

# Copyright

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

1<sup>st</sup> year - No. 5

May 1965

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# INTERNATIONAL UNION

## Committee of Experts on the Administrative Structure of International Cooperation in the Field of Intellectual Property

(Geneva, March 22 to April 2, 1965)

### NOTE <sup>1)</sup>

(1) The Committee of Experts on the Administrative Structure of International Cooperation in the Field of Intellectual Property (hereinafter referred to as "the Committee of Experts") met in Geneva from March 22 to April 2, 1965, on the invitation of the Director of BIRPI and pursuant to a joint Resolution of the Permanent Committee of the Berne Union and the Permanent Bureau of the Paris Union, adopted in 1962 (see *Le Droit d'Auteur-Copyright*, 1962, page 186).

(2) Of the Member States of the Paris and Berne Unions, 37 were represented: Australia, Austria, Belgium, Brazil, Canada, Congo (Leopoldville), Czechoslovak Socialist Republic, Denmark, Finland, France, Federal Republic of Germany, Greece, People's Republic of Hungary, India, Indonesia, Iran, Ireland, Israel, Italy, Ivory Coast, Japan, Lebanon, Luxembourg, Monaco, Morocco, Netherlands, New Zealand, Norway, Pakistan, Polish People's Republic, Rumanian People's Republic, Spain, Sweden, Switzerland, United Kingdom of Great Britain and Northern Ireland, United States of America, Socialist Federal People's Republic of Yugoslavia.

(3) The Union of Soviet Socialist Republics was represented by Observers, its adherence to the Paris Union becoming effective only on July 1, 1965.

(4) Four intergovernmental organizations, namely, the United Nations, UNESCO, the International Patent Institute, and the Organization of American States, and six non-governmental organizations: International Association for the Protection of Industrial Property (IAPIP), International Bureau for Mechanical Reproduction (BIEM), International Chamber of Commerce (ICC), International Confederation of Societies of Authors and Composers (CISAC), International Federation of Patent Agents (FICPI), International Literary and Artistic Association (ALAI) were also represented by Observers.

(5) The names of the participants appear at the end of the present Note.

(6) Judge Torwald Hesser (Sweden) was elected Chairman, while Messrs. H. Puget (France), S. Sumodiredjo (Indonesia), and E. Tasnády (Hungary), were elected Vice-Chairmen.

### Basis of the Work of the Committee of Experts

(7) The Committee of Experts had before it the texts of a draft convention entitled "Convention of the World Intel-

lectual Property Organization" and a draft resolution which a Working Group (hereinafter referred to as "the Working Group of 1964") consisting of experts from ten States Members of the Paris or Berne Unions had drawn up in May 1964 (see *Le Droit d'Auteur-Copyright*, 1964, page 148). The Committee of Experts also had before it an Introductory Report drawn up by the Secretariat of BIRPI with the assistance of experts of the Government of Sweden, the prospective host of the Stockholm Revision Conference scheduled to take place in 1967.

(8) It will be recalled that the main objective of the draft convention prepared by the Working Group of 1964 was to provide for an administrative framework in which the basic aims of the Paris and Berne Unions could be more efficiently served.

(9) That draft provided for the establishment of a World Intellectual Property Organization to which Members of the Paris or Berne Unions and certain other States not Members of any of these Unions (hereinafter referred to as "Third States") could adhere. It also provided for a General Conference of all these States and an Executive Board emanating from the General Conference. Furthermore, it provided for a General Assembly and an Executive Committee for each of the Unions, and for a Coordination Committee. Finally, it provided for a Secretariat, regulated the finances of the Organization and the Unions, and contained other provisions usual in international treaties of its kind.

### Results of the Meeting

(10) The Committee of Experts made some important changes in the drafts of the Working Group of 1964 both in respect of the structure of the proposed instruments and in respect of the proposed changes in the administrative structure of the various Unions administered by BIRPI and BIRPI's proposed successor to which the new drafts give the name "International Intellectual Property Organization" (abbreviated as "IPO").

(11) As to the structure of the instruments which would incorporate and effectuate the changes, the Committee of Experts proposes that only matters which concern directly IPO should be the subject of the proposed new Convention ("IPO Convention") whereas all matters of direct and exclusive interest to the various Unions should be the subject of Protocols. There would be single separate Protocols, for the Paris Union, for the Berne Union, and each of the Special

<sup>1)</sup> This Note was prepared by BIRPI on the basis of the official Records of the meeting (document AA/II/34).

Agreements or Restricted Unions existing under the Paris Convention. Each of these Protocols would be roughly identical and in harmony with the provisions of the IPO Convention. Accordingly, the Committee established the text of a Draft Protocol which would serve as a model for each Union.

(12) This solution was dictated not only by legal considerations but also by the desire to underline the autonomy of each Union.

(13) Each Union would have an Assembly consisting of its Member States. The Paris Union would also have an Executive Committee elected by its Assembly and consisting of one-fourth of the Member States. The Berne Union would have a corresponding but separate Executive Committee established similarly. The other Unions may have Executive Committees, if they so desire. In addition to the questions relating to the Assembly and the Executive Committee, the main questions regulated by the Protocol are the finances of each Union. Further details on the Protocol are given in paragraphs (17) to (19) below.

(14) The organs of IPO would be the following: General Assembly, Coordination Committee, Conference, and Secretariat — the last being a simple continuation of what is today BIRPI. Membership in IPO would not be limited to States Members of the Unions, but membership in the General Assembly would be limited to such States. The Conference — having mainly consultative functions only — would include all Members of IPO, that is also States not Members of any of the Unions (so-called Third States). The Coordination Committee would consist of the States Members of the Executive Committees of the Paris and Berne Unions. It is to be noted that whereas the Draft of the Working Group of 1964 provided for a General Conference including also Third States and an Executive Committee as an emanation of the General Conference, the Drafts adopted by the Committee of Experts provide for neither of these organs. Further details on the Draft IPO Convention are given in paragraphs (20) to (28), below.

(15) In addition to the Draft Protocol and the Draft IPO Convention, the Committee of Experts also adopted a Draft Resolution concerning the limited provisional application, on an interim basis, of the instruments to be adopted at Stockholm, and a list of consequential changes which would have to be made in the various existing Conventions and Agreements in respect to administrative provisions in them.

(16) Some of the Experts made certain reservations in connection with the various texts adopted by the Committee of Experts. They are reflected in the Report adopted by the Committee of Experts but not reproduced in the present Note since it was generally admitted that the Experts did not in any way express a binding or final opinion of the Governments which delegated them into the Committee of Experts.

#### The Draft Protocol

(17) As already indicated, each Union would have an Assembly consisting of the States Members of the Union. The Assembly would, among other things: (a) deal with all matters

concerning the maintenance and development of the Union and the implementation of its Convention (but not with the revision of the Union's Convention which would still be in the sole jurisdiction of diplomatic (negotiating) conferences convened for that specific purpose), (b) determine the program and adopt the triennial budget of the Union, (c) review the activities of, and instruct, the Secretariat, as far as matters concerning the Union are concerned.

(18) All administrative tasks would be carried out by the Secretariat of IPO.

(19) The present class-and-unit system for the contributions of Member States would be maintained; however, a seventh class (with one unit) would be added to the present six classes. The budget would be voted upon once every three years; if any new budget should carry with it an increase in the contributions of the Member States, its adoption would require a two-third majority. A working capital fund would be instituted.

#### The Draft IPO Convention

(20) The Preamble of the Draft Convention summarized in the following manner the *reasons* for which the Convention would be concluded: "The Contracting Parties, desiring to modernize and render more efficient the administration of the Intellectual Property Unions through the establishment of administrative organs which, although in part common, fully respect the autonomy of each of the several Unions, and to promote the protection of intellectual property throughout the world, in particular through the creation of a Conference and the offer of legal-technical assistance to developing countries, have agreed as follows . . ."

(21) Article 1 states that "the International Intellectual Property Organization is hereby established", and enumerates its *organs*: "a General Assembly of the States Members of the various Unions, a Coordination Committee, a Conference, and a Secretariat".

(22) The *objective* of IPO is "to promote cooperation among States in the field of protection" for industrial property, copyright and neighboring rights "through administrative cooperation among the various Intellectual Property Unions and through other appropriate means set on in the . . . Convention".

(23) The *tasks* entrusted to IPO would include the administrative tasks of the Paris and Berne Unions and other existing or future intellectual property Unions, the assembling of information, the maintenance of various services, the promotion of the harmonization of legislations, and the furnishing of technical-legal assistance, particularly to developing countries.

(24) The *Headquarters* of IPO would be in Geneva.

(25) The *General Assembly* would consist only of the States which are Members of a least one Union. All such States would be Members of the General Assembly. Among other things, the General Assembly would: (a) review the activities of the Coordination Committee, (b) appoint the Director-General after having heard the advice of the Conference, (c) decide — by a three-quarters majority — whether

or not to accept new intellectual property agreements for administration by IPO.

(26) The *Conference* — in which "Third States" would have the same rights as States Members of one or more Unions — would: (a) discuss matters of general interest in the field of intellectual property and adopt resolutions and recommendations relating to such matters; (b) adopt a triennial budget (consisting of contributions which the various Unions have agreed to make and the contributions of Third States providing for funds to cover the expenses of the Conference and the program of technical-legal assistance ("Conference budget"); (c) within the limits of the Conference budget, establish the triennial program of legal-technical assistance; (d) give advice to the General Assembly as to the question of who should be elected Director-General. The General Assembly is not bound to follow this advice.

(27) The *Coordination Committee* would consist of the States Members of the Executive Committee of the Paris Union, and of the Executive Committee of the Berne Union, each of these Committees being composed of one-fourth of the Members of the Unions. Whenever the Coordination Committee considers the Conference budget, one-fourth of the Third States would participate in the Coordination Committee with the same rights as Members of that Committee. The main task of the Coordination Committee would consist of giving advice to the organs of the various Unions, the General Assembly, and the Conference, on all administrative, financial and other matters of common interest to two or more of the Unions; and in particular on the common expenses to be inscribed in the budgets of the various Unions and the Conference budget.

(28) The *Secretariat* would comprise a Director-General, two or more Deputy Directors-General, and other staff members as required.

#### Future Steps Contemplated

(29) The matters dealt with by the Committee of Experts are expected to be further discussed and finalized at the Stockholm Diplomatic Conference scheduled for 1967.

#### List of Participants

##### I. Member States

##### Australia

Mr. K. B. Petersson, Commissioner of Patents, Patent Office, Canberra.

##### Austria

Mr. Thomas Lorenz, Ratssekretär, Patent Office, Vienna.  
Mr. Helmuth Tades, Secretary, Federal Ministry of Justice, Vienna.

##### Belgium

Mr. Albert Willot, Second Secretary of Legation, Permanent Delegation of Belgium in Geneva.  
Mr. Gérard de San, Director-General, Legal Counsellor, Deputy Chairman of the National Copyright Commission, Brussels.

Mr. Frans Van Isacker, Professor at the Faculty of Law of Gand, Member of the National Copyright Commission, Brussels.

Mr. A. Schurmans, Director of the Industrial and Commercial Property Service, Brussels.

Mr. Paul Peetermans, Doctor at Law, Industrial and Commercial Property Service, Brussels.

##### Brazil

Mr. Fanor Cumplido Jr., Minister, Permanent Delegation of Brazil, Geneva.

Mr. João Cahral Melo Neto, Counsellor of Embassy, Permanent Delegation of Brazil, Geneva.

##### Canada

Mr. J. W. T. Michel, Commissioner of Patents, Patent Office, Ottawa.

Mr. Charles T. Stone, Counsellor, Second Secretary, Permanent Mission of Canada, Geneva.

##### Congo-Leopoldville (Dem. Rep.)

Mr. Albert Mongita, Director of Cultural Affairs, Ministry of National Education and Cultural Affairs, Central Government, Leopoldville.

Mr. Marcel Duhru, Dean of the Faculty of Law, University of Lovanium, Leopoldville.

##### Czechoslovak Socialist Republic

Mr. Jaroslav Němeček, President, Patent Office, Prague.

Mr. Radko Fajfr, First Secretary, Ministry of Foreign Affairs, Prague.

Mr. Jiří Kordač, Counsellor, Legislative Division, Ministry of Education and Culture, Prague.

Dr. Otto Kunz, Chief of Research, Czechoslovak Academy of Science, Law Institute, Prague.

##### Denmark

Mr. Torhen Lund, Professor at the University of Aarhus.

##### Finland

Mr. Berndt Godenhjelm, Professor at the Faculty of Law, University of Helsinki, Helsinki.

##### France

Mr. Henry Puget, Counsellor of State, Professor, Institut des Sciences Politiques, President of the Intellectual Property Commission, Paris.

Mr. Guillaume Finnis, Inspector-General of Industry and Commerce, Paris.

Mr. Roger Labry, Counsellor of Embassy, Ministry of Foreign Affairs, Paris.

Mr. Charles Rohmer, Head of the Copyright Bureau, Ministry of Cultural Affairs, Paris.

##### Advisers of the Delegation:

Mr. Bernard Laclavière, Civil Administrator, Ministry of Agriculture, Paris.

Mr. Marcel Pierre, Civil Administrator, Industrial Property Service, Paris.

##### Federal Republic of Germany

Mr. Alhrecht Krieger, Regierungsdirektor, Federal Ministry of Justice, Bonn.

- Mr. Dirk Rogge, Landgerichtsrat, Federal Ministry of Justice, Bonn.
- Mr. Klaus Pfanner, Regierungsdirektor, Patent Office, Munich.
- Mr. Hans-Ludwig Donle, Regierungsrat, Patent Office, Munich.
- Mr. Peter Schönfeld, First Secretary of Embassy, Permanent Delegation of the Federal Republic of Germany, Geneva.

#### *Greece*

- Mr. Georges Pilavachi, Jurist, Permanent Delegation of Greece, Geneva.

#### *Hungarian People's Republic*

- Mr. Emil Tasnádi, President, National Office of Inventions, Budapest.
- Mr. József Bényi, Deputy Permanent Representative, Chargé d'Affaires a. i., Permanent Mission of Hungary, Geneva.
- Mr. Gyula Jelenik, Secretary, Ministry of Foreign Affairs, Budapest.
- Mr. János Zakár, Legal Counsellor, Hungarian Copyright Office, Budapest.
- Mr. Gyula Pusztai, Head of Section, National Office for Inventions, Budapest.

#### *India*

- Mr. S. Vatsa Purushottam, Second Secretary, Permanent Mission of India, Geneva.

#### *Indonesia*

- Mr. Sugondo Sumodiredjo, Assistant Minister of Justice for Legal and Legislative Affairs, Department of Justice, Djakarta.
- Mr. Alwi Sutan Osman, Head of the Minister's Bureau, Department of Justice, Djakarta.

#### *Iran*

- Mr. Gholam-Reza Salahshoor, Director-General, Office of Registration of Acts and Property, Teheran.
- Mr. Mehdi Naraghi, Director, Industrial Property and Societies Registration Office, Teheran.

#### *Ireland*

- Mr. J. J. Lennon, Controller of Industrial and Commercial Property, Dublin.

#### *Israel*

- Mr. Ze'ev Sher, Registrar of Patents, Designs and Trade-marks, Ministry of Justice, Jerusalem.

#### *Italy*

- Mr. Giuseppe Talamo Atenolfi, Ambassador of Italy, Ministry of Foreign Affairs, Rome.
- Mr. Valerio De Sanctis, Lawyer, Rome.
- Mr. Giuseppe Trotta, Legal Counsellor, Ministry of Foreign Affairs, Rome.

#### *Ivory Coast*

- Mr. Theodore De Mel, Counsellor of Embassy, Berne.

#### *Japan*

- Mr. Muneoki Date, First Secretary, Permanent Delegation of Japan, Geneva.

#### *Lebanon*

- Mr. Michel Farah, Chargé d'Affaires, Embassy of Lebanon, Berne.

#### *Luxembourg*

- Mr. Jean-Pierre Hoffmann, Head, Industrial Property Service, Ministry of National Economy and Power, Luxembourg.

#### *Monaco*

- Mr. Jean-Marie Notari, Head, Industrial Property Service, Monaco.

#### *Morocco*

- Mr. Laraqui, Ambassador of Morocco, Berne.

#### *Netherlands*

- Mr. C. J. De Haan, President, Patent Council, The Hague.
- Mr. W. M. J. C. Phaf, Director, Legal Section of the Ministry of Economic Affairs, The Hague.

#### *New Zealand*

- Miss M. C. Riches, Third Secretary, New Zealand Permanent Mission, Geneva.

#### *Norway*

- Mr. Sten H. Røer, Office Manager, Patent Office, Oslo.

#### *Pakistan*

- Mr. Sam M. Ahmed, Controller of Patents and Designs, Karachi.

#### *Polish People's Republic*

- Mr. Ian Dalewski, Head, Legal Section, Polish Patent Office, Warsaw.
- Mrs. Eleonora Ratuszniak, Chief of the Division, Ministry of Foreign Affairs, Warsaw.
- Mr. Edward Drabienko, Lawyer, Counsellor to the Minister of Arts and Culture, Warsaw.

#### *Rumanian People's Republic*

- Mr. Ion Anghel, Chief Legal Adviser, Ministry of Foreign Affairs, Bucharest.
- Mr. Lucian Marinete, Technical Director, State Office for Inventions, Bucharest.

#### *Spain*

- Mr. Electo J. Garcia Tejedor, Permanent Delegate a. i. to International Organizations, Geneva.
- Mr. Ernesto Rua, Chief of Section, Spanish Industrial Property Registry, Madrid.
- Mr. Emilio Aragon Colville, Deputy-Head of the Trade-mark Section, Industrial Property Registry, Madrid.

#### *Sweden*

- Mr. Torwald Hesser, Judge at the Court of Appeal, Ministry of Justice, Stockholm.
- Mr. Claës Uggla, Counsellor, Board of Appeals, Patent and Registration Office, Stockholm.
- Mr. J. L. Myrsten, Head of Section, Ministry of Foreign Affairs, Stockholm.

#### *Switzerland*

- Mr. Hans Morf, Lawyer, Former Director of the Federal Office of Intellectual Property, Berne.

Mr. Joseph Voyame, Director, Federal Office of Intellectual Property, Berne.

Mr. Rodolphe Bühler, Division of International Organizations, Federal Political Department, Berne.

#### *United Kingdom*

Mr. Gordon Grant, Comptroller-General of Patents, Designs and Trademarks, Industrial Property Department, Board of Trade, London.

Mr. William Wallace, C. M. G., Assistant Comptroller, Patent Office, Board of Trade, London.

Mr. L. J. Smith, Controller of Plant Variety Rights, London.

Mr. James D. Miller, United Kingdom Deputy Permanent Representative, Geneva.

#### *United States of America*

Mr. William M. Gibson, Minister, U. S. Mission, Geneva.

Mr. Edward Brenner, Commissioner of Patents, Washington.

Mr. Harvey J. Winter, Assistant Chief, International Business Practices Division, Department of State, Washington.

Mr. Kenneth McClure, Director, Office of Legislative Planning, U. S. Patent Office, Washington.

Miss Sylvia Nilsen, Office of the Legal Adviser, Department of State, Washington.

#### *Yugoslavia*

Mr. Vladimir Savić, Director, Patent Office, Belgrade.

Mr. Vojislav Spaić, Professor, University of Sarajevo.

## *II. Observers*

### *1. States*

#### *Union of Soviet Socialist Republics*

Mr. Yevgueny Artemyev, Vice-Chairman, Committee of State for Inventions and Discoveries, Moscow.

Mr. Yevgueny Pavlov, Expert, Committee of State for Inventions and Discoveries, Moscow.

Mr. Yevstigneyev, Expert, Committee of State for Inventions and Discoveries, Moscow.

Mrs. Chvetsova, Translator, Geneva.

### *2. Intergovernmental Organizations*

#### *United Nations*

Mr. Claude Benjamine, Legal Officer, Commission Affairs and Trade Development Division, Economic Commission for Europe, Geneva.

#### *International Patent Institute*

Mr. G. Finnis, Chairman of the Administrative Council.

Mr. D. Merle, Financial Controller.

#### *Unesco*

Mr. Alfonso de Silva, Head, Division of Relations with International Organizations, Paris.

Miss Marie-Claude Dock, Copyright Section, Department of Cultural Activities, Paris.

#### *Organization of American States (OAS)*

Mr. Raul Migone, Representative, Geneva.

## *3. Non-Governmental Organizations*

#### *International Association for the Protection of Industrial Property (IAPIP)*

Prof. P. J. Pointet, Chairman, Swiss Group of IAPIP, Zurich.

Mr. Georges Gansser, Chairman, International Coordination Commission for Intellectual Property Rights of IAPIP, Basel.

#### *International Bureau for Mechanical Reproduction (BIEM)*

Mr. Léon Malaplate, Secretary-General, CISAC, Paris.

#### *International Chamber of Commerce (ICC)*

Prof. P. J. Pointet, Vice-Chairman, Commission for the International Protection of Industrial Property of the ICC, Zurich.

#### *International Confederation of Societies of Authors and Composers (CISAC)*

Mr. Léon Malaplate, Secretary-General, Paris.

#### *International Federation of Patent Agents (FICPI)*

Mr. René Jourdain, Chairman, Work Study Commission of FICPI, Paris.

Mr. Alfred Vander Haeghen, Patent Agent, Professor at the University of Brussels.

#### *International Literary and Artistic Association (ALAI)*

Mr. Jean Vilbois, Permanent Secretary, Paris.

## *III. BIRPI*

Prof. G. H. C. Bodenhausen, Director.

Dr. Arpad Bogsch, Deputy-Director.

Mr. Charles-L. Magnin, Deputy-Director.

Mr. Claude Masouyé, Counsellor, Head of Copyright Division.

## *IV. Officers of the Meeting*

Chairman: Mr. Torwald Hesser (Sweden).

Vice-Chairmen: Mr. Henry Puget (France).

Mr. Sugondo Sumodiredjo (Indonesia).

Mr. Emil Tasnádi (Hungarian People's Rep.).

# NATIONAL LEGISLATION

## ZAMBIA

### The Copyright Act, 1965

(No. 14, of 1965)<sup>1)</sup>

#### Arrangement of Sections

##### Section

1. Short title and commencement.
2. Interpretation.
3. Works eligible for copyright.
4. Copyright by virtue of nationality or residence.
5. Copyright by reference to country of origin.
6. Copyright in works of Government and international bodies.
7. Nature of copyright in literary, musical or artistic works and cinematograph films.
8. Broadcasting of works incorporated in a cinematograph film.
9. Nature of copyright in sound recording.
10. Nature of copyright in broadcasts.
11. First ownership of copyright.
12. Assignments and licences.
13. Infringements.
14. Appointment of competent authority and duties of such authority.
15. Regulations and extensions of application of Act.
16. Saving.
17. Repeal of Copyright Act (Amendment) Ordinance and the Patents, Designs, Copyright and Trademarks (Emergency) Ordinance.

An Act to provide that the Copyright Act, 1911, of the United Kingdom shall cease to have effect in Zambia, to repeal the Copyright Act (Amendment) Ordinance and the Patents, Designs, Copyright and Trademarks (Emergency) Ordinance and to make provision for copyright in literary, musical and artistic works, cinematograph films, sound recordings and broadcasts.

Enacted by the Parliament of Zambia.

#### Short title and commencement

1. — This Act may be cited as the Copyright Act, 1965, and shall come into operation on such date as the President may, by notice in the *Gazette*, appoint<sup>2)</sup>.

#### Interpretation

2. — (1) In this Act, unless the context otherwise requires —

“artistic work” means, irrespective of artistic quality, any of the following, or works similar thereto:

- (a) paintings, drawings, etchings, lithographs, woodcuts, engravings and prints;
- (b) maps, plans and diagrams;
- (c) works of sculpture;
- (d) photographs not comprised in a cinematograph film;
- (e) works of architecture in the form of buildings or models; and
- (f) works of artistic craftsmanship;

“author”, in the case of a cinematograph film or sound recording, means the person by whom the arrangements for the making of the film or recording were undertaken, or in the case of a broadcast transmitted from within any country, means the person by whom the arrangements for the making of the transmission from within that country were undertaken;

“broadcast” means a sound or television broadcast of any material and includes a diffusion over wires;

“broadcasting authority” means the Zambia Broadcasting Corporation and any other broadcaster whether licensed under the Zambia Broadcasting Ordinance or any other written law;

“building” includes any structure;

“cinematograph film” means the first fixation of a sequence of visual images capable of being shown as a moving picture and of being the subject of reproduction and includes the recording of a sound-track associated with the cinematograph film;

“communication to the public” includes, in addition to any live performance or delivery, any mode of visual or acoustic presentation;

“copy” means a reproduction in written form, in the form of a recording or cinematograph film, or in any other material form, so however that an object shall not be taken to be a copy of an architectural work unless the object is a building or model;

“copyright” means copyright under this Act;

“literary work” means, irrespective of literary quality, any of the following, or works similar thereto:

- (a) novels, stories and poetical works;
- (b) plays, stage directions, film scenarios and broadcasting scripts;
- (c) textbooks, treatises, histories, biographies, essays and articles;
- (d) encyclopaedias and dictionaries;
- (e) letters, reports and memoranda;
- (f) lectures, addresses and sermons;

but does not include any written law, law report or judicial decision;

“Minister” means the Minister of Commerce and Industry;

“musical work” means any musical work, irrespective of musical quality, and includes works composed for musical accompaniment;

<sup>1)</sup> Published in the *Gazette of the Republic of Zambia*, on February 12, 1965.

<sup>2)</sup> This Act came into force on March 1, 1965.



“prescribed” means prescribed by regulations made under section 15;

“re-broadcasting” means simultaneous or subsequent broadcasting by one broadcasting authority of the broadcast of another broadcasting authority and includes diffusion of the broadcast over wires;

“reproduction” means the making of one or more copies of a literary, musical or artistic work, cinematograph film or sound recording;

“sound recording” means the first fixation of a sequence of sounds capable of being perceived aurally and of being reproduced, but does not include a sound-track associated with a cinematograph film;

“work” includes translations, adaptations, new versions or arrangements of pre-existing works, and anthologies or collections of works which, by reason of the selection and arrangement of their content, present an original character;

“work of joint authorship” means a work produced by the collaboration of two or more authors in which the contribution of each author is not separable from the contribution of the other author or authors.

(2) For the purposes of this Act the following provisions shall apply with respect to publication:

- (a) a work shall be taken to have been published if, but only if, copies have been issued in sufficient quantities to satisfy the reasonable requirements of the public;
- (b) where in the first instance a part only of a work is published, that part shall be treated for the purposes of this Act as a separate work;
- (c) a publication in any country shall not be treated as being other than the first publication by reason only of an earlier publication elsewhere, if the two publications took place within a period of not more than thirty days.

#### *Works eligible for copyright*

3. — (1) Subject to the provisions of this section the following works shall be eligible for copyright:

- (a) literary works;
- (b) musical works;
- (c) artistic works;
- (d) cinematograph films;
- (e) sound recordings;
- (f) broadcasts.

(2) A literary, musical or artistic work shall not be eligible for copyright unless —

- (a) sufficient effort has been expended on making the work to give it an original character; and
- (b) the work has been written down, recorded or otherwise reduced to material form.

(3) An artistic work shall not be eligible for copyright if, at the time when the work is made, it is intended by the author to be used as a model or pattern to be multiplied by any industrial process.

(4) A work shall not be ineligible for copyright by reason only that the making of the work, or the doing of any act in relation to the work, involved an infringement of copyright in some other work.

#### *Copyright by virtue of nationality or residence*

4. — (1) Copyright shall be conferred by this section on every work eligible for copyright of which the author or, in the case of a work of joint authorship, any of the authors is, at the time when the work is made, a qualified person, that is to say —

- (a) an individual who is a citizen of, or is domiciled or resident in Zambia; or
- (b) a body corporate which was incorporated under the laws of Zambia.

(2) The terms of copyright conferred by this section shall be calculated according to the following table:

<i>Type of Work</i>	<i>Date of Expiration of Copyright</i>
1. Literary, musical or artistic work other than photographs.	Twenty-five years after the end of the year in which the author dies.
2. Cinematograph films and photographs.	Twenty-five years after the end of the year in which the work was first made lawfully accessible to the public.
3. Sound recordings.	Twenty years after the end of the year in which the recording was made.
4. Broadcasts.	Twenty years after the end of the year in which the broadcast took place.

(3) In the case of anonymous or pseudonymous literary, musical or artistic works the copyright therein shall subsist until the end of the expiration of twenty-five years from the end of the year in which it was first published:

Provided that in the event of the identity of the author becoming known the terms of copyright shall be calculated in accordance with the provisions of subsection (2).

(4) In the case of a work of joint authorship, references in the preceding table to the death of the author shall be taken to refer to the author who dies last, whether or not he is a qualified person.

#### *Copyright by reference to country of origin*

5. — (1) Copyright shall be conferred by this section on every work, other than a broadcast, which is eligible for copyright and which —

- (a) being a literary, musical or artistic work or a cinematograph film is first published in Zambia; and
- (b) being a sound recording, is made in Zambia; and which has not been the subject of copyright conferred by section 4.

(2) Copyright conferred on a work by this section shall have the same duration as is provided for in section 4 in relation to a similar work.



*Copyright in works of Government and international bodies*

6. — (1) Copyright shall be conferred by this section on every work which is eligible for copyright and which is made by or under the direction or control of the Government or such international bodies or other governmental organisations as may be prescribed.

(2) Copyright conferred by this section on a literary, musical or artistic work, other than a photograph, shall subsist until the end of the expiration of twenty-five years from the end of the year in which it was first published.

(3) Copyright conferred by this section on a film, photograph, sound recording or broadcast shall have the same duration as is provided for by section 4 in relation to a similar work.

(4) Sections 4 and 5 shall not be taken to confer copyright on works to which this section applies.

*Nature of copyright in literary, musical or artistic works and cinematograph films*

7. — (1) Copyright in a literary, musical or artistic work or in a cinematograph film shall be the exclusive right to control the doing in Zambia of any of the following acts, namely the reproduction in any material form, the communication to the public and the broadcasting, of the whole work or a substantial part thereof, either in its original form or in any form recognisably derived from the original:

Provided that copyright in any such work shall not include the right to control —

- (a) the doing of any of the aforesaid acts by way of fair dealing for purposes of research, private use, criticism or review, or the reporting of current events, if any public use of the work is accompanied by an acknowledgment of its title and authorship except where the work is incidentally included in a broadcast;
- (b) the doing of any of the aforesaid acts by way of parody, pastiche or caricature;
- (c) the reproduction and distribution of copies, or the inclusion in a film or broadcast, of any artistic work situated in a place where it can be viewed by the public;
- (d) the incidental inclusion of an artistic work in a film or broadcast;
- (e) the inclusion in a collection of literary or musical works which includes not more than two short passages from the work in question if the collection is designed for use in educational institutions and includes an acknowledgment of the title and authorship of the work;
- (f) the broadcasting of a work if the broadcast is intended to be used for educational purposes;
- (g) the making or importing of a sound recording of a literary or musical work and the reproduction of such sound recording if intended for retail sale in Zambia and provided a fair compensation is paid to the owner of the relevant part of the copyright in the work in accordance with regulations made under section 15;
- (h) the reading or recitation in public or in a broadcast by one person of any reasonable extract from a published literary work if accompanied by a sufficient acknowledgment;

- (i) any use made of a work for purposes of communication to the public by or under the direction or control of the Government where such use is in the public interest, no revenue is derived therefrom and no admission fee is charged for the communication to the public of the work thus used;
- (j) the reproduction of such number of such works by such public or institutional libraries, non-commercial documentation centres or scientific institutions for the purpose of their activities as may be specified in regulations made under section 15;
- (k) the reproduction of a work by or under the direction or control of a broadcasting authority where such reproduction or any copies thereof are intended exclusively for lawful broadcast of that broadcasting authority and are destroyed before the end of the period of six calendar months immediately following the making of the reproduction or such longer period as may be agreed between the broadcasting authority and the owner of the relevant part of the copyright in the work; any reproduction of a work made under this sub-paragraph may, if it is of an exceptional documentary character, be preserved in the archives of the broadcasting authority which are hereby designated official archives for the purpose, but, subject to the provisions of this Act, shall not be used for broadcasting or for any other purpose without the consent of the owner of the relevant part of the copyright in the work;
- (l) the broadcasting of a work already lawfully made accessible to the public with which no licensing body referred to under section 14 is concerned, provided that subject to the provisions of this section the owner of the broadcasting right in the work receives a fair compensation determined, in the absence of agreement, by the competent authority appointed under section 14;
- (m) any use made of a work for the purpose of a judicial proceeding or of any report of any such proceeding.

(2) Copyright in a work of architecture shall also include the exclusive right to control the erection of any building which reproduces the whole or a substantial part of the work either in its original form or in any form recognisably derived from the original:

Provided that the copyright in any such work shall not include the right to control the reconstruction of a building in the same style as the original.

*Broadcasting of works incorporated in a cinematograph film*

8. — (1) Where the owner of the copyright in any literary, musical or artistic work authorises a person to incorporate the work in a cinematograph film and a broadcasting authority broadcasts the film, such broadcast shall not, in the absence of any agreement to the contrary, infringe such copyright.

(2) Where a broadcasting authority broadcasts a cinematograph film in which a musical work is incorporated, the owner of the right to broadcast the work shall, subject to the provisions of this Act, be entitled to receive fair compensation from the broadcasting authority:

Provided that in the absence of an agreement the amount of such compensation shall be determined by the competent authority appointed under section 14.

#### *Nature of copyright in sound recording*

9. — Copyright in a sound recording shall be the exclusive right to control in Zambia the direct or indirect reproduction of the whole or a substantial part of the recording either in its original form or in any form recognisably derived from the original:

Provided that the provisions of sub-paragraphs (a), (i), (k) and (m) of subsection (1) of section 7 shall apply *mutatis mutandis* to the copyright in a sound recording.

#### *Nature of copyright in broadcasts*

10. — Copyright in a broadcast shall be the exclusive right to control the doing in Zambia of any of the following acts, namely, the recording and the re-broadcasting of the whole or a substantial part of the broadcast and the communication to the public in places where an admission fee is charged of the whole or a substantial part of a television broadcast either in its original form or in any form recognisably derived from the original:

Provided that the provisions of sub-paragraphs (a), (i) and (m) of subsection (1) of section 7 shall apply *mutatis mutandis* to the copyright in a broadcast:

Provided further that the copyright in a television broadcast shall include the right to control the taking of still photographs from such broadcasts.

#### *First ownership of copyright*

11. — (1) Copyright conferred by sections 4 and 5 shall vest initially in the author:

Provided that notwithstanding the provisions of subsection (7) of section 12, where a work other than a broadcast —

- (a) is commissioned by a person who is not the author's employer under a contract of service; or
- (b) not having been so commissioned, is made in the course of the author's employment;

the copyright shall be deemed to be transferred to the person who commissioned the work or the author's employer, subject to any agreement between the parties excluding or limiting such transfer.

(2) Copyright conferred by section 6 shall vest initially in the Government or such international bodies or other governmental organisations as may be prescribed.

#### *Assignments and licences*

12. — (1) Subject to the provisions of this section, copyright shall be transmissible by assignment, by testamentary disposition, or by operation of law, as movable property.

(2) An assignment or testamentary disposition of copyright may be limited so as to apply to some only of the acts which the owner of the copyright has the exclusive right to control; or to a part only of the period of the copyright; or to a specified country or other geographical area.

(3) A purported assignment of copyright shall be void if it is not in writing signed by or on behalf of the assignor.

(4) Any document purporting to confer an exclusive licence to do an act falling within copyright shall be construed as a total or partial assignment of the copyright, as the case may require.

(5) A licence to do an act falling within copyright may be written or oral, or may be inferred from conduct, and may be revoked at any time:

Provided that a licence granted by contract shall not be revoked, either by the person who granted the licence or his successor in title, except as the contract may provide, or by a further contract.

(6) An assignment or licence granted by one copyright owner shall have effect as if granted by his co-owners also, and subject to any contract between them, fees received by the grantor shall be divided equitably between all the co-owners:

Provided that for the purposes of this section persons shall be deemed to be co-owners —

- (a) if they share a joint interest in the whole or any part of a copyright; or
- (b) if they have interests in the various copyrights in a composite production, that is to say, a production consisting of two or more works.

(7) An assignment, licence or testamentary disposition may be effectively granted or made in respect of a future work, or an existing work in which copyright does not yet subsist, and the prospective copyright in any such work shall be transmissible by operation of law as movable property.

(8) A testamentary disposition of the material on which a work is first written or otherwise recorded shall, in the absence of contrary indication, be taken to include the disposition of any copyright or prospective copyright in the work which is vested in the deceased.

#### *Infringements*

13. — (1) Copyright shall be infringed by any person who does, or causes any other person to do, an act falling within the copyright without the licence of the person in whom is vested either the whole of the copyright or, where there has been a partial assignment or partial testamentary disposition, the relevant portion of the copyright.

(2) Subject to the provisions of this Act, infringements of copyright shall be actionable at the suit of the owner of the copyright; and in any action for such an infringement all such relief, by way of damages, injunction, accounts or otherwise, shall be available to the plaintiff as is available in any corresponding proceedings in respect of infringement of other proprietary rights.

(3) Where in an action for infringement of copyright it is proved or admitted —

- (a) that an infringement was committed, but
- (b) that at the time of the infringement the defendant was not aware, and had no reasonable grounds for suspecting, that copyright subsisted in the work or other subject-matter to which the action relates,

the plaintiff shall not be entitled under this section to any damages against the defendant in respect of the infringement,

but shall be entitled to an account of profits in respect of the infringement whether any other relief is granted under this section or not.

(4) Where in an action under this section an infringement of copyright is proved or admitted, and the court, having regard (in addition to all other material considerations) to—

(a) the flagrancy of the infringement, and

(b) any benefit shown to have accrued to the defendant by reason of the infringement,

is satisfied that effective relief would not otherwise be available to the plaintiff, the court, in assessing damages for the infringement, shall have power to award such additional damages by virtue of this subsection as the court may consider appropriate in the circumstances.

(5) No injunction shall be issued in proceedings for infringement of copyright which requires a completed or partly built building to be demolished or prevents the completion of a partly built building.

(6) In this section “action” includes a counter-claim, and references to the plaintiff and to the defendant in an action shall be construed accordingly.

*Appointment of competent authority and duties of such authority*

14. — (1) The Minister shall appoint such person or persons as he may think fit to be a competent authority for the purposes of this Act.

(2) In any case where it appears to the competent authority that a licensing body—

(a) is unreasonably refusing to grant licences in respect of copyright; or

(b) is imposing unreasonable terms or conditions on the granting of such licences;

the competent authority may direct that, as respects the doing of any act relating to a work with which the licensing body is concerned, a licence shall be deemed to have been granted by the copyright owner provided the appropriate fees pre-

scribed by such competent authority are paid or tendered before the expiration of the prescribed period after the act is done.

(3) In this section “licensing body” means an organisation which has as its main object, or one of its main objects, the negotiation or granting of licences in respect of copyright works.

*Regulations and extensions of application of Act*

15. — The Minister may make regulations prescribing anything to be prescribed or which may be prescribed under this Act and, in particular, shall make regulations extending the application of this Act in respect of any or all of the works referred to in subsection (1) of section 3—

(a) to individuals or bodies corporate who are citizens of or domiciled or resident in or incorporated under the laws of;

(b) to works, other than sound recordings, first published in;

(c) to sound recordings made in;

a country which is a party to a treaty to which Zambia is also a party and which provides for copyright in works to which the application of this Act extends.

*Saving*

16. — This Act shall apply in relation to works made before the commencement of this Act as it applies in relation to works made thereafter, so however that this section shall not be taken to render an act done before the commencement of this Act an infringement of copyright under section 13.

*Repeal of Copyright Act (Amendment) Ordinance and the Patents, Designs, Copyright and Trademarks (Emergency) Ordinance*

17. — The Copyright Act, 1911, of the United Kingdom shall cease to have effect in Zambia and the Copyright Act (Amendment) Ordinance and the Patents, Designs, Copyright and Trademarks (Emergency) Ordinance are hereby repealed.

## The Zambian Copyright Act

1. — The Copyright Act of Zambia which came into force on March 1, 1965, will in a number of respects repay the attention of those who keep abreast of the progress of literary and artistic property in English-speaking Africa. It represents a marked advance over the first copyright act of an independent African country, that of Ghana<sup>1)</sup>, and it lends itself to a number of interesting comparisons with the draft model copyright law elaborated by African experts under the auspices of BIRPI and Unesco<sup>2)</sup>. Lastly, it is a very accurate gauge of the stage of development that has been reached by a newly independent country on the African continent which is desirous of reconciling the protection of authors, both nationals and aliens, with the need to try to restrict as far as possible a one-way outflow of foreign currency, with little prospect of its being offset in the short term by the foreign use of works of which it is the country of origin.

2. — Perhaps the most fruitful method of analysing the Zambian Act is to compare it with the Ghanaian Act which was used as the starting point but from which it has departed very considerably. The reader will thus be better able to measure the headway that has been made in protecting the authors, and to note *en passant* a number of technical improvements for the imperfections which mark the pioneering law in Ghana and the almost exact replica of it in Uganda<sup>3</sup>). The draft model African copyright law was not officially in existence at the time when Zambia was legislating, but specialists already had access to an advance text. Reference to this draft will enable the reader to appreciate both how up-to-date the draft model law is, and how necessary it is for the legislative authorities in an English-speaking African country to adapt it to the British legislative tradition to which it is accustomed. This is because the draft model law, contrary to the concepts current in the United Kingdom and in countries whose copyright acts have been patterned on the United Kingdom Copyright Acts of 1911 or 1956, protects a work from the moment of creation, even before it has been reduced to tangible form, does not grant a film copyright to the motion picture maker, is silent on the subject of copyright in records and *a fortiori* in broadcasts, yet expressly grants on the other hand a "moral right" of unusual breadth in countries with an Anglo-Saxon legal background.

3. — The subject-matter of copyright is the same in the two Acts that we are comparing, those of Ghana and Zambia, even if the enumeration does not appear in the same place. However, the definitions are anything but identical. With

regard both to cinematograph films and to sound recordings, the definitions in the *Zambian Act* emphasize much more explicitly than is done in the *Ghanaian enactment* the fact that what is protected is the first fixation, which implies that the protection given to "the person by whom the arrangements for the making of the film or recording were undertaken" vests initially in the initial manufacturer, that is to say the person responsible for the first sound fixation or sound and visual fixation, and that subsequent publishers can assert only that portion of the copyright which the original proprietor may have assigned to them. The definition of "broadcast" contains an original feature by comparison with the one in the *Ghanaian Act*; copyright no longer subsists only in a broadcast produced otherwise than from published records or films which have been presented to the public; henceforward, and in accordance with the international Convention on "neighbouring rights", copyright in *Zambia* will subsist in any broadcast, whatever its subject-matter. By comparison with the catalogue of definitions in the *Ghanaian Act*, the *Zambian statute* contains several additional ones, two of which are worthy of mention. The re-broadcasting of a programme is taken to mean the simultaneous or subsequent relaying by one broadcasting authority of the broadcast of another broadcasting authority, even if the re-broadcaster is a wire diffusion authority. It will be recalled that according to the definition in the international Convention on "neighbouring rights" the expression "re-broadcasting" means only the simultaneous relay, and that wire diffusion, not being assimilated to re-broadcasting, is not an act which the originating organization may license or prohibit. The *Zambian Act* has closed these two loopholes, and has added for good measure to the list of *Ghanaian definitions* an explication of the expression "work", which also comprises works at second hand, on condition that they present an original character by reason of the selection and arrangement of their content. Besides this, a few minor modifications have been introduced into the definitions in the *Zambian Act*, such as the removal of "directories" from the enumeration of literary works; original though they may be, directories (but for the odd exception) do not answer the description of an artistic creation but are more prosaically merely the product of a certain amount of research and organization for which protection must be sought in a different field from that of copyright.

4. — One of the fundamental differences between the two enactments here compared lies in the mode of extending protection to works attaching to another country by the criteria of nationality, domicile or residence, or (in the case of a company) by inclusion in the Register of Companies or

1) Cf. *Le Droit d'Auteur (Copyright)*, 1962, p. 89.

2) Cf. *Copyright*, 1965, p. 36.

<sup>3)</sup> Cf. *Le Droit d'Auteur (Copyright)*, 1964, p. 180.

otherwise. The Ghanaian Act, in an access of laudable but somewhat prodigal generosity, extended national protection *de plano* to works attaching to a country mentioned in the Schedule to the Act. It is true that with two exceptions the Schedule confines itself to enumerating the States which are parties to the Universal Copyright Convention, but it failed to make allowance for the fact that that Convention does not apply to phonograms and broadcasts, and that therefore Ghana is granting to these two classes of products originating in a country of the Universal Copyright Convention full Ghanaian protection without any assurance of reciprocity. The legislative authorities in Zambia thought it wiser not to follow the example of this generosity all the way, and preferred to keep to the text-book example whereby the operation of a national law is extended to objects originating outside the territory only on condition that there is mutual protection. This being so, the Zambian Act does not include any schedule of countries whose works (in the widest sense of the word) would automatically be protected in Zambia, whatever the position of Zambian works in those countries; it rests with the Minister of Commerce and Industry to make regulations extending the application of the Act to works originating in other countries and linked to them by one of the criteria which the Act uses as eligibility tests for Zambian works themselves. In addition, the Zambian Act differs from its Ghanaian counterpart on the subject of phonograms in that it does not resort to the criterion of publication, coupled with that of nationality, domicile or entry in a register, but uses the criterion of fixation. Since the Rome Conference on "neighbouring rights" the importance of having the criterion of fixation for the protection of phonograms in preference to that of publication has been generally realized, and it would be pointless to dwell here on this question of legislative technique with immense economic implications.

5. — Calculation of the term of protection is also very different in the two Acts. In contrast to that of Ghana, the Zambian statute does not discriminate between literary, musical or artistic works, whether published or otherwise, and copyright subsists for the life of the author and the twenty-five years after his death, a sufficient term according to the Universal Copyright Convention and not contrary to the Berne Convention as revised in Rome, the level at which Zambia stood when it became an independent State. Published or unpublished cinematograph films and photographs are protected for twenty-five years after the year in which they were first made lawfully accessible to the public, an idea that is also met with in section 23 of the draft African model law. Sound recordings are protected for twenty years after the end of the year in which the recording was made; no distinction is made between published and unpublished phonograms, and the drawback of the Ghanaian Act which allowed of protection for sound recordings for anything up to forty years is thus avoided. The term of copyright in broadcasts is identical in both enactments. On the other hand, a sizeable divergence exists in another respect: the Zambian Act contains no provision for a literary, musical or artistic work which has fallen into the public domain as an unpublished work being

brought back into copyright, a dangerous retroactivity when one thinks of the fate of all the uses which may be started after an unpublished work falls into the public domain (theatrical performances, broadcasts, etc.), and which by a first publication may suddenly again come under the sway of copyright and its exercise — which may take the form of a prohibition. Indeed, the Ghanaian legislator enacted no provision that might obviate the trouble arising out of a resurrection of copyright, and *bona fide* use is exposed to serious risks.

The Zambian Act, repairing an oversight in the enactment on which it is patterned, defines the term of protection for anonymous and pseudonymous works by adopting the classic provision in the Berne Convention.

6. — The most striking headway which the idea of protection for the author has made in English-speaking African countries since the passage of the Ghanaian Act will be found in the Zambian definition of the content of the protection granted to the author of a literary, musical, or artistic work or cinematograph film. The statute in Ghana made no provision for a right of reproduction and substituted for it a right to authorize or prohibit the distribution of copies of the work. The reasons for this innovation have been sufficiently explained and need not be rehearsed here<sup>4</sup>); the fact remains that most of the criticism of the Act was directed to this point, and the Zambian legislative authorities did not wish to lay themselves open to the same blame. They therefore vested in the authors of the above-mentioned works the right of reproduction in any material form, the right of communication to the public and the right of broadcasting, without also requiring that the public performance must be "for payment" in order to come within the sphere of copyright, as had been done in Ghana. It goes without saying that the right of reproduction entails various restrictive provisions which did not need to appear in the Ghanaian legislation because the latter, as we have seen, brings protection against reproduction into being only at the level of the distribution of copies. In these circumstances, the Zambian Act has had to enact the traditional exceptions to the right of reproduction, almost all of which are to be found in Chapter II of the draft African model copyright law.

Three restrictions on copyright are deserving of special mention, namely paragraphs (i), (k) and (l) of subsection (1) of section 7. The first of these three provisions permits any use made of a work for purposes of communication to the public by or under the control of the Government where such use is in the public interest, no revenue is derived therefrom and no admission fee is charged for the communication to the public. This is a model African provision which answers the requirements of a government responsible for educating its people by any and every means, especially documentary films, for initiating them in the mysteries of prophylaxis and the secrets of the alphabet, even if otherwise copyright works have to be used to this end; in such cases the general interest must prevail over the private interest. It is indeed a matter

<sup>4</sup>) Cf. the present writer's article on the Ghanaian Act in *Le Droit d'Auteur (Copyright)*, 1962, p. 93.



for regret that the draft African model law does not contain such a provision, as its Article 10 is not of the same scope. The provision in paragraph (k) relates to ephemeral recordings and lays down a rule identical to that in the new Irish Copyright Act: the existence of an ephemeral recording is limited to six months after the making of the reproduction. The African experts, who saw fit to set the lawful life of ephemeral recordings at one year from the date of first use, under Article 15 of the draft model law, were perhaps somewhat too inclined to favour broadcasting, even without any pecuniary consideration for the author in return. Lastly, paragraph (l) of the Zambian Act, a replica of Article 16 of the African model copyright law, introduces a compulsory licence in broadcasting without prejudice to the author's right to receive fair compensation, on the twofold condition that the work has already been lawfully made accessible to the public and that it does not belong to the repertoire of a licensing body (or authors' society) since the latter is subject to the arbitration of the competent authorities. The system is intended to work as follows: a work lawfully made accessible to the public with its author's consent but which is not in the repertoire of any licensing body for Zambia is subject to the compulsory licence in the event of disagreement; a work in the repertoire of a licensing body whose constitutional territory extends to Zambia is subject, under the conditions stated in section 14 of the Act, to the decision of the competent authorities. This balance between works, whether or not they are controlled by an authors' society, with regard to their use in broadcasting, an almost unique medium of communication for everything constituting the cultural heritage of humanity, is essential in a country whose population still has everything to learn and virtually nothing to give in the cultural field.

7. — It has already been stated that cinematographic works are treated in the Zambian Act in the same way as any other works, with the exception of calculation of the term of copyright. This being so, it was not necessary to devote a whole section to copyright in cinematograph films, as the Ghanaian enactment does; the protection accruing to literary, musical and artistic works inures to cinematograph films without any discrimination whatsoever. However, a presumption is introduced into the Zambian Act, a presumption that it taken almost "as is" from section 48 of the new Irish Act: in the absence of any agreement to the contrary, the owner of the copyright in a work incorporated with his permission into a film is deemed to have transferred the broadcasting rights, but in the case of a musical work he will notwithstanding this be entitled to receive from a broadcasting authority using the film fair compensation, to be determined in the absence of agreement by the authority responsible for settling disputes between authors' societies and users. In view of the fact that this provision, like all the other parts of the Act, also applies to works already in existence at the date of its commencement, or in other words to films made before March 1, 1965, it may be of importance whenever the cinematographic contract is not explicit about broadcasting rights. It should not be forgotten that Zambia already possesses a

television service which, like its opposite numbers in much more highly developed countries, makes considerable use of motion pictures *stricto sensu*.

8. — The rights of record manufacturers are not limited, as in the Ghanaian Act, to the right of authorizing or prohibiting the distribution of copies, but amount to the exclusive right to control the direct or indirect reproduction of the whole or a substantial part of an initial sound recording. As here framed, this right is in keeping with Article 10 of the international Convention on "neighbouring rights" and would not require amending in the event that Zambia desired to become bound by that Convention. For obvious reasons the record manufacturers' right of reproduction is subject to several of the restrictions which apply to copyright, particularly the provisions on ephemeral recording. With regard to the communication of records to the public by broadcasting or otherwise, it would now appear to be well established in Africa that wherever the manufacturer still enjoys the right to license such uses, he will have to give it up and content himself with the excellent advertising he receives on the air, without which he would have difficulty in selling his wares. This principle is firmly rooted in French-speaking Africa because the manufacturers have never collected fees for the public communication of records there, presumably because French law makes no provision for such fees. Moreover, when Niger and Congo (Brazzaville) adhered to the international Convention on "neighbouring rights" they finally stated that they would not apply Article 12 of that instrument. As regards English-speaking Africa, the manufacturers' copyright is still in operation wherever the law has remained as it was before independence; nevertheless, the movement started by Ghana is steadily gathering momentum, and it would be surprising if it did not carry with it all the countries concerned. The fee paid to the manufacturers is precisely one of those where reciprocity is almost out of the question, for lack of home production of phonograms that are used outside Africa to a sufficient extent.

9. — By comparison with the Ghanaian Act, protection for broadcasts has been reduced and cut back to more reasonable proportions. There is no longer any question of protecting sound broadcasts against performance in public, or of giving the broadcasting authority a greater right than that of the authors, in that communication of the broadcast to the public is within the control of the organization, whether made "for payment" or not. On the other hand, protection against the taking of still photographs is expressly provided for, in contrast to the Ghanaian Act which favoured newspapers and periodicals in this matter at the expense of photograph distributing agencies, which are very seriously undercut by the unrestricted right to photograph pictures appearing on the screen.

10. — A very substantial improvement for the author, both by comparison with the Ghanaian Act and with the draft African model law, is the way Zambia has dealt with first ownership of copyright. Generally speaking, the copyright belongs to the author as defined in the Act. In the case of a

commissioned work or a work made in the course of the author's employment, the copyright is deemed to be transferred to the person commissioning it or to the employer, subject to any stipulations excluding or limiting such transfer that may be agreed between the parties. Turning to the Ghanaian Act, we see that in both these eventualities the copyright vests *ab initio* in the employer or person commissioning the work, without any possibility of restrictive provisions or agreements to the contrary. Under the draft African model law, agreement to the contrary is possible but failing this, the copyright will originally vest in the employer or person giving the commission. The Zambian Act, which is definitely more favourable to the author of the work, provides not only a possibility of negative stipulations but also presents the ownership of copyright by the employer or the person commissioning the work as being derived from the original ownership and does not resort to the fiction that the copyright comes into existence vested in a proprietor who is not the real author. It is very important to point out that under Zambian law the arrangements outlined above apply "notwithstanding the provisions of subsection (7) of section 12". This is a precaution of considerable significance, because what is actually excluded in the case of commissioned works or works by employee-authors is the effect of an assignment, licence or testamentary disposition in respect of a future work. Putting it in simpler language, membership of an authors' society involving an assignment or a mandate to administer future works will not stand in the way of operation of the provisions on the presumed transfer of copyright to the employer or person giving the commission.

11. — An interesting innovation by comparison with the Ghanaian Act will be found in section 12, subsection (6) of the Zambian enactment. The corresponding provision in the Ghanaian Act was the subject of some speculation as to its efficacy, not to say criticism, in the article by the present writer on the Ghanaian law. Section 10 (6) of that statute provides that in the event of there being two or more co-owners of the same copyright, an assignment or licence granted by one copyright owner would be sufficient for third parties and fees received by the grantor would be divided among the co-owners according to the contract between them or failing that, equitably between all co-owners. For the purposes of this clause, persons are deemed to be co-owners if they share a joint interest in the whole or a part of a copyright, or if they have interests in the various copyrights in a composite production, that is, a production consisting of two or more works "made in collaboration". The present writer's doubts at the time concerned the last phrase about collaboration. The explanatory memorandum to the Ghanaian Act gave as the justification for the above clause the fact that it would facilitate transfers of copyright mainly in relation to cinematograph films, which generally have several copyright owners, because a licence from any one of them would have the effect of licensing the use of the work on behalf of the others. The writer thought it proper to record some misgivings at the optimism of the Ghanaian legislative authorities and made the point, *inter alia*, that in regard to motion pic-

tures where there is a tangled skein of copyrights of the author of the pre-existing work, the composer, the scenario writer, the script writer, etc. it is rather risky to regard them all as "collaborators" and that it is for instance rather rare for the author of the novel from which the film is taken to "collaborate" with the composer of the background music or the writer of the scenario in the making of the film as a composite production.

The Zambian legislature has dispelled these doubts by a twofold measure, one part of which has already been mentioned. It has deleted the words "made in collaboration", with the result that the co-owners are taken to be the persons having interests in the various copyrights in a composite production, whether or not these works were made in collaboration. In the case of an opera in which the music has been superimposed on an existing literary work, without collaboration with the author of the latter, the composer will nevertheless be in a position to license on his own the exploitation of the composite production, even though there is no question of a work of joint authorship in the technical sense, a solution which resembles that of Article 34 of the Swiss Copyright Act.

In regard to cinematograph films, however, it is clearly apparent that the provision under discussion will not be applicable, because the Zambian Act contains a special provision mentioned above which establishes the presumption. According to the rule *specialia generalibus derogant*, there can be no doubt at all that an assignment or a simple or exclusive licence in respect of a cinematograph film are governed by the special provision and do not come under the more general clause concerning the co-owners of a composite production.

12. — As in the case of the Ghanaian Act, the Zambian statute does not provide for criminal penalties for infringements of copyright. There are several reasons for this, all proceeding from the specific circumstances of African countries. If infringements are to be punishable they must have been committed knowingly and with intent. Will it not be years before one can expect the very idea of protecting intellectual works to have penetrated sufficiently into the habits of African countries for such infringements as are committed to have been committed intentionally? In other words, will penal sanctions really have any practical effect where greater allowance has to be made for ignorance of the law? Moreover, having regard to the existing technical facilities in Africa by means of which copyright can be infringed, it seems probable that the majority of infringements will be in the field of public performance and not in that of reproduction, and that they will thus be committed in a field which leaves no trace, since public performance is by definition ephemeral and evanescent. Criminal penalties have no real meaning unless the infringements to be guarded against are more serious and take the form of the manufacture of copies. In the circumstances of a newly independent African country, the copying facilities are generally in the sole hands of the broadcasting authority and are therefore not available for uses which might infringe copyright. Persuaded by this argument, the Zambian legislative authorities did not enact any criminal



penalties for copyright infringements, though they strengthened the civil remedies which appear in the Ghanaian Act.

13. — The Minister of Commerce and Industry will designate the authority who may issue licences in cases where they have unreasonably been refused by the licensing body or where unreasonable terms or conditions have been imposed for the grant of such licences. This is a replica both of a provision in the Ghanaian Act and an article in the draft African model law, but there is an appreciable difference by comparison with the first-mentioned enactment: in the case of Ghana, the Minister of Information himself is the competent authority, and it may be argued that, when it is a question of a broadcasting organization as a user, he may to some extent be a judge in his own cause. In the case of Zambia, the competent authority is not defined, and it will rest with the Minister to appoint an impartial authority having no connection with the opposing parties.

14. — The provisions for the extension of copyright protection to works attaching to other countries are framed entirely differently in the two African enactments, a fact to which attention has been drawn above. As no provision is made for automatic extension, it is left to the Minister to extend Zambian protection to works attaching, according to certain criteria listed in the Act, to countries to which Zambia is bound by a bilateral or multilateral treaty on copyright. In so doing the Minister will have regard to the subject-matter of the treaty in question, and in the case of the Berne Convention or the Universal Copyright Convention, he will extend to works originating in States that are parties to these Conventions Zambian copyright protection as regards literary,

musical, artistic and cinematographic works, but will exclude from such extension sound recordings and broadcasts as neither of these productions are covered by the said Conventions. It is only upon a hypothetical future accession to the international Convention on "neighbouring rights" — which presupposes a Zambian enactment on protection for performers — that the Minister will apply Zambian protection for phonograms and broadcasts to productions from other countries that are likewise parties to that Convention.

15. — At the time of concluding this article, there is no clear indication of the ties which the Zambian Government proposes to create with other States through the agency of these international instruments. While it seems certain that it will accede to the Universal Copyright Convention, its policy with regard to the Berne Union and a possible declaration of continuity with respect to the Rome version of the Union Convention are under consideration. As for the international Convention on "neighbouring rights", it is safe to say that no accession is contemplated for the moment. The fact remains, however, that as was stated on the second reading in the Zambian National Assembly, the Act is so framed as to render these various accessions possible, and this is why BIRPI and Unesco, when consulted by the Government before the Act was passed by Parliament, found it conformable to the two Conventions which they administer respectively. This favourable opinion, to which prominence was given in the National Assembly in Lusaka, is an augury that the Zambian Act may well serve as a precedent, not to say a model, in other English-speaking countries in Africa where a reform of the existing legislation on copyright is in prospect.

G. STRASCHNOV

## CORRESPONDENCE

### Letter from Czechoslovakia <sup>1)</sup>

As is generally known, Czechoslovakia has in recent years acceded to the Universal Copyright Convention, and to the International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations, commonly referred to as the "Rome Convention". The first of these two Conventions came into force for Czechoslovakia on January 6, 1960, and the second on August 14, 1964. Both contain provisions which, at the moment, are not in keeping with the Czechoslovak Law on Copyright of 1953, in force since January 1, 1954.

At the time of the accession of Czechoslovakia to the Universal Convention, there was a suggestion that the Czechoslovak Copyright Law should be revised, and when the question of accession to the Rome Convention was being discussed in 1963, it then became apparent that it would be essential to adapt the Copyright Law in force to the provisions of these two international treaties. During the same period, there have been changes due to developments in the Czechoslovak legal system, which found expression in the publication of a new Civil Code. Thus the reasons multiplied, and the need strengthened, for a readaptation of the Czechoslovak Copyright Law. The first intention was to publish a law which would merely complete the existing legislation. However, owing to the changes in the new legal terminology and the new wording of the laws already in force, which have been shorn of their complex and frequently antiquated formulae, it was decided to draft a new Copyright Law. This draft has been in course of preparation for more than a year and in recent months it has reached the stage of final discussion before being submitted to the National Assembly.

The first draft of the new Copyright Law has undergone a series of changes and improvements during the preparatory stage, changes — it should be stressed — which have been for the benefit of the authors, who have been able to vindicate and command recognition of their rights. This is borne out by the fact that the various committees of the National Assembly, in particular the cultural and constitutional committees, have already referred the Bill back to the Government on two occasions, with important comments and criticisms. Very shortly, the committees of the Assembly will be discussing the Bill as modified in accordance with the amendments, for the third time, and it seems likely that on this occasion they will recommend its submission to the plenary session of the National Assembly.

International circles concerned with copyright will be interested to note that in fact the Bill contains no provisions which are contrary to the interests of the authors or which

might worsen their position as compared with the Law at present in force. Theoretically, the Bill is based on the principle that copyright is one single indivisible right belonging to the author as a physical person whose creative activity has resulted in a scientific, literary or artistic work. Copyright exists without any formality as soon as the work is expressed in such a manner as to be perceptible to the human senses. For copyright to exist, neither the mode of expression of the work, nor its purpose, nor its value, are decisive. Although the Bill provides both for the moral right and the material right, its terms make no distinction between the two constituents, which form an indivisible part of the single right.

The term of protection remains unchanged at 50 years *post mortem auctoris*. Copyright is handed down to the heirs just like any other property. In cases where the author or his heirs die without survivors, the copyright lapses and cannot therefore pass to the State.

As far as cinematographic works are concerned, the term of protection has been extended, in keeping with the Universal Convention, from 10 to 25 years after the first exhibition of the film. As to photographic works, the provision at present in force, which grants protection for 10 years after publication, has been improved upon in the new Bill, which provides for an extension of the period to include the life of the author and 10 years after his death. The Bill likewise provides for posthumous works, whose term of protection would be extended for a further 10 years in the case of publication of the work immediately before the expiration of the 50-year term *post mortem auctoris*.

Mention should be made of the importance of the Bill with regard to the question — which is now being keenly discussed at the international level — of the copyright in a cinematographic work, as dealt with in connection with the draft amendments for Article 14 of the Berne Convention, prepared for the Diplomatic Conference of Revision to be held at Stockholm. The Czechoslovak Copyright Bill rejects outright any assumption of *cessio ex conventionis* or *ex lege*. The Bill states literally that the authors of the various constituents of a cinematographic work, or of a work created in a similar manner, shall grant to the producer the right to use the work by means of a contract. This is in fact an express confirmation of the principle of contractual transfer of copyright in the field of cinematographic works.

The scope of statutory licences has not been widened by the Bill and remains limited to the extent necessary, providing for quotations designed to facilitate scientific and educational work, as in the case of licences in respect of current affairs or journalism.

Unlike some copyright laws in other countries, the Bill also makes provision for the legal relationship between the

<sup>1)</sup> This "Letter" was presented, in the form of a report, to the Legislative Committee of CISAC at its meeting in Paris in March 1965. It is printed here with the kind permission of the author and of the Secretariat-General of CISAC.

author and his employer when a work has been created as part of paid employment. Some of the author's acts in respect of the work he has created in such conditions are limited, but he still retains the right to remuneration. A similar deviation is the stipulation concerning the creation of a work pursuant to a commission, although this is not a contract normally within the scope of copyright. In Czechoslovakia, there is a whole group of scientific and other institutions concerned with the distribution of artistic works (cinema, radio, television), including manufacturers of works of applied art, which commission artistic works, according to their wishes or requirements. The Bill, therefore, contains in a special chapter basic provisions regulating relations between the author and the person commissioning the work. The same chapter also contains basic provisions on the contents of the contracts in most general use in the field of copyright, such as, publishing contracts, and so forth. These provisions protect the author against users of his works and take the form of *ius cogens*.

As regards the rights of performers, the Bill provides for their extension to members of ensembles, on condition, however, that the performance in question is that of an artistic work. Unlike the Rome Convention — and in this respect improving upon the latter — the Bill makes provision for the rights of performers by means of a stipulation whereby

the user of the artistic performance or the recording thereof is required to obtain the consent of the performer for a new or further public use. The term of protection of such rights is fixed at 25 years from the date of the recording of the artist's performance. The scope of the rights granted to producers of phonograms and broadcasting organizations is in principle the same as that granted by the Rome Convention, and the term of protection is fixed at 25 years from the date of the recording or of the broadcast.

I have given a survey of the development of Czechoslovak copyright legislation and of the principles of the new Copyright Bill, whose provisions will bring the existing Law into line with the new international Conventions, and whose contents exclude any danger of a reduction of the rights granted to authors under the Law at present in force. The wording of the various provisions has been radically simplified and their practical application will demand a very close interpretation of the text.

Once the Bill is approved by the National Assembly and becomes the new Czechoslovak Law on Copyright, I shall make a more detailed analysis and give a fuller explanation of the contents.

Jiří NOVOTNÝ

Deputy Director-General of the Czechoslovak  
Society of Authors and Composers (OSA)

## INTERNATIONAL ACTIVITIES

### Founding Congress of the International Secretariat of Entertainment Trade Unions

(Brussels, March 8 to 11, 1965)

The first International Conference of Entertainment Trade Unions, which was transformed into the Founding Congress of the International Secretariat of Entertainment Trade Unions, was held, from March 8 to 11, 1965, at the *Maison de la Presse* in Brussels, under the auspices of the International Confederation of Free Trade Unions (ICFTU). Those present included the representatives of the free entertainment trade unions (film, radio and television workers and employees; musicians, actors and variety artistes) of the following 18 countries: Argentina, Austria, Belgium, Canada, Finland, France, Germany (Fed. Rep.), Italy, Japan, Mexico, Netherlands, Peru, Salvador, Sweden, Switzerland, Turkey, United Kingdom and United States of America. This Conference had the support of the Inter-American Federation of Entertainment Workers, the European Union of Film and Television Workers and the International Congress of Broadcasting Trade Unions.

Invited in the capacity of observers, the International Labour Office (ILO) was represented by Mr. J. Fafchamps, the national correspondent of the ILO in Belgium; BIRPI by Mr. C. Masouyé, Counsellor, Head of the Copyright Division; and the European Economic Community (EEC) by Mr. L. Coppée.

The opening session was held in the presence of Mr. Henri Janne, the Belgian Minister of National Education and Culture, and a number of other local figures and trade union personalities. The working sessions were presided over in turn by Mr. Littlewood (United Kingdom) and Mr. Jenger

(France), who had been elected respectively Chairman and Vice-Chairman of the Conference.

An International Secretariat of Entertainment Trade Unions has been set up under the direction of Mr. Alan Forrest; its headquarters have been temporarily installed in the offices of the International Confederation of Free Trade Unions (ICFTU). Apart from administrative and financial questions relating to the constitution of this new international trade union organization and its permanent secretariat, the agenda of the meeting included, in particular, the following items: conditions of employment in the entertainment industry; work abroad by performing artists and others in the entertainment industry; mutual impact of television and the film industry; national and international protection of performers' rights. On this last point, the Congress adopted, at the close of its deliberations, the following motion:

"In relation to the protection of the rights of performing artists, this Congress

*Welcomes* the entry into force of the Rome International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations;

*Regrets*, however, that very few countries have so far ratified this Convention;

*Declares* that in the interest of musicians it is vital that all countries should do so; and

*Calls upon* organisations affiliated to the International Secretariat as well as non-affiliated musicians' organisations in countries which have not yet ratified the Convention to take appropriate steps with their governments."

## NEWS ITEMS

### DENMARK

#### *Ratification of the Rome Convention for the International Protection of Performers, Producers of Phonograms and Broadcasting Organisations*

The Secretary-General of the United Nations Organisation informs us that the instrument of ratification of the Convention by the Government of Denmark was deposited on March 11, 1965, in accordance with Article 24, paragraph 3. The instrument is accompanied by the following declarations:

- (1) With regard to Article 6, paragraph 2: Protection will be granted to broadcasting organisations only if their headquarters is situated in another Contracting State and if their broadcasts are transmitted from a transmitter situated in the same Contracting State.
- (2) With regard to Article 16, paragraph 1 (a) (ii): The provisions of Article 12 will be applied solely with respect to use for broadcasting

or for any other communication to the public for commercial purposes.

- (3) With regard to Article 16, paragraph 1 (a) (iv): As regards phonograms the producer of which is a national of another Contracting State, the protection provided for in Article 12 will be limited to the extent to which, and to the term for which, the latter State grants protection to phonograms first fixed by a Danish national.
- (4) With regard to Article 17: Denmark will grant the protection provided for in Article 12 only if the first fixation of the sound was made in another Contracting State (the criterion of fixation) and will apply for the purposes of paragraph 1 (a) (iii) and (iv) of Article 16, the said criterion instead of the criterion of nationality.

In accordance with Article 25, paragraph 2, the Convention shall come into force, in respect of Denmark, three months after the date of deposit of its instrument of ratification, i.e. June 12, 1965.

# 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	Denmark
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 (3 <sup>rd</sup> 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 (1 <sup>st</sup> 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
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
Paris	May 31, 1965	International Chamber of Commerce (ICC)	Commission on the International Protection of Industrial Property
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