

Copyright

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

1st year - No. 3

March 1965

Contents

	Pages
INTERNATIONAL UNION	
— New Zealand. Application to the Cook and Tokelau Islands of the Berne Convention for the Protection of Literary and Artistic Works, revised at Rome on June 2, 1928 (with effect from March 18, 1965)	55
INTERNATIONAL CONVENTIONS	
— Protocol to the European Agreement on the Protection of Television Broadcasts	55
GENERAL STUDIES	
— Copyright: A General Structural Survey (Ž. Radojković)	57
CORRESPONDENCE	
— Letter from Great Britain (Paul Abel), <i>First Part</i>	65
INTERNATIONAL ACTIVITIES	
— Unesco. Thirteenth Session of the General Conference (Paris, October 20 to November 20, 1964)	72
JURISPRUDENCE	
— France	73
OBITUARY	
— Louis Vaunois	74
CALENDAR	
— Meetings of BIRPI	75
— Meetings of Other International Organizations concerned with Intellectual Property	76

INTERNATIONAL UNION

NEW ZEALAND

Application to the Cook and Tokelau Islands of the Berne Convention for the Protection of Literary and Artistic Works, revised at Rome on June 2, 1928

(with effect from March 18, 1965)

Notification of the Swiss Government to the Governments of Unionist Countries

Carrying out the instructions issued by the Federal Political Department on February 18, 1965, the Embassy of Switzerland has the honour to inform the Ministry of Foreign Affairs as follows:

On November 19, 1964, the Embassy of the United Kingdom of Great Britain and Northern Ireland in Switzerland has transmitted to the Federal Political Department a letter of November 2, 1964, by which the New Zealand High Com-

missioner at London, on behalf of the Government of New Zealand, has notified the Political Department of the application of the Berne Convention for the Protection of Literary and Artistic Works revised at Rome on June 2, 1928, to the Cook Islands (including Niue) and to the Tokelau Islands. This declaration refers to Article 26, paragraph (1), of the said Convention.

According to paragraph (3) of its Article 25, the declaration of New Zealand will take effect on March 18, 1965.

The present notification has been made in application of Article 26, paragraph (3), of the above-mentioned Convention.

INTERNATIONAL CONVENTIONS

Protocol to the European Agreement on the Protection of Television Broadcasts ¹⁾

The member States of the Council of Europe, signatory hereto,

Considering the desirability of amending the European Agreement on the Protection of Television Broadcasts, signed at Strasbourg on 22nd June, 1960, hereinafter referred to as "the Agreement";

Considering that the International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations, signed in Rome on 26th October, 1961, entered into force on 18th May, 1964,

Have agreed as follows:

Article 1

1. — Paragraph 1 of Article 2 of the Agreement shall be amended as follows:

"Subject to paragraph 2 of Article 1, and Articles 13 and 14, the protection provided for in paragraph 1 of Article 1

shall last not less than a period of twenty years from the end of the year in which the broadcast took place."

2. — Paragraph 2 of Article 2 of the Agreement shall be deleted.

Article 2

1. — Sub-paragraph 1 (a) of Article 3 of the Agreement shall be amended as follows:

"(a) withhold the protection provided for in sub-paragraph 1 (b) of Article 1 as regards broadcasting organisations constituted in their territory or transmitting from such territory, and restrict the exercise of such protection, as regards broadcasts by broadcasting organisations constituted in the territory of another Party to this Agreement or transmitting from such territory, to a percentage of the transmissions by

¹⁾ See *Le Droit d'Auteur*, 1960, p. 201.

such organisations, which shall not be less than 50 % of the average weekly duration of the broadcasts of each of these organisations.”

2. — Sub-paragraph 1 (e) of Article 3 of the Agreement shall be amended as follows:

“(e) without prejudice to sub-paragraph 1 (a) of this Article, withhold all protection provided for in this Agreement from television broadcasts by broadcasting organisations constituted in their territory and under their laws or transmitting from such territory, where such broadcasts enjoy protection under their domestic law.”

3. — Paragraph 3 of Article 3 of the Agreement shall be amended as follows:

“3. The aforesaid Parties may, in respect of their own territory, provide for a body with jurisdiction over cases where the right of diffusion to the public by wire referred to in sub-paragraph 1 (b) of Article 1, or the right of communication to the public referred to in sub-paragraph 1 (c) of Article 1, has been unreasonably refused or granted on unreasonable terms by the broadcasting organisation in which the said right vests.”

4. — Any State which in accordance with Article 10 of the Agreement has, before the entry into force of this Protocol, availed itself of the option in sub-paragraph 1 (a) of Article 3 of the Agreement may, notwithstanding anything in paragraph 1 of the present Article, maintain the application of such option.

Article 3

Article 13 of the Agreement shall be deleted and replaced by the following:

“1. This Agreement shall remain in force indefinitely.

2. Nevertheless, as from 1st January, 1975, no State may remain or become a Party to this Agreement unless it is also a Party to the International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations signed in Rome on 26th October, 1961.”

Article 4

1. — The Governments signatory to the Agreement and the Governments having acceded thereto may become Parties to this Protocol by the procedure laid down in Article 7 or

Article 9 of the Agreement, according to whether they are member States of the Council of Europe or not.

2. — This Protocol shall enter into force one month after the date on which all the Parties to the Agreement have signed this Protocol without reservation in respect of ratification, or deposited their instrument of ratification or accession in accordance with the provisions of the preceding paragraph.

3. — As from the date on which this Protocol enters into force, no State may become a Party to the Agreement without becoming also a Party to this Protocol.

Article 5

The Secretary-General of the Council of Europe shall notify member States of the Council, other States Parties to the Agreement, and the Director of the Bureau of the International Union for the Protection of Literary and Artistic Works of any signature of this Protocol, together with any reservations as to ratification, and of the deposit of any instrument of ratification of the Protocol or of accession to it, and of the date referred to in paragraph 2 of Article 4 of this Protocol.

In witness whereof the undersigned, being duly authorised thereto, have signed this Protocol.

Done at Strasbourg, this 22nd day of January, 1965, in English and French, both texts being equally authoritative, in a single copy which shall remain deposited in the archives of the Council of Europe. The Secretary-General of the Council of Europe shall transmit certified copies to each of the signatory and acceding States.

NOTE. — The Protocol to the European Agreement on the Protection of Television Broadcasts was signed at Strasbourg on January 22, 1965, by the Delegates of the Governments of the following countries: Denmark, France, Germany (Fed. Rep.), Luxembourg, Sweden. It was then signed by Belgium on February 2, 1965, and by the United Kingdom on February 23, 1965.

Denmark, France, Sweden and United Kingdom, which had previously ratified the Agreement¹⁾, signed the Protocol without reservation in respect of ratification.

In accordance with its Article 4, paragraph 2, the Protocol will enter into force on March 24, 1965.

¹⁾ See *Copyright*, 1965, p. 27.

Copyright: A General Structural Survey

I. The Characteristics of Copyright

Copyright occupies a peculiar place in the system of positive law. It is distinct from the other branches of law and by content it is both composite and complex. This represents one of the essential features of copyright in the system of civil law. We consider this to be quite in accordance with the nature of intellectual creation, seeing that the activity of the human intellect set in motion by inspiration and by creative capacity is a complex creative process. Thus, the legal system governing the position of intellectual creators and their works vis-à-vis third parties is also characterised by distinct and peculiar provisions. Copyright regularises the relationships arising from the creation and use of literary, artistic and scientific works. Consequently, it is the products of the intellect which represent the matter covered by copyright, in other words, the specific forms of intellectual creation. The content of copyright is composed of the personal and patrimonial elements of these products. Moreover, copyright is of universal importance because the problems with which it is concerned arise similarly outside the national frontiers of countries and are then necessarily settled at the international level. Hence, copyright is composed of personal elements, patrimonial elements and elements of private international law. Specific in scope, and complex in structure, copyright is a single field of law, notwithstanding its composite character. Consequently, it represents a complex juridical phenomenon and is to be regarded as a branch of law *sui generis*.

According to one definition¹⁾, copyright should be taken to mean the right of the creator of a literary, artistic or scientific work to his intellectual creation. The aim of this right is to protect intellectual creation irrespective of the quality or the artistic value of the work created. Three distinct components must be clearly envisaged in the creative process followed by the author of a work: *the idea* which he develops, *the form* which he wishes to give it and the *material framework* in which his idea is put in concrete form (*corpus mechanicum*: book, gramophone record, etc.). Neither the idea, as such, nor the material framework comes within the scope of copyright. It is impossible to speak of a work of the human mind until such time as the idea is expressed or incorporated in a concrete form. Thus it is only this form which is covered by the concept of copyright. It may be expressed in words, by image, by sound or in any other medium, and every creator does this as he sees fit. The idea in itself may be other than original, but it must be expressed in an original form which it has never had previously, and in a manner which nobody has previously used. It must be the expression of the indivi-

dual composition of the author of an intellectual work, and this is dictated by his fantasy, his inspiration and his creative capacity. The true aim of legal protection is to prevent any violation of the form which the author has given to the work of his mind²⁾. There is also the particular case of copyright relating to scientific works. A scientific work stating and developing ideas rooted in the author's theoretical and scientific concepts and attitudes is protected by copyright against unlawful publication, duplication, modification and reproduction. However, scientific ideas, discoveries and theories are not in themselves protected by copyright. They may be freely used in view of their general, cultural and social importance³⁾. For similar reasons the duration of copyright is limited. In most cases, it covers the author's lifetime and 50 years thereafter. In its aim to reconcile two opposing interests, the author's individual interests and society's collective interest, copyright has a dual role to play. It stimulates the intellectual creator to unimpeded creative activity, and it provides the community with the benefit of authors' intellectual wealth in order to develop the general spiritual and material values.

This means that copyright has a definite objective and a dual function. In the first place, protection of definite forms of intellectual creation and their artistic expression brings with it respect for human personality. Thus, the intellectual creator is enabled to enjoy the material advantages of his intellectual work, whereby he is rewarded for his intellectual effort and his contribution to raising and furthering the cultural standards of the social structure in which he lives. In the second place, copyright tends towards the development of general culture and information, which means that it has an important and lasting social function. The limited period of protection is the best evidence of this, constituting as it does the essential difference as compared with the other subjective branches of law. This is due to the very nature of intellectual creation, which is encompassed by copyright provisions. The author creates his work, which does not belong to him alone, although it is intimately bound up with his personality. In this connection, reference must be made to the remarkable divergences in the legal situation between intellectual and material property. There is a very close intellectual link between the author and his work. However, the right to make use of a work of the human mind is subject to restriction in time and does not always produce absolute effects. On the other hand, a material work is not intimately linked to its creator, but the right of disposal over such a work is absolute in its effect and guaranteed in time in lasting form.

²⁾ Cf. M. Konstantinović: "Le travail intellectuel et le droit", *Novi Sad*, 1928, pp. 8 et seq.

³⁾ Cf. Vojislav Spaić: *Autorsko pravo* (Copyright), Sarajevo, 1957, pp. 88 et seq.

¹⁾ Cf. Robert Plaisant: *Propriété littéraire et artistique*, Paris, 1954, Fascicule 2, No. 2.

As a composite branch of law containing both personal and patrimonial elements, copyright cannot be included among any purely personal or patrimonial systems⁴⁾. By virtue of its personal juridical elements it protects the author's personal, ideal and moral interests, whereas its patrimonial elements enable the author to use his work in any form in which he sees fit and to derive therefrom the economic advantages serving as a material basis whereby he may continue his intellectual activities.

As a form of subjective law, copyright has both absolute and relative quality. It therefore produces effects both *erga omnes* and *inter partes*⁵⁾. It is the source of many authorisations, which permit the author to enter into binding relationships with *inter partes* effect in connection with the use of his work, since they are governed within the sphere of contractual law. Therefore, the patrimonial prerogatives of the author may be used for economic and juridical circulation, and the material benefit derived therefrom is also subject to seizure. They may also be transmitted to other persons; they are limited in time and bound by prescription.

On the other hand, personal prerogatives do not come within the field of patrimonial law, and by their very nature they are inalienable, non-transferable, permanent and not subject to prescription; no seizure or forcible execution may be ordered with regard to such prerogatives, and they consequently remain outside provisions relating to the law of debt.

Nevertheless, and despite the great difference which exists between them, the personal and patrimonial elements combine to make copyright a single form of law in which they are interlinked.

Thus, copyright has its individual characteristics. This quality of copyright has led to lengthy discussion in scientific circles, among both jurists and philosophers, and has resulted in different concepts regarding both the problem of its legal nature and the connection between copyright and the contemporary legal system.

II. The Juridical Nature of Copyright

The origin and confirmation of copyright resulted both in the need to determine its juridical nature and in the desire to find its proper place within the legal system. The doctrine of copyright placed this problem in particular prominence, owing to its undeniable importance in both theory and practice. This explains the great interest shown in this problem by eminent jurists and philosophers. What they aimed to do was to study and explain the ideological foundation for the protection of intellectual creation⁶⁾. But, however much this problem has been discussed, no single solution has emerged and the question remains open and full of controversy in the scientific sphere. There are also certain authorities⁷⁾ who claim that the problem was settled once and for all with the

passing of the new French Law on Literary and Artistic Property of March 11, 1957, the first Article of which recognises the author's "exclusive incorporeal property right, effective against all persons" in an intellectual work, by the mere fact of its creation.

For the above reasons we shall briefly consider the essential premises contained in theories so far known regarding the legal character of copyright.

(a) Theory of the Right of Property

The first explanation of the juridical nature of copyright derives from the theory which sees in it a right of property. This theory recognises the author's exclusive right to use the fruits of his intellectual creation. The concept of copyright as property was one of the dominant ideas of the French Revolution and was proclaimed by Le Chapelier. The theory of property dealt exclusively with the economic part of copyright, leaving aside any intellectual connection between the author and his work. By giving the author a right over his work it ended the privileges of publishers, and this marked an undeniable step forward. At a time when any other juridical notions were lacking, it was a political necessity to find refuge in the notion of property in this manner⁸⁾. The theory of property was favoured, according to Professor Spaić, by the victory of individualism, particularly in the period of industrial capitalism, and it is based on the fact that the author is the creator of the work, which must therefore belong to him. This concept therefore excludes any possibility of the work's also belonging to the social community. It is based on the philosophical doctrine of John Locke conceiving property as the result of labour and the need to remunerate such labour. The first mention of any need for the author to have the right of ownership over his work appeared in England (Warburton). The idea had its successors in Germany (Hegel and Fichte) and in France (Diderot, Voltaire, Le Chapelier⁹⁾). The most outstanding protagonists of the theory were, in France, Bérard, Pouillet and his disciples, Maillard and Claro¹⁰⁾. The theory of property was confirmed in French jurisprudence by the decision of the Court of Cassation dated August 16, 1880. This decision states that: "According to the general principles of law, literary and artistic property has the same characteristics and should be treated in the same manner as any other form of property, subject only to the limit imposed on its duration in the public interest, since a literary composition materialised through publication constitutes an article which may be owned"¹¹⁾. Property in intellectual products was thus conceived as property in material objects.

Consequently it seemed to certain experts (in France, Alphonse Karr; in Germany, Adolf Wagner) that copyright came within the sphere of real law. This theory was violently opposed by others (Renouard, Proudhon, Mazzini, Tolstoy). Proudhon was most outspoken, claiming that the world of ideas

⁴⁾ Cf. Spaić, *op. cit.*, p. 149.

⁵⁾ Cf. François Hepp: "Copyright, 'Incorporeal Property'?", in *Revue internationale du droit d'auteur (RIDA)*, Vol. XIX, 1958, pp. 185 and 191.

⁶⁾ Cf. Spaić: "Pravna priroda autorskog prava" (The juridical nature of copyright), in *Annuaire de la Faculté de droit de Sarajevo*, Vol. III, 1955, p. 207.

⁷⁾ Cf. François Hepp, *op. cit.*, pp. 161 et seq.

⁸⁾ Cf. R. Plaisant, *op. cit.*, Fascicule 2, No. 16.

⁹⁾ Cf. Spaić, *op. cit.*, p. 143.

¹⁰⁾ Cf. "De la nature juridique du droit d'auteur", in *Le Droit d'Auteur*, September 15, 1923, p. 98 (author anonymous).

¹¹⁾ *Ibid.*

could not be ruled by material appropriation and that the author could not therefore be considered as the owner of the products of his mind, which belonged to the community and to society; the author was entitled to reward only, and there was no question of equating intellectual property with property, as governed by civil law. For Proudhon the very idea of property in intellectual creations was an absurdity¹²).

Contemporary views on copyright also reject this theory, advancing the following line of argument: the object protected by copyright is an intellectual product and the object protected by property rights is a material article; there is also a difference in the nature and intensity of the power resulting from such rights: the author's exclusive right is not absolute in all cases, since he cannot, for example, prevent the use of his work in private homes¹³). Moreover, the concept of exclusive and absolute right differs in its qualitative aspects according to whether it relates to copyright or to the right of property over material goods. There is no danger of confusion between copyright and rights vested under real law when reference is made to certain accessory rights, which may also be based on the patrimonial prerogatives of copyright, such as possessory lien or usufructuary right¹⁴). Copyright is limited in time and thereby differs from property rights, which are permanent¹⁵). Legally speaking, it would be impossible to describe a right combining personal and patrimonial elements as a right of ownership¹⁶). In the view of Michaélides-Nouaros, ownership cannot be founded on a right; he goes on to say that copyright cannot even have any character of exclusivity, this being peculiar to the right of ownership, since intellectual creation expresses the author's thoughts and feelings and belongs to the human community at large. That is why the author has limited powers over it. Acquisition by extension, such as exists in the field of property, is unknown in the field of copyright. When property is transferred, the new owner enjoys the whole range of rights which belonged to the former owner. But when copyright is transferred, the author reserves certain rights stemming from his personal powers¹⁷). If copyright were conceived as a right of ownership, the personal (moral) elements would have to be left out, which would in fact be tantamount to negation, since copyright would thus remain without one of its essential components. The preceding comments prove that the theory

of copyright as a right of ownership cannot be accepted and explain why it has been abandoned in most countries.

Nevertheless, France, which engendered and developed copyright, has not entirely rejected this theory. The most recent French doctrine, referring to Article 1 of the Law of March 11, 1957, is based on the following principles: (1) a work of the human mind with which the author's thoughts are identified cannot be acquired entirely as a piece of property; (2) the law excludes the possibility of alienation of the author's personal prerogatives; (3) the intellectual attributes linked to the author's creative thought cannot be alienated either; (4) only patrimonial prerogatives, media for the use or material exposition of works of the human mind (books, pictures, statues, etc.), can be acquired as property. However, in view of the complex make-up of copyright, the acquisition of its patrimonial component could not be identified with any specific legal relationship. By acquiring the right of property in the patrimonial prerogatives of copyright the owner does not obtain any absolute right of disposal, since he has obligations towards the author, the intellectual creator of the work, who in turn has other prerogatives maintaining a permanent economic and intellectual link with his work¹⁸).

However, the fact that both French theory¹⁹) and legislation²⁰) retain the expression "literary and artistic property" calls for some explanation of how the term is understood in French positive law.

Since Renouard opposed the use of this expression in 1938 there have been many to support his view, but the wording has now passed into law and there are fewer and fewer enemies of its use. One of the most eminent is the outstanding jurist, Professor Henri Desbois. In this connection there are two standard arguments. The first of these is of purely pragmatic importance, being based on a concept which is obviously without any legal force: it is held that any new departure should be avoided by maintaining the traditional terminology — a formalistic attitude which has met with much opposition from the supporters of contemporary legal doctrine. Professor Desbois takes the contrary view by asserting that there is nothing paradoxical in using the blanket expression "literary and artistic property" in order to convey the spirit of French copyright legislation, even if not the detailed forms.

The second argument turns on juridical concepts, being based on Kohler's celebrated view of the immaterial patrimonial value of copyright. This concept has re-emerged in our day and is coming into increasing prominence in the science of copyright²¹). Basically, it does not derive from the premise that copyright is property, and instead it stresses the author's absolute and exclusive right to appropriate his intellectual products by virtue of the very fact that he is their creator.

¹²) Cf. Spaić, *op. cit.*, p. 143.

¹³) Cf. Spaić, *op. cit.*, p. 144.

¹⁴) Cf. Desbois: *Le droit d'auteur*, Paris, 1950, No. 232.

¹⁵) The time limits applying to copyright are used as an argument to distinguish it from property rights. However, Prof. M. Konstantinović does not think that a right of ownership should be discounted as such simply because it is limited in time. We believe this point of view can be adopted because it would lead to an absurd situation to claim that copyright is distinct from the right of ownership on the grounds of its limited duration also, since this would automatically imply that it would be considered as a right of ownership if its validity were not limited in time. This is confirmed by the fact that some countries (Nicaragua, Portugal) recognise the unlimited duration of copyright. Therefore, we do not believe that limited duration of validity should be taken as a primary argument. In other words, copyright should not be linked to limited duration in the formal sense because it is an essential characteristic from the viewpoint of the juridical nature of copyright by virtue of its social function. (Cf. Desbois, *op. cit.*, No. 238.)

¹⁶) Cf. Jeannot: *La notion d'"intérêt personnel" et l'écrivain*, Lussanne, 1960, p. 71.

¹⁷) Cf. Michaélides-Nouaros: *Le droit moral de l'auteur*, Paris, 1935, pp. 35 et seq.

¹⁸) Cf. Hepp, *op. cit.*, p. 151; Tournier: "Can One Acquire the Ownership of an Intellectual Work according to the French Law of the 11th March, 1957?", in *RIDA*, Vol. XX, 1958, p. 22.

¹⁹) Cf. Desbois: *La propriété littéraire et artistique*, Paris, 1953. (Preface).

²⁰) Cf. the French Law on Literary and Artistic Property, 1957.

²¹) Cf. Mario Are: "Validità del concetto di bene immateriale", in *Il Diritto di Autore*, No. 3, 1958, p. 353; Amedeo Giannini: "Nuovi studi sul diritto di autore", *op. cit.*, No. 2, 1957, p. 175.

Taking as its point of departure the possibility that works of the human mind may be appropriated by their creators, the Law of March 11, 1957, defines copyright as an exclusive and absolute right of incorporeal property and accepts the traditional designation: "Law on Literary and Artistic Property". Thus, it is maintained in the first argument, the term property under French copyright law remains only in the title of the legislation. The second argument, however, asserts that this designation is of essential importance and that, if copyright is not defined as a right of ownership as contemplated in real law, it is defined as a special right of ownership, being a right of incorporeal and immaterial property which the author of an intellectual product possesses with regard to his work by virtue of his creation.

Even Le Chapelier, whose ecstasy of revolutionary enthusiasm led him to glorify property of intellectual creators in their works²²), adds that it is nonetheless a very special kind of property.

According to the latest view²³), the characteristic feature of property in works of the human mind is appropriation, that is to say, the immediate link between the legal holder and the object. Thus, there can be only one exclusive right with regard to intellectual works, and that is copyright, an absolute right because it has universal effect (*erga omnes*).

The situation in respect of so-called accessory rights, such as easements, does not show that an individual owns these rights, but simply that they are vested in him although the enjoyment of such rights is bound to an actual estate. On the contrary, it takes no small effort to admit that an individual can in fact own something immaterial, incorporeal property such as easements, with which certain jurists have been wont to compare copyright²⁴). This difficulty is common to every country whose legal system is derived from Roman law, which is basically rationalistic. It is a creation of ancient Latin society with its "great sense of reality and the practical demands of life". Its solutions were inspired "by a healthy spirit and a sense of the proper measure". Thus, Roman law "rationalised juridical existence and subjected it to the rules of logic"²⁵). Hepp argues that this is a characteristic attitude for Frenchmen, with their innate links with their native soil, so that they do not find it easy to conceive of a right of ownership without a material base, or at least without any concrete support in practice, that is to say — in accordance with earlier doctrine — without direct link between persons and things²⁶).

²²) "The most sacred, the most incontrovertible and, if I may say so, the most personal of all forms of property is the work which stems from the thoughts of an author."

²³) Cf. Hepp, *op. cit.*, p. 177.

²⁴) Prof. M. Konstantinović quotes an early concept interpreting copyright as a form of easement. This view regarded copyright as belonging to the social community. However, in order that the author should be duly rewarded for his contribution to the community, he is asked to refrain from using his right over his work for a certain time. This would make copyright a restricted "dominant tenement" enjoyed by the author over the permanent "servient tenement" enjoyed by the community. This concept is quoted here as an interesting construction but one without any legal validity. Cf. Prof. Konstantinović, *op. cit.*, p. 24.

²⁵) Cf. Slavko Stojković: *Encyclopédie du droit*, Belgrade, 1941, pp. 99 *et seq.*

²⁶) Cf. Hepp, *op. cit.*, pp. 161 *et seq.*

Roman law knew nothing of intellectual rights. This explains why the celebrated German jurist, Josef Kohler, does not designate copyright as intellectual property (*geistiges Eigentum*) but as a right applying to immaterial goods (*Immaterialgüterrechte*)²⁷). In this way, as Hepp points out, an important step was taken through the admission that rights over immaterial goods constituted a form of property. The essence of this doctrine is contained in the concept that a legal relationship is established only among persons, and that rights under real law create no legal relationship between persons and things, but only between the subject possessing certain rights and any person violating such rights. This stresses the importance of subjective rights which safeguard the legal situation of their owners in exercising and enjoying such rights²⁸).

Professor Desbois asserts that no appropriation is more justifiable than where intellectual works are appropriated by their creators. To explain this view he refers to the undeniable fact that a work of the human mind is profoundly penetrated by the person of its creator. In the preface to his book, *La propriété littéraire et artistique* (1953), he anticipates any criticism his choice of title might cause by stating that copyright prerogatives enjoyed by authors and artists are not permanent, as contrasted with property in immovable goods which is not forfeited through failure to use such property but only through prescription or usucaption on behalf of a third party. He goes on to say that a work of the human mind is, by its very nature, intimately connected with its creator both before and after publication because intellectual creation reflects the personality of the author. This is why he believes that the title he chose conveys the idea of intellectual creation in the most satisfactory manner.

Thus, French law has legalised the juridical premise of incorporeal (immaterial) property in a work of the human mind. This leaves considerable scope to continue the previous practice of designating the incorporeal property rights vested in authors as "literary and artistic property", although on the basis of a clearer juridical doctrine. The law thereby confirmed the results of the gradual evolution of theory and jurisprudence. Consequently, French legislation is clearly and finally established as regards terminology and the concept of the essence and juridical nature of copyright, which it describes as a right of incorporeal property.

Some authorities believe that the problem of the juridical nature of copyright has been stated in its final terms by means of this solution²⁹). The problem of property in immaterial goods has been brought into particular prominence, and it is interesting to note how it is stressed in contemporary writings on copyright. Apart from the French, as we have already pointed out³⁰), Italian specialists also follow this line³¹).

The concept of copyright as incorporeal property is not universally understood or accepted, and it cannot be regarded as having put an end to controversy on the juridical nature

²⁷) Cf. Kohler: *Urheberrecht an Schriftwerken und Verlagsrecht*, Stuttgart, 1907, pp. 1 *et seq.*

²⁸) Cf. Hepp, *op. cit.*, p. 177.

²⁹) Cf. Hepp, *op. cit.*, p. 161.

³⁰) *Ibid.*, pp. 161-191.

³¹) Cf. footnote 21.

of copyright. It is scarcely based on a certain and firm foundation, since incorporeal property lacks what is essential to any definition of property in the true sense of the word. In our view it is more a legal construction than a juridical solution. Theoretical writers consider that the designation of copyright as "incorporeal property" has neither scientific nor practical significance³²).

(b) Theory of Personal Right

The directly opposite view to the concept of property is represented by Kant's theory of personal right. Although he was not a jurist, Kant dealt with juridical questions from a philosophical viewpoint, in particular in the field of copyright. His contention was that the essence of copyright lies in the fact that it prohibits any other person from using the intellectual product of its creator³³).

It was, in fact, under Kant's influence that this theory was presented and defended by its most notable protagonist, the German jurist, Otto von Gierke, who saw in copyright a personal right (*Persönlichkeitsrecht*). The subject of copyright is the work of the mind which forms an integral part of the author's personality. It stems from a creative effort by the author and represents a continuation of his personality³⁴). This theory therefore makes the personality of the author the centre of concern. His intellectual product is regarded as so closely linked to him that it is seen as an integral part of his personality. In placing such emphasis on the personal character of copyright this theory merely relegates the patrimonial aspect to second place, but does not reject it. All of an author's prerogatives are personal; thus when he transfers any right the author does not cede the substance but merely the exercise of copyright, which is inseparable from his personality.

This theory has had passionate advocates as well as bitter opponents. One of its proponents was Jules Sfetea³⁵), who did not, however, share Gierke's view that all personal rights are rooted in the individual's personality, believing that this was the case of copyright only. He believed that the crux of the matter does not lie in the author's right over his work, since the work is an integral part of his personality. All the prerogatives granted to the author appeared to Sfetea to be connected directly with the exercise of the rights available to man in order that he may protect his personality³⁶).

The great merit of this theory is that it has displayed the major importance of the personal (moral) right of authors and brought about the recognition of that principle in both national and international law. Its weakness is that it makes out that the work of the human spirit, the personal property of the author, is indivisible from his personality. There is no denying the very close link between the author and his work, but that does not mean that the work may not be contemplated apart from his personality, for otherwise there would be

no possibility of protecting the author's moral or patrimonial rights³⁷). For the reasons mentioned, this theory cannot be adopted either.

(c) Theory of Immaterial Patrimonial Value

One of the most important concepts regarding the juridical nature of copyright is offered in Kohler's theory of immaterial patrimonial value³⁸). Kohler distinguishes clearly between copyright and personal right. He states that the author's intellectual products are immaterial goods, quite independent of the framework in which the author's ideas are given concrete form. Nevertheless, Kohler includes copyright in the field of real law, seeing immaterial values as separate from the author's person and capable of expression in pecuniary terms, thereby enabling the author to use his work and derive economic benefit from it. Personal law, in Kohler's view, does not come within the scope of copyright, and exists independently in the form of purely personal rights³⁹).

Together with Kohler's theory, certain variations propounded by other jurists must be mentioned. The great Belgian jurist, Edmond Picard, believes that copyright should be considered as an intellectual right (*iure in re intellectuali*) and as a fourth category in the system of civil law alongside personal law, real law and the law of obligation or debt. Josserand and Bonnecase regard copyright as a form of property *sui generis*, while Roubier presents it as the right of custom.

However, neither Kohler's theory nor the above-mentioned variations can be adopted. What they represent in fact is a continuation of the theory of property in new forms⁴⁰). The strict separation of personal rights from copyright leads to the inescapable conclusion that in this respect copyright is of purely patrimonial character, which would mean denying the author's moral rights. But this is not so, because copyright comprises both personal and patrimonial elements. All we can say is that personal rights are included within copyright, which is in fact inseparable from the sphere of personal law. This is so essential a characteristic of copyright that it distinguishes it from all other legal branches. This is one of the reasons why copyright cannot be included in the sphere of real law. Nor can copyright be qualified as an intellectual right since this would not separate it clearly from other branches. The same applies to the concept of immaterial property *sui generis*. The concept of copyright as a right of custom is even less acceptable because the element of custom which determines the use made of a product of the human mind cannot be embraced by law⁴¹).

As we have already seen, Kohler's doctrine resulted in the new approach laid down in the French legislation of 1957 which is held to provide the key to the juridical nature of copyright. All the same, there is an essential difference between these two concepts regarding the importance of "moral right" in relationship to the right of "incorporeal property". Kohler practically identifies moral right with personal right

³²) Cf. Michaélides-Nouaros, *op. cit.*, p. 38.

³³) Cf. Kant: *Eléments métaphysiques de la doctrine du droit*, p. 297 (French translation by Barni), quoted by Masse in *Droit moral de l'auteur*, Paris, 1906, p. 45.

³⁴) Cf. Gierke: *Deutsches Privatrecht*, Leipzig, 1895, Vol. I, p. 756.

³⁵) In his book, *De la nature personnelle du droit d'auteur*, Paris, 1923, p. 242.

³⁶) Cf. Sfetea, *op. cit.*, p. 59.

³⁷) Cf. Spaić, *op. cit.*, pp. 214-215.

³⁸) Cf. Kohler, *op. cit.*, pp. 1 et seq.

³⁹) Cf. Michaélides-Nouaros, *op. cit.*, p. 49; Willy Hoffmann: *Archiv für Urheberrecht*, 1936, p. 110.

⁴⁰) Cf. Spaić, *op. cit.*, p. 217.

⁴¹) *Ibid.*, p. 219.

in the general sense. He sees no need for the latter to be covered by special regulations and regards the protection of personal (moral) interests as being based on personal right in the general sense⁴²). Consequently, "moral right" in Kohler's view does not represent an element of copyright but merely supplements it⁴³). As a personal right in the general sense, "moral right", when considered as a separate entity, has only a very tenuous connection with copyright, with which it forms a dual right (*Doppelrecht*). On the other hand, the doctrine incorporated in French law stresses the major importance of "moral right" and gives it particular prominence in the law itself (Art. 6, 19 and 32), where it adopts the concept⁴⁴) that the rules of purely personal rights are not enough to ensure complete protection of "moral right". French legislation has accepted a combination of Kohler's theory and the dualistic theory⁴⁵). The first of these is reflected in the Law's qualification of the patrimonial component of copyright as "incorporeal property", which corresponds to the notion of "immaterial patrimonial value". The second is revealed where the law gives priority to "moral right", in distinction to Kohler's theory, which emphasises the patrimonial component of copyright.

(d) The Dualistic Theory

Consideration must also be given to the dualistic theory of the juridical nature of copyright. The followers of this theory (in Germany, Mihaelis and Georg Müller; in Switzerland, Alphonse Melliger; in France, Jean Escarra, Jean Rault, François Hepp, Lepaule and Henri Desbois) believe that copyright comprises two peculiar and different rights: a personal right and a patrimonial right⁴⁶). These rights have a common source in the personality of the author and are joined together under a single designation, namely copyright⁴⁷). The dualists thus see two completely separate rights within copyright, although they recognise their interdependence⁴⁸).

Comparison of this theory with that of Kohler would lead to the following conclusions: the dualists do not separate personal right from patrimonial right ("copyright"), merely claiming that copyright is of dual nature and that two individual rights exist within it. However, Kohler separates personal right from "copyright" and designates it as a double right (*Doppelrecht*). This does not, however, mean that his theory is a dualistic one⁴⁹), although other theorists besides Kohler believe this to be so⁵⁰).

The opposite concept is that copyright does not contain two individual rights and that it is a single right that contains personal and patrimonial elements⁵¹). The entity of copyright consists essentially of two inseparable elements although enjoyment of the prerogatives to which these ele-

ments relate may be considered separately⁵²), but within the structure of a single copyright.

(e) The Monistic Theory

A very substantial number of legal specialists believe that the only acceptable theory of the juridical nature of copyright is the monistic theory, which conceives copyright as a single right *sui generis*. It is argued that there are only two components of a single right involved. Copyright is therefore "neither purely personal, nor exclusively patrimonial". Dual interests are combined, both personal and patrimonial, and one side cannot be protected without reference to the other. These qualitatively different interests are elements of a single right⁵³).

Although it has been severely criticised the monistic theory is gaining an increasing number of supporters (its most outstanding representatives are Allfeld, Le Boor, Ulmer and Runge in Germany; Rippert and Robert Plaisant in France; and Piola Caselli in Italy). The most severe criticism has come from Professor Desbois, who regards the author's moral and material interests as two different and incompatible matters⁵⁴). To support his argument, Professor Desbois quotes the fact that it is possible to publish a work with the author's consent without any material recompense being considered. He goes on to say that there are separate spheres in which the application of the moral and patrimonial interests of authors can be distinguished. He also draws a dividing line between the act of creation of a work and its publication, and states that the former corresponds to the intellectual life of the work and the second to its patrimonial value, an economic element capable of juridical circulation.

However, the opponents of this line of thought, with whom we are in agreement⁵⁵), reply that the moral and material interests of authors cannot be regarded as two different elements. On the contrary, they maintain, these interests are so interlinked as to be inseparable. Similarly, the view that an author's right to protection of his work stems only from its publication is rejected on the grounds that this right exists as soon as the work is created, irrespective of whether it has been published or not. By putting his idea in concrete form, the author combines in his person the patrimonial and moral prerogatives with which his rights as author are imbued.

Thus it is believed that the monistic theory has provided the most logical explanation of the juridical nature of copyright. Its reputation has expanded to the point where it is now accepted as the dominant theory in the science of copyright⁵⁶). Thanks to the personal component of copyright the author is ensured of protection for his personal, moral and spiritual interests. The material component is there to protect his economic and patrimonial interests. This being so, there is no danger that a product of the human mind will be regarded as an article of merchandise although publication and

⁴²) Cf. Michaélides-Nouaros, *op. cit.*, p. 50.

⁴³) *Ibid.*

⁴⁴) *Ibid.*

⁴⁵) Cf. Gavin: *Le droit moral de l'auteur dans la jurisprudence et la législation françaises*, Paris, 1960, No. 287.

⁴⁶) Cf. Desbois, *op. cit.*, No. 235.

⁴⁷) Cf. Spaić, *op. cit.*, p. 219.

⁴⁸) Cf. Gavin, *op. cit.*, No. 287.

⁴⁹) Cf. Spaić, *op. cit.*, p. 216.

⁵⁰) Cf. Sfetea, *op. cit.*, p. 42; Michaélides-Nouaros, *op. cit.*, p. 24.

⁵¹) Cf. R. Plaisant: "Lettre de France", *Le Droit d'Auteur*, 1955, pp. 102 et seq.

⁵²) Cf. Fernay: "Transfer and Publication Contract", *RIDA*, Vol. XIX, 1958, pp. 257 et seq.

⁵³) Cf. Spaić, *op. cit.*, pp. 219 et seq.

⁵⁴) Cf. Desbois, *op. cit.*, No. 237.

⁵⁵) Cf. Spaić, *op. cit.*, p. 150.

⁵⁶) Cf. Alois Troller: "Reflexions sur l'Urheberpersönlichkeitsrecht", in *Le Droit d'Auteur*, 1960, p. 311.

distribution give it the value of accessibility, for there remains a permanent link between the work and the author's personality. This means that, in addition to personal interests, the author's patrimonial interests are also protected and that he is not exposed to exploitation as was the case under Kohler's theory. Therefore the monistic theory is in closer harmony with the development of copyright.

III. The Place of Copyright in the Legal System

The place of copyright in the legal system also constitutes an exceedingly complex problem. In order to envisage it clearly, in the view of Professor Spaić, a comparison must be made between copyright and the branches of law related to it, thereby drawing demarcation lines instead of following the line of thought which would prefer copyright to be grouped within some other branch of law.

Elster, for instance, has claimed that copyright is covered by commercial law. He suggests that copyright contains personal, patrimonial (material) and commercial elements, but contemporary theory rejects this tripartite concept and contests the possibility of there being any commercial elements present in copyright⁵⁷).

Another school of thought, as represented by Piola Caselli, puts copyright within the framework of labour law, by stressing the author's labour. Undoubtedly there are certain connections between these two branches of law but that does not mean that copyright is a form of labour law, which concerns the relationships "arising in the actual process of labour". Whatever the nature of physical and intellectual labour, copyright does not protect the author's labour and does not ensure him of remuneration for that labour. Copyright protects the specific forms of intellectual creation in the literary, artistic and scientific fields, in other words, the results of intellectual labour and not the labour itself⁵⁸).

The closest branch of law to copyright is industrial property (inventors' rights). However, comparison between the two shows that there are also essential differences. In the general field it may be said that copyright and industrial property rights reveal striking analogies and are indeed very close. Both come within the sphere of intellectual creation⁵⁹), since they are dependent on the results of the activity of the human mind⁶⁰). They both contain both personal and patrimonial elements and occupy a special place in the system of law as branches *sui generis*⁶¹). But the differences between them are very great and, in Sfetea's words, if there are resemblances there is also a world of distinction between them⁶²). First of all, there is the object of regularisation involved. Copyright regulates the situation with regard to the creation of literary and artistic works; industrial property law covers inventions and technical advances. Copyright protects specific forms of intellectual creation; industrial property rights protect inventions that have already been made and technical advances which have no specified form but whose

existence is confirmed by description. With regard to intellectual creation the author is placed within a far larger field. He has a whole world of ideas before him, and he can develop known ideas or take material that has already been developed in a well-known work, provided that he gives it an original form⁶³). The inventor, on the other hand, is bound by a far more restricted field and has fewer possibilities and combinations for his invention. In industrial and technical circles it is generally known what inventions are needed, and it can easily happen that two inventors working quite independently of each other arrive at the same invention. It is the chronological order of application for patent rights to the competent authority that decides which of the two will be recognised⁶⁴). Therefore, in order for an invention to be able to exist it is not enough that it has been invented: this must be stated in a document from the competent authority granting the inventor rights over his invention. This is one of the basic differences between the invention and the work of the human mind⁶⁵). A literary or artistic work is a very complex intellectual creation, and only in exceptional cases is there any question of identity of creation because there is no danger of the sort of conflict which may arise over identical inventions. Inventions must be given greater publicity because, if their existence is ignored, it may well be that other inventors working towards the same aim will have wasted their efforts entirely. Moreover, an invention that has not been made public could well be used in the best of faith without the user knowing to whom it belonged. Thus, the institution of patents is of dual significance: the right confirmed in the patentee avoids conflict with an identical invention, and the invention as an intellectual value belongs to the person who first discovered it by virtue of his own work⁶⁶).

Theoretical writers make a clearer distinction as to the quality of creation between the objects of copyright and of industrial property rights. In the case of copyright it is said that the author's personality as manifested through his literary and artistic work is protected. No claim of this sort could be made for patents and registered marks. While the work of the human mind is a permanent reflection of the creative capacity of the author's personality, inventions such as machines or models are only things. The invention as the product of the inventor's intelligence is largely of value for industrial purposes. The work of the human mind is an intellectual creation without any particular utility in aim but which expresses truth and beauty⁶⁷). According to Kohler, the author's work has an aesthetic aim and the inventor's work a technical aim⁶⁸). The author's personality speaks through his works; the inventor's personality does not speak through his inventions.

This concept fails to recognise the inventor's personal prerogatives with regard to his invention. That is why arguments continuing the distinction between copyright and in-

⁵⁷) Cf. Spaić, *op. cit.*, p. 228.

⁵⁸) Cf. Spaić, *op. cit.*, p. 230.

⁵⁹) *Ibid.*, p. 228.

⁶⁰) Cf. Sfetea, *op. cit.*, pp. 239 *et seq.*

⁶¹) Cf. Spaić, *op. cit.*, pp. 228 and 233.

⁶²) Cf. Sfetea, *op. cit.*, p. 239.

⁶³) Cf. Kohler, *op. cit.*, p. 10.

⁶⁴) Cf. Huard: *Traité de la propriété intellectuelle*, Vol. II, Paris, 1906, No. 220.

⁶⁵) *Op. cit.*, p. 1.

⁶⁶) *Op. cit.*, p. 3.

⁶⁷) Cf. Isidro Satanowski: *Derecho Intelectual*; see *Le Droit d'Auteur*, 1957, p. 91.

dustrial property rights stress the fact that copyright is in principle non-transferable and cannot be subjected to forcible execution. It is considered only proper that the work of the mind cannot be separated from its creator without violating the author's personal (moral) right to amend or delete any part of his creation as he alone sees fit. This question is not, however, regarded as arising in the case of inventors, because inventions, as material objects, cannot lead to any conflict with the personal (moral) or patrimonial interests of the inventor. It is considered that nobody will be in any way offended if someone other than the inventor himself modifies or improves the invention. Therefore there is no cause to oppose transfer of patent rights, and in fact it appears that this free collaboration helps to ensure that the major inventions of our time are brought to a remarkable pitch of perfection. Consequently, any action harmful to an invention would have an adverse effect on the interests of civilisation. But any attempt to violate the integrity of a product of the human mind would entail serious legal consequences⁶⁹).

We do not consider this reasoning to be correct. If it is assumed that industrial property rights arise from intellectual effort, just as in the case of copyright, the inventor's personal (moral) prerogatives over his invention cannot be denied. It is true that industrial property law places greater emphasis on economic use of inventions⁷⁰), but that does not mean that the inventor's personal prerogatives are extinguished or that he is unable to use them for the protection of his invention against unauthorised modifications or misuse. This concept is also laid down in the Yugoslav Law on Patents and Technical Improvements (Art. 2, 17, 25 and 26).

The final distinction between copyright and industrial property rights lies in the fact that there are different legal provisions to cover each of them in all countries. Copyright is covered by the Berne, Pan-American and Universal Conventions; industrial property rights are regulated by the Paris Convention of 1883.

The preceding paragraphs show that industrial property rights, which also occupy a peculiar place in the legal system, are not identical to copyright.

In order to determine where copyright should come in the legal system it must be presented in its peculiar features that distinguish it from other branches of law. In the first place, as already pointed out, copyright is limited in time in the interests of society. This limitation is due to a compromise between the individual and the collective interest. Copyright is a composite branch containing both personal and patrimonial rights. It governs relationships of both personal and material character. Nevertheless, and although it protects both personal (moral) and patrimonial (material) interests, its character is that of a single branch of law. It is also elastic in its scope, for although the author can himself transfer the exercise of personal prerogatives to persons he trusts he can also be restricted in his right to transfer patrimonial prerogatives (restriction in time or in volume). Restrictions may also be imposed on the exercise of patrimonial prerogatives, as for

instance where the work is used in a manner conflicting with the author's desires (compulsory or legal licence). Also, as a consequence of the intellectual connection between the author and his work, copyright has an absolute character. It is similarly an exclusive right, but it is in no way a monopoly. Exclusive and absolute, copyright, is similar to real rights since it is only the real elements among the patrimonial rights which have an absolute character. Copyright certainly comes within the field of real law to a certain extent, but not so far as to identify it with that sphere. Exclusivity is also a characteristic of both real law and copyright. However, exclusivity has a particular import in connection with copyright. It enables the author to decide purely for himself if and when he will publish his work and approve its reproduction and distribution. It also authorises him to enjoy the economic benefits of his intellectual work. Then, as a result of this exclusive right of sovereign disposal over his work and of obtaining material benefits therefrom, the author can improve the results of his creative work. As a real right, copyright can also be transferred by means of legal deed *inter vivos* and *mortis causa*, and may be legally bequeathed.

In addition to these analogies there are also vital divergences between real rights and copyright. Real rights are normally subject to forcible execution, whereas copyright as such cannot be subjected to forcible execution. This can be imposed only on material revenue obtained by the author, that is to say, the patrimonial element in copyright. With regard to real rights, the object of protection is constituted by the economic and patrimonial interests of the person concerned, whereas copyright protects the author's personal (moral) interests also. Between the two branches there is also a difference in the object protected. The object of real law is a material article; the object of copyright is an immaterial product which can be partly expressed in patrimonial terms. There is a further difference in the degree of authorisation. Since the product of the human mind is in very close intellectual connection with the author's personality he has greater powers over his work than has the owner with regard to corporeal goods. In addition, copyright reverts to public ownership after expiry of a specified period, whereas real rights exist permanently.

The preceding arguments have demonstrated that copyright is a specific right. It cannot be grouped among real rights although it comes partly within the category of patrimonial rights. Nor again may it be classified among immaterial personal rights because it is not exclusively immaterial in character. What is certain, however, is that copyright, with its personal and patrimonial elements, comes within the field of civil law where its personal and patrimonial prerogatives make it a branch of law *sui generis*⁷¹).

Dr. Živan RADOJKOVIĆ

Legal Adviser

of the Society of Authors and Music
Composers (ZAMP) of Yugoslavia

⁷¹) Cf. Spaić, *op. cit.*, p. 233.

⁶⁹) Cf. Sfetea, *op. cit.*, pp. 239 *et seq.*

⁷⁰) Cf. Spaić, *op. cit.*, p. 233.

CORRESPONDENCE

Letter from Great Britain

(First Part)

Summary

- I. *Legislation*: 1. to 6. Orders and Government Notifications. 7. Convention with France (Double taxation). 8. Treaty with Japan. 9. Public Libraries and Museums Act, 1964. 10. The Obscene Publications Act, 1964. 11. Design Copyright; Typographic Characters.
- II. *Jurisprudence*: 1. *The Hopkins's Will Trust* (Was Shakespeare the author of the works ascribed to him?). 2. *J. & C. Moores Ltd. v. Commissioners of Customs and Excise* (Does copyright element increase value?). 3. *Arnold v. Associated Recordings Ltd.* (Unfounded denial of authorship). 4. *Balliol College v. Kimber* (Universities' and Colleges' copyright in perpetuity). 5. *Dorling v. Honnor Marine Ltd. and Another* (Infringement of copyright in plans to build boats). 6. *John Calder (Publishers) Ltd. v. Dagg Books Ltd.* (Infringement of copyright in the book *Tropic of Capricorn*). 7. *Donmar Productions Ltd. v. Bart and Others* (Film, radio and television rights in the musical play *Oliver!*). 8. *Pickwick v. Alfred Records Ltd.* (Infringement of copyright in record sleeves). 9. *New Realm Pictures Ltd. v. Astor Pictures Inc. and the BBC* (Alleged infringement of copyright in a film). 10. *APRA v. Canterbury-Bankstown Leagues' Club* (Authorising performance). 11. Pinion deceased (The value of paintings). 12. *The Fanny Hill case* (Obscene novel). 13. *W. H. Allen & Co. v. Brown Watson Ltd.* (Right in the title of a book). 14. Legal and tax situation of the BBC. 15. The Net Book Agreement. 16. *McCarey v. Associated Newspapers Ltd.* ((a) Absolute privilege of reports on Court proceedings. (b) Excessive damages for libel). 17. *Hinds v. Sparks* (Libel action by a convicted person against a police officer). 18. *Dering v. Uris and Others* (Libel action concerning a passage in the book *Exodus*). 19. *Reade v. The Times Publishing Co.* (Libel in a book review). 20. *Egger v. Davies* (Qualified privilege in libel case). 21. *Castle and Wigg v. Yorkshire Conservative Newspaper Co. Ltd.* (Libel action by Labour M.P.s). 22. *Linklater v. The Daily Telegraph Ltd.* (Task of judge and jury in libel cases). 23. *Daubeny v. Private Eye* (Using the photograph of a third person). 24. *Globe v. Globe* (Identity of names).
- III. *The Performing Right Society Ltd. (PRS)*: 1. Jubilee. 2. Annual General Meeting. 3. In the Estate of Béla Bartók, deceased (Injunction regarding royalty payments by the PRS). 4. The Performing Right Tribunal ((a) Pop and beat music. (b) Music performed in places owned by municipal authorities). 5. *PRS v. Dumighan* (Infringement of copyright in a song).
- IV. *Miscellaneous*: 1. Shakespeare's "Copyright". 2. Fair Dealing. 3. Use for Private (Domestic) Purposes. 4. Copyright Notice. 5. Copyright and the USSR. 6. Copyright and Confiscation. 7. British Book Production. 8. Authors and Financial Aspects. 9. The Press Council. 10. The BBC and the Musicians' Union. 11. Jubilee of the Society of Authors.

Following a custom of many years, I am reporting below events which occurred during the year 1964 in the United Kingdom concerning the field of copyright and related matters, and I venture to hope that the contents will not be without some interest to authors (including composers), artists, performers, broadcasters, journalists and other persons who esteem the development of intellectual property.

I. Legislation

1. — On October 29, 1963, the Director-General of Unesco received a communication by which the Government of the United Kingdom declared that the *Universal Copyright Convention* (UCC) shall apply to the *Falkland Islands, Kenya, St. Helena and Seychelles*.

With regard to this notification, as far as it related to the Falkland Islands, the Permanent Delegation of the Republic of Argentina to Unesco sent to the Director-General of Unesco a declaration stating that the application of international instruments cannot affect sovereign rights and that some islands are under the sovereignty of the Republic of Argentina¹).

2. — I would refer to items 6 and 7, Section I, of my last "Letter" (*Le Droit d'Auteur - Copyright*, 1964, pp. 57 and 58). The ratification of the *Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations* by Mexico being the sixth ratification, the Convention has come into force on May 18, 1964, in accordance with Article 25²). As mentioned in my last "Letter" the instrument of ratification by the United Kingdom was accompanied by some declarations which are reported in the article entitled "The 'Neighbouring Rights' Convention" by Mr. R. F. Whale in the *Bulletin, Performing Right*, No. 40, May 1964.

3. — The *Copyright (Mauritius) Order*, 1964, of May 12, 1964, No. 689, extends the provisions of the Copyright Act, 1956, with certain exceptions and modifications, to form part of the law of *Mauritius*. According to a letter from the British Embassy in Switzerland of October 12, 1964, the Berne Convention, last revised at Brussels, is also applicable to *Mauritius*³).

4. — The *Copyright (International Conventions) Order*, 1964, of the same date, No. 690⁴), revokes and re-enacts respectively some previous Orders and takes account (a) of the accession of *Finland, Greece and Norway* to the UCC; (b) of the fact that *Cyprus, Upper Volta and Congo (Leopoldville)* have subscribed in their own right to the Berne Copyright Union; (c) of the ratification by *Congo (Brazzaville), Ecuador, Mexico, Niger and Sweden* of the Rome Convention.

1) See *Le Droit d'Auteur (Copyright)*, January and March 1964, pp. 27 and 64.

2) *Ibid.*, February 1964, p. 44.

3) *Ibid.*, September and December 1964, pp. 149 and 192.

4) *Ibid.*, September 1964, pp. 150 et seq.

This Order, No. 690, has been amended

5. by the *Copyright (International Conventions) (Amendment) Order* of July 27, 1964, No. 1194⁵), which *inter alia* takes account of the accession of Czechoslovakia to the Rome Convention, and

6. by the *Copyright (International Conventions) (Amendment II) Order* of October 15, 1964, No. 1651, which *inter alia* takes account of the fact that Guatemala and New Zealand have subscribed to the Universal Copyright Convention.

7. — The *Convention for avoiding double taxation* concluded between the United Kingdom and France on June 21, 1963, contains *inter alia* in Article 4 provisions on copyright protection⁶).

8. — The *Treaty of Commerce*, concluded by the United Kingdom with Japan on November 14, 1962 — which entered into force on May 4, 1963 — does not refer to the Berne Convention (Art. 19 deals with the Paris Convention only), but contains one clause on films, providing that cinematograph films originating in any territory of one Contracting Party shall be accorded in any territory of the other treatment not less favourable than that accorded to like films originating in any other foreign country⁷).

9. — *Public Libraries and Museums Act, 1964* (Eliz. II, Ch. 75, July 31, 1964). According to the Introduction of this Act its purpose is “to place the public library service provided by local authorities in England and Wales under the superintendence of the Secretary of State, to make new provisions for regulating and improving that service . . .”.

During the preparatory stages of the Bill the most controversial question was whether a “public lending right” — a subject-matter considered several times in my previous “Letters” — should be introduced. The indefatigable propagator of that right, Sir Alan P. Herbert, criticised the Bill strongly for not creating such a right (e. g. in *The Daily Telegraph* of March 9, 1964)⁸). Section 7 (1) of the Act provides that it shall be the duty of every library authority to provide a comprehensive and efficient library service. Under Section 8 (1) *no charge* shall be made for library facilities, except as provided by that Section (e. g. for notifying a person that a book requested by him is available, etc.).

10. — The *Obscene Publications Act, 1964* (Eliz. II, Ch. 74, July 31, 1964) fills loopholes shown in the 1959 Act by

⁵) *Ibid.*, November 1964, pp. 184 and 185.

⁶) *Le Droit d'Auteur*, December 1964, p. 298.

⁷) Article 18 (7) of the Treaty, Treaty Series No. 53-1963, *Cmd.* 2085.

⁸) See, for example, *The Times* of April 29, 1964; *The Daily Telegraph* of the same date; *The Guardian* of February 5, 1964. See also *The Author*, Spring 1964, pp. 8 *et seq.*, and Summer 1964, pp. 10 *et seq.* Now that the new Act is on the Statute Book, coming into force on April 1, 1965, Sir Alan has renewed his vigorous campaign to “Charge the Borrower” (*The Daily Telegraph*, November 7, 1964). He reveals the small sum of royalties he has received for his many successful writings, and he says, not without some bitterness: “The new Act makes it impossible for us to get fair treatment from the local authorities who run the Public Libraries. Who will help us now?”. See also the “Letters” in *The Daily Telegraph* of November 17 and 27 and December 3, 4 and 11, 1964; the letter of December 3 is by Mr. D. de Freitas who clears up mistakes frequently made as to the performing right. — The Bill of the new German Copyright Act introduces a duty to compensate for borrowing copyright matter, so that the author's rights are not exhausted by the sale of the book, etc., concerned.

the jurisdiction of the Courts. It had widely been suggested that, when an obscene publication is not criminally prosecuted, but when the prosecution confines itself to seizing and destroying obscene material (Section 3 of the 1959 Act), the Magistrates' Court should exercise jurisdiction with a jury, but the legislator has not accepted such proposals, in my view quite rightly⁹). In this connection I would mention an important decision of the Court of Appeal (December 10, 1964) in a case in which a book had been seized because “it highlighted the favourable effects of drug-taking and advocated it”. The Court (Lord Parker, Messrs. Justices Sachs and Ashworth) dismissing the appeal by the publisher (*John Calder*) against the forfeiture of his book, Lord Parker said there was no reason to confine obscenity and depravity to sex. The two other Judges agreed. Leave to take the case to the House of Lords was refused¹⁰).

11. — I would refer to my last two “Letters” (*Le Droit d'Auteur - Copyright*, 1963, p. 60, V, 5; 1964, p. 58, I, 9 (a)), in which I considered the proposals by the “Committee on Industrial Designs” to introduce some kind of “Design Copyright” (*Cmd.* 1808). In the May 1964 issues of *Le Droit d'Auteur (Copyright)* and *Industrial Property*, Mr. J. W. Miles, Wellington, New Zealand, comments on “International Aspects of the Protection of Industrial Designs in the United Kingdom and in New Zealand”. He welcomes the said Committee's statement that the evidence revealed substantial support for the application of the principles of copyright to industrial designs. He points out that any artistic work should be protected by copyright, even if essentially intended to serve on industrial purposes and stresses that there is a great need for “a cheap and effective international protection” for industrial design based on the principles of the law of copyright. Kenneth Johnston, Q. C. (London) deals too in *GRUR*, International Part, July 1964, with the Committee's recommendation; he finds that the British Design Law now in force has many deficiencies and also welcomes the introduction of some kind of “Design Copyright”. The Committee's suggestion has not led so far to any legislative measure.

The Report of the Committee further recommends amplifying the Copyright Act, 1956, in order to create within its framework special protection for “Typographic Characters”, but that recommendation has so far not brought forth new legislation. Maître Louis Vaunois is also in favour of protecting “Typographic Characters” (see his “*Lettres de France*”, *Le Droit d'Auteur*, January 1964, p. 18, and July 1964, p. 182). The *International Typographic Association* at its General Meeting at Cambridge (May 1964) resolved to alter one controversial proviso in the draft set up at Geneva in 1963¹¹), so

⁹) The question how to amend the 1959 Act was hotly discussed in the Press, e. g. in *The Sunday Times*, February 16, 1964; *The Guardian*, June 3, 1964; *The Daily Telegraph*, June 4, 1964; *The Author*, Spring, Summer and Autumn 1964. See also below, Section II, 12. — It might not be without interest to note that New Zealand has created a Tribunal on censorship of indecent publications with a right to appeal to the full Court of the Supreme Court (see Sir Guy Powers in his article “The Citizen's Rights against the Modern State” in Volume 13 of the *International and Comparative Law Quarterly*, July 1964, p. 712).

¹⁰) *The Times*, *Law Report*, December 11, 1964.

¹¹) See *Industrial Property*, 1964, pp. 104 and 148. In *GRUR*, International Part, December 1964, Dr. Th. Lorenz, Vienna, discussed the contents of the draft.

that perhaps there might be some prospect of the conclusion of an international agreement.

II. Jurisprudence

1. — *Re: The Hopkins's Will Trust (Was Shakespeare the author of the works ascribed to him?).*

The so-called "*Baconian theory*" means that the plays and poems generally ascribed to *Shakespeare* are really the work of *Francis Bacon* (1561-1626). It is said that that opinion was first stressed by the Rev. *James Wilmot* in 1785. A full and definite claim for the Baconian authorship was made by *William Henry Smith* in 1859. Since then a considerable literature has appeared on this subject. It is remarkable, indeed, that the long-standing argument about whether *Francis Bacon* wrote *Shakespeare's* plays and poems has now reached the High Court, and in the very year of the quatercentenary of *Shakespeare's* birth. Mrs. *Evelyn May Hopkins* who died in 1961 bequeathed in her Will dated 1957 one third of her estate (about £6,000) to the *Francis Bacon Society* "towards finding the Bacon-Shakespeare manuscripts and in the event of the same being recovered by the date of my death, for the general purposes of work and propaganda of the Society". The *Francis Bacon Society* was formed in 1903; Mrs. Hopkins was a member of it for many years. Its objects were *inter alia* "to encourage the study of the works of *Francis Bacon* ... and to encourage the general study of the evidence in favour of *Francis Bacon's* authorship of the plays commonly ascribed to *Shakespeare*". The Society was a Charity Society. The testatrix's next of kin contested the validity of the bequest whereas in the Society's opinion it was a valid charitable trust. Thereupon, the trustees of the Will of Mrs. Hopkins issued a summons asking for a declaration that the bequest was not valid. The case was heard in the Chancery Division by Mr. Justice *Wilberforce* on June 16 and 17, 1964. Affidavits of outstanding Shakespearian experts were read at the hearing. Mr. Justice *Wilberforce* decided in his reserved judgment, read on July 8, that the bequest was a valid charitable trust. His Lordship stated that, although *Shakespeare* died in 1616, the First Folio was not published until 1623 (I would refer to my note below in Section IV, item 1) and it contained a number of plays not published during his lifetime, a fact which shows that some manuscripts of the plays must have been in existence at some time after *Shakespeare's* death. Turning to the construction of the bequest, His Lordship said that the search propagated by the testatrix was to be for real manuscripts of existing plays, once in existence. His Lordship continued that no determination of the authorship of the "*Shakespeare*" plays fell to be made in the present proceedings. The Court was only concerned with the practicability and legality of the testatrix's wishes being carried into effect. The Judge referred to the fact that some found difficulty in understanding how a man with the antecedents and known character of *Shakespeare* could have developed the literary qualities required to compose the plays. Considering all the circumstances, the Judge arrived at the conclusion that the search for the Bacon-Shakespeare manuscripts was not so manifestly futile that the Court should not allow the bequest to be spent upon it as upon an object devoid of the possibility

of any result. The evidence, the Judge argued, showed that discovery of any manuscript of the plays was unlikely, "but so were many discoveries before they were made: one might think of the Dead Sea Scrolls or the Tomb of Tutenkhamen". The Judge then answered the question whether the gift was of a charitable character in the affirmative. It seemed to His Lordship that a bequest for the purpose of search or research of the manuscripts of England's greatest dramatist (whoever he was) would be well within the law's conception of charitable purposes. His Lordship, concluding his highly interesting arguments, said: "The discovery of such manuscripts would contribute probably decisively to a solution of the authorship problem and that alone was benefit enough which might lead to improvements in the text and to more accurate dating. Therefore the bequest was for improving of our literary heritage and should be upheld"¹²).

2. — *Re: J. & C. Moores Ltd. v. Commissioners of Customs and Excise (Does copyright element increase value?).*

I refer to the report on this case in my last "Letter" (*Le Droit d'Auteur - Copyright*, 1964, pp. 59 and 60, II, 2), where the facts of the case have been stated. The House of Lords (Lord *Reid*, Viscount *Radcliffe*, Lord *Morris*, Lord *Hodson* and Lord *Pearce*) dismissed the Commissioners' appeal on June 17, 1964. The main argument put forward by the appellants was that the copyright element in the coupons was an additional consideration for the sale, and the value was to be estimated as the sum which the printer of the coupons would have added to his bill if he and not his customer (Littlewood) had been the owner of the copyright. Lord *Reid* said with the concurrence of the other learned Lords that copyright protection followed from the owner of the copyright giving the order to print, but he — His Lordship — could not see how it was in any sense a conditional consideration¹³).

3. — *Re: Arnold v. Associated Recordings Ltd. (Unfounded denial of authorship).*

Mr. *Malcolm Arnold* is the composer of *March on the River Kwai*. The work was part of the music for the film *Bridge on the River Kwai*. A theme lasting three minutes was taken from a March by *Kenneth Alford*, made in 1914, called *Colonel Bogey*. *Associated Recordings Ltd.* recorded the *March on the River Kwai* on gramophone records which they distributed. The records were sold also by *Selfridges Ltd.* The sleeve stated that it was a march from a film, written in 1914 by *Alford*; it was added that the march was originally called *Colonel Bogey*. *Arnold* sued both above named companies for libel because the text on the sleeve gave the impression that he falsely claimed credit for the work of another composer. The case was heard by Mr. Justice *Gorman* on July 29, 1964. The defendants did not contest the plaintiff's claim; they undertook to prevent any further publication of the damaging passage so that the matter was settled amicably¹⁴).

¹²) (1964) 3 W. L. R. 840; (1964) 3 All E. R. 46; *The Times*, Law Report, June 17 and 18, and July 9, 1964. See also, for instance, two articles in *The Sunday Times* of June 7, 1964, entitled "The Mark of Shakespeare" and "Bequest takes Bacon v. the Bard to High Court".

¹³) (1964) 1 W. L. R. 817; (1964) 2 All E. R. 983; *The Times*, Law Report, June 18, 1964.

¹⁴) *The Daily Telegraph*, July 30, 1964.

4. — *Re: Balliol College, Oxford v. Kimber (Universities' and Colleges' copyright in perpetuity).*

An Act, issued 1775 (15 Geo. 3, c. 53), granted to the Universities at Oxford and Cambridge, four Scottish Universities, and some Colleges (*inter alia*, Balliol College at Oxford), the *exclusive right of printing* all such books as have been or may be bequeathed to them by their authors or their representatives. This right extended also to the Universities' and Colleges' own books, as long as they were printed at the University's press and for their own benefit. This right is *perpetual*, but lapses, if the University or College concerned delegates, leases or sells its copyright or grants a licence to print such books. The copyright in any works, given or bequeathed to the respective Universities or Colleges, had to be *registered* with the Stationers' Company. The Act also contains some provisions for infringement of that copyright. Although the Act of 1775 was repealed by the Copyright Act, 1911, Section 33 of the latter Act provides that "nothing in this Act shall deprive any of the Universities and Colleges, mentioned in the Copyright Act, 1775, of any copyright they already possess under that Act". Section 46 (1) of the Copyright Act, 1956, maintains any rights conferred on Universities and Colleges by the Copyright Act, 1775, but the provisions of Part III of the 1956 Act ("Remedies for Infringements of Copyright") "shall apply for the enforcement of those rights as if they were copyright subsisting by virtue of the 1956 Act". Thus the rights of the Universities and Colleges concerned have been maintained, but new privileges cannot be acquired under the Act of 1956. In the cases mentioned above there still exists in the United Kingdom copyright in *perpetuity*, and strange enough a suit arose in 1964 in connection with that old Act. Two *Plato dialogues* had been translated into English by Benjamin Jowett, the great Master of Balliol College, Oxford. He died in 1893, leaving his copyright in those translations in the hands of that College. Absolutely unaware of the legal situation, the publishers William Kimber & Co. Ltd., London, published copies of those translations coupled with two Hindu treatises on love. Referring to its copyright under the 1775 Act, Balliol College objected to such publication. This peculiar but quite interesting case was settled by an apology and payment of a nominal amount as amends¹⁵).

5. — *Re: Dorling v. Honnor Marine Ltd. and Another (Infringement of artistic copyright in plans to build boats).*

The plaintiff, T. J. Dorling, who was not a professional boatbuilder, designed a 14-foot sailing dinghy which he named the "Scorpion" and formed the "Scorpion Class Association". He did not register the design of the boat under the Registered Designs Act, 1949, although it could have been registered; it was not in dispute that the plans could not be registered under that Act. In 1959, he granted a licence to Colonel Th. P. Honnor, the second defendant, to become a builder of "Scorpion" boats and supplied him with all the relevant material. That licence had terminated in the following year. Colonel Honnor formed a company, the Honnor Marine Ltd., the first defendant, and purported to have

assigned his licence before its termination to that company (hereinafter referred to as "the Company"). As the Company had started to build boats according to the plaintiff's plans, the latter sued both defendants in the Chancery Division and asked for an injunction to stop the defendants building "Scorpions" to his design and to have the copies of the plaintiff's plans returned to him. The plaintiff took the view that the defendants infringed his copyright in the plans by their three-dimensional reproduction in the form of complete boats, as well as kits of parts, and also their reproduction in the form of photographs.

Mr. Justice Cross rejected the action, holding that the Company could not rely on the assignment of the licence as the same was personal and, therefore, not assignable, but that the plaintiff had lost his artistic copyright under Section 10 (3) of the Copyright Act, 1956, having failed to register the design of the boat under the Designs Act, 1949. That rather complicated proviso denies copyright infringement in a work which would have been within the scope of copyright in the design if the design had been registered under the 1949 Act. The plaintiff appealed, however, only against the Company. The Court of Appeal (Lords Justices Harman, Danckwerts and Davies) allowed the appeal on December 19, 1963, after a hearing of four days. The main argument put forward by the three Lords Justices in their rather long votes was that the plaintiff had not been deprived of his remedies under the Copyright Act, 1956, because the plans and the parts made therefrom were not registrable under the Registered Designs Act, 1949; the Court further held that the drawing of a part of the boats and the completed boats were reproductions of the plaintiff's plans and infringed his copyright therein. The injunctions sought were granted and an inquiry as to damages was ordered¹⁶).

6. — *Re: John Calder (Publishers) Ltd. v. Dagg Books Ltd. and Others (Infringement of copyright in the book "Tropic of Capricorn").*

Henry Miller, the author of the above book, had granted to John Calder (Publishers) Ltd., London, the exclusive right to publish the book in the British Commonwealth with the exception of Canada. Calder had more than 500,000 copies of the book ready for publication which was to start in the middle of February 1964. Dagg Books Ltd. and Godfrey Gold, a director of that company, were selling in Great Britain copies of *Tropic of Capricorn* which had been imported from the USA but had not been issued by the USA publishers, the author's agents. On February 7, 1964, Mr. Justice Ungood-Thomas granted Calder an interim injunction restraining the defendants from selling or distributing such unauthorised copies, which injunction was made definitive on February 18, 1964, the trial of the motion for injunction having been treated as the trial of the case¹⁷).

7. — *Re: Donmar Productions Ltd. v. Bart and Others (Film, radio and television rights in the musical play "Oliver!").*

Lionel Bart is the author of the musical play *Oliver!* which was produced by the plaintiffs, Donmar Productions

¹⁵) (1964) 2 W. L. R. 195.

¹⁷) *The Times, Law Report*, February 8 and 19, 1964.

¹⁵) Reported in the *Evening Standard* of February 6, 1964.

Ltd., and had been running for the last three or four years in the West End and in New York. *Montpelier Arts & Enterprises Ltd.*, theatrical agents, were entrusted with the management of Mr. Bart's business affairs. The above case related to an agreement concluded in May 1959 between Mr. Bart and the plaintiffs, which provided that if Mr. Bart received a *bona fide* offer for the world motion picture, radio and commercial television rights of the play, he should immediately notify the plaintiffs of such offer; if such offer should be unacceptable to the plaintiffs, they should within 10 days either submit a better *bona fide* counter-offer from a third party or themselves offer to purchase the said world rights on the same terms as the original offer, and Mr. Bart would be bound to accept such offer. On May 5, 1964, *Brookfield Productions Ltd.* made an offer to purchase the world rights for \$400,000 to be guaranteed by *Columbia Picture Corporation*, and offered \$100,000 to Mr. Bart if he collaborated in the film production of the play. The plaintiffs, informed of that offer, transmitted a counter-offer from *Romulus Films Ltd.*, increasing the above sums to \$450,000 and \$112,500 respectively, whereupon *Brookfield* increased their offer to the sums offered by *Romulus*. Mr. Bart was not willing to accept the *Romulus* offer; he preferred the *Brookfield* offer mainly because he wished the well-known actor, *Peter Sellers*, to appear in the film and the latter refused to work with *Romulus*. Thereupon the plaintiffs sued *Bart*, *Montpelier* and two companies associated with *Bart* and *Brookfield* and asked for an injunction restraining the first four defendants, until the trial of the action or further order, from disposing of the copyright, otherwise than to *Romulus Films Ltd.*, of the play, *Oliver!*, as relates to the production of such play or parts thereof in motion picture form or by radio or commercial television in any part of the world; an injunction was further claimed restraining *Brookfield* from acquiring those rights pending trial of the action. The case was heard by Mr. Justice *Ungoed-Thomas* on June 3, 1964, and the next two days. The Judge said that the *Romulus* offer was to be objectively assessed at the time of the offer *qua* offer in the context of the 1959 agreement. The plaintiffs — the Judge said — had established their rights in the sense in which they claimed under the 1959 agreement, and also on the basis of convenience it was desirable that the *status quo* should be maintained until the trial of the action. The injunctions were therefore granted as requested¹⁸).

8. — *Re: Pickwick v. Alfred Records Ltd. (Infringement of copyright in record sleeves).*

Pickwick International Inc., New York, were the owners of the copyright in certain record sleeves and *Pickwick International (Great Britain) Ltd.*, London, started to sell records in those sleeves in England. They sued the defendants, *Alfred Records Ltd.* and *Recordings (Sales) Ltd.*, London, for copyright infringement and passing off, because the defendants had reproduced the whole or a substantial part of some of

those record sleeves. On the plaintiffs' motion Mr. Justice *Stirling*, after having found the sleeves used by the defendants confusingly similar to those used by the plaintiffs, granted the latter an interim injunction as asked for (September 9, 1964). At the hearing of the case on October 2, 1964, the defendants gave a perpetual undertaking not to infringe the plaintiffs' copyright, whereupon Mr. Justice *Pennycuik* made an Order in the terms of the said interim injunction¹⁹).

9. — *Re: New Realm Pictures Ltd. v. Astor Pictures Inc. and Others and the BBC (Alleged infringement of copyright in a film).*

In August 1962, *BBC Television* showed in the feature entitled "The Saturday Film" a film: *The Devil and Miss Jones*. *New Realm Pictures Ltd.*, London, alleged that they owned the copyright in that film and sued in the Queen's Bench Division *Astor Pictures Inc.*, New York, and some other New York film companies and the *BBC* for infringement of copyright and breach of contract, asking for an account of profits and damages. The *BBC* claimed to be entitled to indemnity in respect of any alleged infringement of copyright under a contract concluded in February 1962. On December 11, 1963, the High Court made an Order for particulars and discovery which has not yet been complied with by the plaintiffs, nor has the Third Party Defence been delivered yet. It might be that the plaintiffs wish to abandon the case, so that the question of copyright infringement is still open²⁰).

10. — *Re: APRA v. Canterbury-Bankstown Leagues' Club (hereinafter referred to as "the Club") (Authorising performance).*

I feel I should include the following case in this paper although it was not decided in the United Kingdom, but in *Australia*.

(a) The facts were as follows: The Club arranged Saturday night entertainments for members and their guests at which were performed musical works which were controlled by the *Australasian Performing Right Association (APRA)*, without the Association's consent. A man had been employed by the Club as an *independent* contractor to act as Master of Ceremonies; he was given a free hand to run the entertainment and all instructions to the hand were given by him. On these facts, the Club, sued by *APRA* for copyright infringement, denied its responsibility for authorising the performance of copyright music.

(b) The two issues were: (i) Was the performance a *public* one? (ii) Did the Club *authorise* the performance by the band of the copyright music?

The Equity Court at Sydney (Mr. Justice *Jacobs*) answered both questions in the affirmative and granted the injunction sought by *APRA*. The appeal brought by the Club was unanimously rejected by the Supreme Court on May 18, 1964. Mr. Justice *Ferguson*, giving the judgment of the Court, said *inter alia*: "Because of the particular facts in this case, I regard this decision as giving the *widest meaning to the word*

¹⁸ *The Times*, *Law Report*, June 4, 5 and 6, 1964; *The Daily Telegraph* of the same days; *The Financial Times*, June 6, 1964. In this connection, it might not be without interest to note that *Bart's* income from all sources (shows, film rights, song royalties) is estimated at £8,000 per week (*Evening Standard*, October 22, 1964).

¹⁹ *The Times*, *Law Report*, September 10 and October 3, 1964.

²⁰ *Evening Standard*, January 5, 1963.

'authorise' which has ever been given in England or Australia... If the performance in this case were not held to be a performance in public, copyright protection would be a mockery".

The appeal of the defendant Club was unanimously dismissed in May 1964 by the Australian Supreme Court and an application for Special Leave to a further appeal was refused by the High Court (August 1964), so that the above decision has become final²¹).

The decision seems to me to deserve particular attention because of the wide interpretation of the term "authorise".

11. — *Re: Pinion deceased (The value of paintings).*

I refer to the report on the above case in my last "Letter" (*Le Droit d'Auteur - Copyright*, 1964, pp. 74 and 75, II, 12). Mr. Justice Wilberforce had held that Mr. Pinion's bequest of his estate including his studio with the deceased's paintings to a trust to be formed was a valid charitable trust. Pinion's sister to whom his estate would have devolved in the case of the invalidity of the bequest appealed. The Court of Appeal (Lords Justices Harman, Davies and Russell) decided unanimously that the Judge's opinion should not be maintained. Lord Justice Harman said that the gift to an established museum was charitable. In the present case it was suggested that education in the fine arts was the object, but in his Lordship's opinion, based on the view expressed by the expert witnesses, the collection was worthless and the deceased's paintings were "atrociously bad" so that it was impossible to speak of any purpose to educate the public in the fine arts. He — His Lordship — could "conceive no useful object to be served in foisting upon the public this mass of junk". "*De minimis non curat lex*", added Mr. Justice Russell! The deceased's sister became, therefore, entitled to the entire estate as Mr. Pinion was held to have died intestate²²).

12. — *Re: The "Fanny Hill" Case (Obscene novel).*

I dealt with this case in my last "Letter" (*Le Droit d'Auteur - Copyright*, 1964, p. 76, II, 17). The case was heard — without a jury as provided for in Section 3 of the Obscene Publications Act, 1959 — by the Bow Street (London) Magistrate, Sir R. Blundell, on February 2 and 10, 1964. Several literary experts described the novel as of historic and literary merit. Reviewing the evidence, Sir R. Blundell said he had to have regard "to a due sense of the realities"; he had no hesitation — he continued — in saying that the seized books should be forfeited as obscene²³). No appeal has been lodged. Magistrates in other Districts decided in the same sense. It has often been said that prosecuting a book as obscene is unfortunately the best propaganda for it. This is what also happened in the *Fanny Hill* case which has attracted widespread attention (in my view, much more than the novel deserves). Regarding Henry Miller's *Tropic of Capricorn* (see

above under II, 6) the Director of Public Prosecutions decided that proceedings should not be instituted as he considered the novel not to be obscene in spite of its many sexual episodes. In this connection I would add that contrary to the well-known verdict of an English jury — see my "Letter" in *Le Droit d'Auteur*, 1961, p. 114, II, 7 — the Supreme Court of India declared *Lady Chatterley's Lover* to be obscene; the Court found that the portions dealing with sex were the only attraction to the common man. Even an expurgated version of the novel was found obscene and was confiscated by an Edinburgh Magistrate (October 21, 1964).

13. — *Re: W. H. Allen & Co. v. Brown Watson Ltd. (Right in the title of a book).*

W. H. Allen & Co. were the publishers of a full unexpurgated edition of the Autobiography *My Life and Loves* by Frank Harris. In 1964 the defendants put out a circular announcing their forthcoming publication of an expurgated version (paperback) of the said book under the title *My Life and Loves*, by Frank Harris. On the motion by the plaintiffs, Mr. Justice Pennycuik granted them an injunction to restrain the defendants from passing off an abridged expurgated version of the book — which the defendants had advertised as "the explosive bestseller at the moment" — under the same title as the plaintiffs' book. The Judge said that the plaintiffs had acquired a distinctive reputation in that title and if anyone published a book under the same title he was doing something which was likely to deceive; that would mean passing off²⁴).

14. — *The Legal and Tax Situation of the BBC.*

I dealt briefly in my last "Letter" (*Le Droit d'Auteur - Copyright*, 1964, p. 84, V, 5) with the decision by Mr. Justice Wilberforce who had held the *British Broadcasting Corporation* liable to income tax. The BBC's appeal was heard by the Court of Appeal (Lords Justices Willmer, Danckwerts and Diplock) on March 5, 1964. Like Mr. Justice Wilberforce the Court did not accept the BBC's point of view that the Corporation was "an emanation of the Crown" and, therefore, entitled to Crown status. "The BBC", Lord Justice Willmer said, "is not strictly comparable to any other institution." The Court, however, was in favour of the BBC's alternative argument that the surplus remaining in its hands at the end of the year out of the annual grant made to it by Parliament was not income, which surplus in theory, but not in practice, reverted to the source — the Exchequer — from which it had come. Lord Justice Willmer argued that the BBC had no more made a profit than did "the housewife who managed to get through the week without spending the whole of her husband's housekeeping allowance". The Court, therefore, unanimously allowed the BBC's appeal in so far as the said surplus was concerned. The BBC had admitted that it did not enjoy immunity. The Corporation was liable to income tax on investment income, profit from trading activities, such as its publications. Leave to appeal to the House of Lords was refused to the defendant, the Inspector of Taxes²⁵).

²¹) See the Report in *APRA Bulletin*, No. 2, June 1964. A similar case — Musical performances given in a Club held to be given "in public" — is referred to in the "Letter from Denmark" by Professor Torben Lund, Aarhus, Denmark, published in *Le Droit d'Auteur (Copyright)*, October 1964, p. 168.

²²) (1964) 2 W.L.R. 919; (1964) 1 All E.R. 890; *The Times*, Law Report, February 29, 1964.

²³) Compare, for instance, *The Daily Telegraph*, February 11, 1964.

²⁴) *The Times*, Law Report, November 10 and 21, 1964.

²⁵) (1964) 2 W.L.R. 1071; (1964) 1 All E.R. 923; *The Times*, Law Report, March 6, 1964; *The Financial Times*, March 21, 1964.

15. — *The Net Book Agreement.*

(a) In my "Letter" of March 1963 (*Le Droit d'Auteur - Copyright*, 1963, p. 51, II, 10), I referred to the above Agreement under which publishers had agreed that if a publisher fixed a "net" price for his books he would act against anyone selling under the stipulated retail price. The Restrictive Practices Court had declared the restriction in that Agreement not to be against public interest. The said Agreement had been concluded between members of the Publishers' Association. An Agreement on virtually identical terms had been concluded between publishers not members of the said Association. That Agreement came before the Restrictive Practices Court under the chairmanship of Mr. Justice Mocatta on February 14, 1964. The Court decided in the same sense as in the case of the first mentioned Agreement; the Registrar had raised no objections²⁶).

(b) The *Resale Prices Act 1964* prevents manufacturers and other suppliers of goods from imposing conditions for maintaining *minimum prices*, but the Restrictive Practices Court is entitled to order under certain circumstances that particular classes of goods should be "exempted goods". During the debates on the Bill in Parliament an amendment was proposed to exempt the Net Book Agreement from the application of the said Act, but the amendment was rejected. It will, therefore, be required to apply to the said Court for declaring books covered by the Net Book Agreement "exempted goods". This is regretted in the circles concerned, all the more so as the procedure before the Court which ended in the decision of 1962 had lasted three years and had involved high costs²⁷).

16. — *Re: McCarey v. Associated Newspapers Ltd.* ((a) *Absolute privilege of reports on Court proceedings*; (b) *Excessive damages for libel*).

(a) The radiologist, Dr. A. G. McCarey, had inadvertently given a patient an injection of surgical spirit instead of saline, which caused the death of the patient. Dr. McCarey admitted that he alone was responsible. Four newspapers, all issued by *Associated Newspapers Ltd.*, reported that at the inquest on the patient the Coroner had rebuked Dr. McCarey for shifting responsibility to someone else. In fact, the Coroner had rebuked another person, not Dr. McCarey whose be-

haviour had been blameless. Dr. McCarey sued *Associated Newspapers Ltd.* for libel. Mr. Justice Thompson ruled that *fair and accurate reports* on Court proceedings enjoyed *absolute privilege* and that that also applied to such reports on proceedings before the *Coroner's Courts* (Coroners have to hold inquests on bodies of persons presumed to have died by violence or accident). In his summing-up the Judge told the jury they had to say whether the report was fair and accurate. The jury returned a verdict of Guilty and awarded the plaintiff £ 9,000 as *damages*.

(b) The defendants *appealed* against the amount of damages. The Court of Appeal (Lords Justices Willmer, Pearson and Diplock) ordered a *re-trial* limited to the question of *damages* (November 6, 1964). The Court said the plaintiff suffered damage to his reputation. Lord Justice Pearson pointed out that the amount of £ 9,000 was too high if compared with damages awarded, for instance, for the loss of a leg; the jury seems to have awarded *punitive damages*, but — as ruled by the House of Lords in *Rookes v. Barnard*²⁸) — *punitive damages* ought to be awarded only in the case of oppressive, arbitrary or unconstitutional conduct of Government servants, or if the defendant's conduct had been calculated by him to make a profit for him, none of which happened in the present case; the sum of £ 9,000 should, therefore, not be allowed to stand. The two other members of the Court concurred.

This decision seems to me to be noteworthy, all the more so as it deals with the principles for awarding damages in libel cases, as juries are frequently inclined to award excessive damages in such cases²⁹).

(To be continued)

Dr. Paul ABEL
Consultant on International
and Comparative Law
London

²⁸) (1964) 2 W.L.R. 269; (1964) A.R. 1129; (1964) 1 All E.R. 36; *The Times*, *Low Report*, January 22, 1964.

²⁹) (1964) 1 W.L.R. 855; (1964) 2 All E.R. 835; *The Times*, *Low Report*, April 22 and November 7, 1964. I would refer to the comments in my last "Letter" in Section I, 10 (*Le Droit d'Auteur - Copyright*, 1964, p. 58). The importance of the decision for publishers and newspapers is pointed out in an article in *The Sunday Times* of November 15, 1964, headed "Bringing the Price of Reputations down to Earth". In this connection I would refer to a case in which a much higher sum was awarded: the long-drawn case of *Rubber Improvement Ltd. v. Associated Newspapers Ltd.* and *The Daily Telegraph* in which the award was set aside by the Court of Appeal as excessive (1962; 2 W.L.R. 1062, reported in my "Letters" published in *Le Droit d'Auteur - Copyright*, 1962, pp. 36 and 37, II, 9 (A) and 10; 1963, pp. 56 and 57, II, 23; and 1964, p. 77, II, 21). (That case was settled on December 17, 1964, by payment to the plaintiffs of a relatively small amount.)

²⁶) (1952) L.R. 3 R.P. 246; (1962) All E.R. 251; *The Times*, *Law Report*, October 31, 1962. Decision of February 14, 1964; (1964) L.R. 4 R.P. 484; *The Times*, *Low Report*, February 15, 1964.

²⁷) *The Author*, Summer and Autumn 1964. J. Lever discusses in his book *The Law of Restrictive Practices and Resale Prices Maintenance* (Sweet & Maxwell, 1964) the "Net Book Agreement".

INTERNATIONAL ACTIVITIES

Thirteenth Session of the General Conference of Unesco

(Paris, October 20 to November 20, 1964)

The thirteenth session of the General Conference of the United Nations Educational, Scientific and Cultural Organisation (Unesco) was held in Paris at the headquarters of the Organisation, from October 20 to November 20, 1964.

The delegates of 117 Member States of Unesco took part, as well as observers from the United Nations and its specialised agencies and from various intergovernmental organisations including BIRPI (represented at certain of the Programme Commission's meetings by Mr. C. Masouyé, Counsellor, Head of the Copyright Division). Non-governmental organisations enjoying consultative status with Unesco were also represented.

The General Conference elected Professor N. M. Sissakian (USSR) as its President and Mr. S. J. Cooke (Nigeria) and H. E. Mr. B. Tuncel (Turkey), respectively, as Chairmen of its Programme Commission and Administrative Commission. It approved the Organisation's programme for 1965-1966 which will be financed out of a budget of 48,857,000 dollars, i. e. an increase of approximately 10 million dollars over the previous year.

At the close of the deliberations, the General Conference adopted a number of resolutions, including Resolution 3,336 concerning copyright and neighbouring rights, which is reproduced below:

"In order to encourage and improve both nationally and internationally the protection of the rights of authors and/or persons performing, recording or broadcasting the works of authors,

I

Member States are invited, if they have not already done so, to become parties by ratification, acceptance or accession,

- (a) to the Universal Copyright Convention, and
- (b) to the International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations.

II

The Director-General is authorized:

- (a) to maintain the services necessary for the implementation of the Universal Copyright Convention and the International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations, in particular, by collecting and disseminating information through the *Unesco Copyright Bulletin* and other publications;
- (b) to assist Member States to develop national copyright legislation by such means as convening meetings and granting fellowships;
- (c) to give African Member States the support necessary to assist them in drawing up their national copyright legislation and in forming copyright societies;
- (d) to give consideration, when preparing the Draft Programme and Budget for 1967-1968, to the question of assisting African Member States in developing national copyright legislation."

JURISPRUDENCE

FRANCE

I

Industrial and commercial property. Designs. Unlawful reproduction. Notion. Originality. Identical designs in conformity with contemporary taste. Influence of a general tendency. Lack of originality. Invalid deposit. Absence of protection. Application in respect of furniture.

(*Cour d'appel de Lyon, 4^e Ch. corr.*, February 21, 1964. — M. P. and Société Durand v. Séguin)

If it is established that the same designer has devised for all his furniture manufacturing clients identical designs in conformity with contemporary taste, granting that in the modern age the industry is of necessity influenced by a general tendency demanded by purchasers as a body and facilitated by the use of machinery, a tendency comparable to that of fashion, it is exclusive of any originality of such a nature as to be recognisable in a given design.

Thus, if the articles of furniture produced by a manufacturer are commonly produced by various undertakings of a similar nature, they do not present the characteristics of creative works in the commercial field. Having fallen into the public domain, such designs cannot be validly deposited nor can they obtain legal protection for those who produce them.

II

Designs. Toys. Unlawful reproduction.

(*Cour d'appel de Paris, 4^e Ch.*, October 15, 1964. — Walt Disney v. M., importers, and S., trader)

Although in the field of artistic creation the "anthropomorphisation" of animals dates back to the most ancient times, the designer who makes a statnette patterned on the duck (whose features it distorts) and on man (whose stature it borrows) creates, within the meaning of the Act of March 11, 1957, a new and original work whose reproduction is prohibited without the consent of its author.

The reproduction need not be a slavish copy to be considered illegal, so long as the object alleged to have been unlawfully reproduced has the same essential features of creative imagination as those which characterise the original work.

In particular, the maker of an unlawful reproduction would be ill-advised to claim that the "expression" described by him as "psychological", of the imaginary figure he has devised on the pattern of the original work differs from that of the original work, when, on the one

hand, the original design represents an animated humorous figure, which is therefore capable of different expressions, and when, on the other hand, the original model and the alleged unlawful reproduction are so closely related that, even if a buyer had both of them under his very eyes at the same time, he could easily confuse them, however attentive he might be.

The manufacturer who has infringed the designer's rights by making objects, in the form of toys, reproducing the original design shall be sentenced to repair the damage thus caused to the author of the design, and it follows that, in order to ensure a fuller and more effective protection of the works which have been unlawfully reproduced, the judgment condemning the said unlawful reproductions shall be published at the expense of the maker of the same.

III

Literary and artistic property. Protected works. Applied arts. Utilitarian objects. Minor differences of form and material not excluding unlawful reproduction. Anticipation of all parts required for destruction of novelty.

Presumption of bad faith. Assessment criteria for damages.

(*Cour d'appel de Paris, 4^e Ch.*, October 8, 1964. — Cristalleries de Saint-Louis v. Dupont-Desfontaines et Fils and Verreries et Gobeletteries Doyen)

Imitation takes place when the infringing work confines itself to introducing into the protected work minor differences having no noticeable effect on its configuration or its external appearance and leaving the risk of confusion undiminished.

Drinking glasses are strictly utilitarian objects, but they may include variations as to form and ornamentation which, without altering the ordinary commercial result, make them genuine intellectual works within the meaning of Article 1 of the Act of March 11, 1957.

Failing anticipation of all the elements as a whole, anticipation of individual parts is not sufficient to destroy novelty.

The difference in the material, far from eliminating unlawful reproduction, aggravates it to the extent that when manufactured in inferior materials it can only lower the value of the protected work.

The Act of 1957 on literary and artistic property enacts a presumption of bad faith.

Sentence for unfair competition requires other prejudice apart from unlawful reproduction.

Moral prejudice, trade interference, inconvenience, waste of time and expenses arising from legal proceedings are all criteria for assessing the amount of the damages.

OBITUARY

Louis Vaunois

Once again, at the end of last year, death struck the ranks of the defenders of intellectual rights in France: Maître Louis Vaunois, Barrister at the Court of Paris, passed away on December 24, 1964. He had been his country's correspondent to our review and readers have been able to appreciate the "Letters from France" which he sent us at regular intervals. He had taken over the job in 1943 from his father, Albert Vaunois, who had first started to write for *Le Droit d'Auteur* in 1912, thus carrying on a family tradition of intelligent and esteemed collaboration for more than half a century.

In his periodical reviews of legislative developments and jurisprudential decisions in France in the field of literary and artistic property, Louis Vaunois brought into play his qualities as an eminent jurist, a remarkable annalist, a meticulous observer and a polished writer. He was skilled in sifting out from doctrinal controversies or court judgments the essentials which, with the passing of time, must prevail over private quarrels. He had full command of the subjects and cases he dealt with and, when summing them up with his usual care and precision, he sometimes ventured to submit suggestions or criticisms prompted by his own legal convictions. Supported by personal reflections and written in a pleasing style, his "Letters" have enriched legal literature and they leave us with a feeling of moved gratitude towards the writer who has now laid down his pen for ever.

His constant and unfailing cooperation with *Le Droit d'Auteur*, however, was only one of the aspects of the tireless activity of Louis Vaunois. Born in Paris on September 14, 1892, he was called to the Bar of that city in 1920, where his intellectual distinction and his attractive style of pleading in Court immediately commanded attention. His career as an

advocate was brilliant and some of his cases at the Seine Assizes, for example, excited universal interest. Thanks to his gifts as a speaker, he was a very fine lecturer, particularly admired by the Paris audiences of the *Université des Annales*.

But his favourite pursuit, and a constant influence on his tastes, was poetry. Apart from a play in verse performed at the *Comédie Française* under the title *L'adieu*, he published many volumes of poetry (including *L'indifférent*) as well as an anthology entitled *Les poètes de la vie* grouping more than 110 poets and containing only original and unpublished works, a venture which had not been attempted since the *Contemporary Parnassus*. To sing the poetry of life, but also to make the past live again: these were the aims of Louis Vaunois, the writer. Thus, he was the author of some remarkable historical works, including *Le roman de Louis XIII* and *La vie de Louis XIII*, awarded a prize by the *Académie Française*, as well as several novels on contemporary life. President of the *Revue des Etudes historiques*, he was the moving spirit behind the *Société Racinienne* and was in charge of the publication of the *Cahiers Raciniens*, offering scholars valuable documentation on the great dramatist, Jean Racine.

His death leaves a great blank which his friends in the profession find it difficult to bear. His intelligence, his refinement, his courtesy and his charm will remain in our recollection of Louis Vaunois, who, it will be remembered, was the descendant of Marie Racine, the only sister of Jean Racine.

"Dans quel repos, ô ciel, les avez-vous coulés!"

(Britannicus)

Claude MASOUYÉ
Counsellor

CALENDAR

Meetings of BIRPI

Date and Place	Title	Object	Invitations to Participate	Observers Invited
March 11 and 12, 1965 Geneva	Advisory Group of the International Committee of Novelty-Examining Patent Offices	Industrial property statistics; index of parallel patents	Austria, Canada, France, Germany (Fed. Rep.), Japan, Poland, Sweden, Switzerland, United Kingdom of Great Britain and Northern Ireland, United States of America	International Patent Institute, Committee for International Cooperation in Information Retrieval among Examining Patent Offices (ICIREPAT)
March 15 to 19, 1965 Geneva (Headquarters of ILO)	Committee of Experts on Inventors' Certificates	To study the problem of inventors' certificates in relation to the Paris Convention	All Member States of the Paris Union	Union of Soviet Socialist Republics, United Nations, Council of Europe, International Patent Institute, Organization of American States, Inter-American Association of Industrial Property, International Association for the Protection of Industrial Property, International Chamber of Commerce, International Federation of Patent Agents
March 22 to April 2, 1965 Geneva (Headquarters of ILO)	Committee of Experts on the Administrative Structure of International Cooperation in the Field of Intellectual Property	To study a draft Convention on administrative structure	All Member States of the Paris and Berne Unions	Union of Soviet Socialist Republics, United Nations, International Labour Organization, United Nations Educational, Scientific and Cultural Organization, World Health Organization, Council of Europe, International Patent Institute, Organization of American States, Inter-American Association of Industrial Property, International Association for the Protection of Industrial Property, International Bureau for Mechanical Reproduction, International Chamber of Commerce, International Confederation of Societies of Authors and Composers, International Federation of Patent Agents, International Literary and Artistic Association
May 4 to 7, 1965 Geneva	Committee of Experts for the Classification of Goods and Services	To bring up to date the international classification	All Member States of the Nice Union	
May 18, 1965 Geneva (Headquarters of ILO)	Constitution of the Intergovernmental Committee (Neighbouring Rights). Meeting convened jointly with ILO and Unesco	Application of Article 32 (1), (2) and (3) of the Rome Convention	Czechoslovakia, Congo (Brazzaville), Ecuador, Mexico, Niger, Sweden, United Kingdom of Great Britain and Northern Ireland	
July 5 to 14, 1965 Geneva	Committee of Governmental Experts preparatory to the Revision Conference of Stockholm (Copyright)	Examination of the amendments proposed by the Swedish/BIRPI Study Group for the revision of the Berne Convention	All Member States of the Berne Union	Certain Non-Member States of the Berne Union, Interested international intergovernmental and non-governmental organizations
September 28 to October 1, 1965 Geneva	Interunion Coordination Committee (3rd Session)	Program and budget of BIRPI	Belgium, Brazil, Ceylon, Czechoslovakia, Denmark, France, Germany (Fed. Rep.), Hungary, India, Italy, Japan, Morocco, Netherlands, Nigeria, Portugal, Rumania, Spain, Sweden, Switzerland, United Kingdom of Great Britain and Northern Ireland, United States of America, Yugoslavia	All other Member States of the Paris Union or of the Berne Union; United Nations

Date and Place	Title	Object	Invitations to Participate	Observers Invited
September 29 to October 1, 1965 Geneva	Executive Committee of the Conference of Representatives of the Paris Union (1 st Session)	Program and activities of the International Bureau of the Paris Union	Ceylon, Czechoslovakia, France, Germany (Fed. Rep.), Hungary, Italy, Japan, Morocco, Netherlands, Nigeria, Portugal, Spain, Sweden, Switzerland, United Kingdom of Great Britain and Northern Ireland, United States of America, Yugoslavia	All other Member States of the Paris Union; United Nations

Meetings of Other International Organizations concerned with Intellectual Property

Place	Date	Organization	Title
Paris	March 1 to 6, 1965	International Confederation of Societies of Authors and Composers (CISAC)	Federal Bnreaux, Legislative Committee and Confederal Council
Strasbourg	April 5 to 9, 1965	Council of Europe	Committee of Experts on Patents
Caracas	May 4 to 6, 1965	Inter-American Association of Industrial Property (ASIPI)	Administrative Council
Namur	May 23 to 27, 1965	International League Against Unfair Competition	Congress
Stockholm	August 23 to 28, 1965	International Literary and Artistic Association (ALAI)	Congress
London	August 31 to September 10, 1965	Committee for International Cooperation in Information Retrieval among Examining Patent Offices (ICIREPAT)	Fifth Annual Meeting
Tokyo	April 11 to 16, 1966	International Association for the Protection of Industrial Property (IAPIP)	Congress