ramasawmy.

V. International Non-Governmental Organizations (Observers)

European Broadcasting Union (EBU): W. Rumphorst; J. Briquemont. Inter-American Association of Broadcasters (AIR): V. Blanco Labra. International Alliance for Distribution by Wire (AID): G. Moreau. International Association for the Protection of Industrial Property (AIPPI): T. Mollet-Vieville. International Association of Conference Interpreters (AIIC): A. Chaves-Rivier. International Bureau of the Societies Administering the Rights of Mechanical Recording and Reproduction (BIEM): J.-A. Ziegler. International Chamber of Commerce (ICC): J. Buraas. International Confederation of Free Trade Unions (ICFTU): P. Fruh. International Confederation of Societies of Authors and Composers (CISAC): J.-A. Ziegler. International Copyright Society (INTERGU): G. Halla. International Federation of Actors (FIA): R. Rembe. International Group of Scientific, Technical and Medical Publishers (STM): J.-A. Koutchoumow. International Federation of Film Producers Associations (FIAPF): A.

Brisson. International Federation of Musicians (FIM): J. Morton; Y. Burckhardt. International Federation of Phonogram and Videogram Producers (IFPI): G. Davies; E. Thompson; C. Frew. International Federation of Translators (FIT): R. Haeseryn. International Hotel Association (IHA): L. Jolivet. International Literary and Artistic Association (ALAI): W. Duchemin. International Publishers Association (IPA): J.-A. Koutchoumow. Latin-American Federation of Performers (FLAIE): J. Souza Costa; A. Millé. World Council for the Welfare of the Blind (WCWB): D. de Gouvêa Nowill; E.H.A. Nowill.

VI. Secretariat

World Intellectual Property Organization (WIPO)

A. Bogsch (*Director General*); C. Masouyé (*Director, Public Information and Copyright Department*); S. Alikhan (*Director, Developing Countries Division (Copyright)*); G. Boytha (*Director, Copyright Law Division*).

Notifications

Nairobi Treaty on the Protection of the Olympic Symbol

SRI LANKA

Ratification

The Government of the Democratic Socialist Republic of Sri Lanka deposited, on January 19, 1984, its instrument of ratification of the Nairobi Treaty on the Protection of the Olympic Symbol, adopted at Nairobi on September 26, 1981.

The said Treaty enters into force, with respect to Sri Lanka, on February 19, 1984.

Nairobi Notification No. 18, of January 23, 1984.

National Legislation

MADAGASCAR

Ordinance

amending certain provisions of Law No. 57-298 of March 11, 1957, on Literary and Artistic Property

(No. 82 031, of November 6, 1982)*

Article 1. Articles 3, 18, 21, 43, 65 and 75 of Law No. 57-298 of March 11, 1957, are amended as follows:

Article 3 (new). The following in particular shall be considered intellectual works within the meaning of this Law: books, pamphlets, and other literary, artistic and scientific writings; lectures, addresses, sermons, pleadings in court, and other works of the same nature; dramatic or dramatico-musical works; choreographic and mimed works, the acting form of which is fixed in writing or otherwise; musical compositions with or without words; cinematographic works and works made by processes analogous to cinematography; works of drawing, painting, architecture, sculpture, engraving, lithography; photographic works of an artistic or documentary character, and other works of the same character produced by processes analogous to photography; works of applied art; illustrations, maps; plans, sketches, and plastic works relating to geography, topography, architecture or the sciences; works of folklore and, in general, works forming part of the traditional cultural heritage of Madagascar.

Article 18 (new). The authorship of a radio or television work shall be deemed to belong to the natural person or persons who brought about the intellectual creation.

The author of the work and the composer shall be considered the authors of a completed dramatic or dramatico-musical work.

The provisions of Article 14, last paragraph, and Article 15 are applicable to radio and television works.

Article 21 (new). The author shall enjoy the exclusive right to exploit his work in any form whatever and to derive economic benefit therefrom during his lifetime.

On the death of the author, that right shall inure to the benefit of his successors during the current calendar year and for fifty years thereafter.

Moral rights may be exercised by the State, however.

In the case of works of joint authorship, the determinative calendar year shall be the year of the death of the last surviving co-author.

Article 43 (new). A contract whereby an author of an intellectual work and his successors authorize a natural person or legal entity to perform that work under conditions determined by them shall be deemed a performance contract.

A contract under which a professional body representing authors confers on an entertainment organizer the power to perform, for the term of the contract, the existing or future works constituting the repertoire of the said body, under conditions determined by the author or his successors, shall be deemed a general performance contract.

Where the State and its decentralized structures are owners of the copyright, it shall be exercised by the administrative bodies of the corresponding politico-territorial unit that are responsible for cultural matters.

* Published in the *Journal officiel de la République démocratique de Madagascar*, of November 6, 1982.—WIPO translation.

Note: Law No. 57-298, of March 11, 1957, referred to in this Ordinance, is the French Copyright Law, which, according to information received by the International Bureau of WIPO in March 1967, is still in force on the territory of Madagascar.

Article 65 (new). Disputes arising from the application of this Law shall be subject to the provisions of this Chapter that follow.

The public body responsible for the protection of authors' rights, referred to in Article 75 below, may be party to legal proceedings in the defense of the interests entrusted to it.

Article 75 (new). The administration of copyright and the defense of the moral and material interests of authors shall be entrusted to a public body of authors, created by decree, which alone shall be authorized to operate on the territory of the Democratic Republic of Madagascar.

That body shall be substituted as of right for

any other professional body representing authors in the implementation of contracts in force with users or associations of users on the territory of the Democratic Republic of Madagascar.

Apart from the reports of judicial police officers or agents, proof of the existence of a performance or dissemination of any kind, and proof of any infringement of the provisions of Article 46 may be constituted by the statements of a sworn agent of the of public body of authors referred to in the first paragraph.

Article 2. This Ordinance shall be published in the Official Journal of the Republic. It shall be implemented as a Law of the State.

General Studies

The Legal Protection of Works of Folklore

by E.P. GAVRILOV*

On the initiative of developing countries, a number of international organizations have embarked on a study of the establishment of an international system for the legal protection of folklore. The problem arose for the following reason: under international cultural exchange arrangements, developing countries receive from developed countries works protected by copyright whose use provides their authors with remuneration. Conversely, developed countries import a great number of works of folklore, which are not protected by copyright. In the opinion of certain specialists in developing countries this exchange is unbalanced. Not only are works of national folklore extensively exploited outside their countries of origin, without the slightest advantage accruing to those countries: it is not uncommon for them to be used by foreign firms which thereby earn profits in the very countries of origin of these works.

International cultural interchange is a multifarious phenomenon. It can involve not only the distribution of printed products (books, magazines, newspapers) but also that of works of art (paintings, ornaments), discs or other recording materials, the exchange of cinematograph films and television programs and the organization of art exhibitions and performers' tours, either individual or collective. Such interchange can be organized either free or on a remunerated basis. If the scientific, literary and artistic works involved in international exchanges are protected by copyright in the country in which they are or will be used, due account is taken of that fact. In such a case the work cannot be used for commercial purposes without the authorization of the owner of the copyright, in accordance with an agreement that generally provides for the payment of remuneration to the owner. Any unauthorized use, adaptation or transformation of the work is considered unlawful. Obviously works that are not protected by copyright lend themselves more to international cultural exchanges, since their use is not

subject to any authorization and does not entail the charging of any copyright royalty. On the other hand those works are liable to be distorted and exploited without any control. Consequently, the establishment of legal protection for works of folklore would enable international cultural interchange to take place in a more orderly fashion.

The introduction of legal protection for folklore presents a problem that is not only international but often also of a domestic nature for each of the countries concerned. "In its customary setting, folklore undergoes a natural growth which ensures its authenticity, but when transplanted from its native soil and used for commercial purposes, it is laid open to the same infringements as other intellectual works: plagiarism, shortening, misappropriation and unlawful reproduction and use."¹

The term "folklore," which is of English origin, evokes—in its literal sense—the wisdom of the people, or creation by the people. The folklorist studies the collective creation of the masses, notably in the areas of oral, musical (vocal and instrumental), choreographic and dramatic expression.² The artistic creation of the people includes poetry, music, theater, dance, architecture, three-dimensional art and decorative art conceived and created by the people.³

Folklore is sometimes considered to relate only to oral folk creations. However it is much more widely regarded as covering not only those forms of expression but all spiritual and material forms of popular culture.⁴ In copyright, the term "folklore" should be understood in the broad sense and its scope regarded as extending beyond poetic folk creations to include folk music and dances, artistic handicrafts, architecture, etc. Folklore thus groups the various forms of folk art creation.

¹ Henri de Saint-Blanquat: "Copyright: The Creator's Bread and Butter." *Unesco Courier*, November 1978, p. 31.

² *Great Soviet Encyclopedia*, Third Edition, Vol. 27, p. 516.

³ *Ibid.*, Vol. 17, p. 271.

⁴ L.I. Emelianov, *Metodologicheskie voprosy folkloristiki* [Methodology of Folklore Science], L. 1978, pp. 21-23.

*Law Graduate, Scientific Advisor to the Research Organization Department of the USSR Academy of Science.

The principle adopted by the Soviet State with regard to folklore is defined as follows in the USSR Constitution: "The State shall concern itself with preserving and developing cultural values... in the USSR the development of activities relating to folk art shall be encouraged by all means" (Article 27); "It shall be a duty and an obligation of citizens of the USSR to ensure the protection of historical monuments and other cultural assets" (Article 68).

The protection of cultural assets—among which creations of folk art have to be included—may be provided on the one hand for the physical objects that embody an intellectual concept or with which such a concept is associated, and on the other hand for the concept itself, regardless of the physical form in which it manifests itself. For instance, the USSR Law on the protection and use of "historical and cultural monuments"⁵ protects specific physical objects, namely written and other graphic documents, photographs, films, sound recordings, works of art (whether monumental art, three-dimensional art, decorative or any other form of art), folk architecture creations, etc. All the above-mentioned physical objects may be considered creations of folk art, in other words works of folklore. Among the forms of "historical and cultural monuments" protected by the Government, the Law also addresses itself to recordings of works of folklore (Article 5). So manifestations of folklore embodied in physical objects enjoy clearly defined legal protection in the USSR. Of course that protection is not solely the effect of the above Law, which is applicable to the USSR as a whole but also of the corresponding laws enacted by the Republics of the Union to regulate the protection and use of historical and cultural monuments. The Soviet Government and social organizations keep a close watch at all times on matters relating to the safeguarding and development of crafts associated with folk art and to the collection and fixation of folk songs, folk music, folk dances, etc.

The protection of the results of artistic creativeness can be independent of the protection of the physical objects in which those results are embodied. The results of creation are then protected as intangible property. That sort of protection is provided by copyright, the law of discoveries and the law of inventions, for instance. Copyright has a universal character and it protects any scientific, literary or artistic work. So it would seem that copyright could also be used to protect works of folklore. For the time being, however, those works are outside its scope: in Article 487 of the Civil Code of the RSFSR (and in the corresponding articles of the Civil Codes of the other Republics of the Soviet

Union), popular works by unknown authors are³ mentioned among the works that do not give rise to any copyright. Had there not been that mention, works of folklore would clearly have been protected by copyright.

Folklore is one of the forms taken by the results of creative activity. Thus the protection of works of folklore should either be incorporated in copyright or at least associated with it. The first attempts to provide legal protection for works of folklore were made within the framework of copyright legislation. Provisions applicable to folklore protection were included in 1966 in the Tunisian Copyright Law, and then in the copyright legislation of Algeria, Cyprus, Senegal and Sri Lanka. In all those countries, the rules applicable to the legal protection of folklore correspond for the most part to those appearing in the Tunis Model Law on Copyright for Developing Countries, drawn up jointly by Unesco and the World Intellectual Property Organization (WIPO) in 1976.⁶ Under the Model Law, works of national folklore are protected without any limitation in time, and their protection is ensured by the competent national authority. The Model Law also places particular emphasis on the fact that "copies of works of national folklore made abroad, and copies of translations, adaptations, arrangements, or other transformations of works of national folklore made abroad, without the authorization of the competent authority, shall be neither imported nor distributed" on the national territory (Section 6). For the purposes of the Model Law, folklore means "all literary, artistic and scientific works created on national territory by authors presumed to be nationals of such countries or by ethnic communities, passed from generation to generation and constituting one of the basic elements of the traditional cultural heritage" (Section 18).

Even though the above provisions contain sufficient legal basis for the protection of national folklore to be assured, they are not applied in practice. The same can be said of paragraph (4) of Article 15 of the Berne Convention for the Protection of Literary and Artistic Works, according to which it is a matter for legislation in any country of the Union to designate the competent authority authorized to protect "unpublished works where the identity of the author is unknown, but where there is every ground to presume that he is a national of a country of the Union."

This provision is specifically intended to provide for the protection of works of folklore.⁷

⁶ Tunis Model Law on Copyright for Developing Countries, Unesco, WIPO, 1976.

⁷ *Mejdounarodnye konventsii ob avtorskom prave. Kommentary.* [The International Copyright Conventions. Commentary], R., 1982, pp. 109–110.

⁵ *Bulletin of the Supreme Soviet of the USSR*, 1976, No. 44, p. 628.

At present WIPO and Unesco are studying the legal intellectual property aspects of the protection of folklore. The research undertaken should result in the writing of draft model national legislation on folklore protection, and in the establishment of international machinery for folklore protection. Model provisions have already been published with a view to the drafting of national laws for the protection of folklore.⁸ The essence of those provisions is given below.

The "expressions of folklore" eligible for protection are the following: folk tales, folk poetry and riddles, folk songs and instrumental music, folk dances and plays, productions of folk art, etc. (Section 2). The use of the expressions of folklore for commercial purposes (publication, reproduction, distribution of copies, recitation or public performance, transmission by wireless means or by wire, etc.) may only take place with the authorization of the competent national authority (Section 3). On the other hand, such authorization is not required when the uses are made in "their traditional or usual setting" or for educational purposes, or alternatively in the case of the borrowing of elements of expressions of folklore for creating an original work (Section 4). The authorization may be individual or "blanket," in other words it may be granted for one specific case or cover all possible forms of use (Section 11). Any unauthorized use of folklore is subject to sanctions—fines and seizure of the objects manufactured—without prejudice to the possibility of action for damages.

In the model provisions for national legislation it is specified that the protection granted must not prejudice any protection applicable to expressions of folklore under the copyright law, the law protecting performers, etc. (Section 13), or hinder the normal use and development of expressions of folklore (Section 14). As the provisions worked out do not specify any term of protection, it is fair to assume that there is no limitation in time. The model provisions also provide the possibility of protecting expressions of foreign folklore. Such protection may be provided either subject to reciprocity or on the basis of international treaties or agreements, whether multilateral or bilateral.

The draft of "Model Provisions for National Laws on the Protection of Expressions of Folklore," as drawn up and published, is destined to undergo further improvement. In that connection the question arises of the relations between the protection proposed and copyright protection, as it is on the basis of the latter, in our opinion, that folklore pro-

tection can and should be constructed. The distinction between these two types of legal protection is to a large extent an artificial one.

Like any subject of copyright (scientific, literary and artistic works), folklore is the result of a creative process. Folklore takes the same form as any subject of copyright, that is, the form of a work. Strictly speaking, folk songs can be regarded as a variation on the kind of song that is protected by copyright, while folk art productions can be assimilated to decorative art, etc. So, with regard to their form of expression, works of folklore are comparable to the works protected by copyright. With respect to their content, of course, folk productions do differ from authors' works, but the distinction has no bearing on the provision of legal protection. The public use of works of folklore and works protected by copyright takes place according to identical processes: publication of folk tales and folk songs, public performance or television broadcasting of folk dances, reproduction and sale of folk art productions, etc. It is impossible to visualize any use of works of folklore that does not have a counterpart in the field of copyright. It even seems that there is the same concordance between the cases of what is called "fair use," in other words use requiring no authorization. This is borne out by the Model Provisions for National Laws examined above. Finally, works of folklore have to be protected against alteration, as in the case of all works in the copyright field.

One further circumstance has to be mentioned that testifies to the practical desirability of drafting legislation on folklore protection within the framework of copyright. There are a number of uses of works protected by copyright where the authors assert their rights through the agency of authors' societies. This generally happens in the case of public performance or radio and television broadcasting of songs and other short works, the production of copies of sound recordings, the reproduction of works of art in magazines and books and also some other uses of use of works for mass distribution. The authors' societies collect the royalties payable from the users, and handle their distribution to the authors; they also issue the authorizations for the use of works and ensure the observance of moral rights, namely the right of authorship of the work and the right to respect for the work.⁹ Inasmuch as works of folklore are used by the same means as works protected by copyright, their protection would require the existence of bodies comparable to authors' societies. Instead of setting up "parallel" bodies, it

⁸ Working Group on the Intellectual Property Aspects of Folklore Protection: *Copyright*, 1981, pp. 111-117.

⁹ In the USSR, the body that performs this function is the All-Union Copyright Agency.

would be preferable to assign the responsibility for protecting works of folklore to existing authors' societies.

Another argument of a practical nature should be mentioned that militates in favor of amalgamating the legal protection of folklore and copyright: at the international level, it is far easier to incorporate the legal protection of works of folklore in the existing copyright conventions than it is to set up separate machinery for the purpose. Experience has shown that if certain results of creative activity whose protection is difficult to accommodate in the available legal categories that already enjoy protection, and therefore constitute a category apart, the introduction of their protection at the international level is postponed for a long time or even never achieved. For instance, type faces were made distinct from industrial designs, with the result that the Vienna Agreement for the Protection of Type Faces and their International Deposit, which was concluded in 1973, is still not in force. Another example is that of the legal protection of software and computer programs. On the basis of the assumption that that subject matter should not be protected either by copyright or by the law of patents (inventions), it was recommended that special legislation should be drafted. That legislation has already been drawn up on the basis of elements drawn from copyright and from patent law, but a national law has yet to be enacted specifically for the protection of software and computer programs. In the meantime the trend towards rejecting the idea of protection on the basis of copyright and patent law has continued to grow.

The efforts to dissociate the legal protection of folklore from protection based on copyright are unwarranted. For instance the Model Provisions for National Laws on the Protection of Folklore specify as the subject matter of protection works that in substance are the same as the works that enjoy copyright protection. It is true however that works of folklore are distinguished from works enjoying copyright protection by their lack of an individual author. That is probably what accounts for the adoption of the principle of protection without limitation in time for works of folklore.

A work of folklore is a product of collective folk creation. The person who executes it (storyteller, dancer, woodcarver, etc.) is not the author. The person who first fixed it (notably in writing) or published it is not the author either. However, in spite of the absence of an author, the problem of the ownership of the rights in a work of folklore is in fact already solved. It has been recognized that ownership goes to the ethnic group or people with which the work originates. In general the representative of such an ethnic group is an autonomous local administration, but sometimes it is the local or central bodies of the State. That administration or those

bodies have to be recognized as the "competent authority" at the time of the introduction of legal protection for works of folklore. All the provisions of national laws examined earlier, whether in force or in draft form, start from that principle.

The matter of the term of protection of works of folklore has to be carefully considered. In copyright, the work is protected during the author's lifetime and thereafter for a specified period (usually 25 or 50 years). Only for cases in which the term of protection of works cannot be calculated in relation to the lifetime of the author has another principle been introduced, according to which the term is calculated as from the date on which the work was published for the first time.

The adoption of a specific period is also possible for the protection of works of folklore. To do so one has only to lay down in the law that the work of folklore is protected for instance for a term of 50 years from the date of its first publication, first public performance, etc. By advocating the principle of perpetual protection for works of folklore one does admittedly recognize the importance of that protection, but this in turn raises the question of the desirability of adopting for folklore different standards from those applicable in the copyright field. All that could be prejudicial to the establishment of folklore protection.

The problem of the legal protection of folklore is of quite considerable importance to the USSR. The introduction of such protection would make it possible to take effective action against the deformation and incorrect interpretation of works of folklore. It has been written in the press that musical folklore calls for stringent protection,¹⁰ and that even now it is possible to encounter "groups and soloists who unscrupulously modernize works of folklore by arranging them in a new manner, by giving folk songs added rhythm and volume at the expense of their melodic character."¹¹ Performances of folk dances often take the form of "banal, impersonal shows devoid of the characteristics peculiar to the folk dances of the various regions of Russia. As for the garishly-colored costumes worn by the dancers, they are a travesty of the originals." This phenomenon is due to lack of knowledge of the world of folk dance.¹² The introduction of legal protection for folklore will make it possible to derive earnings

10 Dachitcheva A., "Ou zolotykh vorot" [At the Golden Gates]. Notes on the plenary assembly of the governing body of the Union of Composers of the RSFSR, devoted to the theme of "Folklore and Contemporary Musical Creation." *Sovietskaia Kouloura*, June 8, 1982.

11 Terskaia V., "Iskat svoe litso" [In Search of One's Own Face], *Pravda*, May 3, 1982.

12 Cheremetievskaiia N., "Beretch istoki. Zametki o narodnom tantse" [The Safeguarding of Sources. Reflections on Folk Dance], *Pravda*, November 11, 1981.

from the performance abroad of folklore works belonging to the folk heritage of the peoples of the USSR (publication of proverbs and folk tales, performance of folk songs and folk dances, etc.).

The Soviet Union, whose folklore heritage is extremely rich, is permanently concerned with providing for its preservation and development; it is doing its utmost to widen the international cultural exchanges in which folklore is given a prominent

place. That is why Soviet specialists are duty-bound to consider the theoretical and practical problems that the legal protection of folklore presents, to follow carefully the development of any projects that are undertaken in this field and to take all the appropriate steps to ensure the legal protection of Soviet folklore, both in the USSR and abroad.

(WIPO translation)

Correspondence

Letter from France

André FRANÇON*

I. Domestic Law

1. Legislation

Although there is currently much talk of amending the Copyright Law of March 11, 1957, at the time these lines are being written, no reform has as yet taken place and the present situation is still too provisional for any actual drafts to be reported here.

Consequently, this part of the "Letter" will deal simply with two instruments that are no longer new, but which have come into being since the preceding "Letter" and present some interest from a copyright point of view although remaining of limited scope. The first is the *Law of July 17, 1978, on the communication of administrative documents to the public*. Article 1 of that Law sets out a list of such documents, referring particularly to reports, studies, minutes, which undoubtedly constitute works enjoying copyright protection insofar as they do not take the form of official texts. However, Article 4 of the Law of 1978 gives the general public the possibility of obtaining a single copy of such documents, except where reproduction would be prejudicial to the preservation of the document. Article 10 stipulates that the exercise of the right of communication afforded under this Title shall exclude the possibility for its beneficiaries or third parties of reproducing, disseminating or utilizing for commercial purposes the documents thus communicated. These arrangements may be compared with those of Article 41.2 of the Law of March 11, 1957, which withdraw from the author's monopoly reproductions of his work made for private use (on this subject, see I.2(d) below).

A further instrument which warrants attention is the *Law of July 29, 1982, on audiovisual communication*. Two of its provisions call for comment from the copyright point of view. First, the Law contains a Title V concerning the dissemination of cinematographic works and, among the provisions on that

subject, note may be taken of Article 89 under which no cinematographic work exploited in cinema theaters may be simultaneously exploited in the form of carriers intended for sale or rental for the private use of the general public, particularly in the form of videocassettes or videodisks, prior to the expiry of a period of time to be laid down by decree and which will begin as from the issue of the authorization to exploit. This period of time has been set at one year by a Decree of January 4, 1983, whose Article 2 nevertheless gives the possibility of obtaining a reduction in the period of time for films that have attracted only small cinema audiences.

The purpose of these provisions is to prevent premature exploitation of films in the form of cassettes reducing the size of the audiences in cinema theaters. In some quarters, however, it is felt that this one-year period will be put to good use, above all, by pirates who will be able to market their infringing cassettes during that time without having to fear any competition whatsoever. It is also open to question whether this authoritarian step does not take too little account of the right of the authors of a film (or the producers to whom they have assigned their rights) to organize for themselves how they wish to exploit the film.

Still as regards the Law of July 29, 1982, mention must also be made of one of its more peculiar consequences. Article 4 of the Ordinance of February 4, 1959, had given to the broadcasting organizations a neighboring right in their broadcasts. That text had been kept in force by Article 34 of the Law of August 7, 1974. However, Article 110 of the Law of July 29, 1982, repeals the Ordinance of February 4, 1953, and most of the provisions of the Law of August 7, 1974, whereby Article 34 is not in the list of those Articles of the 1974 Law that remain in force. This Article has therefore to be considered repealed. Doubtless, the neighboring right of the broadcasting organizations in their broadcasts will be once more afforded by the forthcoming copyright instruments that are under preparation. In the meantime, however, the broadcasting organizations would seem to be left without defense in the event of their broadcasts being plundered.

* Professor at the Paris University of Law, Economics and Social Sciences.

2. Court Decisions

(a) Protected Works

One of the most spectacular novelties that has occurred in France in recent years under this heading is constituted by the stance taken by courts as regards the *protection of software*. Since Article 6(2)(c) of the Patent Law of January 2, 1968, as amended by the Law of July 13, 1978, excludes patent protection for computer programs, and it nevertheless would appear necessary to safeguard the interests of authors of programs, the courts therefore have recourse to copyright in order to provide such protection. Mention may be made, in particular, of a decision by the Court of Paris of November 2, 1982 (RIDA, January 1983, No. 115, p. 148) in which it is said that the writing of an applications program for a computer is an original work of the mind both in its composition and its expression, going beyond simple automatic, imperative logic, that it does not constitute an inevitable intellectual mechanism, but indeed the analyst programmers have to choose, as do the translators of works, between various types of presentation and expression and that their choice thus bears the mark of their personality.

More recent decisions have confirmed this solution. A summary order of the *Tribunal de grande instance* of Paris of June 14, 1983 (PIBD 1983, III, 222) held in relation to basic software that its elaboration, that was original in its conception, its architecture and its expression, bore the mark of its author beyond the confines of mere logic. A decision, as yet unpublished, of the *Tribunal de grande instance* of Paris was given as regards the substance of this same case on September 21, 1983, which proceeds in the same manner but comprises much more detailed reasoning. It would take too long to set it out in detail here. Let it suffice to say that the Court examined two questions. The first was the question of principle whether programs were in fact works of the mind within the meaning of the 1957 Law, and the second was to determine, should a positive reply have been given to the first question, whether copyright protection applied only to program products or whether it similarly extended to applications programs. Having found that the 1957 Law applied to programs in general, the Court held that there was no reason to make a distinction in that respect between the various types of programs and that all were capable therefore of being protected by literary property.

This decision is far from having achieved unanimity. (See, for instance, the critical comments by our colleague Plaisant in the *Gazette du Palais*, No. 268-270, of September 25-27, 1983). It is clear that copyright regulations are ill-adapted to the situation

in which it is required to make them apply in this case and it is possible that the importance and special nature of data processing would justify specific legislation being drafted to protect software. This would also seem to be the viewpoint of the Minister for Industry and Research. Indeed, at the Cabinet meeting on August 3, 1983, when presenting a development plan for patents and licenses, he also announced two measures to promote the development of creative industries. One of these was that the Working Group set up at the National Institute of Industrial Property to deal with the legal protection of creations of data processing software was invited to present its proposals to the Minister before the end of 1983 (see at (d) below for a further copyright question concerning computers).

Under this heading of protected works, mention must also be made of the situation of *performers*. It is well known that the 1957 Law is silent on this subject, but that a decision of the Supreme Court of January 4, 1964, had appeared to consider the performance of a work as being protected by copyright. In the last "Letter" (*Copyright*, 1977, p. 320), a new decision by the Supreme Court, of March 15, 1977, was reported since it appeared to constitute a noticeable step backwards from the 1964 decision. Since then, a further decision by the same Court (RIDA, April 1981, p. 158) was given on this subject on November 5, 1980.

In the light of the latter two decisions of 1977 and 1980, the current situation of case law would seem the following: from those two decisions, it is deduced to begin with that, in their own words, performers do not enjoy the benefit of the 1957 Law. Therefore, they cannot claim copyright in their performances.

The question may be asked, however, whether those court decisions do not, without saying so, recognize in effect a true neighboring right belonging to performers. Indeed, the Supreme Court stated in the above-mentioned decisions of 1977 and 1980 that performers were entitled, under the general rules of law, to require that their performance be put to no other use than that authorized by them.

The question is in fact to determine what the Supreme Court meant by general rules of law. The phrase certainly means that, by contract, a performer may prohibit a person from a given use of his performance and that, if such person ignores that prohibition, he is *contractually* liable. However, does the reference made by the Supreme Court to the general rules of law have a greater scope? If a *third party* uses the artist's performance without his authorization, does he commit an offense in respect of which he has *liability under civil law*? The recent decision of 1980 at least would seem indeed to go that far since, before referring to the general rules of law, it cites Article 1382 of the Civil Code. It may be

held therefore that the courts have acted in a praetorian way to create a true neighboring right for the benefit of performers, that may be invoked *erga omnes*, that is to say against not only against a contractual partner but also a third person.

(b) *Persons Protected*

A matter already discussed in this review (*Copyright*, 1977, p. 320) must be raised again under this heading in respect of the situation of *legal persons* as regards copyright. Following the entry into force of the 1957 Law, predominant legal opinion had always asserted that a legal person could not enjoy authors' rights in a work except in the case of a work known as a collective work, or where such legal person had been assigned pecuniary rights by an author who was a natural person.

However, in recent years there has been support for a theory that is more favorable to legal persons. It is based on Article 8 of the Law of March 11, 1957, under which "authorship shall belong, in the absence of proof to the contrary, to the person or persons under whose name the work is disclosed." The reasoning consisted in emphasizing that the wording was drawn up in the most general of terms and made no distinction between disclosure of the work under the name of a natural person or under that of a legal person. It was deduced from that standpoint that authors' rights could be generated on behalf of a legal person, where the work concerned had been published under the name of that person, without it being necessary for the work to also satisfy the conditions qualifying it as a collective work.

However, in its decision of March 17, 1982 (RIDA, October 1982, No. 114, p. 155) the First Civil Chamber of the Supreme Court rejected this argument. After having referred to Articles 8, 9 and 13 of the Law of March 11, 1957, the Court indeed reaffirmed that those provisions meant that a legal entity could not enjoy original copyright other than in those cases where a collective work created on its initiative was disclosed under its name. The Supreme Court therefore refused to give Article 8 the scope that some had wished to see in it. In reality, the provision simply sets up a rule of proof and not a rule of substance. It could never prevail against Articles 9(1), 14 or 18 of the Law, where the lawmaker has been careful to state the principle that literary property vests solely in authors who are natural persons.

This decision will inevitably increase interest in the concept of *collective work* since the latter constitutes the sole case in which a legal person may be the first owner of copyright in a work. We are indeed obliged to admit that a great deal of uncer-

tainty remains about this concept of collective work and that the relevant case law is nothing short of changeable. It had begun by advocating a broad concept of collective work (1st Civ., July 1, 1970, D. 1970, J. p. 770, note by Edelman), and thereby ran into criticism from legal opinion. Subsequently, the courts opted for a narrower concept of this type of work (see in particular 1st Civ., May 17, 1978, D. 1978, J. p. 661). However, latterly, there would seem again to be a move towards a broad concept of the collective work (1st Civ., October 21, 1980, RIDA, July 1982, No. 113, p. 143). In this most recent case, the Supreme Court indeed held that a community of inspiration and agreement between the members of the team did not necessarily exclude the existence of a collective work. Legal experts, on the other hand, had accepted that in the event of community of inspiration and agreement between the various authors involved, the work constituted a collaborative work. The Supreme Court rejected this proposition, thus again paving the way for a broad concept of collective work. This may well give grounds for regret, since it would indeed seem to have been the wish of the drafters of the 1957 Law to afford this category of works only a limited place.

(c) *Moral Rights*

The case that has had the greatest impact in the field of moral rights in France in recent years has been the Dubuffet case.

To recall briefly the facts, Mr. Dubuffet was commissioned to make the model and draw up plans for a monumental sculpture known as "Salon d'été" to be erected in the courtyard of Régie Renault headquarters. The model was indeed completed and subsequently accepted by Renault, but during erection of the monument the company decided to put a halt to the work and even considered destroying the part that had already been built.

Mr. Dubuffet protested in the name of his right to respect and instituted legal proceedings against Renault, demanding that erection of the monument be completed. The proceedings went on for a considerable time and the outcome long remained uncertain, since the case was twice submitted to the Supreme Court. Mr. Dubuffet finally won the case. The most important element to be noted is probably the statement made by the Supreme Court in its first decision (1st Civ, January 8, 1980, RIDA, April 1980, No. 104, p. 152) that Mr. Dubuffet enjoyed a moral right not only in the model of his work but also in the construction carried out on the basis of that model. The words of the Court were indeed that the author of an original model on the basis of which a monumental construction is carried out is

the owner of a moral right in the construction insofar as the latter derives its originality from the model and is the realization of the author's concept.

These grounds of principle are noteworthy since they confirm that copyright protection covers not only architectural plans but also constructions erected on the basis of those plans (see Article 3 of the Law of March 11, 1957).

In speaking of recent case law in respect of moral rights, mention must also be made of the Montherlant case. Although it would seem that only a first instance decision has been given (*Tribunal de grande instance*, Paris, December 1, 1982, RIDA, January 1983, No. 115, p. 165, note by Gautier, comments by Colombet D. 1983, rapid summary information with commentary p. 94), nevertheless the problems linked with exercising moral rights after the death of the author are so intricate and the decisions on the subject so seldom given, that it would be a pity not to speak of them once they have been published.

To give a brief summary, the facts of the case were as follows: Mr. Barat, who is Montherlant's heir and executor, had authorized Mr. Sipriot to publish a biography of the deceased writer containing a number of unpublished letters and manuscripts. Mr. Claude Gallimard, acting as a friend of the deceased writer, brought an action against Mr. Barat, Mr. Sipriot and the publisher in order to establish that Mr. Barat had manifestly abused the exercise of the right of disclosure since Montherlant had been opposed to any disclosure of unpublished documents after his death. The "Association professionnelle de défense des auteurs biographes" intervened in the proceedings to request the rejection of the action by Mr. Gallimard, on behalf of the interests of the whole body of biographers.

The Court admitted both Mr. Gallimard's action and also the intervention by the "Association professionnelle de défense des auteurs biographes." As regards the substance, however, the Court dismissed the action, holding that there had not been manifest abuse in the exercise of the right of disclosure on the part of Mr. Barat.

This decision calls for a number of comments. It is interesting, in the first place, to note that the Court admitted Mr. Gallimard's right to sue. His action was based on Article 20 of the Law of March 11, 1957, which censors the manifest abuse of the exercise or non-exercise of the right to disclose a work by the deceased author's representatives and whose second paragraph stipulates that in such case "the matter may be referred to the tribunal particularly by the Minister in charge of Arts and Letters." It had already been long accepted by legal opinion that this text did not stop at giving the right to take action solely to the Minister or to the holders of the *post mortem* moral right referred to in Article 19. By

admitting the action instituted by Mr. Gallimard, who was not the owner of the moral rights in Montherlant's work but only someone who had had long-standing business and personal connections with the author, the Court confirmed its will to open the courtroom doors wide to anyone who wished to avail themselves of Article 20. To support its argument, it invoked Article 31 of the new Code of Civil Procedure which, in a general manner, gives the right to sue to anyone who can claim a "legitimate interest." The Court considered that Article 20 of the 1957 Law did not constitute a derogation from that instrument.

Mr. Colombet (*op. cit.*) asks whether the *Tribunal de grande instance* of Paris is not being too liberal and whether its decision is not likely to lead to a proliferation of proceedings all based on Article 20. Nevertheless, I hold that fear to be exaggerated. Where a court considers that a plaintiff is acting on superficial grounds, it has the possibility of finding him guilty of abuse of the right to institute legal proceedings. This prospect should be sufficient to dissuade plaintiffs not having well-founded reasons from taking action on the basis of Article 20.

The Court likewise held the intervention on the part of the "Association professionnelle de défense des auteurs biographes" to be admissible. This Association wished to be party to the proceedings in order to safeguard the interests of biographers in general whose freedom of action seemed to be threatened by the action instituted by Mr. Gallimard. The Court made use here of the second paragraph of Article 65 of the 1957 Law, under which "regularly constituted organizations for professional defense may be parties to the legal proceedings in order to defend the interests entrusted to them according to their by-laws." In the case in point, the statutes of the Association concerned laid down in Article 2 that its aim was to defend the professional, economic and moral interests of authors of biographies in accordance with the second paragraph of Article 65 of the Law of March 11, 1957. By admitting the intervention of the Association, the Court acted more liberally than the Court of Paris had done in the *Le Bossu* case in which the "Société des Gens de Lettres" had attempted in vain to intervene in defense of the interests of the community of writers against distortion of their works (Paris, June 14, 1972, RIDA No. LXXIV, p. 135).

There remains the substance, that is to say that the Court held that in the case in point Mr. Barat was not guilty of manifest abuse of the exercise of the right of disclosure as regards the works by Montherlant. The point of law decided in this case was what was to be understood by "manifest abuse" within the meaning of Article 20 of the 1957 Law. The Court held that the adjective "manifest" was to be taken in the meaning of "evident." Evident abuse

by the heir would have taken place if the latter had ignored a wish to disclose or not to disclose his work expressed clearly by the deceased author. In the case of Montherlant, the Court considered that his intentions remained uncertain and indeed that they seemed to have varied. The judges therefore concluded that by authorizing Mr. Sipriot to publish his book, Mr. Barat had not manifestly abused the exercise of the right to disclose.

The principles raised by this decision in respect of Article 20 would seem to warrant approval. Certainly, it is to be hoped that an heir would not make the *post mortem* moral right the instrument of his own personal whims. However, it should not be forgotten that during his lifetime the author was answerable to no one as regards the use he made of his moral rights; if, on the contrary, it is advisable to submit the heir to possible judicial control of his exercise of those moral rights, it must be ensured that the judge's intervention remains the exception, simply permitting heirs to be reminded of their duty of fidelity towards the deceased author in those cases where they have clearly ignored it.

(d) *Economic Rights*

This heading will deal, in particular, with recent case law concerning exceptions to the right of reproduction allowed for by Article 41 of the Law of March 11, 1957.

To begin with, mention can be made of a case concerning *private copying*. A photocopying agency was found guilty of having made unauthorized photocopies of works protected by copyright (Paris, October 8, 1982, G.P. 1983 I, Jurisprudence, p. 83). The Court of Paris denied the agency benefit of Article 41.2 which gives exemption from the right of reproduction in the case of "copies or reproductions reserved strictly for the private use of the copyist and not intended for collective use." The appeal court judges held that it was indeed the owner of the apparatus who was to be considered the copyist. It was, quite obviously, not for his own personal use but for that of his customers that the owner made photocopies. The hypothesis that Article 41.2 provided an exception to the right of reproduction was therefore not applicable.

This notion of a copyist was not the only possible one, but it was doubtless both the most equitable and the simplest. It would seem preferable to both the too artificial concept of the copyist being the person who orders the copy and also the too uncertain concept of assimilating the copyist to the "custodian" of the apparatus within the meaning of the law of civil liability. This case is currently pending before the Supreme Court. It is to be hoped that the latter Court will confirm the opinion of the Court of Appeal and thus avoid Article 41.2 opening up too

wide a breach in the reproduction monopoly belonging to the author of the work.

In another case, it was a question of how far a work protected by copyright may be freely incorporated in a data bank. It is possible, in this connection, to draw three conclusions from a decision, as yet unpublished, of November 9, 1983, by the Supreme Court.

The first is that one may, without any authorization being required, mention a work in such a bank by its title or by key words facilitating its identification. The second lesson of the decision is that there is no impediment either to making a summary of a work, when it is a purely descriptive analysis for documentary purposes, not containing a substantial account of the contents of the work, and not enabling the reader to dispense with the use of the work itself. The third noteworthy conclusion of the decision is that where short extracts are quoted for information purposes, this is authorized by Article 41.3 of the Law of 1957, even when they are not accompanied by any commentary or personal elaboration by the person who is quoting.

These three conclusions arise without doubt from a will to encourage the development of data banks, which an excessively strict application of copyright law might impede. But in any case the third conclusion seems nevertheless to take little account of the restrictive terms of Article 41.3 of the Law of 1957 on the exception granted to quotations.

Recent case law has likewise had occasion to specify that *press reviews* are also exempted from the right of reproduction by Article 41.3, but has not defined the concept. In the last "Letter from France" (see *Copyright* 1977, p. 323), mention was made of a decision by the Court of Paris of June 5, 1975, in which it had refused to accept as a press review the fact that a weekly newspaper regularly reproduced in its columns an editorial read each morning on the radio by a well-known journalist. The Criminal Chamber of the Supreme Court rejected by decision of January 30, 1978 (D. 1979, p. 456, note by Le Calvez) the appeal from the decision by the Court of Paris and seized that opportunity to give a definition of a press review. It stated that a press review necessarily presupposes the joint presentation, by way of comparison, of various commentaries given by different journalists on one and same topic or one and the same event. This definition is precise. It precludes any attempt made by a newspaper to invoke this exception, in order to escape action for infringement instituted against it, in cases where its habit is to systematically reproduce without authorization in its publication articles that have appeared in the columns of its competitors, whatever the subject matter (see similarly, Paris, March 25, 1982, RIDA, October 1982, No. 114, p. 170).

II. International Law

In the last "Letter," a report was given (see *Copyright*, 1977, p. 324) on a decision by the First Civil Chamber of the Supreme Court of December 15, 1975, accepting the application in France of the comparison of terms provided for in Article IV.4 of the *Universal Copyright Convention*, and therefore of the limitation of the term of protection to that of in the country of origin, despite the fact that no domestic French law provided for such limitation. The Supreme Court deduced therefrom, that once a work had become part of the public domain in its foreign country of origin, it could no longer claim protection in France even if the French copyright instruments laid down a longer term of protection than that existing in the country of origin. I emphasized in my comments that this solution was unquestionably hard on foreign authors.

However, it must be pointed out that, on a related point, the Supreme Court more recently adopted a solution which, on the contrary, was more liberal. In that case, it concerned the comparison of terms instituted by Article 7 of the *Berne Convention* as given in the 1948 Brussels Act. The problem was again to decide whether a work that had fallen into the public domain in its country of origin could nevertheless still enjoy protection in France by dint of the French laws giving wartime prolongation. The case in point concerned a work by a Spanish author that had been first published in England. According to the Convention, the country of origin of the work was therefore England and the term of protection had expired in that country. However, an exchange of letters between France and Spain of June 5 and 21, 1957, concerning the term of protection of foreign works in France, afforded the benefit of the wartime prolongation laws to Spanish authors. It was open to question whether that exchange of letters could have validly derogated from Article 7 of the *Berne Convention* and, if so, if it had indeed had that effect.

The judges of the lower court had restricted themselves to applying Article 7, but the Supreme Court, in a rather laconic decision, disagreed with them and quashed their decision (see 1st Civ., October 9, 1979, RIDA No. 103, January 1980, p. 151) whereas, on referral, the Court of Amiens in turn adopted the stance taken by the Supreme Court and explained at length the reasons for its choice (see Amiens, January 11, 1982, RIDA, April 1982, No. 112, p. 129). The Supreme Court simply states that as a result of the Franco-Spanish agreements, the provisions of the French Laws of February 3, 1919, and September 21, 1951, extending the terms of protection for literary and artistic works apply in France to works by Spanish authors which fulfill the

conditions laid down in those laws *irrespective of the country of origin of the work*.

The Court of referral held that such agreement was to be considered to derogate from Article 7 of the Convention and it judged such a derogation to be lawful since it was permitted by Article 20 of the Convention that authorized special agreements.

This decision calls for two observations. The first is that, although the last-mentioned case ended with the adoption of a solution that was favorable to authors, it is nevertheless liable to be the source of a certain legal insecurity. Since it has been admitted that exchanges of letters may derogate from Article 7 of the *Berne Convention*, it becomes essential to know whether such exchanges will always have that same effect. The reply undoubtedly depends on their wording. However, it appears that this wording has not always been the same in the past. In the case of relations between France and Spain, which the Supreme Court had to examine in the above-mentioned case, the exchange of letters referred to Spanish *authors*, which explains that the Supreme Court disregarded the place of publication of the works of those authors. It would almost certainly take the same decision in respect of the 1956 exchange of letters between France and Norway, whose wording also refers to the nationality of the author. However, in relations between France and Germany, it is probable on the contrary that the 1974 exchange of letters could hardly be considered to thwart the provisions of the *Berne Convention*, since it uses the same terminology as the Convention, stating the will to afford the term of protection of the French law to works whose *country of origin* is the Federal Republic of Germany. However, the interpretation of the exchanges of letters between France and Italy in 1957 and 1967 and between France and Austria in 1976 is even more delicate. Mention is made of "Italian works" or "Austrian works" without it being clear whether the expression covers all works by Italian or Austrian authors or whether it is intended to refer to the concept of the country of origin of the work.

The second observation that may be made on the case law of the Supreme Court as regards the comparison of terms laid down by the *Berne Convention* and the *Universal Copyright Convention* is that, viewing the 1979 decision together with that of 1975, beyond the minimum stipulated by the Conventions, the rule of comparison of terms should normally apply and may only be waived for the benefit of a longer term of protection in the country where protection is claimed if such results either from the formal provisions of domestic law in that latter country (1975 decision) or from those of a special Agreement (1979 decision).

(WIPO translation)

Activities of Other Organizations

International Copyright Society (INTERGU)

IXth Congress

Interamerican Copyright Institute (IIDA)

IVth Continental Conference

(Santiago de Chile, October 31 to November 4, 1983)

The International Copyright Society (INTERGU) and the Interamerican Copyright Institute (IIDA) jointly held their IXth Congress and IVth Continental Conference respectively in Santiago de Chile from October 31 to November 4, 1983.

This meeting was held under the patronage of H.E. Horacio Aránguiz Donoso, Minister of Education, and a Committee of Honor which included Mgr. Juan Francisco Fresno, Archbishop of Santiago; Brigadier General Roberto Soto Mackenney, Rector of the University of Chile; H.E. Jaime del Valle, Minister of Justice; Mr. Carlos Bombal, Mayor of Santiago and Mr. Héctor Humeres, Pro-Rector of the University of Chile.

The opening ceremony was held in the ceremonial hall of the University of Chile under the chairmanship of the Rector of the University, who was the guest of the IXth Congress of INTERGU and of the IVth Continental Congress of the IIDA. A very special tribute was paid to three persons for their merits in the field of culture and copyright in Latin America. Professor Dr. Erich Schulze, President of INTERGU, presented the Richard Strauss medal to Professor Domingo Santa Cruz, President of the Art Academy of Chile, to Professor Antonio Chaves, President of the IIDA and former Dean of the Law Faculty of the University of São Paulo, and to Professor Carlos Mouchet of the University of Buenos Aires.

The work of the joint meeting, which was attended by more than 100 participants from some 15 countries, was presided over by Professor Dr. Erich Schulze.

The reports were on the following subjects:

— Problems of piracy of works protected by copyright (this report, by Mr. Claude Masouyé,

Director of the Public Information and Copyright Department of WIPO, was presented in his absence by Mrs. M.C. Olivarez, Chile).

- Cassettes and videocassettes and the principle of remuneration according to the exploitation potential of the work (rapporteur: Professor A. Chaves, Brazil).
- Copyright laws in Latin America and the international conventions (rapporteur: Mr. A. Plazas, Unesco Counsellor, Colombia).
- Copyright in the Constitution of the Republic of Chile (rapporteur: Mr. S. Larraguibel, Chile).
- The copyright taxation system in Chile (rapporteur: Professor C.E. Jorquiera, Chile).
- Multilateral and bilateral agreements on the avoidance of double taxation of copyright royalties (rapporteur: Dr. R. Kreile, Federal Republic of Germany).
- Offenses against copyright in Latin America (rapporteur: Professor Dr. A. Villalba, Argentina).
- Natural law as a basis for a positive law on copyright (rapporteur, Professor Dr. A.J. Arüstegui, Argentina).
- Copyright and cable television (rapporteur: Dr. W. Haindl).
- Recent copyright developments in the European Community (this report by Professor Dr. G. Reischl, Attorney General of the Court of Justice of the European Communities, was

presented in his absence by Dr. R. Kreile, Federal Republic of Germany).

- Nature and character of the General Society of Authors of Spain (rapporteur: Mr. J.A. Garcia Noblejas, Spain).
- Extension of the copyright notice to audiovisual material (rapporteur: Mr. H. Duval, Brazil).
- Application of copyright laws (rapporteur: Professor E. Bautista, Philippines).

At the closing meeting of the IXth Congress of INTERGU and of the IVth Continental Conference of IIDA, the participants adopted the following joint resolution:

Resolution

With the object of extending the protection of intellectual property by means of complete harmonization and/or assimilation of national and international legislations,

and considering that, based upon natural right, the right of the author is a prerequisite of cultural development,

the Ninth Congress of the International Copyright Society (INTERGU) and the Fourth Continental Conference of the Interamerican Copyright Institute (ICI) in their joint meetings held in Santiago, Chile, at the University of Chile, from October 31 to November 4, 1983, declare as follows:

1. It is desirable to obtain harmonization of penal provisions for copyright infringements in national laws.

2. It is necessary to introduce and extend every sort of legal protection against phonographic and audiovisual piracy.

3. An adequate sum must be paid to authors and others entitled to intellectual rights for private reproduction and hiring of phonograms and videograms.

4. Protection must be given to authors against double taxation.

5. Protection must be given to the author when his work is diffused by means of cable television and satellite.

6. The teaching of copyright law in universities should be encouraged.

ad 1. Doctrinal studies should be promoted to reach agreement as to which activities are most harmful to copyright so that they can be punished and, in the light of this, to promote legislative reforms in order to find the best way of describing these activities with the aim of coherence in the terminology employed.

Likewise, as regards degrees of punishment, equal basic similarities should be sought, establishing some form of relationship between the penalties applicable to copyright infringements and other penalties applied by penal legislation.

ad 2. INTERGU and ICI join their exhortations to those formulated by government representatives and experts who have participated in the Worldwide Forum on Piracy organized by WIPO in Geneva in March 1981, calling attention to the seriousness of phonographic and audiovisual piracy and the means of combating it. At the same time, they call attention of the States to the importance to react to the Inquiry on Piracy carried out by Unesco with the aim of determining its causes and its extent and of seeking ways and means of fighting it.

They call attention to the menace that this phenomenon of international crime is to both authors and national culture.

They recommend that means be adopted in order that the public conscience reacts against the serious damage which piracy causes to authors, composers, performers and producers of phonograms and videograms.

ad 3. The continuing evolution of the technology of reproduction for personal use of visual and audiovisual works demands that legislators take a position in favor of authors, performers and others entitled to intellectual rights, abandoning the criterion of free copying for personal use, since the present possibility of making copies of a work illegally does tremendous damage to rights owners.

At present, the only plausible ways to compensate for such serious damage are those shown by the legislations of Austria and the Federal Republic of Germany, principally adopted in the proposed CNDA law in Brazil, introducing payment of compensatory remuneration upon the import, manufacture and sale of blank tapes.

ad 4. In order to protect the author from double taxation, it is necessary to have in mind the following:

(a) Income from copyright and neighboring rights must be protected from double taxation; this is demanded by both the specialist in intellectual property law and the specialist in tax law.

(b) It is to be welcomed that the Madrid Convention and its Protocol have engaged its signatories to that effect, but this should be a reflection of a more general basic international legal principle.

(c) It is to be welcomed that the Convention gives its members freedom to choose the means by which they may avoid double taxation of copyright and neighboring rights royalties. But it would be desirable that States

— give primary consideration in the execution of the Convention to the legitimate interests of the author, and when it is the case, relegate fiscal considerations to second place,

— develop flexible and simple models for special bilateral agreements for the avoidance of double taxation of copyright royalties.

(d) Regarding the present state of affairs, it can be said that within the OECD the guiding principles

of the Convention are being adequately and fully carried out. There is a lack of international action—which would bring with it opportunities for international progress, mainly between developing countries themselves, as well as in the relations between developing countries and industrialized countries.

- (e) In the context of future and continuing developments, the shared principles of cultural life common to both developing and industrialized countries should be taken into consideration. Tax deductions from copyright royalties should be reduced progressively and, if possible, completely abolished.
- (f) Moreover, for tax deduction purposes, countries should recognize working expenses necessary for the creation of a protected work.
- ad 5. The protection of copyright and neighboring rights in cable and satellite television starts from the following principles:

- legal protection must take place through the proper authorization of those entitled to intellectual rights and, in exceptional cases, through compulsory or statutory licenses,
- the absolute primacy of the authorization given by owners of intellectual rights is the basis for freedom of contract as opposed to the granting of rights through compulsory or statutory licenses,
- the balanced composition of the bodies which decide on the remuneration appropriate for the grant of the right,
- the interpretation of national legislation and international conventions in accordance with the underlying concept of protection in favor of authors.

- ad 6. It is recommended that universities should intensify courses offered in law faculties and in the music departments in art faculties, in order that copyright and neighboring rights problems may be studied, so as to obtain a better understanding of the subject.

International Consultation on the Protection of the Rights of Performers in Socialist Countries

(Prague, November 1 to 4, 1983)

1. An International Consultation on the Protection of the Rights of Performers in Socialist Countries was organized by the Central Committee of the Union of Workers in the Field of Art and Culture and of Social Organizations in Czechoslovakia, in cooperation with the respective Ministries of Culture of the Czech and Slovak Socialist Republics, in Prague, from November 1 to 4, 1983. The questions relating to the protection of performers were considered with regard to the protection of authors' rights; topical issues of copyright development were also discussed.

2. Seventeen delegates from Bulgaria, Czechoslovakia, the German Democratic Republic, Hungary, Poland and the Soviet Union participated in the Consultation. The World Intellectual Property Organization (WIPO) was represented by Mr. György Boytha (Director, Copyright Law Division). Representatives of Unesco and of the International Federation of Musicians (FIM) also attended the meeting. The Consultation was chaired by Mr. Jiri Neuzil, President of the Central Committee of the Union of Workers referred to above.

3. Lectures were delivered by the representatives of WIPO and Unesco and by guest speakers from

Czechoslovakia (Professor Karel Knap, Deputy Director of the Institute for Copyright and Industrial Property Rights, Charles University, Prague; Mr. Jiri Kanka, Director of the Section of Organizations and Law of the Ministry of Culture of the Czech Socialist Republic, and Mr. Michal Klorus, Director of the Section of Organizations and Law of the Ministry of Culture of the Slovak Socialist Republic), from the German Democratic Republic (Professor Heinz Püschel, Director of the Section of Civil and Family Law of the Humboldt University, Berlin) and from the Soviet Union (Mr. Vasilij R. Sitnikov, Deputy Chairman of the All-Union Copyright Agency (VAAP), Moscow).

4. Country reports were delivered by each delegation participating in the Consultation.

5. After lively discussion of the problems put on the agenda, and in conclusion, the delegations adopted a communiqué setting forth, *inter alia*, that in the process of socialist economic integration the necessity of continuously harmonizing the legal systems of the socialist countries, including their laws on copyright and neighboring rights, has come to the fore—front with regard also to the activities of the organizations administering the rights of per-

formers, as well as to the related activities of the competent State organs and the trade unions. The endeavor to develop the protection of the said rights in the socialist countries in a most comprehensive manner furthers the cultural development in those countries. In solving the problems of protecting the rights of performers it is necessary that the socialist countries consider in due course the impact of the development of science and technology on the distribution of works of art, in particular as regards cable television, videograms, use of computers and communication satellites. The delegations recom-

mended systematic and planned improvement of mutual information about solutions of problems concerning copyright and neighboring rights, through both regular and *ad hoc* multilateral and bilateral consultations of socialist countries, at the level of State organs and trade unions alike, as well as in the field of legal sciences. Furthermore, it was recommended to cooperate in international organizations concerned with the rights of authors and performers, and to improve the exchange, among socialist countries, of information about relevant international discussions.

Calendar of Meetings

WIPO Meetings

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

1984

February 27 to March 24 (Geneva) — Revision of the Paris Convention for the Protection of Industrial Property — Diplomatic Conference (Fourth Session)

April 2 to 6 (Paris) — Joint International Unesco-WIPO Service for Facilitating the Access by Developing Countries to Works Protected by Copyright — Working Group on Model Contracts Concerning Co-Publishing and Commissioned Works (convened jointly with Unesco)

April 9 to 13 (Geneva) — Permanent Committee on Patent Information (PCPI) — Working Group on General Information

May 3 to 11 (Geneva) — Permanent Committee on Patent Information (PCPI) — Working Group on Planning and on Special Questions

May 7 to 11 (Geneva) — Committee of Experts on the Harmonization of Certain Aspects of Patent Law

May 14 to 25 (Geneva) — Permanent Committee on Patent Information (PCPI) — Working Group on Search Information

May 21 to 24 (Geneva) — Conference on Inventors (convened jointly with the International Federation of Inventors' Associations)

June 4 to 8 (Geneva) — Committee of Experts on Private Copying of Works Protected by Copyright (convened jointly with Unesco)

June 18 to 22 (Geneva) — Group of Consultants on Legislative Provisions for Publishing Contracts (convened jointly with Unesco)

September 17 to 19 (Geneva) — Permanent Committee on Patent Information (PCPI) — Working Group on Developing Countries

September 18 to 21 (Geneva) — Permanent Committee for Development Cooperation Related to Industrial Property

September 18 to 21 (Geneva) — Permanent Committee on Patent Information (PCPI) and PCT Committee for Technical Cooperation (PCT/CTC)

September 24 to 27 (Geneva) — Ordinary Sessions of the Coordination Committee of WIPO and the Executive Committees of the Paris and Berne Unions; PCT Union Assembly (Extraordinary Session)

October 15 to 19 (Geneva) — Nice Union — Preparatory Working Group

October 22 to 26 (Geneva) — Committee of Experts on the Question of Copyright Ownership and its Consequences for the Relations between Employers and Employed or Salaried Authors (convened jointly with Unesco)

November 5 to 9 (Geneva) — Committee of Experts on Biotechnological Inventions

November 19 to 23 (Geneva) — Permanent Committee on Patent Information (PCPI) — Working Groups on Special Questions and on Planning

November 26 to 30 (Paris) — Committee of Experts on Copyright Problems Related to the Rental of Phonograms and Videograms (convened jointly with Unesco)

November 26 to 30 (Geneva) — International Patent Classification (IPC) Union — Committee of Experts

December 3 to 7 (?) (Geneva) — Permanent Committee on Patent Information (PCPI) — Working Group on General Information

December 10 to 14 (Paris) — Committee of Experts on the Intellectual Property Aspects of the Protection of Folklore at the International Level (convened jointly with Unesco)

1985

September 23 to October 1 (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)

UPOV Meetings

1984

April 4 and 5 (Geneva) — Administrative and Legal Committee

April 6 (Geneva) — Consultative Committee

May 15 to 17 (La Minière) — Technical Working Party on Automation and Computer Programs

June 11 to 15 (Bet Dagan) — Technical Working Party for Vegetables

June 26 to 29 (Lund) — Technical Working Party for Agricultural Crops, and Subgroups

August 6 to 10 (Hanover) — Technical Working Party for Ornamental Plants and Forest Trees, and Subgroups

September 25 to 28 [or October 8 to 11] (Valencia) — Technical Working Party for Fruit Crops, and Subgroups

October 16 (Geneva) — Consultative Committee

October 17 to 19 (Geneva) — Council

November 6 and 7 (Geneva) — Technical Committee

November 8 and 9 (Geneva) — Administrative and Legal Committee

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

Non-Governmental Organizations

1984

Council of the Professional Photographers of Europe (EUROPHOT)

Congress — March 17 to 21 (Darmstadt)

International Confederation of Societies of Authors and Composers (CISAC)

Legal and Legislation Committee — May 8 to 10 (Corfu)

Congress — November 12 to 17 (Tokyo)

International Council on Archives (ICA)

Congress — September 17 to 21 (Bonn)

International Federation of Translators (FIT)

Congress — August 17 to 23 (Vienna)

International Literary and Artistic Association (ALAI)

Study Session on Designs — April 5 and 6 (Paris)

Executive Committee — April 7 (Bourges)

International Publishers Association (IPA)

Congress — March 11 to 16 (Mexico)

1985

International Union of Architects (IUA)

Congress — January 20 to 26 (Cairo)