Copyright

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Contents

NATIONAL LEGISLATION

DENMARK

Ordinance Amending the Decree on the Application of the Law on Copyright in Literary and Artistic Works and the Law on Rights in Photographic Pictures with Respect to Foreign Countries [1])

(Of November 18, 1963) [2])

We, Frederik The Ninth, hy the Grace of God King of Denmark, the Wends and the Goths, Duke of Slesvig, Holstein, Storman, Ditmarsken, Lauenhorg and Oldenborg, do herehy decree:

Since Denmark has acceded to tbe Berne Convention for the Protection of Literary and Artistic Works as revised in Brussels on June 26, 1948, to the Universal Copyright Convention of Septemher 6, 1952, and to the European Agreement of June 22, 1960, on the protection of television broadcasts, the following is prescribed pursuant to Section 60 of Act No. 158 of May 31, 1961, on Copyright in Literary and Artistic Works, and Section 20 of Act No. 157 of May 31, 1961, on Rigbts in Photograpbic Pictures, as regards the application of the provisions in the aforesaid Acts in relation to countries which have acceded to the above-mentioned international agreements:

Berne Convention

Section 1. — The provisions in the Act on Copyright in Literary and Artistic Works, with the exception of Chapter V, shall be applicable, with the modifications enumerated in Sections 2 to 4, in respect of

1. works by foreign authors who are nationals of countries that are parties to the International Union for the Protection of Literary and Artistic Works (the Berne Union), in the case of puhlished works, conditional to the works either heing published for the first time in a foreign country of the Union, or published in a country of the Union simultaneously with or within 30 days after their first puhlication in a country outside the Union;
2. works by foreign authors who are not nationals of countries that are parties to the Union, if the works are published for the first time in a foreign country of the Union or are published in a country of the Union simultaneously with or within 30 days after their first puhlication in a country outside the Union;
3. works of architecture by foreign authors, if the works are erected in a foreign country of the Union;
4. works of graphic or plastic art hy foreign authors, if the works form part of a building located in a foreign country of the Union.

Section 2. — (1) When the term of protection for a work has expired according to the legislation in force in the country of origin of the work, the work shall not enjoy protection under the provisions of the Copyright Act with the exception of Sections 51 to 53.

(2) The country of origin for published works sball he considered to be the country in wbich tbe work is publisbed for the first time, or in the case of the work being puhlished simultaneously or within 30 days in two or more countries of the Union with different terms of protection, the one which has the shortest term of protection. For works puhlished in a country of the Union simultaneously with or within 30 days after their first publication in a country outside the Union, the country of the Union alone shall he regarded as the country of origin.

(3) The country of origin for unpuhlished works shall he considered to be the country to which the author belongs. For works of architecture or works of graphic or plastic art, forming part of huildings, the country of origin shall be considered to be the country of the Union where these works have heen erected or incorporated in huildings.

Section 3. — For such works of applied art and industrial designs and models which in the country of origin are solely protected as designs and models, protection shall only he given under the Danish laws on designs.

Section 4. — For works created by nationals of Thailand the provisions in Section 2, paragraph (1), and Section 3 are not applicable.

Section 5. — With regard to the application of the provisions in the Act on Rights in Photograpbic Pictures in relation to countries that are parties to tbe Berne Union, the rules prescribed in Sections 1 to 4 shall he similarly applicable.

Universal Copyright Convention

Section 6. — The provisions in the Act on Copyright in Literary and Artistic Works, with the exception of Chapter V, shall he applicahle, with the modifications enumerated in Sections 7 and 8, in respect of

1. works by foreign nationals of countries that are parties to the Universal Copyright Convention of 1952;
2. works by foreign authors when the works have been published for the first time in a foreign Contracting State;

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1) See *Le Droit d'Auteur (Copyright)*, 1963, p. 69.
2) Official translation kindly communicated by the Ministry for Cultural Affairs of Denmark.

3. works by foreign authors who are domiciled in a foreign Contracting State, provided that this State in its legislation accords such persons equal treatment with its own nationals in respect to the application of the Universal Copyright Convention;
4. works by stateless persons and refugees who have their habitual residence in countries that have acceded to Protocol No. 1 of the Universal Copyright Convention.

Section 7. — (1) When the term of protection for a work has expired according to the legislation in force in the country of origin of the work, the work shall not enjoy protection under the provisions of the Copyright Act with the exception of Sections 51 to 53.

(2) When a work is published for the first time in a Contracting State, this State is to be considered as the country of origin of the work. In the case of a work being published simultaneously or within 30 days in two or more Contracting States with different terms of protection, the country of origin of the work shall be considered to be the one which has the shortest term of protection.

(3) When a work is published for the first time in a non-Contracting State, the country of origin of the work shall be considered to be the State of which the author is a national.

(4) For an unpublished work, the country of origin shall be considered to be the country of which the author of the work is a national.

Section 8. — For works whose country of origin according to the rules in Section 2 is a party to the Berne Union, or a country which after January 1, 1951, has seceded from the Berne Union, the provisions contained in Sections 6 and 7 are not applicable.

Section 9. — The provisions in the Act on Copyright in Literary and Artistic Works, with the exception of Chapter V, shall apply to works which are first published by the United Nations (UN), by the Specialized Agencies attached to the UN, or by the Organization of American States, and to unpublished works which the above organizations are entitled to publish.

Section 10. — With regard to the application of the provisions in the Act on Rights in Photographic Pictures in relation to countries of the Universal Copyright Convention, the rules prescribed in Sections 6 to 9 shall be similarly applicable.

Agreement on the protection of television broadcasts

Section 11. — (1) The provisions in Section 48 in the Act on Copyright in Literary and Artistic Works and other provisions in the Act relating thereto shall also be applicable, with the modifications enumerated in paragraphs (2) and (3), to television broadcasts taking place in foreign countries that are parties to the European Agreement of June 22, 1960, on the protection of television broadcasts.

(2) When the term of protection for a broadcast has expired in the country in which it took place, the broadcast shall not enjoy protection under the provisions of the Copyright Act.

(3) With regard to broadcasts from countries which have entered reservations pursuant to Article 3, paragraph (1) *(d)* of the Agreement, in respect of the protection of still photographs of broadcasts and reproductions of such photographs, the rules given in Section 48 on protection against unlawful fixation or still photographs of a television broadcast on tape, film or other devices by means of which it can be reproduced, and against unlawful re-recording of the broadcast from such devices to other devices which are able to reproduce it, shall not be applicable to still photographs and reproductions of such photographs.

Section 12. — This Ordinance shall supersede Ordinance No. 164 of June 26, 1912, and Ordinance No. 40 of February 22, 1913, whereby the provisions in the Act of May 13, 1911, on the sole right to photographic works are made applicable to photographs from, respectively, the countries that have acceded to the Berne Convention as revised in Berlin in 1908, and the United States of America; Ordinance No. 275 of September 12, 1933, on the application of the provisions in the Act of April 26, 1933, on Authors' and Artists' Rights in works from countries of the Berne Union; Ordinance No. 274 of September 12, 1933; Ordinance No. 27 of February 10, 1938; and Ordinance No. 191 of June 13, 1955, on the application of the provisions contained in the same Act to works produced by nationals of, respectively, the United States of America, Argentina and Mexico.

INTERNATIONAL CONVENTIONS

European Agreement for the Prevention of Broadcasts Transmitted from Stations outside National Territories

The member States of the Council of Europe signatory hereto,

Considering that the aim of the Council of Europe is to achieve a greater unity between its Members;

Considering that the Radio Regulations annexed to the International Telecommunication Convention prohibit the establishment and use of broadcasting stations on board ships, aircraft or any other floating or airborne objects outside national territories;

Considering also the desirability of providing for the possibility of preventing the establishment and use of broadcasting stations on objects affixed to or supported by the bed of the sea outside national territories;

Considering the desirability of European collaboration in this matter,

Have agreed as follows:

Article 1

This Agreement is concerned with broadcasting stations which are installed or maintained on board ships, aircraft, or any other floating or airborne objects and which, outside national territories, transmit broadcasts intended for reception or capable of being received, wholly or in part, within the territory of any Contracting Party, or which cause harmful interference to any radio-communication service operating under the authority of a Contracting Party in accordance with the Radio Regulations.

Article 2

1. Each Contracting Party undertakes to take appropriate steps to make punishable as offences, in accordance with its domestic law, the establishment or operation of broadcasting stations referred to in Article 1, as well as acts of collaboration knowingly performed.

2. The following shall, in relation to broadcasting stations referred to in Article 1, be acts of collaboration:

(a) the provision, maintenance or repairing of equipment;
(b) the provision of supplies;
(c) the provision of transport for, or the transporting of, persons, equipment or supplies;
(d) the ordering or production of material of any kind, including advertisements, to be broadcast;
(e) the provision of services concerning advertising for the benefit of the stations.

Article 3

Each Contracting Party shall, in accordance with its domestic law, apply the provisions of this Agreement in regard to:

(a) its nationals who have commited any act referred to in Article 2 on its territory, ships, or aircraft, or outside national territories on any ships, aircraft or any other floating or airborne object;
(b) non-nationals who, on its territory, ships or aircraft, or on board any floating or airborne object under its jurisdiction bave committed any act referred to in Article 2.

Article 4

Nothing in this Agreement shall be deemed to prevent a Contracting Party:

(a) from also treating as punishable offences acts other than those referred to in Article 2 and also applying the provisions concerned to persons other than those referred to in Article 3;
(b) from also applying the provisions of this Agreement to broadcasting stations installed or maintained on objects affixed to or supported by the bed of the sea.

Article 5

The Contracting Parties may elect not to apply the provisions of this Agreement in respect of the services of performers which have been provided elsewhere than on the stations referred to in Article 1.

Article 6

The provisions of Article 2 shall not apply to any acts performed for the purpose of giving assistance to a ship or aircraft or any other floating or airborne object in distress or of protecting human life.

Article 7

No reservation may be made to the provisions of this Agreement.

Article 8

1. This Agreement shall be open to signature by the member States of the Council of Europe, which may become Parties to it either by:

(a) signature without reservation in respect of ratification or acceptance, or
(b) signature with reservation in respect of ratification or acceptance followed by ratification or acceptance.

2. Instruments of ratification or acceptance shall be deposited with the Secretary-General of the Council of Europe.

Article 9

1. This Agreement sball enter into force one month after the date on which three member States of the Council shall, in accordance with the provisions of Article 8, have

signed the Agreement without reservation in respect of ratification or acceptance, or shall have deposited their instrument of ratification or acceptance.

2. As regards any member State which shall subsequently sign the Agreement without reservation in respect of ratification or acceptance or which shall ratify or accept it, the Agreement shall enter into force one month after the date of such signature or the date of deposit of the instrument of ratification or acceptance.

Article 10

1. After this Agreement has entered into force, any Member or Associate Member of the International Telecommunication Union which is not a Member of the Council of Europe may accede to it subject to the prior agreement of the Committee of Ministers.

2. Such accession shall be effected by depositing with the Secretary-General of the Council of Europe an instrument of accession which shall take effect one month after the date of its deposit.

Article 11

1. Any Contracting Party may, at the time of signature or when depositing its instrument of ratification, acceptance or accession, specify the territory or territories to which this Agreement shall apply.

2. Any Contracting Party may, when depositing its instrument of ratification, acceptance or accession or at any later date, by declaration addressed to the Secretary-General of the Council of Europe, extend this Agreement to any other territory or territories specified in the declaration and for whose international relations it is responsible or on whose behalf it is authorised to give undertakings.

3. Any declaration made in pursuance of the preceding paragraph may, in respect of any territory mentioned in such declaration, be withdrawn according to the procedure laid down in Article 12 of this Agreement.

Article 12

1. This Agreement shall remain in force indefinitely.

2. Any Contracting Party may, in so far as it is concerned, denounce this Agreement by means of a notification addressed to the Secretary-General of the Council of Europe.

3. Such denunciation shall take effect six months after the date of receipt by the Secretary-General of such notification.

Article 13

The Secretary-General of the Council of Europe shall notify the member States of the Council and the Government of any State which has acceded to this Agreement, of:

(a) any signature without reservation in respect of ratification or acceptance;

(b) any signature with reservation in respect of ratification or acceptance;

(c) any deposit of an instrument of ratification, acceptance or accession;

(d) any date of entry into force of this Agreement in accordance with Articles 9 and 10 thereof;

(e) any declaration received in pursuance of paragraphs 2 and 3 of Article 11;

(f) any notification received in pursuance of the provisions of Article 12 and the date on which denunciation takes effect.

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

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. — This European Agreement for the Prevention of Broadcasts Transmitted from Stations outside National Territories was signed at Strasbourg on January 22, 1965, by the Delegates of the Governments of the following countries: Belgium, Denmark, France, Greece, Luxembourg, Sweden, United Kingdom. It was then signed by Italy on February 17, 1965, by Norway on March 3, 1965, and by Ireland on March 9, 1965.

In accordance with its Article 9, this Agreement will enter into force one month after the date on which three member States of the Council of Europe shall have deposited their instrument of ratification or acceptance, or shall have signed *without* reservation in respect of ratification or acceptance.

The Governments of the ten countries mentioned above having signed *with* reservation in respect of ratification or acceptance, this Agreement has not yet entered into force.

GENERAL STUDIES

Should the Berne Convention include a Definition of the Right of Reproduction?

(A study of Articles 9 and 10) *)

1. The new Article 9 proposed by the Study Group

The Stockholm Conference will certainly propose that the Berne Convention should include a provision defining the right of reproduction.

Proposals to this effect were rejected at each of the revision conferences (the last one being that of Austria at Brussels in 1948), and the present proposal will have no more chance of success than the previous ones.

The Swedish/BIRPI Study Group suggests that this definition should replace Article 9, which makes periodical and newspaper articles subject to special provisions. There can only be approval of the full and absolute abolition of such a system of exception and of the *ad hoc* provision, in conformity with the wishes of journalists. Paragraph 2, therefore, becomes redundant.

Regarding paragraph 1, this is not and never has been a special regulation; the preparatory work of the 1886 Conference shows that it is merely a clarification, necessitated by historical factors; it can thus disappear, even though Article 2 does not state that serial novels are literary works like any others, as this to-day is no longer disputed.

As regards paragraph 3, the Study Group rightly makes this the final paragraph of Article 2.

Article 9 may therefore be deleted, even without the insertion of a general regulation on the right of reproduction.

At first sight it might certainly be thought anomalous that the definition of a fundamental prerogative of an author should not be recognized *expressis verbis*. This, however, as I shall show, is a false anomaly.

Further, such a definition would in no way constitute an improvement in the Union's system, as referred to in Article 24 of the Convention, and it is better to reject it once again. I shall show that, far from being an improvement, it would in fact be harmful to authors.

Extreme scepticism is permissible when the justification given in the Study Group Report is noted. The Group, which first thought a definition had no chance of adoption, nevertheless, after further discussion, decided to propose one. It consists of two paragraphs which, according to the explanation given, appear *indissociable*. Yet the definition in paragraph 1 is cancelled out by a second paragraph, so that, as will appear, it becomes devoid of meaning (see text, page 9a of Doc. DA/22/3). To obtain such a definition, the provisions of the Convention (see p. 46 of the Study Group Report, Doc. DA/22/2) on prerogatives recognized *iure conventionis* (Articles 8, 9, 11, 11bis, 11ter, 12, 13, 14, 14bis) have been highlighted and then summarized, that is to say, the definition is only *partial*. Nevertheless, this is presented as including the whole right of reproduction.

It is only partial because it fails to include the right of distribution, whereas it is well known that the 1948 Brussels Conference — in contrast to the concessions made to film authors — denied this right to authors of phonographic works, purely in order to avoid expressing an opinion on the disputes on this subject which existed in several States of the Union. Will the question remain in abeyance in 1967, although in the meantime there have been frequent case-law judgments favourable to authors in several countries? I do not know [1]).

But there is something even more serious: after giving, in a first paragraph, an already inadequate definition, the contracting States are then authorized to regard it as non-existent under the terms of a second paragraph, which in the Group's view cannot be dissociated from the former.

What advantage would there then be to the authors?

It is certainly no part of my intention to cast the slightest doubt on the devotion of the officials of the Berne Union to the cause of the authors, or on their intelligence and loyalty in working for that cause.

I feel sure, therefore, that they will forgive me if I express my thoughts quite freely: I firmly believe that such a proposal is a serious error, and I hope with equal firmness that they will consent to review it. The advantage afforded to authors is purely apparent: it is a false semblance, a piece of stage scenery: from a distance it is a fortress, but if the artist leans on it, it collapses.

2. Criticism of the method used to arrive at this proposal

The Study Group Report states clearly that, in order to arrive at a definition of the right of reproduction (it being claimed that this is the only means of incorporating it in the Convention), a satisfactory formula must be found for the exceptions to this right, which States are not prepared to abolish at this stage. Nevertheless, it is intended to "reserve to the authors" the forms of exploitation which are of "considerable economic or practical importance" to them; this clearly means that they may be deprived of those forms which are of small economic importance (but whose moral significance may be considerable) [2]).

*) The author asks us to state that he is here expressing a strictly personal point of view. This study has also been submitted to the Legislative Committee of CISAC at its Paris meeting in March 1965.

1) See *RIDA*, July 1956, p. 121 (conclusions of the Advocate-General to the Belgian Supreme Court of Appeal). See also my work of 1955, p. 13, and my 1960 work (published after the judgment of January 19, 1956), pp. 55 *et seq.*

2) It is to be noted that the Italian Law, which is claimed to be taken as a guide, stops short of this and attaches primary importance to the fact that excerpts should be short (abridgement, quotation, fragment) and should be permitted only for specific purposes of criticism, discussion or instruction; even for anthologies a limit is imposed.

In the public interest all legislation must of course allow for exceptions to prerogatives of individual rights; similarly, in order to secure unanimous acceptance, international conventions cannot disregard national laws and may permit similar reservations. In this connection Article 10, paragraph 1, of the Berne Convention (particularly in the text proposed by the Study Group, as will appear below) makes provision for the need to authorize certain excerpts, *iure conventionis*, and paragraph 2 allows some reservations.

On the subject of wider derogations, must the Convention adopt them? If it were to do so, it would be disloyal to its purpose, which is to stipulate a *minimum*, and would be attempting to establish a *maximum of protection*.

The primary criticism of the Study Group is not, however, that it has drafted an incomplete definition in its first paragraph, which is made totally ineffective by the second paragraph; but rather that, in order to obtain the definition, it has employed a faulty *method*, that is to say, *in order to define the right of reproduction, it has sought a satisfactory formula for the exceptions to this right.*

The Report does not go into any detail as to the arguments used by the Study Group, but I have found, in *Le Droit d'Auteur* of November 1964, under the title "*Le droit de reproduction et la revision de la Convention de Berne*" an article by an eminent professor of the University of Rome, Mario Fabiani, in which he makes a suggestion identical with that of the Study Group, states the problem in the same way and reveals the reasoning process.

An examination of Professor Fabiani's article will greatly assist my demonstration. His thesis is as follows: he sets out to seek the "limits" within which the right of reproduction *must* be "confined" and is confronted with the difficulty of finding "natural" limits. He finds to his regret that as regards the right of performance the problem is simple: if the public is present it is the contemporaneity between the latter and the exploitation [3]).

He rejects the reasons commonly adduced by national legislation to justify limitations (the spread of culture, need for information and for free discussion of ideas, etc.) [4]), although these are the only valid reasons for expropriating the right of reproduction. In actual fact there are *no "natural" limits* to an exclusive and absolute right, but only violations, *encroachment of the right*, which the common interest requires should be limited.

All the exceptions to this right are *outside* the field of copyright. Professor Fabiani claims, on the contrary, that derogations occur in "the sphere of subjective and absolute right" which constitutes copyright [5]) and he conducts his demonstration with relentless rigour.

"The right of reproduction", he says, "must be given a *definition from which the limits* of uses open to third parties and of personal use *may be deduced*. The definition should avoid the possibility that the explanation [6]) of the free uses of the work by third parties might cause a prejudice to the right of reproduction reserved to the author" (section 2, paragraph 1, p. 286, col. 2).

Elsewhere he states that a definition, to be useful, must "give the true extent of the right recognized". Again, he refers to "the limits within which the right of reproduction must be confined" (section 1, paragraph 3, p. 286, col. 1).

Concerning the right of quotation, he believes that the definition he proposes "would enable its limits to be specified" (section 5, paragraph 6, p. 289, col. 2).

The author bases his demonstration on the French Law of 1957, especially on Article 26 and the definition in Article 28 (which is purely an enumeration of examples); is it permissible to point out that the French Law in no way *deduces* the limitations it places on the right of reproduction from the definition of this right?

Nor are the limitations referred to in Articles 9 and 10 of the Convention *deduced* from any determination of the right.

Moreover, Professor Fabiani interprets Article 26 restrictively.

On a strictly literal interpretation of the Article, of course, it is a question of the exploitation of *economic* rights (i. e. the monopoly of exploitation), in accordance with Article 21. In actual fact, however, the moral right implicitly accompanies each curtailment of copyright, since Article 1 of the Law has so ruled, once and for all, and has even placed moral right before other rights [7]).

As Professor Desbois has admirably said: "*The moral right has precedence over economic attributes, envelops and survives them*".

The moral right is exercised in every application of the right of reproduction, jointly with economic rights.

If there be any doubt whether the moral right is *bound up* with the right of reproduction *at all times* during the operation of the monopoly of exploitation, reference should be made to Article 32 on the right to *correct*, which could not be clearer. It even has precedence over economic rights and supersedes them, since retraction only obliges the author to indemnify the transferee.

In conclusion, the arguments used by the Study Group and Professor Fabiani consist in seeking to define the right of reproduction by *inductive methods*, reasoning from facts which are neither in the field of that right nor in the field of copyright in general (exceptions), and in submitting them as being justified *a priori* if they are not prejudicial to economic rights.

Covering the same ground in the reverse direction, Professor Fabiani deduces from the definition thus arrived at the corollaries (exceptions) which have helped him to establish it, and whose validity has been affirmed without any evidence.

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3) It may be said in passing that in the French Law the criterion between rights of performance and reproduction is not merely the presence of the public (processes of reproduction are conceivable which would not allow of communication "to the public" or processes of performance which would be less "direct").

4) Page 286, col. 2, first three lines.

5) Page 289, col. 2, last two lines.

6) Probably a slip for "exploitation".

7) Mr. Fabiani does not of course dispute all the moral prerogatives of the author, since elsewhere he acknowledges that he has the right of authorship (indication of the source of the excerpt), but he denies him the essential right, the right of disclosure, while absolving the borrower from the need to ask the author's permission.

Will he allow me to ask whether this does not really *beg the question*, since the reasoning assumes proof of the matter at issue?

In claiming to provide irrefutable proof in favour of limitations on copyright, Professor Fabiani (and the Study Group) is making a garment to measure, which takes the frequently monstrous shape of derogations.

3. The criterion of derogations according to the Study Group and to Professor Fabiani

The criterion proposed by the Study Group as a basis for permitting mutilations of copyright is the *establishment of the absence of economic competition in the use of the work.* The forms of exploiting a work which are of " considerable economic or practical importance " to them must be " reserved to the authors ". Other forms may therefore be taken away from them.

It is true that " special precautions should be taken before countenancing exceptions when no remuneration is stipulated ". The result of these comments is that, when remuneration is stipulated, special precautions appear to be no longer necessary and the " scope of the power to make exceptions widens to some extent " (p. 49 of the Report, lines 6 to 8).

Note 24 at the foot of page 49 lends force to this impression. Having accepted that exceptions should be allowed for " specified purposes " — which means in plain language " *anything one wants as long as one says it* " — the Group admits that an alternative solution would be to indicate the exceptions in the text by means of a list intended to be restrictive; unfortunately, the Group realizes, the list would be very long, as it would have to contain *all* the limitations of *all* legislations, so that its effect would be to " *encourage* the adoption of all the exceptions allowed and abolish the right to remuneration ".

Obviously. Since it would be vain to suppose that States would be willing to abolish exceptions, is it not better to leave it to the national legislations which contain unorthodox exceptions to formulate them, without giving them in advance the blessing of the Convention for a practice whose extent cannot be foreseen? According to the Report, the field of application of exceptions will to some extent be *widened* by the practice of the gratuity known as " remuneration ", which naturally will never be the fair equivalent of an expropriation, which is always unfair; in other words, the infringer may offend if, to obtain remission of his offence, he buys the indulgences, classified to scale, which are offered to him; as for the author, he will sell his birth-right for a mess of pottage.

Note 23 at the foot of page 47 assembles all the conceivable mutilations of copyright. I will exclude public speeches, quotations and reporting of current events, which are governed by other Articles, and I disregard the exceptions already covered by Articles of the Convention (2^{bis}, 10, 10^{bis}, 11^{bis}). But reproduction in special characters for the use of the blind? The handicapped are indeed deserving of pity and solicitude, but let anyone mention a single writer who has refused his consent to the transcription of one of his works in Braille; if such an author could be found, he would still be well within his rights, since there are other means of helping these unfortunate creatures than by causing injury to authors. Are the workers who build their dwellings and make their furniture, or the typesetters who compose books in Braille, obliged to work without payment? If they do work for nothing, they deserve congratulation, but they are not obliged by law to do so.

And what about artistic works used as a background in films and in television? Can instances be given of a painter having brought an action against a theatre manager for having stuck on to a piece of scenery a colour print or design which resembled one of his pictures? Are we, at a Diplomatic Conference, going to discuss such futilities, such petty trivialities? *De minimis non curat praetor.*

More serious is the question of *private use.* Several national laws go into some detail on this point, but in my view this is a dangerous error. Moreover, in countries where the law lays down nothing on this point, the lack of such a provision has never caused difficulties and has not hindered scientific progress. Copies for private use are current practice, and common sense dictates a certain tolerance in such matters.

Modern methods of mechanical reproduction (photographs, visual and sound recording, tape-recorders suitable for public dissemination, etc.) certainly raise problems. Few legislations have solved them and they are, in any case, not yet ripe for solution; preliminary studies must continue, as there are many controversies.

Yet here again I cannot agree with Professor Fabiani. According to him, the effect on the economic life of a work must set a limit to expropriation. The author's moral right, however, enables him to forbid reproduction, even if there is no pecuniary loss.

All these problems still need to be studied in depth, and no solution is in sight. In the meantime, it is in the authors' interests that the Convention should maintain the implicit rule that *any* reproduction for private or personal use is automatically unlawful, even if in point of fact its punishment involves conflict with the inviolability of domicile or other legal obstacles. At the present stage, it is not possible to draft an internationally valid, explicit rule which could be accepted in 1967.

4. Particular reference to Article 10

After having challenged the Study Group's proposals on Article 9, I am happy to be able to approve of its suggestions concerning Article 10. Refraining from making any changes in paragraphs 2 and 3, it limits itself to widening the scope of paragraph 1, that is to say, the freedom to make quotations. Mr. Masouyé rightly wrote [8]) that the revision of Article 10 must still be considered, and it is to comply with this desire that the present study has been made.

First, the distinction between quotations (paragraph 1) and excerpts (paragraph 2) is maintained; the former are authorized *iure conventionis*, the latter are left to the discretion of national legislation: an excellent arrangement.

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[8]) Masouyé: " *Perspectives de la revision de la Convention de Berne* ", *RIDA*, May 1964, XLIII, p. 27.

It should be noted here that before 1948 the Convention contained no provision authorizing quotations, however short; this text was added at Brussels. Thus the power to legislate freely on this point was removed from national legislations, and the latter have had imposed on them a *minimum* below which they cannot go on the plea that the quotation must be *short*. To-day the Study Group proposes widening the scope of paragraph 1 and authorizing its use outside the press, especially in the scientific field. I agree to this being stated *expressis verbis*, because that is the *de facto* situation.

The Study Group proposes, however, to replace the term "short" by two other criteria:

(a) compatibility with fair practice;

(b) justification of the length of the quotation by the purpose.

On the latter point the Study Group did not support the view of the 1963 Committee of Experts, which wanted to limit authorization to make quotations to a scientific, critical, informatory or educational purpose. I believe the 1963 Committee of Experts was right. The Study Group claims that the list is too restricted and that there may also be other purposes: aesthetic, for instance. What in practice does that mean? I ask myself this with some concern, since there cannot in any case be a quotation in the artistic field, the word "quotation" being applicable to excerpts from a literary work, but never to the total or partial reproduction of a plastic work. In this case it can only be a question of excerpts. I explained this at some length in an article published in 1957 [9]) and will not refer to it here.

Nevertheless, it should be noted that a quotation from a musical work can be lawful only in writings, as is requested by Mr. Schulze [10]).

Concerning paragraph 2 of Article 10, it will no doubt continue to be maintained in 1967 that it is unnecessary, paragraph 1 of Article 4 being sufficient, but nobody will propose deleting it.

Professor Desbois has a pragmatic view on the matter and comments that there is some value in retaining it, owing to the words "in so far as this inclusion is justified by its purpose", which enable the courts, if necessary, to restrict the authority of the competent law, if they consider it too liberal [11]).

Quite certainly, however, paragraph 2 need not have been created; as long ago as 1886 a French delegate to the Conference described it as "*superfluous and false*" [12]), since some countries were actually *induced* to restrict copyright beyond the then existing domestic legislation. Yet at that time this article was considered to be justified by the provisions of Article 15 (now Article 19) and of the additional article, which reserved special arrangements only to the extent that they reserved wider rights. It was wrongly feared, however, that this restriction would no longer be authorized [13]).

The provision is, therefore, historical in origin but should not be understood as an inducement to curtail copyright.

While not wishing to dilate at length on the right to make quotations, I must nevertheless devote a few moments to it. While the Study Group does not include in Article 10 the criterion of the absence of economic competition, which nevertheless is the back-bone of its thesis in the new Article 9 and of that of Professor Fabiani, the latter, who has a methodical mind, seeks in Article 10 confirmation of the system. He claims to be able to derive Article 10 from the definition of the work would not be compatible with fair practice." [14]) assures us that "comptability with fair practice would thus be precisely identified", since the length of the quotation would not reside in the determination of "its mathematical length". "Quotations which might affect the economic life of the work would not be compatible with fair practice." [14])

Professor Fabiani adds that the notion of compatibility with fair practice does not seem to be correct when it refers to activities exercised in the field of subjective and absolute rights, and applies rather to unfair competition. I frankly do not see why it could not apply to any civil matter, and therefore in the field of copyright.

Nor do I care to hear references to "economic" injury, nor to "*economic* competition with the right of reproduction" [15]).

It must be reiterated, therefore, as Mr. Hepp has recently done in this same review, that a fundamental difference exists between rights arising from industrial and commercial property and those arising from copyright, owing to the different nature of the subjects with which they are concerned; on the one hand, goods "fungible" in character, which may be the subject of competition; on the other hand, owing to their purely qualitative nature, rights concerned with a particular individual body, the reproduction of which constitutes infringement [16]).

Even if, in order to beguile us, we are told that Professor Fabiani's criterion would enable quotation to be more successfully limited, I frankly prefer the concept of "fair practice", and I have confidence that the courts are well able to assess what does or what does not constitute fair dealing.

5. Limits of the pseudo-right of quotation

In actual fact, what is known as the "right of quotation" is not a right at all. It is a derogation from the right, a mutilation of copyright, a violation, a taking of the law into one's own hands made lawful out of regard for the common interest. Its object is to facilitate the exercise of freedom of information, of criticism, of controversy or to assist the spread of ideas and of scientific or educational information. This function must be performed in a democratic society and it is in the public interest that it should be performed; private interests must give way to it. *But they must give way only if there*

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9) Recht: "*La pseudo-citation dans le domaine des arts plastiques et figuratifs* », *RIDA*, October 1957, XVII, pp. 85-119.

10) Schulze: Letter to the Authors' Consultative Committee. See also the comments of the *Internationale Gesellschaft für Urheberrecht* (Doc. DA/22/10, p. 11).

11) Desbois, *Le droit d'auteur*, p. 363.

12) Soldan: "*L'Union internationale pour la protection des œuvres littéraires et artistiques*", Thorin, Paris, 1888, extract from the *Revue générale du droit*, 1887, p. 496.

13) Soldan, *ibid.*, p. 496.

14) *Op. cit.*, p. 289, col. 2, para. 4.

15) P. 289, col. 2, lines 29 and 33.

16) Hepp: "*L'exercice des droits de propriété littéraire et artistique dans la CEE*", *Le Droit d'Auteur*, December 1964, p. 303, col. 1.

is no other means of satisfying the needs of the general interest. Anything other than that represents an encroachment of the right.

At this stage I should like to congratulate Professor Fabiani on having, with the full authority that invests the writing of so eminent a jurist, propounded the case of those who wish to permit reproduction other than for purposes of gain [17]). One of his compatriots has already brilliantly upheld the same point of view. " Why ", he says, " must intellectual rights be prejudiced, in order to promote an alleged public interest, more readily than other forms of movable or immovable property? It is a kind of tax levied on products of the mind for the benefit of popular education and the instruction of the masses. " [18])

Apart from cases where the general interest cannot be safeguarded by means other than expropriation, the author's permission must always be sought. " For the individual it is an entirely lawful prerogative to assert his right against the interests of his neighbour [19]). An author who exercises his right will never commit an unlawful act, and his act will never be a *violation of the right*, unless it is of no legitimate value to the author, which is an *abuse of the right*, of which the theory of public order is an application. " [20])

Contrary to the claim made by Hirsch-Ballin [21]), it is in no way a question of setting the rights of the individual against those of the community. In no way is it a question of two opposed rights equal in value. There is only one exclusive individual right which must suffer mutilation in the higher interest of the nation, an expropriation to further the common weal.

In order to avoid the discretion of the judge who might be called upon to decide on the degree of lawfulness of the right, legislation has itself laid down strict rules (in the sense of Article 10) specifying the cases in which the intangibility of the right must yield to the common interest, which might be harmed by the exercise of copyright.

These rules, however, also set limits to the importance of the spread of culture — sometimes too facile a pretext. What is the public welfare? It is intangible. It is the crucible of all contradictions, all conflict, all errors. Are the development of the individual, the increase in his capacity for action, socially less valuable than protection of the masses? It would be a very bold man who ventured to claim that the agreement reached on these problems was sufficient to enable the solutions proposed to provide a scientific criterion [22]).

As Mr. Del Bianco states, there is no ground of public interest which would justify the exploitation of one class of society by the others. It was this author too who clearly showed that the natural limits of copyright can only be those which derive from its legal nature (public domain, etc.). It is useless for Professor Fabiani to cudgel his brains in an attempt to find *natural* limits to mutilations of copyright; they are *material* limits, not natural ones, and originate in factors which exist outside the definition of copyright (conflicts of interest with third parties, public welfare, etc.); these are mutilations which would be illicit if they were not authorized by law [23]).

In the circumstances there is no need to examine the absence of economic competition. It may even happen that a quotation is lawful despite the economic prejudice to the person concerned; it is also possible that, directly or indirectly, it may be to his advantage, but that is beside the point. *It is not because competition causes no prejudice that it must be authorized, but because the public interest so demands.*

I should now like to make an observation which I feel is *fundamental:* if the reasons for legalizing the curtailment of copyright are examined more closely, it appears that the spread of culture (in 1886 it was called the need to educate the people) is sometimes merely a pretext used by national legislation to favour certain users of literary works (the case of publishers of anthologies is typical). It must be acknowledged, however, that there are cases where it is clearly impossible (materially or morally) for the borrower to seek the author's permission, while on the other hand the public interest demands that the borrower should write, should compose the work which requires the inclusion of the quotation.

In the case of the " quotations " mentioned in Article 10, paragraph 1, the impossibility arises from either the urgency and speed of the information, or the freedom of the press inseparable from a democratic system which allows any person to challenge any opinion without asking leave, either of the person who expressed it or of anyone else.

The Study Group was wise to extend this idea and apply it to scientific works, as it should not be necessary to ask the scientist, or the critic, whom one is attacking, for permission to do so. In a democracy public interest demands the liberty to attack any person who publicly disseminates an idea or exhibits an artistic work.

This, however, is not the case in paragraph 2.

There is nothing to prevent the authors' permission being asked in order to compile a chrestomathy. As Mr. Del Bianco says, a well-produced chrestomathy is able to extract the whole essence of a work, so that the purchase of the work is no longer of interest; thus he rightly considers that Article 27 of the Swiss Law is a deplorable legal sanction of a case of unfair competition [24]). The compilers have only to obtain permission to use both the text and the picture; the plagiarism committed by makers of anthologies and " digests " should be repressed. This has always been so in Belgium since 1886

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17) Fabiani, *op. cit.*, p. 287, col. 2, section 4.

18) Rosmini: *Le Droit d'Auteur*, 1894, p. 136.

19) Josserand: *De l'abus des droits*, 1905, p. 63. Incidentally, the theory of the abuse of rights applies here, as in the interpretation of Article 544 of the French Civil Code, the scope of which was exaggerated by 20th century liberalism.

20) Since the author may commit abuses of the right by using his prerogatives, even without an intention to harm, if the applicant has chosen, from among the various ways of exercising his right with the same advantage, the way which is harmful to another person. Rights are not absolute prerogatives which may be used arbitrarily without regard to their ultimate effect, their scope and their *justification* (cf. Planiol, *Droit civil*, II, 871). Such cases are, however, extremely rare in copyright, and it would be the concern of the courts to punish any action which was rash or provocative (unnecessary seizure, etc.).

21) Hirsch-Ballin, *RIDA*, January 1956, X, p. 22.

22) De Harven: *Mouvements généraux du droit civil belge contemporain*, Brussels-Paris, 1928, p. 292.

23) Del Bianco: *Le droit d'auteur et ses limites*, Lausanne, 1951, pp. 104 and 153.

24) Del Bianco, *op. cit.*, p. 157.

and no one would, I think, claim that the cultural and scientific development of that country has thereby suffered. Moreover, in practice such permission is always granted subject to remuneration, except when the author does not wish to be included in the anthology of a certain publisher, as is naturally his full right.

In general also there is nothing to prevent the permission of the authors being sought to publish extracts and illustrations for scientific or educational works; there is certainly no shortage of time. In this case, however, there must be more latitude for " extracts " of texts, when they are in fact " quotations " made with a critical object, as an author cannot be asked for permission for every line or sentence quoted in a discussion or a controversy that has arisen in a scientific work. It is a question of degree, which the courts will assess.

For this reason the Study Group was wise to delete the word " short " from paragraph 1. The danger thereby created could nevertheless be offset by deleting from paragraph 2 the power to include excerpts in scientific works, as this power is already granted within reasonable limits by paragraph 1 *iure conventionis*. The same procedure could be adopted for works intended for teaching, thus deleting paragraph 2, which, as has been said, exists only for historical reasons.

The suggestion I have just made will no doubt remain a pious hope, as the countries which now favour the compilers and makers of chrestomathies on the plea of favouring the instruction of the masses [25]) will probably not accept it, even if BIRPI were to propose a rearrangement of paragraph 1.

As Great Britain rightly pointed out in 1948 in regard to Articles 9, 10 and 10bis, *there are exceptions which must be tolerated, without specifying them in the Convention, in order to avoid harmful extensions* [26]).

Regarding illustrations, in an article already mentioned [27]) I explained that there can be no quotations in the artistic field.

Naturally, an author cannot be prevented from writing what he pleases about a painter, but the artist must have the right to refuse to allow the reproduction of his pictures (even on a reduced scale or in a form unusable outside the book) under the pretext of a pseudo-quotation in the artistic field.

Where, in this case, is the violation of a critic's freedom of opinion, since he is free to write what he pleases?

" The right of free reproduction does not derive from the right of free criticism." It is the opinion expressed by the critic which is guaranteed by the freedom of the press, but not the right of reproduction.

6. The impossibility of defining the right of reproduction without first defining copyright

Can the right of reproduction be defined without a prior definition of copyright? I think not.

Arguments on the origin and source of copyright are many and interminable. According to those who hold the Anglo-Saxon doctrine, it is the law that creates the monopoly of exploitation, but it is acknowledged that common law is a source of moral prerogatives. According to others, copyright germinates, comes into being and grows in the sphere of natural right, that is to say, in the region where the basic factors held to be necessary to enable social life to continue and prosper are evolved; it is only at a later stage, after they have been adopted by custom or given concrete form by legislation that these basic factors assume the character of statutory rules, sanctioned if necessary by the power of the State. The intellectual output of a country flourishes only if legislation is concerned to protect the most individual work of all, that of authorship; this is so in all culturally advanced countries, whether their system of government be individualist or socialist.

The statutory source of the material rules of copyright, *" diritto di autore "*, *" droit d'auteur "* or *" Urheberrecht "* (as literary and artistic property is variously called) is contained, therefore, in copyright laws; but its origin, that which explains it, is buried more deeply in life itself; it is " the creation of a work resulting from an intellectual effort ".

Be that as it may, it is generally admitted that the primary and true source of copyright lies in a concept evolved in the human brain, as is so clearly affirmed in the Italian Law of April 22, 1941 (Article 6). According to the French Law of 1957 (Article 1), it is " the fact of the creation of an intellectual work ". While few laws are concerned to justify, or even to indicate clearly, the origin of the right, all state, implicitly or explicitly, that creation lies at the root of the right. " The purpose of the Copyright Law is to regulate legal relationships resulting from the *creation* of works " (Czechoslovak Law of December 22, 1953, Article 1); the Polish Law of July 10, 1952, Article 15, places before the exclusive disposal of the work " the protection of the author's personal rights "; the Yugoslavian Law states that " the community recognizes the special rights of authors in respect of their intellectual creations " (Law of July 10, 1957, Article 1). The USSR Civil Code considers that property which is the product of activity (including the creative activity of intellectual works, cf. Italian Law) must be protected and devotes a whole chapter to this right (Articles 96 to 106, Law of December 8, 1961).

Once it has been recognized and sanctioned by substantial law, copyright will appear subjectively as the appropriation by its creator of a work of the mind, of an intellectual concept, from the mere fact that he is its creator. This right will be exercised by the permission or refusal of permission to allow the concept which has issued from his brain to be reproduced, and by a whole series of moral and economic prerogatives.

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25) Seventy years ago there were violent protests concerning the lawful excerpts and " *raccoglitore* " mentioned in paragraph 2; see an article by Rosmini, *Le Droit d'Auteur*, 1894, p. 136.

26) Documents of the Brussels Conference, p. 235.

27) " *La pseudo-citation dans le domaine des arts plastiques et figuratifs* », *RIDA*, October 1957. But there may be *lawful reproductions*, e. g. for reports of current events. Article 10bis has made provision for this need to make reliable reports, since it cannot be known in advance what musical tunes will be recorded, nor what pictures will be exhibited, nor what monuments will be on a processional route. I even consider that Article 10bis could be extended in a similar way to Belgian law, i. e. by authorizing full reproduction " but only within the limits of the needs of reporting current events " (Law of March 11, 1958, amending the 1886 Law, *RIDA*, XX, July 1958, p. 128; for a commentary on this law, see *ibid.*, p. 90).

Objectively, it will be "*a body of rules which establish the fair practices of dissemination and economic exploitation of literary and artistic works*" [28]).

Such is the universal, now well-established doctrine.

Controversy on the legal nature of copyright is as pointless as is that on its origin and its *raison d'être*.

Is it a property right? Is it possible to speak of literary and artistic property? French legislation has adopted such an expression and the holders of this theory can find no better protagonist than Lerebours-Pigeonnière, Judge at the Supreme Court of Appeal [29]). After first recalling that to-day no one disputes that *the person-to-person relationship is the basis of any subjective right*, he justifies the terminology of the Law by saying that plenitude of powers in respect of the subject of the right, an attribute of tangible property, is in no sense a postulate as regards property in general [30]).

The word may be accepted because it is a convenient term, or one can equally well reject it and say that we are concerned with a variety of intellectual rights, according to the suggestion of the Belgian jurist, Edmond Picard, who thought he could thereby solve the difficulty.

Whatever one's view, *copyright resembles property*. In fact, the property right is not a simple right, but a composite right of very variable content, a complex body of rights, powers and prerogatives, very diverse in *nature* and *purpose*. Thus, instead of saying that property is a right, it is better to describe it as a "*subjective situation* resulting from the allocation of wealth possessed by the individual to the satisfaction of needs created for the individual by his life in society, the realization of these powers being determined by respect for the demands of community life and the productivity of political communities" [31]).

Yet what else is copyright than such a subjective situation, and by no means the anti-social and dangerous right which users would like to make it appear? [32])

Even to a greater extent than ownership of material things, the subjective powers of the author are protected by reason of their intended purpose, because they have a *social finality*. Such protection is nothing else than the organization of the extensions given to the objective situation known as property, where the latter is recognized as being the product of activity and as necessary to the intellectual development of the country.

Such an organization will include the drawing up of practical rules and, in particular, the listing of prerogatives.

In this respect too there are different systems: the unitary and the dualist theories, and others. However, a very marked trend is now found in all schools towards a growing recognition (already expressed in Article 6[bis] of the Convention) of the "*absolute pre-eminence of the personal element over the economic element*, of a veritable domination of all copyright by this notion that jurisprudence has brought out little by little under the vague appellation of 'moral right', and which almost all the legislations consecrate today, not as an accessory attribute but as the very foundation of the right" [33]).

To-day no respect is paid to the thesis of those remarkable experts on common law, Planiol and Ripert, who saw in copyright only a monopoly of exploitation. It is no longer denied that copyright possesses a *twofold character*, based on the fact that a writer who decides to publish brings into play both his spiritual and his pecuniary interests: he exercises both his monopoly of exploitation (economic rights) and, before that, the prerogatives of his moral right.

When an author releases a work from his own sphere and sends it out into the material world, into social life, he *exercises* an exclusive right known as the *right of disclosure*, of *first disclosure*, of *dissemination*, of *presenting the work to the public*, of *making public* (in a wide sense, not in the restricted sense of "publishing"). He performs this disclosure by an *act of publication*, by which he communicates it to the public, either by performance or by reproduction.

He effects this disclosure *under conditions fixed by him and by him alone*. It is then that the economic right appears, or rather a series of economic rights which are termed the monopoly of exploitation. Will this monopoly live a life of its own (dualist concept) or must it be considered that the source of profit is the work itself (monist or unitary concept)?

It is of small importance, since in both concepts the author exercises, jointly with his economic rights, the prerogatives of his moral right. Both rights derive from the act of disclosure and it may even be said that there is a primacy of the intellectual and a subordination of the economic factors (envisaged as a monopoly) to the moral factors.

Yet the author has not exhausted his moral right by the act of publication. If then the monopoly should happen to be broken, the moral right *will accompany it in all its parts and at all times*, not only at the time of disclosure.

Monopoly and the moral right cannot be considered in isolation. Moreover, when the French Law entitles Part II "Exploitation of the economic rights of the author", it does not separate these from the moral right (contrary to what its adoption of the dualist concept might imply). "Exploitation of the essentially economic monopoly develops in close dependence on the moral right, owing to the links which bind together the work and the author's personality." [34])

7. Conclusion

We perhaps render a poor service to authors by seeking to define the right of reproduction in the Convention without first defining copyright, the former being a mere fraction, a compartment, a dismembered portion of the latter.

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28) Hepp, *Radiodiffusion-télévision et droit d'auteur*, Paris, 1958, p. 7.

29) Chairman of the Copyright Committee of the *Société d'études législatives*. His speech of April 20, 1945, is reproduced in the *Bulletin* of this society.

30) An extract from this frequently quoted text will be found in Hepp: *Radiodiffusion-télévision et droit d'auteur*, Paris, 1958, p. 162.

31) De Harven: *Les mouvements du droit civil belge contemporain*, Brussels-Paris, 1928.

32) Of these users the most dangerous are the broadcasting and television corporations, all the more so because in Europe they are state-owned, and therefore powerful. A former director of Radio Belge, Mr. Clausse, writing in a work entitled "*Les nouvelles, synthèse critique*», *Edition de l'Institut de sociologie de l'Université de Bruxelles*, 1963, p. 218, states that "Copyright is a serious handicap in the work of broadcasting the cultural heritage".

33) Fernay, *RIDA*, October 1963, XLI, p. 15. Cf. also a Greek work by Ioannou and Lykiardopoulos, analyzed *ibid.*, p. 254.

34) Deshois: "*Le droit moral dans la loi de 1957* », *RIDA*, XIX, p. 143. Owing to these links, monopoly is excluded from the marriage community.

But that is in fact impossible. It was impossible as long ago as 1886, owing to the divergent opinions on the origin and the very nature of copyright, according to current ideas in the various countries; the most that was achieved was agreement on the choice of a title to designate the Union; it was still not even a question of copy*right*, but of "*the rights*" of authors (Article 4 of the Convention). It was decided to place on record in the Acts of the Conference that this term was equivalent to that of literary and artistic property and could be translated by the customary expression in each country. The term mattered little provided there was agreement on the thing itself.

To-day different opinions exist as to both the nature of the right and its application, owing to psychological differences and differences of interest in the various countries. To achieve uniformity, an adequate measure of common ground would be required, and that does not exist.

Nevertheless, we must not lose sight of the fact that the Berne Convention did not attempt to devise a supra-national law patterned on a particular doctrine, which would be unanimously agreed, but stipulated only what was acceptable to all national legislations. Some provisions are substituted for national legislation on points on which there is unanimity, but the primary aim of the treaty is *reciprocal assurance of national treatment*, the enjoyment by an author of a country of the Union of all the rights conferred by the law of the country in which protection is required (former Article 2, present Article 4) [35]).

In such circumstances how can the Stockholm Conference be expected to draw up a definition of copyright and, as a corollary, a definition of the right of reproduction, maintaining all the economic and moral features appropriate to the subjective situation known as copyright?

The only definition acceptable to authors would clearly be the one proposed by the Authors' Consultative Committee, which might be more clearly stated as follows:

"The right of reproduction is a corollary of copyright; it covers the economic prerogatives which, without prejudice to the rights conferred on the author by Article 6bis, follow from the act of publication of the work.

"The right comprises in particular the exclusive right to reproduce and to authorize the reproduction of one or more copies of the work in any way and in any form whatsoever, as well as the distribution of the original or reproduced work."

The new Article 9 proposed by the Study Group would in no way improve the situation of authors. Paragraph 1 is no doubt more or less in accordance with the definition proposed by the Authors' Consultative Committee (Doc. DA/22/7), although at present shorn of the right of distribution, but paragraph 2 nullifies its scope and importance. However, in the Group's view, it cannot be dissociated from the first and represents the price to be paid for securing the definition [36]).

The effect of paragraph 1, even if adopted without paragraph 2, would in itself be to stereotype and crystallize the right of reproduction for the future, which would be a prejudicial anticipation.

Paragraph 2, however, being conceived in vague terms ("specified purposes", actually "unspecified"), would merely be an illusory barrier, and one easily surmounted by the use of a gratuity called remuneration [37]).

It would enable States in which users have priority over authors to undertake hazardous ventures, and the new Article 9 would thus become in their hands a launching-pad for rockets which would shatter the authors' rights to pieces.

May the Swedish/BIRPI Study Group be asked to reconsider the question?

Pierre RECHT
President of the Belgian National Copyright Commission
Member of the Legislative Committee of CISAC

35) *Le Droit d'Auteur*, 1895, pp. 162-165.

36) Did the Authors' Consultative Committee foresee its defeat when it reacted only mildly to this text? (Doc. DA/22/7, p. 9.)

37) Which does not even seem to be compulsory.

CORRESPONDENCE

Letter from Great Britain

(Second and Last Part) *)

17. — *Re: Hinds* v. *Sparks (Libel action by a convicted person against a police officer).*

This is a quite extraordinary case fought and won by the plaintiff. *Alfred George Hinds* had been convicted with some other persons in 1953 for breaking into *Maples'* stores in London and robbing a large sum of money. He had been sentenced to 12 years' preventive detention. His defence had been an " alibi ". All the steps he undertook against his conviction had failed. He was due to be released from prison at the end of 1964. The investigations against him had been conducted in 1953 by detective chief superintendant *Herbert Sparks.* After his retirement from Scotland Yard in 1961 Sparks asked a freelance writer to write for him his *autobiography* for which he provided the material. That autobiography, signed by him, was published in 1962 in two parts in the *Pictorial.* The second article dealt with many criminals and, *inter alia,* with the said robbery at *Maples.* Sparks said that Hinds had been justly convicted; materials found on *Hinds* had come from the scene of the robbery. After the publication of those articles *Hinds* hoped to have an opportunity of having his case *re-tried* before a civil jury by suing *Sparks* for *libel.* He therefore sued, *not* the *Pictorial,* but *Sparks,* for libel committed in the said article. He hoped to prove that his permanent contention of " alibi " was right. The hearing started on June 27, 1964, before Mr. Justice *Edmund Davies* and a jury. The hearing took nearly four weeks. The Judge ruled that the onus was on the defendant to prove that the decision of 1953 was correct. The verdict of the jury was returned on July 29, 1964. The jury found in the *plaintiff's* favour and awarded him £ *1,300 as damages.* The case attracted wide interest as the jury was obviously of the opinion that *Hinds* had been wrongly convicted in 1953 [30]).

Sparks had issued notice of appeal which was withdrawn, however, last October [31]).

18. — *Re: Dering* v. *Uris and Others (Libel action concerning a passage in the book " Exodus ").*

This case attracted quite extraordinary public attention. Mr. *Leon Uris,* New York, wrote a novel called *Exodus* about the adventures of a number of Jews in and around Israel after the end of World War II. The book was published in Great Britain by the London publishers, *William Kimber & Co. Ltd.,* in 1959. The plaintiff, Dr. *Wladyslaw Dering,* was a Polish Roman Catholic doctor educated at Warsaw. He was incarcerated in *Auschwitz,* the ill-famed Nazi concentration camp, because of his underground activities; he was employed there as a prisoner-doctor. He is now a registered medical practitioner in London. Nearly three years after the publication of *Exodus* Dr. Dering complained that he was libelled by the following passage in that book: " Here is Block X (in Auschwitz) ... Dr. Dering performed 17,000 ' experiments ' in surgery without anaesthetics ". Dr. Dering sued the author, Leon Uris, and the publishers, William Kimber & Co., in the Queen's Bench Division, London, for libel, demanding damages. The defendants admitted that those words were defamatory, but pleaded that they were true in substance and in fact. The hearing of the case before Mr. Justice *Lawton* and a jury started on April 13, 1964, and occupied about three weeks. Many witnesses from various countries, mostly summoned by Mr. Uris's London solicitor, Mr. S. Kaufman, were heard. It was not in question that Dr. Dering performed at Auschwitz operations to sterilise young Jews and Jewesses, but he alleged that he applied anaesthetics in accordance with medical rules, and further that he would have been killed had he refused to perform the operations. It is, of course, impossible to give in this paper even a summary of the evidence and I will therefore confine myself to quoting some important passages from the Judge's *Summing-up* which occupied nearly five hours.

The Judge reminded the jury that they were not acting as a war crime tribunal, nor were they conducting an inquiry about what went on at Auschwitz. They had to try a civil case according to the law of England. The Judge discussed the influence of so-called " superior orders ".

" Our law ", the Judge said, " is that in regard to some acts one could plead that one did them in fear of one's life or grievous harm ... but we have always said that fear was no excuse for murder and from the decisions of English Judges it seemed likely that fear was no excuse either for causing grievous bodily harm ... This question of moral values and attitude was only relevant so far as blameworthiness attached to Dr. Dering and this was only relevant in deciding whether the defendants had proved the sting of the libel ... "

The jury returned the *verdict* on May 6. They found *for the plaintiff* and awarded as damages to the plaintiff against the defendants: *One halfpenny* (a contemptible sum, commented one of those present), the smallest coin. Judgment was entered accordingly. His Lordship ordered that the plaintiff should pay the costs of the action after the payment into court of £ 2 by the second defendants in March 1964, and

*) See *Copyright,* 1965, p. 65.
30) *The Times, Law Report,* from June 28, 1964, onwards.
31) *Ibid.,* October 20, 1964.

that the plaintiff should get no costs up to the date of payment in. Thus, the plaintiff's victory was a "Pyrrhic" victory. The Judge refused the plaintiff leave to appeal against the order as to costs [32]).

19. — *Re: Reade* v. *The Times Publishing Co. Ltd. (Libel in a book review).*

This case, though settled by mutual agreement, is of some interest because the personality of the world famous inventor, *Marconi*, and his political outlook play an important part therein. Mr. *Leslie Isaac Reade* published in 1963 a book entitled *Marconi and the Discovery of Wireless*. Mr. *Reade* when dealing with *Marconi*'s active enthusiasm for *Fascism* considers in his book various possible explanations for that fact, *inter alia* the explanation given by *Marconi* himself that he thought he was acting for the good of his country. *Reade* said in the book that that was "an unsatisfying excuse". In March 1963 there appeared in *The Times Educational Supplement*, of which the defendants are the proprietors, an unsigned review of Mr. *Reade*'s book in which the reviewer said the author might have accepted Marconi's explanation, so that there was the impression that the above criticism was the reviewer's. Mr. *Reade*, who had been an active opponent of Fascism for many years, sued the defendants for libel. At the hearing before Mr. Justice *John Stephenson* on February 11, 1964, the defendants stated that any such suggestion would be wholly without foundation and that the statement that Marconi's explanation was an unsatisfying excuse was the author's and not the reviewer's criticism. They had paid to the plaintiff a sum as damages and expressed their regret that any aspersions should have been cast even inadvertently on the plaintiff's integrity. The plaintiff accepted those apologies so that the case was settled [33]).

20. — *Egger* v. *Davies (Qualified privilege in libel case).*

I think I should report this case although it concerns libel not committed by or against a newspaper, but the new principle stated by the Court of Appeal seems to me to be of interest to newspapers, journalists, etc. Mrs. *Valerie Egger*, a registered Alsatian Dog judge, sued several members of a dog club, *inter alios* one Davies, for libel contained in a letter written to another dog club, alleging that she was unfit to act as a dog judge. The jury found the letter defamatory and added that the defendants had been actuated by *malice*, except three members of that club. Mr. Justice *Marshall* said that the defendants would have been entitled to rely on the defence of *privilege*, but that defence did not lie because of the malice by some of the defendants. The Judge adhered in this respect to the rule stated in a decision given 50 years ago that, if a person was sued for joint libel and he was actuated by malice, the co-defendants who had not acted with malice were also excluded from the defence of privilege. The three defendants who had not been actuated by malice — as found by the jury — appealed successfully. The Court of Appeal (the Master of the Rolls, Lord *Denning*, Lords Justices *Harman* and *Davies*) carefully considered the previous decision and overruled the same — a rare occurrence — finding that it seemed contrary to natural justice (July 22, 1964). The Court accepted the plea of privilege put forward by the three defendants and dismissed the action insofar as it concerned those defendants [34]).

21. — *Re: Castle and Wigg v. Yorkshire Conservative Newspaper Co. Ltd. (Libel action by Labour M.P.s).*

The following case, although settled, might be of interest because it shows that newspapers are liable for libel if they inadvertently publish a defamatory "Letter to the Editor". Mrs. *Barbara A. Castle* and Mr. *George E. C. Wigg* have been Labour M. P.s for many years. In October 1963, the *Yorkshire Post* published a "Letter to the Editor" in which the writer asserted that the only weapon which the Labour Party had in Parliament was a muck-rake, wielded by Wigg, Castle & Co. The plaintiffs sued the Company as the publishers of the *Yorkshire Post* for libel. The case was heard by Mr. Justice *Marshall* on February 25, 1964. The defendants did not deny their responsibility and, as soon as the matter was brought to their attention, apologized, stressing that there was not the slightest foundation for the offence contained in the "Letter"; they repeated the apology in open Court, whereupon the case was considered to be settled [35]).

22. — *Re: Linklater* v. *The Daily Telegraph Ltd. (Task of Judge and Jury in libel cases).*

This case deserves attention because the Master of the Rolls, Lord *Denning* — who sat as an additional Judge of the Queen's Bench Division — distinguished in a particularly clear manner between the *task* of the *Judge* ("whether words complained of were capable of a defamatory meaning") and of the *Jury* ("to say whether the words should be so understood"). In the present case a medical undergraduate at Oxford, *J. Ph. Th. Linklater*, had an excited quarrel with an assistant in a Bond Street shop in the course of which he attacked the assistant and broke a window. The sentence of 3 months' prison given in the Magistrates' Court was on appeal substituted by a conditional discharge. *Linklater* was born at Prague of an English father and a Czechoslovak mother; he was British by descent. Referring to that case *The Daily Telegraph* published an article in which Linklater was spoken of as "a *Czech*" who had fought against the Germans in France. *Linklater* complained that calling him "a Czech" meant that he was an unreliable Communist and sued the newspaper for libel. The trial lasted not less than eight days. Lord *Denning* told the jury they had to consider what the natural and ordinary meaning of the words complained of was. The jury returned a verdict of Not Guilty [36]). The case seems to me not without some political importance.

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32) (1964) 2 *Q.B.* 669; (1964) 2 *W.L.R.* 1298; (1964) 2 *All E.R.* 660; *The Times, Law Report*, April 14, 1964, and the following days. The case has been commented on by all the newspapers. I would mention only two articles in *The Sunday Times* of May 10, 1964, one by Michael Hamlyn, "How the Dering case was built up", the other by Godfrey Smith, "The Dering case".

33) *The Times, Law Report*, February 19, 1964.

34) (1964) 3 *W.L.R.* 714; (1964) 3 *All E.R.* 406; *The Times, Law Report*, February 25 and July 22, 1964.

35) *The Times, Law Report*, February 26, 1964.

36) *The Times, Law Report*, November 11, 1964.

23. — *Re: Daubeny* v. *"Private Eye" (Using the photograph of a third person).*

It happens again and again that newspapers illustrate articles with the *photograph* of persons who have no connection at all with the character described in the respective article. In many continental countries a "right in one's image" (*"Recht am eigenen Bild"*) is recognised by statutory law. This right is infringed by happenings such as those mentioned above and may be enforced by injunction. In English law such happenings are considered to be passing-off and justify libel action. In the case under review, *Private Eye* published a light-hearted extravaganza concerning an imaginary character portrayed as a notorious "pimp". Rather funnily, the article was illustrated by a photograph of Mr. *Daubeny*, culled by chance from a magazine. He could be plainly recognised by his friends. The publishers of that paper, *Pressdram Ltd.*, were sued by Mr. *Daubeny* for libel before M. Justice *Lawton* on May 14, 1964. The defendants stressed that it was, of course, absurd to suggest that the plaintiff was to be identified in any way with the subject matter of the article. The plaintiff did not think that the defendants had ever any intention of defaming him; he accepted the defendants' apologies; a suitable sum was paid to him as damages and the record was withdrawn [37]) [38]).

24. — *Re: Globe* v. *Globe (Identity of names).*

That such casual misadventures occur also to owners of *names* can be seen in a case heard just one day before the above case by Mr. Justice *Glyn-Jones*. A substantial proportion of the business of the well-known publishers, *Macmillan (Holdings) Ltd.*, has been for over 40 years the distribution of educational books. This business was carried on by a subsidiary, *Globe Publishing Co. Ltd.* In a programme broadcast in October 1963 by the BBC the activities of two salesmen of educational books were portrayed who described themselves as being employed by "The *Globe* Book Company". Those two characters were depicted as deceitful salesmen who adopted unscrupulous methods in order to obtain sales. The name "Globe" had been fictitious and did not refer to an existing publishing firm. As soon as the attention of the BBC had been drawn to the similarity of the names an announcement was broadcast that the name in the programme was fictitious and that any imputation in the programme against the plaintiffs would, of course, be entirely baseless. The plaintiffs had commenced a libel action because they felt they had no alternative but to seek a full public retraction. At the hearing of the case by Mr. Justice *Glyn-Jones* on May 13, 1964, the BBC repeated their sincere apologies and paid the plaintiffs a proper sum in damages. The record was then withdrawn [39]).

[37]) A quite similar case, *Middleton* v. *Associated Newspapers Ltd.*, is reported in my "Letter", *Le Droit d'Auteur*, March 1959, p. 53, Section II, 12.

[38]) *The Times, Law Report*, May 15, 1964.

[39]) *The Times, Law Report*, May 14, 1964. I would refer to two similar cases dealing with confusion of names, *Stuttard* v. *Daily Sketch* and *Jewry* v. *Associated Newspapers Ltd.*, mentioned in my "Letter" in *Le Droit d'Auteur (Copyright)*, March 1963, p. 54, Section II, 15.

III. The Performing Right Society Ltd. (PRS)

1. — The Society was formed fifty years ago on March 6, 1914. On the occasion of the fiftieth anniversary the President of the Society, Sir *Arthur Bliss*, published in the Bulletin, *Performing Right*, No. 40, a short survey of the Society's history and the difficulties which it had been necessary to overcome. At the Banquet held the day after the Annual General Meeting, the Guest of Honour, Sir *Ashley Clarke*, and other famous guests paid complimentary tributes to the Society's achievements. I would quote only the words with which Sir *Ashley* ended his address: "I hope that the next fifty years of the Society are going to be as successful as the first fifty years, and that prosperity will attend on all your efforts" [40]); a hope undoubtedly shared by everyone interested in the protection of intellectual rights.

2. — The fiftieth *Annual General Meeting* of the Society was held on June 25, 1964, with the President, Sir *Arthur Bliss*, in the chair. The President stated that the gross income from all sources had increased in 1963 by £ 354,437 to a total of £ 4,243,738. The rate of administration expenses had decreased slightly to 11.95 % of the gross income. The distributable revenue had increased by £ 323,453 to a total of £ 3,668,475. The General Fees Account had increased by £ 272,123 and the Broadcasting Fees Account by £ 82,314 gross. The membership rose to 3,528 members [41]).

3. — *Re: The Estate of Béla Bartók, deceased (Injunction regarding royalty payments by the PRS).* — *Béla Bartók*, the greatest modern Hungarian composer, died in New York in 1945, leaving a Will, executed 1943. As he left some estate in London, probate of the Will was granted in January 1964 to Mr. *Viktor Bator*, New York, out of the Principal Probate Registry, London, in January 1964. In February 1964 Bartók's widow, Mrs. *Edith P. Bartók*, began a probate action against said Mr. *Bator*, one of the executors appointed in *Bartók's* Will, for revocation of the probate grant and for a grant to her of letters of administration, contending that her husband died domiciled not in New York, but in Hungary. Some of the assets of the estate of the deceased in England were held as *royalties* by the PRS, London. The PRS was proposing to remit the sums held by the Society on Bartók's account to another performing right society established in the German Federal Republic. Mr. Justice *Faulks* granted an interim injunction to prevent the funds being transferred out of the jurisdiction. On March 11, 1964, the PRS gave an undertaking that they would not part with any monies received by them in respect of performances of the works of *Béla Bartók*, that undertaking to remain in force until one month after determination of the probate action mentioned above, and the interim injunction was discharged by the Court [42]).

[40]) See *Performing Right*, No. 41, p. 29. The *GEMA News*, which has appeared since January 1, 1964, in English, French and Spanish, published on the occasion of the PRS Jubilee an interesting article — contributed by Mr. *H. L. Walter* — on the historical development of the Society.

[41]) See *Performing Right*, No. 41, p. 23.

[42]) *The Times, Law Report*, February 19 and March 12, 1964.

4. — *The Performing Right Tribunal.*

A. I reported in my last "Letter" under item 2 (b), Section III (*Le Droit d'Auteur - Copyright*, 1964, p. 80), that the Society's tariff for "pop" or beat music had been referred to the Tribunal. The tariff is destined to apply only where the performance takes place on premises not otherwise covered by an appropriate licence. The *Cinematograph Exhibitors' Association* (CEA), joined by some other interested parties, objected to that tariff which provided for a fee calculated at the rate of *4 %* on the *actual gross takings* at each concert to which it applied, and for that purpose periodical certificates of a qualified accountant should be furnished. The CEA contended that 4 % was a much too high proportion and objected further to the said measure of control, mainly because they feared possible discovery of the figures arrived at by one member of the CEA by the other members. The case was tried under the chairmanship of Mr. *Rayburn*, Q. C. on December 9, 1963, and the seven following days. The Tribunal's decision was handed down in February 1964. The Tribunal drew attention to some minor defects of the tariff which were met by agreement during the hearing. Two questions were at issue:

(a) Whether the proper method is to charge a percentage on actual gross takings or estimated takings.

(b) If such method is to be used, what is the appropriate percentage?

As to *(a)*, the Tribunal said the ideal method of arriving at the true value of an intangible commodity such as a licence to use copyright matter would be evidence of what a willing buyer of that commodity had agreed in a free market to pay to a willing seller. The Tribunal having stressed that copyright music was a "necessity" for a "popular" concert stated that this test could not in the circumstances be applied. The Tribunal noted that no evidence had been furnished to it by the referors that would have enabled it to fix a basis for estimating receipts. Accordingly, and without necessarily expressing a general principle that the PRS was entitled to base its charges on true receipts from the exploitation of its repertoire, the Tribunal decided that the Society's charge should be on actual gross takings, but with an option to the licensee to pay on a percentage of the total moneyholding capacity for the concert.

As to *(b)*, the Tribunal stressed — as in the *Bingo* case (reported in my last "Letter", *Le Droit d'Auteur - Copyright*, 1964, p. 79, III, 2 *(a)*) — that percentages applicable to cases such as musical plays had little relevance to the case of popular concerts. But on the other hand the Tribunal considered that the PRS tariff for variety, pantomime and the like entertainments would produce a yield far lower than 4 % on gross receipts. The Tribunal added: "While the Tribunal do not subscribe to the proposition, as such, that charges made for licences should be tied down to those which were made under different circumstances in the past, they certainly feel that increases must not be made arbitrarily". The Tribunal fixed the method of assessment at *2 % on actual gross takings*, as certified by a qualified accountant, or, alternatively, at the rate of 1.75 % on the total moneyholding capacity of the concert hall. The effect of this alternative will be to provide the Society with a payment of 2 % on uniform notional takings equal to 87½ % of moneyholding capacity. In the accountant's certificate the individual places of performance may be disguised under *code letters*, if so desired by the licensee. The Tribunal accordingly varied the tariff "LP" to give effect to the decision.

B. "On the 29th April, 1964, the Performing Right Tribunal gave its decision on the reference to it of the Society's tariff 'M'. Subject to certain exceptions, the tariff related to the premises owned, occupied or controlled by *local authorities* which are let for miscellaneous entertainments at which music is played, or at which such entertainments are provided by or on behalf of the local authorities" (quoted from the article by Mr. *Denis de Freitas* in *Performing Right*, No. 41, September 1964, pp. 45 *et seq.*). Regarding the arguments put forward by each party, I would refer to the said article by Mr. *de Freitas*.

The Tribunal reduced the tariff from the flat rate of 2 % of the expenditure by the municipal authorities on musical entertainments to 2 % on the first £ 3,000 of expenditure, descending gradually to 1 %. The tariff was also revised in other respects.

Mr. *de Freitas* concludes his article with the following remarks:

"There are two general comments that may be made about the decision. Firstly, although the Society was unsuccessful in seeking to abolish descending percentages and aggregation, the practical effect of the application of the formula settled by the Tribunal will produce in the aggregate a sum under this tariff that will not fall very far short of the amount that would have been produced by the tariff as referred.

"Secondly, it is fair to say that the Tribunal in its decision did not find, either expressly or by implication, that the Society in establishing the referred tariff in December 1962 had acted in abuse of monopoly power. This in turn gives rise to the reflection that although the provisions in the Copyright Act, 1956, establishing the Tribunal have their origin in the Report of the Copyright Committee 1952 (*Cmd.* 8662) which, in this connection, was concerned solely with the possibility of the abuse of monopoly power, the Society's tariffs in practice are varied even when no abuse of power has taken place." [43])

5. — *Re: The PRS* v. *Dumighan (Infringement of copyright in a song).* — The defendants, two brothers, *G. and R. Dumighan*, were owners of a Dance Hall. They allowed the playing there of a song out of the PRS repertoire. They asked the Court to order an inquiry into the Society's activities, alleging that the Society's fees for the public performance of copyright songs were too high. This entirely misconceived defence against the plaintiffs' allegation of copyright infringement was rejected by Mr. Justice *Pennycuick* who pointed out that he had no power to order such an inquiry. His Lordship made

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[43]) See the comments on the decision in *Performing Right*, No. 40, May 1964, pp. 11 *et seq.* In his presidential address *Sir Arthur Bliss* referred to the above and the preceding decisions (*Performing Right*, No. 41, December 1964, p. 24).

au order stopping the defendants from infringing the Society's copyright [44]).

IV. Miscellaneous

1. — *Shakespeare's "Copyright"*. — The quatercentenary of the Poet's birth seems to me an opportunity to cast a brief glance at the English "Copyright" situation in those remote days. "Copyright" in the modern sense of that term did not exist as a right belonging to *authors*. The so-called "Copyright" belonged to the *printer*. In 1557, *Queen Mary* granted a *charter* of incorporation to "The Masters and Keepers or Wardens and Commonalty of the Mystery or Art of a Stationer of the City of London". All printers were to become members of "The *Worshipful Company of Stationers*"; all the books were to be authorised by the Archbishop of Canterbury or the Bishop of London; all books had to be entered in the Company's *Registers*. The said Company edited in 1923 a highly interesting booklet in Commemoration of the First Folio Tercentenary "with a Catalogue of Shakespearians" from which booklet I quote some passages with the kind permission of the Master and Wardens of the Company. "The object of the charter was to check heresy ... The Company acted as a licensing authority ... The Volumes containing early entries of the plays of William Shakespeare ... are available in an excellent transcript by Professor *E. Arber*. In April 1593, *Richard Field*, native of Stratford-on-Avon, entered for his copy under the hands of the two Wardens a book entitled *Venus and Adonis*, a poem by Shakespeare whose name, however, was not entered, as the 'copyright' belonged to Richard Field." On November 8, 1623, the Registers show the following entry:

"8° Nouembris 1623.

Master Blounte Isaak Jaggard	Entred for their Copie vnder the hands of Master Doctor Worrall and Master Cole warden Master William Shakspeers Comedyes Histories and Tragedyes soe manie of the said Copies as are not formerly entred to other men."

A list of Shakespeare's "Comedies, Histories and Tragedies" not previously printed follows. Soon after November 8, 1623, appeared "Mr. William Shakespeare's Comedies, Histories and Tragedies. Published according to the Originall Copies, London: Printed by *Isaac Jaggard* and *Ed. Blount*, 1623".

It might be of interest to consult the Company's Register, in which an entry refers to *Hamlet* and *Romeo and Juliet*.

In this connection I would briefly refer to an article by *Martin Seymour-Smith* in the Spring 1964 issue of *The Author*, dealing with the *economics of authorship* in *Shakespeare*'s time. According to the writer of that article "a frugal and careful writer could live in London on £ 20 or £ 30 a year" (it must not be overlooked that the weekly wage was about five shillings as against the present £ 17 or so). Not more than £ 2 or £ 3 could be expected for a manuscript. "This is what *Shakespeare* would have received for *Venus and Adonis* ... the average payment made for a play was £ 6" [45]).

2. — *Fair dealing* with a copyright work for purposes of *research* or *private study* does not constitute infringement of copyright in that work (Section 6 [1] of the Copyright Act, 1956), and the same applies under Section 6 (2) to fair dealing for purposes of criticism or review, if accompanied by a sufficient acknowledgment. In 1958 the Society of Authors and the Publishers' Association agreed on certain limits of copying (reproducing) a work for purposes of *criticism or review*. As to the details, I refer to my "Letter" in *Le Droit d'Auteur*, March 1959, p. 54, Section IV, 1; see also *The Author*, 1958, p. 53. As reported in the Winter 1964 issue of the latter paper (p. 17), the said Associations have now concluded a parallel agreement as to certain limits if a work is copied (reproduced) for purposes of *private study* or *research*. The details are set forth in the above issue of *The Author*.

Copying (reproducing) for other private purposes, especially for entertainment, is not covered by Section (1) of the Act. I refer to the following item 3.

3. — In my last "Letter" (*Le Droit d'Auteur - Copyright*, 1964, p. 61) I reported in item 4 of Section II the case of *Lawrence Wright Music Co. Ltd. (and another)* v. *Grundig* in which it has been ruled that embodying broadcast copyright matter *on a tape recorder* without the author's consent infringes the latter's copyright even if effected for *private (domestic) uses only*, e. g. for entertainment (except if reproduced for purposes of private study or research under Section 6 [1] of the Act). The importance of that decision is not impaired by the fact that at the end of the hearing the defendants consented. The question of *private* embodying of broadcast copyright matter on tape recorders (*"Private Tonbandaufnahme"*) continues to be hotly discussed in the German Federal Republic and it cannot yet be foreseen how that problem will finally be solved in the coming new German Copyright legislation. An important contribution to that problem has appeared in the October 1964 issue of the German periodical, *Gewerblicher Rechtsschutz und Urheberrecht*, by the well-known copyright expert, Dr. *Alfred Baum*, Zurich. He considers the question from the standpoint of *international* law, *viz.* the *Revised Berne Convention*. He draws attention to the wording of Article 13 as revised at *Brussels* where it is provided in paragraph (1) that "*les auteurs d'œuvres musicales jouissent du droit exclusif d'autoriser l'*enregistrement *de ces œuvres par des instruments servant à les reproduire mécaniquement*" (the English translation renders the term "*enregistrement*" by "*recording*"). Paragraph (2) of that Article authorises the national legislations to provide for reservations and conditions relating to the application of the foregoing right *without prejudice* however to the author's right to obtain just remuneration. Dr. *Baum* is in my opinion quite right when he categorically declares that the member States are not entitled to consider "*enregistrement*" ("*recording*") as used in the Convention to be identical to "*reproduction*" ("*Vervielfältigung*"). Dr. *Baum* arrives, therefore, at the conclusion that embodying broadcast copyright matter on a tape recorder requires the author's (composer's)

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44) *Daily Telegraph*, October 21, 1964.

45) See also the Letter by Hugh Heckstall-Smith, *The Author*, Summer 1964, p. 27.

consent even if done for *private* purposes, a result in agreement with the above decision [46]).

4. — *Copyright Notice under the UCC.* — The attitude of the different States regarding *assignment of copyright* varies: In the USA, the legal title of copyright can be assigned only on the whole, but not in part; the copyright is held to be indivisible; but licences can be granted also on single rights comprised under the term " copyright ". Many countries allow assignment also of single rights contained in copyright. Some countries (such as Austria) allow copyright to be bequeathed *mortis causa*, but not to be assigned *inter vivos;* exclusive and non-exclusive licences may be granted in respect of the copyrigbt *in toto* or of single rights (under Austrian law called " *Werknutzungsrechte* " and " *Werknutzungsbewilligungen* " respectively). The *Copyright Notice* required by the UCC must contain the " *name of the copyright owner* (or owners) ". As the UCC was drafted mainly by USA copyright experts and — as just mentioned — under USA law copyright is indivisible, the UCC does not mention who is to be indicated as " copyright owner " if, in a country in which parts of copyright are assignable, a work is published by a person to whom a *part* has been assigned, e. g. if a work is published by a person in the German Federal Republic who is the owner only of the right to translate the work into some language and distribute the translation. The well-known copyright expert, Dr. *H. L. Pinner*, London, shortly before his untimely death at the beginning of 1964, wrote a study, entitled *Vorbehalt des Urheberrechts und Copyright Notice* (Publishers: Verlag Rombach, Freiburg im Breisgau), in which he considers that problem. *Pinner* examines the question how the Copyright Notice has to be worded in such a case with regard to the name of the " copyright owner ", in order to comply also with USA law. *Pinner* discusses the various proposals put forward in this respect. He thinks the best way is to name the publisher. If an author assigns his copyright to different persons in different countries, Dr. *Pinner* suggests that the names of the different assignees should be given in the Copyright Notice. In the case of translations he proposes, for example, the following wording:

Translation © A. B., 1960.
Original Work © C. D., 1958.

Pinner had been informed that, in spite of the many controversial questions which could arise, neither in the USA nor in any other country did a law suit seem to have been instituted over the wording of the Copyright Notice.

5. — *Copyright and the USSR.* — All the endeavours to make the USSR join any Copyright Union have failed so far. An article in the Summer 1964 issue of *The Author*, signed M. E. B., and entitled " *Bridging the Russian gap* ", looks at the copyright relations with the Soviet Union in what seems to me to be a more realistic manner. M. E. B. sees the reason for the Soviet Union's attitude in the *differences between the Western and the Soviet copyright systems*, outlined in a recently published book, *Introduction to Soviet Copyright Law*, by *Serge L. Levitsky* (published in English by *Sijthoff*, Leyden, at about £ 3. 3. 0.) [47]). The Soviet principle is that the author works for the good of the community and should be remunerated in accordance with the " social usefulness " of his work . . . Once he has offered his work . . . for exploitation in any medium, the fees he is to receive are set out in a series of schedules laid down under the USSR copyright laws of 1928 and 1961. " The rates, worked out per sheet of 16 pages . . . vary according both to literary merits and the contribution the work makes to the cultural growth of the nation and its Communist education. Socially useless writings, such as church hymns and other religious works, whatever their literary merit, earn nothing at all. " How big are the sums an author might get is shown by the reported fact that " the author of no more than an ' ordinary conscientious translation ' of *Shaw's Pygmalion* received no less than one million roubles ".

However much one might disapprove of that legal situation one must take it into consideration and, therefore, it seems to me a reasonable suggestion by M. E. B. " to drop all efforts for the time being to arrange full reciprocal copyright protection, and instead . . . to concentrate on trying to secure in the USSR for foreign authors treaty rights to remuneration similar to, if less favourable than, those enjoyed by Soviet nationals " [48]).

6. — *Copyright and Confiscation.* — It does not often happen that relations between *copyright and confiscation* are discussed. The book by Dr. *Karl-Heinz Böckstiegel* (published in 1963 by Walther de Gruyter, Berlin, XXIII and 158 pp., DM. 21; reviewed by myself in Volume 13 of the *International and Comparative Law Quarterly*, July 1964, pp. 1124 *et seq.*) is one of the few studies dealing with that problem. It is entitled " *Die allgemeinen Grundsätze des Völkerrechts über Eigentumsentziehung* " and discusses Article 1 of the *Additional Protocol* to the *Convention on Human Rights* [49]). The

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[46]) See Note 18 in my last " Letter " (*Le Droit d'Auteur - Copyright*, 1964, p. 62). I would refer also to the article by *Fabiani* in the November 1964 issue of *Le Droit d'Auteur*, p. 286, item 2. According to a notice in *The Guardian* of May 7, 1962, the English Recording Amateur Cluhs pay an annual sum for private recording. The importance of the ahove problem to authors and composers is stressed *inter alia* in articles in the *GEMA Nachrichten*, e. g. June 1964.

[47]) The hook is reviewed in Volume 13 of the *International and Comparative Law Quarterly*, 1964, p. 1130.

[48]) The musical, *My Fair Lady*, was performed in Moscow last December without the permission of the *Columbia Broadcasting System* which controls the foreign rights in that work. *Columbia* has registered an official complaint with the Cultural Attaché of the Russian Embassy in Washington. Will that change the USSR's attitude towards foreign works? I doubt it.

[49]) The text of Article 1 considered ahove reads as follows (hoth texts heing authentic):

English text: " Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall he deprived of his possessions except in the public interest and subject to the conditions provided for hy law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contrihutions or penalties. "

French text: " Toute personne physique ou morale a droit au respect de ses hiens. Nul ne peut être privé de sa propriété que pour cause d'utilité publique et dans les conditions prévues par la loi et les principes généraux du droit international.

Les dispositions précédentes ne portent pas atteinte au droit que possèdent les Etat de mettre en vigueur les lois qu'ils jugent nécessaires pour réglementer l'usage des hiens conformément à l'intérêt général ou pour assurer le paiement des impôts ou d'autres contrihutions ou des amendes. "

author points out that the term "property" ("possessions") and the respective words in the French text of Article 1 do not include "claims in rem" (*"dingliche Rechte"*) only, but comprise all *subjective private or public rights of any pecuniary value*, and, therefore, also *copyrights*. He rejects — in my view quite rightly — the opinion expressed elsewhere that rights of intellectual property, such as copyrights, patents, etc., are not covered by Article 1 because of their limited duration. Dr. *Böckstiegel* expounds that a member State is not entitled to confiscate, for instance, copyright belonging to *foreigners*, except in the public interest and against adequate compensation payable without any delay and without any discrimination, even if that State is entitled under its domestic law to confiscate without any compensation such rights belonging to its own subjects. An important principle in view of the present tendency to confiscate private property.

7. — *British Book Production.* — According to *The Bookseller* (see also *The Author*, Spring 1964, pp. 19, 30 and 36) titles issued by British publishers in 1963 amounted to 26,023 (944 more than 1962). There was a decrease in new editions (448 down on 1962); 2,599 children's book were issued. A substantial increase occurred in the educational and technical fields. Book *exports* increased rather substantially. About two and a half million were imported from London to India. As to the not fully developed Asian and African countries, British books, either printed on the spot or imported, are an integral part of those countries' educational systems, but purchases are limited by insufficient financial means. An article in the Summer 1964 issue of *The Author* points out that in the five years 1958-63 exports of British books to the European Continent have more than doubled, from £3 million to over £7 million, the Continent being the largest importer of British books, superseding even the USA, due mainly to the establishment of English as a "second" language.

If I cast a brief glance at the situation in the USA, 25,784 new titles were issued there in 1963 (10 % over 1962). New paperbacks accounted for 20 % of the titles. As listed in the *Publishers' Weekly*, sales from the USA to Great Britain amounted in 1962 to about 9 million dollars for more than 9 million books, compared with 8.4 million dollars in 1961. The said paper estimates that book exports from USA to Great Britain exceeded imports by a *ratio* of about 10 to 3 in dollar income [50]).

Books and periodicals were exempted from the *Import surcharge* of 15 % introduced by the new Labour Government in November 1964.

8. — *Authors and Financial Aspects.* — In an article in *The Sunday Times* of March 22, 1964, entitled "*Harder times for soft covers*", the situation of *paperbacks* is considered. The unnamed author says that there are difficulties facing a new entrant into the paperback market. A few publishers dominate about 84 % of that market (at the top *Penguin* with 23 %) so that "140 publishers scramble for the remaining 16 % of the market. Rights fees rise and so do royalties. The old figure was 7½% divided between hard-cover publisher and author." Paperback houses are now bidding about 12½%, 5 % to the publisher and 7½% to the author. This is one of the reasons why paperbacks cost more and "some customer-resistance is being encountered".

An article in the same paper (April 19, 1964) deals with the *rare books* market. Its author, Mr. *William Rees-Mogg*, says that that "market is to its devotees one of the most fascinating of all". "The general advance in rare book prices can hardly have been less than 50 % in 1963."

In a "Letter to the Editor" of *The Daily Telegraph* the manager of the well-known Sadler's Wells Theatre, *David McKenna*, draws attention to the difficulty young British composers have in attracting audiences to their works (April 24, 1964). Great difficulties are also to be faced by poets (*The Sunday Times*, November 22, 1964) [51]). As a contrast, I would mention that *Frederick Loewe*, the composer of *My Fair Lady*, has dedicated about a million dollars to a USA hospital out of royalties received from performances of that musical.

9. — Last December the reconstituted *Press Council* published its first Report, called *The Press and the People*. Lord *Devlin* defined as the Council's first objects the preservation of the freedom of the British Press and the maintenance of the highest professional standards; "respect by the public for the freedom of the Press depends on the maintenance of standards". Last year the Council had to deal with about 300 cases; the Council adjudicated in 86 cases. A remarkable reference to the Council was made last December by the Queen concerning "attempts by individual press photographers to intrude upon the privacy of herself and her sister Princess Margaret". The editors of two newspapers, having been falsely told that the photographs had been taken from a public footpath, published the photos. The Council strongly censured those photographers. That incident has renewed the demand to revive Lord *Mancroft's* "Right of Privacy Bill" — abandoned in 1961 (referred to in my "Letter", *Le Droit d'Auteur - Copyright*, March 1962, p. 33, Section I, item7). The activity of the Council was discussed and generally approved by the House of Commons last May [52]). The often discussed question whether the Editor of a newspaper must publish "Letters to the Editor" has been answered by the Council in the negative; publication is a matter for the editor's discretion.

10. — A dispute had arisen between the *BBC* and the *Musicians' Union* on the question of *increased use of gramophone records* for the extension of the Light Programme and

[50]) See also the note "Anglo-American up-down" in the Winter 1964 issue of *The Author*, p. 29.

[51]) I would refer also to the comments by *Sir A. Herbert*, above, Section I, 9, and to *The Daily Telegraph* of November 19, 1964, "The Writing Business", by *David Holloway*. See also the articles in the Winter 1964 issue of *The Author* by *J. B. Priestley* and *Harry Kullman*, and the "Letter" by *John Creasey* (pp. 1 *et seq.* and 28).

[52]) See as to other cases adjudicated by the Council *The Times*, October 22, 1964; *The Sunday Times*, October 26 and December 27, 1964; *The Daily Telegraph*, December 16, last. In this connection I would refer to the article by Professor *Svante Bergström* in the April 1964 issue of this paper suggesting the deletion of paragraph (3) of Article 9 of the Berne Convention, which denies protection to "news of the day" and to miscellaneous information having the character of mere items of news.

for the serious music network. That dispute led to an agreement concluded on June 22, 1964, without reference to the PR Tribunal. The Union withdrew their objections to the use of the 47 extra hours per week as needletime that the BBC required, so that Phonographic Performance Ltd. were in a position to authorise the increase. On the other hand, the agreement provides for increased employment of musicians in connection with the new music services.

As reported in the dailies in June 1964, the Screenwriters' Guild protested against the BBC's decision to cut the number of television plays in the last quarter of 1964 and the Composers' Guild objected to the BBC's concentrating on "pop" music, thus obliterating opportunities for composers of light music. The BBC gave satisfying explanations.

11. — Two articles in the Summer 1964 issue of *The Author* by Lord *Francis-Williams* and by *V. B. C.* respectively remind us of the *80th anniversary* of the *birthday* of the *Society of Authors* in 1964. On September 28, 1883, Sir *Walter Besant* held a meeting at which it was resolved to found a Society to be called "The Company of Authors". On May 26, 1884, the Poet Laureate, Lord *Tennyson*, accepted the Presidency of the Society, now called "The Society of Authors", and that date might be considered the birthday of the Society. At that time "even leading authors were generally regarded as exploitation-fodder by all but the most honest of publishers and by any copyright-snatcher who saw a chance of making a quick shilling out of other people's talents" (Lord Francis-Williams). The Society's aim was "to protect and further the interests of authors, principally by defining and defending literary property and by reforming copyright at home and abroad". In 1890, *The Author* appeared for the first time as a monthly, a paper full of information on legal, economic, cultural and social matters of interest to authors, information of which I have had and still often have the opportunity to avail myself in my "Letters", published in *Le Droit d'Auteur* annually since 1942. I am sure anyone who is interested in protection and progress of intellectual work will gladly subscribe to the closing words in Lord Francis-Williams's article: "I hope that the Society's eightieth anniversary will provide opportunities for considering the whole question of the position of the author in society and for impressing upon the British the importance — to them and to the world — of authorship" [53]).

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53) See also *The Author*, Autumn 1964, p. 16.

INTERNATIONAL ACTIVITIES

International Confederation of Societies of Authors and Composers (CISAC)
Meeting of the Legislative Committee

(Paris, March 4 to 6, 1965)

The CISAC Legislative Committee met in Paris from March 4 to 6, 1965, holding some of its sessions jointly with the Confederal Council. Mr. Valerio de Sanctis was unanimously re-elected Chairman of the Committee. Members of both of these CISAC bodies were present, namely, jurists, experts and technicians of the authors' societies of the following countries: Austria, Belgium, Czechoslovakia, France, Germany (Federal Republic), Greece, Hungary, Italy, Netherlands, Poland, Spain, Sweden, Switzerland, United Kingdom, United States, Yugoslavia. Invited in the capacity of observers, BIRPI was represented by Mr. C. Masouyé, Counsellor, Head of the Copyright Division, and Unesco by Miss M.-C. Dock, of the Copyright Section. ALAI had delegated its President, Maître M. Boutet, and its Perpetual Secretary, Mr. J. Vilbois; and BIEM its Director-General, Mr. A. Tournier.

The agenda included the following items:

— a report on the proceedings of the Authors' Consultative Committee (Rapporteur: Mr. Streuli);
— the right of reproduction and the Stockholm Conference (Rapporteur: Mr. Recht);
— the proposed World Intellectual Property Organization (Rapporteur: Mr. de Sanctis);
— the problems of the Common Market in the field of copyright (Rapporteur: Mr. Hepp);
— the possible accession of Argentina to the Berne Convention (Rapporteur: Mr. Mouchet);
— the revision of domestic copyright legislation in South Africa (Rapporteur: Mr. Roos), Czechoslovakia (Rapporteur: Mr. Novotny), the Netherlands (Rapporteur: Mr. van Nus), and Switzerland (Rapporteur: Mr. Uchtenhagen);
— the reform of the confederal organization (Rapporteur: Mr. J. L. Tournier).

At the close of the deliberations, some questions led to the adoption of resolutions which were ratified by the Confederal Council of CISAC, under the chairmanship of Sir Arthur Bliss, President of CISAC. The text of these resolutions is reproduced below.

1. Proposed Revision of the Berne Convention

The Confederal Council of CISAC, meeting in Paris on March 6, 1965, at the proposal of its Legislative Committee,

Having noted the final report of the Authors' Consultative Committee as well as the individual reports submitted to it on this subject,

Expresses its entire approval of the contents of this document and congratulates the members of the Authors' Consultative Committee on the remarkable work performed in this connection;

Draws the special attention of the affiliated Societies, with a view to the representations to be made to their respective Governments within the framework of the preparations for the Stockholm Revision Conference, to the following points in the proposals of the Swedish/BIRPI Study Group:

(1) the assimilation of television works to cinematographic works (Article 2 [2]), which would be particularly dangerous in view of the special systems for the protection of cinematographic works already in existence or planned for the futnre;
(2) the faculty allowed to States to limit as widely as possible not only the exercise but even the recognition of the right of reproduction (Article 9 [2]), which would open the door to all possible exceptions and thus render illusory the formal recognition of the right of reproduction contained in paragraph (1) of the said Article;
(3) the absence of any real justification, in the light of experience, for maintaining the power to restrict the author's exclusive right in respect of broadcasting (Article 11bis [2]) and ephemeral recordings (Article 11bis [3]);
(4) the fact that any presumption of assignment (Article 14) in favour of the film-makers would constitute not only an obvious lowering of the level of the protection of the authors but at the same time a serious limitation of contractual freedom, which would certainly be quite out of place in an international convention;
(5) the grave danger of re-introducing into the Berne Convention the system of reservations (Article 25bis), abolished since 1928, and the risks of deterioration which such a measure is liable to involve for the Convention.

2. Proposal for a World Intellectual Property Organization

The Confederal Council of CISAC, meeting in Paris on March 6, 1965, at the proposal of its Legislative Committee,

Having noted the introductory report and the Draft Convention of the World Intellectual Property Organization,

Recalls the resolution voted by the Legislative Committee of CISAC at Madrid in November 1962;

Notes that the tendency towards grouping the most widely varying disciplines under the designation of Intellectual Property, which it drew attention to on that occasion, has merely continued to strengthen;

Considers that the integration of the Berne Union into a much wider international organization, whose declared aims do not coincide with, and may indeed be in contradiction to, those of the Berne Union, and, further, whose members may include countries not knowing any international system of copyright protection, cannot fail to ruin the economy of the Union and even compromise its very existence;

Recognizes, however, that it may be necessary to make changes in the present administrative organization of the Unions but feels that any such reorganization can and must only be carried out within the framework of the structural and functional autonomy of the Unions concerned.

3. Private Recordings

The Confederal Council of CISAC, meeting in Paris on March 6, 1965, at the proposal of its Legislative Committee,

Having noted the report presented to it by STIM (Sweden) on private recordings,

Recalling the contents of the decision which it adopted at Rome in June 1962, as well as all the resolutions which it made in 1949, 1950, 1952, 1954, 1955 and March 1962, concerning the general question of

recordings, for private or personal nse, by means of tape-recorders or other similar machines, of protected literary or artistic works,

Reaffirms in particular the principle according to which Article 13 of the Berne Convention excludes all possibility of denying the right granted to authors of musical works in respect of the recording of their works by instruments for reproducing them mechanically, whatever the conditions in which such recording is effected;

Emphasizes that the concept of private use does not in any way restrict the principle defined above, except for the system of the right of public presentation and performance which excludes private use from protection.

4. Refusal to Grant Rights of Public Presentation

The Confederal Council of CISAC, meeting in Paris on March 6, 1965, at the proposal of its Legislative Committee,

Having noted the report of SAFCA (South Africa) concerning the refusal of certain authors to grant rights of public presentation,

Considers that, apart from the general agreements made by the authors' societies for their repertoire as a whole, the right of the author personally to grant or refuse authorization to present his work is an indisputable aspect of his moral right, and that the exercise of this prerogative can on no account be considered as an argument in favour of the introduction of a statutory licence in national legislation.

NEWS ITEMS

IRELAND

Signature of the European Agreement concerning Programme Exchanges by Means of Television Films

In a letter dated March 12, 1965, the Secretary-General of the Council of Europe informed BIRPI that on March 5, 1965, the Permanent Delegate of Ireland to the Council of Europe, vested with full powers by his Government, had signed, without reservation in respect of ratification or acceptance, the *European Agreement concerning Programme Exchanges by means of Television Films*, open to signature by the Members of the Council of Europe since December 15, 1958 [1]).

This Agreement, which is already in force between Belgium, Denmark, France, Greece, Luxembourg, Norway, Sweden, Turkey and the United Kingdom [2]), will take effect as regards Ireland on April 4, 1965, in pursuance of the provisions of Article 7 (2).

This notification was made in accordance with Article 10 of the said Agreement.

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[1]) For the text, see *Le Droit d'Auteur*, 1959, pp. 37 *et seq.*
[2]) See *Copyright*, 1965, p. 27.

CALENDAR

Meetings of BIRPI

Date and Place	Title	Object	Invitations to Participate	Observers Invited
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
September 29 to October 1, 1965 Geneva	Executive Committee of the Conference of Representatives of the Paris Union (1st 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
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
Paris	May 7, 1965	International Literary and Artistic Association (ALAI)	International Commission and Executive Committee
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