Copyright

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Contents

NATIONAL LEGISLATION

UNITED KINGDOM

The Copyright (International Conventions) (Amendment No. 3) Order 1966

(No. 1409, of November 11, 1966, coming into force on November 18, 1966)

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

1. — The Copyright (International Conventions) Order 1964 [1]) (hereinafter referred to as " the principal Order "), as amended [2]), shall be further amended —

(i) by adding a reference to Venezuela in Part 2 of Schedule 1 thereto (which names the countries party to the Universal Copyright Convention) and in Schedule 2 thereto (which names certain countries who are not members of the Berne Copyright Union but who are parties to the Universal Copyright Convention) and a related reference to 18th November 1966 in the list of dates in column 2 of the said Schedule 2;

(ii) by adding a reference to the Federal Republic of Germany (and *Land* Berlin) in Schedules 5 and 6 (which name the countries whose broadcasting organisations are afforded copyright protection in the United Kingdom in relation to their sound and television broadcasts respectively) and a related reference to 18th November 1966 in the list of dates in those two Schedules.

2. — (1) The provisions of Articles 1 (i) and 3 of this Order shall extend to all the countries mentioned in the Schedule hereto (being the countries to which Part I of the principal Order has been extended).

(2) The provisions of Article 1 (ii) of this Order shall extend to Gibraltar (to which Part II of the principal Order has been extended).

[1]) See *Le Droit d'Auteur (Copyright)*, 1964, p. 150.
[2]) *Ibid.*, 1964, p. 184; *Copyright*, 1965, pp. 40, 240 and 241; 1966, pp. 93, 187 and 247.

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

(2) This Order may be cited as the Copyright (International Conventions) (Amendment No. 3) Order 1966 and shall come into operation on 18th November 1966.

SCHEDULE

Countries to which the Order [other than Article 1 (ii) thereof] extends

Bahama Islands	Isle of Man
Bermuda	Mauritius
British Honduras	Montserrat
Cayman Islands	Seychelles
Falkland Islands and its Dependencies	St. Helena and its Dependencies
Fiji	St. Lucia
Gibraltar	Virgin Islands
Grenada	

EXPLANATORY NOTE

(This Note is not part of the Order)

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

It takes account of the accession by Venezuela to the Universal Copyright Convention [Article 1 (i)] and of the ratification by the Federal Republic of Germany of the International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations [Article 1 (ii)].

Article 2 (1) of the Order extends its provisions [other than those of Article 1 (ii)] to the dependent countries of the Commonwealth where the Copyright Act 1956 is law. Article 2 (2) extends the provisions of Article 1 (ii) of the Order to Gibraltar.

CORRESPONDENCE

Letter from Japan

This first "Letter from Japan" will confine itself to a description of the preparatory work now under way for the revision of the present Copyright Act of Japan. The description is based on the recommendations for revision made by the Government Copyright Council, of which the writer is a member.

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I. General

The present Japanese Copyright Act of 1899 was enacted to carry into effect the country's objective, *inter alia*, of reviving judicial independence hy freeing it from the clutches of iniquitous treaties which had until then sanctioned extra-territorial rights and consular courts. The Act was one of the many legislative measures framed at the time for the same purpose, and demonstrated the advanced civilization of the country, which bore comparison with Western standards. This does not mean that copyright laws and protection did not exist hefore that time. Apart from what might he considered the first copyright statute of Japan enacted in 1869, prohihiting the unauthorized reprinting of hooks, the Copyright Act of 1893, the Dramatic and Musical Compositions Act of 1893 and the Photography Copyright Act of 1887 were also in force. These scattered and fragmentary Acts were ahrogated by the new Copyright Act of 1899 and consolidated into a single statute. The new Copyright Act could claim to have attained to an international outlook. With its promulgation, Japan acceded to the Berne Convention of 1886 and the Additional Act of 1896. Since then, during its lifetime of more than sixty-five years, the Copyright Act has undergone amendments on various occasions, principally in order to hring it into line with the Berlin (1908) and the Rome (1928) Texts of the Berne Convention, the other amendments being of minor importance. Viewed in the light of recent improvements in the diffusion media, the Act on the whole is so much hehind the times that it is out of tune with the changed conditions. It was natural, under the circumstances, for the various interested sections of the nation to urge a comprehensive revision of the present outmoded Act. These pleas were, moreover, lent additional force hy the recent international developments in copyright law following the application, in most countries of the Berne

Union, of the Brussels Text of 1948 and, elsewhere, of the Rome Convention of 1961 concerning neighbouring rights. Hence, the Japanese Government decided to entrust the Copyright Council with the task of preparing the revision proposals. Meanwhile Parliament, anticipating that the work of revision would be completed in three years from 1962, and taking into account the term of protection granted by the Brussels Text, extended this from thirty to thirty-three years after the death of tbe author. In 1965, as a result of protracted deliberations by the Copyright Council, the term was further extended to thirty-five years. In 321 meetings held over the space of four years from 1962, the Copyright Council heard 49 authors' and 36 users' groups and submitted its Final Report in July 1966.

Having outlined the historical background, we shall now endeavour to explain the principal features of the Report. The Government is currently engaged in incorporating the recommendations of the Council into the draft text of the new Bill, which will be laid before the 1966-67 session of Parliament and, if passed, put into effect as from January 1, 1968.

Mention may be made, in passing, of the legislation now in force in Japan which, in addition to the Copyright Act of 1899, regulates copyright and the country's international commitments:

Statutes:

(i) Law of 1956 concerning the Exceptional Provisions to the Copyright Law required in Consequence of the Enforcement of the Universal Copyright Convention;
(ii) Law of 1952 concerning Exceptional Provisions for Copyrights owned by the Allied Powers and the Allied Nationals;
(iii) Law of 1939 on Intermediary Business concerning Copyrights.

Treaties (multilateral):

(i) Rome (1928) Text of the Berne Convention;
(ii) Universal Copyright Convention;
(iii) Treaty of Peace with Japan of 1951 [Articles 17, 12, 15 (C), and 19, etc.].

II. Works

Eligibility of works for protection is a difficult criterion with which every legislative body has to grapple. It is easy to say that works in the literary and artistic domain are protected, but to conclude from this that works as different as the masterpieces of Beethoven and the telephone directory enjoy equal protection is to be guilty of an obtuse interpretation of the positive text of the law and of the nature of copyright. The Report, to settle this point, makes in essence the following recommendations.

1. Works to be protected

Works eligible for protection under the Copyright Act should be clearly defined as those intellectual creations which fall within the literary, artistic, scientific and musical domain. The present Act does not explicitly mention the basic requisite, namely "intellectual creation", the absence of which leads to a misconception of the matter to be protected and enlarges the scope thereof. The Council fell in with the general desire to clear up this misconception. However, as a simple definition would not have sufficed, the Report recommends that the point be further clarified by enumerating examples of works to be protected, taking into consideration the international conventions and foreign legislation.

2. Enumeration

The Copyright Council submitted the following enumeration as being typically international in scope:

(1) literary, dramatic, or scientific works expressed in writing or orally;
(2) musical works;
(3) dramatic and choreographic works and entertainments in dumb show, fixed in writing or otherwise;
(4) artistic works such as paintings, drawings, woodcuts, prints, sculptures, engravings, architectural works and works of artistic craftsmanship;
(5) works such as illustrations, geographical charts, plans and models;
(6) photographic works and works produced by a process analogous to photography;
(7) cinematographic works and works produced by a process analogous to cinematography.

The works to be protected are independent of the mode or form of expression, except choreographic works, entertainments in dumb show and cinematographic works. In the case of choreographic works and entertainments in dumb show where the acting form is not fixed, the Copyright Council feared that a confusion might arise between the work itself and its performance. For this reason, the Report adopts the Brussels version in the matter. With regard to cinematographic works and works produced by a process analogous to cinematography, the Report makes fixation also a prerequisite for protection.

3. Works of architecture, scenic, calligraphic, photographic and cinematographic works

(1) *Works of architecture.* Architectural works should be protected if they show the characteristics of works belonging to the artistic domain. Constructions such as bridges and towers will be protected if they satisfy this criterion.

(2) *Scenic works.* Scenic decorations should be protected if they show the characteristics of works belonging to the artistic domain. In this case, protection will extend to the scenic decorations themselves as arranged on the stage but not to all scenic effects, including costumes and stage lighting.

(3) *Calligraphic works.* Works of calligraphy should be protected if they show the characteristics of works belonging to the artistic domain. Here the peculiar traditional Japanese calligraphy is the subject to protection.

(4) *Photographic works.* Photographic works should be protected if they are intellectual creations, whether belonging to the scientific or to the artistic domain.

(5) *Cinematographic works.* Cinematographic works should be protected if fixed on some material support. Visual or audiovisual fixations made by broadcasting organizations to serve as technical aids should not be considered as cinematographic works.

Explaining its recommendations, the Copyright Council advances the following reasons: *(a)* The protection of architectural works flows essentially from the necessity of protecting against piratical imitation the artistic beauty embodied in the architectural creation. Accordingly, ordinary buildings or residential houses are not eligible for protection as architectural works. Nor is the converse true, however, namely that a work of architecture, to be protected, must attain the same high standard as artistic sculpture. *(b)* The Council does not, for the present, uphold the view that all scenic effects including costumes and lighting should be protected as artistic works. This matter is to be reviewed sometime in the future when considering the protection of co-ordinate scenic effects in stage performances of dramatic works. Needless to say, original plans of stage decoration will be protected independently of the actual decoration on the stage if they satisfy the requirements of works eligible for protection. *(c)* Cinematographic works need to be added to the enumeration of works. Distinction, as in the present Act, of cinematographic works on the basis of originality should be abandoned. The Council does not deny that it is the visual effects that count and not the material supports, but deems, for the present, that it is premature to put this idea into practice and retains instead the principle of fixation. Fixations of dramatic and other works made by broadcasting organizations might in a sense be assimilated to cinematographic works; but because of their intended use and manner of use as well as their nature as technical aids to broadcasting, the Council decided not to include them in the classification of cinematographic works.

4. Works of applied art

The present Act does not explicitly mention works of applied art as being works eligible for protection. It has been the general belief that no work produced for a useful purpose in more than one copy is protected by the copyright law. The Council, however, considers that protection under the copyright law will be inadequate if it does not extend to works of applied art simply because they serve a useful or industrial purpose, although they may be comparable to other works of art like pictures or sculptures. In view of this, but taking into consideration the opposition voiced in industrial circles to the idea, the Council recommends two alternative solutions:

(1) Works of applied art should be protected by the copyright law. Such protection should be effectively co-ordinated with the industrial property system, in particular with the Design Act, on the following basis:

(a) Subject of protection:

(i) in the case of works serving as useful articles, protection should be limited to a single work of artistic craftsmanship;

(ii) designs, models, patterns and other objects intended for use in making reproductions or as useful articles should be the object of copyright protection in so far as they are artistic works in the sense given to the term by the copyright law.

(b) Co-ordination with the Design Act and the Trademark Act: artistic works, such as designs created for an industrial purpose, should exclusively be regulated by the Design Act where their industrial exploitation is concerned, once they have been put to industrial use with the consent of the copyright owner.

(2) In case such co-ordination is difficult to realize, it is recommended that a more effective means of protecting designs be devised by making a combined review of the copyright system and the industrial property system and that the current revision work should limit amendments to the following points only: *(a)* For designs, models, patterns and other objects intended for use in making reproductions or as useful articles, no amendment should be proposed to the Copyright Act and the entire protection of such objects left to the industrial property system, particularly the Design Act. But if they show the characteristics of the fine arts, they should of course be protected as artistic works. *(b)* Pictures and photographs created for, or used in, posters, picture postcards or calendars should be treated as works, or copies of works, eligible for copyright protection.

5. Items not coming within the purview of the Copyright Act

(1) The present Copyright Act provides that laws, ordinances and Government documents shall not be the subject of copyright. The Council proposes that all Government publications should be protected by copyright, except laws, ordinances, notifications, instructions, and any other documents publishing the decisions of the Government, central and regional, as well as the decisions or judgments of the judicial or administrative courts or of Government committees. In view of the nature of such Government publications, however, the Council recommends that the making of short quotations and excerpts therefrom be allowed.

(2) The Act also provides that miscellaneous reports and articles reporting current events, published in a newspaper or periodical, shall not be the subject of copyright. It is recommended that this provision be reworded so as to bring out the basic ineligibility of such items for copyright protection.

(3) Under the Act, speeches made in law courts, diets or assemblies, or political meetings open to the public, may not be the subject of copyright. In the case of speeches made in political meetings, the Council considers that there is no cogent reason for denying them copyright protection and that limitation to fair use for informatory purposes should suffice.

6. Translations, adaptations, arrangements of music and compilations

Such works should be clearly described as protected works, without prejudice to the copyrights in the original works. This will render superfluous the present provision in the Copyright Act relating to artistic works lawfully reproduced by a technique different from that of the original author.

7. Titles

The Council affirms that titles are not a proper subject for copyright. In case it should become necessary to protect titles by means of the copyright law, such protection should be limited to prohibiting the use of original titles characterizing a work in another work likely to be confused with the original.

However, the Council is of the opinion that protection of titles should preferably be left to the legislation governing unfair competition rather than to the copyright law.

III. Authors and Owners of Copyright

1. Works of employees and of legal entities

In the case of works produced by an employee at the initiative of the employer, in the course of employment, under the direction and supervision of the employer, in pursuance of an employment contract, for use in the business of the employer, and published at the behest and under the name of the employer, the Council recommends that the employer be deemed the author of the work thus created. No other provision is specifically envisaged for works of employees or for those produced by legal entities.

2. Authors of photographs and owners of copyright in photographs

(1) The present Copyright Act provides that copyright in a photograph which is inserted in a work of literature or science and which was produced or commissioned specifically for such work shall belong to the author of such work of literature or science and shall endure for the same period as the copyright in the latter. The Council recommends that this provision be deleted, leaving the matter to be settled by contractual agreement between the parties.

(2) The Act also provides that copyright in a portrait photograph commissioned by a third person shall belong to such person. The Council proposes that copyright in such cases should belong to the author of the photograph, with the reservation that its exploitation by the photographer should be subject to a licence from the person portrayed, who may reproduce the portrait photograph or cause it to be reproduced.

3. Works of joint authorship

The Council recommends that a work of joint authorship should be defined as a work produced by the collaboration of two or more authors whose individual contributions cannot be separately exploited. The publication, use and alteration of a work of joint authorship should be subject to the consent of all the authors of such work. Any one author should not be able to assign his share without obtaining the consent of the other authors, who may not withhold their consent without justification.

4. Authors and owners of copyright in cinematographic works

On this controversial issue, the Council makes the following recommendations:

(1) Authors of original works used in cinematographic works

(a) The authors of novels, dramas and music used in a cinematographic work should not be considered as authors of the work.

(b) The author of a work used in a cinematographic work should be clearly described as having the following exclusive rights of authorization, it being assumed that they have not been assigned to the maker:

(i) the right to authorize the cinematographic adaptation and reproduction of his work;
(ii) the right to authorize the distribution of the work thus adapted or reproduced;
(iii) the right to authorize the public performance and presentation and the broadcasting of the work thus adapted or reproduced.

(c) The conditions for the separate exploitation of original works used in a cinematographic work should be settled by contractual agreement between the parties. But, the same dramatic work should not be readapted for another cinematographic purpose in a manner inconsistent with proper exercise of this right and any act prejudicial to the economic exploitation of the cinematographic work should be avoided.

(2) Authors of cinematographic works and owners of copyright in cinematographic works

(a) The authors of a cinematographic work should be defined as " those persons who have participated creatively in the making of the cinematographic work ". In this sense, producers, directors, cameramen and art advisers will be authors. Performers might be considered as authors if they have made a creative contribution to the making of the work. The Council maintains, however, that these authors should not be enumerated in the positive text of the law.

(b) Copyright in a cinematographic work should belong to the maker. But authors and other persons who have participated in the making of the cinematographic work should not be prevented from entering into other agreements with the maker concerning the exploitation of the work.

(c) The moral rights of the authors of a cinematographic work should entitle them:

(i) to demand that they shall be mentioned by name during exploitation of the cinematographic work;
(ii) to prohibit adaptations or alterations prejudicial to the integrity of the cinematographic work. In the exercise of this right, regard must be had to the interests of other authors and of the maker.

The Report of the Council adds the following minority opinion:

(1) Copyright in a cinematographic work should belong to the maker.

(2) Directors and other persons who have participated in the making of a cinematographic work should be protected against any distortion, mutilation or other modifications of the work which would be prejudicial to their honour or reputation. However, this right should be exercised through the director acting as a representative of all participants, thereby avoiding an uneconomic exploitation of the cinematographic work which might result from the separate assertion by each of the participants of their individual moral rights.

It is noteworthy that the question of authorship of a cinematographic work was the most hotly disputed point in the deliberations of the Council, an observation which has its parallels in some other countries. The present Copyright Act, being patterned on the Rome Text of 1928, does not define the author of a cinematographic work. Much controversy had

been going on between the rival camps of claimants to authorship, in particular the directors and the makers. The Council, mindful of the ultimate object of ensuring the smooth operation of the film trade and determined to put an end to the dispute, devised a solution of its own. This result of such laborious deliberations calls for a few remarks. The Council was hostile to: *(a)* any assumption of assignment, *(b)* legal assignments, *(c)* film copyright, and *(d)* the author-maker concept. However, every member of the Council was in favour of the idea that the right of exploitation should vest in the maker. Nor were any outside interests opposed to this view. Encouraged by this general trend of thought, the Council adopted the solution which it has recommended. The salient features of the solution are: *(a)* it assimilates scenarios and music to pre-existent works (e. g. novels or dramas) which have been adapted or reproduced in a cinematographic work; *(b)* it defines the authors of a cinematographic work as "those persons who have participated creatively in the making of the cinematographic work", without however enumerating them; *(c)* the authors of a cinematographic work are granted moral rights narrower in scope than ordinary moral rights; and *(d)* copyright in a cinematographic work is vested in the maker, subject to those moral rights.

IV. Content of Copyright

The recommendations of the Council in regard to the content of copyright will now outlined. The Council proposes that the copyright law should clearly state that the author shall have the exclusive right to reproduce the work materially as well as "immaterially", that is, to have it, say, publicly represented or performed. Under the present Copyright Act, copyright includes the right of reproduction, the right of translation, and, in the case of dramatic and musical compositions, the right of public performance. The liminary Article does not, however, further define the content of copyright. Rights which later came into being, such as those relating to phonograms, cinematographic works and broadcasting, are provided for in several dispersed Articles. The notion of "reproduction" has sometimes been stretched to include every aspect of use, whether material or "immaterial". The Council urges that a sharp distinction be drawn between the right of reproduction and the right of public representation or performance so as to adapt the notion to the changed conditions under which works are exploited. Accordingly, the Council recommends that copyright should in general comprise authors' rights covering the uses of a work which are enumerated below.

1. Enumeration of authors' rights

(1) Reproduction of a work in writing or by photography, including plans, sketches of artistic works such as works of architecture, etc.;
(2) recording of a work;
(3) public performance of a dramatic work;
(4) public performance of a musical work;
(5) broadcasting of a work;
(6) public recitation of a work of literature or science;
(7) public exhibition of a work of art;
(8) public distribution and presentation of a cinematographic work and of works used in a cinematographic work.

It is to be noted that performance and broadcasting in the above enumeration include these operations as effected by means of mechanical supports. With regard to translations, adaptations, arrangements of music and other alterations of a work, the Council holds that the author's right to authorize them should be clearly provided for in the copyright law.

2. Right of broadcasting

The right to broadcast a work should include:

(1) the right to authorize the broadcasting of the work;
(2) the right to authorize the rebroadcasting, or the retransmission by wire of broadcasts, of the work in cases where such communication is made by a body other than the original one. However, provision should be made to ensure that retransmission by wire of a lawfully broadcast work, if done for non-profit purposes, shall not constitute an infringement of the right of broadcasting;
(3) the right to authorize the communication to the public by loudspeaker or any other similar instrument. However, provision should be made to ensure that such public communication, if made through the ordinary receivers used in private homes, shall not constitute an infringement of the right of broadcasting.

Some remarks are called for in regard to the secondary uses of broadcast works referred to in (1) and (2) above, the rights in question being new rights still to be sanctioned. Retransmission by wire of broadcasts is practised all over Japan to supplement the poor reception of the hertzian waves, due to the country's mountainous terrain. The network has been developed mainly in the outlying rural villages. Unlike the so-called rediffusion service in other countries, retransmission by wire of broadcasts is effected by bodies which may be likened to co-operatives, each serving only one locality on a non-profit basis. Under the provisions of the broadcasting law, owners of receiving sets are liable to a special fee in respect of broadcasts retransmitted by wire. As of January 1966, there were in Japan more than 2,500 systems of retransmission by wire for reception by radio and more than 8,000 such systems for reception by television, serving more than 2,800,000 and 596,000 households, respectively. Under these circumstances, the members of the Council were unanimous in agreeing that such systems should not be regarded as transmitting a broadcast work to new audiences. With regard to reception by the public (3), the Council recommends that the right of broadcasting should extend only to particular types of communication which would freely permit public reception, say, in a small café using an ordinary receiver without a sound amplifier.

3. Right to exhibit works of art

The Council, in recognizing this new right, recommends that it be properly co-ordinated with copyright in the same work, on the following lines:

(1) *(a)* public exhibition of an original work of art should be subject to the authorization of the person holding copyright in it;

(b) where the original of a work of art has been assigned, its owner should be allowed to exhibit the original, unless there is a reservation to the contrary;

(c) such reservation by means of a special stipulation should not be enforceable against *bona fide* third parties.

(2) Television broadcasts of a work of art, being comprised in the right of broadcasting, should not be subject to the right of public exhibition.

4. " Droit de suite "

The Council holds that it would be premature to introduce the *droit de suite* system in view of the current trade practices regarding works of art in Japan, where the system of public assessment of their prices, such as by public auction, is not so widely established. The Council, therefore, recommends that the system be given fresh attention when the economic conditions are ripe for its introduction.

5. Right of public distribution of mechanical sound recordings

The Council, hostile to the idea of this right *erga omnes*, considers that it may safely be left to contractual arrangements negociated between the parties, and that public performance or broadcasting of such mechanical recordings should not be subject to any right other than the right of performance or of broadcasting.

V. Exceptions to Copyright Protection

In keeping with its recommendations concerning the content of copyright, the Council proposes the following amendments to the present limitations on copyright.

1. Private use

(1) *Material reproduction.* The present Copyright Act permits the free reproduction of a published work provided that such reproduction is made by other than mechanical or chemical processes, without any intention of publishing it. In the Council's opinion, the present requirement of "other than mechanical or chemical processes ", which limits the manner of reproduction to copying by hand only, no longer corresponds to present-day conditions, which have changed as a result of the development of copying or recording machines. Consequently, the Council proposes that the free fair reproduction of works in any manner be permitted if reproduction is made only for private or family use or for any other use in a limited circle and not for the purpose of publication or for the sake of financial gain. It expressed concern that the further development of reproductive devices might pose a tbreat to the interests of authors and that, in such an event, reconsideration of the proposed solution would be necessary.

(2) " *Immaterial* " *reproduction.* The following cases of " immaterial " reproduction should not be considered as public performances:

(a) where the audience is particularized and limited, as in the family circle;

(b) where, even tough the audience is large, its sphere of interest is precisely limited and its component members are mutually and personally connected.

The Council adds, further, that even a non-particularizcd audience may present cases which common sense prevents us from regarding as a public performance, because of the small audience involved or the purpose, manner, or non-profit nature of the use of the work. To take a concrete example, a performance at a wedding party should not be considered as a public performance, but the playing of " music while you work " in a large factory having many employees should not bc exempt from copyright claims nor, for that matter, a performance under similar conditions before the members of a club. Thc performance of a musical work in the waiting-room of a hospital or in a barber's shop is cited as another instance which common sense prevents us from regarding as a public performance.

2. Quotations

(1) Quotation from another person's work for the purposes of information, criticism, scientific research and the like should be lawful if compatible with fair practice, and to the extent justified by the purpose in view, even though such quotation may comprise the whole of a short work or of a work of art.

(2) This amendment will render superfluous the provisions of the present Copyright Act relating to " the insertion in one's own dramatic or musical composition of excerpts from the text of another person's work of literature or science " and " the insertion of an artistic work as an illustration in a work of literature or science, or the insertion of a work of literature or science as an explanation in an artistic work ".

3. Educational use

(1) *Use in textbooks. (a)* The use of a work in textbooks compiled or sponsored by the Ministry of Education should not be subject to the authorization of its author, but should entail the payment of a reasonable compensation to be fixed by the Minister of Education in consultation with thc Council.

(b) Authors should receive prior notice of any intended use of their works in order that they may have an opportunity to protect their moral rights. Minimal modifications necessitated by the educational purpose in view should be permissible.

(2) *Other educational uses. (a)* Use for school broadcasting. The use of a work in school broadcasting programmes should be assimilated to the use in textbooks referred to above.

(b) Use for teaching purposes. The free fair use of a work for school or popular education may be said to be basically justified, but no special legal provision is required as fair use here would be the same as the non-public or non-profit use provided for elsewhere.

4. Reproduction by libraries

(1) Reproduction on microfilm and by photograpby in a library of a work in its custody for the private use of a person on his application should be lawful, provided that such reproduction is made in a single copy for each user and reproduces only part of the work.

(2) But if the purpose of reproduction justifies it, the making of more than one copy should be permissible. Articles

published in a periodical may be reproduced in their entirety, but due diligence must be used to avoid economic injury to the periodical.

(3) Libraries should be allowed lawfully to reproduce the whole of a work in their custody for the purpose of preserving it.

(4) Libraries should be allowed lawfully to provide other libraries, at the latter's request, with reproduction of a work in their custody which is difficult to obtain by reason of its being out of print or for any other similar reason.

(5) The libraries entitled to reproduce a work should be limited to those of a public character having qualified experts on their staff. This restriction should be enforced by the authorities.

5. Non-profit public performances

The present Copyright Act provides that the public performance of a dramatic work or musical composition when not for profit and when the performers do not receive remuneration, or the broadcasting of such a performance, shall not be deemed an infringement of copyright. The Council recommends that this provision be retained but that some such phrase as " not for financial gain " be added so as to exclude any public performance for propagandistic or advertising purposes under cover of this provision. The Council remarks, further, that it cannot see any justification for the free broadcasting of a public performance and considers that the phrase relating to this in the relevant provision should be deleted.

6. Ephemeral fixations

The system of ephemeral fixations should be introduced subject to following conditions:

(a) ephemeral fixations may be made by a broadcasting organization by means of its own facilities and used for its own broadcasts. However, the actual fixing may be entrusted to another broadcasting organization similarly authorized in respect of the work in question;

(b) fixations thus made should not be preserved more than six months, though those of exceptional documentary value may be kept in the official archives to be designated by an order of the Cabinet.

The possibility of entrusting the actual fixing to other broadcasting organizations needs some explanation. Broadcasting in Japan is currently based on two systems: one of them, which may be described as public service broadcasting, is provided by *Nippon Hoso Kyokai* (Japanese Broadcasting Corporation), and the other is a commercial network comprising more than 62 companies. The commercial network broadcasts either " live " or recorded performances. Whether a performance is " live " or recorded depends upon the convenience and day-to-day operational needs of the network. Hence it is reasonable to put " live " and recorded performances on the same footing.

7. Use of works for informatory purposes

(1) Articles on current political, economic or social events, published in a newspaper or periodical, should be allowed to be reproduced in another newspaper or periodical or by broadcasting, unless there is a reservation to the contrary.

(2) Public speeches on political topics should be allowed to be either published in a newspaper or periodical, or broadcast. In this case, broadcast political speeches will be considered as speeches made in public.

It should be noted that reproduction by printing and broadcasting of what amounts to published articles on current topics will be limited to political speeches only, whereas broadcasting organizations will be permitted to use all articles on topics of current events published in the press. In all cases, the sources of the articles will have to be indicated.

8. Use of works for reporting current events

The use of works for reporting current events by means of photography, cinematography or broadcasting should be allowed in so far as is justified by the informatory purpose in view. Such fixations should not be used for other than the particular informatory purpose.

9. Use of works for judicial and similar purposes

Reproduction of a work for purposes of testimony or consultation in the courts or in public offices should be permissible. It should be pointed out, in this connection, that the present Copyright Act provides for the free reproduction of a work for use by Government agencies only. The Council, considering that such reproduction is covered by its recommendations relating to use in a limited circle [see V. 1 (1) above], suggest the deletion of this provision.

10. Reproduction in braille

Such reproduction should be freely allowed.

11. Reproduction of works of art permanently situated in places open to the public

Such reproduction should be allowed.

12. Catalogues of publicly exhibited works of art

The promoters of a public exhibition of works of art should be free to reproduce them for the purpose of making catalogues.

13. Use of texts from works of literature in musical compositions

The Council recommends the elimination of this exception which is presently recognized by the Copyright Act, as the current practice is generally to seek the authorization of the author.

14. Broadcasting or public performance of works reproduced by mechanical processes

The present Copyright Act provides for the fair use of records and similar reproductions in such performances. The Council proposes that this exception should be eliminated, for the development of reproductive devices and the enormous increase in the possible uses of mechanical reproductions, in particular the introduction of commercial broadcasting, have given rise to a persistent demand on the part of authors and composers for the abolition of the exception on the one hand,

and have been responsible for the present absence of such an exception in other countries on the other. However, public performances for non-profit purposes should not be the subject of copyright. Since the free use of mechanical reproductions is an established practice originated by the law, the Council maintains that due consideration must be given to this fact and that the amount of the fee payable as well as the mode of collection should be such as not to cause an abrupt change in the present conditions.

VI. Compulsory Licences for Mechanical Reproductions

In Japan there is no provision for compulsory licences in respect of mechanical reproductions. In view of the marked tendency of industry to monopolize the work of authors and composers, thereby impairing the free development of musical culture, the Council recommends that industry should make an effort to bring order into this pernicious monopolistic situation and that, failing such action, legislation providing for compulsory licences should be introduced after a reasonable period of time.

VII. Duration of Copyright Protection

1. Terms of protection

(1) The Council recommends that the term of protection should be the life of the author plus fifty, instead of the present thirty-five, years after the death of the author. Posthumous works should be similarly protected.

(2) For anonymous or pseudonymous works as well as works published or publicly performed under the name of corporate bodies, the term should be fifty years after the time of publication or public performance.

(3) Copyright in any work the term of protection of which is calculated from the time of publication or public performance should endure for fifty years after such publication or public performance.

(4) The term of protection subsequent to the death of the author or the time of publication or public performance of a work should run from the date of the author's death or the time of such publication or public performance.

(5) The extension of copyright duration under the Treaty of Peace as well as under the present Copyright Act might be abolished in view of the extended terms of protection recommended above.

2. Cinematographic works

(1) The term of protection for cinematographic works should be fifty years after the time of public presentation.

(2) After the expiration of this term, the cinematographic works themselves should not be used in such a manner that the copyright in the works incorporated in them, e. g. novels, scenarios and music, is infringed.

3. Photographic works

The term of protection should be fifty years after the time of publication.

4. Right of translation

The Council considers that the time has come for Japan to withdraw its reservation regarding the Berne Convention and to accord to translation rights the same treatment as to copyright in general. However, in view of the consistent attitude taken in this matter by Japan on the international plane and the probable repercussions of such a measure on the publishing industries, the Council adds that its recommendation should be carefully examined before it is put into practice.

5. "Domaine public payant"

The Council, believing that the recommended extensions of the term of protection and the general lack of understanding of the system of the *domaine public payant* render the universal adoption of the system difficult, suggests that the matter be reserved for future consideration.

VIII. Moral Rights

The Council recommends that the provisions of the present Copyright Act relating to moral rights should be amplified as follows:

(1) Authors should enjoy moral rights independently of their pecuniary rights.

(2) Authors should enjoy the following exclusive rights:

(i) the right to authorize the publication of their works;

(ii) the right to claim authorship of their works;

(iii) the right to object to any distortion, mutilation or other alteration of, or any other action in relation to, the said works which would be prejudicial to their honour or reputation. *Bona fide* alterations warranted by the nature of a work or by its intended use should be allowed without the authorization of the author. In such a case, the author should be entitled to refuse permission for any indication of his name on the work.

(3) After the death of the author, the above rights should expire at the same time as his copyright.

The Council mentions, in passing, that no right of retraction should be recognized.

IX. Infringements

Besides the amendments recommended in respect of civil remedies and criminal penalties, the Council suggests that an administrative mediation committee be set up in the Ministry of Education to mediate in any dispute concerning copyright at the request of both parties.

X. Application of Copyright Act

(1) The Council recommends that protection under the Copyright Act should extend to:

(i) works of authors who are nationals of Japan;

(ii) works first published in Japan;

(iii) works of art or of architecture which form part of a building in Japan;

(iv) works which Japan is bound to protect under international treaties.

Moreover, the protection of works of aliens domiciled in Japan should be examined in connection with the treatment to be extended to stateless persons and refugees having their habitual residence in the country.

(2) The Council suggests that sympathetic consideration be given to the idea that works of nationals of countries having no treaty relations with Japan should enjoy the same protection in Japan as is granted to the works of Japanese nationals in those countries.

XI. Neighbouring Rights

1. Introduction of neighbouring rights system

The Council urges the introduction in Japan of the neighbouring rights system designed to protect performers, producers of phonograms and broadcasting organizations. It recommends that performances, singing, and mechanical reproductions should no longer be protected under the copyright law as at present, but under the neighbouring rights system. Although the present Copyright Act mentions "performances", "singing" and "mechanical reproductions" as enjoying protection, the exact scope and extent of this provision are far from clear, the broad interpretation suggested by the words themselves being untenable in the light of relevant legislative history. However, the Council reached the conclusion that the neighbouring rights system was the most appropriate to the purpose. With regard to the protection of broadcasting organizations, the Broadcasting Act provides for the prohibition of rebroadcasting, and the Wire Broadcasting Act, for the prohibition of retransmission by wire of broadcasts, without the consent of the broadcasting organizations concerned. It is considered sufficient if private rights are sanctioned for the protection of broadcasting organizations. Accordingly, apart from Japan's possible accession to the Rome Convention of 1961, which deals specifically with neigbbouring rights, the Council recommends that the neighbouring rights system be instituted in the country not only in harmony with local conditions but on the model of the Rome Convention.

2. Protection of performers

(1) *Performers eligible for protection.* The performers to be protected by the copyright law should be those who perform literary and artistic works. Performers in similar fields participating in the performance of such works should also enjoy protection.

(2) *Content of the right of performers.* Performers should have the right to authorize or prohibit:

(a) the broadcasting and the communication to the public of their performance, except where the performance used in the broadcasting or the public communication is itself already a broadcast performance or is made from a fixation;

(b) the fixation of their unfixed performance;

(c) the reproduction of a fixation of their performance:

(i) if the original fixation itself was made without their consent;

(ii) if the reproduction is made for purposes different from those for which the performers gave their consent;

(iii) if the original fixation was made in accordance with the provisions regarding exceptions to neighbouring rights, and the reproduction is made for purposes different from those referred to in those provisions.

If broadcasting was consented to by the performers, such consent should, unless otherwise agreed, be considered to include their consent to the rebroadcasting of the fixation and to its fixation and reproduction for broadcasting purposes. Rebroadcasting of a fixation and its use for broadcasting purposes should entitle the performer to an equitable remuneration distinct from the initial one. Adequate measures should be taken to remove the overlap between the type of fixation here considered and an epbemeral fixation for broadcasting purposes, which is already an exception to the neighbouring rights system. The minority opinion in regard to this point, quoted in the Council's Report, is worth mentioning:

(a) If broadcasting was consented to by the performers, the broadcasting organization which obtained such consent should be allowed to fix the performance, and reproduce and use the fixation, only for the broadcasting purpose in respect of which consent was given. But the use of the fixation for broadcasting purposes other than the one consented to and the rebroadcasting thereof should be subject to the consent of the performer.

(b) Unless otherwise agreed, fixations which have obtained the consent of the performer may be preserved for six months and should be rendered unusable three weeks after their use.

(c) An ephemeral fixation for the purpose of broadcasting should be considered as an exceptional fixation to be used only once in lieu of a "live" performance.

Performers should be entitled to make secondary use of phonograms (see below).

(3) *Exercise of performers' rights through representatives.* Adequate provision should be made for several performers who have participated in the same performance to exercise their rights through a representative nominated by them.

(4) *Moral protection of performers.* It is recognized that there is no need to provide for the mentioning of a performer by name. With regard to the distortion, mutilation or other modification of performances, it should suffice if the law were to provide that the use of a fixation such as a phonogram shall not involve distorting, mutilating or otherwise modifying it in a manner prejudicial to the honour or reputation of the performer.

(5) Among visual or audio-visual fixations, a cinematographic work protected as a work in the literary or artistic domain should not entitle the performers whose performance is incorporated therein to protection under the neighbouring rights system. This rather involved language in which the recommendation of the Council is couched means, in effect, that performers should enjoy protection if they appear in a visual or audio-visual fixation intended for television.

3. Protection of directors of theatrical performances

Any use of a theatrical performance should be subject to the consent of the person who has directed it. The scope and nature of this right of the director should be similar to those of performers' rights. The continuity of directors of a performance should be protected in the same manner as the performance itself, but there is not sufficient ground at present for making any special provision to this effect.

4. Protection of producers of phonograms

(1) *Producers eligible for protection.* The producers to be protected by the copyrigbt law sbould be those persons who, or the legal entities which, first fix the sounds of a performance or other sounds.

(2) *Content of the rights of producers of phonograms.* Producers of phonograms should enjoy the rigbt to authorize or prohibit the direct or indirect reproduction of their phonograms and also the right to make secondary use of phonograms.

5. Protection of broadcasting organizations

(1) *Broadcasting organizations eligible for protection.* The broadcasting organizations to be protected by the copyright law sbould be those legal entities which transmit, by wireless means, sounds or images and sounds for reception by the public.

(2) *Content of the rights of broadcasting organizations.* Broadcasting organizations should enjoy tbe right to authorize or prohibit:

(a) the rebroadcasting and retransmission by wire of tbeir broadcasts;
(b) the fixation of their broadcasts;
(c) the reproduction of fixations of their broadcasts;
(d) tbe communication to the public, for profit, of their television broadcasts, made by special equipment other than receiving sets of the kind commonly used in private bomes.

It should be pointed out that the retransmission by wire referred to above is not to be subject to authorization if done for a non-profit purpose.

6. Rights of performers and producers of phonograms in respect of the secondary uses of phonograms

(1) If a pbonogram publisbed for commercial purposes is used as an essential implement of business as in broadcasting, a single equitable remuneration should be paid by the user to the performers and to the producers of phonograms.

(2) Secondary use rigbts in respect of phonograms should for tbe time being be limited to use in broadcasting (including transmissiou of music by wire). The scope of such rights should be reviewed in the future when the neighbouring rights system has been put into practice on an international scale.

(3) The right of equitable remuneration should be exercised by the producers of phonograms and any remuneration received should be sbared with the performers by passing on to tbese a reasonable part thereof. Disputes between producers and performers concerning tbe amount of tbe remuneration and similar questions should be decided by mediation or arbitration. In any casc, great care sbould be exercised in order not to impose an excessive burden on the broadcasting organizations by introducing a sudden change into the conditions governing the use of phonograms.

7. Exceptions to neighbouring rights

Neigbbouring rights should be subject to tbe same exceptions — private use, use of short excerpts in connection with the reporting of current events, ephemeral fixation for broadcasting purposes, and use solely for the purposes of teacbing or scientific research — as apply to copyright.

8. Term of protection under neighbouring rights

The term of protection should be twenty years computed from the first day of the year following the year in which (1) the fixation was made, where phonograms and performances fixed in phonograms are concerned, or (2) the performance or broadcast took place, where unfixed performances or broadcasts, respectively, are concerned. Provision should be made for the assignment and inheritance of neighbouring rights in the same way as in copyright, taking into account the nature of such rights.

9. Infringements of neighbouring rights

The legal provisions against infringement should be similar to those applicable to copyright.

10. Performers, producers of phonograms and broadcasting organizations entitled to protection under tbe neighbouring rights system

(1) *Performers.* Performers should be protected if any of the following conditions is met:

(a) the performance took place in Japan;
(b) the performance was incorporated in a phonogram of a protected producer;
(c) the performance was carried by a broadcast of a protected broadcasting organization.

However, careful consideration should be given to the question of applying the above criteria to aliens before the neighbouring rights system is firmly established internationally.

(2) *Producers of phonograms.* Producers who are nationals of Japan and producers who first fix the sounds of a performance or other sounds in Japan should be protected.

(3) *Broadcasting organizations.* Broadcasting organizations whose headquarters are situated in Japan and broadcasting organizations whose broadcasts are transmitted from a transmitter situated in Japan should be protected.

11. Transitional measures

The neighbouring rights system should apply to performances, phonograms and broadcasts wbich are performed, fixed and broadcast after its entry into force. With regard to "performances", "singing" and "mechanical reproductions" protected under the present Copyright Act at the time of entry into force of the neighbouring rights system, adequate transitional measures should be taken to avoid causing confusion due to the duplication of protection under the old and tbe new systems.

XII. Miscellaneous

1. Protection of editions

The Council is of the opinion that the following persons deserve to be considered for some kind of protection:

(1) publishers, in respect of typographical rearrangements of a published edition;
(2) authors of scientific publications concerning old documents and materials having no copyright protection;

(3) collectors of music who have reduced, say, old traditional folk-songs, to a lasting form by writing them down.

2. Repression of pirated phonograms

It is considered proper that persons engaging in the reproduction and sale of phonograms made from an imported matrix should be entitled to prevent the making of pirated editions of their phonograms, particularly in view of the connection with the law repressing unfair competition.

3. Protection of private writings and pictures of private persons

The protection of writings of a private nature, such as epistles or diaries, and of pictures of private persons should not be dealt with in the course of the present revision work.

XIII. Conclusion

The above survey of the recommendations of the Government Copyright Council, though inevitably discursive, is by no means exhaustive. It remains to be seen how far the drafters of the Government Bill will follow the Council's recommendations. My next "Letter" will cover the subsequent work of the Government in drafting the new copyright law and also the preparatory work of the Council connected with the revision of the Collection Society Act of 1939.

Yoshio NOMURA
Member of the Government Copyright Council

INTERNATIONAL ACTIVITIES

International Writers Guild (IWG)

(First World Congress, Los Angeles, October 10-16, 1966)

A new international non-governmental organization, the International Writers Guild, formed in October, 1964, held its first World Congress in Los Angeles (USA), from October 10 to 16, 1966. Up to now, it was only the Executive Committee of this organization that had met [1]). The International Writers Guild, whose original founders were the writers organizations of Great Britain, the United States and Yugoslavia, consists of autonomous national associations which represent screen, television and radio writers. Its aims are to maintain and support the writer's responsibility to the peoples, ensure that he receives a fair share of the rewards of his own achievement and that his moral and material interests are safeguarded throughout the world. Besides being an international craft organization, the International Writers Guild is founded on the belief that the free exchange of ideas between writers of different countries and their co-operation in transmitting these ideas through films, television and radio to audiences throughout the world will lead to greater understanding, tolerance and ultimately to universal peace.

The first World Congress held its sittings at the center of the Writers Guild of America (West). The delegates of national associations, members of the International Writers Guild, of the following countries took part in it: Australia, Belgium, Canada, Czechoslovakia, Denmark, Finland, France, Great Britain, Israel, Japan, Netherlands, Sweden, United States of America, and Yugoslavia. The national association of the USSR had delegated its observers; the International Confederation of Societies of Authors and Composers (CISAC) and the International Federation of Actors (IFA) had done the same.

Invited in the capacity of observers, BIRPI was represented by Mr. Claude Masouyé, Counsellor, Head of the Copyright Division, and Mr. Melville B. Nimmer, Professor of law at the University of California, Los Angeles, consultant of BIRPI; and Unesco by Mr. Gérard Bolla, Head of the Bureau of Personnel.

The agenda included the examination of a certain number of professional or guild problems: co-production; translation rights; production costs; quotas; proportion of national/foreign production; censorship; various provisions to be inserted in agreements between writers and producers.

It included also the study of the proposals for the revision of the Berne Convention concerning the film copyright system and the rules provided for in favour of developing countries. In this respect, the International Writers Guild, having heard the report presented by the Chairman of its International Copyright Committee, expressed the following opinion:

> The First Congress of the International Writers Guild, meeting in Hollywood on October 10-16, 1966,
>
> Having examined the new proposals for the revision of the Berne Convention,
>
> (a) *about the question of cinematographic and television works*
>
> (Article 14, paragraphs 4 to 7, and Article 2, paragraph 2)
>
> Establishes the fact that the interpretative rule of contracts (Article 14, paragraph 4) which replaces the former presumption of assignment has, in effect, the same meaning, i. e., the writers (even if it is no longer presumed that they have transferred all their rights) lose the right to prevent the exploitation of their work, in any way, whatever their contract may be, except in case of an agreement clearly to the contrary;

[1]) See *Copyright*, 1965, p. 247.

Remarks that paragraphs 5 and 7 of Article 14 contain only purely hypothetical possibilities of choice while paragraph 6 simply confirms the anomaly against which screenwriters have many times protested — under which only composers reserve the rights in their works which rightfully all the authors should be able to retain;

Observes that paragraph 2 of Article 2 still proposes that television works should come under the same rules as cinematography — with only the purely illusory reservation that these works must be fixed in some material form which is the case with respect to virtually all telecasts;

Reaffirms forcefully that the proposed modifications which have the effect of diminishing the individual and collective protections of writers and placing the film producers and, above all, the radio and television companies, in a privileged legal position without any justification, are contrary at the same time to the spirit and vocation of the Berne Convention;

(b) *about the question of developing countries* (the former Article 25bis which has now become a Protocol Regarding Developing Countries)

Regrets that the apparent concession granted to writers by substituting a special protocol for the former Article 25bis is obviously illusory for this protocol forms an integral part of the Convention and must be obligatorily ratified at the same time;

Establishes that the benefits of the protocol, just as earlier those of Article 25bis, can always be claimed by all countries which may invoke their " cultural " needs and can pretend to be " developing ";

Remarks that the restrictions for " educational " purposes authorized by paragraph *(e)* of the protocol allow States which so desire to abolish copyright or to establish legal licences for purposes of exploiting creative work in any form;

Observes that the least objectionable provisions of the protocol are no doubt those contained in paragraphs *(a)* and *(b)* relating to translations and the term of copyright which are verbatim repetitions of the Universal Copyright Convention's Articles IV and V;

And therefore raises the question (while recognizing the necessity of providing developing countries with cultural aid which these countries need, but at the same time being conscious of the grave danger which the introduction of such facultative restrictions into the Berne Convention presents to all our rights):

(1) whether the equitable solution would not demand that the Governments of the " developed " countries, propagators of this culture, should take upon themselves the burden of such aid, by paying the writers themselves rather than, by accepting the restriction of copyright protection — providing " free help " of which the writers would pay the cost;

(2) if it would not be more logical that the developing countries should be referred to membership in the Universal Copyright Convention (which Unesco set up in 1952 for this very purpose) and whether the instrument upon which the essential foundations of the protection of creative works rests should be conserved intact and if need be, with fewer participating countries.

At the close of its deliberations, the Congress elected the Executive Committee and various other committees. Mr. James R. Webb (USA) was re-elected President of the International Writers Guild. Mr. Henry Comor (Canada), Miss Evelyn Burkey (USA). Mr. Kurt Haulrig (Denmark), Mr. Roger Fernay (France), Mr. Howard Clewes (Great Britain), and Mr. Radoš Novaković (Yugoslavia) were elected Vice-Presidents. Furthermore, three international secretariats (London, Belgrade and New York) were created and assumed by Mr. Eric Paice, Mr. Oto Deneš and Mrs. Manya Starr respectively.

The next Congress will take place either in Yugoslavia or in Japan.

The Los Angeles meeting was preceded by a Conference organized in New York, from October 6 to 8, by the International Writers Guild under the anspices of the International Film and Television Council whose President is Mr. John Maddison. This Conference on the international understanding through films and broadcasting discussed a certain number of problems of a general nature, such as the free flow of ideas, film and broadcasting as a cultural influence, and the impact of the media on history. Its work was attended by the representatives of the United Nations.

NEWS ITEMS

GERMANY (Federal Republic)

Max Planck Institute for Foreign and International Law of Patents, Copyright and Competition, Munich [1])

The Max Planck Society for the Promotion of the Sciences has established in Munich a Max Planck Institute for Foreign and International Law of Patents, Copyright and Competition which began its activities on March 1, 1966 *(Max-Planck-Institut für ausländisches und internationales Patent-, Urheber- und Wettbewerbsrecht in München).* Professor Eugen Ulmer has been appointed Director of this Institute. His closest collaborator is Professor Friedrich-Karl Beier.

This constitutes an important transformation in the structure of the previously existing Institute of the Munich University, which was founded by Professor Eduard Reimer and then placed under the direction of Professor Ulmer and Professor Beier following Professor Reimer's death in 1957. It will continue to function, under the same direction, as a university institute for industrial property and copyright questions relating to German law. The new Institute, however, will take over matters of foreign and international law and comparative law. Its inclusion among the ranks of the various research institutes of the Max Planck Society will not only enable the previous work to be continued on a broader basis, but also new research activities to be initiated.

The main purpose of the Institute's work consists of systematic research of international and foreign law based on the study and analysis of the legal sources, the judicial reports and the literature on the subject. Particular attention will therefore be devoted to expanding the existing stock of literature in order to form a comprehensive library. Work is already going ahead on documentation that will comprise all the relevant material and make it accessible for use in research, theory and practice.

In the field of international law, the Institute will analyze the treaty law, in particular the Paris Convention for the Protection of Industrial Property and the special Agreements connected therewith, the Berne Convention for the Protection of Literary and Artistic Works, and the Universal Copyright Convention. This work can only be prolific if it is combined with the study of national legislation and case law in the member countries. It is also intended to examine the questions relating to the development of treaty law on the basis of comparative law studies.

A further function will be to collaborate, in connection with the aims of the Council of Europe and more particularly of the European Economic Community, to the harmonization of legal systems within Europe. The work already done by the University Institute in this field will be continued: At the request of the Commission of the European Economic Community, the Institute elaborates a report on the law of unfair competition in the member States of the E. E. C. Of this report, the comparative study (volume I) and the country study on Italy (volume V) have already appeared, while those on Belgium, Luxembourg, the Netherlands, Germany and France are due to be published shortly.

There are other tasks awaiting the Institute as a result of the new questions arising at the international level. These include examination and description of the legal situation in the East European countries, with particular reference to the protection of inventors, as well as the special problems of industrial property and copyright in developing countries.

In addition, both the basic aspects of industrial property and copyright and special problems will be dealt with by comparative law methods. The basic questions involved include, in particular, the relationship of patent protection to the economic system, and especially to Anti-Trust law, as well as the principle of territoriality in trademark law. Special projects on which the Institute is at present engaged include legal protection of computer programs, protection of industrial designs, and problems of film and television law.

The Institute hopes to be able to pursue and expand the contacts it has previously maintained both with international offices and organizations and with foreign experts and specialists in the field of industrial property and copyright. In 1967, the Institute will move into a new building offering better working facilities for the members as well as for guests of the Institute, particularly also for guests from abroad.

The Institute will report on the results of its work in its monthly publication, *Gewerblicher Rechtsschutz und Urheberrecht, Internationaler Teil,* and in two series of publications, one in the field of industrial property and the other in the field of copyright.

The provisional address of the Institute is: Munich 2, Zweibrückenstrasse 12.

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[1]) BIRPI translation.

OBITUARY

Henry Puget

A high official of the French Government is no more, and his death brings sorrow to all those — and they are many all over the world — whose respect and admiration he had won. Henry Puget, Honorary Counsellor of State, passed away at his Paris home on November 18, 1966, in his seventy-third year.

In intellectual property circles, this man of sterling character who often dominated the diplomatic, governmental and other meetings will not be forgotten so soon. Called upon on several occasions to act as a spokesman of France, Chairman Puget knew, by his authority and his clear vision, how to safeguard the interests which had been confided to his care or the positions which it was his mission to defend. His elocution, the concision of his style, his manner of self-expression admirably bore out the famous dictum of Boileau:

" What is well conceived is clearly expressed,
And the right words come happily after."

His flair for writing led him to play a prominent rôle in the drafting of reports, conventions and other international agreements, and in our own particular field he took an important part, at the Diplomatic Conferences of Brussels in 1948 and of Rome in 1961, in the formulation not only of the last revised text of the Berne Convention but of the Rome Convention on neighbouring rights.

These activities, however, were only a modest facet of a career which was brilliant both at the national and international level and which it is difficult to recall without being reminded of Victor Hugo's admirable remark: " Glory, that tardy orb, that serene and somber moon which rises over graves."

Born in 1894 at Toulouse, in Languedoc, from where so many illustrious men have come, Henry Puget finished his university studies as *Agrégé* at the Faculty of Law, Master of Arts, and obtained a diploma from the *Ecole libre des sciences politiques*. In 1921, he entered the Council of State, where he rose through the ranks to the top position of Counsellor of State. He was notably, from 1926 to 1930, principal private secretary to the Minister of Finance and, from 1932 to 1934, permanent under-secretary to the Air Minister. Apart from his administrative career, Henry Puget, who never forgot that " to teach is to learn twice over," was Professor at the *Ecole libre des sciences politiques*, which later became the *Institut d'études politiques* of the University of Paris, where I had the privilege of being his pupil. I remember how he used to open his course of lectures with the words: " I shall certainly expound legal texts to you, but above all I shall seek to make you understand the sequence of events, the chain of facts, the march of life, to evoke persons, to present the pros and cons, to plunge you into reality." Then he would go on to say: " A knowledge of the past is indispensable because it enables us to explain and understand the present, to make out under what conditions the present was born; it also teaches us the relativity of things, it puts us on guard against a belief in permanence." The premises of this teaching attracted many of us students, who in later life were to discover their soundness.

In the full enthusiasm of his educative vocation, Henry Puget was appointed head of the *Centre de recherches administratives* of the National Foundation of Political Science. He was also divisional head at the *Institut de droit comparé* and member of the Executive Committee of the *Institut international des sciences administratives*, where he was chairman of the Scientific Committee.

Moreover, Henry Puget put his remarkable experience in public administrative law to the service of international organizations such as Unesco, the Executive Committee of which passed the following resolution: " Pays tribute to the memory of Mr. Henry Puget who, as Chairman of the Council of Appeal since July 1948, performed his task with exceptional authority, impartiality and humanity and thus made a signal contribution to the development of the case-law governing the international public service."

Henry Puget devoted himself also to the promotion of the arts and to the defence of intellectual property rights. At the national level, he was active as chairman of the Intellectual Property Commission and of the *Caisse des Lettres* and, at the international level, as French delegate to the Permanent Committee of the Berne Union, to the Intergovernmental Copyright Committee, and at the various intellectual property Conferences held since the end of the war.

He played an important part in the administrative and structural reorganization of the Literary and Artistic Property and Industrial Property Unions, which, as he had clearly grasped, were in urgent need of adjustment to contemporary developments in law and international institutions. In this connection, he often suggested ways and means of safeguarding the principles enshrined in the Berne and Paris Conventions.

He was also vice-president of the International Literary and Artistic Association.

In the sphere of urbanization and the arts in his own country, he was associated with the initial work of the Town Planning Committee for the Paris region, of which he was vice-chairman. He was also chairman of the *Comité des sites* of the Seine, member of the *Commission supérieure des sites*, vice-chairman of the *Sauvegarde de l'art français* and administrator of the Touring Club of France.

Lastly, in addition to these main activities of his to which we have devoted only a few lines, Henry Puget wrote several works on administrative law and comparative law, the most recent of which dealt with atomic law.

He was Grand Officer of the Legion of Honour and the holder of many foreign decorations.

It would not be presumptuous to say that the Intellectual Property Unions grouped together in BIRPI bow today before the memory of the Chairman of the Permanent Committee of the Berne Union and pay homage to his qualities and abilities, thanks to which the cause of intellectual rights was so brilliantly championed. Counsellor of State Henry Puget will remain one of the most prominent personalities that have left their mark on the history of those International Unions to which he was so attached.

Claude MASOUYÉ
Counsellor

CALENDAR

Meetings of BIRPI

Date and Place	Title	Object	Invitations to Participate	Observers Invited
January 23 to 30, 1967 New Delhi	East Asian Seminar on Copyright	Discussion of general principles of special interest to East Asian countries in the field of copyright and related rights	All East Asian States Members of the United Nations or of any United Nations Specialized Agency	All other Member States of the Berne Union; United Nations; Unesco; varions interested non-governmental Organizations
April 18 to 21, 1967 Geneva	Committee of Experts for the Classification of Goods and Services	To bring up to date the international classification	All Member States of the Nice Union	—
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	*For (a), (b) and (c):* Member States of the various Unions *For (d):* States Members of the United Nations or any of the UN Specialized Agencies	*States:* States not members of the Unions [for *(a)*, *(b)* and *(c)*] ***Intergovernmental Organizations:*** United Nations; International Labonr Organization; World Health Organization; United Nations Edncational, 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***
December 18 to 21, 1967 Geneva	Interunion Coordination Committee (5th Session)	Program and Budget of BIRPI	Belgium, Brazil, Ceylon, Czechoslovakia, Denmark, France, Germany (Fed. Rep.), Hungary, India, Italy, Japan, Mexico, 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
December 18 to 21, 1967 Geneva	Conference of Representatives of the International Union for the Protection of Industrial Property (2nd Session)	Program and Budget for the next three-year period	All Member States of the Paris Union	—
December 18 to 21, 1967 Geneva	Executive Committee of the Conference of Representatives of the Paris Union (3rd Session)	Program and Budget (Paris Union)	Ceylon, Czechoslovakia, France, Germany (Fed. Rep.), Hungary, Italy, Japan, Mexico, 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

Date and Place	Title	Object	Invitations to Participate	Observers Invited
December 18 to 21, 1967 Geneva	Council of the Lisbon Union for the Protection of Appellations of Origin and their International Registration	Annual Meeting	All Member States of the Lisbon Union	All other Member States of the Paris Union

Meetings of Other International Organizations concerned with Intellectual Property

Place	Date	Organization	Title
Paris	January 13 to 15, 1967	International Association for the Protection of Industrial Property (IAPIP)	Conference of Presidents
Strasbourg	March 13 to 17, 1967, and April 3 to 7, 1967	Council of Europe	Working Group of the Committee of Experts on Patents
Basle	March 29 to April 4, 1967	International Literary and Artistic Association (ALAI)	52nd Congress
Montreal	May 13 to 20, 1967	International Chamber of Commerce (ICC)	21st Congress
Helsinki	from August 27, 1967	International Association for the Protection of Industrial Property (IAPIP)	Executive Committee
Stockholm	September 18 to 29, 1967	Committee for International Cooperation in Information Retrieval among Examining Patent Offices (ICIREPAT)	7th Annual Meeting