

# Copyright

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# INTERNATIONAL UNION

## Second Committee of Governmental Experts on Administration and Structure

(Geneva, May 16 to 25, 1966)

### Note<sup>1)</sup>

(1) The Second<sup>2)</sup> Committee of Governmental Experts on Administration and Structure (hereinafter referred to as "the Committee of Experts") met at Geneva, in the *Palais Wilson*, at the invitation of the Director of BIRPI, from May 16 to 25, 1966.

(2) The following 39 States were represented: Algeria, Australia, Austria, Belgium, Brazil, Bulgaria, Congo (Brazzaville), Czechoslovakia, Denmark, Finland, France, Germany (Fed. Rep.), Greece, Hungary, India, Indonesia, Iran, Ireland, Israel, Italy, Japan, Luxembourg, Mexico, Monaco, Morocco, Netherlands, Norway, Poland, Portugal, Rumania, Spain, Sweden, Switzerland, Syrian Arab Republic, Uganda, Union of Soviet Socialist Republics, United Kingdom of Great Britain and Northern Ireland, United States of America, Yugoslavia.

(3) The United Nations, the International Labour Organization, the International Patent Institute, and the European Economic Community were represented by observers.

(4) The following non-governmental organizations were represented by observers: International Association for the Protection of Industrial Property; International Chamber of Commerce; International Confederation of Societies of Authors and Composers; International Federation of Patent Agents; International Literary and Artistic Association; International Writers Guild.

(5) The list of participants is reproduced at the end of the present note.

(6) Mr. Hans Morf (Switzerland) was elected Chairman and Messrs. Henry Puget (France), Evgeni Artemiev (USSR), Gholam-Reza Salahshoor (Iran), and Godfrey S. Lule (Uganda) were elected Vice-Chairmen.

(7) The examination of the various draft texts presented to the Committee of Experts was carried out in three Working Groups, meeting consecutively, and with the participation of all Delegates and Observers.

(8) The three Working Groups were presided by Messrs. Ion Anghel (Rumania), Eugene M. Braderman (United States of America), and Torwald Hesser (Sweden), respectively.

(9) The Committee of Experts had before it draft texts for the revision of the administrative and final provisions of the Paris and Berne Conventions, and the Special Agreements concluded under the former, as well as the draft text of a

<sup>1)</sup> This Note was prepared by BIRPI on the basis of the official documents (AA/III/1 to 23) of the meeting.

<sup>2)</sup> The first Committee took place in 1965; see *Copyright*, 1965, p. 102.

convention establishing the proposed new international intellectual property organization. These drafts were based on the results of the deliberations of the First Committee of Experts (1965) and were established, on the invitation of the Swedish Government, by BIRPI, in consultation with Experts of that Government.

(10) In June 1966, the Government of Sweden informed the Director of BIRPI that it had decided to include in the agenda of the Intellectual Property Conference of Stockholm, scheduled for June 12 to July 14, 1967, the matters dealt with by the Committee of Experts. It also asked BIRPI to prepare the documents — official proposals and commentary — for the Stockholm Conference on the basis of the results of the deliberations of the Committee of Experts.

(11) These documents are now under preparation and are due to be published between September and December 1966. Future issues of the present periodical will contain summaries of such documents and thereby give a general description of the proposed reforms as well as the results of the deliberations of the Committee of Experts.

### List of Participants

#### I. Member States

#### *Algeria*

Mr. Salah Bonzidi, Head of Trademarks Office, National Office of Industrial Property, Algiers.

Mr. Ahmed Chouaki, Ministry of Foreign Affairs, Algiers.

#### *Australia*

Mr. Lindsay James Curtis, Principal Legal Officer, Attorney-General's Department, Canberra.

#### *Austria*

Mr. Kirt Herndl, Deputy Permanent Representative, Permanent Mission of Austria, Geneva.

Mr. Thomas Lorenz, Ratssekretär, Federal Ministry for Commerce and Reconstruction, Industrial Property Division, Vienna.

Mr. Helmuth Tades, Secretary, Federal Ministry of Justice, Vienna.

#### *Belgium*

Mr. Gérald-L. de San, Director-General, Legal Counsellor, Ministry of National Education and Culture, Deputy Chairman of the National Copyright Commission, Brussels.

Mr. Frans van Isacker, Lawyer, Professor at the Law Faculty of the University of Gand, Member of the National Copyright Commission, Muzen.

Mr. A. Schurmans, Director of the Industrial and Commercial Property Service, Ministry of Economic Affairs and Energy, Brussels.

Mr. J. L. L. Bocqué, Deputy Counsellor, Ministry of Foreign Affairs, Brussels.

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**Brazil**

Mr. Jorge Carlos Riheiro, Secretary of Embassy, Permanent Delegation of Brazil to International Organizations, Geneva.

**Bulgaria**

Mr. Penko Atanassov Penev, Director of the Institute of Inventions and Rationalization, Sofia.

**Congo (Brazzaville)**

Mr. Anguste Roch Ganzadi, Attorney-General, Court of Appeal and Supreme Court, Chief of the Legal Service, President of the "Order of Advocates", Brazzaville.

**Czechoslovakia**

Mr. František Krístek, Professor, President of the Office of Patents and Inventions, Prague.  
 Mr. Radko Fajfr, First Secretary, Ministry of Foreign Affairs, Prague.  
 Mr. Jiří Kordač, Counsellor, Legislative Division, Ministry of Education and Culture, Prague.  
 Mr. Miloš Všeček, Chief of the Legal and International Division, Office of Patents and Inventions, Prague.  
 Mr. Otto Kunz, Chief of Research, Law Institute of the Czechoslovak Academy of Science, Prague.  
 Mr. Vojtěch Strnad, Legal Adviser, Ministry of Education and Culture, Prague.

**Denmark**

Mr. Erik Tuxen, Director of the Patent Office, Copenhagen.  
 Mr. Torhen Lund, Professor at the University of Aarhus (representing the Ministry of Cultural Affairs), Aarhus.  
 Miss Julie Olsen, Head of Section, Patent Office, Copenhagen.  
 Mrs. Dagmar Simonsen, Head of Section, Patent Office, Copenhagen.

**Finland**

Mr. Niilo Eerola, Director of the National Board of Patents and Registration of Trademarks, Helsinki.  
 Mr. Ragnar Meinander, Government Counsellor, Ministry of Education, Helsinki.  
 Mr. Berndt Godenhielm, Professor at the Faculty of Law of the University of Helsinki, Helsinki.

**France**

Mr. Henry Puget, Honorary Counsellor of State, Professor at the Institute of Political Science, Chairman of the Intellectual Property Commission, Paris.  
 Mr. François Savignon, Director of the National Institute of Industrial Property, Ministry of Industry, Paris.  
 Mr. Roger Lahry, Counsellor of Embassy, Ministry of Foreign Affairs, Paris.  
 Mr. Charles Rohmer, Head of the Copyright Service, Ministry of Cultural Affairs, Paris.

**Germany (Fed. Rep.)**

Mr. Alhrecht Krieger, Regierungsdirektor, Federal Ministry of Justice, Bonn.  
 Mr. Dirk Iteel Rogge, Landgerichtsrat, Federal Ministry of Justice, Bonn.  
 Mr. Romuald Singer, Senatsrat, Patent Office, Munich.  
 Mr. Carl August Fleischhauer, Second Secretary of Embassy, Ministry of Foreign Affairs, Bonn.  
 Mr. Peter Schönfeld, First Secretary of Embassy, Permanent Delegation of the Federal Republic of Germany, Geneva.

**Greece**

Mr. Anastassios Ioannou, Lawyer, Athens.  
 Mr. Dimitri Xanthopoulos, Technical Advisor of Societies of Authors, Member of the Legislative Committee of CISAC, Athens.

**Hungary**

Mr. Emil Tasnádi, President of the National Office of Inventions, Budapest.

Mr. Gyula Pusztai, Head of the Legal Section, National Office of Inventions, Budapest.

Mr. György Pálos, Legal Adviser, National Office of Inventions, Budapest.

Mr. János Zakár, Legal Adviser, Hungarian Copyright Office, Budapest.

**India**

Mr. T. S. Krishnamurti, Deputy Secretary to the Government of India, Registrar of Copyrights, Ministry of Education, New Delhi.

**Indonesia**

Mr. Hasjim, Third Secretary, Embassy of Indonesia, Berne.

**Iran**

Mr. Gholam-Reza Salahshoor, Under-Secretary of State, Ministry of Justice, Teheran.

Mr. Mehdi Naraghi, Director, Industrial Property and Societies Registration Office, Teheran.

Mr. Ali Asghar Bahramheyguy, Third Secretary, Permanent Delegation of Iran, Geneva.

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

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**Italy**

Mr. Giuseppe Talamo Atenolfi, Ambassador, Ministry of Foreign Affairs, Rome.

Mr. Valerio de Sanctis, Lawyer, Rome.

Mr. Gino Galtieri, Inspector-General, Head of the Office of Literary, Artistic and Scientific Property attached to the President's Office, Rome.

Mr. Giuseppe Trotta, Legal Advisor, Ministry of Foreign Affairs, Rome.

Mr. Paolo Marchetti, Inspector-General, Patent Office, Ministry of Industry, Rome.

Mr. Mario G. E. Luzzati, Lawyer, President of the Italian Group of IAPIP, Milan.

Mr. Roberto Messerotti-Benvenuti, Lawyer, Milan.

Mr. Alherto Mario Ferrari, LL. D. (Pavia), LL. M. (Yale), Milan.

Mr. Antonio de Rosa, Director of the Division of International Treaties and Conventions, Office of Literary, Artistic and Scientific Property attached to the President's Office, Rome.

**Japan**

Mr. Junichi Nakamura, Second Secretary, Permanent Delegation of Japan to International Organizations, Geneva.

**Luxembourg**

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

**Mexico**

Mr. Enrique Bravo Caro, Minister, Acting Permanent Delegate of Mexico to International Organizations, Geneva.

**Monaco**

Mr. Jean-Marie Notari, Director of the Industrial Property Service, Acting Director of Commerce and Industry, Monaco.

**Morocco**

Mr. Abderrahim H'ssaine, Director, Copyright Office, Ministry of Information, Rabat.

Mr. Chahhouni Daoudi, Secretary-General, Copyright Office, Ministry of Information, Rabat.

*Netherlands*

- Mr. C. J. de Haan, President of the Patent Council, The Hague.  
 Mr. J. H. Kramer, Director of Treaties, Ministry of Foreign Affairs, The Hague.  
 Mr. J. de Bruijn, Legal Adviser, Patent Office, The Hague.

*Norway*

- Mr. Sten Horn Røer, Head of Section, Industrial Property Office, Oslo.

*Poland*

- Mr. Jan Dalewski, Head of the Legal Division, Patent Office, Warsaw.  
 Mrs. Eleonora Ratuszniak, Head of Division, Ministry of Foreign Affairs, Warsaw.  
 Mr. Edward Drabienko, Lawyer, Counsellor, Ministry of Culture and Arts, Warsaw.

*Portugal*

- Mr. José-G. Faria, Secretary, Embassy of Portugal, Berne.

*Rumania*

- Mr. Ion Anghel, Chief Legal Adviser, Ministry of Foreign Affairs, Bucharest.  
 Mr. Ion Goritza, Third Secretary, Permanent Mission of Rumania to International Organizations, Geneva.

*Spain*

- Mr. Electo J. Garcia Tejedor, Deputy Permanent Delegate, Permanent Delegation of Spain to International Organizations, Geneva.  
 Mr. Antonio Fernandez Mazarambroz, Director, Industrial Property Registry, Madrid.  
 Mr. José Raya Mario, Secretary-General of the Directorate of Archives and Libraries, Madrid.

*Sweden*

- Mr. Torwald Hesser, Justice of the Supreme Court, Stockholm.  
 Mr. Ove Rainer, Under-Secretary of State, Ministry of Justice, Stockholm.  
 Mr. Love Kellberg, Head of the Legal Department, Ministry of Foreign Affairs, Stockholm.  
 Mr. Claës Uggla, Legal Adviser, Court of Appeal of the National Patent Office, Stockholm.  
 Mr. Ulf Nordenson, Head of Department, Ministry of Justice, Stockholm.  
 Mr. John Lennart Myrsten, Counsellor, Ministry of Finance, Stockholm.  
 Mr. Holger Bergerus, Director, Solna.

*Switzerland*

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

*Syrian Arab Republic*

- Mr. Issam Hayani, First Secretary, Embassy of the Syrian Arab Republic, Berne.

*Uganda*

- Mr. Godfrey S. Lule, Registrar of Trade Marks and Patents, Kampala.

*Union of Soviet Socialist Republics*

- Mr. Evgeni Artemiev, Vice-Chairman, State Committee for Inventions and Discoveries of the Council of Ministers of the USSR, Moscow.  
 Mr. Ivan Morozov, Deputy Head of the Department of Foreign Relations, State Committee for Inventions and Discoveries of the Council of Ministers of the USSR, Moscow.

*United Kingdom of Great Britain and Northern Ireland*

- Mr. Gordon Grant, C. B., Comptroller-General of Patents, Designs and Trade Marks, Industrial Property Department, Board of Trade, London.  
 Mr. Stephen M. Davenport, Chief Executive Officer, Industrial Property and Copyright Department, Board of Trade, London.

*United States of America*

- Mr. Eugene M. Braderman, Deputy Assistant Secretary of State, Bureau of Economic Affairs, Department of State, Washington, D. C.  
 Mr. Harvey J. Winter, Assistant Chief, International Business Practices Division, Department of State, Washington, D. C.  
 Mr. Kenneth F. McClure, Director, Office of Legislative Planning, U. S. Patent Office, Department of Commerce, Washington, D. C.  
 Miss Sylvia E. Nilsen, Attorney, Deputy Assistant Legal Adviser, Treaty Affairs, Department of State, Washington, D. C.

*Yugoslavia*

- Mr. Vladimir Savić, Director of the Patent Office, Belgrade.

**II. Observers***1. Intergovernmental Organizations**United Nations Organization (UNO)*

- Mr. Mayer Cahay, Economic Affairs Officer, Fiscal and Financial Branch, Economic and Social Affairs Department, United Nations, New York.

*International Labour Organization (ILO)*

- Miss Anna Fidler, Non-Manual Workers' Unit, General Conditions of Work Branch, Geneva.

*International Patent Institute*

- Mr. Guillaume Finniss, Inspector-General of Industry, Director-General of the International Patent Institute, The Hague.

*European Economic Community (EEC)*

- Mr. Franz Froschmaier, Chief Administrator, Brussels.

*2. Non-Governmental Organizations**International Association for the Protection of Industrial Property (IAPIP)*

- Professor Pierre-Jean Pointet, Chairman, Swiss Group of IAPIP, Zurich.  
 Mr. Georges Gansser, Lawyer, Basle.

*International Chamber of Commerce (ICC)*

- Mr. Pierre-Jean Pointet, Professor, University of Neuchâtel, Vice-Chairman, Commission for the International Protection of Industrial Property of the ICC, Zurich.  
 Mr. Leslie A. Ellwood, Solicitor, London.

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

- Mr. Jean-Alexis Ziegler, Assistant to the Secretary-General, Paris.

*International Federation of Patent Agents (FICPI)*

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

*International Literary and Artistic Association (ALAI)*

- Mr. Jean Vilhois, Permanent Secretary, Paris.

*International Writers Guild*

- Mr. Roger Fernay, Chairman, International Copyright Commission, Paris.

**III. BIRPI**

- Professor G. H. C. Bodenhausen, Director.  
 Dr. Arpad Bogsch, Deputy Director.  
 Mr. Charles-L. Magnin, Deputy Director.  
 Mr. Claude Masouyé, Counsellor, Head of the Copyright Division.

## IV. Officers of the Meeting

*Committee of Experts*

Chairman: Mr. Haus Morf (Switzerland).  
 Vice-Chairmen: Mr. Heury Puget (France).  
 Mr. Evgeni Artemiev (USSR).  
 Mr. Gholam-Reza Salahshoor (Iran).  
 Mr. G. S. Lule (Uganda).

*Working Groups of the Committee of Experts*

- I. (Administrative Protocols)  
 Chairman: Mr. Ion Anghel (Rumania).  
 II. (IPO Convention)  
 Chairman: Mr. Eugene Braderman (United States of America).  
 III. (Final Clauses and Resolutions)  
 Chairman: Mr. Torwald Hesser (Sweden).



## NATIONAL LEGISLATION

## CZECHOSLOVAKIA

## Copyright Law concerning Literary, Scientific and Artistic Works

(No. 35, of March 25, 1965)<sup>1)</sup>

The National Assembly of the Czechoslovak Socialist Republic has adopted the following law:

*Introductory provision*

*Section 1.* — The purpose of this law is to regulate relationship arising from the creation and social role of literary, scientific and artistic works in such manner as to protect the interests of authors and secure favourable conditions for the development of cultural creation and the active participation of the working people in this creation in harmony with the development and requirements of the socialist society.

## PART I

## Copyright

*Works*

*Section 2.* — (1) The subject matter of copyright shall be literary, scientific and artistic works resulting from the creative activity of an author, particularly literary, theatrical and musical works, works of fine arts, including works of architecture and works of applied art, and cinematographic, photographic and cartographic works.

(2) The provisions of this law shall not apply to statutory provisions and legal decisions, public documents and official records, to news of the day or to speeches delivered in connection with public matters; such speeches, however, may be published in a collection or incorporated in a compilation only with the consent of the person who delivered them.

*Adaptation and translation of a work*

*Section 3.* — (1) New original works resulting from adaptation of a creative character of works of another person shall also be the subject of copyright.

(2) Translations of works into other languages shall also be the subject of copyright.

(3) A work may be adapted or translated into another language only with the consent of its author. The consent of the author shall not be necessary for the translation into another language of works referred to in Section 2 (2).

*Compilations*

*Section 4.* — (1) Symposia, periodicals, anthologies, exhibitions and other compilations shall be the subject of copyright if their arrangements are the result of creative activity; a work may be incorporated in a compilation only with the consent of the author.

(2) Copyright in a compilation as a whole shall belong to its compiler; however, this shall not affect the rights of the authors of works included in the compilation.

(3) Copyright in a published symposium, cartographic work and periodical shall be exercised by its publisher.

*Composite works*

*Section 5.* — (1) Works may be joined together only with the consent of their authors. All authors shall dispose of a composite work in common.

(2) The rights of authors to dispose in another way of their works forming part of a composite work shall not be affected.

(3) For the performance of a musical work with a text, the consent of the author of the musical part shall be sufficient.

*Cinematographic works*

*Section 6.* — Authors of individual components of a cinematographic work or of a work produced by an analogous process grant their consent to the maker to use the work by means of a contract. Copyright in the work as a whole thus produced shall be exercised by the maker.

<sup>1)</sup> Published in *Sbirka zákonu*, of April 8, 1965; coming into force on July 1, 1965. Translation communicated to BIRPI by courtesy of the Czechoslovak Authorities.

*Works of joint authorship*

*Section 7.* — Copyright in a work which, as a single work, has resulted from the creative activity of several authors shall belong to all co-authors jointly and severally.

*Anonymous and pseudonymous works*

*Section 8.* — (1) It shall not be permissible to reveal the identity of an author whose work was published without his name or under a pseudonym, without the author's consent.

(2) As long as the author does not disclose his identity to the public, copyright in the work may be exercised by the person who first lawfully published the work or, in case of an unpublished work, made it public. A public declaration of the author shall not be necessary if his real name is commonly known.

*Origin of copyright in the work*

*Section 9.* — (1) Copyright in the work shall originate as soon as the work is expressed orally or in the form of a manuscript, draft, sketch or in any other perceptible way.

(2) Copyright in the work shall apply to both the whole of the work and to its particular parts.

*The making public and the publication of a work*

*Section 10.* — (1) A work shall be considered as having been made public on the day when it was first lawfully performed or exhibited in public, or published or made public in any other way.

(2) A work shall be considered as having been published on the day when copies thereof were lawfully put into public circulation.

*Country of origin of a work*

*Section 11.* — (1) The country of origin of a work shall be considered to be

- (a) in the case of unpublished works, the State of which the author is a national;
- (b) in the case of published works, the State where the work was first lawfully published.

(2) A work published simultaneously in the territory of the Czechoslovak Socialist Republic and in another country shall be regarded as having been published in the Czechoslovak Socialist Republic; a work shall be considered as having been published simultaneously in the case of its publication within a period of not more than thirty days.

*Content of copyright*

*Section 12.* — (1) The author shall have the right

- (a) to the protection of his authorship, especially to the inviolability of his work; if the work is used by another person, such use should be made in a manner not prejudicial to its value;
- (b) to dispose of his work, especially to decide upon making the work public and to grant his consent to its use;
- (c) to remuneration for his creative activity (Section 13).

(2) The right to the protection of authorship shall not be transferable.

*Section 13.* — (1) Subject to the provisions contained in Section 15, the author shall be entitled to remuneration for creative activity in each case of the use of his work. The amount of the remuneration shall depend on the value of the work and its social importance.

(2) The rates of authors' fees, especially fees for the publication, performance or other use of the work, may be determined by an ordinance of the Ministry of Education and Culture.

*Use of work*

*Section 14.* — (1) Unless permitted explicitly by this law, a work may be used only with the consent of the author. The author shall grant his consent to the use of the work by contract.

(2) The Ministry of Education and Culture may by an ordinance issue forms of model contracts for different modes of the use of works.

(3) The author's rights resulting from this law may not be waived or restricted by any agreement between the parties.

(4) A work may be used without the consent of the author only in cases provided for in Sections 15 and 16, on the basis of a judicial decision under Section 17 (2) or an official decision under Section 18.

*Section 15.* — (1) Copyright shall not be deemed to be infringed by a person who uses an idea contained in a work of another person in order to create a new original work.

(2) The author's consent to the use of a work shall not be necessary and the obligation to grant remuneration shall not apply to a person who

- (a) makes for his own personal use a reproduction or copy of a work already made public, provided that in the case of a work of fine arts he identifies it clearly as a reproduction or copy and provided that it is not the case of a reproduction or copying of a work of architecture by the construction of buildings or other structures;
- (b) quotes excerpts of a published work, provided that he indicates both the author and the title of the work;
- (c) includes in a scientific or critical work, to the extent necessary in order to explain the text, or in textbooks or manuals for schools, within reasonable limits, parts of published works or even entire short published works, reproductions or copies of works or of their parts, provided that he indicates both the author and the source;
- (d) uses a published work in an individual lecture exclusively for teaching or educational purposes, provided that he indicates both the author and the work;
- (e) reprints, in a periodical, articles of current interest on economic or political matters already published in other periodicals, provided that he indicates both the author and the source; however, reprint shall not be permitted when it has been expressly forbidden;
- (f) adapts to another field of fine arts a work of fine arts that has been located in public places; photographs of a work of fine arts thus located may also be multiplied and disseminated without the consent of its author;

- (g) reprints in the catalogue of a public collection or exhibition, a picture of a work of fine arts included in such a collection or exhibition;
- (h) exhibits publicly works of fine arts or photographic works which have been transferred by the author to a socialist organization; if a work of fine arts or photographic work has been transferred into personal ownership, the author's consent shall not be necessary, provided that the work is exhibited free of charge or lent free of charge to a socialist organization to be exhibited;
- (i) reproduces for his own personal use or for gratuitous distribution a commissioned photographic portrait of himself or has it reproduced by a third party.

(3) The author's consent shall not be necessary and the obligation to grant remuneration for the use of a work shall not apply to an organization reporting current events by means of photography, film, radio or television, if reasonable use is made of the work which is performed or exhibited on such occasion.

*Section 16.* — Broadcasting and television organizations may, without the author's consent, transmit works that have already been made public; however, they shall have the obligation to indicate both the author and the work and to remunerate the author for each such transmission.

*Section 17.* — (1) For the purpose of fulfilling its tasks, a socialist organization may, without further consent of the author, use a scientific or artistic work created by its employee in the performance of his duties resulting from an employment contract.

(2) A socialist organization whose functions include the publishing of works or otherwise making them public may publish or otherwise make public a work of its employee created in the performance of his duties resulting from an employment contract only with the consent of the author. If the author unreasonably refuses to grant his consent, the organization may obtain in court the consent to publish the work.

(3) The author of the work which has been created in the performance of his duties resulting from an employment contract with a socialist organization may grant his consent to publish or otherwise make the work public only with the consent of the organization. If the organization unreasonably refuses to grant its consent, the author may obtain such consent in court.

(4) Detailed terms concerning the use of a work created in the performance of duties resulting from an employment contract with a socialist organization shall be specified by the employment contract. Unless an employment contract provides otherwise, the organization shall be authorized to request the author to make an adequate contribution from his received author's fee to cover expenses incurred by the organization in the creation of the work.

*Section 18.* — (1) The consent to use the work of a Czechoslovak national which has already been made public may be replaced by a decision issued by the Minister of Education

and Culture or by a body authorized by him, if it is not possible to obtain the author's consent through reasonable efforts or if the author unreasonably refuses to grant his consent; the author's right to remuneration shall not be affected thereby.

(2) The Minister of Education and Culture may, by his decision, replace the author's consent to a translation of works of foreign nationals into the languages of the nationalities of the Czechoslovak Socialist Republic, provided that international agreements so permit and under conditions stipulated therein.

#### *Transfer of the rights of author*

*Section 19.* — (1) The author may transfer only the right to use the work.

(2) An assignee may transfer the right obtained by him to a third person only with the consent of the author.

(3) The right to use the work by introducing it to the public may be transferred by the author only to an organization authorized to make works available to the public in its particular manner (hereinafter called "organization").

*Section 20.* — The author shall transfer the right to use the work in foreign countries through the intermediary of the socialist organization authorized therefor (Section 44).

*Section 21.* — If the organization to which the right to use the work was transferred ceases to exist and has no legal successor, the right to decide upon further use of the work shall revert to the author.

#### *Contracts for dissemination of a work*

*Section 22.* — (1) By a contract for the dissemination of a work, the author shall, in consideration of payment, grant to the organization the right to disseminate his work; collective contracts shall be subject to the approval by the Ministry of Education and Culture.

(2) Contracts for the dissemination of a work shall include, in particular, a publishing contract, contract for the public performance of a work, contract for the dissemination of copies of a sound recording, and a contract for the sound or visual broadcast of a work.

(3) A contract for the dissemination of a work must provide for the method and the extent of the dissemination, the time when the dissemination shall take place, the author's fee, the collaboration of the author, the term for which the contract is made and the obligation of the organization to disseminate the work at its own expense.

(4) Unless the Ministry of Education and Culture provides otherwise, the contract for the dissemination of a work must be made in writing.

*Section 23.* — (1) The author shall have the obligation to submit the work to the organization in due time and in a form enabling its dissemination in the agreed manner without difficulties.

(2) The organization may rescind the contract, if the author, without reasonable cause, does not submit the work in

the proper form even in the prolonged term granted to him by the organization; if it ensues from the contract or from the nature of the matter that the organization cannot have any interest in the delayed completion, the prolonged term need not necessarily be granted. In such a case, the organization may demand the return of the advances already paid to the author.

(3) The author may rescind the contract and demand that the work be returned if the work is not disseminated within the term specified in the contract; his right to the author's remuneration shall not be affected thereby.

#### *Publishing contract*

*Section 24.* — (1) By a publishing contract, the author grants his consent to the publisher to publish a literary, dramatico-musical or musical work or a work of fine arts or a photographic work, and the publisher is bound to publish the work at his own expense, to provide for its dissemination and to pay remuneration to the author.

(2) As long as the obligations based on the publishing contract exist, the author shall not be entitled to grant to any other organization the right to publish the work without the consent of the publisher, except in the case of the publication of the work in a collection of his works or in a periodical.

(3) If the work is out of print before the expiration of the term specified in the contract, the author may ask the publisher to republish the work, even though a subsequent edition of the work has not been provided for in the contract. If, thereafter, a publishing contract for a new edition is not made within six months, the author shall be free to make a contract with another publisher.

*Section 25.* — (1) The author shall be entitled to correct the proofs.

(2) If the author is not given an opportunity to correct the proofs, he may rescind the contract and ask that the work be returned, should it be used in a manner that would be prejudicial to its value; his right to the author's remuneration shall not be affected thereby.

#### *Contract for public performance of a work*

*Section 26.* — By a contract for the public performance of a work the author grants his consent to the organization to perform a theatrical or musical work and the organization is bound to perform the work at its own expense and to pay the author a remuneration.

#### *Contract for creation of a work*

*Section 27.* — (1) By a contract for the creation of a work the author shall have the obligation to create for the ordering party, in consideration of payment, a literary, scientific or artistic work and shall grant the right to the ordering party to use the work for the purpose specified by the contract.

(2) The author shall have the obligation to create the work personally and within the stipulated term. Unless otherwise specified, delivery of the work shall give rise to the author's right to the agreed remuneration.

(3) If the work has defects preventing its use for the purpose specified in the contract, the ordering party may rescind the contract. If the defects can be remedied, the ordering party may rescind the contract only if the author does not remove the defects within an appropriate term granted to him for that purpose by the ordering party.

(4) The provisions of Section 23 (2) shall apply, respectively, to the contract for the creation of a work.

#### *Contracts for other uses of a work*

*Section 28.* — The provisions of Section 22 (3) and Section 23 shall apply, respectively, to contracts for other uses of a work.

#### *Devolution of copyright*

*Section 29.* — (1) Copyright shall devolve upon the heirs of the author. The provisions of this law concerning the author, unless inapplicable by reason of their nature, shall also apply to his heirs.

(2) If a co-author leaves no heirs, his share shall accrue to the shares of the other co-authors.

#### *Transfer of a work*

*Section 30.* — A person who acquires an original work or its reproduction shall not by this transfer acquire the right to use the work, unless otherwise expressly agreed.

*Section 31.* — An author who has transferred the original of his work for valuable consideration may claim a fair share from any transferee if the latter obtains a socially unjustified profit from a further transfer of ownership of the work. This right may not be waived in advance.

#### *Infringement of copyright*

*Section 32.* — (1) An author whose right has been infringed may demand, in particular, that the infringement of his right be prohibited, that the consequences of the infringement be remedied and that he receive an equitable compensation.

(2) If damage is caused to the author by an infringement of his rights, the author shall be entitled to compensation therefor in accordance with the Civil Code.

(3) In the case of a work of joint authorship, the rights provided for in paragraphs (1) and (2) shall belong also to each co-author independently.

#### *Duration of rights*

*Section 33.* — (1) Unless otherwise provided hereinafter, the term of copyright shall be the life of the author and fifty years after his death, and in the case of works of joint authorship fifty years after the death of the last surviving co-author.

(2) The term of copyright in a posthumous work which was first made public during the last ten years of the term referred to in paragraph (1) shall be extended to expire ten years after the publication of the work.

(3) In the case of anonymous or pseudonymous works where the author's identity is not known, the term of copyright shall expire fifty years after the publication of the work.

(4) The term of copyright in cinematographic works shall expire twenty-five years after the date when the work was made public.

(5) In the case of symposia and periodicals published by organizations, the term of copyright shall expire ten years after the publication of the work.

(6) The term of copyright in photographic works shall be the life of the author and ten years after the date of his death.

(7) The right to the protection of authorship shall not be limited in time.

*Section 34.* — The term of copyright shall always be counted only as from the end of the year in which an event, determining the measure of the term, took place.

#### *Works in the public domain*

*Section 35.* — (1) If the author leaves no heirs or if his heirs refuse to accept the inheritance, his works, with the exception referred to in Section 29 (2), shall become works in the public domain, and this shall occur even prior to the expiration of the terms provided for in Section 33.

(2) If the term of copyright expires or if, for another reason, a work enters the public domain, the user of the work shall not have the obligation either to ask for the consent to such use or to pay the author's remuneration. Nevertheless, a work in the public domain may be used only in a manner corresponding to its value, and its author, if known, must be indicated. Authors' societies and organizations referred to in Section 44 shall attend to the observance of this condition.

(3) The organization shall pay a special contribution for the use of a work in the public domain. The amount of such contribution, methods of payment and the principles guiding the allocation of funds thus obtained shall be determined by the Government; the Government may also provide for exceptions from this obligation.

## PART II

### Rights of performers

*Section 36.* — (1) The subject of the rights of performers under this law shall be their performances, namely performances of actors, singers, musicians, dancers and other persons who act, sing, deliver, declaim, or otherwise perform literary or artistic works.

(2) Without the consent of performers, their performances may not be used for:

- (a) fixation of sounds or images or of both sounds and images (hereinafter called "fixation") made for the manufacture of copies intended for public sale, or for the making of films intended to be shown in public (hereinafter called "copies of fixation");
- (b) making copies of fixations intended for public sale or the use of fixations or their copies for a purpose different from that for which the consent has already been granted, unless these are cases provided for in Section 37 (1);
- (c) sound and visual broadcasts;

(d) projecting in public or disseminating by other means, if the performance is conveyed to a person different from the organization intended to use it.

(3) Performers shall be entitled to remuneration for the use of their performances.

*Section 37.* — (1) The consent of the performer shall not be necessary for:

- (a) making a fixation of his performance given to a broadcasting or television organization, if the fixation is made by this organization by means of its own facilities and for its own broadcasts;
- (b) the sound or visual broadcast of his performance, if such a broadcast is effected by means of a fixation or its copy made with the consent of the performer;
- (c) communication to the public of his performance by means of a fixation or its copy made with his consent or of his performance by sound or visual broadcast;
- (d) the use of his performance for personal purposes of the user;
- (e) the use of his performance by means of a fixation or its copy exclusively for scientific or educational purposes.

(2) Performers shall be entitled to remuneration for the use of their performances in cases provided for in paragraph (1) (a) to (c), above.

*Section 38.* — The term of the rights of performers shall expire twenty-five years after the end of the year in which the fixation of the performance was made.

*Section 39.* — (1) Provisions contained in Sections 6 to 9, 12 and 13, Section 14 (1), Section 15 (3), Sections 19 to 23, 26 and 27, Section 29, Section 32 (1) and (2), and Section 34 shall apply respectively to performers and their performances.

(2) The Ministry of Education and Culture may specify the manner in which performers will claim their rights provided by this law if several participate in the same performance.

## PART III

### Organizations of authors and performers

*Section 40.* — Safeguarding of social interest, particularly fulfilment of the aims provided by Section 1 of this law shall be entrusted to organs of the State and to social organizations, primarily to Art Unions and Cultural Funds (Section 41) and to socialist organizations representing authors and performers (Section 44).

*Section 41.* — (1) Furtherance of creative literary, scientific and artistic activity shall be assured by Cultural Funds, namely Cultural Funds for Literature, Music and Fine Arts, which shall particularly encourage promotion of individual fields of art and science, assist in the creation of artistic works and secure favourable conditions for the creative activity of authors and performers.

(2) The activity, legal relations and legal status, organization and principles of allocation of the Cultural Funds shall be regulated by the Government which also shall determine the composition and competence of the bodies administering

them. In regulating the organization of Cultural Funds, the Government may establish special sections for some fields of creative activity or constitute, if necessary, further Cultural Funds.

(3) In legal relationships, Cultural Funds, as socialist organizations, shall act on their own behalf; they may even operate enterprises whose activities are in harmony with the functions of the Funds.

*Section 42.* — (1) Those who receive authors' and performers' remuneration shall have the obligation to pay contributions to Cultural Funds.

(2) Any organization using a work shall pay a contribution for such use, even in the case of a work in the public domain the use of which shall be subject to the obligation provided for in Section 35 (3).

(3) The amount of contributions under paragraphs (1) and (2), the methods of their payment and principles of their allocation shall be regulated by the Government which may also provide for exceptions from the said obligation.

*Section 43.* — Apart from the contributions paid to Cultural Funds, their resources of income shall be the profits derived from their own property, the surplus earnings of enterprises operated by them, gifts and inheritances or other income as may be determined by the Government.

*Section 44.* — (1) Socialist organizations representing authors or performers in the exercise of rights provided by this law may be granted, by the Minister of Education and Culture, the exclusive right, within their competence,

- (a) to grant the right to the use of works and performances and to collect authors' and performers' remunerations;
- (b) to act as an intermediary in the case of the transfer of rights of Czechoslovak authors or performers to a foreign country and of the rights of foreign authors or performers in the Czechoslovak Socialist Republic;
- (c) to disseminate, exclusively, works of authors, and
- (d) to collect contributions to the credit of Cultural Funds.

The Minister of Education and Culture may establish, as appropriate, socialist organizations entrusted with the fulfilment of the aforesaid tasks.

(2) The Minister of Education and Culture may regulate obligations of organizations and persons who, in order to use a work, shall need the consent of organizations specified in paragraph (1) or must pay remuneration to such organizations.

#### PART IV

##### Rights of producers of phonograms and of broadcasting or television organizations

*Section 45.* — (1) The subject of the rights of producers of phonograms provided by this law shall be the phonograms of performances given by performers or of other sounds.

(2) The consent of the producer of phonograms shall be necessary:

- (a) for the sound or visual broadcast of phonograms and their copies;

- (b) for making reproductions of a phonogram or its copy for other than own personal use;
- (c) for communication to the public of phonograms or their copies.

(3) The producer may demand compensation for the consent under paragraph (2).

(4) The term of the right of the producer of phonograms shall expire twenty-five years from the end of the year in which the phonogram was made.

*Section 46.* — (1) The subject of the rights of a broadcasting or television organization shall be its own broadcasts.

(2) A sound or visual broadcast may be transmitted, fixed for other than personal use and such a fixation may be reproduced or otherwise disseminated in public only with the consent of the organization which made the broadcast; the organization may demand compensation for the consent.

(3) The term of the right of broadcasting or television organizations shall expire twenty-five years from the end of the year in which the broadcast first took place.

*Section 47.* — The consent of the producer of phonograms and of broadcasting or television organizations as well as the grant of a compensation shall not be necessary in the case of making a fixation or its copy and its exclusive use for reporting current events or for scientific or educational purposes.

*Section 48.* — The Government may regulate conditions under which the rights provided for in Sections 45 and 46 shall be accorded to foreign producers of phonograms and to foreign broadcasting or television organizations in accordance with international agreements.

#### PART V

##### Common provisions

*Section 49.* — (1) The Slovak National Council shall take part in the fulfilment of tasks ensuing from the implementation of this law.

(2) The extent of the jurisdiction of the Slovak National Council Commissioner for Education and Culture in the implementation of this law shall be defined by the Government; the Government shall particularly specify the Commissioner's jurisdiction in the exercise of the provisions contained in Section 18, Section 22 (1) and Section 44 of this law.

*Section 50.* — (1) The provisions of this law shall apply to the works of authors who are Czechoslovak nationals, wherever their works may have been created or made public. The same shall apply to the works of authors who enjoy the right of asylum in the Czechoslovak Socialist Republic.

(2) The provisions of this law shall apply to the works of foreign nationals in accordance with international agreements or, in the absence thereof, when reciprocity is assured.

(3) If none of the conditions provided for in paragraph (2) is fulfilled, this law shall apply to the works of authors who are not Czechoslovak nationals if their works were first pub-

lished or made public in the Czechoslovak Socialist Republic or if the author has his domicile therein.

(4) The term of copyright in works of foreign nationals may not be longer than in the country of origin of the work.

(5) The provisions of paragraphs (1) to (4) shall apply to performers and their performances respectively.

#### Transitory and Final Provisions

*Section 51.* — (1) The term of copyright shall be governed by this law even if it started to run prior to the entry of this law into force. If this law provides for a longer term, this prolongation shall apply only to works in respect of which the rights did not cease to exist prior to the entry of this law into force.

(2) The same shall apply to the rights of performers, producers of phonograms and broadcasting or television organizations.

*Section 52.* — The protection of works of applied art under this law shall not exclude protection of such works also by the regulations relating to the protection of industrial designs.

*Section 53.* — (1) Unless otherwise provided by this law or by regulations for its application, legal relationships of authors and performers which have arisen from the creation and the use of their works or performances shall be governed by general rules of law.

(2) Any disputes concerning claims arising out of this law shall be referred to court for adjudication, even in the case of a dispute between socialist organizations.

*Section 54.* — Law No. 115 of 1953 on Copyright is hereby repealed.

*Section 55.* — This law shall enter into force on July 1, 1965.

## NORWAY

### Act on Modification of the Act of December 2, 1955, relating to Provisional Extension of the Term of Copyright

(Of June 3, 1966)<sup>1)</sup>

1. — *Section 1, third paragraph, of the Act of December 2, 1955, relating to provisional extension of the term of copyright, shall read as follows:*

“With regard to works, the term of protection of which would, according to the provisions of this Act, otherwise expire in 1962, 1963, 1964, 1965, 1966 and 1967, the term of

protection of copyright shall nevertheless last until December 31, 1968, unless the King decides otherwise.”

2. — This Act shall come into force immediately.

<sup>1)</sup> See *Le Droit d'Auteur (Copyright)*, 1963, p. 32.

## SPAIN

## Law on Intellectual Property Rights in Cinematographic Works

(No. 17/1966, of May 31, 1966)\*

The norms of the Law of January 10, 1879, and the Regulations of September 3, 1880, which regulate intellectual property, very opportune and just in their time, are still sound in their fundamental principles, but are insufficient to-day to resolve the complex situations arising from the utilisation of new techniques of publication and diffusion of intellectual works.

Thus, there are questions which require an immediate solution, such as those arising in connection with the rights of authors in the field of cinematographic production, in relation to the rights of producers of such works, which are matters which have been insufficiently developed in the legal norms actually in force, and which result in the rights of authors and producers being placed in a dangerous situation.

In order to remedy this, the present law seeks to determine these rights, thereby filling a notorious gap in our legislation, even though it may only do so in a transitional manner, until such time as the new general statute on copyright sees the light of day. For this reason, the present law merely departs from the system actually applied in our country, without introducing any alterations into it beyond those that are indispensable to the suppression of the clearest causes of friction, thus reserving to the future law of intellectual property the opportunity of a general reform, after detailed consideration of existing systems.

By reason of this, and in agreement with the proposal drawn up by the Spanish *Cortes*,

*I order:*

*Article 1.* — The exclusive exercise of the rights of economic exploitation of a cinematographic work belongs to the producer or his assignees or successors in title.

The exercise of the rights referred to in the preceding paragraph includes the right to reproduce the film in as many copies as may be necessary for its exploitation, as well as the right of projecting the said copies in public, in halls intended for this purpose, without any restriction or limitation.

The producer and his assignees or successors in title are the only persons legitimately entitled to exercise the rights established by the paragraphs (2) and (3) of Article 49 of the Law of Intellectual Property of January 10, 1879<sup>1)</sup>, and

\* ) Published in the *Boletín Oficial del Estado*, No. 131, of June 2, 1966. BIRPI translation.

<sup>1)</sup> *Article 49 of the Law of Intellectual Property of January 10, 1879. Paragraph (2):* The Provincial Governors or, in places where no Governor resides, the Mayors, shall order, at the instance of the owner of a dramatic or musical work, the suspension of the performance of such work, or the deposit of proceeds of admission, to such extent as may be necessary to guarantee the appropriate royalties in respect of the said work. *Paragraph (3):* If the amount collected is inadequate for the purpose, the interested party may institute appropriate action before the Courts.

Articles 63 and 104 of the Regulations thereunder<sup>2)</sup>). The right to claim the deposit of the proceeds received, as established by the legal provisions referred to above, shall belong, indistinguishably or separately, also to producers, and to their assignees or successors in title, as well as to the authors of cinematographic works, for the defence of the economic rights of the former and of the intellectual property of the latter.

The physical person or the legal entity who takes the initiative and assumes the responsibility for the realisation of a cinematographic work shall be considered to be the producer thereof. Such person or legal entity shall be presumed to be the owner of the right to authorise projection.

*Article 2.* — The producer may not utilise or incorporate in the film any intellectual work of other persons without the authorisation of the author or his assignees or successors in title, unless the work is in the public domain.

*Article 3.* — The following are considered to be the authors of a cinematographic work:

- (1) the authors of the plot, of the adaptation, of the scenario, of the dialogues or of the commentaries;
- (2) the authors of the musical compositions and, where relevant, of the texts;
- (3) the director of the film.

Other physical persons who, by virtue of any activity of intellectual creation, participate in the realisation of the said work, may also enjoy this designation.

*Article 4.* — The authors of a cinematographic work, irrespective of any agreements they may have concluded with producers, shall, in all cases, enjoy the following rights:

- (1) the right to collect, from persons publicly exploiting the cinematographic work, a percentage of the receipts derived from such public exploitation, after deduction of any taxes specifically applying to it. Persons exploiting the film may deduct from this sum the amounts payable by them to the distributors of the film;

<sup>2)</sup> *Article 63 of the Regulations of September 3, 1880:* The Provincial Governors or, in places where no Governor resides, the Mayors, shall order the immediate suspension of any performance or reading of any literary or musical work that may have been announced, if the proprietor of the work or his representative complains to such Authority that the enterprise concerned has not obtained the requisite permission. Suspension shall be ordered without the necessity of complaint when the Authority is aware that no permission has been given.

*Article 104 of the Regulations of September 3, 1880:* Upon the request of an interested party, the Provincial Governors or, in places where no Governor resides, the Mayors, shall, in addition to the provisions of Article 49 of the Law and as a natural corollary thereto, order the deposit of the proceeds of the sale of tickets for the purpose of meeting any outstanding liability that the enterprise may have in respect of copyright royalties, after having met the claims of the owners of works performed on any particular night.

- (2) to have, in the credit title of the film, and in all copies of it, even partial, mention of their contribution, as regards the portion pertaining to them;
- (3) to command, both in respect of the realisation and exploitation of the film, respect for their contributions, and to be entitled to take action in respect of any substantial alterations which may have been effected without their authorisation, as well as in respect of any other acts which may be harmful to their moral rights as authors;
- (4) to dispose of their contributions separately, irrespective of the film, provided that this does not prejudice the normal exploitation of the film.

*Article 5.* — When the producer himself is the owner of the copyright, the percentage referred to in paragraph (1) of the preceding Article will be understood as being included in the amount which he can collect in respect of the hiring of the right of projection of the said film.

In all cases, exploiters must pay any percentages established on a general basis. If no foreign owner is involved, the sums shall be devoted, as a matter of social interest, to the benefit of Spanish cinematographic authors, in such manner as the Government may stipulate in regulations under the present law.

*Article 6.* — The rights recognised in favour of authors by virtue of Article 4 are inalienable.

Any global assignment of future works will automatically be null and void.

*Article 7.* — The rights of authors in respect of the public projection of foreign films will only be recognised in cases where corresponding rights are recognised by the laws of the respective countries, and based on the principle of reciprocity, both as regards the recognition of the rights and as regards the persons in whose favour the rights are recognised, all being without prejudice to any commitments arising under any international Conventions and Treaties in this matter, ratified by Spain.

*Article 8.* — A cinematographic work and the rights of the authors thereof shall be recorded in the Register of Intellectual Property, in accordance with the regulations under the present law and the conditions stipulated therein.

*Article 9.* — The general provisions relating to intellectual property shall, by analogy, be applied to all cases which are not explicitly provided for by the present law.

#### *First transitional provision*

If, within a period of thirty effective days from the publication of the present law, the representatives of the groups concerned have not reached agreement, in accordance with the legal regulations in force, as regards the fixing of the percentages referred to in paragraph (1) of Article 4, any one of the parties concerned may ask for the said percentages to be fixed by the Government, on the joint recommendation of the Ministries of National Education, Information and Tourism, after reference to the Trade Union Organisation, and after having heard the General Society of Authors, on the basis of the actual receipts, established with the assistance of a box-office control of the kind specified in the Ordinance of December 22, 1964, applying the Decree of July 6 of that year.

#### *Second transitional provision*

The compensation due to cinematographic authors for the period between February 1, 1965, and the date of application of the present law shall be the subject of agreement between the parties or, in default thereof, of a decision of the Government, as envisaged in the preceding transitional provision.

#### *Third transitional provision*

The consequences referred to in paragraph (1) of Article 4 will not be applicable to contracts drawn up between exploiters and assignors of films prior to the coming into force of the present law.

Done at the Palace of Prado, May 31, 1966.

Francisco FRANCO

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*CORRESPONDENCE*

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

Since the last "Letter" <sup>2)</sup> on the Czechoslovak Bill on copyright, this new legislation has been enacted by the National Assembly, after some minor amendments pertaining to form rather than to substance, and entered into force on July 1, 1965.

Before describing the principal and essential provisions of the new law, let us briefly review the reasons for its enactment: these were, on the one hand, the changes that had occurred in the evolution of the Czechoslovak legal system and which had been incorporated in certain fundamental laws, above all in the Civil Code, and on the other hand, Czechoslovakia's accession to the Universal Copyright Convention, with effect from January 6, 1960, and to the Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations, with effect from August 14, 1964. The law previously in force no longer corresponded fully to the new provisions of civil legislation, nor was it in conformity with the two Conventions mentioned above.

The new law contains 55 sections, arranged in five parts. Part I defines the essential concepts of copyright, specifies its content and scope and sets forth conditions for use of the work; Part II is devoted to the rights of performers; Part III sets forth the principal provisions relating to organizations of authors and performers; Part IV concerns the rights of producers of phonograms and of broadcasting or television organizations; the fifth and last Part contains certain provisions common to the preceding parts, together with the inevitable transitional provisions to ensure smooth and uninterrupted passage from one law to the other.

The previous Czechoslovak law on copyright, enacted in 1953, contained in all 113 sections and one might think that the new law has been greatly curtailed and that certain provisions have not been retained. Although certain clauses have been dropped — for example, those concerning the domain of private correspondence and personal portraits — there has been no material reduction of the provisions. What has been done is that similar problems have been brought together in a single section with the addition of some paragraphs relating to questions dealt with by separate articles in the old law.

The principal provisions of Part I define the basic concepts and establish for copyright an independent legal domain designed to regulate relations arising from the creation of a work and from its public use, that is to say, relations between

the author, his work and the public. The unity of copyright is emphasized without any special distinction being made between the moral right and the economic right. Copyright belongs to the author who disposes of it with regard to third parties and, by means of this right, secures his artistic and economic interests. The unity of copyright has eliminated the use of the word "protection" which is no longer used save in one single connection where, in section 12, it serves to emphasize one of the fundamental rights of authors, that is to say, "the right to the protection of authorship". Pursuant to this principle, for example, the term "duration of rights" is used instead of "duration of protection" (section 33). The term of copyright is limited to fifty years after the author's death, and it is specifically stated that "the right to the protection of authorship", which is essentially a personal right, is not limited in time.

The subject of copyright is the author, and its object is the work that is the result of the creative activity of the author, in other words, of natural persons. The list of the various kinds of works (sections 2 to 8) also contains the term "theatrical work" to designate dramatic, dramatico-musical, choreographic works or pantomime. Personally, I am not satisfied with this terminology because, in certain cases of practical application, there may be a doubt as to the precise character of the work. I consider that a mere legal interpretation, or even a terminological designation, cannot change the work itself, in other words the form and nature with which the author endowed it. The work's inviolability is assured and, without the author's consent, no one is authorized to amend the work in any way, not even by means of an artistic intervention and still less by any legal interpretation. Moreover, the use of the term "theatrical work" is not even consistent, for the provisions relating to the publishing contract (section 24) mention the publishing of literary, dramatico-musical or musical works, works of fine arts or photographic works. The enumeration is clearly inadequate and, in my opinion, the legislator has been insufficiently precise: a pantomime or a choreographic work should be classified, not according to its nature but according to its mode of expression, among literary works.

And first of all for practical reasons the law states that its provisions on copyright do not apply to statutory provisions, legal decisions, public documents or official records. The interpretation of this exception must always be restrictive and be applied strictly to the work by virtue of the fact that it forms part of such records and according to the use made of the records as a whole. In no case could one permit a broader interpretation: it is beyond dispute that when removed from official records and published separately, an expert opinion or a photographic work, etc., constitutes subject mat-

<sup>1)</sup> This "Letter" was presented, in the form of a report, to the Legislative Committee of CISAC at its meeting in Prague, in June 1966. It is printed here with the kind permission of the author and of the Secretariat-General of CISAC.

<sup>2)</sup> See *Copyright*, 1965, p. 117 *et seq.*

ter for copyright. Information or speeches delivered in connection with public matters have been made subject to the same provision, but here again it must be a matter of "news of the day" and matters that are really "public". The consent of the person who delivered the speech must obviously be obtained for complete publication.

In accordance with the principles of copyright, the adaptation of a work already in existence becomes an independent subject of copyright where such adaptation bears signs of the personal activity of its author. The same applies to translations which also enjoy an independent copyright, on condition, however, that the text of a translated work corresponds to the term "work" in the sense of the law. Logically, the translator is not required to make a personal creative contribution because if he did, then the work would be not a translation, but an adaptation of another author's work, without taking account of the fact that such adaptation is expressed simultaneously in another language. The law emphasizes that for an adaptation or for a translation the author's consent is required, the reason being to stress the authorized use of an idea contained in a work of another person in order to create a new original work (section 15). In practice, the distinction will often be a delicate matter for the experts who, in the case of adaptation, will have to consider the interdependence between the pre-existing work and the creative activity newly deployed in the extension, dramatization, etc., of the work. In cases where the subject matter is used, however, there will only be a resemblance between the ideas underlying two works which are otherwise entirely different in their creative expression. With respect to a compilation as a whole, the law recognizes that copyright belongs to the compiler, who thus has an independent copyright, provided the arrangement is the result of creative activity. In this case, such compilations are covered by two-fold copyright: that of the compiler, and that of each author whose work is included in the compilation. As regards symposia, cartographic works and periodicals, the publisher can dispose of copyright, but in no case does this imply any transfer *ex lege*, it merely authorizes the publisher to avail himself of the right to which he is entitled by law so far as the periodical or symposium is concerned, in particular vis-à-vis other publishers.

The question of collaboration between two or more authors is covered in the law by two different provisions, depending on the nature of the collaboration (sections 5 and 7). The law makes a distinction between "composite works" and "works of joint authorship". "Composite works" are generally those in which, for reasons of convenience, two or more independent works are brought together. A typical example would be a musical composition with a text, or again an opera with libretto. For such a combination of works, the consent of all the authors is required and there are two absolutely independent copyrights. For reasons of practical necessity, the law states that for the performance of a musical work with a text (hence not an opera, etc.), the consent of the composer is sufficient, though without prejudice to the remuneration of the author of the text. On the other hand, a "work of joint authorship" does form one single work, despite the fact that two or more authors have cooperated in creating it,

whether or not simultaneously. It does not matter if the various parts of the work, for example, can be recognized as being by different authors. What is decisive is the unity of the final work which carries one single copyright that can be disposed of by any of the co-authors. In the event of death, the term of copyright is calculated as from the death of the last surviving co-author.

Among the examples of the various kinds of works cited and in accordance with the general evolution of theory, the law also mentions cinematographic works as having a distinct character of their own (section 6). In my opinion, a cinematographic work is, by its very nature, a collective work whose various components, generally independent — literary work, musical work, photographic work, work of fine arts, etc. — are brought together by a creative activity into a single whole for presentation to the spectator. The concept of a cinematographic work does not, of course, imply any need to determine who is the author of the single work; one can thus avoid this delicate problem to which theory has not yet afforded any solution.

The authors of the various works that form a cinematographic work or a work produced by the same processes grant their consent to the producers to use their works by means of a contract. The contract must settle all the questions involved, in particular whether a work is to be created on commission, or a film made and the cinematographic work exploited in any manner whatsoever. The law stipulates that copyright in a cinematographic work as a whole is exercised by the maker. Hence the essential part of this provision lies in the concept of "exercising copyright" and the maker is therefore not deemed to be author of the film and does not benefit from copyright. The law merely authorizes him to claim his right, in his own interest as well as in that of the authors. This provision has become necessary in practice in order to simplify the distribution of films and it in no way impinges on the rights of the authors of the various components of a film; the scope and the modalities for exercising copyright are determined by the contract entered into with the authors. In this connection, mention should be made of section 13 which states that the author is entitled to remuneration in each case of the use of his work, and also section 32 which provides the means for an author to take action if his rights have been infringed.

In this respect, the law mentions not only cinematographic works but also works produced by an analogous process. The importance of the provision is based on the concept of "creation" which must be carefully distinguished from the concept of "making". In my opinion, any optico-chemical process would not be decisive, nor would the processing, but only the creative activity. A practical interpretation must always exclude the possibility of considering as cinematographic works those in which there has been no creative activity, regardless of the fact that they are recorded on film. In practice, this may apply to cinematographic or photographic works, provided, however, that the latter are the result of creative activities and not simply of reproduction techniques.

This concept of the regulation of copyright in regard to films does not correspond to the Stockholm proposals for

revising Article 14, and it maintains the contractual principle that consent must be obtained from the author to whom copyright belongs. The situation is not changed in any way by the fact that in practice the maker of the film is empowered by law to exercise the copyright in the work as a whole — but not the author's copyright.

True, the law mentions cinematographic works or works produced by analogous processes, and clearly this cannot imply that films are assimilated with television. A television organization may sometimes, for its programme requirements, acquire cinematographic works in the sense of the stipulations of the law, and in this respect it comes within the concept of "maker". It should be recalled, however, that Czechoslovakia's legislation includes a special law concerning television, under which television organizations may only acquire and transmit a wide variety of programmes, without being authorized to produce films intended for cinematographic distribution. This would therefore cover only sound or visual recordings of various works intended for television broadcasts. Provided film techniques have been used, the subject matter of such recordings is generally suitable for ordinary cinematographic projection. But if, in the event, it happens that a television film arouses the interest of a film distributor either within the country or abroad, in that case the television organization cannot make its film available for ordinary distribution unless special permission is obtained from the authors — in practice, the author's organization. Thereafter, distribution is no longer organized by the television organization, but by the film distributor who is obliged to respect all the copyright conditions that the law imposes on a producer of cinematographic works. This concept confirms that the new law in no way corresponds to the assimilation of the film with television, in the sense of the Stockholm drafts.

Among the important and essential conditions mentioned in this part of the law, one should note the clause concerning the origin of copyright (section 9) and not only the protection of copyright which is its natural consequence. Copyright originates without any formality as soon as the work is expressed in any way perceptible to the human senses and it applies not only to the entire work in its final form, but also to each part (sketch, plan, etc.).

From the legal aspect, an important question in the field of copyright is the making public and the publication of a work. The new law gives a definition of both notions (section 10). "Making public" signifies any means of communicating the work to the public, lawfully of course, that is to say, with the author's consent. The "publication" of the work is a special mode of making it public and legally the decisive moment in this case is the day when its lawful distribution commenced after its multiplication.

Although the law contains certain clauses specifying when the use of a work is directly authorized by law, the author retains the absolute, exclusive and unlimited right to authorize the "making public" of his work, for he alone can decide when the work is finished and when it is mature and ready to accomplish its artistic, scientific and — in general — social function. Logically this applies also to publication of the work.

The characteristics of the unity of copyright embodied in the new law are set forth in the clause concerning the content of copyright (section 12). A distinction is made between three groups. In the first is the author's right to the protection of his authorship and to the inviolability of his work, it being specified that no other person has the right to use the work in any manner prejudicial to its value. The second concerns the right to dispose of the work, to decide upon making it public and to grant consent to its use. Lastly, the third group contains the right to remuneration for creative activity. The law distinguishes between the right to decide to make a work public and the right to grant consent to its use, for these are not two identical notions, although in certain cases they may be covered by one single authorization. Indeed, this is confirmed by the ensuing provision (section 13) which stipulates that the author is entitled to remuneration in each case of use of his work. The emphasis is laid upon the expression "each case of use", signifying that the law does not envisage remuneration once and for all time in the form of a lump sum payment, and does not permit the purchase of copyright. This provision should also be carefully examined in connection with the regulation of legal relations between the author and the maker of films.

An exception is provided from the principle that the author's consent is required for any use of the work; this exception consists of legal licences (sections 15 and 16) permitting, on the one hand, a work to be used exclusively for personal and private requirements and, on the other hand, to be used to the extent necessary to facilitate its use for teaching or educational purposes. The law enumerates the cases in which a work may be used without the author's consent and even those in which the granting of remuneration is not compulsory. Always on condition, however, that the work has been lawfully made public and, in most cases, that it is a published work. In any event, the name of the author and the title of the work must always be indicated. Broadcasting or television organizations are allowed to broadcast works that have already been made public, on condition, however, that the author receives remuneration for each such transmission.

In certain specific cases, the author's consent may be replaced by decision issued by the Minister of Education and Culture (section 18) provided the work is one by a Czechoslovak national that has already been made public and that it is not possible to obtain the author's consent for important reasons, or if the author refuses to grant his consent without due reason, in particular for artistic reasons. His right to remuneration is nevertheless assured. The same Minister may also authorize the translation of a foreign work into the national languages, but only under the conditions stipulated in international agreements. Thus, the provisions of Article V of the Universal Copyright Convention are applied.

In relation to the clauses regarding the use of the work, the law also settles questions arising when the work is created at the place of work in which the author performs his duties as defined in an employment contract. Contrary to other legislation in regard to this question, the new law proclaims the principle that copyright over such a work is safeguarded for the author. The organization employing the author cannot

therefore publicly use the work without his consent. If the author unreasonably refuses to grant his consent, the employer may submit the matter to a court for decision. Inversely, the author of a work created in the performance of his duties may ask the court to decide in the event that the employer does not allow him to authorize someone else to use the work. Generally speaking, the new law maintains the principle that any disputes concerning copyright must be settled exclusively by the courts (section 53).

A section with the somewhat obscure title of "Transfer of the rights of author" contains provisions concerning the transfer of rights to use a work (sections 19 to 31). As in the earlier law, the author can transfer certain rights deriving from his copyright only to organizations and undertakings whose activities are concerned with the dissemination of works. Any transfer of rights as between natural persons is therefore precluded; clearly, this constitutes a certain restriction on freedom to dispose of a work, but, at the same time, it affords an advantage by preventing anyone from being able to acquire the rights of the author, in certain propitious circumstances, at an inadequate price or even for nothing. An exception is made for inheritance, in which case copyright devolves upon the author's heirs. As regards the right to protection of authorship, which is not transferable (section 12), and the unlimited duration thereof (section 33), the authors' organizations are responsible for ensuring that it is observed after the term of copyright has expired (section 35). After the author's death, but during the term of copyright, the heirs have the same rights as the deceased author (section 29).

In addition, the first part of the law contains some fundamental clauses for contracts under which the author grants his consent to the use of his work. In comparison with the old law, these provisions are indeed more concise, but their substance affords favourable safeguards for the author. A particularly important provision is the one stating that all the author's rights resulting from the law are *jus cogens* and may not be waived or restricted (section 14). If, however, such a case arose, any such agreement between the author and the user would be null and void *ex lege*.

The provisions concerning contracts for the dissemination of a work also regulate the conditions for contracts relating to the creation of a work (section 27). The ordering party only has the right to use the work for purposes specified by the contract, and the latter must also contain a clause concerning authorization to use the work. However, copyright on the work thus created does not pass to the ordering party but continues to belong to the author with respect to any other uses not mentioned in the contract. Here again, the author is entitled to remuneration in each case of use of the work (section 13). If the author has transferred his rights to an authors' organization the consent of the latter will naturally have to be obtained and adequate remuneration will have to be paid to the organization concerned.

A work, being the subject matter of copyright, generally has a tangible form (manuscript, picture, statue, etc.) that can be transferred to another person in that material form or in the form of a copy. In such case (section 30), the transferee does not acquire any right to use the work, unless otherwise

expressly agreed. The "*droit de suite*" (section 31) applies to the originals of all kinds of works, even for example to manuscripts. This "*droit de suite*" gives the author and his heirs the right — which may not be waived in advance — to arrange a settlement with any party acquiring the work who might later realize a profit.

Mention has been made above of the term of copyright, but it is appropriate here to comment on some exceptions from the fifty-year principle. A ten-year extension is applied to posthumous works. For cinematographic works the term has been extended from ten to twenty-five years after the date on which they were made public, in conformity with the Universal Copyright Convention. For photographic works the term of copyright has been improved substantially and has been extended from ten years after the date on which they were made public to ten years after the date of the author's death.

The notion of the "*domaine public payant*" has been carried over from the old law; the proceeds of the special contribution payable for use of a work in the public domain are handed over to the Cultural Funds (sections 35 to 41). These Funds are independent organizations in the field of literature, music and the fine arts which out of their own financial resources, made up of contributions in respect of works in the public domain together with subscriptions from authors and those who use their works, encourage the arts and sciences, secure favourable conditions for creative activity, and in particular concern themselves with young talent.

Part II of the law is devoted to the rights of performers (sections 36 to 39). Contrary to the Rome Convention, the law gives performers the express right to grant their consent to a certain number of performances, which are specifically enumerated. Thus, with respect to their performances and in particular their recordings, they acquire rights identical to those that the author enjoys with respect to his work. Thus, certain provisions concerning copyright apply by analogy to the rights of performers. The term of performers' rights expires twenty-five years following the recording.

The rights of producers of phonograms are governed by Part IV of the law (sections 45 to 48). In principle, it retains the provisions of the earlier law while bringing them into conformity with the Rome Convention. The consent of producers of phonograms is required for the use of the recordings that they have made, not only with respect to performances by performing artists but also with respect to other sounds. The law enumerates the various modes of use for which consent is required, and remuneration can be required for granting such consent. The term of producers' rights expires twenty-five years from the time when the recording was made.

The subject matter of the rights of broadcasting or television organizations is their own broadcasts. For subsequent broadcasts or other public use, as well as for the making of a recording and its dissemination, the consent of the organization that made the broadcast is required. An exception is provided with respect to personal and private use of such broadcasts. Payment may also be required. The term of the right is also twenty-five years as from the first broadcast.

So far as the creation and application of the rights of broadcasting or television organizations are concerned, it is of no consequence whether broadcasts are transmitted "live" or by means of a recording made by any process whatsoever. This means that the rights of television organizations in regard to their own films are sufficiently assured, all the more so because the term of their rights is the same as that granted to cinematographic works.

If one considers the rights of television organizations as assured by the Rome Convention in conjunction with the Stockholm draft revisions (Articles 2 and 14), one arrives at the conviction that acceptance of the Stockholm proposals in their present wording would in practice have the result — in the international system of legal protection of the interests of authors and performers — of affording the maximum protection to television organizations. Without any doubt, the latter would enjoy a two-fold right with respect to television films, ampex recordings, etc. — on the one hand, they would be entitled to claim rights as authors, and, on the other hand, they would be entitled to claim rights with respect to their own broadcasts, under the Rome Convention. Contrary to all principles, one would arrive at a paradoxical situation in

which the parties making use of works would have more rights than the authors of those works.

Although this commentary may seem fairly substantial, it has only examined the essence of the new copyright legislation in Czechoslovakia. We have passed over a whole series of detailed provisions that nonetheless serve to clarify the fundamental stipulations.

In conclusion, it should be noted that the new law is not in contradiction with the Berne Convention (Rome text) pursuant to which Czechoslovakia is a member of the Berne Union, but on the other hand it is not in conformity with all the provisions of the Brussels text. In my purely personal view, therefore, the new Czechoslovak law on copyright can, for the time being, be considered only as transitional legislation. The duration of its application will depend on whatever attitude Czechoslovakia adopts towards the revised text of the Berne Convention as it results from the Diplomatic Conference to be held at Stockholm in 1967.

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## 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 Appellations 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	

Date and Place	Title	Object	Invitations to Participate	Observers Invited
October 30 to November 4, 1966 Budapest	East/West Industrial Property Symposium	Discussion of practical questions of industrial property		Open. Registration required
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, Yemen <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 <sup>th</sup> Annual Meeting
Hollywood	October 11 to 17, 1966	International Writers Guild (IWG)	1 <sup>st</sup> Congress
Paris	October 27 and 28, 1966	International Chamber of Commerce (ICC)	Commission on the International Protection of Industrial Property
Brussels	November 17 to 19, 1966	International Literary and Artistic Association (ALAI)	Executive Committee

### VACANCY FOR A POST IN BIRPI

Applications are invited for the post of Head of the Industrial Property Division in BIRPI which will become vacant in the autumn of 1966.

The person appointed will have responsibility for the implementation of BIRPI's program concerning Industrial Property (other than Registration Services), in particular the Paris Union, including:

- (a) acting as editor of *Industrial Property* and *La Propriété industrielle*;
- (b) drafting of working papers and reports of international meetings;
- (c) writing of legal studies;
- (d) representation of BIRPI at meetings of other international organizations;
- (e) responsibility for compiling a collection of translations of industrial property laws.

Candidates should have a university degree in law or equivalent professional qualification and wide experience in the field of industrial property law, preferably with some experience in its international aspects. An excellent knowledge of one of the official languages (English and French) and at least a good knowledge of the other are necessary.

Candidates must be nationals of one of the member States of the Paris or Berne Unions. Preference will be given to candidates who are nationals of States of which no national is on the staff of BIRPI. An age limit of 55 will apply.

Application forms and full particulars regarding the conditions of employment may be obtained from the Head of Personnel, BIRPI, 32, chemin des Colomnettes, Geneva, Switzerland. Application forms duly completed should reach BIRPI not later than October 17, 1966.