

Copyright

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NATIONAL LEGISLATION

KENYA

The Copyright Act, 1966

(No. 3, of 1966)¹⁾

Arrangement of Sections

Section

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18. Repeal of Copyright Act, 1956.

An Act of Parliament to provide that the Copyright Act, 1956, of the United Kingdom shall cease to have effect in Kenya, and to make provision for copyright in literary, musical and artistic works, cinematograph films, sound recordings and broadcasts.

Enacted by the Parliament of Kenya, as follows:

Short title and commencement

1. — This Act may be cited as the Copyright Act, 1966, and shall come into operation on such date as the Minister may, by notice in the *Gazette*, appoint.

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, and also, subject to the provisions of section 3 (3) of this Act, includes

pictorial woven tissues and articles of applied handicraft and industrial art;

“author”, in the case of a cinematograph film or sound recording, means the person by whom the arrangements for the making of the cinematograph 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 Voice of Kenya or any other broadcaster authorized by or under any written law;

“building” includes any structure;

“cinematograph film” means the first fixation on film or on any other medium of a sequence of visual images or electronic impulses capable of being seen as a moving picture and of being the subject of reproduction, and includes the recording of a soundtrack 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;

“licence” means a lawfully granted licence permitting the doing of an act controlled by copyright;

“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;

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

¹⁾ This Act came into force on April 1, 1966.

“prescribed” means prescribed by regulations made under section 15 of this Act;

“rebroadcasting” 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;

“school” shall have the meaning assigned thereto under the provisions of the Education Act;

“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 soundtrack 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) 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, and duration of copyright

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, Kenya; or
- (b) a body corporate which is incorporated under or in accordance with the laws of Kenya.

(2) The term of a 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 term of protection of a copyright shall be calculated in accordance with the provisions of subsection (2) of this section.

(4) In the case of a work of joint authorship, reference 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 Kenya; and
 - (b) being a sound recording, is made in Kenya,
- and which has not been the subject of copyright conferred by section 4 of this Act.

(2) Copyright conferred on a work by this section shall have the same duration as is provided for in section 4 of this Act 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 and also such international bodies or other governmental organizations 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 cinematograph film, photograph, sound recording or broadcast shall have the same duration as is provided for by section 4 of this Act in relation to a similar work.

(4) Sections 4 and 5 of this Act shall not be deemed 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 Kenya 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 recognizably derived from the original:

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

- (i) 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;
- (ii) the doing of any of the aforesaid acts by way of parody, pastiche or caricature;
- (iii) 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;
- (iv) the incidental inclusion of an artistic work in a film or broadcast;
- (v) 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 any school registered in accordance with the provisions of the Education Act or university and includes an acknowledgment of the title and authorship of the work;
- (vi) the broadcasting of a work if the broadcast is intended to be used for educational purposes;
- (vii) any use made of a work enumerated in section 3 (1) of this Act in any school registered in accordance with the provisions of the Education Act or any university for the educational purposes of that school or university:

Provided that if a reproduction be made for the purposes of this paragraph such reproduction shall be

destroyed before the end of the period of twelve calendar months immediately following the making of the reproduction;

- (viii) 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 Kenya and provided that 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 of this Act;
- (ix) 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;
- (x) any use made of a work by or under the direction or control of the Government, or by such public libraries, non-commercial documentation centres and scientific institutions as may be prescribed, where such use is in the public interest, no revenue is derived therefrom and no admission fee is charged for the communication, if any, to the public of the work thus used;
- (xi) 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 by 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 paragraph may, if it is of an exceptional documentary nature, be preserved in the archives of the broadcasting authority, 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;
- (xii) the broadcasting of a work already lawfully made accessible to the public with which no licensing body referred to under section 14 of this Act is concerned, provided that subject to the provisions of this section the owner of the broadcasting right in the work receives fair compensation determined, in the absence of agreement, by the competent authority appointed under the said section 14;
- (xiii) 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 recognizably derived from the original:

Provided that the copyright in any such work shall not include the right to control the reconstruction of a building to which that copyright relates 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 authorizes a person to incorporate the work in a cinematograph film and a broadcasting authority broadcasts the film, it shall, in the absence of any express agreement to the contrary, be deemed that the owner of the copyright authorized such broadcast.

(2) Notwithstanding the provisions of subsection (1) of this section where a broadcasting authority broadcasts a cinematograph film in which a musical work is incorporated, the owner of the right to broadcast the musical 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 of this Act.

Nature of copyright in sound recording

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

Provided that the provisions of paragraphs (i), (vii), (x), (xi) and (xiii) of the proviso to section 7 (1) of this Act 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 Kenya of any of the following acts, namely, the recording and the rebroadcasting 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 recognizably derived from the original:

Provided that —

- (i) the provisions of paragraphs (i), (vii), (x) and (xiii) of the proviso to section 7 (1) of this Act shall apply *mutatis mutandis* to the copyright in a broadcast;
- (ii) 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 of this Act shall vest initially in the author:

Provided that, notwithstanding the provisions of section 12 (6) of this Act, where a work —

- (i) is commissioned by a person who is not the author's employer under a contract of service; or
- (ii) 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 of this Act shall vest initially in the Government or such international bodies or other governmental organizations as may be prescribed, and not in the author.

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) No assignment of copyright and no exclusive licence to do an act the doing of which is controlled by copyright shall have effect unless it is in writing signed by or on behalf of the assignor, or by or on behalf of the licensor, as the case may be.

(4) A non-exclusive licence to do an act the doing of which is controlled by 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.

(5) 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. For the purposes of this subsection 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.

(6) 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.

(7) 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.

Infringement

13. — (1) Copyright shall be infringed by any person who does, or causes any other person to do, an act the doing of which is controlled by the copyright without the licence of the owner 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 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;

“court” means the High Court;

“owner of the copyright” means the first owner, an assignee or an exclusive licensee, as the case may be, of the relevant portion of the copyright.

Appointment of competent authority and duties of such authority

14. — (1) 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 licensing body at the time the act is done provided the

appropriate fees fixed by such competent authority are paid or tendered before the expiration of such period or periods as the competent authority may determine.

(2) In this section—

“competent authority” means an authority of not more than three persons appointed by the Attorney-General for the purpose of exercising jurisdiction under the provisions of this Act whenever any matter requires to be determined by such authority;

“licensing body” means an organization which has as its main object, or one of its main objects, the negotiation or granting of licences in respect of copyright works.

(3) No person shall be appointed under the provisions of this section, nor shall any person so appointed act as a competent authority, if he, his partner, his employer or any body (whether statutory or not) of which he is a member has any pecuniary interest in any matter which requires to be determined by such authority.

Regulations and extensions of application of Act

15. — The Attorney-General may make regulations for the better carrying out of the provisions of this Act, and without prejudice to the generality of the foregoing such regulations may prescribe anything to be prescribed or which may be prescribed under this Act, and may extend the application of this Act in respect of any or all of the works referred to in section 3(1) of this Act—

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

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

(c) to sound recordings made in,

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

Application to works made before commencement of Act

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.

Abrogation of common law rights

17. — No copyright, or right in the nature of copyright, shall subsist otherwise than by virtue of this Act or of some other enactment in that behalf.

Repeal of Copyright Act, 1956

18. — The Copyright Act, 1956, of the United Kingdom and the Copyright (Kenya) Order, 1963, in so far as they form part of the laws of Kenya shall cease to have effect in Kenya.

“The Enforcement of Morals”²). Legislation in order to protect private life seems, however, not to be contemplated, at least not for the time being.

That creation of a statutory right to privacy is desirable can be seen also from a libel case heard by Mr. Justice MacKenna on June 1, 1965. The newspaper *The People*, published by *Odhams Press*, contained in its issue of September 29, 1963, an article on Mr. S. V. C. Mason, a clerk in the Department of Inland Revenue, which said *inter alia*: “Get with it, Mr. Mason! You’re so Victorian. No wonder both your daughters left home”. The article purported to show how Mr. Mason had organized his household. It presented an erroneous and disparaging picture of the plaintiff, Mr. Mason, and constituted an unwarranted intrusion into his *private affairs*. Sued for libel, *Odhams Press* and the writer of the article offered their sincere apologies, which were accepted by the plaintiff so that the case was settled in a friendly manner³).

4. — *The Law of Libel*. In my recent “Letters”, I have several times mentioned that many people and in particular those connected with newspapers hold the present state of the *Law of Libel* in many respects to be unsatisfactory. A working party, consisting of six experts under the chairmanship of Lord *Shawcross*, was appointed by “Justice”, the all-party association of lawyers, and by the British Committee of the International Press Institute. That working party published last June a report (60 pages; Stevens & Sons; 17 s. 6 d.) in which they recommend important amendments to the *Law of Libel*. The space allotted to me does not allow me to refer thereto in detail. I would mention a few only of the most important changes of the laws as recommended. Whenever the defence of fair comment or qualified privilege is met with an allegation of malice, it should be the function of the judge (and not of the jury) to decide whether or not the words complained of were malicious. Further, the Court of Appeal should be given the power to vary damages awarded by a jury in the same way as it is entitled to vary an award of damages made by a judge. Another important recommendation is to introduce a defence for newspapers in the case where the report was substantially true even though one minor statement in it might not be. The report further contains an important progress in international cooperation by proposing that fair and accurate contemporaneous reports of foreign judicial and Parliamentary proceedings published in a newspaper should be the subject of qualified privilege whereas up to now this has been the case only if publication in an English newspaper is of interest to the English public. Whether the *Law of Libel* is amended at all and whether such amendment would be within the lines indicated in the report cannot be foreseen⁴).

²) Reviewed in *The Sunday Times* of March 21, 1963, by Cyril Connolly.

³) *The Times, Law Report*, June 2, 1965.

⁴) See a Private Members’ Bill introduced by Mr. *Lever*, M.P., to allow newspapers greater freedom of reporting without fear of libel actions, and Lord *Shawcross* in his address to the Guild of British Newspaper Editors on October 1, 1965 (*The Sunday Times*, June 22 and October 3, 1965). In the same sense a broadcast by Lord *Devlin* on December 5, 1965. In a “Letter to the Editor” of *The Sunday Times*, of October 31, 1965, “The Underwriter” of *Denham Syndicate* discusses

II. Jurisprudence

1. — *Re: Twentieth Century-Fox Film Corporation (referred to as “Fox”) v. Anglo-American Amalgamated Film Distributors Ltd. (Infringement of copyright in a picture)*.

Fox, a well known American film company, produced in 1963 a film called “Cleopatra”. They had employed a painter to paint a scene in the film showing Cleopatra as portrayed by *Elizabeth Taylor*, lying on a divan, and in the background Mark Antony and Julius Caesar, portrayed by famous actors. It was not disputed that copyright in the picture was vested in *Fox*.

Anglo-American Amalgamated Film Distributors Ltd. and *Warner Pathé Distributors Ltd.*, London, were authors of a film, “Carry on Cleo”, a parody of the film “Cleopatra”.

Fox did not complain of the production of the film “Carry on Cleo”, but they complained of a poster exhibited by the two defendant companies. *Fox* used their picture as propaganda for their film “Cleopatra” and posters showing that picture were exhibited at theatres where the film was performed. *Fox* alleged that the poster exhibited by the defendants as propaganda for the film “Carry on Cleo” was a reproduction of the plaintiffs’ picture. *Fox*, therefore, moved for an interim injunction restraining the two defendant companies from reproducing or displaying any reproduction of the said painting or of any substantial part thereof in the form of posters, illustrations or advertisements. The defendants contended their picture was a parody of that of *Fox*, but not a copy or reproduction of it.

The case was heard by Mr. Justice *Plowman* on January 19 and 21, 1965. The Judge granted the interim injunction asked for. He did not agree that the picture complained of was a parody; he pointed out that a parody was not an infringing reproduction only because its author had subjected the work concerned to such revision and alterations as to produce an original work. Whether there was an infringing reproduction — His Lordship commented — has to be judged not by a classical scholar or a student of ancient history, but from a quick look rather than a meticulous study; it was a matter of first impression. On the evidence of his own eyes — the Judge said — it seems that the defendants’ poster came so near as to suggest the plaintiffs’ poster to every person seeing it. The only difference was that the defendants had replaced the heads of their own actors to those of the plaintiffs’ actors. The Judge, therefore, arrived at the conclusion that the plaintiffs had made out a *prima facie* case of infringement⁵).

2. — *Re: Dam Things Establishment v. Cornelius (Infringement of copyright in an artistic work)*.

Thomas Dam, manager of the plaintiffs *Dam Things Establishment* of the Principality of Liechtenstein, has designed “trolls”, i. e. fairies or gnomes with shocks of hair, equivalent to the Cornish “Pixie” (trolls are figures in the Scan-

“Insurance against Libel” the object of which he describes as to protect the insured against the consequences of an accidental and not intentional libel. The writer thinks the fear of publishers that insurance men are becoming censors in spite of themselves to be unfounded.

⁵) *The Times, Law Report*, February 20 and 22, 1965.

dinavian mythology). The plaintiffs had granted a licence to an English Company which manufactured these articles in England where they are astonishingly popular; they were exported at the rate of 30,000 a month. The defendants, the London Company *Cornelius Ltd.* imported such fancy articles from Hong-Kong as "charms" called "lucky snooks" and sold them in England. They were almost identical with the original articles thereby infringing the plaintiffs' artistic copyright. The plaintiffs sued for copyright infringement. The case was tried by Mr. Justice *Lloyd-Jacob* on October 6, 1965. The Judge remarked that he wondered that articles of this kind attract people in England. Counsel for the plaintiffs said the matter was urgent because it was the time when the rate at which traders lay in stocks increased rapidly; most shipments from Hong-Kong were intended to arrive during October for the Christmas market.

The Judge granted the plaintiffs the injunction asked for restraining the defendants from violating the plaintiffs' copyright. At the trial of the case, on December 14, 1965, the injunction was made permanent⁶).

3. — *Re: Board of Governors of the Hospital for Sick Children v. Walt Disney (The title "Peter Pan")*.

In this summons the plaintiffs (Board of Governors of the Hospital for Sick Children) and the defendant, Walt Disney of California, USA, claimed the *title* in the play "Peter Pan". *J. M. Barrie* had assigned to the plaintiffs' predecessors in title, in an agreement of 1929, the rights in "Peter Pan" of which he is the author. The issue in this case arose from an agreement concluded between the parties on January 11, 1939. The plaintiffs said at the hearing of the case before Mr. Justice *Plowman* on March 9, 1965, that in that agreement the defendants undertook not to object to the plaintiffs' making and exhibiting an ordinary sound motion picture with exclusively living actors based on the play "Peter Pan", provided it was not exhibited in public prior to the expiration of 10 years from the world première of an animated cartoon made by the defendants, which took place in January 1953. The plaintiffs alleged they were from January 1, 1963, entitled to authorize the making and exhibition of a film of the play with the title "Peter Pan". The defendants contested the plaintiffs' construction of the 1939 agreement, claimed an exclusive right in the film title "Peter Pan" and alleged that they had vested some cinematograph rights in the play in Paramount Pictures Inc. The plaintiffs asked for a declaration that under the said agreement the defendants had no right to object to the plaintiffs making or exhibiting an ordinary film exclusively with living actors based on the play by Barrie "Peter Pan" under the title "Peter Pan".

In his judgment the Judge said that the matter hinged on the true construction of the 1939 agreement and that as the plaintiffs relied not only on the literal, but also on the implied meaning of the same, the plaintiffs should make discovery of any documents relating to the circumstances relevant to the existence or non-existence of the implied term. The case is pending⁷).

⁶) *The Evening Standard*, October 6, 1965, under the heading "Judge cocks a 'snook' at troll". *The Daily Telegraph*, December 7, 1965.

⁷) *The Times, Law Report*, March 10, 1965.

4. — *Re: Russell v. Cuccione (False attribution of authorship; misuse of name)*.

The defendant had published a promotional leaflet in which he announced the publication of a new magazine called "Penthouse", a magazine "struggling for sexual and intellectual freedom". The proposed cover of the first number should show the name of *Earl Russell*, the famous philosopher, and should contain an article by Earl Russell. Earl Russell emphasized that all that was absolutely wrong and that he had never agreed to be in any way concerned with that magazine. He sued the publisher *Cuccione* and asked for an injunction restraining the defendant from further circulating the above leaflet or any other statement that Earl Russell was in any way concerned with the publication or production or launching of that magazine. The motion for the injunction was heard by Mr. Justice *Ungoed Thomas* on December 16 and should contain an article by Earl Russell. Earl Russell ance with the injunction asked for. At the trial of the case on March 5, 1965, before Mr. Justice *Pennycook*, the defendant apologized and renewed his undertaking. In that way the case was disposed of⁸).

5. — *Re: Regina v. Straker; Regina v. Stanley (Indecency or obscenity?)*.

In my "Letter" of 1964, I reported the case *Regina v. Straker* in which it was decided in 1963 on appeal, that the Obscene Publications Act, 1959, did not apply to *photographic negatives*. That case *inter alia* caused the amendment in 1964 of the 1959 Act. Some of the developed photographs had been found in 1963 *not to be obscene*. Mr. Straker sent in 1965 four of those photographs to a friend by *post*. The photographs were intercepted by the postal authorities as "*indecent*" under the Post Office Act, 1953. Straker was fined by the Magistrate £25 on each of the four photographs. The appeal was dismissed, because it was held that the photographs were indecent, though not obscene.

Two months later, the same happened to a certain *Alan Stanley* for the same offence against the Post Office Act, 1953⁹).

6. — *Re: Chaplin v. Frewin (Publishers) Ltd. (Contract by a minor with publishers. Transfer of copyright)*.

a) *Michael John Chaplin* is the son of the well known actor and producer *Charlie Chaplin*. He, aged 19 years, has since his 16th year been estranged and is still estranged from his parents. He had been living an erratic and poverty-stricken life in London. In the beginning of 1965 he was driven to seek national assistance. This fact was reported in the Press and attracted widespread publicity. He was approached by two would-be "ghost" writers, Mr. Tom Merrin and Mr. Charles Hamblett, both journalists, who wished to write an autobiography on Mr. Chaplin's behalf. They introduced him to the defendants *Leslie Frewin (Publishers) Ltd.* The results were two contracts concluded in April 1965 by Chaplin and his 25-year old wife: one with the two writers in which

⁸) *The Times, Law Report*, December 17 and 19, 1964, and March 6, 1965.

⁹) Reported by Mr. C. H. Rolph in the Winter 1965 issue of *The Author*.

it was stated that the copyright in the book should be vested in the plaintiff and his wife, and another with the publishers. In this latter contract the plaintiff and his wife assigned the copyright in the book to the publishers who were entitled to grant licences in all countries. The two writers elicited a substratum of fact from Chaplin, the plaintiff, and his wife and drafted the autobiography. The publishers paid some money to Chaplin and the two writers. Mr. Chaplin was first quite content with the book, but after some time he saw the piquancy of the situation that the son of a famous man was making damaging and disloyal remarks about his family in breach of all accepted standards of family confidence; he became aware of the piquancy of the situation of such a young man showing an attitude to life compounded of irresponsibility and depravity and of the popular appeal to readers. Having appreciated the implications — *inter alia* the probability of several libel actions — the plaintiff consulted solicitors in August 1965. A letter was written by them to the publishers in September 1965 repudiating the contract and they were asked for an assurance that they would not go forward with the project. The assurance was declined and the publishers indicated that they had spent a lot of money on the book and were going to publish it. The head of the publishing firm said in his affidavit that he had met the Chaplins several times and that he explained in detail the implications of the contract; if within seven days they should be unhappy on any point they should be entitled to rescind the contract. He emphasized that proofs of the book had been given to them last June when they were told that any alterations could be effected, but no alterations were demanded. Obviously they have later changed their attitude. 50,000 copies of the book would be issued in Great Britain and the rights had been sold in many countries. The book was due to be published on October 11.

Chaplin by his wife and next friend asked for an interim injunction, until judgment in the action or further order, restraining the publishers and the printers from publishing, printing, or otherwise reproducing the book, or authorizing those acts without the licence of himself and his wife. The work should have been entitled "I Couldn't Smoke the Grass on my Father's Lawn".

Counsel for the defendants (publishers and printers) referred *inter alia* to section 19 of the Copyright Act, 1956, which speaks of the grant of licences by the owner of the copyright, and stressed that that section involved a transfer of interests of a substantial character and that the transfer was irrevocable. Counsel for the plaintiff replied — I submit rightly — that that section 19 was merely procedural and did not affect substantive rights.

The case came on for hearing before the Vacation Judge Mr. Justice Waller on September 15 and 17, 1965. In his judgment, read on September 20, the Judge granted the injunction as asked for. The reasons given by the Judge were briefly as follows:

1. It had to be decided — said the Judge — when an irrevocable contract was not irrevocable. For the purpose of the present interlocutory proceedings, His Lordship accepted *prima facie* the view that an infant was entitled to repudiate

a contract which was neither for necessities nor for his advantage. On this basis the exclusive licence granted to the publishers by the plaintiff would have been determined. It would follow that the sublicences which had been granted by the publishers no longer were in force and accordingly the plaintiff had made out a *prima facie* case for relief. Consequently, printing and/or publishing the book or any substantial part thereof would constitute *infringement* of the plaintiff's *copyright* in the book.

2. If the book were published it might be libellous of the plaintiff; but even if it was not, it might do irreparable harm to his character. The publication of the work to the world would reflect no credit to him and would do a world-wide disservice to him and perhaps to his family.

3. The defence emphasized *inter alia* that the delay and acquiescence in this case were grounds for refusing equitable relief. His Lordship, however, had to have in mind that the plaintiff was a minor who might require protection in spite of himself. Nobody who has heard the facts and negotiations in this case and having had the misfortune to read the book, could be left with any sympathy for the plaintiff. No doubt attracted by the prospect of substantial rewards for giving the necessary background information and his name to the book has been the dominant motive on his mind. But as he had second thoughts at the eleventh hour, the Court should, because of his age, while lacking any sympathy with the plaintiff give the relief asked for and an injunction would be granted in terms of the motion¹⁰.

The defendants appealed. The Court of Appeal (Lords Justices Danckwerts and Winn, The Master of the Rolls Lord Denning dissenting) allowed the appeal (October 21, 22, 25, 1965), by a majority vote. The point at issue was whether the contract of April 1965 with the publishers was for the minor plaintiff's benefit.

Lord Justice Danckwerts said that at the time Chaplin entered into the contract — that time was decisive — the contract was to his benefit. The advantage was that the contract would enable him to make a start as an author and earn a living (£400 advance royalties had been paid him); the contract was not voidable because it turned out later that it was not as beneficial as anticipated. His Lordship considered copyright to be property; the transfer of property by the plaintiff remained effective against him, even if the contract was otherwise revocable. The copyright in the book was no more Chaplin's, but the publishers'. Lord Justice Winn who concurred with Lord Justice Danckwerts said he based his opinion on section 36 of the Copyright Act which provides "copyright is transferable by assignment . . ." and that assignments must be in writing which requirement has been complied with. Lord Denning, dissenting, pointed out a contract is not for the benefit of a young man if it is to bring shame on him and others and to invade the privacy of his family life. The two other Lords Justices also condemned the contents of the book very strongly; expressions such as cheap and silly blasphemy, worthless from a literary point of view, no taste in the sense

¹⁰ *The Times, Law Report*, September 15, 17 and 20, 1965.

of manliness, foolish, etc. were used. The two "ghost" writers were described as experts in illiterate literature¹¹).

The publishers gave an undertaking not to publish the book pending a further appeal to the House of Lords.

The above proceedings for an interlocutory injunction do not prejudice the trial of the action when a permanent injunction will be asked for.

Leave to appeal to the House of Lords was granted.

7. — *Re: Capital Finance v. Bowmaker and Lombank (Alleged infringement of copyright in a finance plan).*

Capital Finance, Edinburgh, had brought actions in the Court of Session against *Bowmaker* (Commercial) and *Lombank* for copyright infringement. The plaintiffs contended that the plan issued by the defendants infringed the plaintiffs' copyright in a hire purchase scheme, called the "Capital Plan", involving tax relief through a bank loan. The defendants denied any infringement. The case was heard before Lord *Avonside* on January 7, 1965. Counsel for the plaintiffs said he wanted to withdraw the actions because with the coming into force on January 1, 1965, of the Hire Purchase Act, 1964, the documentation, on which the complaint was based, had become entirely obsolete.

His Lordship recalled the temporary injunction granted a few months ago and dismissed the actions as requested. He said that the emergence of the new Act and attendant regulations had so altered the picture in that field that the documentation would no longer be of any copyright value. If it was the case that *Bowmaker* had suffered damage by the injunction it would have its remedy¹²).

8. — *Re: Warrior Records Ltd. v. Hayes and another (Breach of an agreement concerning "pop" singers).*

The plaintiffs *Warrior Records Ltd.* had concluded with the defendants two oral agreements on April 14 and May 27, 1964. By those agreements the defendants had agreed to assign to the plaintiff company recordings concerning some "pop" singers, in particular "The Animals". The plaintiff company was incorporated on May 8, 1964, i. e. between the dates of the two oral agreements. During that period the defendants were engaged in the business of acting as managers, producers and agents for "The Animals". The defendants had failed to carry out the terms of the oral agreements when embodied in a written contract by refusing to accept it. The directors of the plaintiff company had financed the defendants with regard to "The Animals". The defendants, sued for breach of contract, contended that they had not bound themselves. The hearing before Mr. Justice *Megaw* took 13 days. His Lordship rejected the evidence of the defendants and accepted that of the plaintiffs. He held as a matter of law that because the parties had contemplated that a subsequent written document would later regulate the oral agreements, it did not prevent the oral agreements binding the defendants in the meantime¹³).

9. — *Re: Francis Day & Hunter Ltd. v. Bron (Unconscious copying).*

I refer to my report on the above case in *Le Droit d'Auteur (Copyright)*, 1964, p. 60, in which case the question of "unconscious copying" was at issue. That case is also reviewed by Mr. C. H. Rolph in the Summer 1965 issue of *The Author*. Mr. Rolph mentions another interesting case of "unconscious copying" to which I would briefly refer. The case is described in the *Times Literary Supplement*. Mr. Glyn Jones is the author of "The Blue Bed and Other Stories" (1937) which contains a prose passage; the same appears in poetry in the poem "Perfect" by Mr. Hugh MacDiarmid. The latter explained that incident saying that he had read several reviews of the book by Mr. Glyn Jones; he continued: "I either automatically memorised it and subsequently thought it my own, or wrote it into one of my notebooks with the same result. Any plagiarism was certainly unconscious". That case shows that unconscious copying is not so rare as one would think.

10. — *Re: The Henry Wood National Memorial Trust.*

That Trust Fund came into being in 1944 to celebrate the 75th birthday of *Sir Henry Wood*, the conductor, and the 50th Season of the Promenade Concerts. As the object of the Fund the building of a Concert Hall was described at the place of the old Queen's Hall which had been destroyed by bombs in 1941. A formal Trust Deed was executed two years later. The Government decided that a Concert Hall should not be built on the Queen's Hall site. Although the Fund had reached the region of £90,000 that sum is by no means sufficient to build a Concert Hall these days. The Trustees consequently brought proceedings to obtain the Court's leave for the Trustees to deal with the Fund otherwise.

The case was heard by Mr. Justice *Stamp* on October 7 and 8, 1965. Counsel for the Trustees said that *Sir Henry*, who died in 1944, had raised the standards of orchestral playing and had, in 50 years of promenade concerts, transformed musical taste and enlarged the concert audience. "Millions looked upon him with affection, esteem and gratitude." Counsel made several suggestions for the use of the Trust. The Judge reserved judgment. In his judgment, delivered October 28, he ordered that anyone who had subscribed more than two guineas to the Trust might have the money back. The Court will decide a form of memorial to *Sir Henry* when those of the 15,000 subscribers to the fund who are entitled to the return of their money and who wanted it, have been repaid¹⁴).

11. — *Re: Wheeler v. Somerfield and others (Principles of the Law of Libel).*

This case seems to me of particular interest because Mr. Justice *Milmo* has defined the principles governing Libel Law in an extraordinarily lucid manner. The *News of the World* published in 1964 an article dealing with the activities of insurance agents in cases of accident. This article contained comments on Mr. Charles D. Wheeler (the details are not of interest), an insurance claims assessor. He sued the editor of that newspaper Mr. *Stafford W. Somerfield*, and some other

¹¹) *The Times, Law Report*, October 22, 23 and 26, 1965.

¹²) *The Financial Times*, January 8, 1965.

¹³) *The Times, Law Report*, October 11, 1965.

¹⁴) *The Times, Law Report*, October 8 and 28, 1965. *Daily Telegraph*, October 8, 1965.

people involved, for libel. The case came before Mr. Justice *Milmo* on October 28 and 29, 1965. His Lordship explained to the jury the main principles as follows:

(a) The jury had first to decide whether the words complained of were defamatory of the plaintiff.

(b) If the answer is positive justification had to be considered, i. e. whether the sting of what was published was true, not that every word was true.

(c) If a person consented to something being published about him he was not entitled to complain if it was published.

(d) If a person allowed himself to be interviewed by a press reporter, that person knew very well that he was not interviewed for the pleasure of his company, but with a view to publishing an account of the interview in the newspaper¹⁵).

(e) No claim can be made against any newspaper fairly reporting what was said by a member of Parliament in the House of Lords or in the Commons (Parliamentary immunity).

(f) Damages, if any, should be neither parsimonious nor extravagant. The jury awarded the plaintiff £1,650 as damages.

12. — *Re: Astaire v. Campling and another (Question of "innuendo")*¹⁶).

Mr. *Jarvis J. Astaire*, boxing manager, sued Mr. *Peter Campling*, reporter, and *Odhams Press Ltd.*, proprietors and publishers of the newspaper *The People*, in respect of an article in that paper. In the article it is said that an official inquiry is to be held into the operations of boxing managers, in particular a man known in the fight game as Mr. "X". The article further stated that Mr. "X" is Mr. *Jarvis Astaire*. The latter alleged that the article was defamatory of him and in paragraph 4 of the statement of claim "innuendoes" were claimed, paragraph 5 setting out 15 sub-paragraphs about what other papers had written about the plaintiff. The plaintiff contended a reasonable reader, having read all that material would say, having read the article complained of: "I now know that all those defamatory references concern Mr. *Astaire*". Mr. Justice *Thompson*, who heard the summons filed by the defendants on July 28, 1965, did not accept the plaintiff's viewpoint. He pointed out, the inquiry whether one was dealing with words alleged to be defamatory in their natural and ordinary meaning or in some extended or hidden meaning ("innuendo") was: are the words capable of bearing, and do they bear, a meaning of the suggested meaning defamatory of the plaintiff? But the meaning of the words (their "innuendo") cannot be derived from what someone else said or wrote. For that reason Mr. Justice *Thompson* ruled — as moved by the defendants — that paragraphs 4 and 5 of the statement of claim had to be struck out. The plaintiff appealed against that ruling. The appeal was heard by the Court of Appeal on October 22, 1965. The three Lords Justices (*Sellers*, *Davies* and *Diplock*) were of the same opinion as Mr. Justice *Thompson* that the plaintiff could not interpret the meaning of words allegedly defamatory of him by refer-

ring to libels made on him by others. The appeal accordingly failed. Lord Justice *Diplock* remarked that this case raised a question of first principle in the law of libel¹⁷). Leave to appeal to the House of Lords was refused.

13. — *Two libel cases against the British Broadcasting Corporation (BBC)*.

(a) *Foreman v. BBC and Thorpe, M. P.*

In the television programme "Not so much a Programme More a Way of Life", transmitted on December 4, 1964, reference was made to Sir *Winston Churchill's* ninetieth birthday (November 30, 1964). This was followed by a song in which the name *Carl Foreman* was mentioned in connection with payments for rights in one of Sir *Winston Churchill's* books and there followed spoken reference by Mr. *Jeremy Thorpe, M. P.* to "leeches" attaching themselves to the great. Mr. *Foreman* alleged that the item was defamatory of him and sued for libel; the case is still pending.

(b) *Highet v. BBC and Lord Harewood*.

Lord Harewood made a broadcast, called "Festival Magazine". He was being interviewed to demonstrate a typical day in the life of the Artistic Director of the Edinburgh Festival. Dr. *Highet*, lecturer in applied psychology at the Glasgow University, had corresponded with *Lord Harewood* in regard of the proposed appearance of the African Ballet in which some of the female artists were to appear bare from the waist. In this connection *Lord Harewood* described Dr. *Highet* as a sex-mad professor. Dr. *Highet* sued the BBC and *Lord Harewood* for libel. The case was settled by payment of a substantial amount as damages.

14. — *Re: Showerings v. Postgate (The beverage "Baby-cham")*.

Showerings Ltd. are the manufacturers of "Babycham", a sparkling beverage of a colour similar to that of champagne. Mr. *Raymond W. Postgate*, a wine expert, had published in the magazine *Holiday* for February 1963 an article which contained *inter alia* the following passages: "Beware particularly of a thing called Babycham which looks like champagne and is served in champagne glasses. If you read the label carefully you will find it's made of pears".

Showerings Ltd. sued Mr. *Postgate* for libel.

The case was heard by Mr. Justice *Milmo* and a jury on October 29, November 1, 2, 3, 1965.

It was admitted that the words complained of were defamatory of the plaintiffs and that the case concerned a matter of public interest. For lack of space, I omit the contents of the depositions of the witnesses (Mr. *H. Showerings* and Mr. *Postgate*) and turn to the Judge's summing up.

The Judge told the jury they have first to decide whether the words complained of were facts or comment. In the latter case the jury had to consider whether the comment was fair, i. e. whether the comment was based on true facts and whether an honest man could come to the same opinion as the defendant. "Fair comment" — His Lordship stated — is a pillar of our law and constitution... Each and everyone of us is entitled to express his or her views... provided he or she holds them honestly..."

¹⁵ *The Times, Law Report*, October 29 and 30, 1965.

¹⁶ See about "innuendo" *Lewis and Rubber Improvement Co. v. Daily Telegraph Co. Ltd.* and *Associated Newspapers Ltd.*, further *Grubb v. Bristol United Press Ltd.*, referred to in my "Letter", 1963 (II, 23 and 24).

¹⁷ *The Times, Law Report*, October 23, 1965.

The Judge explained to the jury the respective legal terms very clearly.

The jury returned the verdict in the defendant's favour and judgment was entered accordingly¹⁸).

15. — *Re: Boston v. Bagshaw & Son (Question of privilege)*.

At an auction of pigs held by the auctioneers *Bagshaw & Son* three piggies were stolen. A few days later the theft was reported in a television broadcast by *Associated Television Ltd.* (ATV). A well known cattle dealer *A. R. Boston* had been present at the auction. Although nobody had suggested that Mr. Boston had any connection with the theft, the words used in the programme were likely to convey to reasonable people that Mr. Boston was in some way involved with the theft. The purpose of the broadcast was to trace the thief. *Boston* sued ATV for libel. The hearing before Mr. Justice *Milmo* lasted about a fortnight. The jury found that the broadcast was defamatory of the plaintiff and awarded him £ 11,000 damages on the ground that his credit had been badly impaired by the broadcast. The jury added that the defendants had not been actuated by malice. The next day (November 26, 1965) the Judge gave his ruling, that the broadcast was *privileged* because it was in the public interest to find the thief. Consequently the Judge dismissed the action so that the plaintiff did not get any damages and had to pay heavy costs¹⁹).

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

My last "Letter" contained (II, 18) a report of the above case. It was a libel action by Dr. *Dering*, formerly a Polish subject, who had been deported by the Nazis to Auschwitz; the libel related to a passage in the book "Exodus" by *Leon Uris*. As shown in my "Letter", the jury found in the plaintiff's favour, but awarded him only a halfpenny as damages. Now, a book has been published under the title "Auschwitz in England; a record of a libel action" (publishers: Macgibbon & Kee, London, 1965, 293 pages). The authors of the book are two barristers-at-law, well known Law Reporters in the Royal Courts of Justice, Miss *Mavis M. Hill* and Mr. *L. Norman Williams*. The book gives in six parts, divided into 24 chapters, a full record of all the stages of the proceedings. The book deserves attention not only by lawyers, but also by laymen in view of the widespread public interest aroused by the action. The Right Honourable Lord *Denning*, Master of the Rolls, one of the highest English judges, speaks in his Foreword of "a case of historic and social import", and adds that the book might almost be headed: "How to conduct a libel action". His Lordship stresses in that Foreword also the importance of Law Reporting: "The very essence of a Law Report is to give a fair and accurate report of what goes on in Court, so that people outside can know what those inside see and hear", and considers such a Law Report to be "a work of literature equal to that of the historian or the dramatist"²⁰).

¹⁸) *The Times, Law Report*, October 30 and November 4, 1965.

¹⁹) *The Times, Law Report*, November 26 and 27, 1965.

²⁰) The book is reviewed by Michael Foot in the *Evening Standard* of January 26, 1965. The reviewer cites the Judge's comment: "one facet of what future generations will probably come to describe as the greatest crime that has ever been committed".

17. — *Re: Broadway Approvals Ltd. v. Odhams Press Ltd. (Excessive damages in libel action)*.

In my last "Letter" I commented on jury verdicts which award excessive damages for libel (see *McCarey v. Associated Newspapers Ltd.*, II, 16). The following case dealt again with an award of excessive libel damages. It is not necessary to expose the facts of the case in detail; it suffices to say that *Broadway Approvals* traded in postage stamps by mail order and that *The People*, a newspaper published by *Odhams Press Ltd.*, published an article criticising the plaintiffs' business methods. *Broadway Approvals Ltd.* and their Managing Director sued *Odhams Press Ltd.* for libel. The case was heard on May 14, 1964 by Mr. Justice *Lawton* and a jury. The latter decided in the plaintiffs' favour, dismissed the plea of justification and awarded £ 5,000 and £ 10,000 to the plaintiff company and its Managing Director respectively. On appeal by the defendants, the Court of Appeal (Lords Justices *Sellers, Davies* and *Russell*) ordered, on March 28, 1965, a *new trial* on the issues of fair comment and damages. Lord Justice *Sellers* pointed out that if the Managing Director had lost a leg, it was unlikely that he would have received more than about half the amount the jury awarded for the injury to his reputation; the damages were extravagantly out of proportion to any possible injury to the plaintiff. "How could" — His Lordship emphasized — "an income of £ 400 or £ 500 a year for life be justified by any harm to the plaintiff, for such he could obtain with £ 10,000 and leave the lump sum intact." His Lordship referred to the above cited case *McCarey* in which it was established that compensation was the normal basis for damages for defamation and that punitive or exemplary damages should be granted in extraordinary cases only. A re-trial was, therefore, ordered with the concurrence of the two other Lords Justices, who also agreed with Lord Justice *Sellers* that there was some misdirection in the trial judge's summing up²¹).

18. — *Re: Vine Products Ltd. and others v. The Daily Telegraph Co. Ltd. and another (No contempt of Court in an article)*.

The plaintiffs sold wine in the United Kingdom under the description "British Sherry". Three Spanish firms, who shipped sherry from *Spain* to the United Kingdom, contended that the name "Sherry" should be used for wine only made from grapes grown in the Spanish province *Jerez*²²). The plaintiffs had sued the said Spanish firms for a declaration that they, the plaintiffs, were entitled to use the description "British Sherry" for a wine produced in the United Kingdom. That suit is pending.

On June 8, 1965, an article was published in the *Daily Telegraph*, headed "The Truth in Labels". That article discussed the "Sherry" situation and arrived at the conclusion that the name "Sherry" should properly be used only for wine from grapes grown in the Spanish province *Jerez*. *Vine Products* and two co-plaintiffs considered that article to be

²¹) (1965) 1 *W. L. R.* 805; (1965) 2 *All E. R.* 523. *The Times, Law Report*, March 29, 1965.

²²) It is believed that the Moorish town of *Shiraz*, which later became *Jerez*, has been anglicised into *Sherry*.

in *Contempt of Court* and brought in a motion for Contempt of Court against the *Daily Telegraph Co. Ltd.* and the editor. The defendants denied any intention of influencing the course of the proceedings, or committing any kind of Contempt of Court. Mr. Justice *Buckley* rejected the motion on July 2, 1965, holding that the article would not influence a judge in deciding the case which would be conducted without a jury²³).

19. — *Re: Montereale v. Maxwell and Longmans, Green & Co. Ltd. (The question of qualified privilege in a literary libel).*

The Right Hon. *G. Alliata, Prince of Montereale*, brought an action for libel against Mr. *Gavin Maxwell* and *Longmans, Green & Co. Ltd.*, the author and the publishers respectively of the book "God protect me from my friends".

The plaintiff, a former Monarchist member for East and West Sicily in the Italian parliament, claimed that certain passages in the book were gravely defamatory of him, and that his reputation and influence had been injured thereby.

The case was tried by Mr. Justice *Glyn-Jones* and a jury on February 12, 1965, and the following six days. The Judge ruled that the passages complained of were capable in law of bearing a defamatory meaning. The defendants denied for various reasons that those passages were in fact defamatory of the plaintiff. They did, however, not suggest that there was any truth in the allegations against the plaintiff.

The main defence was that of *qualified privilege*. The defendants pointed out, that the book has been published *bona fide* and without malice, whereas the plaintiff had stressed that both defendants had been actuated by malice. The defendants contended that the passages complained of formed a part of a fair and accurate report of criminal proceedings conducted in the Court of Viterbo, Italy, in 1951 against a Sicilian chieftain, in the course of which a witness made serious allegations against the plaintiff. The Court of Palermo had investigated those allegations and found in 1953 that they were absolutely untrue.

I do not propose to deal with the complicated facts of the case which might be of high interest to politicians and/or historians, but intend to confine myself to the main legal problem involved, i. e. *qualified privilege*. The Judge ruled, that the passages complained of were not published on an occasion of qualified privilege. The Judge gave his very clearly worded reasons for that ruling in the course of his summing-up and I would summarize the same as briefly as possible as follows:

(a) True and accurate reports of judicial proceedings in the United Kingdom may be published; that lies in the public interest. If, in the course of evidence, somebody said something defamatory of somebody else, the person defamed must put up with it. But this principle does not extend to reports of trials in *foreign* countries. Only if some foreign trials are of proper public interest in the United Kingdom, publication might be said to be on an occasion of qualified privilege, for example if the trial was of a British subject. (I would refer to the same principle stated by Mr. Justice *Pearson* in re

²³ *The Times, Law Report*, and *The Daily Telegraph* of June 26 and July 3, 1965. (1965) 3 *W. L. R.* 791; (1965) 3 *All E. R.* 58.

Webb v. Times Publishing Co. Ltd., a test case reported by me in my "Letter" in *Le Droit d'Auteur*, 1961, II, 12.)

(b) The book in question was not a report of judicial proceedings. It is a commentary of a trial with comments on the thoughts and feelings of witnesses, interspersed with expressions of the author's opinions, including what purported to be extracts from some evidence.

(c) Had the Judge thought it was a report, he would have had to leave it to the jury to say whether it was fair and accurate. The burden to prove that lies on the defendants.

(d) If it could have been said that it was a report of judicial proceedings and that such report was fair and accurate, the next question for the Judge would have been whether public interest in the United Kingdom required that a report of what two witnesses said about the plaintiff was of such interest to the British public that a report should be published in the United Kingdom. It could not be said that the public interest required that the cloak of privilege should be put over the author and the publishers.

On these grounds, the defence of qualified privilege was rejected.

(e) Even if the defence of qualified privilege were justified it was for the plaintiff to prove that the publication was actuated by spite or ill will or improper motives. But in view of the rejection of the defence of qualified privilege the question of malice did not arise and the Judge said he would not like to trouble the jury to give a hypothetical answer to that question. Had that question arisen he would have ruled that there was no evidence on which a finding of malice could have been made against the publishers. Mr. Justice *Glyn-Jones* further ruled that to *repeat* a libel is to commit a fresh libel.

The only questions for the jury were, therefore: were the words complained of defamatory of the plaintiff and, if so, how much damages should be awarded to compensate the plaintiff for damage to his reputation? The Judge told the jury that "they should not go wild and give a fantastic sum"; the amount should be proportionate to the gravity of the libel, but should not be given as a punishment.

The Judge then gave the jury a very elaborate description of the events considered in the book with which, as stated above, I am not concerned in this paper.

The jury found *for the plaintiff* and awarded him £400. Thanking the jury the Judge added that by their verdict they had entirely vindicated the plaintiff's character²⁴).

20. — *Re: Ackrill Ltd. v. Retail Trading Standards Association (Dispute in the advertising world).*

The *Trade Information Bulletin*, of which the defendants were the publishers, published an article which contained attacks on so-called bait advertisements which appeared in the *Harrogate Advertiser* owned by *R. Ackrill Ltd.* The latter company held that attack to be defamatory and the company as well as its director sued the defendant company for libel.

The case was tried by Mr. Justice *Phillimore* on February 1, 1965. The case seems to me noteworthy because the Judge defined very precisely the task of juries in libel cases.

²⁴ *The Times, Law Report*, February 12, 1965, and the following days. Judgment was entered on February 22, 1965. The decision is reviewed by Mr. C. H. Rolph in the Summer 1965 issue of *The Author*.

(a) The Judge ruled that the words complained of were capable of being defamatory. It was for the jury — he continued — to decide whether those words were in fact defamatory and whether they tended to discredit the plaintiffs.

(b) If the jury thought the words were defamatory, they would have to consider the defence of *justification*.

(c) The Judge then drew the attention of the jury to the defence of *fair comment*. Mr. Diplock, the director of the defendant company, said that bait advertisements were recognised as undesirable and that the comment was based on a fair summary of facts and concerned a matter of public interest. The Judge stressed that people should be free to make comments, but that the facts must be set out correctly to justify the comment.

(d) The plaintiffs also alleged *malice* on the part of the defendants. It was said that the comment was actuated by unfair prejudice. If the jury thought — the Judge said — that the words were malicious then it was not fair comment.

(e) The defence of *qualified privilege* was rejected by the Judge.

(f) The Judge said that if the jury came to the conclusion that the words were defamatory of the plaintiffs and were not justified and not fair comment, they would have to consider the question of *damages*. "It must be borne in mind" he added, "that damages were to compensate the plaintiffs, and not to punish the defendants."

The jury found for the plaintiffs and awarded £2 to the plaintiff company and £500 to its director²⁵).

21. — *Re: Leightye v. Scannell (Imputation of fascism)*.

Mr. V. Scannell is the author of a book entitled "The Big Time" published by Longmans, Green & Co. On a page of that book a character called Archie Pett-Reeves was described in terms which resembled a number of the plaintiff's characteristics so closely that many of his friends and acquaintances had recognized him in the character. It was suggested in that passage that Archie Pett-Reeves was an enthusiastic supporter of Mosley's Black Shirts during the 1930s. The plaintiff emphasized that he never had and never had had any sympathies with fascism and that, on the contrary, he was fundamentally opposed to the drawing of any distinctions on the basis of race, colour or religion. At the hearing of the case for libel against the author and the publishers before Mr. Justice Brabin on October 19, 1965, the defendants withdrew any imputation of fascism against the plaintiff and apologized to him for any embarrassment which he had been caused. They agreed to delete the offensive references in all future editions, reprints or impressions of the book. The plaintiff accepted those declarations and the matter was settled²⁶).

22. — *Re: Manson v. Associated Newspapers Ltd. (The Great Train Robbery)*.

This case deserves attention because of its background, the Great Train Robbery, one of the biggest robberies ever committed. A group of bandits stopped a train on August 8, 1963, and robbed it of two million pounds. Inquiries concern-

ing the culprits were started internationally. The police searched for persons who had shared in the spoil. One Mrs. Mary K. Manson, alias Macdonald, known under the nick name Rubberface (because of her ability to disguise her features) was associated with one of the prisoners who was later acquitted. She bought for him at his expense an Austin-Healey car. Nobody suggested that she had anything to do with the Robbery or that she got any of the robbed money. On August 21 and 23, 1963, respectively, articles appeared in the *Scottish Daily Mail* and the *Daily Mail* under the heading "Police hunt Rubberface Mary". The articles said that the police were hunting her in connection with the Great Train Robbery. The articles went on "Mrs. Rubberface has won herself a place in the team which pulled off the robbery", etc. In fact she was not involved in any way in that crime.

She sued the publishers and printers of those two newspapers *Associated Newspapers Ltd.* for libel. The case started on May 6, 1965, before Mr. Justice Widgery and a jury and lasted four days. The plaintiff claimed damages for injury to her reputation and exemplary or punitive damages as a punishment of the defendants.

The defendants denied that the articles were referring or in fact referred to the plaintiff and, alternatively, that they bore or were capable of bearing any meaning defamatory of the plaintiff; it was further contended that the words were published on an occasion of absolute or relative privilege in that they were a fair and accurate report published contemporaneously of proceedings before the Linsdale Magistrates Court.

In his summing up the Judge strongly emphasized that the jury had not to assess damages in respect of all the consequences of the plaintiff's association with one of the prisoners. The Judge explained the distinction between the two kinds of damages, damages as compensation for suffering and punitive damages. His Lordship explained the conditions for awarding punitive or exemplary damages to the jury. (I would refer in this respect to the case *McCarey v. Associated Newspapers Ltd.* mentioned in my last "Letter"; *Copyright*, 1965, p. 71.)

The jury returned a verdict in the plaintiff's favour and awarded the plaintiff £1,500, answering the question of exemplary damages in the negative²⁷).

23. — *Dr. Holden v. Statesman and Nation Publishing Co. Ltd. (Libel in book review)*.

The case of the Great Train Robbery referred to in the preceding note played a big part also in the following case.

Dr. Holden was in charge of the scientific side of police investigation and at the trial against one of the prisoners in the Train Robbery case he was heard as expert on some important scientific matter. In February 1965 Mrs. Peta Fordham published a book called "The Robbers' Tale" which described the crime and the trial. This book was reviewed in the *New Statesman* by Mr. K. Miller, the periodical's literary editor. In that review it was suggested that the forensic department of the police which was in the charge of Dr. Holden might have fabricated evidence against the prisoner. Dr. Holden sued the *Statesman and Nation Publishing Co. Ltd.* and

²⁵) *The Times, Law Report*, February 2, 1965.

²⁶) *The Times, Law Report*, October 20, 1965.

²⁷) (1965) 1 *W.L.R.* 1038; (1965) 2 *All E.R.* 954. *The Times, Law Report*, May 7, 8, 11 and 12, 1965.

Mr. Miller for libel. At the hearing of the case on October 6, 1965, it was stated that that defamatory passage might have been the result of a misunderstanding of what Mrs. Fordham said in her book. Dr. Holden accepted the defendants' sincere apologies²⁸).

24. — *Re: Galbraith v. Beaverbrook Newspapers Ltd. (The Vassall affair apology).*

Although the following case was settled I think I should not fail to mention it because of the widespread interest it has attracted. I remind the reader of the unfortunate *Vassall* case (see the report in my "Letter" in *Copyright*, 1964, p. 80 *et seq.*). The Hon. *Thomas G. D. Galbraith, M. P.*, had been from 1957 to 1959 Civil Lord of the Admiralty. *Vassall* was employed in his office. He had committed offences under the Official Secrets Act and was sentenced to a long term of imprisonment (October 22, 1962).

In November 1962 the *Daily Express* and the *Scottish Daily Express* published articles about the *Vassall* affair in which Mr. Galbraith was heavily attacked for various reasons. A tribunal appointed by Parliament to investigate the whole of the *Vassall* affair rejected the suggestions made in the articles and confirmed that Mr. Galbraith's conduct was always absolutely correct. Mr. Galbraith sued the proprietors of the two newspapers for libel and the case was heard by Mr. Justice *Edmund Davies* on July 20, 1965. As Mr. Galbraith's concern had always been to vindicate his reputation he accepted the defendants' sincere apologies and their deep regret that absolutely false accusations had been published against him. Thus the matter was settled²⁹).

25. — *Re: Hill v. Wilson (Settled libel action against the Prime Minister).*

I am including this case because it is believed to be the first case of a libel action against a *Prime Minister*.

During the General Election in the Autumn of 1964 employees of *Hardy Spicer Ltd.* were on strike. In the course of the election campaign the Right Honourable *Harold Wilson* made a statement to the effect that the Chairman of *Hardy Spicer Ltd.* Mr. *H. E. Hill* was, or at least was suspected of being, guilty of fomenting the strike for improper political motives. That statement was widely published. Mr. *Hill* sued Mr. *Wilson* who had become Prime Minister for libel. At the hearing of the case before Mr. Justice *Thesiger* on December 17, 1965, Mr. *Wilson* accepted the contention of the plaintiff that this imputation was completely without foundation and offered his sincere apologies so that the case could be settled³⁰).

III. The Performing Right Society (PRS)

1. — The PRS held its 51st *Annual General Meeting* on June 24, 1965. In the absence through indisposition of the President the chair was taken by Mr. Leslie Boosey, President of Honour.

The gross income from all sources has increased by £ 628,235 to a total of £ 4,871,973. The ratio of administration expenses to gross receipts has remained virtually stationary at 11.94%. The distributable revenue has increased by £ 523,134, the grand total being £ 4,191,609. The General Fees account has increased by £ 309,860 gross and £ 232,284 net and the Broadcasting Fees account by £ 318,375 gross and £ 290,850 net. The membership has reached 3,574³¹).

The General Meeting was followed by the Annual Luncheon at which Miss *Jennie Lee, M. P.*, Joint Parliamentary Under Secretary of State, at the Department of Education and Science, was the Guest of Honour.

2. — The following is a quotation from the article by Mr. *Denis de Freitas*, Head of the Legal Department of PRS, in *Performing Right*, No. 43, October 1965:

"On the 29th May 1965 the *Performing Right Tribunal* of the Isle of Man gave its decision in a dispute between Manx Radio and Phonographic Performance Limited regarding the terms and conditions on which the latter were prepared to issue a licence authorising the broadcasting of their copyright records. The proceedings were of considerable interest — both generally, and from the special point of view of the Society.

"Because the Isle of Man has its own legislation the Copyright Act, 1956 of the United Kingdom only applies in the Island in virtue of its extension by Order in Council. This meant that the Tribunal, though composed of the same persons and invested with the same powers as the United Kingdom Tribunal, had to sit in the Isle of Man... Both the BBC and the Musicians' Union had been granted leave to join the proceedings as interested parties."

The legal arguments put forward by either side are thoroughly exposed in Mr. *de Freitas*' article. The space allotted to me does not allow me to dwell on them.

"The Tribunal came to the conclusion that in all the circumstances a reasonable limit for the needle time to be permitted to Manx Radio would be one-half of their total weekly broadcasting time subject to a maximum period of 42 hours in any single week.

"On the question of the amount of the royalty the Tribunal virtually accepted the PPL contentions."

IV. Miscellaneous

1. — *Tape recording for private use.* In my "Letters" 1961, 1962 and 1964 I have considered the question whether tape recording of broadcast copyright matter, mainly music, for private or domestic use requires the consent of the author (composer) of the work concerned. Based on Section 2 (5) (a) of the Copyright Act, I answered that question in the affirmative. In the last of the above "Letters" I referred to the consent-judgment of Mr. Justice *Plowman* in *Wright & Ascherberg v. Grundig*, in which case the Judge was of the same opinion. The *Mechanical Copyright Protection Society*, London, tried to find a practical solution to that legal situation. They have been successful in negotiations with Federations of tape recording clubs to conclude on behalf of the copyright owners "blanket" agreements permitting the member clubs to make recordings of copyright music for club use and hospital request programmes against payment per club of £ 1.10.0 per annum (5 s. for individual members). Any commercial use was excluded. Such a licence authorizes the mem-

²⁸) *The Times, Law Report*, October 7, 1965.

²⁹) *The Times, Law Report*, July 21, 1965.

³⁰) *The Times, Law Report*, December 18, 1965.

³¹) See the Bulletin *Performing Right*, No. 43, October 1965.

ber clubs and their members to make recordings for private and domestic enjoyment and some other purposes enumerated in the agreement³²).

2. — *Public lending right.* Sir Alan Herbert, the indefatigable fighter for the interests of authors, referred to some statistical data in an address given to the Royal Society of Literature, reported in the Spring 1965 issue of *The Author*. For every book bought by the public libraries — Sir Alan emphasized — 11 books are borrowed. The last national figure for total “issues” — or borrowing — was in 1961-1962 more than 460 million books, it might be now about 500 million. In the same year the public libraries spent £6 million on the purchase of books. From those purchases authors and publishers, between them, got about £1.7 million, but nothing in respect of the books lent. We recognize — Sir Alan continued — that the persistent surge in borrowing books from public libraries shows a growing appetite for books in every class which must be welcomed, but, like musical authors and composers, we look for new arrangements to meet the new conditions³³).

According to a note in the Summer 1965 issue of *The Author* the stock of books in the public libraries was in March 1964 71,708,000 books. About half of the total budget of £25.8 million went on staff; under a quarter — £6.4 million — was spent on books and magazines.

3. — *Financial aspects.* In the May 1965 issue of the PRS Bulletin *Performing Right*, No. 42, a statement is reprinted from the *Daily Telegraph* of March 4, 1964 an extract of which reads as follows:

“The average British composer earns less than the National Assistance scale for a married man without children, says Mr. Richard Arnell, chairman of the Composers’ Guild of Great Britain. The native British composer may disappear through lack of support for serious music in this country, he adds.

“His comments are made in a policy statement, published by the Guild today, which criticises the payment offered by national institutions. The Guild has about 340 members, including nearly all our acknowledged composers.

“Mr. Arnell says that commissions are few. He knew of a composer who taught at one of our major schools of music who helped in a newspaper shop in the vacations.”

³²) See *Recording Rights Journal*, 1965, Nos. 1 and 2. See also *GEMA-News*, October 1965. In this connection I would mention that the new German Copyright Act of September 9, 1965, deals with the above problem in Section 53. It provides that the manufacturers of such apparatus have to pay to the competent Authors’ Association a consideration (*Ver-gütung*) which must not exceed 5% of the sale price. Section 53 contains detailed provisions in that regard. The CISAC Legislative Committee noted at its meeting of October 1965 with satisfaction the said provision in the new German Act for reproduction of works by means of devices for registering sounds and pictures intended for private use (*Copyright*, November 1965).

³³) See “Letter” by Sir Alan and Mr. F. R. Ironmonger in *The Daily Telegraph* of June 5 and 14, 1965, respectively. In the same paper of October 9, 1965, Mr. H. Innes suggests distinguishing between works borrowed for dissemination of knowledge and books borrowed for entertainment. It would, I think, hardly be possible to carry out such a distinction. See also “Letter” in that paper of October 26, 1965 (Mr. Dakers).

The new West German *Gesetz über Urheberrecht und verwandte Schutzrechte (Urheberrechtsgesetz)*, of September 9, 1965 (published in *Bundesgesetzblatt*, I, p. 1273) provides that the lender has to pay an adequate consideration if he leases books, papers, records, music, etc. for gain (*Erwerbszwecken*). This provision does not apply to public libraries because the same do not lease for gain. The text of that Act is contained in the September 1965 issue of *GEMA-News*. The Act came into force on January 1, 1966.

In February 1965 the *Prime Minister, Mr. Harold Wilson*, made the following statement in the House of Commons:

“One of the main objectives of the Government’s policy is to encourage the living artist. Painters, poets, sculptors, writers and musicians are sometimes lost to art for lack of a comparatively small sum of money which would support their start in life. The increase in the Government’s 1965/66 grant to the Arts Council will enable them to raise from about £10,000 to £50,000 the sum allocated for awards and assistance to young artists in all fields”³⁴).

Miss Jennie Lee, who is responsible for the welfare of the Arts at the Department of Education and Science, has been discussing ways and means with representatives of the Society of Authors. She said in the House of Commons that, although the problem is complex, “we are working very hard to find an acceptable solution”. Authors may, therefore, look forward to a better future, all the more so as the serious looking is being done by Miss Lee who — in the words of Lord Francis Williams — is doing it “with energy, with enthusiasm, and with imagination”.

The *Arts Council*, under the chairmanship of Lord Goodman, is about to set up a new body, the *Literary Council* to dispense patronage to authors and literature in general. That Council will have a double function: it will promote and protect authors and encourage reading. One idea which has come up is to extend *copyright* protection after the author’s death from 50 to 60 years. The money gathered from royalties in the last 10 years would go into a general fund. As to *public lending rights* Lord Goodman thinks the principle of borrowing books free of charge should be maintained, but the local authorities should pay some kind of literary royalties³⁵).

Commissioned by the *Society of Authors*, an investigation into the *economics of authorship* was carried out as a postal survey in the Summer of 1965. 3,240 questionnaires were sent out and the net return of answers was 1,587. *The Author* publishes in the Winter 1965 issue details about that survey to which I refer (see also the next article in that issue “Lessons of the Phoenix” by Walter Allen).

4. — *The Press.* A. At the annual meeting of the International Press Institute held in London on May 25, 1965, and the next few days Lord Shawcross made important comments on the legal position of the Press. He stressed that freedom of the Press was required in the public interest. “Subject to taking the greatest care”, Lord Shawcross emphasised, “to prevent anything untrue, to acting in good faith, without malice, and with a true sense of public responsibility, in cases where the law seems in doubt, newspapers should take their courage in both hands.” His Lordship pointed out that it would be against the public interest if newspapers, for fear of litigation, should be inhibited from criticising persons of high standard in public life. He referred to the famous dictum: “Publish and be damned”. Lord Shawcross agreed with those who criticised the law of *libel*, and stressed that the defence of qualified *privilege* relating to matters of public concern expressed in good faith and without malice should be open to newspapers. He proposed a change in the law in this regard

³⁴) See the respective articles in the 1965 issues of *The Author*. See, however, Mr. E. Ford, “The Composer’s Expanding Market”, in *Performing Right*, No. 42, October 1965.

³⁵) See *The Sunday Times*, October 3, 1965.

and also some legal provision that the Press should have a duty to disclose. In His Lordship's opinion, in libel cases, the question whether the words complained of were libellous or defamatory should be decided by the judge alone and questions of fact should be left to the jury.

It is noteworthy that a legal authority like Lord *Shawcross* does not share the traditional belief in jurisdiction by jury in civil cases. "Juries are often prejudiced against the Press", he said, "we have done away with juries in most civil cases and on the whole the change has furthered justice." Concluding his address, he expressed tribute to the Press and their tradition of avoiding the publication of anything untrue³⁶).

Mr. *W. Lippmann*, the *American* columnist, also stressed the necessity of a free Press. "Such freedom is not a privilege, but an organic necessity in a great society; the inhabitants cannot conduct the business of their lives unless they have access to the services, argument and information provided by a free Press." The speaker emphasised that a Press monopoly is incompatible with a free Press, which can exist only, if there is competition between newspapers. He concluded by referring to the unending conflict between the journalist's duty to seek the truth and the human desire to get on in the world. "That is the inner drama of the modern journalist's experience"³⁷).

Lord *Thompson of Fleet* vigorously attacked *Canada* for planning economic pressure on foreign-owned publications.

In the new, one-party countries of *Africa* freedom of the Press was seen as critical in the early stage of development. Lord *Thomson* suggested that complete freedom of the Press as we see it might not be quite practical in those countries. A speaker from *Nigeria* reported that the *Eastern Nigerian Guardian* sells about 2,000 copies a day and that that paper often raises independent voices, not seldom at the risk of closure or imprisonment.

At the conclusion of the meeting heavy protests were expressed to various Governments which violate Press freedom.

At a meeting on September 29, 1965, Lord *Denning*, Master of the Rolls, described reporters as being "watchdogs" of justice; they have to see that the magistrates and judges behave themselves.

B. The *Press Council* had to issue warnings to several newspapers, but the cases do not deserve general attention, except perhaps that the Council in rejecting a complaint against the *Sunday Post* said the Press has no responsibility as a general rule, to be satisfied that next-of-kin have been informed of a death before publishing names³⁸).

C. Mrs. *Marion Yass* analyses in *The Author*, Summer 1965, "house journals" of which between 1,500 and 1,800 now ap-

pear in the United Kingdom, sponsored by industrial and commercial firms. The authoress estimates that 65% of these journals are known as "internal"; they are read only by the firm's employees, publish family events, etc. The rest are designed to reinforce the work of the company concerned. The article gives an analysis of several such journals, divided into four types: internal prestige journals, external/internal, industrial publishing houses and trade journals.

5. — *The British book production, 1964*. — As reported in *The Bookseller* and in *The Author* (Spring 1965) the total of titles rose in 1964 by 131 to 26,154. New editions were down by nearly 400 titles — and fictions dropped again by 292 titles to 3,957. Titles on political science rose by 442 on the 1963 total to 1,501, and there were rises too, although smaller, in history and biography.

"British publishing rests (states an article in a Sunday paper) on two supports: education and export. In 1963 British publishers exported a record total of 39 million pounds worth of works." "Next year the wheel will have come full circle with the National Library week the theme of which will be: make time to read."

A statement issued by the Publishers Association remarks that the year 1964 was a good year for book exports but the first three months of 1965 showed a 7½% increase in exports over the same period in 1964. British book exports in those three first months of 1965 were over £10,400,000; more than 45% of the book industry's £22,973,000 turnover in that period.

In this connection I would mention that, according to the *Advertiser's Weekly*, all forms of advertising and sales promotion are estimated in 1964 at a record figure of more than 553 million pounds compared with about 523 million in 1963.

6. — *The book trade in the USSR*. — Last Autumn, a delegation of the Publishers Association visited the USSR. Mr. *Ronald Barker*, a member of that delegation, published the result of the talks with the Soviet authorities concerned in a booklet "The Book Trade in the USSR". That booklet is reviewed in the Spring 1965 issue of *The Author* from which I quote with the kind permission of the Society of Authors the following statements. "In 1963 the USSR produced a quarter of the world's book titles — and over 1,260 million volumes. The book trade was reorganised at the beginning of 1964. Every title has to be approved by the State Committee for Press and Publishing before it can be published... This Committee thus controls the creation, production and distribution of the printed word... The printer is allocated to the publisher by the State Committee; most of the bookshops through which his books are sold are controlled by the State Committee; the prices are fixed by government decree... The writer is paid on the number of books printed, not on the number sold: the royalty is fixed by government decree... On the figures provided by the report, it seems that the author of a novel in an edition of from 50 to 100,000 might earn from £2,000 to £3,400... The Union of Soviet Writers runs a 'Literary Fund', financed from various sources; all the publishers pay a percentage on their authors' royalties

³⁶ See e. g. my "Letter" 1964, *Le Droit d'Auteur (Copyright)*, I, p. 58. The legal position of the Press was also on the agenda of the Conference of English and German lawyers, arranged by the British Institute of International and Comparative Law, held at Berlin, in June 1965. The English members pointed out that, unlike in Germany, there exists no special Press Law in Great Britain. The Press is in no better legal position than individuals; that also applies, at least in theory although seldom in practice, to the duty to disclose in the witness box the source of information (see the Report in *Juristenzeitung*, Tübingen, Nr. 19, October 1, 1965).

³⁷ See e. g. *The Guardian* of May 26, and *The Sunday Times* of May 30, 1965.

³⁸ See the Report of the Press Council covering July 1, 1961, to July 30, 1965.

into the Fund . . . Out of the Fund it finances literary clubs and institutes; clinics for writers and their families; 'Houses of Creative Rest'; travel grants; and other welfare services."

From the interesting contents of the article I would refer only to one more statement concerning "the long grievance of payment". The Report says: ". . . British authors of fiction whose work is translated may in general expect to find a sum of roubles representing their royalty awaiting them if they visit the USSR . . . For non-creative writers, Soviet publishers are less forthcoming".

In this connection I would refer to a "Letter to the Editor" of *The Daily Telegraph* of October 9, 1965, by the famous fighter for authors' welfare Sir *Alan P. Herbert*. He mentions that in a few weeks an "interesting, but impudent" book will be published in London by a Soviet citizen who was convicted for spying and exchanged to Russia. The publishers expect a great success for the book. Under Section 2 (2) of the Copyright Act, 1956, the work will enjoy full protection as first published in England. To avoid the author getting a substantial amount of royalties, whereas British authors get no royalties for works utilized in Russia, Sir *Alan* suggests that the Queen may make an Order in Council under Section 35 of the Act under which She has the right to provide that copyright shall not rest in citizens of a designated country "if the laws of that country fail to give adequate protection to British works . . .". I respectfully think that the Government will hardly advise the Queen accordingly as (apart from the question of protection of foreign works in the Soviet Union as shown in Mr. *Barker's* book) such a measure could disturb the pending endeavours to induce the Soviet Union to adhere to the international copyright Conventions.

On this occasion I would draw attention to the work by *Serge L. Levitsky* "Introduction to Soviet Copyright Law" (publishers A. W. Sijthoff, Leyden, Netherlands; 1964, 300 p., hfl 131.90).

7. — *Film and television*. — In volume 43, 1964, of the Munich periodical *Archiv für Urheber-, Film-, Funk- und Theaterrecht (UFITA)*, edited by Dr. G. Roeber, Mr. Claude Degand, Paris, has published an article about the European integration of the film. The article contains *inter alia* interesting statistical data concerning the economic situation of films and television in various countries and in particular in Great Britain. According to the author, until the end of World War II cinema attendance in Great Britain was the largest in the world. There were in Great Britain in the year 1950 4,838 cinemas with 1,396 million visitors. Mr. Degand states that the decrease started in 1951. In 1958, the number of cinemas had fallen to 3,892 and the number of visitors to 755 million (in 1960 to 460 million). The decrease continued, whereas the number of television sets and of television spectators increased at about the same proportion. The author estimates that in 1964 about 2,000 cinema theatres were available to the British public; 1,700 had to be closed between 1956 and 1960. (I trust the figures given by the author are correct, but I, of course, cannot be held responsible therefor.)

The *London General Council* as licensing authority has issued new Film Rules. No film shall be shown at cinemas

licensed by the L. G. C. if it is likely to encourage or incite crime, lead to disorder, stir up hatred against any section of the public on grounds of colour, race or ethnic or national origin or tends to deprave or corrupt persons who are likely to see it. "Freedom of communication", the Committee's Report points out, "must also apply within the law of film so that films of the kind just mentioned must not be performed to the public."

The average proportion of British films shown in British cinemas in 1964 was well above the prescribed level, stated the Board of Trade. Figures were for first features 42.6% (39.9 in 1963), supporting features 44.9% (45.2 in 1963). The Films Act, 1960, prescribes only 30 and 25% respectively³⁹).

8. — *Authors' manuscripts*. — Manuscripts and typescripts are the author's and not the publisher's property unless an arrangement has been made to the contrary. The Publishers Association has dealt with this question in a letter to the Society of Authors of March 24, 1965, as reported in the Summer 1965 issue of *The Author*. The letter confirms that the author is the proprietor of his manuscripts and typescripts (unless otherwise agreed upon), and that the author may dispose thereof as he sees fit. The publisher acquires only the right to reproduce the work. The Association advises authors to make it clear when selling the manuscript that the purchaser acquires nothing but the actual pieces of paper and that the right to reproduce is not acquired by him. In this connection I would refer to the studies by Professor Mario Are ("On the Access to Manuscripts of Musical Works") and Mr. Carlo Zini Lamberti ("Considerations on Certain Aspects of the *de facto* Monopoly in the Field of Music Publishing") (*Copyright*, 1965, pp. 122 *et seq.* and 148 *et seq.*, respectively⁴⁰).

9. — *The Köstler Prize*. — I trust readers will not mind if I conclude this "Letter" with a somewhat funny episode. An Austrian writer, Arthur Köstler, had founded in 1962 the "Arthur Köstler literary award" to "encourage creative work by prisoners and to offset the mental stagnation in prison life". Don Robson who has been a prisoner wrote, while in prison, a novel entitled "Young and Sensitive". The novel was published by Hutchinsons and the work was highly praised by the critics and won the Köstler prize of £25. The first edition of 3,000 was almost entirely sold out in September 1965. Now it has been ascertained that the novel was almost entirely copied from an American paperback. Hutchinsons' steps to trace the original author Charles Williams or the publishers failed. Neither the Home Office nor Hutchinsons contemplate any steps against Mr. Robson who has returned the prize of £25⁴¹).

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³⁹) I would refer also to the article "Television and the Author" in the Winter 1965 issue of *The Author*.

⁴⁰) See "Letter to the Editor" of *The Author* in the latter's Winter 1965 issue.

⁴¹) *The Daily Telegraph*, October 27, 1965.

