

Copyright

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INTERNATIONAL UNION

Hispano-American Legal Seminar (Copyright)

(Madrid, May 30 to June 5, 1966)

Under the auspices and with the co-operation of BIRPI, a Hispano-American Legal Seminar on copyright, organized by the Hispano-American Legal Studies Centre of the Hispanic Cultural Institute, was held at Madrid from May 30 to June 5, 1966, at the Institute's headquarters.

Meetings of this type organized by the Centre are of a strictly scientific character and the experts invited to participate are selected by reason of their legal speciality and their personal ability. Generally speaking, the objectives are the following: to promote and encourage joint work by Hispano-American lawyers in the various branches of law; to study practical problems of a legal character in order to arrive at homogeneous views; to arrive at practical solutions to the problems examined and contribute effectively to the approximation of the various legal systems.

The 1966 seminar was devoted to copyright. Its principal objectives were to afford a better knowledge of Hispano-American legislation on copyright, to analyse the specific problems arising in each country in connexion with the organization of societies of authors, to study the administrative aspects of the protection of intellectual property rights, to analyse the legislative situation in the Spanish-speaking countries in relation to the principles and rights recognized and protected by the Berne Convention, and to determine the criteria that could afford a basis for solutions at national and international level.

Experts from the following Latin American countries were invited in their personal capacity to participate in the seminar:

Argentina

Mr. Carlos Mouchet, lawyer, former professor at the National University, Buenos Aires.

Brazil

Mr. Hermano Duval, lawyer, associated in the compilation of the "Encyclopaedic Summary of Brazilian Law", Rio de Janeiro.

Colombia

Mr. Arcadio Plazas, professor at the Javeriana University, Bogotá.

Ecuador

Mr. Enrique Avellan Ferres, lawyer of the "Cuerpo de la República del Ecuador", Quito.

Mexico

Mr. Ernesto Rojas y Benavides, lawyer, Mexico City.

Peru

Mr. Rafael Morales, legal counsel to the Peruvian Authors' and Composers' Society (APDAYC), Lima.

In addition, a number of well-known Spanish personalities took part in the discussions:

Mr. Pio Cabinillas, Under-Secretary of State for Information and Tourism, Madrid.

Mr. Eleuterio Gonzales Zapatero, Director-General of Archives and Libraries, Madrid.

Mr. José Raya Mario, Secretary-General of Archives and Libraries, Madrid.

Mr. Jesus Alvarez Romero, Registrar of Intellectual Property, Madrid.

Mr. José-Antonio Garcia-Noblejas, notary and lawyer, Madrid.

Mr. Manuel Olivencia Ruiz, professor of commercial law at the University of Seville.

Mr. Jimenez de Quesada, lawyer, head of the legal department of the Spanish Authors' Society (SGAE), Madrid.

Mr. Jesus-Maria de Arozamena, administrator-delegate of the Spanish Authors' Society (SCAE), Madrid.

UNESCO and the International Confederation of Societies of Authors and Composers (CISAC), which were invited as observers, were represented respectively by Miss Marie-Claude Dock, Acting Head of the Copyright Section, and Mr. Léon Malaplate, Secretary-General.

The Hispanic Cultural Institute was represented by its Director, Mr. Gregorio Marañon, and by Mr. Fernando Murillo, Director of the Hispano-American Legal Studies Centre of the Institute. BIRPI were represented by Mr. Ch.-L. Magnin, Deputy Director, and Mr. Claude Masouyé, counsellor, Head of the Copyright Division. Secretariat services for the meeting were provided jointly by the Hispanic Cultural Institute and BIRPI.

At the opening meeting, Mr. Marañon stressed the importance of this Hispano-American legal seminar for the general development of copyright in the Hispano-American world and expressed his appreciation of the close co-operation that had been established for that purpose between the Hispanic Cultural Institute and BIRPI.

In a message addressed to the participants, Professor G. H. C. Bodenhausen, Director of BIRPI, recalled the keen desire of certain Latin American countries to be more closely associated with the international juridical system established by the Berne Convention; he hoped that the work commenced at Madrid would be the starting-point for a great endeavour to afford still more effective protection for literary and artistic property in those countries.

The discussions took place under the able and enlightened chairmanship of Mr. Murillo.

The agenda included the following topics:

I. The organization of administrative institutions for the protection and defence of copyright in each country.

I—1. Legal and administrative standards for copyright protection.

I—1.1. Works in the private domain: co-operation of administrative organs exercising police, inspection or control functions (police, municipal and other authorities) in order to forestall and prevent any unauthorized or abusive reproduction or use of intellectual works.

I—1.2. Works in the public domain: administrative protection of the integrity and fidelity of reproductions of works in the public domain.

- I—1.3. Administrative problems of the "domaine public payant".
- I—2. Some present-day aspects of copyright.
 - I—2.1. Dissemination of intellectual works by mechanical processes (phonograms, cinematography, photography, television).
 - I—2.2. Reproduction of artistic works.
- I—3. Organization and competence of national copyright registers.
- I—4. System of co-operation between registers in Hispano-American countries.
- II. Legal and institutional system with respect to copyright.
 - II—1. Functions and responsibilities of authors' societies: economic rights within their competence.
 - II—2. Recognition of authors' societies as public institutions (legal personality, national and international).
 - II—3. State intervention: its legal basis and its limitations.
- III. Systems of international copyright protection.
 - III—1. The system created by the Berne Convention of 1886; its development through the revisions at Berlin (1908), Rome (1928), and Brussels (1948). Present prospects.
 - III—2. The system created by the Universal Copyright Convention of 1952. The work of the Unesco Copyright Section. Present prospects.
 - III—3. International protection of performers, producers of phonograms and broadcasting organizations, under the Rome Convention of 1961. Present prospects.
 - III—4. International action by the CISAC for copyright protection. Present prospects.
 - III—5. Multilateral inter-American conventions on copyright.
- IV. Comparative study of the legislation of Hispano-American countries in relation to the Berne Convention for the protection of literary and artistic works.

Communications were presented by the experts on these various items. BIRPI, for their part, presented reports on items III—1, III—3 and IV. Beforehand, BIRPI had made available to participants some information documents relating in particular to the Berne Convention, the Rome Convention and recent Hispano-American legislation on copyright.

At the end of the discussions, the seminar adopted unanimously a number of conclusions and recommendations, the text of which is given below:

The Hispano-American Legal Seminar (Copyright), organized by the Hispanic Cultural Institute under the auspices and with the co-operation of BIRPI, took place from May 30 to June 5, 1966, at the Institute's headquarters. After having examined and discussed the items included in the agenda, and bearing in mind the scientific character of the meeting, the Seminar approved the following recommendations:

I. Administrative protection

Considering:

1. that the development of technique is constantly making available to creative works of the human mind new media for disseminating them and, consequently, for raising the cultural level of mankind;
2. that constant use is made of the said works by corporate bodies or organizations which direct or own the technical installations permitting such widespread dissemination (for example, broadcasting or television stations, cinema producers, etc.);
3. that in order to meet programme requirements or certain tastes the users are frequently led to modify, mutilate or adapt intellectual creations without the consent of the author or his legal representatives,

Recommends:

1. that the legislation of the various countries should consider the desirability of giving the fullest possible attention to the adoption of administrative measures designed to forestall, prevent or ascertain the unauthorized or abusive reproduction and use of intellectual works;
2. that by reason of the great speed and economy which administrative action offers as compared with legal action, such administrative measures

should not only fulfil a protective function but should also have the character of a sanction, in the event of administrative infringements, and within the limits established by legislation in conformity with the system already in force for the protection of copyright;

3. that to this end consideration should be given to the desirability of BIRPI, with the authority that they possess at international level in the field of copyright protection, suggesting to the States the adoption of measures intended to forestall, prevent or ascertain the existence of infringements against the rules of intellectual property.

II. Neighbouring rights

Considering the ever-growing complexity attaching to creative manifestations of the human mind and to the participation of various individuals in artistic achievements (in particular in the field of dramatic and musical creations),

Recommends:

1. that from the scientific aspect, more detailed examination should be made, as and where necessary, of the nature of rights said to be neighbouring or related to copyright, in order to clarify their true character in relation to intellectual property or copyright, with a view to determining what constitutes the real scope of copyright, and that any future studies on this matter should be of the utmost possible precision;
2. that for this purpose it would be appropriate, in the present situation, for the CISAC to draw up a report to illustrate, from the point of view of the authors, the possible implications of the Rome Convention in regard to copyright;
3. that the countries having acceded to the Rome Convention, or which are preparing to accede to it, should consider, in the light of their own national situation, the international commitments that they are required to enter into and the various mechanisms offered by the Rome Convention.

III. "Domaine public payant"

Considering:

1. that in the legislation of various Hispano-American countries there exists the institute called the "domaine public payant" which not only functions to meet what may be deemed the requirements of copyright protection, but also constitutes a powerful factor for the development of the arts and literature by means of the revenue obtained from the exploitation of works that have fallen into the public domain, including the possibility of being an instrument for protecting the social security of writers and artists;
2. that a legal examination of this institution does not lead to conclusions of a negative character in regard to its application in the legislation that recognises it;

Recommends:

1. that the legislation which establishes the "domaine public payant" should provide for the institution of guarantees and limitations, so that such domain may always be conducive to the development of culture and to the well-being of the authors themselves, without having the character of a tax or a general levy;
2. that in any case the levy of such paying public domain should be the responsibility of authors' societies in countries where such societies function in a regular and organized manner and where the unification of activities, in the event that several societies exist, is sufficiently effective.

IV. Unification of legislation

Considering:

1. that it is necessary, both for the universality of copyright protection and for exchanges among peoples, to attain a better degree of unification and approximation of legislation as between all countries in the world;
2. that such unification or approximation of legislation would constitute one of the most effective guarantees for obtaining the accession of the Hispano-American countries to the international instruments, for

example the Berne Convention, that are designed to afford the best means of protecting copyright,

Recommends:

1. that the Hispano-American countries should adopt a minimum duration of fifty years for protection after death;

2. that with respect to formalities the jurists should arrive at an approximation as between the rules established in the various legislations, or in the treaties that are in force or that might be concluded with respect to intellectual property, and the system established by the Berne Convention.

V. The Hispano-American countries and the Berne Convention

The Hispano-American Legal Seminar (Copyright), after having examined the prospects at present afforded by the Berne Convention for the protection of literary and artistic works together with the report presented on this subject by BIRPI,

Considering:

1. that reforms designed to facilitate the exercise of authors' rights, considered as being natural and human rights, can have a decisive influence on the future development of copyright throughout the world;

2. that by reason of its universality it is incumbent upon the Berne Convention to influence the law of member countries as well as that of countries which have not yet subscribed to this international agreement,

Recommends:

1. that the Hispano-American countries that are outside the system of the Berne Convention should give consideration to their immediate accession to this system, so as to exert influence on any future decisions of the Berne Union in reference to protection of the achievements of copyright as being the lofty expression of respect for the creative spirit of man;

2. that the efforts of BIRPI to extend the field of application of the Berne Convention in the Hispano-American countries should be supported, in order in this way to arrive at better and more extensive

protection of the rights of authors of literary and artistic works throughout the world.

* * *

In addition to the foregoing recommendations, the participants at the seminar approved the following conclusion by acclamation, on a proposal by the Mexican expert, Dr. Ernesto Rojas y Benavides:

The 2nd Hispano-American Legal Seminar, conscious of the ever-growing importance of the theoretical consideration of copyright problems with a view to the effective recognition of copyright,

Congratulates the Hispanic Cultural Institute and its Hispano-American Legal Studies Centre on their appropriate and significant initiative in organizing the present seminar,

Likewise congratulates BIRPI for having sponsored and co-operated in the work;

Expresses its gratitude to H. E. Mr. Gregorio Manañón, Director of the Hispanic Cultural Institute, for all the consideration and attention he has shown towards the participants,

Expresses its most sincere and enthusiastic appreciation to Mr. Fernando Murillo for the constant efforts and attention and also the remarkable efficiency with which he has presided over this meeting, and

Expresses the hope that similar meetings may contribute to better understanding and better co-operation between Hispano-American jurists for the development of their common cultural and legal heritages.

* * *

In due course, the Hispanic Cultural Institute is to publish, in co-operation with BIRPI, a booklet reproducing the texts of the working documents, reports, deliberations and conclusions of this Hispano-American legal seminar on copyright.

STATE OF THE INTERNATIONAL UNION ON JULY 1, 1966

Country ¹⁾	Class chosen [Art. 23 (4)]	Date of Accession (Art. 25)	Date on which the Convention was declared applicable (Art. 26) ²⁾	Date of Accession to the Rome Text	Date of Accession to the Brussels Text
1. Australia ³⁾ Nauru, New Guinea, Papua and Northern Territory	III —	14-IV-1928 —	5-XII-1887 29-VII-1936	18-I-1935 29-VII-1936	— —
2. Austria	VI	1-X-1920	—	1-VII-1936	14-X-1953
3. Belgium	III	5-XII-1887	—	7-X-1934	1-VIII-1951
4. Brazil	III	9-II-1922	—	1-VI-1933	9-VI-1952
5. Bulgaria	V	5-XII-1921	—	1-VIII-1931	—
6. Cameroon	VI	24-IX-1964 ^{a)}	26-V-1930 ^{c)}	22-XII-1933 ^{c)}	22-V-1952 ^{c)}
7. Canada ⁴⁾	II	10-IV-1928	5-XII-1887	1-VIII-1931	—
8. Ceylon	VI	20-VII-1959 ^{a)}	1-X-1931 ^{c)}	1-X-1931 ^{c)}	—
9. Congo (Brazzaville)	VI	8-V-1962 ^{a)}	26-V-1930 ^{c)}	22-XII-1933 ^{c)}	22-V-1952 ^{c)}
10. Congo (Leopoldville)	VI	8-X-1963 ^{a)}	20-XII-1948 ^{c)}	20-XII-1948 ^{c)}	14-II-1952 ^{c)}
11. Cyprus	VI	24-II-1964 ^{a)}	1-X-1931 ^{c)}	1-X-1931 ^{c)}	24-II-1964
12. Czechoslovakia	IV	22-II-1921	—	30-XI-1936	—
13. Dahomey	VI	3-I-1961 ^{a)}	26-V-1930 ^{c)}	22-XII-1933 ^{c)}	22-V-1952 ^{c)}
14. Denmark	IV	1-VII-1903	—	16-IX-1933	19-II-1962
15. Finland	IV	1-IV-1928	—	1-VIII-1931	28-I-1963
16. France Overseas Departments and Territories	I —	5-XII-1887 —	— 26-V-1930	22-XII-1933 ⁵⁾ 22-XII-1933	1-VIII-1951 22-V-1952
17. Gabon	VI	26-III-1962 ^{b)}	26-V-1930 ^{c)}	22-XII-1933 ^{c)}	26-III-1962 ^{b)}
18. Germany	I	5-XII-1887	—	21-X-1933	—
19. Greece	VI	9-XI-1920	—	25-II-1932 ⁶⁾	6-I-1957
20. Holy See (Vatican City)	VI	12-IX-1935	—	12-IX-1935	1-VIII-1951
21. Hungary	VI	14-II-1922	—	1-VIII-1931	—
22. Iceland	VI	7-IX-1947	—	7-IX-1947 ⁷⁾	—
23. India ⁸⁾	IV	1-IV-1928	5-XII-1887	1-VIII-1931	21-X-1958
24. Ireland ⁹⁾	IV	5-X-1927	5-XII-1887	11-VI-1935 ⁷⁾	5-VII-1959
25. Israel ¹⁰⁾	V	24-III-1950	21-III-1924	24-III-1950	1-VIII-1951
26. Italy	I	5-XII-1887	—	1-VIII-1931	12-VII-1953
27. Ivory Coast	VI	1-I-1962 ^{b)}	26-V-1930 ^{c)}	22-XII-1933 ^{c)}	1-I-1962 ^{b)}

1) Among the newly independent countries to which the Berne Convention was applied, by virtue of Article 26, there are only mentioned those which have so far made a declaration of continued adherence or a formal notification of accession to the Swiss Government under Article 25 of the Convention. This list will be amended as and when declarations of continued adherence or notifications of accession are received by the Swiss Government from other countries.

2) I. e. the date from which the notification made by virtue of Article 26 (1) began to take effect for the application of the Convention on the territory of the country concerned. After the latter's accession to independence, the application was confirmed by a declaration of continued adherence or accession.

3) Australia belonged to the Union from the outset as a country for the international relations of which the United Kingdom was responsible. April 14, 1928, is the date on which Australia made a declaration of accession, as a contracting country of the Union, in conformity with Article 25.

4) Same observation as in note 3), for Canada, which acceded with effect from April 10, 1928.

5) Reservation concerning works of applied art: Article 2 (4) of the Rome Text had been replaced by Article 4 of the original Convention of 1886.

6) Articles 8 and 11 of the Rome Text had been replaced by Articles 5 and 9 of the original Convention of 1886; but, as from January 6, 1957, Greece renounced these reservations in favour of all countries of the Union.

7) Reservation concerning the right of translation: Article 8 of the Rome Text has been replaced by Article 5 of the original Convention of 1886, in the version of the Additional Act of 1896.

8) Same observation as in note 3), for India, which acceded with effect from April 1, 1928.

9) The new free State of Ireland, which was constituted by the Treaty signed with Great Britain on December 6, 1921, acceded, as such, with effect from October 5, 1927.

STATE OF THE INTERNATIONAL UNION ON JULY 1, 1966

Country ¹⁾	Class chosen [Art. 23 (4)]	Date of Accession (Art. 25)	Date on which the Convention was declared applicable (Art. 26) ²⁾	Date of Accession to the Rome Text	Date of Accession to the Brussels Text
28. Japan	III	15-VII-1899	—	1-VIII-1931 ⁷⁾	—
29. Lebanon	VI	1-VIII-1924	—	24-XII-1933	—
30. Liechtenstein	VI	30-VII-1931	—	30-VIII-1931	1-VIII-1951
31. Luxembourg	VI	20-VI-1888	—	4-II-1932	1-VIII-1951
32. Madagascar	VI	1-I-1966 ^{a)}	26-V-1930 ^{c)}	22-XII-1933 ^{c)}	22-V-1952 ^{c)}
33. Mali	VI	8-V-1962 ^{a)}	26-V-1930 ^{c)}	22-XII-1933 ^{c)}	22-V-1952 ^{c)}
34. Monaco	VI	30-V-1889	—	9-VI-1933	1-VIII-1951
35. Morocco	VI	16-VI-1917	—	25-XI-1934	22-V-1952
36. Netherlands Surinam and Netherlands Antilles	III —	1-XI-1912 —	— 1-IV-1913	1-VIII-1931 1-VIII-1931	— —
37. New Zealand ¹¹⁾	IV	24-IV-1928	5-XII-1887	4-XII-1947	—
38. Niger	VI	2-V-1962 ^{a)}	26-V-1930 ^{c)}	22-XII-1933 ^{c)}	22-V-1952 ^{c)}
39. Norway	IV	13-IV-1896	—	1-VIII-1931	28-I-1963
40. Pakistan ¹²⁾	VI	5-VII-1948	5-XII-1887	5-VII-1948	—
41. Philippines	VI	1-VIII-1951	—	—	1-VIII-1951
42. Poland	V	28-I-1920	—	21-XI-1935	—
43. Portugal ¹³⁾	III	29-III-1911	—	29-VII-1937	1-VIII-1951
44. Rumania	V	1-I-1927	—	6-VIII-1936	—
45. Senegal	VI	25-VIII-1962 ^{b)}	26-V-1930 ^{c)}	22-XII-1933 ^{c)}	25-VIII-1962 ^{b)}
46. South Africa ¹⁴⁾ South West Africa ¹⁵⁾	IV —	3-X-1928 28-X-1931	5-XII-1887 5-XII-1887	27-V-1935 —	1-VIII-1951 —
47. Spain	II	5-XII-1887	—	23-IV-1933	1-VIII-1951
48. Sweden	III	1-VIII-1904	—	1-VIII-1931	1-VII-1961
49. Switzerland	III	5-XII-1887	—	1-VIII-1931	2-I-1956
50. Thailand	VI	17-VII-1931	—	—	—
51. Tunisia	VI	5-XII-1887	—	22-XII-1933 ⁵⁾	22-V-1952
52. Turkey	VI	1-I-1952	—	—	1-I-1952 ⁷⁾
53. United Kingdom ¹⁶⁾ Colonies, Possessions and certain Protectorate Territories	I —	5-XII-1887 —	— various dates	1-VIII-1931 various dates	15-XII-1957 various dates ¹⁷⁾
54. Upper Volta	VI	19-VIII-1963 ^{b)}	26-V-1930 ^{c)}	22-XII-1933 ^{c)}	19-VIII-1963 ^{b)}
55. Yugoslavia	IV	17-VI-1930	—	1-VIII-1931 ⁷⁾	1-VIII-1951 ⁷⁾

¹⁰⁾ The accession of *Palestine*, as a territory under British mandate, took effect from March 21, 1924. After its accession to independence (May 15, 1948), *Israel* acceded with effect from March 24, 1950.

¹¹⁾ Same observation as in note ³⁾, for *New Zealand*, which acceded with effect from April 24, 1928.

¹²⁾ When *Pakistan* formed part of India, it belonged *ipso facto* to the Union as from the outset [see note ⁸⁾]; subsequently, *Pakistan* became a separate State from India and, on July 5, 1948, made a declaration of accession to the Berne Convention as revised at Rome in 1928.

¹³⁾ The former colonies have become "Portuguese Overseas Provinces". The Brussels Text has been applicable to these provinces since August 3, 1956.

¹⁴⁾ Same observation as in note ³⁾, for the *Union of South Africa*, which acceded with effect from October 3, 1928.

¹⁵⁾ The *Union of South Africa* later made a declaration of accession for *South West Africa*, a territory under mandate, and fixed the date of accession at October 28, 1931.

¹⁶⁾ United Kingdom of Great Britain and Northern Ireland.

¹⁷⁾ Application of the Convention to the Isle of Man, Fiji, Gibraltar and Sarawak (see *Le Droit d'Auteur-Copyright*, 1962, p. 32); to Zanzibar, Bermudas and North Borneo (*ibid.*, 1963, p. 8); to Bahamas and Virgin Islands (*ibid.*, 1963, p. 144); to Falkland Islands, Kenya, St. Helena and Seychelles (*ibid.*, 1963, p. 180); to Mauritius (*ibid.*, 1964, p. 192); to Montserrat, Santa-Lucia and Bechuanaland (*Copyright*, 1966, p. 67); to Grenada, the Cayman Islands and British Guiana (*ibid.*, 1966, p. 91). The Republic of the Philippines, however, reserved its position as regards the application to Sarawak.

^{a)} Date of the despatch of the declaration of continued adherence after the accession of this country to independence.

^{b)} Date of the entry into force of the accession, by virtue of Article 25 (3) of the Convention.

^{c)} As a colony (date of the application resulting from the notice made by the colonising power or the power exercising trusteeship or being responsible for the international relations of a country, by virtue of Article 26 (1) of the Convention).

NATIONAL LEGISLATION

REPUBLIC OF SOUTH AFRICA

Proclamation relating to the Extension of Copyright Protection to Countries which are Members of the Berne Copyright Union

(No. R. 73, of March 2, 1966)¹⁾

Under the power vested in me by section *thirty-two* of the Copyright Act, 1965 (Act No. 63 of 1965)²⁾, I hereby provide as follows: —

1. — This Proclamation may be cited as the Copyright International Conventions Proclamation, 1966.

2. — In this Proclamation, unless the context otherwise indicates —

- (1) “the Act” means the Copyright Act, 1965 (Act No. 63 of 1965); and any expression to which a meaning has been assigned in the Act, bears, when used in this proclamation the same meaning;
- (2) “country of origin” means —
 - (i) in the case of a published work or subject matter, if the country of first publication is a country mentioned in the First Schedule hereto, that country;
 - (ii) in the case of a work or subject matter published simultaneously in a country of the Berne Copyright Union and a country which is not in the said Union, the former country;
 - (iii) in the case of a work or subject matter which is published simultaneously in several countries of the Berne Copyright Union, the country whose laws give the shortest term of protection for such a work or subject matter;
- (3) “Berne Copyright Union” means the Union constituted by the Berne Convention for the Protection of Literary and Artistic Works signed on the 9th September, 1886, and completed at Paris on the 4th May, 1896, revised by the Berlin Convention signed on the 13th November, 1908, and completed at Berne on the 20th March, 1914, revised by the Rome Convention concluded on the 2nd June, 1928, and revised by the Brussels Convention signed on the 26th June, 1948, and “country of the Berne Copyright Union” means any country which has adhered to any one or more of the said Conventions and is mentioned in the First Schedule hereto;
- (4) “material time” means —
 - (i) in relation to an unpublished work or subject matter, the time at which such work or subject matter is made or, if the making thereof extended over a period, a substantial part of that period;

(ii) in relation to a published work or subject matter, the time of first publication;

(5) “published simultaneously” means —

- (i) in the case of publications occurring before the commencement of this Proclamation, published within a period of 14 days;
- (ii) in any other case, published within a period of 30 days.

3. — Subject to the following provisions of this Proclamation, the provisions of Chapters I and II (except section *fifteen*) of the Act and all the other provisions of the Act relevant thereto, being the provisions relating to literary, dramatic, musical and artistic works, sound recordings, cinematograph films and published editions of literary, dramatic or musical works, shall apply in the case of each of the countries mentioned in the First Schedule hereto as follows: —

- (a) in relation to literary, dramatic, musical or artistic works, cinematograph films or published editions first published and sound recordings first made in that country just as they apply in relation to such works, films or editions first published and sound recordings first made in the Republic;
- (b) in relation to persons who, at a material time, are citizens or subjects of, or domiciled or resident in that country, just as they apply in relation to persons who, at such a time, are nationals of the Republic or domiciled or resident in the Republic;
- (c) in relation to bodies incorporated under the laws of that country, just as they apply in relation to bodies incorporated under the laws of the Republic: Provided that —
 - (i) in the case of any country, the acts restricted by copyright in a sound recording conferred by section *thirteen* of the Act, as applied by this Proclamation, shall not include causing the recording to be heard in public nor broadcasting the recording;
 - (ii) where copyright subsists by virtue of this Proclamation in any sound recording, it shall subsist only to the extent that protection in the nature of or related to copyright is granted under the laws of its country of origin in respect of a sound recording first made in the Republic of South Africa, and no such sound recording shall enjoy any wider protection by virtue of this Proclamation than is enjoyed

¹⁾ Published in the *Government Gazette Extraordinary of the Republic of South Africa*, Vol. 19, No. 1402, of March 18, 1966.

²⁾ See *Copyright*, 1966, p. 26 *et seq.*

in its country of origin by a sound recording first made in the said Republic;

- (iii) where copyright subsists by virtue of this Proclamation in any published edition being a typographical arrangement of literary, dramatic, or musical works, it shall subsist only to the extent that protection in the nature of or related to copyright is granted under the laws of their country of origin in respect of South African editions and no such edition shall enjoy any wider protection by virtue of this Proclamation than is enjoyed in its country of origin by a South African edition;
- (iv) in relation to any work or other subject matter made before the commencement of this Proclamation, the provisions of the Act shall apply by virtue of this Proclamation, subject to the modifications specified in the Second Schedule hereto;
- (v) nothing in the provisions of the Act as applied by this Proclamation shall be construed as reviving any right to make, or restrain the making of, or any right in respect of, translations, if such right has ceased before the commencement of this Proclamation.

4. — Where any person has, before the commencement of this Proclamation, taken any action whereby he has incurred any expenditure or liability in connection with the reproduction or performance of any work or other subject matter in a manner which at the time was lawful, or for the purposes of or with a view to the reproduction or performance of a work at a time when such reproduction or performance would, but for the making of this Proclamation, have been lawful, nothing in this Proclamation shall diminish or prejudice any rights or interest which arise from, or in connection with, such action, and which subsist and were valuable immediately before such commencement, unless the person who, by virtue of this Proclamation becomes entitled to restrain such reproduction or performance agrees to pay such compensation as failing agreement, may be determined by arbitration.

5. — The Proclamations enumerated in the Third Schedule hereto are hereby repealed; provided that where by virtue of any of the aforesaid Proclamations, copyright subsisted in a work immediately before the commencement of this Proclamation and copyright does not subsist therein under paragraph 3 of this Proclamation, it shall continue to subsist therein as if such Proclamation had not been repealed.

Given under my Hand and the Seal of the Republic of South Africa at Pretoria on this Second day of March, One thousand Nine hundred and Sixty-six.

C. R. SWART, State President

By Order of the State President-in-Council

P. M. K. LE ROUX

FIRST SCHEDULE

Countries of the Berne Copyright Union

Under a Convention concluded at Berlin on the 13th November, 1908 ("The Berlin Convention"), replacing between the parties thereto a Convention concluded at Berne on the 9th September, 1886 ("The Berne Convention"), as amended by an Additional Act ("the Additional Act") agreed to on the 4th May, 1896, and at Rome on the 2nd June, 1928, and at Brussels on the 26th June, 1948—

Australia (Nauru, New Guinea, Papua and northern Territory)	Lebanon
Austria	Liechtenstein
Belgium	Luxembourg
Brazil	Mali
Bulgaria	Monaco
Cameroon	Morocco
Canada	Netherlands (Surinam and (Netherlands Antilles)
Ceylon	New Zealand
Congo (Brazzaville)	Niger
Congo (Leopoldville)	Norway
Cyprus	Pakistan
Czechoslovakia	Philippines
Dahomey	Poland
Denmark	Portugal
Finland	Roumania
France (overseas Departments and Territories)	Senegal
Gabon	South West Africa
Germany	Spain
Greece	Sweden
Holy See (Vatican City)	Switzerland
Hungary	Thailand
Iceland	Tunisia
India	Turkey
Ireland	United Kingdom (Colonies, Possessions and Protectorate Territories)
Israel	
Italy	Upper Volta
Ivory Coast	Yugoslavia
Japan	

SECOND SCHEDULE

1. In the case of any work to which the provisions of the Designs and Copyright Act, 1916, applied immediately before the commencement of this Proclamation, subsection (9) of section *nine* of the Act shall have effect as if, for the references therein to the first day of January, 1917, there were substituted references to the date specified in column 2 of the table set out at the end of this Schedule in relation to the country of origin of that work (being the date on which the Designs and Copyright Act, 1916, first applied in relation to that country), and, in the case of any other work, the said sub-section (9) of section *nine* shall have effect as if, for the references to that date, there were substituted references to the commencement of this Proclamation.

2. Where any musical work, in which, immediately before the commencement of this Proclamation, copyright subsisted by virtue of any Proclamation made under sub-section (2) of section *thirty* of the Third Schedule to the Designs and Copyright Act, 1916, was published before the date specified in column 2 of the aforementioned table in re-

lation to the country of origin of that work (being the date on which that Act first applied in relation to that country), the acts restricted by the copyright in that work shall not include making, or authorising the making of, a sound recording thereof, if before that date any record of that work had been lawfully made or placed on sale within the Republic.

3. Where any musical work, in which copyright did not subsist as mentioned in the preceding paragraph, has been published before the commencement of this Proclamation, the preceding paragraph shall have effect as if, for the references to the date therein mentioned, there were substituted a reference to the commencement of this Proclamation.

4. In the case of a sound recording embodied in any record to which the provisions of the Designs and Copyright Act, 1916, applied immediately before the commencement of this Proclamation, the provisions of paragraphs 6 and 13 of the Sixth Schedule to the Act shall apply in relation to the copyright in that sound recording as if, for the reference therein to the first day of January, 1917, there were substituted a reference to the date specified in column 2 of the table below in relation to the country of origin of that work (being the date on which paragraph 19 of the Third Schedule to the Copyright Act of 1916, first applied in relation to that country), and, in the case of any other sound recording, the said paragraphs 6 and 13 shall have effect as if, for the reference to that date, there were substituted a reference to the commencement of this Proclamation.

5. In relation to any work or other subject matter in which copyright subsists by virtue of this Proclamation, the relevant provisions of the Sixth Schedule to the Act shall have effect as if, for the references, whenever they occur therein, to the commencement of the Act or of any provisions of the Act or to the repeal of any provision of the Designs and Copyright Act, 1916, or of any other enactment, there were substituted references to the commencement of this Proclamation.

Country of Origin (Column 1)	Date of Application of Relevant Provisions, of Designs and Copyright Act, 1916 (Column 2.)
Australia	1st January, 1917
Canada	1st January, 1917
Great Britain	1st January, 1917
India	1st January, 1917
New Zealand	1st January, 1917
Pakistan	1st January, 1917
Belgium	1st May, 1920
Denmark and Faroe Islands	1st May, 1920
France	1st May, 1920
Germany—Federal Republic of and Land Berlin	1st May, 1920
Italy	1st May, 1920
Japan	1st May, 1920
Luxemburg	1st May, 1920
Monaco	1st May, 1920
Morocco (former French zone)	1st May, 1920
Netherlands including Surinam and Netherlands Antilles	1st May, 1920
Norway	1st May, 1920
Portugal	1st May, 1920
Spain	1st May, 1920
Sweden	1st May, 1920
Switzerland	1st May, 1920
Tunisia	1st May, 1920
Brazil	6th July, 1923
Austria	6th July, 1923
Bulgaria	6th July, 1923
Czechoslovakia	6th July, 1923
Greece	6th July, 1923
Hungary	6th July, 1923
Poland	6th July, 1923
Finland	13th April, 1934
French Colonies and Protectorates under the authority of the French Ministry of Colonies	13th April, 1934
Lebanon	13th April, 1934
Liechtenstein	13th April, 1934
Portuguese Colonies	13th April, 1934
Roumania	13th April, 1934
South West Africa	13th April, 1934
Spanish Colonies	13th April, 1934
Syria	13th April, 1934
Thailand (Siam)	13th April, 1934
Yugoslavia	13th April, 1934
Morocco (former Spanish zone)	31st January, 1936
Vatican City	31st January, 1936

THIRD SCHEDULE

Proclamations repealed

1. Proclamation No. 73 of 3rd May, 1920.
2. Proclamation No. 138 of 6th July, 1923.
3. Proclamation No. 185 of 4th August, 1930.
4. Proclamation No. 39 of 13th February, 1933.
5. Proclamation No. 58 of 13th April, 1934.
6. Proclamation No. 32 of 31st January, 1936, as amended by Proclamation No. 147 of 11th August, 1943.
7. Proclamation No. 83 of 5th May, 1939.
8. Proclamation No. 152 of 16th July, 1940.
9. Proclamation No. 153 of 16th July, 1940.

UNITED KINGDOM

I

The Copyright (British Honduras) Order 1966

(No. 685, of June 9, 1966, coming into force on June 16, 1966)

This Order extends the provisions of the Copyright Act 1956 with certain exceptions and modifications to form part of the law of British Honduras.

The Order also extends three Orders in Council made under Part V of that Act. The extension of these Orders will afford protection in British Honduras to works originating in countries party to International Copyright Conventions, to

works produced by certain international organisations and to lawfully authorised broadcasts originating in other Commonwealth countries to which the 1956 Act has already been extended.

The copyright protection afforded in the law of British Honduras will be similar to that afforded in the law of the United Kingdom.

II

The Copyright (International Conventions) (Amendment) Order 1966

(No. 684, of June 9, 1966, coming into force on June 16, 1966)

Her Majesty, in exercise of the powers conferred upon Her by sections 31, 32 and 47 of the Copyright Act 1956 and of all other powers enabling Her in that behalf, is pleased, by and with the advice of Her Privy Council, to order, and it is hereby ordered, as follows:—

1. — The Copyright (International Conventions) Order 1964¹⁾ (hereinafter referred to as “the principal Order”), as amended²⁾, shall be further amended —

- (i) by adding a reference to the Malagasy Republic in Part 1 of Schedule 1 (which names the countries of the Berne Copyright Union); and
- (ii) by adding a reference to Yugoslavia in Part 2 of Schedule 1 (which names the countries party to the Universal Copyright Convention).

2. — The provisions of this Order shall extend to all the countries mentioned in column 1 Part 1 of Schedule 4 to the principal Order, Bechuanaland, the Cayman Islands, Gre-

nada, Montserrat and St. Lucia (being the countries to which that Order has been extended).

3. — (1) The Interpretation Act 1889 shall apply to the interpretation of this Order as it applies to the interpretation of an Act of Parliament.

(2) This Order may be cited as the Copyright (International Conventions) (Amendment) Order 1966 and shall come into operation on 16th June 1966.

EXPLANATORY NOTE

(This Note is not part of the Order)

This Order further amends the Copyright (International Conventions) Order 1964.

It takes account of —

- (a) the fact that the Malagasy Republic has adhered to the Berne Copyright Convention in its own right (it was formerly a party as a French Protectorate);
- (b) the ratification by Yugoslavia of the Universal Copyright Convention.

Article 2 of the Order extends its provisions to the dependent countries of the Commonwealth where the Copyright Act 1956 is law.

¹⁾ See *Le Droit d'Auteur (Copyright)*, 1964, p. 150.

²⁾ *Ibid.*, 1964, p. 184; *Copyright*, 1965, p. 40, 240 and 241; *ibid.*, 1966, p. 93.

CORRESPONDENCE

Letter from Austria*)

In *Le Droit d'Auteur*, 1962, p. 201, I reported on developments in Austrian copyright law. In the period since then, to which my present report refers, only minor changes have taken place in the field of legislation¹⁾, so that I shall devote my comments largely to court decisions. In order to facilitate comparison with my previous report I shall follow the same system of presentation wherever possible. Since I am dealing with a shorter period I can go into somewhat greater detail this time, and I hope that my comments will gain in interest thereby.

1. Scope of application; concept of the work

Practical application of the law has generally continued to follow the principles previously established: only a *specific form given to a material* is eligible for copyright protection²⁾. This excludes from protection the *artistic form* as such, that is to say style, manner or technique²⁾. And the same goes for *thoughts in themselves*³⁾. The criterion of *individuality* con-

tained in the definition of the concept of the work must be understood as the mental act of giving a specific form that stems from the innermost person of the intellectual creator⁴⁾; in other words, the personality of the creator, the unique nature of his character must be expressed in such a manner that his creation bears a unique imprint and clearly reveals that it is his⁵⁾. With regard to the field of *the figurative arts*, this formation of the work must incorporate a certain degree of originality⁶⁾. Such originality is not excluded by the fact that the artist may draw inspiration from other persons' works; however, his work must bear his own characteristic imprint⁷⁾⁸⁾. Every work is distinguished from formations ineligible for protection by virtue of the *individuality* inherent in it⁹⁾.

These principles relating to the distinction between works as defined by the Copyright Act and other products of human

*) List of abbreviations:

- AKM = Staatlich genehmigte Gesellschaft der Autoren, Komponisten und Musikverleger (State-recognized society of authors, composers and music publishers).
 EGZPO = Einführungsgesetz zur Zivilprozessordnung (Introductory Act on civil procedure).
 EvBl. = Evidenzblatt der Rechtsmittelentscheidungen (Bestandteil der "Oesterreichischen Juristenzeitung" (Journal of appellate decisions, being part of the Austrian jurists' Journal).
 GEMA = Gesellschaft für musikalische Aufführungs- und mechanische Vervielfältigungsrechte (German society for musical performing and mechanical rights).
 GRUR = Gewerblicher Rechtsschutz und Urheberrecht (Industrial property and copyright).
 JBl. = Juristische Blätter (Legal Journal).
 OGH = Oberster Gerichtshof (Supreme Court).
 OLG = Oberlandesgericht (Court of appeal).
 OeBl. = Oesterreichische Blätter für gewerblichen Rechtsschutz und Urheberrecht (Austrian Journal for industrial property and copyright).
 OeRZ = Oesterreichische Richterzeitung (Austrian Judges' Journal).
 RGBL. = Reichsgesetzblatt (Austrian Imperial Official Gazette).
 Schulze = Schulze, Rechtsprechung zum Urheberrecht (Copyright law cases).
 SSt. = Entscheidungen des österreichischen OGH in Strafsachen und Disziplinarangelegenheiten (Decisions by the Austrian Supreme Court in criminal and disciplinary cases).
 SZ = Entscheidungen des österreichischen OGH in Zivil- und Justizverwaltungssachen (Decisions by the Austrian Supreme Court in civil and administrative cases).

¹⁾ There has been an exchange of notes with France and Brazil respectively by means of which reciprocity in extending the period of protection in connection with the Second World War is laid down. The exchange of notes with France was announced in *Bundesgesetzblatt* 1964, No. 285; the announcement concerning Brazil is to be made very shortly.

²⁾ OGH 14.3.1962, 9 Os 2/62, OeBl. 1962, p. 77; SSt. XXXIII 16; EvBl. 1962, No. 319; JBl. 1962, p. 568; OeRZ 1962, p. 165; Schulze, No. 23.

³⁾ OGH 14.3.1962, 9 Os 2/62, OeBl. 1962, p. 77; SSt. XXXIII 16; EvBl. 1962, No. 319; JBl. 1962, p. 568; OeRZ 1962, p. 165; Schulze, No. 23; OGH 10.12.1964, 4 Ob 343/64, OeBl. 1965, p. 125 (which refers to the "mere motive").

⁴⁾ OGH 14.3.1962, 9 Os 2/62, OeBl. 1962, p. 77; SSt. XXXIII 16; EvBl. 1962, No. 319; JBl. 1962, p. 568; OeRZ 1962, p. 165; Schulze, No. 23.

⁵⁾ OGH 14.3.1962, 9 Os 2/62, OeBl. 1962, p. 77; SSt. XXXIII 16; EvBl. 1962, No. 319; JBl. 1962, p. 568; OeRZ 1962, p. 165; Schulze, No. 23; OGH 20.11.1962, 4 Ob 322/62, OeBl. 1963, p. 47; JBl. 1963, p. 381; OGH 23.4.1963, 9 Os 347/62, OeBl. 1963, p. 115; SSt. XXXIV 24; EvBl. 1963, No. 342; OeRZ 1963, p. 152; OGH 18.2.1964, 4 Ob 301/64, OeBl. 1964, p. 78; EvBl. 1964, No. 245.

⁶⁾ OGH 14.3.1962, 9 Os 2/62, OeBl. 1962, p. 77; SSt. XXXIII 16; EvBl. 1962, No. 319; JBl. 1962, p. 568; OeRZ 1962, p. 165; Schulze, No. 23. I do not subscribe to the general idea that a work must be an intellectual creation born from the imagination, as affirmed in the decision of the Supreme Court of 18.2.1964, 4 Ob 301/64, OeBl. 1964, p. 78; EvBl. 1964, No. 245, which refers to Schramm: *Die schöpferische Leistung*, p. 106. If this idea were pursued it would mean that all scientific works would be deprived of protection. What constitutes the focal point of all intellectual creation in scientific works is not the author's imagination but the knowledge of the subject as displayed in the development and logic of the arguments and in the representation, selection or arrangement of the material. Therefore it is wrong to equate an intellectual creation with an artistic creation (OGH 20.11.1962, 4 Ob 322/62, OeBl. 1963, p. 47; JBl. 1963, p. 381).

⁷⁾ OGH 14.3.1962, 9 Os 2/62, OeBl. 1962, p. 77; SSt. XXXIII 16; EvBl. 1962, No. 319; JBl. 1962, p. 568; OeRZ 1962, p. 165; Schulze, No. 23.

⁸⁾ I disagree with the view that, in order to enjoy copyright protection, the products of artistic creation must contain a particular individual mental creative power, a corresponding level of creation, a particular degree of creative individuality, which is to say that there must be a corresponding depth of creative formation. (This view is expressed in OGH 14.3.1962, 9 Os 2/62, OeBl. 1962, p. 77; SSt. XXXIII 16; EvBl. 1962, No. 319; JBl. 1962, p. 568; OeRZ 1962, p. 165; Schulze, No. 23; similarly, in reference to the above judgment, OGH 23.4.1963, 9 Os 347/62, OeBl. 1963, p. 115; SSt. XXXIV 24; EvBl. 1963, No. 342; OeRZ 1963, p. 153.) Only the second idea can be approved: a corresponding depth of creation is always required in order to give rise to a work in the legal meaning; otherwise the criterion of individuality will not be satisfied. However, this is valid in general but not for works of art. What is wrong, on the other hand, is to interpret the criterion of individuality more strictly for works of art than for works of literature. There is nothing in the wording of the law to justify this, nor are there grounds of legal policy to require it.

⁹⁾ OGH 14.3.1962, 9 Os 2/62, OeBl. 1962, p. 77; SSt. XXXIII 16; EvBl. 1962, No. 319; JBl. 1962, p. 568; OeRZ 1962, p. 165; Schulze, No. 23. Although this decision refers only to works of art, it quotes Ulmer (*Urheber- und Verlagsrecht*, 2nd edition, p. 114), who uses this idea — in my view, correctly — in order to draw the dividing lines with regard to the concept of the work in general; the restriction to works of art is therefore only a semantic inaccuracy, and in the circumstances a minor one.

creation apply similarly to interviews¹⁰), photographs¹¹) and articles of handicraft¹²). The fact that a poem is used for publicity purposes or that it consists of only two lines is obviously no obstacle to its copyright protection¹³).

The question of whether the definition of a work in the Copyright Act is satisfied is a question of law and comes within the jurisdiction of the courts, not of experts¹³).

The courts have applied the above general principles in specific cases as follows:

Since 1952 the firm of Erna Peter has manufactured and distributed under the name of *Original Peter-Figuren* hedgehog dolls made of plastic, wire and wood, about 8 cm. tall, representing the widest range of human activities and foibles and equipped with the appropriate clothing, tools, musical instruments and so on. From July to September 1958 the defendant firm sold its own hedgehog figures under its own name of "Norwa" that were deceptively similar to the Peter figures. The firm of Erna Peter first of all tried to eliminate this competition by bringing an action against the defendant. The Supreme Court decided that the Peter figures did not constitute a work as defined by the Copyright Act. It ruled that only the individual execution of the subject of a humanized hedgehog as the expression of a creative power could be eligible for protection. This would require the creative individuality of such figures to be so powerfully expressed that they could correctly be termed works of art, their eligibility for protection depending on the overall impression they gave. The Court ruled that the Peter figures did not reach the necessary degree of intensity or depth of creative formation: observation of these figures revealed that neither in their separate constructive elements nor in their overall harmony did they attain to such a high quality of creation as to indicate a level of artistic formation requiring a particular individual mental creative power. Even with regard to the overall character of these products it was impossible to observe any features raising these figures above the level of any other more or less well made dolls as to their execution or formation; moreover, taking the head of the hedgehog, which was probably the most individually developed part, its modelling was relatively rough whatever the particular form, so that even that part could not be said to possess the characteristics that might have shown it to be the product of an artistic creative power in the degree described above¹⁴).

There was a further decision dealing with humanized hedgehog figures. The publisher of a book entitled *Mein grosses Igelbuch* (My big hedgehog book) filed a plea for legal recognition that, in view of the difference in representation, the pictures in this book did not infringe the copyright (itself disputed) in the well-known "Mecki" hedgehog figures. The Court of first instance noted that Hermann Diehl had created

the plastic model of a hedgehog in human form for which the trademark "Mecki", consisting of the name and a design, had been registered. It was alleged that Hermann Diehl — or the firm of *Gebrüder Diehl*, which had acquired all rights of use from the creator — transferred the exclusive right of use of this hedgehog doll, with regard to printed matter, to the defendant on December 8, 1951. It was pointed out that there had already been a large number of representations and drawings of humanized hedgehog figures before Hermann Diehl's creation. Children's story books had frequently described and illustrated the race between the hare and the hedgehog, and these had always shown the hedgehog in his human representation, dressed in rags but always clever enough to beat his opponent. However, none of these versions had ever had any individually creative features. Diehl's hedgehog was something quite different in its proportions and in its movement in the combination of these proportions. The general impression conveyed by Diehl's hedgehog was far more effective than that of other representations, because Diehl had achieved the greatest degree of humanization of the hedgehog while retaining its animal characteristics. His hedgehog had both human and animal comic elements and was also reminiscent of the world of the fable. His figure was notably superior in execution and formation to the mass of hedgehog representations; this was why it had become so universally popular. The defendant company had for many years published children's books and other printed matter containing pictures of hedgehogs on the Diehl model, such as the children's book, *Mecki im Schlaraffenland* (Mecki in cloud cuckoo land). Subsequently the plaintiff had also begun to bring out in his own publishing house children's books with pictures of a humanized hedgehog. One of these was *Mein grosses Igelbuch*. The pictures of hedgehog figures in these works were virtually identical to those in the defendant's publications. The dividing line between human and animal features, as well as their outlines, proportions and combination, were essentially the same.

The Supreme Court's decision was based on the legal principles described above, and pursuing the line of thought in that case allowed the defendant's plea on the following grounds: the representation of a humanized hedgehog included a vertical stance, human clothing, hair shown in the form of vertical prickles, a snout-like nose with a dark tip and various other elements automatically used in depicting a humanized hedgehog and therefore constituting normal artistic stock in trade. These elements were scarcely open to individual artistic formation and could therefore be immediately set aside in any comparison of two works of art or handicraft. The artistic nature of the depiction of a humanized hedgehog could relate essentially only to the formation of the facial expression. The individual creative characteristics could be expressed in the artistic representation of the basic attitude combining the human and the animal as revealed by the face, of the essential features it showed and of the true character of the figure.

The Court held that it was of no relevance to the case whether the Diehl "Mecki" figure met the requirements for a work to be afforded copyright protection as regards the primary question of representation of physiognomy, as assumed for example in the decisions of the German Supreme Court

¹⁰) OGH 12.2.1965, 4 *Ob* 303/65, *OeBl.* 1965, p. 76.

¹¹) OGH 23.4.1963, 9 *Os* 347/62, *OeBl.* 1963, p. 115; *SSt.* XXXIV 24; *EvBl.* 1963, No. 342; *OeRZ* 1963, p. 152; the same attitude is expressed by OLG Vienna, 30.8.1962, 2 *R* 252/62, *OeBl.* 1963, p. 34, with the ruling that a photograph cannot be regarded as a work in the legal sense unless it puts a creative idea into effect.

¹²) OGH 17.12.1963, 9 *Os* 281/62, *OeBl.* 1964, p. 71.

¹³) OGH 18.2.1964, 4 *Ob* 301/64, *OeBl.* 1964, p. 78; *EvBl.* 1964, No. 245.

¹⁴) OGH 14.3.1962, 9 *Os* 2/62, *OeBl.* 1962, p. 77; *SSt.* XXXIII 16; *EvBl.* 1962, No. 319; *JBl.* 1962, p. 568; *OeRZ* 1962, p. 165; *Schulze*, No. 23.

of April 1, 1958 (*GRUR*, 1958, p. 500) or of December 8, 1959 (*GRUR*, 1960, p. 251). Nor had it to be considered whether Diehl's "Mecki" hedgehog was so superior to the Peter figure in its individual artistic creation that the Peter hedgehog should be judged lacking in artistry, characterized by relatively unsubtle modelling of the head and therefore undeserving of recognition as an individual creation as regards both the separate elements of composition and their combination whereas the Diehl figures did deserve such recognition. Even if the defendant were entitled to copyright protection it could not claim infringement of any such rights by the hedgehog figure created by the plaintiff. What was in fact most important was to determine whether the physiognomy of the plaintiff's hedgehogs in *Mein grosses Igelbuch* was sufficiently different from the Diehl "Mecki" hedgehogs to rule out any possibility of an infringement of the defendant's exclusive rights.

The Court held that in such a comparison the details could not be taken into consideration, such as the form of the nose or the way of showing the hedgehog's prickles. All that mattered was the overall impression made by the faces of the two hedgehog figures. It was of no relevance in what passing mood corresponding to the particular picture the figures were shown, whether they were pictured as frightened, jolly, angry or content. The vital consideration was the artistically represented basic attitude, the essence of the figure shining through every passing mood.

An essential difference between the two hedgehog figures involved was that the Diehl "Mecki" model had a spiritual aspect of human nature, as revealed in his eyes and facial features. The plaintiff's hedgehog's principal characteristics were inoffensiveness, simplicity, not to say stupidity and superficiality. The "Mecki" figure was a respectable-seeming slyboots capable of dealing with any situation, something of a rascal and no man's servant, with an imperturbably gay and philosophical disposition. On the other hand, the plaintiff's figure's simplicity made him emotional, playful, jolly, childish, and exposed to everyday hazards. The divergence between the two versions was so wide that it was impossible to speak of any imitation, or of any dependent subsequent creation of the "Mecki" figures by the plaintiff. Thus, even if the "Mecki" hedgehog were eligible for protection — which could be left aside for the time being — the plaintiff's figure did not constitute any infringement of the defendant's rights of use with regard to the "Mecki" figures¹⁵⁾.

On November 20, 1963, a journalist became the first and only member of his profession to succeed in obtaining an interview with *Karl Silberbauer*, who had arrested *Anne Frank* during the Second World War when he was a member of the Gestapo in Holland. The journalist wrote two versions of this interview and on the same day telephoned the text of the shorter one in Dutch to an Amsterdam paper which reproduced the article in its morning edition of November 21, 1963, without any indication as to copyright. On the morning of November 21, 1963, the journalist first offered to sell the interview to the daily *Kurier*, promising to have the German

version ready within a few hours. However, sub-editor H. of the *Kurier* was not prepared to buy the interview right away. The plaintiff thereupon went to the Vienna agency of Associated Press and offered to sell the interview to the editor Erich W. for 4,000 schillings. W. replied that he would first have to obtain approval from his head office in London and promised to contact the journalist if he received an affirmative answer. However, the London head office declined to buy the interview. At about 5 p. m. on November 21, 1963, the journalist went back to the *Kurier* with the German text of the shorter version that had been prepared in the meantime; after consulting the editor, sub-editor H. finally agreed to buy the interview for 1,750 schillings. At the journalist's request, H. confirmed in writing that the *Kurier* would not transmit or sell the interview to any other Austrian newspaper, periodical or agency.

The morning edition of the *Kurier* of November 22, 1963 — which had come out at about 8 p. m. the previous evening — published the interview under the heading "*Der Häuscher Anne Franks sagt aus*" (The man who arrested Anne Frank speaks) with a sub-title "*Exklusivinterview mit dem Wiener Ex-Gestapomann*" (Exclusive interview with the Viennese ex-Gestapo man). An introduction inserted by the *Kurier* said that a Dutch journalist had managed to talk to Silberbauer, and that the *Kurier* had acquired exclusive rights in the interview for Austria and was publishing it below. It went on to say that reproduction of the article, or of any part of it, was forbidden.

A sub-editor on the staff of the Vienna agency of Associated Press, who was unaware of the negotiations between the journalist and Erich W., read the journalist's interview in the *Kurier* on the evening of November 21, 1963. Finding the article interesting, he telephoned the editor of the *Kurier* and asked what was meant by the statement that reproduction of the interview was forbidden. Learning from the editor of the *Kurier* that the paper had acquired exclusive rights in the interview for Austria and could not transfer them, the sub-editor of Associated Press assumed that the exclusive rights related to Austria only. He therefore sent the news to his London head office, and from there it went out over the world-wide network.

The journalist starts off in his article published in the *Kurier* by saying that for over 2½ hours he sat in a small living room in a villa situated in the suburbs of Vienna opposite the man who on August 4, 1944, together with eight Dutch security police, found the Frank and van Daan families and the dentist Dr. Dussel, a total of eight Jewish people, hiding in a house in the Prinsengracht in Amsterdam. This was followed by details identifying Karl Silberbauer. The journalist continued by saying how difficult it was for a Dutchman to express his feelings on finding himself opposite the former Gestapo man who had delivered to Eichmann's machinery of death the girl whose diary millions of people had read or had seen as a play or a film. He went on to explain that Silberbauer seemed to be a perfectly ordinary person and did not give the impression of having profited from SS money. Silberbauer had not seemed unpleasant but had appeared to possess just the degree of severity a born criminalist needed in order to avoid being overcome by human

¹⁵⁾ OGH 10.12.1964, 4 Ob 343/64, OeBL 1965, p. 125.

considerations in his work. The journalist recounts how Silberbauer's wife did not want to let him in first of all but that Silberbauer had then come in from the kitchen himself and had invited him in. The journalist then reverts to the personal impression Silberbauer gave: he had continually trembled, he had seemed to be a mental wreck, he had smoked one cigarette after another, and he had been particularly nervous when he was shown passages out of a report by a German journalist. A copy of Anne Frank's diary as published by the firm of Fischer had been lying on the table. This was followed by a statement by Silberbauer as to when he had bought the book and why, and Silberbauer's description of the detailed circumstances of the arrest of Anne Frank, introduced by a comment by the journalist that Silberbauer had given his account with the precision of an accountant but had smoked a whole packet of cigarettes and had taken great pains to conceal his inner agitation.

The description by Silberbauer is followed by a series of questions by the journalist and Silberbauer's answers. The journalist then describes what had happened to Silberbauer in the meantime, partly in his own words and partly using Silberbauer's answers to his questions. The interview ends with the journalist wanting to take a picture; Silberbauer's wife refused to let him do so, because she said it would then be published in the papers with some such caption as "This is the hangman of Holland".

The text of the interview supplied to Associated Press by the sub-editor at its Vienna agency states right away in the introduction that Silberbauer, who had arrested Anne Frank and the rest of her family for the Nazis, claimed that the family had been betrayed to the Germans by a Dutchman. Then follow — with an indication that it is a copyright interview published by the *Kurier*, Austria's largest daily paper — extracts from the statements made by Karl Silberbauer in the interview with the journalist, these being partly in direct and partly in indirect speech. The sub-editor at the Vienna agency of Associated Press had omitted the journalist's personal comments and the description of the impression Silberbauer had made on him at several stages in the interview.

On the basis of the facts described above the journalist who interviewed Silberbauer claimed infringement of rights under the Copyright Act and was found to be in the right as regards the principle of the question. Taking as its point of departure the above-mentioned opinion that an interview can be a work as defined by the Copyright Act, the Supreme Court found as follows: the point at issue was to decide whether the interview transcended the level of an everyday statement of events and constituted a personal, characteristic intellectual creation on the part of the reporter by virtue of the structure, internal arrangement and selection of material. If the person interviewed played a vital part in regard to the language and the contents of the interview, he might be considered as an additional intellectual creator, or even as the only one. On the other hand, if the form of expression contained nothing but what was needed in order to convey the sense of the interviewee's declarations then neither party to the interview would be in a position to claim copyright protection.

The Court ruled that, if the above principles were applied to the present case, the interview published in the *Kurier* had to be regarded as eligible for protection since it was more than a mere account of certain facts. The description of the meeting between Silberbauer and his accuser was constructed in an effective and gripping manner, Silberbauer's own account of the arrest of Anne Frank, with interspersed comments by the accuser and references to Anne Frank's diary, was reproduced in a dramatic style, and the German version, apart from certain slight linguistic blemishes of expression on the part of the Dutch author, was stylistically correct. Whether viewed from the standpoint of content, time or form, this could not be considered as a mere article on a political question of the day (Article 44, para. 1, Copyright Act) or a simple report on events (Article 44, para. 3) such as qualify for only limited copyright protection, if at all¹⁶).

On the other hand, in the case of a publicity slogan advertising a make of beer, it was decided that the wording was not such as to warrant protection. The slogan read: «*Den Brand löscht nur die Feuerwehr; löscht man den Durst, muss Stadtbräu her*» (Only the fire brigade can extinguish a fire; to extinguish a thirst, *Stadtbräu* must come). The view was taken that if the principles established in the theory and practice of law were applied this slogan would not be found to surpass everyday standards either in content or in form or to constitute an individual intellectual creation as defined by the Copyright Act. The verse form and rhyme were ruled to be traditional and primitive; the intellectual content was restricted to a play on the verb *löschen* (to extinguish) to compare the effect of the fire brigade with that of beer but without any witty contrast; the commonplace character of the slogan was not notably improved by the fact that it stressed the desire of the potential customer rather than the quality of the product, by stating: "Stadtbräu must come", because this form of advertising was nothing out of the ordinary (e.g. "We drink only . . . coffee"). The value of a slogan could be very appreciable — and this was a case in point — even though it lacked originality or intellectual significance, because commonplaces and everyday statements were capable of achieving particular success among the mass of people less interested in intellectual content¹⁷).

As regards the printed word the Supreme Court also decided that lack of individuality excluded the following applications from protection: a work entitled *Wiener Spaziergänge* (Viennese walks)¹⁸, three *labels for blue jeans* respec-

¹⁶) OGH 12.2.1965, 4 Ob 303/65, *OeBl.* 1965, p. 76.

¹⁷) OGH 18.2.1964, 4 Ob 301/64, *OeBl.* 1964, p. 78; *EvBl.* 1964, No. 245. I personally consider that this slogan has enough individuality to be regarded as a work as defined by the Copyright Act; I should have come to the opposite conclusion.

¹⁸) OGH 17.3.1964, 4 Ob 356/63, *OeBl.* 1964, p. 102. The reasons given for this decision quite correctly refer to the absence of novelty in view of the fact that similar titles had been used to such an extent in the past that the title *Wiener Spaziergänge* had been familiar to the public for several decades without reference to the stories in question, whose title was at issue. Thus the title *alone* — which was the only point involved — could never constitute an intellectual formation stemming from the individuality of the creator. This title, as noted by the Court of first instance in this case, came not only from the stories in question, which were the work of Daniel Spitzer, but also from such works as the *Wiener Elegien* of Ferdinand Saar, the *Spaziergänge eines Wiener Poeten* by Anastasius Grün, Pötzl's walks *Rund um den Stephansturm*, the *Spaziergänge eines Wiener Humoristen* by Schilling, Saphir's *Gang durch den*

tively showing a sheriff, a rearing mustang with a rider against a grey background, and a rider with an American flag as background¹⁹), and an *organization and management system*, including a punch card forming part of that system, which had been specially devised for a specific firm²⁰).

On the other hand, a *building memorandum* was found eligible for protection, in view of the particular presentation of the technical data and drawings it incorporated²¹).

It was decided that so-called *multi-picture postcards* did not satisfy the definition of a work given in the Copyright Act. These postcards have the portrait of an artist in the middle, surrounded by views of places having some connection with the artist concerned²²).

2. Co-authorship

In the above-mentioned case concerning the interview with Karl Silberbauer it was ruled that the interviewee was not a co-author. The Supreme Court's line of thought was that the interviewer himself had arranged the matter presented in the interview, had selected the problems discussed and had linked the separate ideas, thereby placing his mark on the external and internal form of the interview²³).

3. Authors' right of exploitation

One of the lines sold in a particular department store was records, which were on sale at a so-called record bar. On the one side of this record bar there was a stationery section and on the other a household goods section. It consisted of a counter some 6 metres in length with several record stands and three record players together with the necessary earphones; behind the counter there was a loudspeaker. Records were played on request over the earphones, but could also be played over the loudspeaker if so desired. On two occasions four protected works on the AKM lists were played without authorization although there were no customers at the record bar at the time. The music was audible within a range of approximately 10 metres. In particular it could be heard by customers in other sections on the first floor of the store. Following proceedings by the AKM, the store was forbidden by means of interim injunction to allow any person on its premises, by means of mechanical reproduction of records, to

Wiener Volksgarten, Theodor Meissl's stories collected under the title of *Bummel durch Alt-Wien*, Friedrich Schögl's stories *Aus Alt- und Neu-Wien*, and to no small extent from *Burgtheater* actor Hennings's lectures on art and the series of stories by Otto Stradal that were being published under the collective title of *O du mein Wien*. There were also the stories by Siegfried Weyr that formerly appeared in the *Kurier* and were subsequently published in the *Kronzeitung*. It was held that the public did not make any distinction between walks "through Vienna, round Vienna etc." and "Viennese walks", and that "Viennese walks" was the generic term for all such stories.

¹⁹) OGH 17.12.1963, 9 Os 281/62, *OeBl.* 1964, p. 21.

²⁰) OGH 20.11.1962, 4 Ob 322/62, *OeBl.* 1963, p. 47; *JBl.* 1963, p. 381. I cannot give any analysis of this case because no details are available concerning the organization and management system in question. However, I find the grounds given for the decision somewhat unfortunate in that they equate an individual intellectual creation with an "artistic creation". This is wrong from the viewpoint of the wording of the Copyright Act, which distinguishes between works of literature and of art, as well as from the viewpoint of everyday language in which science is certainly not placed under the blanket heading of art.

²¹) OLG Vienna, 7.11.1961, 1 R 271/61, *OeBl.* 1962, p. 58.

²²) OLG Vienna, 30.8.1962, 2 R 252/62, *OeBl.* 1963, p. 34.

²³) OGH 12.2.1965, 4 Ob 303/65, *OeBl.* 1965, p. 76.

play or cause to be played any work that was on the AKM's lists owing to the membership of the author, composer or publisher in the AKM or a foreign society of authors associated with the AKM by a reciprocal agreement, except in the case of public performance designed to acquaint individual customers of the record bar in the premises of the defendant company with records or with appliances for their use. It was ruled that the department store had exceeded the right of free use of works granted under Article 56 of the Copyright Act²⁴). It was not necessary to play records when there were no customers present who were interested in records or in appliances for their use. Free use of works applied only where it was necessary to sell a product to individual and specific customers. Publicity performances for an unspecified group of customers were not covered by this right²⁵).

4. Right to use works and authorization to use works

The P. publishing house, in the Federal Republic of Germany, owns all rights to use the works it prints and publishes. In January 1959 it granted an associate company "the *sole distribution and delivery rights* with regard to use of its works throughout Austria". The private plaintiff undertook, *inter alia*, "to be responsible in all respects for delivery and distribution in Austria and for immediate elimination of any defects noted". The P. publishing house, for its part, agreed to inform all customers in Austria of the sole distribution rights granted to its associate by means of an appropriate reference in its publications. The owners of a newspaper distribution firm in Vienna, who were dissatisfied with the associate company's delivery facilities, obtained P.'s publications either direct or from other distributors in Germany and sold them in Austria, although they were aware of the sole distribution and delivery rights granted by P. In proceedings instituted against the two owners of the newspaper distribution firm concerned the Supreme Court decided that a *locally restricted exclusive right to use works* was permissible. It stated that, apart from practical requirements and the logical consideration that the exclusive character of use of works and the geographical restriction of such use were mutually compatible, this opinion was specifically supported by Article 16, para. 3, of the Copyright Act, dealing with the use of distribution rights in the case of a geographically restricted exclusive right of distribution²⁶). In view of the grounds adduced in the decision by the Court of first instance (which is not of interest), the Supreme Court further stated that even an author who had not forfeited his rights by assigning the right

²⁴) The wording of this provision is as follows: "Art. 56. — (1) In business enterprises which produce or sell image or sound recordings, such recordings may be used for public delivery, performance and exhibition of the works recorded thereon insofar as necessary to demonstrate such recordings and the appliances used therewith to their customers. (2) The same shall apply to the use of radio broadcasts for the public reproduction of a work by means of loudspeaker or other technical contrivances in business enterprises which manufacture or sell radio appliances. (3) Paragraph (1) shall not apply to the use of an image or sound recording which has been produced or distributed in violation of an exclusive right to multiply or distribute the work recorded thereon."

²⁵) OGH 11.9.1962, 4 Ob 338/62, *OeBl.* 1963, p. 35; *JBl.* 1963, p. 155; *Schulze*, No. 28.

²⁶) OGH 15.6.1962, 9 Os 94/62, *OeBl.* 1963, p. 13; *EvBl.* 1962, No. 512; *SSr.* XXXIII 35; *Schulze*, No. 26. See Peter: *Das österreichische Urheberrecht*, p. 66, note 11.

of use but was merely restricted in the enjoyment of that right was required to refrain from exploitation of the work if the person entitled to use of the work had acquired an exclusive right in that regard. In this connection the author was in no way different from any other third party against whom the right of use operated as an exclusive right. The person having the right of use thus enjoyed full protection under civil and criminal law in common with the author.

5. Related rights

A. Performing artists

In 1963 a recording company issued a record containing 16 songs by the composer *Hermann Leopoldi*, who died on June 25, 1959. The composer sings his own songs on this record — in certain cases together with a female singer — and also provides the piano accompaniment. The record had been produced from a tape recording by the Austrian broadcasting organization which had been subsequently handed over to the female singer, who in turn had supplied it to the recording company. Before making the records the company had obtained authorization for use of works from the Austro-Mechana agency, but had failed to request the permission of Hermann Leopoldi's heirs to use their rights in the performance. The heirs demanded that the record company should refrain from recording, reproducing and distributing the listed works performed either wholly or in part by Hermann Leopoldi and should destroy any records containing such performances. The defence pleaded that the suit had been brought in ill faith because the plaintiffs were entitled to additional royalties for such record, but this objection has *not yet* been accepted²⁷⁾. The Supreme Court observed that this objection could not be accepted unless the defendants were able to prove that the only reason for the refusal of authorization was that it was intended to harm the defendants' interests²⁸⁾.

²⁷⁾ The female singer was co-defendant.

²⁸⁾ OGH 20.5.1965, 4 Ob 321, 322/65, *OeBl.* 1965, p. 153. The question of whether the female singer can require Hermann Leopoldi's heirs to seek her authorization with a view to use of the performances, in accordance with Article 11 of the Copyright Act (which can be "appropriately" applied to artists' performances under Article 67, para. 2), cannot really be decided yet. Article 11 of the Copyright Act should read as follows with regard to performing artists (cf. Peter, *op. cit.*, p. 172): "Art. 11. — (1) Where several persons have collaborated as soloists or as artistic director in recitations or performances recorded on visual or sound fixations, in such a manner that the result of their contributions make an indivisible whole, the exploitation rights in the recording on a visual or sound fixation shall belong jointly to all those who participated in the making of the recording as soloists or as artistic director. (2) Each of those who participated in the making of the recording as soloists or as artistic director, as defined in para.(1), shall be severally entitled to institute court action for infringement of the exploitation rights in the recitation or performance recorded on a visual or sound fixation. Any alteration or use of the recording on a visual or sound fixation shall require the agreement of all those who participated in making the recording as soloists or as artistic director. Where one of them refuses his authorization without a sufficient reason, each of the other participants, whether they participated as soloists or as artistic director, may file a complaint to obtain such authorization. Where the defendant is not subject to the general jurisdiction of any court in this country, the courts whose circuit includes the First Municipal District of Vienna shall have jurisdiction. (3) The combination of a recitation or of a performance recorded on a visual or sound fixation, with a recitation or performance of a different nature — such as a combination of the recorded performance of a musical work with a work expressed in words or a cinematographic work — shall not in itself create existence of a community of interest amongst those who have participated in recitations or in performances as soloists or as artistic director." — In the same decision the Supreme Court also referred to the provision contained in regulations governing

B. Photographs

The *enlargement and colouring* of photographs produced by another party constitutes an infringement of the producer's right of reproduction, unless a case of free use or the special situation described in Article 75²⁹⁾ of the Copyright Act can be proved. The fact that the photograph may bear *no indication* of the existence of such protection is of no legal significance³⁰⁾.

6. Protection of personality through the Copyright Act

Right to one's own image

A weekly magazine, published on March 8, 1964, contained a whole-page article making various allegations under the headings of "Ex-municipal doctor of the town of K. arrested: abortion and pistol toting in fun" and "Following arrest of ex-municipal doctor: K. divided into two camps — abortion and pistol toting in fun". A photograph was also printed of a man resting on a pile of tree trunks, allegedly the man against whom the accusations were made, with the caption: "Snapshot by a dear friend: the doctor rests after his carouse". The person thus accused demanded that the publisher of the magazine cease the public distribution of pictures in which he was shown sleeping out of doors, and he also claimed compensation. The publisher objected that the picture published did not come within the terms of Article 78 of the Copyright Act³¹⁾ since the plaintiff could not be recognized on the picture printed. This objection was overruled. It was not possible to equate a "picture" with a "portrait" as the defendant wished because, for one thing, present legislation had abandoned the expression "portrait" contained in Article 13 of the 1895 Copyright Act (*RGBl.* No. 197). Moreover, the defendant's claim that a picture as defined in Article 78 of the Copyright Act could be said to exist only if the features of the person represented were recognizable, was neither semantically justifiable, nor based on law. Even if a representation of a person showed him from behind or if his features were in some way obscured it remained a picture of that person. However, in view of the fact that the law referred to "legitimate interests of the person represented", Article 78 could not apply unless

civil proceedings whereby the party found in the right must demonstrate its justified interest in publication of the judgment at the primary level of jurisdiction by means of appropriate declaration and evidence. The Court also dealt with the relevant question of the validity of claims for compensation based on the Copyright Act.

²⁹⁾ This provision reads as follows: "Art. 75. — (1) Unless otherwise agreed, the person ordering a photographic portrait and his heirs, as well as the person represented and, after his death, his lineal descendants and surviving spouse, may make single copies of such photograph taken upon order or cause them to be made by another even for compensation; but a photographic process may be used only where [the aforesaid persons] cannot procure copies produced by such process from the person entitled to the rights of exploitation, or can do so only with inordinate difficulties. (2) Copies produced under the authorization of paragraph (1) may be distributed gratuitously." — Investigation is not ordered with a view to establishing the existence of exceptional circumstances even in criminal proceedings unless the accused makes assertions to this effect (OGH 23.1.1964, 9 Os 182/63, *OeBl.* 1964, p. 105).

³⁰⁾ OGH 23.1.1964, 9 Os 182/63, *OeBl.* 1964, p. 105; *JBl.* 1964, p. 374.

³¹⁾ This reads as follows: "Art. 78. — (1) Portraits of persons may not be exhibited in public or be distributed in any manner which would make them available to the public, if to do so would violate legitimate interests of the person represented or, if he died without having permitted or ordered them to be made public, of a close relative. (2) The provisions of Articles 41 and 77, paragraphs (2) and (4), shall apply analogously."

it could be recognized who the person represented was, since otherwise it was impossible to establish whether his legitimate interests had been violated. The law did not demand that it should be possible to distinguish the person represented from the picture and that other circumstances such as the accompanying text should be discounted in showing who the person was. Not only the picture itself but also the method of distribution and the circumstances of its reproduction had to be taken into consideration in deciding whether the distribution of the picture violated the legitimate interests of the person represented³²⁾ as well as in deciding who was represented³³⁾.

The following case is of particular importance for the protection of the personality in practice: a weekly magazine published a front-page article under the heading: "Hit-and-run driver. Who was at the wheel? Lawyer Dr. H. under serious suspicion. Two witnesses: it was a man driving". Next to this headline, at the top of page 1, there was a picture showing Dr. H. as defence counsel in a criminal court. This picture bore the caption: "Lawyer Dr. H. is directly involved in the investigations into a case of hit-and-run driving". A week later the next number of the magazine contained a front-page article headed: "Direct charges against Dr. H.". According to the paper's account, there was an accident on the S. national highway on the evening of November 18, 1962, in which a moped rider had been run over and seriously injured by Dr. H.'s car. It was reported that the driver had not stopped but that his registration number had been noted by two witnesses. Dr. H. had stated to the police that it was his companion Elfriede D. who had been driving the car, while he himself had been asleep and had not noticed any accident. However, the two witnesses maintained that a man had been driving the car. The paper added to this account of the facts a specific statement to the effect that there was a strong likelihood of hit-and-run driving on the part of Dr. H. and that the police had charged him not only with that offence but also with conspiring to deceive the authorities by causing Elfriede D. to give false evidence. The paper added that further events in the case would be reported. The charges against Dr. H. were withdrawn following preliminary investigation. Dr. H. then demanded that the owner, publisher and printer of the magazine should be forbidden to distribute pictures of him connected with descriptions of the events of November 18, 1962, and further sued for damages. In finding in favour of the plaintiff, the Court stated that a picture of the plaintiff taken in other circumstances had been published in the present case on the front page of the magazine without the plaintiff's consent in order to support what was merely a suspicion of hit-and-run driving expressed by the police.

In this way it had been intended to arouse the interest of a larger public in this case of alleged hit-and-run driving than would have been possible without the inclusion of a picture of a person exposed to the public attention by virtue of his professional activities. There was obvious intent on the part

³²⁾ See *Le Droit d'Auteur*, 1962, p. 205, at the bottom of the left-hand column.

³³⁾ OGH 20.10.1964, 4 *Ob* 342/64, *OeBl.* 1965, p. 49; *EvBl.* 1965, No. 148.

of the publisher to lead the reader to conclude that the plaintiff was in fact guilty of offences of a particularly reprehensible nature for a lawyer, namely of hit-and-run driving and incitement to perjury. Even if the picture of the plaintiff had no actual distorting effect, the close connection between the picture and the text and the sensational presentation meant that in the particular instance the border between reasonable reporting and violation of the legally protected interests of free personality had been overstepped³⁴⁾. It was incorrect to maintain that the accompanying text itself had to constitute a punishable offence in order that the publication of a picture in the same connection should be declared wrongful. Publication of the picture of a person who had fortuitously come under suspicion of having committed a punishable offence was liable to infringe legitimate interests if the accompanying text threw suspicion on that person, representing that person as being directly suspected of having committed the act in question, even if the integrity of personal honour were not compromised or some other similar offence committed by such publication. Even though the investigating police may have expressed certain views at the time, this did not entitle the defendant to publish a picture of the plaintiff to promote the further dissemination of a suspicion that was finally revealed to be ungrounded. This unjustified slander against a lawyer violated his lawful interests. Nor was it considered possible to refer to the provision of Article 41 of the Copyright Act in favour of the defendant's case³⁵⁾. This waives the force of copyright law in instances where a work is used for evidence in proceedings before the courts or other public agencies or for purposes of the administration of criminal justice and public security. The explanatory comments³⁶⁾ on the article in question were held to show that it was meant to cover such instances as the duplication and circulation of a picture in an arrest warrant or the pursuit of a dangerous mental patient who had escaped from an institution. Free use of works had to apply in specific circumstances in the interests of justice and administration, where the private interests of the author came second to the public interest. However, the court ruled that Article 41 was not meant to cover revelations by the press in connection with criminal cases. Moreover, in the instance concerned there had been no need for the press to assist in clarifying the circumstances of this highway offence, since the police were already informed of the details concerning the car and its occupants thanks to the evidence of the two eye witnesses. The Supreme Court's stand on this question may therefore be summarized as follows: Publication of the picture of a person who has fortuitously come under suspicion of having committed a criminal offence is liable to violate

³⁴⁾ With reference to the decisions of the OGH of 21.9.1955, 3 *Ob* 443/55, *OeBl.* 1957, p. 12; *SZ* XXVIII 205; *Schulze*, No. 5, and of 13.12.1960, 4 *Ob* 357/60, *OeBl.* 1961, p. 36 (see *Le Droit d'Auteur*, 1962, p. 205, left-hand column).

³⁵⁾ This article, together with its title, reads as follows: "Free Uses of Works in the Interest of the Administration of Justice and Public Administration. Art. 41. — The use of works for purposes of evidence in proceedings before the courts or other public agencies, and for purposes of the administration of criminal justice and public security, shall not be precluded by the existence of a copyright."

³⁶⁾ As reproduced by Peter, *op. cit.*, p. 558.

the legitimate interests of that person if the text accompanying the picture places the person represented in the centre of suspicion and implies that the person is directly suspected of having committed an offence, even if such text does not in itself constitute a punishable action, and in particular an infringement of the inviolability of honour; revelations by the press in connection with criminal cases are not covered by the provisions of Article 41 of the Copyright Act relating to free use of works in the interest of the administration of justice and the public administration³⁷⁾.

7. Protection of fair competition on the basis of the Copyright Act

Protection of titles³⁸⁾

The use of the title *Wiener Spaziergänge*³⁹⁾ which is that of a serial publication and a book, to designate a gramophone record of Viennese songs does not involve any danger of confusion⁴⁰⁾, nor does the title for a newspaper of *Abend-Zeitung* (Evening Newspaper — a newspaper that used to be published in Vienna) involve any such possibility with regard to the Munich *Abendzeitung* in view of the difference in origin, make-up, price, area of circulation and readership⁴¹⁾.

The question of similarity between two designations giving rise to confusion is a legal issue that can be settled by the courts without consulting an expert⁴⁰⁾.

8. Violation of the law

A. Protection under civil law⁴²⁾

(1) Restraining injunction

The question of the *danger of repetition* — such danger being an essential requirement for the issue of a restraining injunction — is judged according to the same criteria under the Copyright Act as under the Unfair Competition Act. In both circumstances the terms of reference have to be interpreted fairly broadly: the danger of repetition has to be assumed to exist as soon as the law has been violated on one occasion and can only be ruled out if the injured party is protected by an acknowledgment that can be put into immediate effect or if the accused party can provide evidence that no repetition will occur⁴³⁾. It may be assumed that the violation will not be repeated, for instance, if the business has been sold or if the person concerned has quit the business⁴⁴⁾.

Similarly, the onus of proof with regard to the likelihood of repetition is apportioned under the Copyright Act accord-

ing to the same criteria as apply under the Unfair Competition Act⁴⁵⁾ 46).

(2) Actions for appropriate compensation

In the case of breach of contract — in the specific instance, undue use of an architect's preliminary plan for a building — the author has a choice between claiming appropriate compensation or restitution of earnings forfeited⁴⁷⁾.

(3) Damages⁴⁸⁾

The sum of 7,000 schillings was not found excessive as damages in respect of immaterial injury in the case of the lawyer Dr. H.⁴⁹⁾ 50).

B. Protection under criminal law⁵¹⁾

A criminal sanction cannot be brought successfully against a person having only a small share in the ownership of an automatic public record player and not commercially responsible for the use of that machine on the grounds of failing to ensure immediately — if necessary through forceful immobilization of the machine — that protected works are no longer performed by the said machine, even if a legal injunction has been issued to prevent further such performance⁵²⁾.

If the proprietor of a café believes, owing to his ignorance of the law, that he has received AKM authorization for use of works with regard to public display of television transmissions by virtue of payment of a sum claimed by the AKM, this is to be treated as an innocent mistake⁵³⁾.

A plaintiff under private law must be granted authorization to publish the court's verdict if it is judged that he has legitimate interest in such publication⁵⁴⁾.

The co-producer of a photograph is formally entitled to lodge a private suit against another co-producer in respect of violation of his rights⁵⁵⁾.

The question of whether a particular situation constitutes a violation of the Copyright Act is a legal matter coming within the exclusive competence of the courts without any need for consultation of experts⁵⁶⁾.

45) OGH 20.10.1964, 4 Ob 339/64, OeBl. 1965, p. 49.

46) Incidental mention may be made of the following provision of civil procedure: if the defendant introduces a counter-plea against the plaintiff while proceedings for an injunction are pending, this plea cannot cancel out the plaintiff's interest in obtaining a court ruling unless both petitions concern the same purpose; this is not the case if the defendant opposes the plaintiff's plea that non-existence of infringement of copyright be recognized merely by applying for an injunction on the grounds of infringement of his copyright (OGH 12.3.1963, 4 Ob 307/63, OeBl. 1964, p. 36).

47) OGH 22.12.1964, 4 Ob 350/64, OeBl. 1965, p. 78.

48) See also under "(2) Actions for appropriate compensation", above.

49) See also section 6 above.

50) As a further incidental reference to civil procedural matters: any claim to appropriate compensation must specify the amount claimed (OGH 20.10.1964, 4 Ob 339/64, OeBl. 1965, p. 49).

51) See also section 4 above.

52) OGH 6.11.1962, 11 Os 150/62, OeBl. 1963, p. 36; OeRZ 1963, p. 13; SSr. XXXIII 60; Schulze, No. 29.

53) OGH 30.3.1962, 9 Os 37/62, EvBl. 1962, No. 382; Schulze, No. 24.

54) OGH 23.1.1964, 9 Os 182/63, OeBl. 1964, p. 105.

55) OGH 23.4.1963, 9 Os 347/62, OeBl. 1963, p. 115; EvBl. 1963, No. 342.

56) OGH 23.1.1964, 9 Os 182/63, OeBl. 1964, p. 105; JBl. 1964, p. 374.

37) OGH 17.3.1964, 4 Ob 349/63, OeBl. 1964, p. 129; JBl. 1964, p. 423.

38) The provision in question reads as follows: "Art. 80. — (1) For purposes of trade, the title or other designation of a work of literature or art or the format of copies thereof may not be used for another work in a manner that is capable of causing confusion. (2) Paragraph (1) shall also apply to works of literature and art which do not enjoy copyright protection under this Act."

39) Cf. above, Section 1.

40) OGH 17.3.1964, 4 Ob 356/63, OeBl. 1964, p. 102.

41) OLG Vienna 20.4.1961, 1 R 98/61, OeBl. 1962, p. 15.

42) See also section 4 above.

43) OGH 11.9.1962, 4 Ob 338/62, OeBl. 1963, p. 35; JBl. 1963, p. 155; Schulze, No. 28.

44) OGH 7.4.1964, 4 Ob 352/63, OeBl. 1964, p. 75.

9. Protection of name under the Civil Code

An industrialist named Georg Schönborn-Buchheim brought an action demanding that the sole proprietor of a firm designated as *Schönborn-Verlag Dr. Franz G.*, with registered offices at Schönborngasse 13, Vienna VIII, should refrain from further use of the title *Schönborn-Verlag* to designate his enterprise and should amend the designation within 14 days in such a manner as to avoid any abuse of the name Schönborn. The Supreme Court ruled that this plea was justified.

The Court ruled that wrongful use of a name such as could be banned under Article 43 of the Civil Code, upon the plea of the party injured by such wrongful use, was any use not based on actual right to the name or not authorized by the legitimate bearer of such name. In this connection it was immaterial whether the whole name or only a single essential element of the name was used. A name was not only used in cases where a person applied an extraneous name to his own person; the person designated by the name was also protected against unauthorized assertions of a relationship between the person thus designated and objects or third parties. A name was used by any person thereby designating a person or the results of a person's work, in particular goods produced by such person. This also covered the use of the name as a commercial style.

In order for protection of the name to be claimed under Article 43 of the Civil Code, however, the bearer of the name had to be harmed by the unauthorized use of the name, that is to say, he had to be found to have an interest in the non-use of his name. As regards the interest that a person might have in the non-use by another of a name rightfully belonging to that person — irrespective of whether this was a frequently used name or the only instance in use — the criterion was that the identification offered by the name should not mislead by permitting a connection with some other person, so that the unauthorized use of the name should not give rise to any confusion with the person entitled to bear the name, any assumption of a non-existent family relationship, or the attribution of other parties' actions to the advantage or disadvantage of the person entitled to the name or his dependants. Thus, although it was not absolutely essential that there should be a danger of confusion, the appearance would have to be given that immaterial or economic connections existed between the entitled person and the object or person named, if Article 43 of the Civil Code were to be applied. However, the most crucial point was the effect on others, namely that the person or action designated should be regarded as relating to the entitled person.

Taking these basic principles into account, the case in question would appear as follows: the use of the word "Schönborn" in the designation of the defendant's enterprise was unlawful, because the name was one to which the defendant was not entitled by natural right and whose use had not been authorized by the entitled person. However, it was also essential to prove that the entitled person had an interest in non-use of his name. The fact that the plaintiff, who called himself "Schönborn" in the action, was actually called "Schönborn-Buchheim" did not alter his right to protest against use of the name "Schönborn" because, as already mentioned, it

makes no difference whether the whole name is used or only an essential part of it, and moreover the "Schönborn-Buchheim" family was only one branch of the Schönborns.

It could be affirmed on behalf of the defendant that someone visiting the defendant's publishing house in the Schönborn-Gasse would not necessarily have the impression that there were any economic connections or other relationship between the plaintiff and the *Schönborn-Verlag*. By seeing that the defendant's publishing house was situated in the Schönborn-Gasse the visitor could realize that it was named after its location. But with regard to the effect of the use of the name on others, in the case of a publishing house it was not only — nor even primarily — a question of the impression created on visitors. What mattered most was the impression liable to be created among persons receiving the products of that firm, since it is inherent in the business of a publishing house that its products should be distributed in different parts of the world. It was therefore basically incorrect to refer by way of comparison to cases of the use of names based on street location for garages, cafés, restaurants or cinemas. Persons reading the products of a publishing house generally had no idea of where they had been published, because the address of the publishing house was either not indicated at all or was not shown in a prominent place.

The crux of the matter was therefore to decide whether the use of the word "Schönborn" in the designation of the publishing house caused the reader to imagine that there were any economic connections or other relationship between the plaintiff's family and the defendant. This question could only be answered in the affirmative. Admittedly the name "Schönborn" was not unique as a designation; an inquiry to the Viennese Central Registration Office made by the Court of first instance had established that, apart from the plaintiff and the members of his family, there were a certain number of other persons of the same name registered as resident in Vienna. However, the name of the former aristocratic line of the Schönborns was so well-known that any reader was liable first of all to think of that lineage. There might also be people who had never heard of the Counts of Schönborn, and therefore did not think of any such connection as mentioned. What had to be considered here, however, was not the possible impression created by the use of a name, but the impression that would arise among a not unimportant section of the public. The fact that the word "Schönborn" might also be considered as an invented name was extraneous to the issue, because if a word used at the same time by another as his name were used as a designation or as an invented name, rights in the name would still be infringed unless such use for purposes of identification or as an invented name were common practice or unless it could be proved that the word had been used in that manner. There was no question of any such circumstances in the present instance.

Assuming, therefore, that the use of the word "Schönborn" in the designation of the defendant's publishing house was unlawful and that the plaintiff's interests had been infringed, this offence under Article 43 of the Civil Code was in no way affected by the fact that the defendant had added the words "Dr. Franz G." to the style of his firm. Persons read-

ing works published by the defendant might still have the impression that there were economic connections or some other relationship between the publishing house and the Schönborn family, for example that the defendant was the heir to a publishing house that had once belonged to the Schönborn family or that there was a business connection between the defendant and a person entitled to use the name Schönborn.

The Supreme Court's findings may therefore be summarized as follows:

(a) Any use of a name is unauthorized if it is not based on natural right or if it is not permitted by the person entitled to the name, irrespective of whether the whole name or only an essential element of the name is used. The bearer of the name is also protected against unauthorized assertions claiming personal connections between him and other persons or things, particularly the use of his name to designate a business with which he has no connection.

(b) It must always be acknowledged that the bearer of the name has an interest in the non-use of his name by others if the impression is created that there are economic connections or some other relationship between him and the person or object designated, even if there is no direct danger of confusion. The decisive element is the impression that may be created by the use of the name among a not inconsiderable section of the public.

(c) The use of a word which is another person's name for purposes of identification or as an invented name constitutes infringement of entitlement to name unless such use is common practice⁵⁷).

In a later decision the Supreme Court supplemented the ruling quoted above under (b) by stating that the name of a person is also used in an unauthorized manner if the person entitled to a name is connected with the person or thing designated through wrongful inclusion of his name in the *list of members of an association* to which he does not belong⁵⁸).

Legal entities and trading styles also enjoy protection⁵⁸).

⁵⁷) OGH 7.11.1962, 5 *Ob* 243/62, *OeBl.* 1963, p. 32; SZ XXXV 110.

⁵⁸) OGH 10.12.1964, 4 *Ob* 313/64, *OeBl.* 1965, p. 128. In this decision the OGH also ruled that the AKM is obliged under Article XLII of the EGZPO to provide the GEMA with details of all publisher's royalties received both in Austria and from abroad in respect of performance of specific works on the GEMA's repertoire.

10. Miscellaneous

It is not incompatible with correct custom for the composer of an operetta to *assign part of all future royalties* in respect of that work to the co-director of the firm possessing the sole publishing, distribution and performing rights in that work, with the agreement of the publishing firm in return for the undertaking to arrange for performance of the operetta in a specific theatre; such an agreement may also be bequeathed by the assignee⁵⁹).

The author's claim to royalties on the basis of a publishing agreement in respect of a work created as part of his incidental activities is subject to prescription after 30 years⁶⁰).

If an author arranges for books to be printed by a printing firm the following contractual provisions apply:

(a) Approval of a form of print by the person ordering the goods (the press proof) presupposes an explicit statement by the customer, whether verbal or written, in accordance with practice in the printing trade. If the corrected proofs are returned to the printer without comment this is not regarded as equivalent to approval of printing subject to incorporation of corrections thus indicated if a mistake not corrected on the actual proofs has been brought to the notice of an authorized representative of the printers by telephone shortly beforehand.

(b) Minor printing errors such as frequently occur in such instances whose correction must be permitted in accordance with custom and after whose correction the work is correct are not essential defects providing grounds for departure from the contract.

(c) After receiving the completed work, even if it contains defects, the customer may not refuse payment on grounds of failure to provide satisfaction⁶¹).

Dr. Robert DITTRICH
Deputy Director
Ministry of Justice, Vienna

⁵⁹) OGH 26.5.1964, 4 *Ob* 315/64, *OeBl.* 1964, p. 104.

⁶⁰) OGH 27.6.1962, 1 *Ob* 135/62, *OeBl.* 1963, p. 37; *Schulze*, No. 27.

⁶¹) OGH 15.6.1962, 8 *Ob* 185/62, *OeBl.* 1963, p. 14; *Schulze*, No. 25.

Corrigendum

In the May issue, on page 134, the 17th line of the 2nd column should be cancelled and replaced by the following line:

“and 18, 1964, the defendant undertook to act in accord-”

NEWS ITEMS

State of Ratifications and Accessions to the Conventions and Agreements affecting Copyright on July 1, 1966

1. International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations (Rome, October 26, 1961)

Contracting States	Deposit of Instrument	Coming into Force	Ratification (R) or Accession (A)
Brazil	June 29, 1965	September 29, 1965	R
Congo (Brazzaville) ¹⁾	June 29, 1962	May 18, 1964	A
Czechoslovakia ¹⁾	May 13, 1964	August 14, 1964	A
Denmark ¹⁾	June 23, 1965	September 23, 1965	R
Ecuador	December 19, 1963	May 18, 1964	R
Mexico	February 17, 1964	May 18, 1964	R
Niger ¹⁾	April 5, 1963	May 18, 1964	A
Sweden ¹⁾	July 13, 1962	May 18, 1964	R
United Kingdom ¹⁾	October 30, 1963	May 18, 1964	R

¹⁾ The instruments of ratification or accession deposited with the Secretary-General of the United Nations were accompanied by "declarations". As to Congo (Brazzaville), see *Le Droit d'Auteur (Copyright)*, 1964, p. 127; as to Czechoslovakia, see *ibid.*, 1964, p. 110; as to Denmark, see *Copyright*, 1965, p. 214; as to Niger, see *Le Droit d'Auteur (Copyright)*, 1963, p. 155; as to Sweden, see *ibid.*, 1962, p. 138; as to United Kingdom, see *ibid.*, 1963, p. 244.

2. Universal Copyright Convention (Geneva, September 6, 1952)

Contracting States	Deposit of Instrument	Coming into Force	Ratification (R) or Accession (A)	Protocols adopted
Andorra	30 XII 1952 ¹⁾ 22 I 1953 ²⁾	16 IX 1955	R	2, 3 1, 2, 3
Argentina	13 XI 1957	13 II 1958	R	1, 2
Austria	2 IV 1957	2 VII 1957	R	1, 2, 3
Belgium ³⁾	31 V 1960	31 VIII 1960	R	1, 2, 3
Brazil	13 X 1959	13 I 1960	R	1, 2, 3
Cambodia	3 VIII 1953	16 IX 1955	A	1, 2, 3
Canada	10 V 1962	10 VIII 1962	R	3
Chile	18 I 1955	16 IX 1955	R	2
Costa Rica	7 XII 1954	16 IX 1955	A	1, 2, 3
Cuba	18 III 1957	18 VI 1957	R	1, 2
Czechoslovakia . .	6 X 1959	6 I 1960	A	2, 3
Denmark	9 XI 1961	9 II 1962	R	1, 2, 3
Ecuador	5 III 1957	5 VI 1957	A	1, 2
Finland	16 I 1963	16 IV 1963	R	1, 2, 3
France ⁴⁾	14 X 1955	14 I 1956	R	1, 2, 3
Germany (Fed. Rep.) ⁵⁾ . .	3 VI 1955	16 IX 1955	R	1, 2, 3
Ghana	22 V 1962	22 VIII 1962	A	1, 2, 3
Greece	24 V 1963	24 VIII 1963	A	1, 2, 3
Guatemala	28 VII 1964	28 X 1964	R	1, 2, 3
Haiti	1 IX 1954	16 IX 1955	R	1, 2, 3
Holy See	5 VII 1955	5 X 1955	R	1, 2, 3
Iceland	18 IX 1956	18 XII 1956	A	
India	21 X 1957	21 I 1958	R	1, 2, 3
Ireland	20 X 1958	20 I 1959	R	1, 2, 3

Contracting States	Deposit of Instrument	Coming into Force	Ratification (R) or Accession (A)	Protocols adopted
Israel	6 IV 1955	16 IX 1955	R	1, 2, 3
Italy	24 X 1956	24 I 1957	R	2, 3
Japan	28 I 1956	28 IV 1956	R	1, 2, 3
Laos	19 VIII 1954	16 IX 1955	A	1, 2, 3
Lebanon	17 VII 1959	17 X 1959	A	1, 2, 3
Liberia	27 IV 1956	27 VII 1956	R	1, 2
Liechtenstein . . .	22 X 1958	22 I 1959	A	1, 2
Luxembourg	15 VII 1955	15 X 1955	R	1, 2, 3
Malawi	26 VII 1965	26 X 1965	A	
Mexico	12 II 1957	12 V 1957	R	2
Monaco	16 VI 1955	16 IX 1955	R	1, 2
New Zealand	11 VI 1964	11 IX 1964	A	1, 2, 3
Nicaragua	16 V 1961	16 VIII 1961	R	1, 2, 3
Nigeria	14 XI 1961	14 II 1962	A	
Norway	23 X 1962	23 I 1963	R	1, 2, 3
Pakistan	28 IV 1954	16 IX 1955	A	1, 2, 3
Panama	17 VII 1962	17 X 1962	A	1, 2, 3
Paraguay	11 XII 1961	11 III 1962	A	1, 2, 3
Peru	16 VII 1963	16 X 1963	R	1, 2, 3
Philippines ⁶⁾ . . .	19 VIII 1955	19 XI 1955	A	1, 2, 3
Portugal	25 IX 1956	25 XII 1956	R	1, 2, 3
Spain ⁷⁾	27 X 1954	16 IX 1955	R	1, 2, 3
Sweden	1 IV 1961	1 VII 1961	R	1, 2, 3
Switzerland	30 XII 1955	30 III 1956	R	1, 2
United Kingdom ⁸⁾	27 VI 1957	27 IX 1957	R	1, 2, 3
United States of America ⁹⁾ . . .	6 XII 1954	16 IX 1955	R	1, 2, 3
Yugoslavia	11 II 1966	11 V 1966	R	1, 2, 3
Zambia	1 III 1965	1 VI 1965	A	

Total: 52 States

¹⁾ Date upon which an instrument of ratification of the Convention and of Protocols 2 and 3 was deposited on behalf of the Bishop of Urgel, co-Prince of Andorra.

²⁾ Date upon which an instrument of ratification of the Convention and of Protocols 1, 2 and 3 was deposited on behalf of the President of the French Republic, co-Prince of Andorra.

³⁾ The Director-General of Unesco received from the Belgian Government a notification of application of the Convention and Protocols 1, 2 and 3 to the Trust Territory of Ruanda-Urundi, effective from April 24, 1961.

⁴⁾ On November 16, 1955, France notified the Director-General of Unesco that the Convention and the three Protocols apply, as from the date of their entry into force in respect of France, to Metropolitan France and to the Departments of Algeria, Gnadoupe, Martinique, Guiana and Rénnion.

⁵⁾ Following the deposit of the instrument of ratification, a statement was made on June 3, 1955, on behalf of the Federal Republic of Germany: "The Government of the Federal Republic of Germany reserves the right, after complying with the preliminary formalities, to make a statement regarding the implementation of the Universal Copyright Convention and the additional Protocols 1, 2 and 3 so far as the Land of Berlin is concerned". On September 12, 1955, the Director-General of Unesco received the following declaration made on behalf of the Federal Republic of Germany on September 8, 1955: "The Universal Copyright Convention and Protocols 1, 2 and 3 annexed shall likewise be applied in Land Berlin as soon as the Convention and the annexed Protocols come into force in respect of the Federal Republic of Germany".

6) On November 14, 1955, the following communication was addressed to the Director-General of Unesco on behalf of the Republic of the Philippines: "... His Excellency the President of the Republic of the Philippines has directed the withdrawal of the instrument of accession of the Republic of the Philippines to the Universal Copyright Convention prior to the date of November 19, 1955, at which the Convention would become effective in respect of the Philippines". This communication was received on November 16, 1955. By circular letter of January 11, 1956, the Director-General of Unesco transmitted it to the Contracting States of the Convention as well as to the Signatory States. Observations received from Governments were communicated to the Republic of the Philippines and to other States concerned by circular letter of April 16, 1957.

7) The instrument of ratification deposited on behalf of Spain on October 27, 1954, related to the Convention and the three Protocols. Since Protocols 1 and 3 had not been signed on behalf of Spain, the Director-General of Unesco, by letter of November 12, 1954, drew the attention of the Government of Spain to this fact. In reply, the following communication was addressed to the Director-General of Unesco on January 27, 1955: "I am ... instructed by the Minister of Foreign Affairs to inform you that the Spanish ratification of the Universal Copyright Convention applies solely to the documents in fact signed, viz., the Convention and Protocol No 2...". The States concerned were informed of this communication by circular letter of March 25, 1955.

8) The Director-General of Unesco received notifications from the Government of the United Kingdom concerning the application of the Convention to the Isle of Man, Fiji Islands, Gibraltar and Sarawak (coming into force on March 1, 1962), to Zanzibar, to the Bermudas and North Borneo (coming into force on May 4, 1963), to the Bahamas and the Virgin Islands (coming into force on July 24, 1963), to the Falkland Islands, Kenya, St. Helena and Seychelles (coming into force on January 29, 1964), to Mauritius (coming into force on January 6, 1965), to Bechuanaland, Montserrat and Santa-Lucia (coming into force on May 8, 1966), to Grenada (coming into force on May 15, 1966), to the Cayman Islands (coming into force on June 11, 1966), to British Guiana (coming into force on June 15, 1966).

9) On December 6, 1954, the United States of America notified the Director-General of Unesco that the Convention shall apply, in addition to continental United States, to Alaska, Hawaii, the Panama Canal Zone, Puerto Rico and the Virgin Islands. On May 14, 1957, the United States of America further notified the Director-General of Unesco that the Convention shall apply to Gnam. Notification was received on May 17, 1957.

By letter of November 21, 1957, the Government of Panama contested the right of the Government of the United States of America to extend the application of the Convention to the Panama Canal Zone. By letter of January 31, 1958, the Government of the United States of America asserted that such extension of the Convention was proper under Article 3 of its 1903 treaty with Panama. Copies of the two letters have been communicated by the Director-General to all States concerned.

3. European Agreement concerning Programme Exchanges by Means of Television Films (Paris, December 15, 1958)

Contracting States	Deposit of Instrument	Coming into Force	Signature without Reservation in respect of Ratification (S) or Ratification (R)
Belgium	March 9, 1962	April 8, 1962	R
Denmark	October 26, 1961	November 25, 1961	R
France	December 15, 1958	July 1, 1961	S
Greece	January 10, 1962	February 9, 1962	R
Ireland	March 5, 1965	April 4, 1965	S
Luxembourg	October 1, 1963	October 31, 1963	R
Norway	February 13, 1963	March 15, 1963	R
Sweden	May 31, 1961	July 1, 1961	R
Turkey	February 27, 1964	March 28, 1964	R
United Kingdom	December 15, 1958	July 1, 1961	S

4. European Agreement on the Protection of Television Broadcasts (Strasbourg, June 22, 1960)

Contracting States	Deposit of Instrument	Coming into Force	Signature without Reservation in respect of Ratification (S) or Ratification (R)
Denmark ¹⁾	October 26, 1961	November 27, 1961	R
France	June 22, 1960	July 1, 1961	S
Sweden	May 31, 1961	July 1, 1961	R
United Kingdom ¹⁾	March 9, 1961	July 1, 1961	R

¹⁾ The instruments of ratification were accompanied by "options" in accordance with Article 3, paragraph 1, of the Agreement. As to Denmark, see *Le Droit d'Auteur*, 1961, p. 360; as to United Kingdom, see *ibid.*, 1961, p. 152.

Protocol to the said Agreement (Strasbourg, January 22, 1965)

Contracting States	Deposit of Instrument	Coming into Force	Signature without Reservation in respect of Ratification (S) or Ratification (R)
Denmark	January 22, 1965	March 24, 1965	S
France	January 22, 1965	March 24, 1965	S
Sweden	January 22, 1965	March 24, 1965	S
United Kingdom	February 23, 1965	March 24, 1965	S

OBITUARY

Alphonse Tournier

The legion of defenders of copyright has recently lost one of its bravest generals: Alphonse Tournier, who died on May 14, 1966, in Paris. His departure will be sadly felt within those circles concerned with the protection of intellectual property rights.

It would be most unjust were "swift oblivion, second shroud of the dead", as Lamartine put it (*le rapide oubli, second linceul des morts*), to tarnish the memory of Alphonse Tournier; but in fact this need not be feared, for the gratitude of present and future generations will reflect the remarkable personality of this, in the full sense of the word, "expert".

Alphonse Tournier was one of the most competent and renowned experts in the copyright field and one whose opinions were most respected. His knowledge of legal doctrine, his very special (incomparable) manner of analysing problems, his clear-sighted appreciation of their practical consequences, made this surgeon of legal logic, a man whose opinions became an authority not only in his own country but also, and above all, internationally.

On the eve of the Stockholm Conference for the revision of the Berne Convention, on which he was an invaluable commentator, his death is a heavy blow for intellectual creators whose claims he put forward with precision and, when necessary, with force.

To retrace the career of Alphonse Tournier amounts to a description of the evolution of copyright in France since the 1920s, and more particularly, the evolution of the right of mechanical reproduction, to the development of which he devoted his life. Born on December 11, 1890, to a family of modest circumstances, he completed brilliant secondary and later higher studies. A *licence ès lettres* and a diploma in higher German studies led him to attempt the *agrégation* in Goethe's language, when the first World War interrupted his university career. For his part in the battles of Eparges, the Marne and Verdun, he was mentioned several times in despatches, was awarded the *Croix de guerre* and, on his return to civilian life, the red ribbon for his button-hole.

At that time Alphonse Tournier's life was affected by a certain event: in June 1921, he was made an offer by Mr. Delavenne, President of the General Council of the Seine, to enter the EDIFO company, with responsibility for defending, commercially, the interests of authors, at the time of the first stammerings of the "talking machine" and of records. Grasping the full importance of this new means of reproducing works — and the future was to show the extent to which he

was right — Alphonse Tournier thenceforth devoted himself to the protection of the right of mechanical reproduction, and in 1929, he founded in collaboration with Mr. René Dom-mange and several publishers, the International Bureau for Mechanical Reproduction (BIEM), of which he was, until his death, the eminent Director-General. In this capacity, he took part in various international meetings which marked the adaptation of classical copyright to contemporary requirements and which led to a climate, an atmosphere, a general political situation and a field of action entirely different to those with which the promoters of 1866 were faced. His role at the Diplomatic Conference of Brussels in 1948, and during the preparatory work for the Diplomatic Conference of Stockholm, which will take place in 1967, was remarkable, for he knew how to weigh the arguments of the opposition at their real value, while at the same time ensuring that the legitimate interests of which he was the guardian, were taken into consideration. His work as rapporteur general of the Author's Consultative Committee, created under the auspices of BIRPI in connection with preparations for the Stockholm revision, will most certainly make a contribution to a better understanding of the problems concerned by the plenipotentiaries who will meet in the Swedish capital in 1967.

Alphonse Tournier, moreover, took an active part in the elaboration of the new French Copyright Law, first under the Ministry of Jean Zay, and later, in the years after the war, until the law was voted in 1957. He was Secretary of the Ministerial Committee on Intellectual Property.

Appointed technical adviser of SACEM in 1953, he put life into the *Revue internationale du droit d'auteur (RIDA)* of which he was one of the founders. His fertile pen has left to posterity many articles on doctrine which will always be profitably consulted. His indefatigable activity led him, too, to participate assiduously in the meetings of the International Confederation of Author's and Composer's Societies (CISAC), and to present there many papers which will remain amongst the most valuable articles in the legal archives of the Organisation.

If to adopt the words of Honoré de Balzac in *La Recherche de l'absolu*, "glory is the sun of the dead" (*la gloire est le soleil des morts*), that of Alphonse Tournier will shine for many years in the firmament of international copyright, and it is incontestable that his work will not readily be forgotten.

Claude MASOUYÉ
Counsellor

UNITED STATES. COMMITTEE ON THE JUDICIARY. *Copyright Law Revision. Hearings before Sub-committee No. 3 of the Committee on the Judiciary, House of Representatives, 89th Congress, 1st Session. Serial No. 8.* Washington, U. S. Government Printing Office, 1966. - 3 vol., VIII-2056 p.

VOGEL (Botho). *Die Rechtsbeziehungen zwischen Filmverleiher und Filmtheaterbesitzer im Rahmen der Bezugsbedingungen.* Munich, s. n., 1961. - 120 p. Thesis.

WIPF (Rudolf). *Die Stellung des Filmregisseurs im Urheberrecht.* Zurich, Juris Druck, 1966. - XIX-126 p. Thesis.

* * *

Die Stellung des Filmregisseurs im Urheberrecht [The position of the film director in copyright], by Rudolf Wipf. A volume of 126 pages, 22,5 × 15,5 cm. Juris Druck & Verlag, Zurich, 1966.

This is the work of a young author (his thesis for a doctor's degree); it is based not only on the Swiss legislation, but also on the Berne Convention and the contemporary doctrine and practice in several countries.

In the first part of the book, there is a summary of general ideas on film, its technical characteristics and its legal elements. In the second part, the author gives a survey of various theories concerning the role of the director and that of other persons contributing to the creation of a film. Lastly, in the third part, he proposes certain solutions which should give an answer to the much discussed question of authorship in the sphere of film.

The author maintains the theory according to which the film is a work of collaboration (*Gemeinschaftswerk*). On the other hand, he compares the role of the producer to that of a manufacturer (*Filmindustrial*). He concludes that, among the authors of a film — including the author of the script, the composer of the music, and the director — the latter is the principal creator. Trying to find a solution to the problem of mutual relations between co-authors of a film, he brings forward the idea that there is here a partnership *ex lege*, whose members should — by a legal presumption — authorize the director to represent them generally as co-authors.

Finally, it should be noted that this book also includes an exhaustive bibliography. It can be recommended to all those who are interested in the very topical question of copyright in film. M. S.

CALENDAR

Meetings of BIRPI

Date and Place	Title	Object	Invitations to Participate	Observers Invited
September 26 to 29, 1966 Geneva	Interunion Coordination Committee	Program and Budget of BIRPI	Belgium, Brazil, Ceylon, Czechoslovakia, Denmark, France, Germany (Fed. Rep.), Hungary, India, Italy, Japan, Morocco, Netherlands, Nigeria, Portugal, Rumania, Spain, Sweden, Switzerland, Union of Soviet Socialist Republics, United Kingdom of Great Britain and Northern Ireland, United States of America, Yugoslavia	All other Member States of the Paris Union or of the Berne Union; United Nations
September 26 to 29, 1966 Geneva	Executive Committee of the Conference of Representatives of the Paris Union (2nd Session)	Program and Budget (Paris Union)	Ceylon, Czechoslovakia, France, Germany (Fed. Rep.), Hungary, Italy, Japan, Morocco, Netherlands, Nigeria, Portugal, Spain, Sweden, Switzerland, Union of Soviet Socialist Republics, United Kingdom of Great Britain and Northern Ireland, United States of America, Yugoslavia	All other Member States of the Paris Union; United Nations
September 29 and 30, 1966 Geneva	Council established by the Agreement of Lisbon for the Protection of Appellation of Origin and their International Registration	Preparatory work in relation to the entry into force of the Agreement	All Member States of the Agreement of Lisbon	
October 30 to November 4, 1966 Budapest	East/West Industrial Property Symposium	Discussion of practical questions of industrial property		Open. Registration required

Date and Place	Title	Object	Invitations to Participate	Observers Invited
November 7 to 11, 1966 Geneva	Committee of Experts on a model law for developing countries on marks, trade names, indications of source, and unfair competition	To draft a Model Law on Trademarks for developing countries	<i>Africa:</i> Algeria, Burundi, Congo (Leopoldville), Ethiopia, Gambia, Ghana, Guinea, Kenya, Liberia, Libya, Malawi, Mali, Morocco, Nigeria, Rwanda, Sierra Leone, Somalia, Sudan, Tanzania, Togo, Tunisia, United Arab Republic, Uganda, Zambia <i>America:</i> Argentina, Bolivia, Brazil, Chile, Colombia, Costa Rica, Cuba, Dominican Republic, Ecuador, El Salvador, Guatemala, Guiana, Haiti, Honduras, Jamaica, Mexico, Nicaragua, Panama, Paraguay, Peru, Trinidad and Tobago, Uruguay, Venezuela <i>Asia:</i> Afghanistan, Burma, Cambodia, Ceylon, China (Taiwan), India, Indonesia, Iraq, Iran, Jordan, Korea, Kuwait, Laos, Lebanon, Malaysia, Maldive Islands, Mongolia, Nepal, Pakistan, Philippines, Saudi Arabia, Singapore, Syrian Arab Republic, Thailand, Viet Nam, Yemeu <i>Others:</i> Cyprus, Malta, Western Samoa	United Nations; Council of Europe; European Economic Community; Latin American Free Trade Association; African and Malagasy Industrial Property Office; International Association for the Protection of Industrial Property; International Chamber of Commerce; Inter-American Association of Industrial Property; International Federation of Patent Agents
December 13 to 16, 1966 Geneva	<i>Ad hoc</i> Conference of the Directors of National Industrial Property Offices and Committee of Directors of the Madrid Union	Adoption of the Transitional Regulations of the Madrid Agreement (Trademarks)	All Member States of the Madrid Agreement (Trademarks)	All other Member States of the Paris Union

1967

June 12 to July 14, 1967 Stockholm	Intellectual Property Conference of Stockholm, 1967	(a) General Revision of the Berne Convention (Copyright) (b) Revision of the Paris Convention (Industrial Property) on the question of inventors' certificates (c) Revision of the administrative and final clauses of the Berne and Paris Conventions and of the Special Agreements concluded under the latter (d) Establishment of a new Organization	<i>For (a), (b) and (c):</i> Member States of the various Unions <i>For (d):</i> States Members of the United Nations or any of the UN Specialized Agencies	<i>States:</i> States not members of the Unions [for (a), (b) and (c)] <i>Intergovernmental Organizations:</i> United Nations; International Labour Organization; World Health Organization; United Nations Educational, Scientific and Cultural Organization; General Agreement of Tariffs and Trade; International Institute for the Unification of Private Law; International Olive Oil Council; International Patent Institute; International Vine and Wine Office; African and Malagasy Industrial Property Office; Council of Europe; Latin American Free Trade Association; Organization of American States Interested Non-Governmental Organizations
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Meetings of Other International Organizations concerned with Intellectual Property

Place	Date	Organization	Title
The Hague	October 10 to 21, 1966	Committee for International Cooperation in Information Retrieval among Examining Patent Offices (ICIREPAT)	6 th Annual Meeting
Hollywood	October 11 to 17, 1966	International Writers Guild (IWG)	1 st Congress
Brussels	November 17 to 19, 1966	International Literary and Artistic Association (ALAI)	Executive Committee

