

# Copyright

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# INTELLECTUAL PROPERTY CONFERENCE OF STOCKHOLM, 1967

## Report

on the Work of Main Committee II (Protocol Regarding Developing Countries)  
of the Intellectual Property Conference of Stockholm, 1967

by

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1. The protection of authors' rights in countries that have recently gained independence is one of the problems that have solicited the attention of the Swedish Government as the host country of the Revision Conference and that of BIRPI for several years. The history of the preparatory work and studies is to be found in document S/1 (pages 67 to 74).

2. After the publication of document S/1, there was an important event in this domain, whose influence has been apparent both on the discussion and on the results of the Conference. This was the East Asian Seminar on Copyright, which was held at New Delhi in January, 1967.

3. At the proposal of the Government of Sweden, a Main Committee was set up to produce a final text on the basis of document S/1. This Main Committee called Main Committee II in the Conference documents and hereinafter referred to as "the Committee" met ten times. It appointed two Working Groups for certain special problems, one to consider matters of substance (Chairman: Mr. Hesser (Sweden); members: Czechoslovakia, France, India, Ivory Coast, Tunisia, United Kingdom), and the other to consider the definition of the criterion of countries that would be entitled to avail themselves of this Protocol (Chairman: Mr. Lennon (Ireland); members: Brazil, Congo (Kinshasa), Czechoslovakia, France, India, Italy, Ivory Coast, Senegal, Sweden, Tunisia, United Kingdom).

4. Several amendments were submitted with respect to the *definition* of countries beneficiaries of the Protocol mentioned in the introduction to Article 1 of the Protocol with a view to the clarification of the general formula: the object of a proposal by France (document S/176) was to make countries that adhered to the Berne Union only after the signing and entry into force of the Brussels Act beneficiaries of the provisions of the Protocol; a proposal by Italy (document S/213) introduced technical criteria (illiteracy, school attendance) into the idea of a developing country; two proposals, one by the United Kingdom (document S/149), and the other by Denmark, Finland, Norway and Sweden (document S/253), suggested as a solution an international authority competent to decide in each case (the Executive Committee of the Berne Union in the former and the General Assembly of the United Nations in the latter proposal). After discussion, the Working Group proposed to the Committee a text referring to Resolution No. 1897 (XVIII) adopted by the General Assembly of the United Nations at its eighteenth session on November

13, 1963, for application to any country subsequently designated as a developing country. A proposal by the Ivory Coast (document S/234) brought the list up to date by adding seven new African States to it.

5. The Committee dealt with the question and, while accepting the idea that the countries listed in the Annexes to document S/249 should be beneficiaries of the Protocol, it noted that simple reference to the decisions of the United Nations would entail a delay for countries that had recently gained their independence that would prevent them from acceding to the Convention and the Protocol immediately or at least before a decision by the United Nations. A more flexible wording was sought. A joint proposal by Denmark, Finland, Norway and Sweden submitted in document S/253 stipulated that a developing country would be considered to be any country designated as such under the established practice of the General Assembly of the United Nations, it being understood that the term "established practice" implies that the country concerned receives assistance from the United Nations Development Programme through the United Nations or its Specialized Agencies. The country which considers that it is in a position to have recourse to the Protocol shall notify the Director General of WIPO, who shall, if necessary, after consultation with the organs of the United Nations, communicate the notification to the other countries members of the Union together with his observations. The final text was produced by the Committee's Drafting Committee under the chairmanship of Mr. Essén (Sweden) (members: Mr. Abi-Sad (Brazil), Mr. Strnad (Czechoslovakia), Mr. Desbois (France), Mr. Krishnamurti (India), Mr. Ciampi (Italy), Mr. Amon d'Aby (Ivory Coast), Mr. Goundiam (Senegal), Mr. Fersi (Tunisia), Miss White (United Kingdom)). The text was adopted by the Committee at its last meeting.

6. The *substantive provisions* were also examined on the basis of document S/1 submitted by the Government of Sweden with the assistance of BIRPI. The order of the items included in the Protocol was altered by the Drafting Committee so that the provisions concerning the term of protection — following the system of the Convention itself — were mentioned first among the questions of substance, and the others were inserted thereafter. In the course of the proceedings of the Committee they underwent the following changes.

7. As an outcome of the insertion of Article 9, paragraph (2), of the Rome Act of 1928 and the Brussels Act of 1948 in

a new draft of the text of the Convention itself, in which it appears as Article 10<sup>bis</sup>(1), paragraph (c) of Article 1 in document S/1 became superfluous in the Protocol and was deleted.

8. A group of countries (Congo (Brazzaville), Congo (Kinshasa), Gabon, India, Ivory Coast, Madagascar, Morocco, Niger, Senegal and Tunisia) submitted a new drafting of the text of the Protocol (document S/160), stemming from document S/1 and adopting its scheme, but adding certain new features.

9. The *term of protection* has been decided without change in the manner proposed by the Government of Sweden with the assistance of BIRPI. The term of protection may therefore be fixed by domestic legislation at a period shorter than the compulsory term of fifty years referred to in Article 7 of the Convention.

10. The *translation license* combines the translation license referred to in Articles 25 and 27 of the Convention (Brussels text) and traditional in the Berne Union with certain elements of the license referred to in Article V of the Universal Copyright Convention; the definition of the languages into which the translation may be made has been clarified.

11. Several proposals were submitted for regulating the régime of published works on the basis of a statutory license (the proposals of Italy, document S/162; of Denmark, document S/146; of Greece, document S/181; and of Israel, document S/199). Japan made a proposal in document S/127 for simplification of the translation license by simply taking over the system as it exists in the Berne Convention.

12. The result of the proceedings of the Working Group and of the Committee, which is set out in document S/249, corresponds with certain slight alterations to the desire to replace the text of Article 5 of the Paris Act of 1896 quoted in paragraph (b) of Article 1 of the Protocol by an up-to-date wording without affecting the substance of the provisions concerned.

13. The principles of the Universal Copyright Convention (see Article V, paragraphs 2 and 5), which are incorporated in the system of the translation license provided for by the Protocol (Article 1, paragraph (b)(iv)) have also undergone modification: the compensation stipulated should be just and the explicit reference to international usage in this matter was deleted; the transmittal of such compensation, also referred to in the above Article of the Universal Copyright Convention, is made subject to national currency regulations by the text of the Protocol.

14. It should be noted that neither of the two International Conventions that might be regarded as having served as a model for paragraph (b) of Article 1 of the Protocol stipulates precisely where a translation must be published by the author himself if he does not wish a statutory license to come into force. Article 5 of the Paris Act of 1896 merely stipulates that the publication of such a translation must take place in a country of the Union. The Protocol adds an important clarification: the translation must be published in the country invoking the reservation concerning the translation license. Publication does not mean printing in the strict sense;

this is an essential distinction for countries that do not possess even the technical means needed to publish translations or reproductions under the conditions laid down by the Protocol.

15. The proposals on the right of *reproduction* contained in Article 1(e) of document S/1, corresponding to Article 1(c) of the final text, have undergone profound modification. After discussion and examination of the various proposals (see the proposal of the United Kingdom, document S/149, paragraph 3, and the joint proposal of ten developing countries, document S/160), the Working Group proposed the text contained in document S/249, Article 1, paragraph (d). The final solution adopted for the reproduction license is modeled on the translation license to the extent that the analogy is possible. It provides for the possibility of the introduction of a reproduction license for educational or cultural purposes — the wording should not be interpreted in a restrictive manner, given that the addition “for exclusively... purposes...” was intentionally deleted.

16. On the other hand, restriction of the right of reproduction to educational or cultural purposes excludes from the field of application of this reservation all works whose educational or cultural purpose is not evident; as an example, detective and adventure stories were mentioned in the discussion.

17. The procedure to be followed in order to obtain such a license, the conditions concerning payment of the compensation, the place of publication, respect for the right of the author to withdraw the work from circulation, and the possibility of having recourse to such a license even after the copies of the original edition of the work are out of print, have been established on the same basis as for translations.

18. Paragraph (d) of Article 1 of the Protocol, which concerns the *broadcasting* of literary and artistic works, permits the countries beneficiaries of the Protocol to substitute for paragraph (1) and paragraph (2) of Article 11<sup>bis</sup> of the Convention the text of the Rome Act of 1928 with two changes. The first, which represents a modernization of the text, is to replace the words “communication by radiodiffusion” of the Rome Act of 1928 by the word “broadcasting”. The second change settles a basic matter: the public communication of broadcast works for profit-making purposes shall not be permitted except on payment of equitable remuneration fixed, in the absence of agreement, by competent authority. That addition takes over the wording of the proposal by the United Kingdom (document S/149, paragraph 2).

19. A new possibility for restriction open to domestic legislation has been adopted for uses destined *exclusively for teaching, study and research in all fields of education*. It should be noted that that reservation does not apply solely to the rights of translation and reproduction; it may also be invoked equally for the other uses of literary and artistic works. A new formula has been inserted for the determination of compensation, by which the latter shall “conform to standards of payment made to national authors”. The addition of the words “in all fields of education” and the exclusivity of the purposes for which the reservation can be utilized

indicate that industrial or commercial research or research of the same nature is outside the scope of this reservation.

20. In the case of copies of works translated and reproduced on the basis of the reservations in a country availing itself of the Protocol, the general principle adopted is that their export and sale are not permitted in a country not availing itself of these reservations. The prohibition does not apply if the legislation of a country which cannot avail itself of the Protocol, or the agreements concluded by that country, authorize such importation. The reference to domestic law and to agreements concluded has been replaced, in the case of the works mentioned in Article 1(e), by the condition of the agreement of the author. In the same paragraph it has been made clear that only copies of a work published in a country for the said educational purposes may be imported and sold in other countries availing themselves of the reservations; the effect, therefore, is that such copies will be in a language relevant to the educational needs of that country. An example quoted in the discussions was that of a translation made in India which could be imported into Ceylon but not into Japan.

21. The above reservations may be maintained for ten years from the time of ratification by the country concerned (see Article 1, introduction *in fine*); countries that do not consider themselves in a position to withdraw the reservations made under this Protocol may continue to maintain them until they accede to the Act adopted by the next revision conference; the "maintaining of reservations" therefore implies that it will be essential for a declaration to that effect to be addressed to the Director General by the country concerned, and that in default thereof the reservations shall cease to be applicable. The country concerned would then be bound by the Convention itself.

Various proposals made in the course of the Conference by the Delegations present, and concerning one or other of the problems mentioned above, have either been incorporated in the final text or withdrawn (see, for example, publication of serials, abridgements or translations in newspapers or periodicals, document S/160, or the provisions for the institution of certain measures of control over the application of the

Protocol submitted by Israel, document S/199), or have found their place in a resolution (for example, the creation of a fund intended for the authors of works affected by the reservations stipulated in the Protocol, as proposed by Israel, document S/228).

22. Article 6 was added to the text as the result of a proposal by the United Kingdom which was adopted by the Committee at its eighth meeting. Even a developing territory, judged by the same principles as sovereign countries, which has not acceded to independence by the day on which the Convention is signed may enjoy the benefits of the Protocol.

23. With regard to this Article, the Delegations of Tunisia, Czechoslovakia, India and Israel made statements evidencing their opposition in principle to clauses of this kind in conventions. Later on, in the Plenary of the Berne Union this Article was expanded to indicate that the declaration referred to in it could be made only by a country bound by the Protocol.

24. The reference to the practice established by the United Nations made it necessary to solve the problem of the legal consequences of a contrary situation, namely, to deal with the case of a country to which the status of developing country ceases to be applicable. The solution proposed by the Drafting Committee is that such a country will no longer be able to avail itself of the Protocol at the expiry of a period of six years from the appropriate notification.

25. To provide a possibility for developing countries to benefit immediately from the Protocol, an Article 5 has been added to the text, offering this possibility even before the text of the Convention itself has been ratified within the meaning of Article 28(1)(b)(i).

26. Another question that was the subject of consideration by the developing countries in the course of the preparatory work, that of the protection of folklore, was resolved by Article 15, paragraph (3), of the Convention itself.

*[This Report was unanimously adopted by Main Committee II in its meeting on July 8, 1967.]*

## Report

### on the Work of Main Committee IV (Administrative Provisions and Final Clauses of the Paris and Berne Conventions and the Special Agreements) of the Intellectual Property Conference of Stockholm, 1967

by

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1. The tasks assigned to Main Committee IV by the program and rules of procedure of the Conference were of a rather complex nature.

— It was not simply a matter of examining and discussing the proposals for revising the administrative and structural provisions of the Paris Convention for the Protection of Industrial Property (Document S/3), the Berne Convention for the Protection of Literary and Artistic Works (Document S/9), and the Special Agreements concerning industrial property: the Madrid Agreements (international registration of marks; repression of false or deceptive indications of source on goods), the Hague Agreement (international deposit of industrial designs), the Nice Agreement (international classification of goods and services for the purposes of the registration of marks), the Lisbon Agreement (protection of appellations of origin and their international registration), but also of examining the final clauses of the various Conventions and Agreements and the provisions relating to the adoption of possible transitional measures, as well as the decisions to be made with regard to the ceiling of contributions from the member countries of the Paris and Berne Unions.

— While the structural and administrative provisions concerning the Unions are tied in with the proposed new Intellectual Property Organization, the final clauses and transitional measures appear to be related to matters that are of interest also to other Main Committees of the Conference; therefore, constant coordination — particularly through the

holding of joint meetings — was established with those Committees during the course of our work.

2. The Plenary Assembly of the Conference, which met at the time of the opening of the Conference, accepted the proposals of the Swedish Government to the effect that the chairmanship of Main Committee IV should be entrusted to France and the duties of Rapporteur to the writer of this Report.

3. The Committee began its work on June 13 under the chairmanship of Mr. François Savignon (Vice-Chairman: Mr. G. S. Lule, Uganda) and terminated it on July 10. During its meetings, the Committee set up a drafting committee composed of delegates from the following countries: Brazil, France, Germany (Federal Republic), Netherlands, South Africa, Soviet Union, Spain, Sweden, Tunisia, United Kingdom, United States of America. Mr. Roger Labry (France) was named Chairman of this committee and Miss Silvia Nilsen (United States), Vice-Chairman.

— As the work of the Main Committee progressed, working groups were set up to make a preliminary study of certain matters.

4. During the general discussion of the structural and administrative reform, opened by the Chairman at the first meeting of the Committee, all delegations indicated their willingness to adopt, in principle, the suggested proposals which were the result of a long preparatory work, particularly in governmental Committees of Experts.

— The creation, for each Union, of new permanent organs representing the common will of the member countries and the autonomy of each Union, especially as regards its own budget, constituted the foundation of the new administrative structure elaborated by the Committee and proposed to the Conference.

— The Head of the Swiss Delegation made a statement in which he reminded the delegates that the Federal Council considered it an honor to be entrusted with the mandate of supervisory authority but was ready to accept its transfer to the Member States if they so desired; he added that the Swiss Government would, of course, continue to exercise its mandate on behalf of the States as long as they were not yet Members of the new Intellectual Property Organization. This statement was greatly appreciated by all delegations.

5. Also during the general discussion, it was agreed that the references to the new Organization appearing in the texts to be adopted by the Committee could be regarded as approved, subject to the decisions made by Main Committee V. Inasmuch as the program (Document S/3, Article 16; Document S/9, Article 25) reserved to the States the right to choose between several possibilities when ratifying or acceding to the Stockholm Acts (this idea was later accepted by the Committee,

notwithstanding certain proposals intended to restrict the possibilities of choice), some delegations recommended that the references in question be limited to what was absolutely necessary; this suggestion was taken into account in the drafting of the new texts.

6. The examination of the provisions in the program concerning the composition and functions of each Union's Assembly and Executive Committee gave rise to many suggestions by several delegations. Even in cases where they were accepted by the Committee, however, these suggestions did not alter the structure of the new organs as they were proposed in the program. It should simply be noted that, here too, an effort was made to strengthen the existing parallelism among the different Unions but to avoid unduly complicating the organization of certain industrial property Agreements.

7. The Assembly thus remains the sovereign organ of each Union, due to the fact that it is composed of all Union countries, and the Committee endeavored to strengthen its powers. As in the program, the Executive Committee consists of countries elected by the Assembly from among countries members of the Assembly.

— The constitution of the Assembly is the essential feature of the administrative reform of the Unions, and this was the principle on which the Committee based its work. The Assembly permits the member countries of each Union, even though grouped in a Union, to exercise their sovereign powers. Furthermore, from the standpoint of the development of international cooperation in the field of intellectual property, it offers the possibility of an uninterrupted exchange of views, whereas the present organization of the Unions — especially that of the Berne Union — provides for meetings only at intervals sometimes more than twenty years apart, at a time when culture and technology are advancing at a pace never before attained.

8. As regards the composition and functions of each Union's new organs, I should merely like to call attention to a matter concerning the representation of the member countries within the Assembly, a matter that was raised, in connection with a specific case, by a proposal made by the Delegations of Madagascar and Senegal. Because of the very strong fears of certain delegations that the proposal might weaken a basic general principle — namely that each delegation to the Assembly may represent, and vote in the name of, one country only — a compromise solution was adopted, following long debates within both the Committee and an *ad hoc* working group. The solution restricts the provision to the Paris Convention and limits it to the benefit of certain Paris Union countries, namely those which, under an agreement, are grouped in a common office possessing for each of them the character of a special national service of industrial property (referred to in another provision of the same Convention) and all of which, in discussions in the Assembly, may be represented by one of them. It is also understood that, in such a case, a delegation may vote by proxy only for one country and only for exceptional reasons.

— A proposal put forward during the debates by the Delegations of Argentina, Brazil and Uruguay (Document

S/189), supported by the Delegation of Spain, provided that the possibility of voting in the name of a second country would not be limited to countries having a common office but would be made general. However, this proposal was rejected by the majority of the members of the Committee, who were of the opinion that what was involved was an exception and, consequently, should not be generalized so as not to upset, as regards voting, the structure of the Assembly and of any other collegial organ of the Unions.

9. The question of the quorum of each Union's Assembly was examined by a working group, set up for that purpose by the Committee, which felt that the quorum of one-third provided in a paragraph of the draft was too low. The provisions adopted by the Committee in regard to this matter brought the quorum up to one-half, on the understanding, however, that the Assembly could make decisions even if the number of countries represented at a session was less than one-half, as long as it was equal to or more than one-half of the member countries. Decisions adopted in such cases would, however, not take effect until after having been communicated to the countries not represented in the Assembly, with a view to reaching the quorum by correspondence. The provision drawn up to this effect might appear to be somewhat complicated, but certain delegations pointed out that nothing prevented the application of the provision being clarified and simplified in the clauses of the Assembly's rules of procedure.

10. There is a certain interdependence between the matter of the quorum in the Assembly and that of the majority required in the Assembly to amend the administrative clauses of the two Conventions. In fact, only amendments to the administrative clauses are within the competence of the Assembly. Revision of the substantive provisions is, on the other hand, entrusted to conferences of the Union countries. Under the terms of the text adopted by the Committee, the majority required to amend the administrative clauses is three-fourths of the votes cast, except as regards the articles concerning the composition and functions of the Assembly, amendments of which require a four-fifths majority of the votes cast.

— The debates on these matters were rather lively, especially as concerns the conferences of revision of the substantive clauses. The requirement of unanimity was reaffirmed in respect of the Berne Convention, including the Protocol, which is an integral part of it. A proposal to substitute a qualified majority for unanimity was rejected by a vote of 24 to 11, with 9 abstentions. As to the substantive clauses of the Paris Convention, the existing situation has been maintained.

— A proposal to provide that the conferences of revision would always be held at the headquarters of the Organization was not adopted, but it was understood that the matter would be re-examined at the Conference of Revision of the Paris Union, scheduled to be held at Vienna in a few years' time.

11. The administrative tasks with respect to each Union will, on the basis of the new structural organization of the Unions, be performed by the International Bureau. The latter is a continuation of the Bureau of the Paris Union and the



Bureau of the Berne Union, united in 1892 pursuant to a Swiss Federal Council decree. The Committee made no important substantive amendments to the proposals contained in the program. The replacement of the wording (French text) appearing in the program by the expression "*Les tâches administratives incombant à l'Union sont assumées par le Bureau international qui succède au Bureau de l'Union*" does not alter the basic idea. What is concerned is, in fact, a continuation in the same functions, and, as a transitional measure, the new wording confirms that the International Bureau of the Organization will also act as the Bureau of each Union so long as all countries of the Unions have not become Members of the Organization.

— The International Bureau will provide the secretariat of the various organs of each Union.

— This combination of functions within a single organ, this two-faced Janus, is not only a characteristic of the new structural organization of the Unions as set up at Stockholm in regard to the International Bureau; it is also to be found in the person of the Director General. He is, in fact, the chief executive of the new Organization and, at the same time, the chief executive of each Union; in addition, he represents all of these different international bodies, which, by the way, have their own autonomy.

12. In the matter of finances, the text adopted by the Committee provides that each Union shall have its own budget. This provision also reflects the concept that each Union is autonomous, as is brought out in the Unions' new structural organization.

— On the basis of a joint proposal by France, Germany (Federal Republic), Italy, and the United States of America, the original text (Documents S/3 and S/9) was amended as concerns the financing of the Unions. The Committee reached agreement on a text which provides that the budget of the Union shall include the expenses proper to the Union, its contribution to the budget of expenses common to the Unions, and, where applicable, the sum made available to the budget of the Conference of the Organization. Other draft provisions were altered accordingly. In connection with this provision, the Delegations of France, Germany (Federal Republic), Hungary, Italy, the Soviet Union, the United Kingdom, and the United States of America, put forth proposals to Main Committee V so as to have the words "...adopt the budget of expenses common to the Unions" (Documents S/62 and S/93) inserted in the list of powers belonging to the General Assembly of the Organization.

— Again on the subject of finances, the Delegation of Spain suggested (Document S/82) including among the sources of income of the Paris Union a fee that would be collected on behalf of the International Bureau in respect of all applications relating to patents, marks, etc., for which claim — under the Paris Convention — is made to the right of priority. Another proposal (Document S/163) would merely have referred to the possibility of such a fee. Considering, however, that the proposal raised important practical and legal questions, the Committee preferred to adopt a draft resolution addressed to the Plenary of the Paris Union and requesting it to invite the International Bureau to make a study of the matter and submit

the results of its work to the forthcoming Vienna Conference of Revision.

13. Still in connection with finances, the Committee adopted draft decisions concerning the maximum annual amount of ordinary contributions from the countries members of the Paris Union and of the Berne Union (ceiling of contributions) for the years 1968, 1969, and 1970. In regard to this matter, the Delegation of Argentina, supported by the Delegation of Brazil, observed that the ceiling-of-contributions system was no longer appropriate. It should be noted that the new Stockholm texts have abandoned this system.

14. At this point in my Report, I see that, if I were to attempt to deal in detail with each matter taken up by the Committee, this paper would become unnecessarily long, not only because of the existence of minutes and other Committee documents, but also and above all because of the fact that no really complex problems came up in connection with the administrative organization of the Unions. As a matter of fact, after carefully considering each matter, the Committee almost fully accepted the proposals, on these points, appearing in the draft texts contained in the program of the Conference. The work consisted primarily in resolving questions of a technical and editorial nature. In this respect, I should like to call attention to the really impressive accomplishments of the drafting committee which, in particular, undertook to draft the texts of the Special Agreements concerning industrial property that are in relationship with the Paris Convention, taking into account the parallelism that had to be achieved as far as possible in these different instruments.

I shall thus restrict myself to one or two matters concerning the final and transitional clauses.

15. In regard to the final provisions of the Paris Convention and Berne Convention, the Committee devoted special attention to the proposals of the program relating to the application of the earlier Acts of the Conventions of the Unions (Paris, Article 18; Berne, Article 27), which refer to the relations among countries of the Union that have acceded to different earlier Acts, and above all to the relations between a country that has acceded solely to the Stockholm Act and the other Union countries that have not acceded to it.

— Since corrigenda (Documents S/3/Corr. 1 and S/9/Corr. 1) to the proposals regarding this matter contained in the original program had affected other provisions somewhat related to it (in particular, Article 25<sup>quater</sup> (Berne), originally proposed concerning the anticipated application of the Protocol Regarding Developing Countries), these problems were also examined at joint meetings of Main Committees II and IV, where other problems too were examined, especially those raised by Article 20<sup>bis</sup> (Berne) concerning the Protocol Regarding Developing Countries. The joint meeting of the two Committees, under the chairmanship of Mr. Joseph Voyame (Switzerland), referred these matters to a working group, likewise chaired by Mr. Voyame, for preliminary examination; after a thorough debate, the working group presented its conclusions to the Committee. Moreover, once these conclusions had been approved, the subject — particularly as concerns Article 27(3) (Berne) — was again taken up by the Committee,

at the proposal of the Delegation of Switzerland, after it had been decided to re-open discussion on this point.

16. The solution to the problems concerning the application of earlier Acts within the framework of a Union Convention may look different depending on the view held, as regards international public law, on the effects of international treaties on the reciprocal obligations of States deriving from successive Acts of a Union Convention. The debates on this reflected the various schools of legal thought that exist on the subject, and there were naturally differences of opinion as to how the question might be settled. Furthermore, the matter is also tied in with the basic principles of Article 2 of the Paris Convention and Article 4 of the Berne Convention, relating to the concept of equality of treatment (assimilation clause) and to the obligations of the States regarding the rights specially provided for by the Convention (minimum rights), as well as to the principle that the enjoyment and exercise of rights is independent of the existence of protection in the country of origin of the work. These problems of a general nature, which in the past had been the subject of a number of scholarly discussions, were once again raised in the Committee, particularly in the statements made by the Delegations of Australia, France, and the United Kingdom. Out of rather divergent views — one considering that the obligations among Union countries are governed by the most recent common Act, the other that the obligations of a Union country are governed by the provisions of the most recent Act to which it has acceded with regard to all other Union countries and, therefore, even Union countries not parties to that Act — the view that emerged in the Committee, but only in respect to countries outside the Union which become parties to the Stockholm Act, is one which, in reciprocal relations, takes account of certain interests of any country that has not acceded to the Stockholm Act.

17. The solution envisaged by the Committee takes its inspiration from the following general principle: as this matter is not one of different treaties but of successive Acts of a Union of countries (see Article 1 of the Berne and Paris Conventions: "The countries . . . constitute a Union . . ."), all of the Union countries must always have some links with one another, even if they are not bound by a common Act. Moreover, the successive Acts of a Union Convention always contain more or less parallel provisions, so that, from a practical point of view, the question arises only with respect to provisions that differ from one another, especially when the more recent Act to which a Union country has not acceded contains provisions regarding minimum rights that are far removed from the level of protection guaranteed by the previous Act. Only in such a case did it seem reasonable and legally correct for the countries outside the Union but parties to the Stockholm Act, in conformity with the above-mentioned Swiss proposal, to apply that Act in their relations with all of the Union countries, even those that have not acceded to the Stockholm Act, while the latter countries, in their relations with the former, apply the provisions of the last Act to which they are party, with the possibility, however, of adapting its level of protection to the level guaranteed by the Stockholm Act. Texts based on these principles were adopted by the Committee.

— Consequently, as regards the relations between countries that accede only to the Stockholm Act and countries of the Union that do not accede to it, or that do so only later, both the Berne Convention and the Paris Convention provide that the former shall apply the Stockholm Act and that the latter shall apply the most recent Act to which they have acceded.

— Furthermore, I repeat, the Stockholm Act of the Berne Convention also provides that the countries of the second group mentioned above have the possibility of adjusting the level of protection they grant, on the basis of the most recent Act, to the level provided by the Stockholm Act. The Committee felt that this provision was justified because, in certain respects, the level of protection guaranteed by the Stockholm Act is not as high as that guaranteed by earlier Acts.

— Based on analogous principles, but having a different structure and content, is the provision, proposed during the joint meetings of Main Committees II and IV, according to which countries having, upon becoming parties to the Stockholm Act, made reservations permitted under the Protocol Regarding Developing Countries may apply such reservations in their relations with other countries of the Union not parties to the Stockholm Act, provided that the latter countries have accepted such application. A precedent for the legal institution of such acceptance is found in the Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations.

— The Committee did not feel it was necessary for the Paris Convention to include a provision similar to the one inserted in the Berne Convention, since the Stockholm Act of the Paris Convention in no way alters the level of protection afforded under the previous Act of that Convention. Consequently, there seemed to be no need to provide for the possibility of the kind of material reciprocity which is the basis of the new provision of the Berne Convention, and which, by the way, already existed in earlier Acts of that Convention — although in a less general form — in particular in regard to the term of protection and works of applied art.

18. Somewhat tied in with the views on the general question of the application of earlier Acts was the decision made by the Committee regarding the accession of a country outside the Union which accedes to the Stockholm Act and, by the same fact, to the earlier Acts. This decision extended to the Paris Convention the provision already found in Article 28(3) of the Berne Convention (Brussels Act). Consequently, after the entry into force of the Stockholm Act in its entirety, a country may not accede to earlier Acts of the Paris Convention. It was only after long debates that the Committee came to an agreement on this extension of the principle found in the text of the Berne Convention. As a matter of fact, as was pointed out in the Committee, a distinction must be made between *accession* to earlier Acts and *application* of such Acts. A country may not accede to earlier Acts of a Union Convention since they are replaced by the last Act; however, because of the relations existing between countries outside the Union that accede to the last Act and countries already belonging to the Union that do not accede to it, there do exist relations between these two categories of countries, which relations



result also from the very contents of the earlier Acts. Besides, nothing prevents a country acceding for the first time to the Unions, in particular the Paris Union, from making an express declaration on the application of the earlier Acts.

— The new wording adopted by the Committee introduces a further element of parallelism between the texts of the two Conventions.

19. There was still another matter concerning the relations among Union countries within the framework of the unitary system of the Unions, and that was the provision of Article 25<sup>quater</sup> (Document S/9) in the original text of the program which deals with the anticipated, voluntary application of the reservations made under the Protocol Regarding Developing Countries at any time after the date of signature of the Stockholm Act, by any Union country not yet bound by the substantive articles of that Act, including the Protocol which is an integral part of it. A provision debated at length in a working group and corresponding to Article 25<sup>quater</sup> was included in an article of the Protocol proposed to Main Committee II by its drafting committee.

20. Ratification of or accession to the Stockholm Act (Paris and Berne Conventions) entails acceptance of all the clauses and admission to all the advantages of that Act; however, as mentioned above (paragraph 5), there is the possibility of excluding from the effects of ratification or accession one of the two groups of Convention provisions (substantive and administrative).

— The general question of reservations (other than the reservations provided for in the Protocol Regarding Developing Countries), regarding certain provisions of the Berne Convention, that may be confirmed or formulated at the time of ratification of or accession to the Stockholm Act had been included in the program of the Conference (Article 25<sup>ter</sup> of Document S/9), and it was therefore within the province of the Committee to examine this matter. However, Main Committee I had examined, as to substance, the question posed by the reservation concerning the right of translation, and had been in favor of maintaining, in the Stockholm Act, the provision contained in Article 25(3) of the Brussels Act, namely that notifications of accession to the new Stockholm Act by countries outside the Union could specify that such countries wished to substitute, provisionally at least, the provisions of Article 5 of the Union Convention revised at Paris in 1896 for those relating to the exclusive right of translation.

— In this connection, a proposal was subsequently put to Main Committee I by the Delegation of Italy in order to combine the possible maintenance of the right of reservation in favor of countries outside the Union which accede to the Stockholm Act with the right of countries making no reservations to apply, in this matter, the principle of material reciprocity in their relations with countries wishing to benefit from such a right of reservation. The matter was again taken up at a joint meeting of Main Committees I and IV held under the chairmanship of Professor Ulmer (Federal Republic of Germany), the compromise proposal was accepted, and a provision to the said effect was added to Article 25<sup>ter</sup> of the program. On the other hand, as concerns Union countries which have

already made reservations (Article 27(2) of the Brussels Act of the Berne Convention and Article 25<sup>ter</sup>(2)(a) of the program) and which, when ratifying the Stockholm Act, wish to retain the benefit of such previously formulated reservations, the situation on reservations made in regard to the right of translation remains what it was before.

21. At the Brussels Conference of Revision of the Berne Convention, a clause on the settlement of disputes was inserted into the text of the Convention (Article 27<sup>bis</sup>) providing for the compulsory jurisdiction of the International Court of Justice in matters of disputes between two or more countries of the Union, concerning the interpretation or application of the Convention, not settled by negotiation. There was no similar clause, however, in the Paris Convention.

— It should be noted that, since the entry into force of the Brussels Act, no petition on such an issue has been made to the International Court by Union countries.

— The Committee examined this matter several times on the basis of the proposal of the program, reproducing the existing provision of the Berne Convention together with several variants. Certain delegations feared that this proposal — restricted, by the way, to the Berne Convention — might, in changing the existing provision, weaken the Convention as regards the compulsory jurisdictional protection obtained with such great effort at the Brussels Conference. Other delegations, on the other hand, expressed concern since, in their view, such a clause constituted an obstacle for several countries of the Union to the ratification even of the Brussels Act. Lastly, the Committee constantly endeavored to maintain a certain parallelism between the administrative clauses of the Berne and Paris Conventions, that is, between those clauses not touching upon the substantive provisions of the two Conventions. A compromise proposal, presented by the Delegations of the Netherlands and of Switzerland, whereby the same provision concerning the settlement of disputes could be inserted in both Conventions, was finally accepted by the Committee. This compromise provides for the insertion of the said jurisdictional clause in the texts of both Union Conventions, but each Union country would have the right, when signing or ratifying the Stockholm Act, to consider itself not bound by that clause, the principle of reciprocity applying for any Union country that has not availed itself of that right.

22. The provisions of the program relating to the denunciation of the Paris and Berne Conventions have not been altered.

— In regard to the interpretation of paragraph (4) relating to the minimum of five years from the date upon which a country becomes a member of the Union that must elapse before such a country may exercise the right of denunciation, the drafting committee recommended that the Report of Main Committee IV should specify that denunciation may not be notified until after the expiration of the period concerned; it would thus go into effect six years, at the earliest, after the date mentioned in the said paragraph (4).

23. Draft resolutions on certain transitional measures regarding the proposed administrative reforms (Document S/11) — the first pertaining to the Paris Union, the second

to the Berne Union, and the third to the General Assembly and the Coordination Committee of the proposed new Intellectual Property Organization as well as to related matters — were withdrawn by BIRPI. Mr. E. Braderman (United States of America), Chairman of Main Committee V, announced this at a joint meeting of that Committee and Main Committee IV that he had been called upon to chair. As no delegation brought up these proposals again, our Committee did not have an opportunity to pursue the debates on them. It is therefore understood that, until such time as the different Stockholm texts enter into force, the administrative situation of the Unions will — as it is at present — be governed by the Acts now in force and by the application of these Acts in practice. Once the new structural rules of the Union have entered into force, certain existing institutions of the Unions will cease to function — such as, for the Paris Convention, the Conferences of Representatives established by Article 14(5) of the Lisbon Act, and, for the Berne Convention, the

Permanent Committee of the Union, set up by a resolution of the Brussels Conference of Revision.

24. As we have already indicated in this Report, the Swiss Government will continue to exercise its mandate of supervisory authority, not only until the entry into force of the various texts signed at Stockholm, but beyond that date in regard to Union countries that have not yet become Members of the new Intellectual Property Organization and the Assemblies of the Unions. In this connection, at the joint meeting, tribute was once again paid to Switzerland, which, for nearly a century, has carried out with dignity functions permitting the Unions to be administered wisely, and which, today, agrees to carry on — even though on a somewhat reduced scale — this function.

*[This Report was unanimously adopted  
by Main Committee IV in its meeting  
on July 10, 1967.]*

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# INTERNATIONAL UNION

## Working Agreement between the United International Bureaux for the Protection of Intellectual Property (BIRPI) and the International Labour Office (I.L.O.)

A working agreement has been concluded between the United International Bureaux for the Protection of Intellectual Property and the International Labour Office.

The terms of this agreement are contained in a letter from BIRPI to the I. L. O., dated May 31, 1967, and the reply of the I. L. O. of June 9, 1967. The text of the two letters is as follows:

### I

"Mr. David Morse, Director-General  
International Labour Office  
Geneva

Dear Mr. Director-General,

I have the honor to confirm that, following informal consultations concerning the establishment of working relations between the International Labour Office (I. L. O.) and the United International Bureaux for the Protection of Intellectual Property (BIRPI), agreement has been reached, pending the conclusion of further arrangements in the light of the expected structural reform of BIRPI, on the following provisions:

#### *Cooperation and Consultation*

With a view to facilitating their respective functions, and especially to avoiding duplication of effort, I. L. O. and BIRPI shall regularly consult each other on matters of common interest. In particular, each of them will consult the other prior to undertaking any project likely to be of interest to the latter.

#### *Exchange of Documents*

Subject to the restrictions necessary for the safeguarding of the confidential nature of certain documents, the I. L. O. will communicate to BIRPI, and BIRPI will communicate to I. L. O., their documents concerning matters of common interest.

#### *Mutual Representation*

The Director-General of the I. L. O. will make appropriate arrangements to enable BIRPI representatives to participate, without the right to vote, in meetings convened by the I. L. O. whenever questions of mutual interest are discussed. Similarly, the Director of BIRPI will make appropriate arrangements to enable I. L. O. representatives to participate, without the right to vote, in BIRPI meetings whenever questions of mutual interest are discussed.

Sincerely yours,  
G. H. C. BODENHAUSEN  
Director "

### II

"Mr. G. H. C. Bodenhause, Director  
United International Bureaux for the Protection  
of Intellectual Property  
32, chemin des Colombettes  
Geneva

Dear Mr. Director,

I have the honor to confirm that, following informal consultations concerning the establishment of working relations between the United International Bureaux for the Protection of Intellectual Property (BIRPI) and the International Labour Office (I. L. O.), agreement has been reached, pending the conclusion of further arrangements in the light of the expected structural reform of BIRPI, on the following provisions:

#### *Cooperation and Consultation*

With a view to facilitating their respective functions, and especially to avoiding duplication of effort, I. L. O. and BIRPI shall regularly consult each other on matters of common interest. In particular, each of them will consult the other prior to undertaking any project likely to be of interest to the latter.

#### *Exchange of Documents*

Subject to the restrictions necessary for the safeguarding of the confidential nature of certain documents, the I. L. O. will communicate to BIRPI, and BIRPI will communicate to I. L. O., their documents concerning matters of common interest.

#### *Mutual Representation*

The Director-General of the I. L. O. will make appropriate arrangements to enable BIRPI representatives to participate, without the right to vote, in meetings convened by the I. L. O. whenever questions of mutual interest are discussed. Similarly, the Director of BIRPI will make appropriate arrangements to enable I. L. O. representatives to participate, without the right to vote, in BIRPI meetings whenever questions of mutual interest are discussed.

Sincerely,  
David A. MORSE  
Director-General "

## RHODESIA

According to information brought to the knowledge of BIRPI, the Berne Convention for the Protection of Literary

and Artistic Works, in its version as revised at Rome on June 2, 1928, continues to be applied on the Rhodesian territory.

## BILATERAL RELATIONS

### Exchange of Notes

#### between the Government of the Federal Republic of Germany and the Government of the Italian Republic concerning the extension of the term of copyright protection

(Notification dated May 29, 1967)

Notes concerning the extension of the term of copyright protection were exchanged in Bonn on April 18 and 28, 1967, between the Government of the Federal Republic of Germany and the Government of the Italian Republic. The Notes exchanged are published below.

#### THE ITALIAN EMBASSY

Bad Godesberg, April 18, 1967

His Excellency  
The Secretary of State  
for Foreign Affairs  
Bonn

Sir,

The relations between the Italian Republic and the Federal Republic of Germany with regard to copyright have been re-examined and,

— After having established that, under paragraph (2) of Article 7 of the Brussels Convention of June 26, 1948, the following provisions were laid down with respect to the term of protection:

“(2) However, where one or more countries of the Union grant a term of protection in excess of that provided by paragraph (1), the term shall be governed by the law of the country where protection is claimed, but shall not exceed the term fixed in the country of origin of the work.”

— In view of the legal situation with regard to the term of protection of copyright as laid down in the Italian Republic by Act No. 633 of April 22, 1941, and by the Legislative Decree No. 440 of July 20, 1945, and in the Federal Republic of Germany by the Act dealing with Copyright and Related Rights (Copyright Act) of September 9, 1965,

I have the honour to state the following:

— the German works already published on August 17, 1945, and still protected on the date of entry into force of the above-mentioned Act of September 9, 1965, benefit by the extension by six years of the term of protection provided in the Legislative Decree No. 440 of July 20, 1945;

— as a matter of reciprocity, the Italian works already published on August 17, 1945, and still protected on the date of entry into force of the above-mentioned Act of September 9, 1965, benefit by prolongation of the same duration in the Federal Republic of Germany.

I have the honour to inform you that the Italian Government is of the opinion that this legal situation results directly from the Italian and German laws and the Berne Convention and I would be grateful if you would confirm that the Government of the Federal Republic of Germany is of the same opinion.

I beg you, Sir, to accept the assurance of my highest consideration.

\* \* \*

THE SECRETARY OF STATE  
FOR FOREIGN AFFAIRS

Bonn, April 28, 1967

His Excellency  
The Ambassador of Italy

Sir,

I have the honour to acknowledge receipt of your Note No. 8541 of April 18, 1967, the text of which is as follows:

“The relations between the Italian Republic and the Federal Republic of Germany with regard to copyright have been re-examined and,

— After having established that, under paragraph (2) of Article 7 of the Brussels Convention of June 26, 1948, the following provisions were laid down with respect to the term of protection:

“(2) However, where one or more countries of the Union grant a term of protection in excess of that provided by paragraph (1), the term shall be governed by the law of the country where protection is claimed, but shall not exceed the term fixed in the country of origin of the work.”

— In view of the legal situation with regard to the term of protection of copyright as laid down in the Italian Republic

by Act No. 633 of April 22, 1941, and by the Legislative Decree No. 440 of July 20, 1945, and in the Federal Republic of Germany by the Act dealing with Copyright and Related Rights (Copyright Act) of September 9, 1965,

I have the honour to state the following:

— the German works already published on August 17, 1945, and still protected on the date of entry into force of the above-mentioned Act of September 9, 1965, benefit by the extension by six years of the term of protection provided in the Legislative Decree No. 440 of July 20, 1945;

— as a matter of reciprocity, the Italian works already published on August 17, 1945, and still protected on the date of entry into force of the above-mentioned Act of September 9, 1965, benefit by prolongation of the same duration in the Federal Republic of Germany.

I have the honour to inform you that the Italian Government is of the opinion that this legal situation results directly from the Italian and German laws and the Berne Convention and I would be grateful if you would confirm that the Government of the Federal Republic of Germany is of the same opinion."

I have the honour to inform you that my Government is in agreement with the statements contained in your Note and shares the opinion of the Italian Government that the legal situation referred to in your Note results directly from the German and Italian laws and the Berne Convention.

I beg you, Sir, to accept the assurance of my highest consideration.

## CORRESPONDENCE

### Letter from Hungary

Since my last "Letter" (*Copyright*, 1965, p. 127) there has been no new copyright legislation in Hungary, nor any new regulations of fundamental importance. In the decisions described below reference was made to two earlier regulations, which it may be useful to quote here in order to explain the courts' position.

The first of these is *Decree 23/1963 (IX.25) Korm., relating to the establishment of a Council for the Fine Arts and Handicrafts*.

I. A Council for the Fine Arts and Handicrafts (hereinafter "Council") shall hereby be established under the direct authority of the Minister for Cultural Affairs. Its purposes shall be to promote cultural development by means of works of artistic value coming within the categories of the fine arts and handicrafts, to ensure equitable employment corresponding to the abilities of the creative artists concerned and fostering the development of their talents, and to determine fair and uniform rates of remuneration for the artists concerned.

#### II. Functions of the Council:

1. (a) Prior consideration of artistic criteria adopted in the conditions laid down for future competitions for works or designs coming within the categories of fine arts or handicrafts, as well as of the reasons and conditions for commissioning contracts to be concluded by State organs, institutions and enterprises, cooperatives, and social organizations and their enterprises and institutions, with the exception of the press and its organs (hereinafter "public bodies");

(b) appraisal of works received in connection with such competitions;

(c) designation of artists having the necessary abilities to carry out commissions to be granted by the above public bodies;

(d) prior appraisal of works coming within the categories of fine arts or handicrafts which the above public bodies propose to acquire other than through the free public market;

(e) prior appraisal of photographic works which the above public bodies propose to purchase from private parties;

(f) evaluation of the cost (purchase price, royalties, design fees etc.) of works to be commissioned or purchased under (a) to (e) above;

(g) prior appraisal of works within the categories of fine arts or handicrafts to be exhibited under the auspices of public bodies, other than works lent by museums;

(h) approval of the putting into circulation of works created by collectives of artists or handicraft workers; determination or approval of the prices of such;

(i) control of State commissioning contracts and purchases in accordance with instructions governing the use of investment credits and the level of State budget allocations for the purchase of works coming within the categories of fine arts and handicrafts.

2. The functions of the Council as defined in 1. above shall not apply to industrial designs or to works within the categories of the fine arts, handicrafts or photography connected with the production of postage stamps or books. The methods of appraisal of and remuneration for industrial designs, and of the above-mentioned productions and works shall be determined by the Minister for Cultural Affairs in conjunction with the other Ministers concerned.

3. The Council shall assume responsibility for the functions listed in 1, by stages to be determined by the Minister for Cultural Affairs; where appropriate it shall take over the said supervisory functions from organs and enterprises already performing them.

III. 1. The activities of the Council shall be performed within its budgetary allocations. It shall be headed by a Director. The Director and the chief artistic and economic administrators shall be appointed by the Minister for Cultural Affairs, the other staff members being appointed by the Director.

2. Decisions on behalf of the Council shall be taken by the Director, who shall be assisted in preparing decisions by the Council's special committees. The said committees shall consult the commissioning bodies directly concerned, representatives of the Association of Hungarian Artists and the Association of Architects, and, in the case of works to be displayed in a public place, the representatives of the municipal councils concerned, or, in the case of works to be produced by a factory or specialized enterprise, the representatives of the branches of industry concerned. An appeal may be lodged with the Minister for Cultural Affairs against a decision, within fifteen days of its communication. No decision to display a work in a public place shall be valid without the approval of the President of the Executive Committee. The organization and rules of operation of the Council shall be fixed by the Minister for Cultural Affairs.

IV. 1. With regard to the functions stated in II. 1., the body concerned shall make an appropriate application to the Council.

2. The body concerned shall settle the cost of works within the categories of fine arts, handicrafts or photography during the current financial credit period, in accordance with the provisions of Section 11 (1) of Decree 24/1952 (III.27) M. T., as supplemented by Decree 25/1955 (IV.10) M. T., except in the case of works within the category of fine arts to be incorporated in new buildings.

V. 1. This Decree shall come into force on the day of its promulgation. The Minister for Cultural Affairs shall be responsible for the application of its provisions. He shall ensure that the Council takes over all the functions stated in II. 1. from the organs and enterprises hitherto responsible by December 31, 1964.

The second of the regulations referred to above is *Decision 1/1958 of the Director of the Central Publishing Board concerning royalties in respect of works published in foreign languages*, as follows:

I. The royalty rate shall be fixed in the publishing contract by agreement between the originator of the work (author, editor, translator) and the publisher. The parties may base their agreement on either (a) the rates laid down in Decree 3/1958 (VI.14) M. M. (*Le Droit d'Auteur*, 1959, p. 122), being a fee per sheet under the Hungarian system, or (b) the percentage rates laid down in II. below.

II. 1. The percentage rates shall be calculated according to the sale price as invoiced to the Hungarian foreign trading organization. The rates may be fixed at up to 8% (6% in the case of heirs of the originators) for each copy up to and in-

cluding 25,000; 50% of the rate applying to the first 25,000 copies for the copies numbered from 25,001 to 50,000; 25% of the contractual percentage rate for the copies numbered from 50,001 to 100,000; and 10% of the contractual percentage rate for copies in excess of 100,000.

2. The number of copies and the rates stated in para. 1. shall be calculated separately for each language.

3. In calculating the rates due in respect of further editions in accordance with 1. and 2. above, the copies pertaining to any previous edition shall be included.

4. The rates due in respect of any edition after the first shall be calculated in accordance with the method applied for the first edition (per sheet or by percentage).

III. 1. If the publisher issues the same literary work in more than one foreign language and the royalties are calculated in accordance with Decree No. 3/1958 (VI.14) M. M., the publisher shall be entitled if he so desires to apply the provision concerning the basic number of copies (for works in prose 5,000, for works in verse 3,000) in respect of the first foreign-language edition only. In calculating the rates for the second and subsequent foreign-language editions, the rates in respect of a number of copies in excess of 5,000 (3,000 in the case of poetry) shall be taken into consideration separately for each language.

2. If the work is first published in more than one language at the same time the basic number shall be applied in respect of the version of which the largest number of copies has been issued.

3. If the publisher paid the royalties in respect of the first foreign-language edition according to the basic number of copies but a smaller number of copies was actually issued the publisher shall deduct the excess royalties paid at the time of the next payment in respect of the edition in the same language.

IV. 1. With regard to the publication of scientific, popular scientific and technical works, if royalties are calculated according to the Hungarian system per sheet and the work appears in more than one foreign language (at the same time or at different times), the publisher and author shall agree which edition shall be regarded as the first. Any subsequent edition, whether in the same language or in another language, shall be considered as second, third edition and so on. For the second edition 25% of the rate payable for the first edition shall be payable, and for the third and subsequent editions 10%.

2. If the work is published in a language other than that of the previous edition(s) more than one year after the first edition, the rate may be raised to not more than 75% of that for the first edition.

3. If royalties were not established at the highest level of the Hungarian system per sheet, the publisher may increase the rate in respect of the second and subsequent editions subject to a ceiling permitting the author to receive an amount equivalent to the highest rate for the first edition. For example, if a figure of 600 forints per sheet was fixed for the first edition of a technical work, then a higher rate, but not



more than 1,400 forints per sheet, may be used in calculating the 25 % rate for the second edition.

(The remaining sections of the Decision refer to royalties payable to editors, translators, readers and authors of illustrated works used in the foreign-language editions, and are not reproduced here.)

### Court Decisions

(a) The plaintiff, a professor at the School of Advanced Musical Studies, was commissioned in writing by the defendant, the State Radio and Television Organization, to compose the musical accompaniment for a television film, which was to be recorded on tape. He was offered a sum of 4,000 forints. The plaintiff wrote the music, and the agreed amount of 4,000 forints was paid by the defendant. The author of the script received 7,000 forints.

Subsequently, under an international programme exchange agreement, the defendant transmitted the tape to the television organization of the German Democratic Republic for broadcasting purposes, but without notifying the plaintiff. The court was unable to establish whether the defendant had informed the GDR television representatives of the plaintiff's right to royalties. Under the agreement between the different television organizations the party showing a film has to pay royalties in respect of its musical score. It has also to be informed in advance by the other party regarding its obligations in this connection.

The work was broadcast twice in the GDR but the royalties due to the plaintiff on the basis of the agreement mentioned were not paid by the GDR television organization. It was not until late 1965 or early 1966 that the plaintiff learned that the broadcast in question had taken place, namely in 1962. On applying to the defendant he was informed that no royalties had been paid for him. When he asked the author of the script he was told that the film had also been shown in the Federal Republic of Germany and in Czechoslovakia, and that she had received a fee of 14,000 forints for the broadcast in the GDR.

The contract between defendant and plaintiff contained no clause stating that the defendant should acquire the right to allow any foreign television company to broadcast the composer's music. Nor had there been any oral reference to any such right before the contract was signed. It was not until March 29, 1966, that the plaintiff's lawyer requested the defendant to pay the royalties. The defendant was prepared to pay 2,000 forints, but the plaintiff would not agree. Legal proceedings were brought on May 30, 1966, the plaintiff suing for payment of 8,300 forints and costs. The defendant contended that its contract with the plaintiff allowed it to grant the right to broadcast in the GDR the film in question as part of the television exchange programme. It acknowledged its sole liability for payment of royalties on the basis of the contract but submitted that the plaintiff's claim was no longer valid in view of the statute of limitation laid down in Section 36 (1) of the Hungarian Copyright Act (*Le Droit d'Auteur*, 1922, p. 49), since the period of three years had already elapsed, the film having been shown on September 5, 1962, and the plea having been filed on May 30, 1966. However, the plaintiff referred to Section 326 (2) of the new Civil Code stating that limitation

shall not apply if the plaintiff has been prevented from lodging his claim. He alleged that this was the case because he had had no knowledge that grounds for such a claim had arisen.

The parties agreed that the court should decide the amount of damages without expert advice. The court found in favour of the plaintiff, for the following reasons: the defendant had declared that, if any liability for payment existed, it was the defendant's liability. The agreement between the television organizations stated that any party supplying a work for the purpose of broadcasting should inform the other party of any liability for payment arising in that connection. This the defendant had omitted to do at the proper time. The relations between the two television organizations would undoubtedly suffer if the plaintiff were to press his claims in the GDR four years after the broadcast in question. The defendant's liability was further increased by the fact that it had failed to inform the plaintiff of the broadcast in the GDR. Section 19 of the Hungarian Copyright Act clearly pointed to the defendant's liability because it states that the party responsible for violation of a contract is jointly liable with the party committing the violation. As regards limitation of the claim the court referred to section 326 (2) of the Civil Code stating that "if the claimant has failed for valid reason to lodge his claim he may do so not more than one year after the cause of such failure has ceased to exist, even if the period prior to limitation has already expired". It is the practice of the Supreme Court to apply this provision even if the injured party had no knowledge of the injury suffered. The Supreme Court therefore considered whether the plaintiff had any knowledge of the broadcast in the GDR, and if not whether circumstances indicated that he should have been informed, and finally when he did learn of the broadcast. After hearing the author of the script the court was able to conclude that the plaintiff was apprised of the broadcast late in 1965 or early in 1966. That meant that there were valid grounds preventing the plaintiff from lodging his claim any earlier. Since less than one year had elapsed since the earliest time at which the plaintiff could have obtained this knowledge (namely the end of 1965), the defendant's claim of limitation could not be entertained. With regard to the amount of the claim the court noted that, when the composer received a fee of 4,000 forints for his work, the script-writer was paid 7,000 forints. Since the script-writer received a fee of 14,000 forints for the broadcast in the GDR, the proportionate rate for the composer would be 8,000 forints. The higher rate was due to the fact that the film was shown twice and that the number of television sets in the GDR is considerably higher than in Hungary.

The defendant was accordingly ordered to pay 8,000 forints plus interest as well as 1,200 forints costs. (Budapest Court, 25 P. 26,198/1966.)

No appeal was lodged against this decision.

(b) The plaintiff, a young composer, had been an assistant teacher at the Academy of Dramatic Arts in the late 1950's. The chief producer of the Budapest State Opera House was a Professor at the Academy. The plaintiff asked the Professor to suggest a stage play that would provide suitable material for a one-act opera, which he did. The plaintiff followed the suggestion and composed a one-act opera. As he completed each

part of his work the plaintiff showed it to the Professor, who made suggestions for the remaining sections. The score was completed in 1959, and the Professor found it very successful.

The management of the State Opera House signed a contract with the plaintiff and informed him that the work would be performed on one of its small stages. The work was in fact performed a few times, and the composer received the appropriate royalties exactly as due. The audiences were not large enough, however, and the opera was not performed any more on that stage. In the meantime the Professor was appointed Director of the State Opera House, and tried to have the work performed there. It was included in the subscription programme of the Opera House, and the contract was amended on June 6, 1960, to state that the defendant would present the work on both of the large stages belonging to it. Royalties for the work were fixed at 3 % of the gross takings, the composer's share being 1.95 %. The opera was never performed, however; the Director claimed that there was a shortage of tenors and that only an outstanding tenor could ensure the success of the work. During these years the Opera House paid the plaintiff a total of 5,000 forints in advances. The competent Ministry stated that takings in the two large theatres on subscription evenings amounted to 28,723 forints and 37,225 forints respectively.

Finally the composer introduced proceedings against the State Opera House for termination of the contract and payment of damages amounting to 10,600 forints. The claim for damages was later amended to a sum of 6,190 forints.

The defendant pleaded for rejection of the claim. It did not deny the contents of the contract but it submitted that the plaintiff's claim had already been met in full through payment of the advances mentioned. In principle the Opera House's income in 1960 amounted to 25,785 forints for each evening, so that the plaintiff's royalties of 1.95 % would be 502.80 forints. Assuming that there were ten performances of the work in the course of the season, the total due would therefore be 5,028 forints. But the plaintiff claimed that the second theatre belonging to the Opera House had gross takings amounting to 47,477 forints, of which 1.95 % would be 925 forints. But seeing that there would be at least twelve performances the royalties due would total 11,190 forints. After deduction of the advances amounting to 5,000 forints, the plaintiff's claim was therefore for 6,190 forints.

The court ordered the defendant to pay the plaintiff damages of 3,711 forints and to cover part of the costs. The reasons given were as follows: the work in question had been included in the 1960 subscription programme for the larger theatre and the public had been accordingly informed. Section 277 of the Civil Code requires contracts to be fulfilled in accordance with the provisions contained therein, at the time and at the place laid down. Under Section 313 failure on the part of one party to fulfil the contract entitles the other party to require its fulfilment and compensation for such failure, or to claim damages if the fulfilment is not possible. The defendant had pointed out that it had been prevented from fulfilling the contract through considerations relating to the composition of the programme and those of artistic standards. It had not been clarified precisely what that meant. The court had noted that,

according to the statement by the Director of the State Opera House, the lack of a suitable tenor had prevented the contract from being fulfilled. But this had long since been generally known, and the Opera House was perfectly aware of it when it signed the contract. This fact could not therefore be adduced to the disadvantage of the plaintiff. The Opera House itself did not dispute the plaintiff's right to compensation, but simply believed that the claim had already been met by means of the advances paid. The court was sure that the work was of a satisfactory standard, as testified by the Director, so that it was reasonable to suppose that it would have been performed on twelve occasions in the 1960-1961 season. The repertoire of the larger stage was planned to allow twelve performances of each work in the course of the season. The average daily takings in 1960 amounted to 37,225 forints, so that the 1.95 % royalty rate would work out at 725.89 forints each time, and a total of 8,711 forints for the twelve performances. It was not disputed, however, that the plaintiff had already received advances amounting to 5,000 forints, so that the defendant was required to pay the balance of 3,711 forints plus interest and costs. (Budapest Court, 25 P. 28,764/1965.)

The defendant appealed against the decision, but this was upheld by the Supreme Court. (Pf. IV.21,064/1966.)

(c) The plaintiff was a ceramic artist employed by a porcelain factory as a painter. The factory is controlled by a centralized national enterprise, which was the defendant. In his leisure time the plaintiff modelled figurines, one of which, representing a dachshund, won first prize in a competition organized by the Committee for Industrial Arts. The Committee's jury stated that the prize awarded was merely symbolic and that, if the figurine were to be reproduced by industrial means, the plaintiff would further be entitled to a fee, to be fixed by the Committee, and appropriate royalties payable by the enterprise acquiring the manufacturing rights. The jury transmitted the figurine to one of the defendant's subsidiary factories for reproduction, stipulating that, in addition to receiving a fee for the use of his model, the plaintiff would also be entitled to royalties equivalent to 3 % of the gross manufacturing cost. The jury also informed the plaintiff of this disposal. The plaintiff consented, but no agreement was made in writing between the plaintiff and the factory. In reply to a question by the court, the defendant stated that the making of the figurine was not part of the plaintiff's job.

The plaintiff sued for payment of royalties equivalent to 3 % of the manufacturing cost. The defendant pleaded for rejection of the claim. It did not deny the facts as stated by the plaintiff but claimed that there was no statutory obligation to pay royalties in such instances. The defendant thus sought a declaration of principle from the court stating whether it had to pay royalties, and if so how much. The plaintiff's claim was for 3 % of a gross production cost of 140,005 forints, together with interest at 5 % and the cost of the proceedings at law. Since the jury of the Committee for Industrial Arts had already examined the work and found it deserving of an award, the court was able to conclude that this was a work of industrial art. The Hungarian Copyright Act provides that the provisions governing protection of works of fine arts shall also govern the protection of works of industrial art

(Section 66). In view of the fact that the reproduction and further utilization of the work took place with the consent of the plaintiff there could be no question of infringement of his copyright. The court had simply to decide whether any contract had been concluded between the parties, and if so what its provisions were. Section 216 (1) of the Civil Code states that contracts may be concluded through the tacit behaviour of the parties. This rule was applicable in the present instance since there was no agreement in writing. The plaintiff had not objected to the jury's transmitting the figurine to one of the defendant's factories for the purpose of its utilization, in return for a fee of 1,000 forints. Since the plaintiff had received that sum, the court was called upon merely to decide whether that sum should be deemed to constitute final settlement of the plaintiff's claim or whether he could continue to advance a legitimate claim. The court found that the parties' tacit behaviour had resulted in a contractual situation which it defined as follows: the Committee for Industrial Arts had announced the conditions of the competition in terms stating that the person whose work won the jury's award would receive a sum of money representing a symbolical prize but would also be entitled to a fee of 1,000 forints and 3 % of the production cost in the event of industrial utilization of the work. The Committee had also stressed that the same amounts would be due to the author of the work in the event of its acquisition by a factory since its making was not part of his normal job. The fact that the plaintiff had created the work outside his employment was not at issue. According to the terms of the contract as construed by the court, the defendant was required to pay the plaintiff, in addition to the fee of 1,000 forints, and royalties equivalent to 3 % of the production cost of 140,000 forints. Royalties were established at 4,200 forints. The defendant was also ordered to pay interest and the costs of the proceedings. (Budapest Court, 25 P. 27 450/1966.)

(d) The plaintiff was the retired chief producer of a theatre, the defendant being a deceased author's widow who had since remarried. The plaintiff alleged that in 1937 he had concluded an agreement with the now deceased husband of the defendant providing that the deceased author would obtain the plaintiff's advice and technical help in writing a play, in return for which the plaintiff would be entitled to 25 % of all income from the play (Hungary or abroad; stage, screen or other forms). On April 23, 1966, the Hungarian broadcasting organization broadcast the play adapted as a musical: a poet had been commissioned to adapt the text of the original work in such a way as to permit the introduction of songs and passages of music, for which he had also written the lyrics. A Hungarian composer was commissioned to write the score.

The broadcasting organization paid royalties to the sole heiress, the defendant. The plaintiff claimed payment of the amount that had been agreed with the deceased author, namely 25 % of those royalties. The defendant refused to do so and pleaded for rejection of the claim. She denied neither the provisions of the contract between the deceased author and the plaintiff nor the fact that she had been paid royalties. She argued that the plaintiff's contribution had not been used in the adaptation of the work. She later altered her line of argument and contended that, although the plaintiff had been co-

author, the part which he had written could be separated from that written by her deceased husband. She referred to Section 1 (3) of the Hungarian Copyright Act under which the plaintiff was entitled to make his own claim to the broadcasting organization, and stated that he should do so.

When requested by the court to produce the text that had been adapted the defendant was unable to do so. The court was thus unable to establish whether the defendant was right in claiming that the two coauthors' respective shares could be separated. The court decided that the defendant should comply with the plaintiff's request for payment of 25 % of the royalties received and should also pay the costs. The reasons for this judgment were that the defendant was unable to corroborate her claims that the plaintiff had not collaborated in the manuscript adapted and that the work adapted could be divided in a manner enabling the plaintiff to lodge a claim with the broadcasting organization in his own right. This being so, the defendant was liable for settlement of the plaintiff's claim. (Budapest Court, 25 P. 26,186/1966.)

(e) Under the Decree establishing a Council for the Fine Arts and Handicrafts, one of the Council's functions is to designate the artist who shall be commissioned to make a work for a public body. It also has to evaluate works that public bodies propose to purchase and to determine what price the author of the work can and should receive for the work delivered. This Council is an official body and cannot therefore be circumvented.

In the case reported here a public body was plaintiff and two graphic artists the defendants. The plaintiff commissioned several works of graphic art from the defendants, and these were supplied and paid for as contracted. It then transpired that the Council had not been consulted by the plaintiff at the time of the commissioning, regarding designation of the artists, evaluation of the works or fixing of the fee. The plaintiff subsequently ascertained that it had paid the two artists considerably more than the Council would have allowed. It therefore sued the defendants for repayment of the greater part of the fees they had already received.

In the course of the hearings the Council was requested to give its evaluation of the two defendants' works and to state what would be an appropriate fee. It accordingly informed the court to what extent the sum actually paid was in excess of the amount normally due. The court referred to Section 215 (1) of the Civil Code stating that, in cases where an official authorization is necessary for the valid conclusion of an agreement, the agreement cannot be regarded as concluded until such time as the authorization is forthcoming but that the parties are in the meantime bound by their statements. If official authorization is received, the contract is regarded as valid from the time of its being agreed upon. If the competent authority does not give its approval to the proposed contract the agreement between the parties is invalid.

In view of the fact that the Council gave its subsequent approval to two only of the works, and subject to the proviso that the fee should be greatly reduced, whereas it rejected the other works, the court declared the contracts to be invalid except in respect of the two works approved, provided that the rates were reduced. Section 237 (1) of the Civil Code states

that if a contract is found to be invalid the situation existing prior to signature of the contract shall be restored. In the present case this was impossible, however. The court therefore considered the contract to be valid until the time of the court's decision and ordered the amounts for which no work had been performed to be repaid.

The defendants referred to Section 4(3) of the Civil Code stating that no person shall be allowed to benefit from his own incorrect behaviour. They argued that the plaintiff was in point of fact bound to use the services of the Council, and that its failure to do so should not serve to its advantage. The court did not agree: both parties should have used the services of the Council at the proper time. In addition the defendants had demanded and received excessive sums for their works. The court therefore ruled that the defendants should repay the difference between the fee actually received and the Council's evaluation for the two works it had approved. As regards all the other works the defendants were ordered to repay 80 % of that difference, being allowed to keep the remaining 20 %. The final result was that the court ordered the defendants to repay a total of 5,350 forints, plus 5 % interest. The defendants were not required to pay costs. (Budapest Court, 25 P. 25, 431/1966.)

Both parties appealed against this decision. The Supreme Court reduced the sums to be repaid by the defendants to 2,993 forints and 550 forints respectively. It also allowed the first of the defendants to pay off the debt in monthly instalments of 100 forints. Otherwise the original decision was upheld.

The Supreme Court agreed with the original decision and also confirmed the reasons given. It merely reduced the sum to be repaid by the defendants and allowed deferred payment in one of the cases.

The plaintiff's objection to the judgment was that the court was not competent to hear the case in view of the amount involved, which meant that it should be heard by the district court, the lowest level of jurisdiction.

The Supreme Court held this objection to be unfounded, if only because there were no grounds for appeal in the fact that a case is heard by a higher court. However, there were also copyright law implications since the contract between the parties was challenged on the grounds of invalidity, and where there were such questions involved the court of justice that had heard the case was alone competent. Section 67 of the Copyright Act states specifically that the provisions of Sections 1 to 44 of the Copyright Act are applicable even in the case of works that cannot be considered to come within the category of the fine arts or handicrafts. (Supreme Court, Pf. IV.20,070/1967.)

(f) Plaintiff in this case was the Hungarian State Railway Board, and defendant was a goldsmith. In February 1964 a contract was signed between the Railway Board and the defendant in which the latter agreed to produce a work of industrial art, a relief, from designs that he had submitted and that had been approved. The work was to measure seven square metres and was to be placed on the outside wall of a locomotive boiler works. The finished design was to be completed by

the end of February 1964, the work itself finished and delivered by the end of the following month. It had been agreed that the artist's fee would be not less than 52,000 forints and not more than 80,000. The contract also contained provisions regarding the conditions of payment.

The Council for the Fine Arts and Handicrafts examined the work, approved it and fixed the artist's fee at 77,000 forints. The Council was informed that the artist would himself place the work on the wall in question and that this would be done by August 10, 1964. The Railway Board acknowledged receipt of the work in a memorandum dated July 16, 1964. However, it was asserted by the plaintiff and confirmed by the court that the defendant had not placed the work on the wall as agreed.

In its plea the plaintiff demanded that the defendant be fined 3,850 forints in accordance with the contract for this failure to observe the deadline. The defendant opposed the complaint by contending that the work had in fact already been delivered. He acknowledged that he had agreed orally to place the work on the building, but added that he had been unable to do so because he had other more important urgent work to do and because the plaintiff had not carried out its payment obligations. The Council supported the defendant in the proceedings.

The plaintiff based its plea on the grounds that the Decree concerning investment (45/1961 (XII.9) Korm.) and the Regulations issued thereunder consider works of art connected with the construction of buildings as building work. It therefore argued that, since the parties had thus to sign a building contract, the contract actually signed had to be considered as a building contract. The plaintiff also submitted that the contractual fine under building contracts has to be fixed separately for each instance, and that this remained true even if the parties had not made specific provision for it in the terms of the contract, any waiver or restriction of this condition being invalid.

With regard to the plaintiff's point of view and the defendant's arguments, the court was required primarily to decide whether the contract should be considered as a building contract in the light of its subject and its contents. If so, then the plaintiff would have to be found in the right, provided that there had in fact been delay. In the case of building contracts the relevant Decree refers to such fines, so that there is no need for any specific statement to that effect in the contract. However, the court did not consider this to be a building contract. The Decree quoted by the plaintiff does stipulate that the artist shall produce works within the category of the fine arts in accordance with the terms of the contract and within the agreed period, but in contrast to the situation governing all other types of contracts the Decree contains no provision with regard to payment of a contractual fine in connection with the time of delivery of a work. The court therefore found the plaintiff wrong in supposing that the Decree was sufficient to establish an obligation in this respect on the part of the artist. Since there was no provision to this effect in the contract and it was laid down in Section 246 (1) of the Civil Code that any such obligation must be stated in writing, the plaintiff's plea could not be accepted. The court further pointed

out that Section 106 (1) of the above-mentioned Regulations requires a building contract to be drawn up only in instances where the contractor is a State organization or a cooperative, which was not the case either. The plaint was therefore dismissed. (Budapest Court, 25 P. 21, 314/1965.)

(g) The joint plaintiffs were the authors of a handbook concerning maintenance and repair of the "Pannonia" motorcycles. The manual was issued in Hungarian by a Budapest publishing house, and it was very favourably received by users. Defendant II, which exported "Pannonia" motorcycles to several countries, thought that the handbook would also prove useful for its foreign users. It therefore ordered Russian, German and English versions of the manual from the publisher in Budapest, with the intention of supplying these as appropriate with its motorcycles. The publisher agreed to produce the three versions. For technical reasons a Polish version was substituted for the Russian one. Defendant II arranged with another publisher for a Russian version to be produced, and ordered 40,000 copies of this. This publisher was brought into the proceedings as defendant I but did not play an important part because the court decided that it should not bear any liability since defendant II had ordered the Russian version from defendant I, so that defendant II was responsible. Moreover, the court felt that if defendant I were fined it would merely in its turn sue defendant II for whatever sum it was itself fined. The court accordingly decided to regard defendant II as bearing sole liability for the Russian version also. The court's verdict was based principally on the fact that defendant II had not obtained the plaintiffs' authorization and that the order placed by defendant II and its execution without due authorization were an infringement of Section 18 of the Copyright Act, the court thus having to decide in the light of the circumstances and in accordance with Section 30 of the Act what compensation was due.

In a decision (1/1958) by the Central Publishing Board rules are laid down regarding fees payable in respect of works published in foreign languages. This decision offers the author a choice of two possibilities: he may choose either the same royalty rates as apply to Hungarian works (rate per sheet) or a percentage rate. The parties fix the percentage in their contract. The form of calculation chosen for one foreign language remains the same if the work is later brought out in one or more other languages. In the present instance the court found that for the first edition the per-sheet system had been used, so that damages would also have to be calculated in that manner. Section 4 of the above-quoted decision states that each further edition, whether in the same language as the first or not, should be treated as the second, third, fourth edition and so on. For the second edition the author is entitled to 25% of the rate paid for the first edition, and for the third and subsequent editions it is 10%. If the second edition is in a different language from the first and if a period of more than one year has elapsed since publication of the first edition, the rate may be raised to not more than 75% of the original rate.

The authors received 7,407 forints for the first edition. On the assumption that the Russian edition had appeared more than one year after the first (Hungarian) edition, the court ordered defendant II to pay 75% of that sum, namely 5,555.25

forints, together with interest and costs. (Budapest Court, 25 P. 22, 750/1965.)

Defendant II appealed against this decision, pleading for the damages to be reduced from 5,555.25 to 740 forints. The Supreme Court found this plea to be partly justified. It agreed that defendant II had infringed the plaintiffs' copyright by reproducing the plaintiffs' work in Russian and distributing it without permission (Sections 8 and 5 of the Copyright Act of 1921, No. LIV). Accordingly defendant II was liable for payment of damages (Sections 18 and 30 of the same Act). However, the court of justice had been wrong in its calculation of damages on the basis of Section 4 (2) of decision 1/1958 of the Central Publishing Board. Evidence had been produced in the course of the hearing that showed the Russian version to have been issued in the same year as the first, Hungarian, edition. Therefore it was impossible to apply the provision whereby the royalty rate might be brought up to 75% of the rate for the first edition. This was the situation irrespective of whether the various editions had been issued by the same publisher. The argument adopted by the court of justice was thus incorrect. But nor was defendant II right in claiming that only 10% of the rate for the first edition was payable under Section 4 (1). Decree 3/1958 (VI.14) M.M. provides for the right of authors to claim a higher rate for second and further editions. "If the royalties payable in respect of the first edition were not fixed at the maximum level payable in accordance with Annex No. II of this Decree, the publisher may increase the amount of royalties in respect of the second and subsequent editions up to the maximum amount that the author would have been entitled to receive if the royalties in respect of the first edition had been fixed at the maximum level (for example, if in respect of the first edition the author's royalties of 600 forints had been fixed on a sheet basis then, in calculating the royalty of 25% in respect of the second edition, a higher sum, but one not exceeding 1,400 forints, may be taken as a basis of calculation)." The court decided to apply this provision in favour of the plaintiffs: since the highest rate per sheet is 1,400 forints and the work contained nine sheets, the plaintiffs were entitled to 10% of 12,600 forints, i. e. 1,260 forints, for the third edition. Thus the Supreme Court reduced the amount originally fixed to 1,260 forints. The costs that defendant II had been ordered to pay were reduced in the same proportion. (Supreme Court, Pf. IV. 20, 879/1965.)

(h) Plaintiff was the Fine Arts Fund, acting as representative for four artists. Defendant was an office responsible for organizing agricultural exhibitions. The plaintiff sued for 23,069 forints, being the balance of fees payable to the four artists. The defendant rejected this claim, asserting that the artists had received payment in full.

The court established the following facts: the defendant concluded a contract with the artists according to which they were to produce various figures and compositions for exhibition pavilions. Article 4 of the contract stipulated that the artists should prepare outline plans together with a cost estimate by a specified date, and that after approval the estimate would be used as basis for payment of an advance. 30% was to be paid at the time of submission of the estimate, a further 30% when the plans were accepted and the balance of 40%



when the finished work had been approved by a jury. Any difference between the fee to be fixed by the jury and advances already paid out would be paid by the defendant within fifteen days of the announcement of the jury's decision. If the fee were fixed at a level lower than the sum of advances already received, the artists would repay the amount paid out in excess. The artists' estimate worked out at 35,400 forints, and they received their advance in order. The jury found that the works were of high artistic quality and that the technical solution found to the problems posed was excellent; it fixed the fee at 66,750 forints. The defendant appealed against this decision. The Ministry for Cultural Affairs reduced the fee by 9,700 forints, so that it would amount to 57,050 forints. As they had already received 34,653 forints the plaintiffs demanded a further 23,069 forints, arguing that the Ministry's decision was to be regarded as binding on both parties. Actually the exact difference was 22,397 forints but a further 3% was due to the Fine Arts Fund, which explained the extra 672 forints.

The defendant objected that it had agreed orally with the artists before signature of the contract that it would pay a fixed rate of 35,400 forints whatever the jury might decide. This was the amount specified in the artists' estimate. The defendant quoted witnesses to corroborate this statement. The defendant asserted finally that the amount mentioned was all that it was able to pay. The plaintiffs considered that there was no point in calling witnesses since the contract had been drawn up in writing and its contents clearly refuted the defendant's contentions.

The court ordered the defendant to pay the amount claimed, giving the following reasons for its decision: the provisions contained in the contract clearly showed the defendant's objection to be unfounded. The estimate had been submitted in accordance with Article 4 of the contract with the sole purpose of providing a basis for payment of an advance. It was understood that the final decision as to the fee would lie with the jury. The defendant had undertaken by virtue of the contract to pay the artists whatever difference there might be within fifteen days of the jury's announcement of its decision. This indicated that, even if the parties had arrived at some other oral agreement, it was clearly superseded by their subsequent written contract. Whatever the parties may have arranged orally prior to signature of the contract was thus entirely irrelevant. The court therefore refrained from hearing witnesses and ordered the defendant to pay the sum due. (Budapest Court, 25 P. 24, 394/1965.)

(i) The case related to "petits droits" and was brought by the Hungarian Office for the Protection of Copyrights against a State hotel enterprise. The plaintiff claimed payment of a difference amounting to 19,390 forints in respect of royalties, alleging that the defendant had made an incorrect declaration of the details on the basis of which hotels are classified for payment of fees. In particular, it was alleged, the defendant had failed to state that its establishments sold alcoholic drinks, as a result of which they were put in a lower category with accordingly lower fees. The plaintiff sued for payment of the difference outstanding between the sums already paid and the amount properly due.

The defendant opposed the plea, arguing that an arrangement had been made between a body to which it was subordinate and the Office according to which the parties would in the future endeavour to bring the Office's classification system in line with the hotel industry's, because there were certain divergences between the two. It had even been arranged, according to the defendant, that representatives of the two parties in the case would jointly establish the distribution by categories.

The Office acknowledge that there had been such talks with the defendant's superior authority but claimed that nothing had been achieved because the criteria applied by hotel establishments in fixing prices were totally different from those followed by the Office in fixing authors' royalties. It alleged that the defendant was quite aware that these talks had led nowhere and that the Office insisted on applying the system of classification it had drawn up and communicated to the various establishments. The Ministry for Cultural Affairs had informed the Office that it was within the exclusive competence of the Office to decide the classification of hotel establishments as regards payment of royalties for the performance of protected works of music in establishments serving alcoholic beverages.

It was on the basis of this authority that the Office included the defendant's establishments, which served alcoholic beverages, in the first class for payment of royalties. The rate for that class was 25 forints per day, whereas the defendant had paid only 17.50 forints, having failed to disclose that alcoholic drinks were served in its establishments.

The court found this account of the situation to be in accordance with the facts. It also heard witnesses who gave evidence that alcoholic drinks were served. From this the court concluded that the Office was perfectly correct in claiming payment of the higher royalty rate, and it ordered the defendant to pay the difference as claimed in full. (Budapest Court, 25 P. 22, 930/1965.)

When the defendant lodged an appeal, the Supreme Court found that the decision of the court of justice was perfectly in order and upheld it. (Supreme Court, Pf. IV.20,787/1965.)

(j) The Fine Arts Fund brought proceedings against the State gramophone record factory, on behalf of an artist who had created a puppet play. The artist alleged that the defendant had produced paper sleeves for its records showing a scene from his puppet play without his authorization. The plaintiff sued for damages in respect of infringement of the artist's copyright.

The defendant stated that it had received the picture from the Hungarian telegraphic agency in return for payment of a specified price and that it had assumed that it had thereby acquired the right of reproduction. It requested that the complaint be rejected.

There was no dispute as to the fact that the Hungarian telegraphic agency employs a number of photographers whose work it reproduces and utilizes. Acquisition of a copy of any work whatsoever, including a photograph, does not, however, constitute acquisition of copyright.

The court found that the defendant had failed to obtain the right of reproduction from the artist, so that his copyright



was infringed by the reproductions which the defendant caused to be produced for its own purposes and used in its commercial operations.

The court ordered the defendant to pay damages of 515 forints. This is the maximum rate payable when a drawing or photograph is used for such purposes. (Budapest Court, 25 P. 28, 458/1965.)

(*k*) This case was brought by the Fine Arts Fund on behalf of four artists who had participated in competition, had been honoured by the jury but had not received their prizes. Defendant was the National Association of Small Industry Cooperatives. The plaintiff sued for payment of 32,960 forints.

After obtaining the text of the rules of the competition and hearing witnesses, the court established the following facts. The Committee for Industrial Arts had proposed to the defendant that they should jointly organize a competition, with award of prizes. The representative of the Committee wanted the defendant to make available to the Committee a sum of 32,000 forints to cover the provision of prizes. The defendant agreed to this proposal. It also agreed that only invited artists should be allowed to participate in the competition. The jury met to examine the works submitted, and decided to pay each artist participating 500 forints and to divide the balance among the most deserving competitors. In this manner the whole of the sum of 32,000 forints was used up.

The defendant was also invited to the jury's meeting. However, the person who had hitherto been conducting its negotiations in this matter was abroad at the time, so another representative was sent. After the jury's decision had been announced, the defendant arranged for all the works submitted to be collected from the Committee and distributed among its member cooperatives for their own use.

The Committee repeatedly demanded payment of the sum offered to cover the prizes. The defendant promised in writing that it would transfer the amount. The court decided that the competition did not come within the definition given in Section 592 (1) of the Civil Code and was in fact to be regarded as a work by contract agreement. In this contract the defendant was one of the parties commissioning the work, and as such it had received for its own use the works produced by the artists on the basis of that contract. There had been no objection to the works supplied, so that the fees established were payable to the artists, and moreover the defendant shared liability for payment of those amounts with the Committee. The defendant was ordered to pay the amount due to the artists plus 960 forints, being 3% of that amount, as the Fund's legal entitlement. (Budapest Court, 25 Pf. 24, 380/1965.)

(*l*) The next case to be described revolved essentially about the question of which of the two forms of calculating fees should be applied. Decree 3/1958 (VI.14) M. M. of the Ministry for Cultural Affairs provides that original scientific, popular scientific or technical works shall command a fee of between 600 and 1,400 forints per sheet for the first edition. Another Decree (149/1962 M. M.) governs the fees due to university professors who write the texts of their lectures to be reproduced for their students. The fee for these works is only 500 forints per sheet.

The National Tourist Office requested the plaintiff, a State documentation enterprise, to bring out on its behalf an original work on comparative economic geography for Hungarian tourist trade specialists. Following this request the plaintiff commissioned the defendant, a university professor, to produce a work on the subject. The work was made available within the prescribed time and no criticism was made of its contents. The plaintiff sued for the repayment of 18,560 forints by the professor. It stated that it had paid him 32,060 forints in author's fees but that only 13,500 forints should in fact have been paid. The plaintiff alleged that the fee had been miscalculated owing to the statement by the National Tourist Office in ordering the work that the appropriate fee was 1,400 forints per sheet. The payment of 32,060 forints made on the basis of this information was 18,560 forints more than was due to the defendant, so the plaintiff asserted. This was the sum which the plaintiff wanted to be repaid.

The defendant requested that the complaint be rejected, and submitted a counter-claim. He demanded payment of a further 5,600 forints on the grounds that his work comprised twenty-seven sheets whereas the plaintiff had paid for twenty-three sheets only.

The National Tourist Office intervened in the hearing to support the defendant's case.

What had to be decided was whether the work constituted the text of a university lecture or an original scientific work. The court requested the Ministry for Cultural Affairs to give expert advice on the point. The Ministry's opinion was in favour of the defendant: it pointed out that the work had not been written for a university audience; the instructions received by the defendant were not to write a manual; the subject matter was not part of the university's syllabus; and the book had not been commissioned by either the university or the Ministry for Cultural Affairs for use as teaching material at the university. For all of these reasons the book was not to be regarded as the text of a lecture such as a university professor is required to prepare for his students as part of his teaching duties. The lower fee could therefore not be applied in this case. The agreement reached by the parties that a rate of 1,400 forints per sheet should be paid to the author was thus entirely correct. The National Tourist Office put forward the same view, noting that the defendant had written an excellent original scientific work, based on scientific method.

The court held the expert opinion to be conclusive; it completely endorsed the line of argument and therefore found the complaint to be unjustified. The complaint was accordingly dismissed. However, the court also dismissed the counter-claim, on the ground that the parties had agreed that the work should comprise nineteen sheets. It was only later that the defendant had informed the plaintiff that it would amount to twenty-three sheets. The plaintiff accepted this increase and paid the corresponding fee. The court referred to Section 6 (4) of Decree 3/1958 (VI.14) M. M. providing that an author shall be entitled to receive a fee for any portion of a work in excess of the amount contracted for only if the party commissioning the work is notified in advance. The plaintiff was notified in advance of the increase in volume from nineteen to twenty-three sheets, and it paid the appropriate fee. The

plaintiff was not given prior notice of the further four sheets, so that no further fee was due to the defendant. (Budapest Court, 25 P. 24, 935/1965.)

When the plaintiff appealed against this verdict the Supreme Court upheld the original judgment. It also noted that the work had been commissioned by the National Tourist Office for specialists in the tourist trade. The Ministry's expert opinion had stressed the fact that it was an original scientific work. The National Tourist Office had also testified during the hearing of the case that it was a scientific work and was not part of the university syllabus. The court of justice had therefore been perfectly correct in refusing to reduce the fee already paid and in dismissing the plaintiff's claim for repayment of part of the fee received. The Supreme Court did not give any ruling on the counter-claim since the defendant had not appealed against its rejection. (Supreme Court, Pf. IV. 21,044/1965.)

(m) The plaintiff was an author, the defendant being the Hungarian broadcasting organization. The plaintiff had written a literary presentation entitled "Recollections of the Radio Aunt" before the Second World War, and it was broadcast by arrangement with the broadcasting organization. The plaintiff was paid the appropriate fee at the time. When the broadcasting organization broadcast the same work on two occasions over twenty-five years later, the plaintiff demanded payment of a fee and the broadcasting organization paid him 500 forints. The plaintiff accepted this sum, but with reservations.

In his plea the plaintiff demanded a further 1,500 forints. He argued that the original pre-war broadcast could not be taken into consideration in calculating the fee for the more recent broadcasts, which should therefore be regarded as the first and second broadcasts respectively, in respect of which 1,500 forints was still outstanding in fees. The defendant asked that the complaint should be dismissed because the plaintiff had already received the appropriate fee in 1940. In the event of a second broadcast the originator of a programme is entitled to half the fee for the first one. The maximum fee paid by the broadcasting organization for such a presentation was 600 forints, so that the plaintiff could not legally claim more than 300 forints. When questioned by the court, the representative of the broadcasting organization stated that the broadcast in question had lasted over thirty minutes. There was no dispute as to the plaintiff's authorship of the work.

In view of the fact that Section 30 of the Copyright Act allows the court full discretionary power in fixing the amount of damages suffered by the plaintiff in the light of all the relevant circumstances, the court decided that the amount due to the plaintiff was 750 forints. This decision was based on the fact that the plaintiff had already received a fee for a broadcast before the war. In addition, however, it was to be borne in mind that the broadcast had lasted over thirty minutes, for which the scale of fees was from 600 to 1,000 forints, with half the fee in the event of a repeat. In the light of the above circumstances the court fixed the fee for the two broadcasts, which were to be regarded as repeat performances, at 750 forints. The costs were awarded against the defendant. (Budapest Court, 25 P. 27, 968/1965.)

(n) Plaintiff was a building investment enterprise, which had a large housing block built. It arranged for a copper relief to be created and placed on the front wall of the building. For this purpose it requested the Fine Arts Fund to designate a sculptor. The Fund designated the subsequent defendant. A contract was drawn up under which the defendant undertook to supply the work by a specified date and to place it on the building appropriately. The sculptor was unable to complete the work in time, and the Fund informed the plaintiff that it, the Fund, would compensate the plaintiff for any loss suffered by the plaintiff as a result of the late supply of the work.

The defendant supplied the work on May 13, 1960, for the purpose of examination by the Fund's jury. The plaintiff's representative was present at the meeting held in that connection. The jury gave instructions for certain minor alterations, but it still agreed to approve the work, fixing the artist's fee at 35,000 forints, which the defendant duly received. When the building was completed, the building enterprise removed all its scaffolding and equipment. In these circumstances the parties to the contract concluded a new agreement for the placing of the work according to which the artist would mount the work on the façade of the building by March 31, 1961, provided that the plaintiff supplied the necessary scaffolding and other equipment. The Fund was to bear the cost involved in this. But the plaintiff was unable for some time to find an enterprise that could arrange for the necessary scaffolding to be put up. Finally an enterprise agreed with the Fund to provide the scaffolding, but not until after September 1961. The Fund informed the plaintiff accordingly, requesting it to make the necessary contractual arrangements with the enterprise in question and to advise both the Fund, which was to bear the cost, and the artist of what was arranged. However, a further period of time elapsed without any contract being signed for the job. The artist informed the plaintiff that he could not continue to store the work in his studio for an indeterminate period, and moved it to the cellar of his domicile. In August 1962 the work disappeared from the cellar. The police found that the cellar had been broken into and the work removed. The persons responsible could not be prosecuted for damages because they were minors aged between ten and twelve and their parents had no knowledge of their action.

The plaintiff asserted that the damage suffered was due to negligence on the part of the defendant: if the defendant had fulfilled his undertaking within the agreed time limit the damage in question would not have arisen. The plaintiff evaluated the damage at 37,645 forints and also sued for costs.

The court found the complaint to be unjustified. It was proved that the defendant had carried out the slight alterations ordered by the Fund's jury, so that the work was then ready for placing. The defendant had undertaken to place the work himself not later than March 31, 1961. The contract specified that the work should be handed over to the plaintiff in the artist's studio. However, the plaintiff did not indicate its readiness to receive the work so that there had been no failure on the part of the artist to fulfil his contractual obligations. Nor was it possible to hold the defendant responsible for the forcible entry into the cellar. The artist needed his studio for his further work, and the relief was taking up necessary space.

The cellar could be locked and was in fact locked. The cellar had been entered by removing a number of bricks with an iron bar. The complaint was therefore dismissed. (Budapest Court, 25 P. 22, 245/1964.)

The plaintiff appealed against this decision. The various assertions in the plaintiff's appeal were examined by the Supreme Court and rejected. The plaintiff alleged that the defendant had failed to advise it that he had completed the minor alterations required by the jury. However, the defendant had informed the plaintiff that he was ready to mount the work on the building and that the work was entirely completed. In a further communication dated January 23, 1961, the defendant had requested the plaintiff in strong terms to arrange for removal of the work from his studio, but without success. Thus there could be no question of negligence on the part of the defendant. This also disposed of the plaintiff's contention that the defendant should have given instructions for removal of the work by the plaintiff before depositing it in the cellar. In fact the defendant's letter of January 23, 1961, had insisted that the work should be collected before March 20, 1961, because he was unable to store it in his studio for any longer. In these circumstances the artist was perfectly justified in storing the work in the cellar, which was part of his residence, since he had no alternative storage place that could be locked more satisfactorily. The defendant had done all that he could reasonably be expected to do in the way of storing the work before it was collected. He could not anticipate the likelihood that anyone would break into the cellar by removing part of the wall. He was not therefore in any way to be blamed for his actions.

The plaintiff had agreed to supply the scaffolding needed for placing the work, and the Fund had moreover accepted the cost of this. The plaintiff had not carried out its part of the agreement before the theft took place, although the Fund had properly notified the plaintiff that it had received an offer by a building enterprise to supply the scaffolding.

Consequently, the plaintiff, as customer, had failed to fulfil its part of the agreement regarding placing of the relief at the time when the damage was caused. The damage would not have been caused if the plaintiff had not thus failed to fulfil its undertaking.

In the light of the above circumstances the Supreme Court held that the court of justice had not been at fault in dismissing the complaint. The defendant was not represented by counsel, so that no costs were awarded. (Supreme Court, Pf. IV.21,081/1964.)

(o) The defendant, an artist, and the plaintiff, a hotel enterprise, signed a contract with the collaboration of the Fine Arts Fund under which the defendant undertook to draw up a plan for a park with fountains to be constructed at the resort of Tihany, on Lake Balaton. The artist was also required to prepare a model showing the proposed form of the park. The work was to be completed by July 28, 1963, and the plaintiff agreed to pay 3,000 forints. Half of this sum was payable upon signature of the contract, the balance upon delivery of the model.

The plans for the general development of the shores of Lake Balaton were changed shortly afterwards, so that the

project described could not be put into effect. The plaintiff informed the Fine Arts Fund of its withdrawal from the contract. The Fund took note of this and requested the artist to stop his work on the plans in view of the withdrawal of the plaintiff. However, the artist had by then completed his plans. He showed them to the director of the plaintiff and also produced them as evidence at the hearing. The director personally confirmed that the plans produced before the court were identical to those he had previously been shown. The model had not, however, been completed at the time.

It was at this juncture that the plaintiff asked the artist to repay the advance of 1,500 forints already received. When he refused to do so proceedings were brought against him. The defendant asked that the case be dismissed, stating that the work he had done before termination of the contract was of a greater value than the amount he was being sued for. At the same time the defendant called the Council for the Fine Arts and Handicrafts as a witness. The Council gave evidence in his favour.

The court found against the plaintiff. The contract between the parties was a work by contract agreement (Section 387 of the Civil Code), in which the defendant undertook to prepare the plans for a park with fountains and the plaintiff agreed to pay a specified fee. From the letter sent to the defendant by the Fund it was quite clear that the plaintiff withdrew from the contract. Under Section 392 of the Civil Code the commissioning party may at any time withdraw from a contract subject to full indemnification of the supplier. The court therefore examined whether the plaintiff's withdrawal from the contract had caused any damage to the defendant and if so how much. The injured party is required to proceed in a reasonable manner calculated to preclude or reduce the injury. The court therefore considered whether the defendant had in fact met his obligations in this respect. The hearing revealed only evidence that showed that the defendant was not notified by the Fund until he had already completed his drawings, i. e. the plans described in the contract. He had not previously received any notification that might have led him to conclude that the plaintiff intended to withdraw from the contract or that the planned project would be thwarted for any other reason. In view of the fact that the artist had already met part of his contractual obligations, namely the artistic planning operation, he suffered injury which the customer had to make good under Section 392 of the Civil Code, since the defendant could not be blamed for failure to avoid or reduce such injury. In its deposition the Council stated that the loss incurred by the defendant through the plaintiff's withdrawal from the contract amounted to 1,500 forints. This was the same amount as the artist had received in the form of advance payment, upon signature of the contract.

The plaintiff further supported its claim with the argument that its withdrawal from the contract had been brought about by circumstances beyond its control. Since the circumstances precluding performance of the contract did not occur on the defendant's side, however, the plaintiff could not be released from its obligation to pay compensation in respect of the work performed.

In the light of the above circumstances and the legal position described, the complaint was dismissed. (Budapest Court, 25 P. 20, 019/1966.)

(p) Plaintiff was the Fine Arts Fund, acting on behalf of a painter. Defendant was a Central Office of cooperative societies. The plaintiff sued for payment of 5,000 forints, being the balance of fees due to the artist in question, and 200 forints for itself. The defendant had signed a contract with the artist for the design and execution of a plan. The premises of the Office were to be decorated with a ceramic work covering a six square metre surface of the building. The artist accepted the contract. It transpired during the works that the defendant could not afford to pay for the whole wall surface surrounding the work to be covered with ceramics as well. The artist was constantly in touch with the defendant's architect, and when it became clear that the available resources would not permit the whole wall to be decorated with ceramics the architect proposed that the wall on which the work was to be mounted should be faced with artificial stone. The artist agreed to this proposal, and the work was carried out. The jury found that the design of the work and its execution were satisfactory, and it approved the work. It stated in its report that the artist had performed work of a high artistic quality. At the same time it ordered the defendant to pay the balance of the fee. The defendant appealed against the Council's decision. A committee was instructed by the Ministry to deal with the question. Its meeting was attended by a high-ranking official on behalf of the plaintiff who noted the committee's recommendation. The Ministry confirmed the Council's decision on the basis of this recommendation. Nevertheless, the defendant persisted in its refusal to pay the balance of 5,000 forints, arguing that the artist had used artificial stone instead of ceramics as originally agreed. It alleged that the agreed fee had been fixed at 30,000 forints precisely because ceramics were to be used; but seeing that artificial stone had been used instead, it was only right and proper that the fee should be reduced accordingly.

The court found it to be satisfactorily proven that the defendant had through its representative approved the use of artificial stone as corresponding to the nature of the project. This was clearly stated in the memorandum established by the commission set up by the Ministry. The experts declared in the same memorandum that if the work had in fact been done in ceramics the cost would have been 20,000 forints more. But the essential point was that the artist had discussed the idea of using artificial stone with the defendant's architect because the available credits would not permit the use of ceramics. It was in fact the architect who had suggested this solution and he had expressed the belief that artificial stone would fit in with the rest of the building suitably. The court accepted the artist's declaration that the use of artificial stone had occasioned greater effort for him than if he had used ceramics. If ceramics had been used he would have needed merely to supply the plans but as things were he was obliged to contribute a good deal of manual work.

In view of the situation described the court ordered the defendant to pay the amount of 5,200 forints as claimed, plus interest. (Budapest Court, 25 P. 20,169/1966.)

(q) The plaintiff was a scientist who had signed a contract with the defendant, a State publishing house. The fee per sheet was fixed at 1,725 forints. The defendant paid the plaintiff an advance of 13,800 forints. The plaintiff supplied the completed manuscript within the appointed time (June 30, 1957). The defendant made no criticism of it. However, on October 22 of the same year the defendant informed the plaintiff in writing that it was obliged to remove his work from its list of planned publications because its publishing programme was overburdened. It was therefore terminating the contract. The plaintiff refused to accept this communication. In the subsequent lengthy negotiations the plaintiff contended that, since it was not his fault that the contract was terminated, he was entitled to receive the full fee contracted for, namely 33,600 forints, less the advance received of 13,800 forints (Section 7 (5) of Decree 98/1951 (IV.21) M. T., as reproduced in *Le Droit d'Auteur*, 1952, p. 50). If an amicable agreement could be reached, the plaintiff was willing to consent to reduction of the fee per sheet from 1,725 to 1,400 forints, and payment of a fee representing only 85 % of the sum originally fixed. The defendant rejected this suggestion. After further discussion an arrangement was made on August 17, 1962, whereby the defendant would publish the work in a version amounting to fifty sheets at a fee of 1,400 forints per sheet. The previous advance was to be deducted at the time of the final settlement and the plaintiff was to receive a further advance of 20,000 forints. Instead of this the defendant paid only 10,000 forints and announced to the plaintiff that the remaining 10,000 would not be paid until the defendant's reading department had examined the twelve and a half sheet manuscript, which had long since been supplied to the defendant. The plaintiff immediately protested against this proposal because the publisher had been in possession of the manuscript since the spring of 1962 and had signed the second contract in full awareness of the contents of the manuscript. The plaintiff thus declared his unwillingness to allow the provisions of the contract to be affected by the findings of the publisher's reading department. The author received no answer to this letter but subsequently learned from the literary director of the publishing house that there had been a delay in examination of the manuscript by the reading department. Upon receiving the report of the reading department the publisher put forward objections to the manuscript and informed the plaintiff that it thereby considered the contract of August 17, 1962, as terminated in view of the unsatisfactory quality of the work. The plaintiff engaged in further discussion with the defendant through the Office for the Protection of Copyrights and stated his refusal to accept the termination of the contract as being entirely unlawful. The plaintiff reviewed the events in a written statement. In particular he stated that the second contract had been signed between the parties after he had demanded full payment of the fee from the defendant because the defendant had unlawfully terminated the first contract. The defendant had wanted to avoid legal proceedings and the plaintiff had desisted from his intention of suing for payment precisely because the defendant had offered a new contract providing for compensation in respect of the original one. The plaintiff further stated that the defendant had failed at the

time in question to express any objection to the quality of the work and had in fact persuaded the plaintiff to engage in work although the defendant was fully aware at the time that it would not publish the plaintiff's manuscript. On December 31, 1964, the defendant informed the plaintiff in writing that the publishing house did not consider the matter to have been legally and formally settled although it had stated its reasons for withdrawing from the contract in a lengthy letter dated August 8, 1963. This letter further informed the plaintiff that the publisher did not intend to press for repayment of the substantial advance made. After receiving this letter the plaintiff instituted legal proceedings, and alleged that the defendant had terminated the first contract (of December 12, 1956) without proper grounds. The situation which arose thereby had given the plaintiff certain rights which he had decided not to use simply because the publisher undertook in the new contract to bring out the work in a larger version. It was for the same reason that the author agreed that the advance received should be deducted from his fee. The publisher had signed the second contract with the same assumption. Since, however, the parties' joint contractual intention was diverted through the defendant's behaviour, the plaintiff was entitled to demand the full fee on the basis of the contract of December 12, 1956. Since the agreed fee was 33,600 forints, the plaintiff sued for payment of 19,800 forints, representing the balance after allowance for the advance of 13,800 forints.

The defendant requested that the case be dismissed. At the same time it lodged a counter-claim for repayment of the 10,000 forints already received by the plaintiff in the form of advance payment under the second contract. Its line of argument was as follows: it was entitled to judge the work on the basis of part only of the manuscript. It had already received a substantial part of the manuscript after signature of the first contract, but it was not until early in March 1963 that it was able to have an overall view of the readers' appraisal of the work. The result of the appraisal was that the manuscript was unsuitable for the publishing house. The readers found that the author had handled the subject in a manner that did not satisfy contemporary scientific demands. It lacked a thorough analysis of the history of literature. The author was not skilled in aesthetic considerations and failed to take either Hungarian or foreign ideas about realism into account. The plaintiff had not placed the concept of public literary opinion in a clear light. He was also blamed for other shortcomings, but the unanimous conviction of the readers responsible for studying the manuscript was that the work should not be published and that it would still not be usable if the publisher gave the author an opportunity to revise it thoroughly. In view of this judgment the publisher considered it legally justifiable to terminate the contract. It further referred to the fact that the plaintiff had received 23,800 forints in payment for a manuscript that was wholly unsuitable for publication.

The court had first of all to consider whether the agreement in the second contract whereby the plaintiff renounced his full fee and even allowed the advance received to be offset against his claim under the second contract was incompatible with Section 210 (3) of the Civil Code on the grounds that

both parties were under the same delusion in drawing up their agreement. The court had further to decide whether the plaintiff's renunciation of his claim under the first contract was valid or not. In the same connection the court was required to establish whether the plaintiff had informed the defendant in proper time of his objection or whether he was not late in instituting proceedings. Under Section 236 (2) of the Civil Code one point in time from which it is possible to dispute a contractual arrangement is the time of recognizing an error or an intent to mislead. From the correspondence between the parties the court was able to satisfy itself that the plaintiff was able to hope until December 31, 1964, that his work might be published. It was only then that the defendant stated its unwillingness to fulfil the contract. Regarding the contestation of the agreement whereby the plaintiff stated in the second contract that he renounced his full fee under the first contract and allowed the advance already received to be offset against his claim, the court noted that in a letter dated August 1963 the plaintiff clearly informed the defendant that his claim in respect of non-fulfilment of the first contract remained unchanged. The court was able to recognize a false assumption on the part of the plaintiff in assuming in perfectly good faith and in the particular circumstances that the defendant could definitely be expected to publish the work on the basis of the second contract, since it must have been aware of the value of the manuscript. There was also a false assumption on the part of the defendant, because it could not be held that the defendant concluded the second contract purely in order to harm the plaintiff. The court accordingly ruled as invalid the provision in the second contract that the author renounced his fee under the first contract and that he would even repay the defendant what he had received as advance payment under the first contract. The consequence was that the defendant was ordered to pay the plaintiff the full fee under the contract of December 1957, plus 5 % interest from November 1, 1957. Concerning this first contract the court also noted a publisher's right under Section 7 (5) of Decree 98/1951 (IV.21) M.T. to terminate a contract to publish whenever it sees fit to do so, provided that, if this is done for a reason for which the author is not responsible, then the publisher has to pay the full fee due to the author. In terminating the first contract, the publisher had referred to its heavy programme. This could not be considered as the plaintiff's responsibility.

The plaintiff's claim was therefore fully justified. But the court also found that the defendant's counter-claim was correct. The readers had unanimously agreed that the work was not suitable for publication. The court requested the Ministry for Cultural Affairs to state its views on the subject, and these entirely bore out the findings of the defendant's experts. The court therefore held that the defendant was justified in such circumstances in terminating the second contract owing to the fault of the plaintiff, which meant that the plaintiff should pay back the advance amounting to 10,000 forints to the defendant. In view of the above the defendant was ordered to pay the plaintiff 9,800 forints plus 5 % interest since November 1, 1957, and costs amounting to 1,200 forints. (Budapest Court, 25 P. 22, 260/1965.)

Neither party lodged an appeal.



(r) The investment department of a university of technology signed two contracts with a painter who was to design a composition for a wall with a ceramic facing in a new building at the university (March 17, 1965). The fee for this first contract was fixed at 3,000 forints. The Council for the Fine Arts and Handicrafts approved this contract, and the investment department paid the sum agreed. The same two parties concluded a second agreement a month later. It related to a ceramic work which was to be designed and executed by the artist. The fee amounted to 180,000 forints, which included the previous fee of 3,000 forints. It was further agreed that the fee should be paid in two instalments, the first upon signature of the contract, the second upon delivery of the work accepted without objection. The money was to be remitted to the account of the Fine Arts Fund on behalf of the artist, together with additional costs (3% for the Fund and 500 forints for the members of the jury).

The Fund brought the case on behalf of the artist because of the investment bank's refusal to carry out the university's request to remit 50% of the agreed fee in accordance with the contract.

The plaintiff contended that the administration of the university was responsible for all matters relating to the obligation to make payment as due. The plaintiff refused to take cognizance of the investment bank's objections since it was convinced that the legal relationship between the bank and the university could not affect the university's obligation to make payment and that the plaintiff's claim existed irrespective of the bank's conduct.

In the hearing the representative of the university acknowledged that it had assumed liability for payment and that it had no objection regarding the amount of the claim (91,155 forints) or its being due.

The court noted that the plaintiff's submission could be regarded as proven, partly by the contents of the contracts and partly by the defendant's statements, so that nothing could prevent judgment being passed against the defendant. The attitude of the investment bank was irrelevant. The question of the manner of payment was a matter of procedure.

Since the artist had already completed the plans required by the first contract and these had been accepted by the Council, and since half the fee plus the additional costs were payable upon signature of the second contract and there was no dispute as to the amount, the court ordered the defendant to pay 91,155 forints plus 5% interest and costs within fifteen days. This decision became enforceable irrespective of any appeal proceedings, under the Civil Procedural Code, Section 231.

The court noted that the fee agreed by the parties appeared to be excessively high but that, since the Council had approved the contract, there were no grounds for any further examination of the case. (Budapest Court, 25 P. 25,365/1966.)

(s) The plaintiff was the Hungarian Office for the Protection of Copyrights, acting on behalf of an author and suing the State film studios for 12,500 forints in author's fees, interest and costs.

The plaintiff's account of the facts was as follows: the film studios had engaged two authors to write the script for a

feature film. The script was to be based on a radio play written by one of the authors, who was the party represented in the case by the Copyright Office.

The authors fulfilled their contractual obligations and supplied the script within the allotted time. The fee was fixed at 30,000 forints, to be divided equally between the two authors. The contract stated that Decision 67,902/1961 of the Central Film Board should be regarded as an essential supplement to the contract. Article 30 of that Decision provides that the film studio must signify in writing its acceptance or rejection of a film script within nine months of its receipt.

The defendant informed one of the coauthors of its decision to reject the script as not appropriated on the basis of the recommendation of its jury. The other coauthor, whose interests were represented in the proceedings by the plaintiff, was not notified. The Office sued for payment of the sum of 12,500 forints outstanding to the author as his share of the fee, on the grounds that he had received no notification of rejection of the work from the defendant, so that it was to be assumed that the script had been accepted. The defendant opposed this allegation by asserting that the second coauthor had had knowledge of the rejection of the work, although no letter had been sent to him to that effect. As evidence the defendant referred to the provision in the contract forbidding the authors to make any use of the script material without prior authorization by the defendant. But the plaintiff had used the material of the script for a stage play after the letter of rejection had been sent to the other author, and the play had been performed. In the defendant's view, the plaintiff had done this because he was aware of the defendant's decision and consequently felt free to handle the subject in a stage play.

The case was dismissed. In its statement of reasons for its decision, the court denied the plaintiff's right to base any claim on the defendant's failure to notify him of its unfavourable decision. It was not likely that the other coauthor, who had received notification, would himself have failed to inform the plaintiff. The two coauthors had written a single work, so that there was a joint liability; therefore the notification given to the one was to be regarded as having been given to the other also. The Decision of the Central Film Board was to be interpreted in the same manner. (Budapest Court, 25 P. 23,048/1964.)

The plaintiff appealed against this decision. The Supreme Court upheld it. The plaintiff's appeal adduced the following arguments: coauthorship did not constitute a joint liability; the contract contained no provision stating that the coauthors had joint rights and obligations. During proceedings the defendant supplied the Supreme Court with the text of the letter that was addressed to both authors although it was sent to the one only. This letter stated, with reference to a previous discussion, that the defendant had rejected the work. There was therefore no doubt that the necessary communication had been addressed to both authors within the nine-month period laid down and that it had been handed to one of them. The two coauthors had agreed to produce their joint, single work in collaboration. A fee was payable to them only in respect of delivery of that joint, single work. The subject of the contract



was therefore not divisible, so that Section 334 (2) of the Civil Code establishing the joint liability of persons bound by an obligation was applicable to the legal situation of the co-authors. This joint liability meant that a statement delivered to one only of those concerned was similarly effective towards the other. The plaintiff's contention that a notification given to one of the coauthors was without effect for the other was without foundation. Since the defendant was required to pay the balance of the fee only in return for a completely acceptable work, the plea could not be allowed. The fact that the complaining coauthor had accepted a theatre's invitation to write a stage play based on the same material, despite the provision of Article 18 in the Decision of the Central Film Board, and without written authorization by the defendant, was evidence that the coauthor was already aware at the time that the defendant had not accepted the work. (Supreme Court, Pf. IV.20,853/1964.)

(t) The mother of an heir who was not yet of age appeared as plaintiff representing him against a co-operative and claimed royalties for her son, whose deceased father had been a handicraft artist. The deceased artist had executed a plan commissioned by the defendant for electric table lamps for use in long-distance buses. The jury of the Fine Arts and Handicrafts Fund fixed the artist's royalties at 6% of the gross production cost. The same court had already awarded royalties to the plaintiff for the lamps produced up to December 31, 1963. In the present case the plaintiff was suing for royalties of 11,045 forints plus interest in respect of the lamps produced between January 1, 1964, and December 31, 1965. In a part judgment (25 P. 10,553/1966) the court had already awarded royalties amounting to 7,828 forints, representing 6% of the gross production cost of the lamps produced in 1964.

This part judgment was confirmed by the Supreme Court. On the present occasion the court of justice had to rule on the royalties due for 1965. In view of the Supreme Court's verdict confirming the part judgment, the defendant recognized the legality of the plaintiff's claim and the validity of the amount claimed. It was on the basis of this declaration by the defendant that the court ruled that royalties of 3,213 forints were payable for the 1965 calendar year. The defendant was also ordered to pay 5% interest and 900 forints costs. The court's decision was declared to be immediately enforceable irrespective of any appeal. (Budapest Court, 25 P. 20,553/1966/9.)

(u) The plaintiff had completed medical studies, but he introduced proceedings in his capacity as a microphotographer. In 1957 he signed a contract with the "Medicina" State publishing house, on the basis of which he supplied fifty-seven black-and-white and seventeen coloured microphotographs for a work entitled "Practical Microtechniques". For these microphotographs he received the agreed fee. In 1962 another publisher, the Academy publishing house, brought out a new, revised version of the work in Russian, containing fifty-six of the plaintiff's black-and-white photos and sixteen of his coloured ones. The plaintiff alleged that these photographs had been reproduced in the new edition without his authorization, so that his copyright was infringed. He therefore claimed damages. The publishing house, as defendant, asked that the plaint be dismissed, asserting that the author of the work was

the person who had created it. It maintained that the photographed text or subject was not the work of the plaintiff, whose contribution consisted exclusively of the technical microphotography concerning the passages indicated for the purpose by the author of the work. From this the defendant argued that the plaintiff's mere technical activity had no creative character and could not therefore be regarded as being protected by copyright. It stated that the author of the work was the person who had indicated what subjects were to be photographed, the plaintiff having merely performed the work of photographing the said subjects. The plaintiff was also interrogated, and stated that 80% of the subjects photographed had been prepared by him. The defendant did not deny this. In answer to a question by the court, the defendant further stated that the fee paid by the "Medicina" publishing house for the plaintiff's microphotographs were appropriate. Therefore "Medicina" had paid the plaintiff the proper amount. The fee had been calculated exactly in accordance with the scale laid down by the Central Publishing Board. However, the defendant contended that the Russian version was not to be considered as a new edition, but simply as a second edition, so that the plaintiff was not entitled to the same fee as "Medicina" had paid him, but to a lower rate only.

The court pointed out that, according to Section 4 of Decree 98/1951 (IV.21) M.T., unless any other arrangement is made, a contract confers on the publisher only the right to reproduce and distribute the work in Hungarian in the territory of Hungary. Thus the defendant's argument that the Russian version should be regarded as a second edition was not correct. It could only be regarded as the first Russian edition, in other words a new edition.

In these circumstances the plaintiff was entitled to the full fee established for his photographs in the first Hungarian edition. This meant that he should receive the same amount as had been paid by "Medicina" for the Hungarian edition. However, seeing that there were only fifty-six black-and-white and sixteen coloured photographs in the Russian edition, the rate would be accordingly lower. The court therefore ordered the defendant to pay the plaintiff 4,960 forints.

The court dismissed the objection that microphotographs are not eligible for copyright protection, since the whole character of the proceedings proved the contrary, and since moreover the defendant did not deny that the plaintiff's personal statements were perfectly correct. The defendant was also ordered to bear the costs of 848 forints. (Budapest Court, 25 P. 30,013/1963.)

(v) The plaintiff is a handicraft artist. He was taking action against two defendants: a State foreign trading corporation (I) and a woodwork cooperative (II). Defendant I ordered wooden mirror frames to the value of 112,160 forints from an enterprise, which played no part in the proceedings. Out of this total, mirror frames to the value of 49,950 forints were delivered, but the rest of the order was not executed. The reason given for this was that the plaintiff, who had previously made the frames for the enterprise, refused to supply any more frames, considering the price to be too low. Defendant I had already arranged for the sale of these frames

to a foreign customer and was in an embarrassing situation since it had to meet its foreign commitments. Defendant I therefore contacted defendant II, the woodwork cooperative, and ordered the same frames. It was defendant I which provided the models. Defendant II thereupon made the necessary deliveries.

When the plaintiff learned of this he brought proceedings against the two defendants and claimed royalties from both, equivalent to 3 % of the gross production cost. The defendants opposed the claim. Defendant I admitted that the three designs it had supplied to the cooperative were the work of the plaintiff. It also acknowledged that a fee was due to the plaintiff in respect of those designs, which it estimated at 500 forints for each design, or 1,500 forints in all. However, it did not agree that the plaintiff was entitled to royalties in accordance with the number of frames made, although the jury of the Fine Arts Fund found the rate of 3 % to be appropriate.

The court heard the expert opinion of an interior decorator, who considered the mirror frame designs in question to be an imitation, without the quality of a work of art. The plaintiff's designs could in the expert's opinion be regarded only as constructional sketches.

The court found this statement convincing, particularly in view of the fact that two further witnesses, who were also handicraft artists, stated that they had made one of the designs for the plaintiff. One of these witnesses even stated that the plaintiff had bought similar designs from him for 50 or 60 forints each. On the basis of the expert opinion mentioned, the court noted that the plaintiff was entitled on the basis of Section 67 of the Copyright Act only to the fee due in respect of the production of the plans, namely 500 forints for each design, or a total of 1,500 forints. Defendant I was willing to pay that amount. The court found the claim for royalties unjustified despite the contrary finding of the jury of the Fine Arts Fund. The court ruled that only an artist who not only designed but also executed and supplied the work was entitled to such royalties. The court's decision was that defendant I should pay a fee of 1,500 forints, plus 5 % interest and costs. The plaintiff's other claims were rejected, and the plaintiff against defendant II was entirely dismissed. (Budapest Court, 25 P. 24,503/1963.)

The plaintiff appealed against this decision. The Supreme Court modified the decision of the court of justice by ordering defendant I to pay 7,759.50 forints plus 5 % interest and costs amounting to 1,400 forints. The same defendant was also required to bear the expert's costs which it had already advanced.

In giving its grounds for its verdict the Supreme Court elaborated on the original court's reference to the fact that defendant II had produced 228 mirror frames between December 18, 1962, and August 14, 1963, the gross production cost of which amounted to 258,650 forints and in whose manufacture the plaintiff's models had been used. In his appeal the

plaintiff asked for the court's decision to be changed in view of his justified claim to 3 % of the gross manufacturing cost since his work came within the category of the handicrafts. Accordingly, the decision of the court of justice would be erroneous. The Supreme Court found his appeal to be correct for the following reasons. First of all, the court of justice was wrong in supposing that the plaintiff was entitled only to a designer's fee under Section 67 of the Copyright Act because defendant II had made the frames to the order of defendant I. Even if the works covered by the provisions of Section 67 were not to be considered as works of industrial art, the provisions of Sections 1 to 44 would be applicable. However, if they were to be regarded as works of fine or industrial art the provisions of Sections 60 to 66 would apply. Thus these works were assured of copyright protection. In the present instance the works of the plaintiff, which were to be regarded as works of handicraft, were reproduced. The artist is entitled to royalties in respect of the reproduction of his works of industrial art. When the Copyright Act is applied it is immaterial what level the work of industrial art attains, namely whether it merely serves everyday practical needs or whether it has a higher value. The expert opinion of the Ministry for Cultural Affairs stated that the plaintiff's work attained the desired level for such a work, even if only to a minimal extent. The interior decorator's testimony also showed that the frames were constructed from the generally known elements and motifs of the baroque and that they were variations of that style. This fact did not, however, deprive the work of its character of a work of industrial art, which remained even if the work was not an original artistic creation. The plaintiff was therefore legally entitled to royalties since the defendants had produced the frames from his designs. Defendant I had in fact challenged only the amount of the fee due. Regarding the amount of royalties due, it was clear from the expert opinion of the Ministry for Cultural Affairs that the plaintiff was entitled, in respect of utilization of the plans by a manufacturer, to 3 % of the gross production cost for the first 750 articles and to one quarter of that amount, i. e. 0.75 %, thereafter. The interior decorator gave the same indication in his evidence. The court of justice was thus at error in suggesting that the plaintiff would have been entitled to such a scale of royalties only if he had himself produced and supplied the frames as well. The 228 frames produced at a cost of 258,650 forints provided the basis for calculation of the 3 % royalties, coming to 7,759.50 forints. The defendants were jointly liable for paying this amount to the plaintiff, since defendant I as customer and defendant II as manufacturer had infringed the plaintiff's copyright by reproducing the protected work and selling it. Incidentally, defendant II already knew at the time of beginning manufacture that it was reproducing the plaintiff's protected work. The above were the changes which the Supreme Court ordered to be made in the decision by the court of justice. (Supreme Court, Pf. IV. 20,880/1964.)

Dr. Robert PALÁGYI

# NEWS ITEMS

## UNITED STATES OF AMERICA

### *German Copyright Extension Proclamation<sup>1)</sup>*

On July 12, 1967, President Johnson signed a proclamation entitled "Copyright Extension: Germany", the text of which is reproduced below.

This proclamation permits German citizens who were unable to apply for U.S. copyright registration during the period from September 3, 1939 through May 5, 1956, to do so during the year following the proclamation (i.e., between July 12, 1967 and July 12, 1968).

The proclamation does not extend the term of copyright for German works; it extends the time for original and renewal registration of those works authored by German citizens which were subject to such action during the period specified. The reason for the proclamation is that during this period there existed, with respect to such works, disruption of facilities essential to compliance with the conditions and formalities prescribed by the U.S. copyright law.

The proclamation also provides that there shall be no liability for lawful uses made of any of the affected works prior to the proclamation date or for the continuation during the subsequent year of any undertaking that involves expenditure or contractual obligation in connection with the exploitation of any such works.

\* \* \*

### Proclamation 3792

### *Copyright Extension: Germany<sup>2)</sup>*

### By the President of the United States of America A Proclamation

WHEREAS the President is authorized, in accordance with the conditions prescribed in Section 9 of Title 17 of the United States Code, which includes the provisions of the act of Congress approved March 4, 1909, 35 Stat. 1075, as amended by the act of September 25, 1941, 55 Stat. 732, to grant an extension of time for fulfillment of the conditions and formalities prescribed by the copyright laws of the United States of America, with respect to works first produced or published outside the United States of America and subject to copyright or to renewal of copyright under the laws of the United States of America, by nationals of countries which accord substantially equal treatment to citizens of the United States of America; and

WHEREAS satisfactory official assurances have been received that, since April 15, 1892, citizens of the United States have been entitled to obtain copyright in Germany for their works on substantially the same basis as German citizens without the need of complying with any formalities, provided such works secured protection in the United States; and

WHEREAS, pursuant to Article 2 of the Law No. 8, Industrial, Literary and Artistic Property Rights of Foreign Nations and Nationals, promulgated by the Allied High Commission for Germany on October 20, 1949, literary or artistic property rights in Germany owned by United States nationals at the commencement of or during the state of war between Germany and the United States of America which were transferred, seized, requisitioned, revoked or otherwise impaired by war measures, whether legislative, judicial or administrative, were upon request made prior to October 3, 1950, restored to such United States nationals or their legal successors; and

WHEREAS, pursuant to Article 5 of the aforesaid law, any literary or artistic property right in Germany owned by a United States national at the commencement of or during the state of war between Germany and the United States of America was, upon request made prior to October 3, 1950, extended in term for a period corresponding to the inclusive time from the date of the commencement of the state of war, or such later date on which such right came in existence, to September 30, 1949; and

WHEREAS, by virtue of a proclamation by the President of the United States of America dated May 25, 1922, 42 Stat. 2271, German citizens are and have been entitled to the benefits of the act of Congress approved March 4, 1909, 35 Stat. 1075, as amended, including the benefits of Section 1 (c) of the aforementioned Title 17 of the United States Code; and

WHEREAS a letter of February 6, 1950, from the Chancellor of the Federal Republic of Germany to the Chairman of the Allied High Commission for Germany established the mutual understanding that reciprocal copyright relations continued in effect between the Federal Republic of Germany and the United States of America:

### THE PRESIDENT

NOW, THEREFORE, I, LYNDON B. JOHNSON, President of the United States of America, by virtue of the authority vested in me by Section 9 of Title 17 of the United States Code, do declare and proclaim:

(1) That, with respect to works first produced or published outside the United States of America: (a) where the work was subject to copyright under the laws of the United States of America on or after September 3, 1939, and on or before May 5, 1956, by an author or other owner who was then a German citizen; or (b) where the work was subject to renewal of copyright under the laws of the United States of America on or after September 3, 1939, and on or before May 5, 1956, by an author or other person specified in Sections 24 and 25 of the aforesaid Title 17 who was then a German citizen, there has existed during several years of the aforementioned period such disruption and suspension of facilities essential to compliance with conditions and formalities prescribed with respect to such works by the copyright law of the United States of America as to bring such works within the terms of Section 9 (b) of the aforesaid Title 17; and

(2) That, in view of the reciprocal treatment accorded to citizens of the United States by the Federal Republic of Germany, the time within which persons who are presently German citizens may comply with such conditions and formalities with respect to such works is hereby extended for one year after the date of this proclamation.

It shall be understood that the term of copyright in any case is not and cannot be altered or affected by this proclamation. It shall also be understood that, as provided by Section 9 (b) of Title 17, United States Code, no liability shall attach under that title for lawful uses made or acts done prior to the effective date of this proclamation in connection with the above-described works, or with respect to the continuance for one year subsequent to such date of any business undertaking or enterprise lawfully undertaken prior to such date involving expenditure or contractual obligation in connection with the exploitation, production, reproduction, circulation or performance of any such works.

IN WITNESS WHEREOF, I have hereunto set my hand this twelfth day of July in the year of our Lord nineteen hundred and sixty-seven, and of the Independence of the United States of America the one hundred and ninety-second.

<sup>1)</sup> Circular issued by the Copyright Office (ML-58 - July 1967 - 3,500).

<sup>2)</sup> Federal Register, Vol. 32, No. 135, pp. 10341-10342.

# CALENDAR

## Meetings of BIRPI

Date and Place	Title	Object	Invitations to Participate	Observers Invited
December 12 to 15, 1967 Geneva	Permanent Committee of the Berne Union (13 <sup>th</sup> Session)	Consideration of various questions concerning copy-right	Belgium, Brazil, Denmark, France, Germany (Fed. Rep.), India, Italy, Portugal, Rumania, Spain, Switzerland, United Kingdom	All other Member States of the Berne Union; interested international inter-governmental and non-governmental organizations
December 18 and 19, 1967 Geneva (Headquarters of ILO)	Intergovernmental Committee (Neighbouring Rights). Meeting convened jointly by BIRPI, ILO and UNESCO (1 <sup>st</sup> Session)	Adoption of the rules of procedure; election of officers; various questions	Congo (Brazzaville), Czechoslovakia, Ecuador, Mexico, Sweden, United Kingdom	All other States parties to the Rome Convention (1961)
December 18 to 21, 1967 Geneva	Internation Coordination Committee (5 <sup>th</sup> 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, 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 (2 <sup>nd</sup> Session)	Program and Budget (Paris Union)	All Member States of the Paris Union	United Nations; International Patent Institute
December 18 to 21, 1967 Geneva	Executive Committee of the Conference of Representatives of the Paris Union (3 <sup>rd</sup> 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, United States of America, Yugoslavia	All other Member States of the Paris Union
December 20 and 21, 1967 Geneva	Council of the Lisbon Union for the Protection of Appellations of Origin and their International Registration (2 <sup>nd</sup> Session)	Annual Meeting	All Member States of the Lisbon Union	All other Member States of the Paris Union
<b>1968</b>				
September 24 to 27 1968 Geneva	Interunion Coordination Committee (6 <sup>th</sup> Session)	Program and Budget of BIRPI	To be announced later	To be announced later
October 2 to 8, 1968 Locarno	Diplomatic Conference	Adoption of a Special Agreement concerning the International Classification of Industrial Designs	All Member States of the Paris Union	To be announced later

## Meetings of Other International Organizations Concerned with Intellectual Property

Place	Date	Organization	Title
Strasbourg	November 6 to 10, 1967	Council of Europe	Committee of Experts on Patents
The Hague	December 4 to 6, 1967	International Patent Institute (IIB)	94th Session of the Administrative Council
<b>1968</b>			
Buenos Aires	April 15 to 19, 1968	International Association for the Protection of Industrial Property (IAPIP)	Presidents' Conference
Munich	April 22 to 26, 1968	Committee for International Cooperation in Information Retrieval among Examining Patent Offices (ICIREPAT)	Standing Committee II
Tokyo	October 21 to November 1, 1968	Committee for International Cooperation in Information Retrieval among Examining Patent Offices (ICIREPAT)	8th Annual Meeting
Lima	December 2 to 6, 1968	Inter-American Association of Industrial Property (ASIPI)	Congress

## Vacancies for Posts in BIRPI

Applications are invited for the following posts:

### I. Counsellor in the Copyright Division

*Category and Grade:* P 4.

*Principal duties:*

In general to assist in the implementation of BIRPI's copyright and neighboring rights program.

The particular duties will include:

- legal studies on questions concerning copyright and neighboring rights;
- drafting of working papers for, and reports on, international meetings;
- participation in meetings of other international organizations;
- maintaining up to date a complete collection of copyright and neighboring rights legislation of all countries.

*Qualifications required:*

- university degree in law or equivalent professional qualifications;
- wide experience in the field of copyright and neighboring rights (preferably including its international aspects);
- excellent knowledge of one of the official languages (English and French) and at least a good knowledge of the other.

*Date of entry on duty:*

January 1968 or later as mutually arranged.

### II. Counsellor (Relations with International Organizations)

*Category and Grade:* P 4.

*Principal duties:*

In general, to assist in the work of maintaining BIRPI's relations with other international organizations and, as far as BIRPI's depository functions are concerned, with Governments.

The duties will include:

- representation of BIRPI in meetings of other international organizations, especially those of the United Nations and its subsidiary bodies;
- responsibilities in connection with the notification of instruments of ratification of and accession to treaties of which BIRPI is the depository.

The incumbent will be under the general supervision of the Senior Counsellor for Relations with International Organizations.

*Qualifications required:*

- university degree in law, political science, economics, or equivalent qualifications in a relevant field;
- familiarity with the activities and procedure of the United Nations, its organs and its specialized agencies; knowledge in the field of intellectual property, especially in its international aspects, would be an advantage;
- excellent knowledge of one of the official languages of BIRPI (English and French) and at least a good knowledge of the other; additional languages (particularly Spanish or Russian) would be an advantage.

*Date of entry on duty:*

January 1968 or later as mutually arranged.

### III. Translator/Editorial Assistant (French)

*Category and Grade:* P 2 or P 3, according to the qualifications and the experience of the candidate selected.

*Principal duties:*

- a) translation of legal texts from English into French;
- b) editing of French texts;
- c) correction of printed proofs in French.

*Qualifications required:*

- a) perfect knowledge of French (mother tongue) and excellent knowledge of English;
- b) university degree or equivalent qualifications;
- c) experience as a translator, preferably in the legal field.

*Date of entry on duty:*

January 1968 or later as mutually arranged.

### IV. Administrative Assistant in the Finance Section

*Category and Grade:* P 1.

*Principal duties:*

As one of the two assistants to the Head of the Finance Section the appointee will participate in part of the following duties:

- 1) preparation of data for the annual Management Report, budget and annual and periodic financial reports; supervision of budget control accounts;
- 2) examination and payment of accounts; responsibility for allocation to subheads of expenditure and necessary accounting;
- 3) supervision of payments of staff salaries, allowances, pensions, pension fund contributions;
- 4) preparation of annual account of Pension Fund;
- 5) financial aspects of staff missions, conferences and delegates travel; overtime;
- 6) cash disbursement and accounting therefor.

The foregoing duties will be placed broadly into two categories: i) those directly related to the budget (items 1) and 2)) and ii) those relating to staff salaries etc. (items 3), 4), 5), and 6)). The appointee may be assigned one or other of these categories of duties.

*Qualifications required:*

- 1) a) Either a university degree or commercial qualifications at equivalent level;
- b) or a full secondary school certificate and at least eight years experience of work comparable with the duties mentioned above.
- 2) Perfect knowledge of one of the official languages of BIRPI (English and French) and at least a good knowledge of the other, in order to be able to perform the duties in both languages.
- 3) Some administrative practice in international organizations would be an advantage.

*Date of entry on duty:*

To be mutually arranged.

### V. Administrative Assistant in the Division of Finance, Personnel and General Administration

*Category and Grade:* P 1.

*Principal duties:*

To assist the Head of Division in the following matters:

- a) general management of BIRPI building, office and storage accommodation; determination of requirements and procurement of supplies and equipment; supervision of inventories;
- b) BIRPI meetings: arrangements regarding conference rooms, interpretation and the reception of delegates;
- c) application of Staff Rules concerning allowances for travel, removal and installation;
- d) participation in the administration of the BIRPI technical assistance program.

*Qualifications required:*

- 1) a) Either a university degree or equivalent qualifications in a relevant field;
- b) or a full secondary school certificate and at least eight years experience of work comparable with the duties mentioned above.
- 2) Perfect knowledge of one of the official languages of BIRPI (English and French) and at least a good knowledge of the other, in order to be able to perform the duties in both languages.
- 3) Some administrative practice in international organizations would be an advantage.

*Date of entry on duty:*

To be mutually arranged.

#### For the five posts mentioned above:

*Nationality:*

Candidates must be nationals of one of the member States of the Paris or Berne Unions. Qualifications being equal, preference will be given to candidates who are nationals of States of which no national is on the staff of BIRPI.

*Age limit:*

Candidates must be less than 50 years of age at date of appointment.

Application forms and full information regarding the conditions of employment may be obtained from the Head of Personnel, BIRPI, 32, chemin des Colomhettes, 1211 Geneva, Switzerland. Application forms duly completed should reach BIRPI not later than December 1, 1967, as regards posts I, II and III, and not later than December 15, 1967, as regards posts IV and V.