Copyright

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The Director of the United International Bureaux for the Protection of Intellectual Property (BIRPI) presents his compliments to the Minister for Foreign Affairs of . . . . . and, in accordance with the provisions of the above Convention, has the honor to notify him that the Government of Ireland

(i) signed the said Convention, without reservation as to ratification, on January 12, 1968,

(ii) and deposited, on March 27, 1968, its instrument of ratification, dated February 15, 1968, of the Stockholm Act of the Paris Convention for the Protection of Industrial Property; Ireland ratified this Act in its entirety.

Ireland has thus fulfilled the conditions provided for by Article 14 of the Convention Establishing the World Intellectual Property Organization (WIPO), and has become a party to the said Convention.

Geneva, April 2, 1968.

WIPO Notification No. 3 *)

*) The WIPO Notification No. 1 deals with the list of the signatory countries of the texts adopted by the Stockholm Conference (see *Copyright*, 1968, p.2). The WIPO Notification No. 2 deals with the application of the provisional clauses of the WIPO Convention and of the Paris Convention by the Republic of Cuba (see *Industrial Property*, 1968, p. 51).

INTERNATIONAL UNION

IRELAND

Notification concerning the application of the provisional clauses (Stockholm Act of the Berne Convention)

Notification of the Director of BIRPI to the Governments of Union Countries

The Director of the United International Bureaux for the Protection of Intellectual Property (BIRPI) presents his compliments to the Minister for Foreign Affairs of ... and, in accordance with the provisions of the Stockholm Act of the Berne Convention for the Protection of Literary and Artistic Works, has the honor to notify him of the notification deposited by the Government of Ireland in which that Government indicates its desire to avail itself of the provisions of Article 38(2) of the said Act.

This notification became effective on the date of its receipt, that is, on March 4, 1968.

In pursuance of the Article mentioned, Ireland, which is a member of the Berne Union, may, for five years from the date of entry into force of the Convention Establishing the World Intellectual Property Organization (WIPO), exercise the rights provided under Articles 22 to 26 of the Stockholm Act of the Berne Convention, as if it were bound by those Articles.

Geneva, March 15, 1968

Notification Berne No. 4

Working Group
Stockholm Conference Recommendation No. III (Copyright)

(Geneva, March 12 to 14, 1968)

Note by the Director of BIRPI

1. The Intellectual Property Conference of Stockholm, which met from June 11 to July 14, 1967, had, among other tasks, that of revising the Berne Convention for the Protection of Literary and Artistic Works of September 9, 1886, whose last revision had taken place at Brussels in 1948. The Stockholm revision dealt with the substantive provisions of the Convention, its administrative provisions and its final clauses.

2. In regard to the substantive provisions, i. e. those governing the international protection of copyright in literary and artistic works, the Stockholm Conference considered the establishing of certain rules in favor of developing countries as one of its most important tasks. Concerning this point, which was discussed by Main Committee No. II, the Conference adopted a Protocol forming an integral part of the Stockholm Act of the Berne Convention.

3. Under the Protocol Regarding Developing Countries, any country regarded as a developing country in conformity with the established practice of the General Assembly of the United Nations which ratifies or accedes to the Stockholm Act or which declares that it intends to apply the provisions of the Protocol in pursuance of Article 5(1)*(a)* thereof may avail itself of the reservations provided in the Protocol if, having regard to its economic situation and its social or cultural needs, it does not consider itself immediately in a position to make provision for the protection of all the rights as provided in the said Act.

4. These reservations concern:

(i) the term of protection of literary and artistic works;
(ii) the exclusive right of translation granted to the authors of such works;
(iii) the exclusive right of reproduction granted to the authors of such works;
(iv) the exclusive right, granted to the authors, of authorizing the broadcasting of their works and the communication to the public of the broadcast of these works;
(v) the protection of literary and artistic works in cases where they are used exclusively for teaching, study and research in all fields of education.

5. The first of the reservations (Article 1*(a)* of the Protocol), which concerns the term of protection, allows another term to be substituted for the terms provided for in Article 7 of the Berne Convention, paragraphs (1), (2), (3) and (4).

(a) Paragraphs (1), (2) and (3) relate to the general term of protection (the life of the author and fifty years after his death), the term of protection of cinematographic works (national legislations having the possibility of determining a term of fifty years after the work has been made available to the public with the consent of the author, or, failing such an event within fifty years from the making of the work, a term of fifty years after such making), and the term of protection of anonymous or pseudonymous works (fifty years after the work has been lawfully made available to the public).

(b) The above-mentioned reservation also allows another term to be substituted for the term of twenty-five years provided for in paragraph (4) of the said Article 7. This paragraph relates to the term of protection of photographic works and that of works of applied art in so far as they are protected as artistic works (twenty-five years from the making of the work).

However, the duration of this other term may not be less than twenty-five years in the case of the first three categories of works and ten years in the case of the fourth category.

6. The second reservation (Article1*(b)* of the Protocol), which concerns the right of translation, permits the establishment of a system of compulsory licenses which can be summed up as follows. The exclusive right of translation, granted to the author under Article 8 of the Berne Convention, ceases to exist after ten years from the first publication of the original work if the author has not availed himself of such right by publishing or causing to be published, in one of the member countries of the Berne Union, a translation in the language for which protection is claimed. This possibility of restricting the exclusive right of translation to ten years is taken from the 1896 version of the Berne Convention (Article 5). It is at present applied by certain countries of the Union (Iceland, Japan, Mexico, Thailand, Turkey, Yugoslavia) having made reservations. This possibility is still open to new adherents to the Union which are unable or unwilling to avail themselves of the provisions of the Protocol (Article 30(2) *(b)* of the Stockholm Act).

7. The principle of the possible limitation to ten years, in certain conditions, of the exclusive right of translation being established, the Protocol permits, independently of that limitation, the granting of a non-exclusive and unassignable license to be instituted. If, after the expiration of a period of three years from the date of the first publication of the original work, a translation of that work has not been published in the developing country availing itself of the reservation into the national or official or regional language or languages of that country, any national of such country may obtain a non-exclusive license for translation from the competent authority. The conditions for obtaining such a license and the mechanism provided for implementing it are stipulated in Article 1, paragraph *(b)*(ii) to (vi) of the Protocol.

8. As a rule, the translation license is valid only for publication in the territory of the country where it has been applied for. Copies so published, however, may be imported and sold in another country of the Union if one of the national or official or regional languages of such other country is the same language as that into which the work has been so translated, and if the domestic law in such other country makes provisions for such licenses and does not prohibit such importation and sale. Where the foregoing conditions do not exist, the importation and sale of such copies in a country of the Union shall be governed by its domestic law and its agreements.

9. The author may take back his exclusive right of translation if, during the term of ten years mentioned above, he publishes or causes to be published his translation in the country where the license has been granted. If he does take back his right, any compulsory license already granted will expire. If he does not do so, the just compensation under the non-exclusive license ceases to be due for any uses made after the expiry of such term. Lastly, the Protocol provides for the possibility of granting a non-exclusive license, subject to the same conditions, in cases where all editions of the authorized translation in the country in question are out of print.

10. The third reservation (Article 1*(c)* of the Protocol), which concerns the right of reproduction, permits, also in respect of that right, the establishment of a system of compulsory licenses. If, after the expiration of a period of three years from the date of the first publication of the original work, such work has not been published in the original form in the developing country availing itself of the reservation, any national of that country may obtain a non-exclusive and unassignable license from the competent authority to reproduce and publish the work for educational or cultural purposes. The conditions for obtaining such a license and the mechanism of implementing it are identical to those provided for in respect of translation, including more particularly the possibilities of importation and sale in another country of the Union and the possibility for the author to take back his exclusive right of reproduction.

11. The fourth reservation (Article1*(d)* of the Protocol), which concerns the right of broadcasting, offers developing countries the possibility of applying, instead of the provisions of Article 11 *bis* of the Stockholm Act of the Berne Convention, less stringent rules.

12. Lastly, the fifth reservation (Article 1*(e)* of the Protocol) offers developing countries the possibility, exclusively for the purposes of teaching, study and research in all fields of education, of restricting the protection of works, provided that the author is assured of compensation which conforms to the standards of payment made to national authors. The importation in another country of the Union of works published pursuant to this reservation is subject to rules similar to those applicable in the cases of translation and reproduction licenses. Where, however, the conditions provided for do not exist, importation and sale are prohibited in the absence of agreement of the author or his successors in title.

13. The salient feature common to all the reservations provided for by the Protocol — with the exception of the first concerning the term of protection — is the obligation for any country which avails itself of such reservations to make due provision by domestic legislation to assure to the owner of the right a just compensation. As a rule, such compensation should be transmitted, subject to national currency regulations.

14. The régime of exceptions established in the Protocol is temporary in the sense that the reservations outlined above are valid for a period of ten years from the ratification of the substantive clauses of the Stockholm Act, or from accession thereto. However, the Protocol provides for the possibility of maintaining them until the country in question ratifies or accedes to the Act adopted by the next revision conference.

15. This régime may also be applied to territories which, on the date of the signature of the Convention, are not responsible for their external relations, and the situation of which can be regarded as analogous to that of developing countries.

16. Lastly, the régime provided in the Protocol must be accepted by each member country of the Berne Union to enable it to be applied to works of which it is the country of origin. Such acceptance may be effected by ratification of or accession to the Stockholm Act of the Berne Convention (substantive provisions and Protocol), or else in the manner provided for by Article 5(1)*(b)* of the Protocol, that is, by a declaration made prior to such ratification or accession.

17. Following a proposition submitted by the Delegation of Israel concerning the implementation of the Protocol Regarding Developing Countries, the Stockholm Conference adopted the following Recommendation:

> "The countries members of the Berne Union for the Protection of Literary and Artistic Works,
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> In a Conference assembled at Stockholm from June 11 to July 14, 1967,
>
> Recognizing the special economic and cultural needs of developing countries,
>
> Desirous of enabling developing countries to have access to works protected by copyright for their educational requirements,
>
> Having for this purpose adopted the Protocol Regarding Developing Countries,
>
> Recommend the International Bureau to undertake in association with other governmental and non-governmental organizations a study of ways and means of creating financial machinery to ensure a fair and just return to authors."

18. In order to give effect to this Recommendation, this Working Group has been convened with the purpose to:

(i) collect information on the problem posed;
(ii) examine the practical implications of the application of the provisions of the Protocol;
(iii) try to find solutions along the lines of the above-cited Recommendation.

19. It seems that, for the purposes of such a study, the Working Group should start from the hypothesis that the

Protocol is applicable in the relations between two or more countries. In this connection, it should be pointed out that such a situation already exists in the relations between Bulgaria and Senegal. [1])

Opening Speech by the Director of BIRPI

Ladies and Gentlemen,

As you all know, the Diplomatic Conference which recently revised the Berne Convention at Stockholm adopted not only *a Protocol* enahling developing countries, memhers of the Berne Union, to make certain reservations as to the protection of copyright, hut also, on a proposal of the delegation of Israel, *a Recommendation* requesting BIRPI to undertake certain studies regarding the possible implementation of this Protocol. The first step in these studies has consisted in the convening of this Working Group.

I should like hriefly to comment upon four points, namely, (1) the way in which BIRPI intends to carry out the said Recommendation of the Stockholm Conference, (2) the suhject matter of the discussion in this Working Group, (3) the qualifications of the experts chosen for this Working Group, and (4) the organization of this meeting.

1. The said Recommendation has requested BIRPI to undertake, in association with other governmental and non-governmental organizations, a study, *in the context of the implementation of the Stockholm Protocol,* of ways and means *of creating financial machinery to ensure a fair and just return to authors.*

The task of BIRPI, and the task of this Working Group, can therefore not he to criticise the Protocol — this may he done elsewhere — but must be to study the possibilities of making its implementation less prejudicial to interested people in developed countries. Since the Berne Convention and the Protocol are *international instruments,* the study reqnested must also be carried out on an *international level and envisage international solutions.*

This first Working Group, composed to a large extent of *experts from non-governmental interested circles,* is expected to do the spadework, on the basis of which *governmental experts* will soon proceed further, and finally *Governments* will take the appropriate decisions.

2. The Working Group will therefore be reqnested to *examine the Protocol point by point,* to give its opinion on *the practical implications of its application,* to report on *measures already taken in developed countries* in view of giving assistance, *in respect of the use of copyrighted works,* to developing conntries and for tbe *compensation of authors and publishers who participate in such assistance,* and finally to try and find *international solutions* for this prohlem. The Working Group is requested to proceed on the hasis of the supposition tbat the Protocol will soon he applied hy many developing countries and accepted, for various reasons, hy a numher of developed conntries, members of the Berne Union. It will then, of conrse, be applied — or very nearly applied — with respect also to works originating in conntries which are not members of the Berne Union, for example, the United States of America. Even if snch countries have acceded to the Universal Copyright Convention, there is in this latter Convention, with the exception of some terms regarding translation rights, nothing which can prevent the application of the Protocol: on the contrary, the Universal Copyright Convention allows even more liherty to its member States.

3. The said Recommendation has requested BIRPI to nndertake its studies *in association with other governmental and non-governmental organizations.* We have therefore invited *intergovernmental organizations,* namely, Unesco and the Conncil of Europe, as well as *non-governmental organizations,* namely the International Literary and Artistic Association, the International Confederation of Societies of Anthors and Composers, the International Writers Guild, the European Broadcasting Union and the Internationale Gesellschaft für Urheherrecht, to he represented at this meeting, and I have much pleasnre in welcoming their delegates. Furthermore, we have asked the *International Publishers Association* to nominate a number of experts from different countries and I am very pleased that we may count on the advice of tbese particularly qualified experts. We have also invited, as ohservers, experts from puhlishers circles in the United States of America: as observers, because this extremly important country is not, or not yet, a memher of the Berne Union, but, for the reasons already indicated, is vitally interested in the matter concerned. I tbank the ohserver designated hy the U. S. publishers organizations warmly for his presence here and I assnre him that in meetings of this type there is no difference in practice hetween participants and observers, so that we may hope that he will not hesitate to participate fully in the discussions.

Finally, and this time really *last but not least,* we have invited *one consultant,* namely, Mr. Sher who, as head of the Israeli delegation at the Stockholm Conference, can he considered to he the fatber of the Recommendation which motivated the convening of this Working Group. No doubt Mr. Sher will explain here even more fully how he expects the Recommendation to be implemcnted and which solntions be has in mind.

All experts here, in expressing their opinions or in making proposals, will, however, *act only in their personal capacity without committing or binding any person or any organization or State.*

4. Meetings of the type of this Working Group do not generally organize themselves formally, particularly in the matter of electing Officers: chairman, vice-chairman and rapporteur, but they leave whatever direction is necessary, and the secretariat, in tbe hands of BIRPI. The main reason for snch informal procedure is that sucb meetings are convened to advise BIRPI and that BIRPI should know what it wishes to be advised about. If this is agreeable to the meeting we shall follow the same procedure now.

Considerations Adopted by the Working Group

1. The Working Group composed of the persons mentioned in the list of participants attached to this document had the task of advising the Director of BIRPI on the ways and means of creating financial machinery to ensure a fair and just return to authors for the use of their works pursuant to the provisions of the Protocol Regarding Developing Countries, hereinafter referred to as "the Protocol" (Recommendation No. III of the Stockholm Conference).

2. To that end, the Working Group first examined the legal and practical implications of the application of the provisions of the Protocol and the possible repercussions of such application on the amount of royalties payable to authors (or their successors in title) whose works would be used in developing countries availing themselves of the reservations provided for.

3. It seemed to the Working Group that the scope and the extent of those repercussions would depend on the conditions governing the use of the works and would vary according to the developing country or group of countries.

4. Reviewing in detail the provisions of Article 1 of the Protocol, the Working Group noted in particular the following points.

5. With regard to the reservation relating to the term of protection, the Working Group considered that the possibility of shortening this term was likely to affect the proceeds from the collection of royalties as practised at present in the countries concerned. However, some recent African laws had already reduced the term of protection from fifty to twenty-five years after the death of the author and, as far as

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1) See *Copyright*, 1968, pp. 23 and 10, respectively.

hroadcasting fees were concerned, the effects of this reduction had proved to he inconsiderahle. By way of an example, it was pointed out that, as regards the use at present of musical works by the hroadcasting organizations of African countries, only five percent approximately of those works were affected by this reduction in the length of the term of protection. Furthermore, in the field of puhlishing, it was noted that, while the length of the term of protection was important as far as literary works were concerned, it was much less so in the case of a certain numher of contemporary scientific works, which, dealing as they did with matters still in the process of developing, lost their interest much more rapidly and were consequently less affected hy a possihle change in the duration of protection.

6. With regard to the reservation relating to the right of translation, the Working Group was of the opinion that it would prohahly not have the same effect everywhere, in view of the fact that works were often used in their original language (English, French, Spanish) in a great numher of developing countries. Nevertheless, the fact that the right of translation would cease to exist after a period of ten years from the date of first publication was likely, on the one hand, to hamper the production of translations mainly of scientific and technical works and, on the other hand, to he an ohstacle to the taking of options on whole editions of the literary works of an author. Attention was also drawn to the unfortunate consequences of the possihle exportation of translations made and published hy virtue of the Protocol.

7. As regards the reservation relating to the right of reproduction, the Working Group felt that a hroad interpretation of this reservation, which would extend the methods of reproducing works beyond the limits of printed puhlication pure and simple, would he particularly calculated to harm the interests of authors. Then again, the economic and commercial conditions (existence or installation of printing offices and publishing houses, extent of markets, structure of demand, etc.) were liable to have a determining influence on the application of the provisions regarding the right of reproduction. Here, too, attention was drawn to the unfortunate consequences of the possihle exportation of reproductions made hy virtue of the Protocol.

8. As to the reservation on the right of broadcasting, it was pointed out that, depending on the interpretation to he given to the notion of "profit-making purposes," it would be possihle for a greater or lesser numher of communications to the public of hroadcast works to escape the payment of authors' fees. It was further ohserved that, in the case of broadcast programs imported into developing countries, the fees for recording and broadcasting were often paid hy the exporting organizations and for that reason the financial loss sustained hy the authors was reduced. It appeared, however, that there was a risk that the sums paid to authors or their successors in title for broadcasts hy the broadcasting organizations in developing countries would he diminished as a result of the application of the Protocol, since certain works would no longer he protected and certain uses would no longer be subject to the payment of authors' fees.

9. Finally, as regards the reservation relating to the use of works for teaching, study and research in all fields of education, the Working Group took the view that this very broad provision could apply to most of the literary and scientific works used in developing countries. It also felt that the reference to conformity with the standards of payment made to national authors and the suhjection of the payment and transmittal of compensation to national currency regulations could have a serious effect on the remuneration of foreign authors. Attention was also drawn to the possihility of applying this reservation to teaching out of school.

10. The Working Group then examined the ways and means of compensating the losses which authors would sustain and the reduction in earnings which they would suffer as a result of the application of the provisions of the Protocol. It considered that the creation of an international fund or of an international fee-paying system (for example, the collection of a stamp tax on books puhlished in developed countries) was not desirahle and it expressed its preference for solutions at the national level or on a hilateral hasis, with regard to the application of the Protocol and the compensation of copyright owners. Naturally, the international repercussions of such solutions would have to he considered.

11. However, the Working Group made a distinction between the prohlems raised by the provision for such compensation and those arising from the difficulties of transferring currency. In the case of the latter, it was of the opinion that multilateral as well as national and hilateral solutions should he sought. Among the possihilities contemplated, mention was made of the system of "Unesco coupons." This question could he examined more carefully hy an appropriate study group.

12. In general, the Working Group was of the opinion that the final adoption of any solution was premature at this stage in view of the fact that such a solution was necessarily linked with the decisions of Governments regarding the application of the Protocol (ratification, accession, anticipated application). In any case, the Working Group felt that it was necessary at least to await the results of the inquiry which BIRPI was at present conducting on this matter.

13. As the Working Group had not heen given the task of examining the desirahility of the Protocol, it expressed no opinion on the suhject. Nor did it discuss other means of assistance which might possihly be offered to developing countries.

List of participants

Members of the Working Group

Mr. Ronald Barker, Secretary, Publishers Association, London

Mr. Marcel Boutet, Attorney-at-Law, President, International Literary and Artistic Association (ALAI)

Mr. S. Olives Canals, Delegate, Instituto nacional del libro español, Barcelona

Mr. Henri Desbois, Professor, Permanent Secretary, International Literary and Artistic Association (ALAI)

Miss Marie-Claude Dock, Copyright Division, Unesco

Mr. M. Dupouey, Director-General, National Publishers Association, Paris

Mr. Walter Jost, Delegate for France, Internationale Gesellschaft fiir Urheberrecht (INTERGU)
Mrs. Madeleine Larrue, Assistant to the Director of Legal Affairs, European Broadcasting Union (EBU)
Mr. Bengt Lassen, Director, Norstedt & Söner, Stockholm
Mr. Léon Malaplate, Secretary-General, International Confederation of Societies of Authors and Composers (CISAC)
Mr. Johannes Overath, Professor, Member of the Executive Board, Internationale Gesellschaft fiir Urheberrecht (INTERGU)
Mr. Hjalmar Pehrsson, Secretary-General, International Publishers Association (IPA)
Mr. Werner Reichel, Klett-Verlag, Stuttgart
Mr. Ze'ev Sher, Registrar of Patents, Designs and Trade Marks, Ministry of Justice, Jerusalem
Mr. John F. Smyth, Principal Administrator, Legal Directorate, Council of Europe
Mr. Georges Straschnov, Director, Department of Legal Affairs, European Broadcasting Union (EBU)
Mr. Jean-Alexis Ziegler, Deputy Secretary-General, International Confederation of Societies of Authors and Composers (CISAC)

Observer

Mr. Leo N. Albert, President, Prentice Hall International Inc.; Chairman, Joint International Trade Committee, American Book Puhlishers Council, American Educational Publishers Institute

BIRPI

Professor G. H. C. Bodenhausen, Director
Mr. Claude Masouyé, Counsellor, Head of Copyright Division
Mr. Mihailo Stojanović, Copyright Division

CORRESPONDENCE

Letter from Great Britain

dealing with copyright and related matters which occurred in Great Britain in 1967

(First Part)

Summary

I. *Legislation:* 1. The Criminal Justice Act, 1967. 2. Libel actions by convicted criminals.

II. *Jurisprudence:* 1. Harman Pictures N. V. v. Osborne and others (Alleged infringement of copyright in a historical book). 2. a. Allilueva v. Flegon (Breach of confidence); b. Copex Establishment (Infringement of copyright). 3. Warwick v. Eisinger (Alleged infringement of copyright in book and film). 4. Vinogradoff v. Felton (Copyright in letters). 5. Artists and Stamps (Infringement of copyright in artistic works). 6. Board of Governors of the Hospital for Sick Children v. Walt Disney *(Peter Pan)*. 7. "The Merry Widow". 8. Duchess of Westminster v. Harrison and W. H. Allen & Co. (Pending copyright and libel case). 9. The Net Book Agreement. 10. Protection of ideas? 11. Regina v. Times Newspapers Ltd. (Contempt of Court). 12. Regina v. X & Y (Obscene novel). 13. Pope v. Odhams Press Ltd. (Fundamentals in libel actions). 14. Koolman-Darnley v. Gunter (Libel action against a Minister; qualified privilege). 15. Kesten v. Heald (Libel action concerning the pre-recording practice by the BBC). 16. Thorne v. BBC (Libel writ struck out). 17. Hambrook v. Law Society (Unsuccessful libel action; qualified privilege). 18. Slim and others v. Herbert and the Daily Telegraph Ltd. (Libel in "Letters to the Editor"). 19. Boaks v. South London Press Ltd. (A linguistic question: law or fact?). 20. Australian Consolidated Press Ltd. v. Uren (and other cases as to damages in libel cases). 21. Davies and another v. Rubin (Excessive damages for libel). 22. Martelli v. Sulzberger and others (Libel in a foreign newspaper). 23. Goody v. Odhams Press Ltd. (Libel action by a convict).

I. Legislation

1. — *The Criminal Justice Act, 1967* (Chapter 80), dated July 27, 1967 (referred to as "the Act"). — Under section 3 (1) of the Act, it shall not be lawful to publish in Great Britain a written report or to broadcast in Great Britain a report of any *commital proceedings* in England or Wales containing any other matter than that permitted by subsection (4) of that section.

Committal proceedings means, according to the interpretation clause in section 36 (1), "proceedings before a Magistrate's Court acting as examining justices".

A person who is found innocent may ask that the respective proceedings are published or broadcast.

The above-mentioned subsection (4) contains matters which, in a report of committal proceedings, may be published or broadcast [1]).

A person who publishes or broadcasts matters in contravention of section 3 is liable for an offence, but proceedings shall be instituted only with the consent of the Attorney-General.

Under section 5, newspaper reports on committal proceedings are privileged in libel actions.

2. — The Law in force at present does not prevent *convicted criminals* from bringing *libel actions* against newspapers which said they were guilty of the crimes for which they have been convicted. That hardly understandable rule enabled Mr. Alfred Hinds who was convicted for a heavy crime to bring a successful libel action against a police officer (reported in my "Letter" of 1965, II, 17). A similar case (*Goody* v. *Odhams Press Ltd.*) is reported by me below in item No. 23. The *Law Reform Committee* has now, on September 6, 1967, decided to recommend to the Government to incorporate in the forthcoming Evidence Bill a clause *abolishing the above rule* which had been strongly criticized, and replace it by the provision that a conviction before a United Kingdom court should be admitted as evidence of the convicted person's guilt; that provision would have the effect that a convicted person could not use a libel action to challenge the judgment of a criminal court and in fact obtain a second trial. On the other hand, a person's acquittal by a criminal court should be conclusive evidence of his innocence. The Committee remarked that it can only undermine public confidence in the administration of criminal justice if civil courts are forced to retry the issue of guilt which has already been determined by a criminal court.

The proposal is almost certain to be accepted by the Lord Chancellor and incorporated in the new Evidence Bill. The proposal is particularly welcomed by the newspaper world.

II. Jurisprudence

1. — *Re: Harman Pictures N.V.* v. *Osborne and others (Alleged infringement of copyright in a historical book).*

(a) Mrs. Cecil Woodham Smith was the author of the book *The Reason Why*. As a historian, she had devoted several years on detailed research to making a detailed and original account of the incidents leading up to the Charge of the Light Brigade at Balaclava, during the Crimean War, and its background. The book was first published in 1953 and later as a popular Penguin paperback in 1958.

In 1954, Mrs. Woodham Smith *assigned* the copyright in the book to *trustees* by a settlement made by her. In 1961, the

[1]) During the Parliamentary debates and by the newspaper world objections were raised against the Bill, e. g. by the Master of the Rolls Lord Denning, the Lord Chief Justice Lord Parker and Lord Shawcross, but the objections were outruled. The British Council issued a statement regretting that under the new Act British courts should sit at closed doors. See *inter alia* the *Sunday Times* of July 29, and the *Daily Telegraph* of July 26, 1967.

trustees assigned the exclusive right to adapt *The Reason Why* for reproduction and to reproduce it for a film to Wilcox Holding Ltd., from whom Harman Pictures N. V., incorporated in the Dutch West Indies (with their registered office in Curaçao), acquired in 1962 all the rights which they had obtained from the trustees. Thus Harman Pictures became the *exclusive owners of the copyright* in so far as it related to the reproduction of the book in a *film*.

(b) In August 1965, there was a statement in the paper *Stage and Television Today* that a film, "The Charge of the Light Brigade", by Mr. John Osborne, had been adapted from the book *The Reason Why*.

(c) As soon as Harman Pictures learned of the contents of that film, they declared the film infringed their copyright in the book; Mr. Osborne could not have written the screen play without having the book *The Reason Why* in front of him and taking therefrom many passages.

(d) Mr. Osborne denied that contention and filed an *affidavit* that he had ascertained the relevant facts by his own research.

(e) Harman Pictures *sued* thereupon Mr. Osborne and the two British companies associated with him, viz. Woodfall Film Presentation Ltd. and Woodfall Productions Ltd., for *copyright infringement* and asked for an *interim injunction* restraining Mr. Osborne, and the two companies associated with him, from infringing the plaintiffs' copyright in *The Reason Why* by making a film based on Mr. Osborne's screen play "The Charge of the Light Brigade".

The hearing began on February 21, 1967, and was continued on February 22, 23 and 24. Mr. Justice Goff delivered his reserved judgment on March 20, 1967.

Counsel for the plaintiffs stated it could not be contested that *The Reason Why* enjoyed *copyright protection*. He said that copyright could exist in a *historical* work whether or not any new historical facts had been discovered. "To secure copyright it was required that labour and skill should have been used so that the work showed quality or character which the raw material from which the work had been compiled did not possess ... Mrs. Woodham Smith had devoted labour and skill to her work ... There was nothing to prevent another person from compiling his own work from the same common sources, provided it was done by that person's own individual labour and research, but if someone should have availed himself of the labour of his predecessor that constituted a breach of the copyright in his predecessor's work." Counsel then showed that such breach had been committed by Mr. Osborne.

Counsel for the defendants emphasized that Mr. Osborne had not taken anything from *The Reason Why*. He continued to say that a person was entitled to gather facts from anywhere: "Anyone was entitled to use another's idea as long as an expression was not borrowed which covered the quarry which was sought".

(f) His Lordship said in his judgment, on comparing the book and the script, he was impressed by the marked similarity of the choice of incidents and by the juxtaposition of ideas. Did Mr. Osborne work independently and did he produce a script which, by the nature of things, had much in common with the book or did he use the book as a basis for taking the incidents from it? The Judge said it was impossible to arrive at a final solution until the trial when one had the advantage of discovery and witnesses. His Lordship pointed out, considering the circumstances of the case, that he ought to *grant the injunction* asked for, but on condition that the plaintiffs, being a foreign company, give *security* in £10,000 within 21 days. The Judge added that, if it looked that the defendants would be ready to distribute the film before trial, they would be able to ask to have the injunction discharged or the security increased. *The injunction was, therefore, granted on the said condition*[2]).

(g) Before the case had been set down for trial, a *compromise* was concluded. The main provision of the agreement was that Mr. Richardson, an associate of the defendant Mr. Osborne, should go ahead with filming "The Charge of the Light Brigade" and the parties agreed on the distribution of the roles of the actors in the film. Thus, the interesting copyright question involved in this case remained unsolved.

2. — *Re: a. Allilueva* v. *Flegon (Breach of confidence, referred to as "first action");*
b. Copex Establishment (Infringement of copyright, referred to as "second action").

I. The parties

1. Plaintiff in the first action is Mrs. Svetlana Allilueva, Stalin's daughter, of New York. In 1963, she wrote her memoirs in a book entitled (in translation) *Twenty Letters to a Friend*. In 1964, she had copies typed by friends and destroyed the manuscript. Two copies were given to friends for careful safe-keeping, one copy was handed to an Indian friend with the instruction to take it to India. She later collected that copy and decided to publish the book. She assigned her copyright in the book to Copex Establishment (referred to as "Copex").

Copex, plaintiffs in the second action, were publishers in Vaduz, the capital of the Principality of Liechtenstein.

2. Defendant in both actions is the Rumanian born London publisher Alex Flegon.

II. The actions

(a) In the first action Mrs. Allilueva claimed damages for *breach of confidence*; she claimed also an injunction.

(b) In the second action Copex asked for an injunction for *copyright infringement*, restraining the defendant, Mr. Flegon, from publishing in any form or language Mrs. Allilueva's book, as a whole or a part thereof.

(c) In the first action (breach of confidence) counsel for Mrs. Allilueva submitted that Mr. Flegon had obviously ob-

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2) *The Times, Law Report*, February 22, 23, 24 and 25, and March 21, 1967. The question whether in an action for copyright infringement the defendant acted independently of the plaintiff's work and thus created a new original work or whether he infringed the plaintiff's copyright in his work has been thoroughly considered by the Court of Appeal in re *Francis Day & Hunter Ltd.* v. *Bron*, reported in my "Letter" of 1964 (II, 3). I would refer to a characteristic dictum of Lord Justice — as he then was — Diplock in that case that to ascertain whether the plaintiff's copyright has been infringed, one must show that the copyrighted work is a *causa sine qua non* of the work which has allegedly violated copyright.

tained one of the three copies of the manuscript of the book from someone in Russia who had been entrusted therewith. The defendant denied that there had been any breach of confidence, the copy having been obtained from "official sources". As to the legal position counsel referred to the dictum by Lord Denning in re *Seager* v. *Copydex Ltd.* (*The Times, Law Report*, April 19, 1967): "A person who has obtained information in confidence is not allowed to use it as a spring-board for activities detrimental to the person, who gave the information, without his consent" (see below, II, 10). Counsel also referred to a decision of Mr. Justice Lloyd-Jacob that a third party who obtained goods as a breach of confidence was bound to respect the confidence.

Counsel for the defendant contended that Russian law applied and, that according to the testimony of an expert, Russian law did not recognize the title on which the first action was based.

(d) Counsel for Copex said in the second action that it was decisive whether copyright subsisted in Mrs. Allilueva's book. "That depended, he said, on the question whether publication has taken place in the United Kingdom." Counsel then referred to the evidence of the offer for sale of 169 copies in the Russian language (see *(b)* above).

Counsel for the defendant said there had not been sufficient publication. Such publication as there was, was insufficient to satisfy the reasonable needs of the public. It was, therefore, in his opinion, no "publication" within the Act.

(e) Result. Defendant undertook in the second action not to publish in any form or language the whole or any part of the book until the trial of the action.

III. The provisions in the Copyright Act, 1956 (referred to as "the Act") applicable in the second action (Infringement of copyright)

(a) Under section 1 (5) of the Act, copyright subsists in any description of work if the author is a "*qualified person*", which means, under paragraph *(a)*, that he is a *British subject* or *domiciled* or *resident* in the United Kingdom or in a Convention country.

(b) Copyright also subsists under section 2 (2) (a) and (b), in a published work if the first publication of the work took place in the United Kingdom or another country to which the Act extends, or if the author was a qualified person at the time when the work was first published.

(c) Counsel for the defendant denied that the first publication of the work took place in the United Kingdom.

(d) It will, therefore, have to be decided whether at the relevant time Mrs. Allilueva was a "qualified person" or whether publication at all and first publication of the book was effected in the United Kingdom or a country to which the Act extends (cf. section 49 (2) (b) and (3) of the Act).

IV. The hearing of the actions

The hearing took place on August 18, 1967, before the Vacation Judge, Mr. Justice Geoffrey Lane.

His Lordship said that in the circumstances the application for an injunction in the first action (breach of confidence) should be *stood over until trial* and that he accepted the defendant's undertaking in the second action (infringement of copyright) [3]).

3. — *Re: Warwick* v. *Eisinger (Alleged infringement of copyright in book and film).*

1. *(a)* Warwick Film Productions Ltd. (referred to as "Warwick") made a cinematograph film on the trials of Oscar Wilde. The film was based on a book by H. Montgomery Hyde, published in 1948, called *The Trials of Oscar Wilde*. The publishers, William Hodge & Co. Ltd. (referred to as "Hodge"), claimed to be exclusive licensee.

(b) Hodge and Warwick issued, on April 26, 1960, a writ against four defendants, i. e., J. Eisinger, R. Goldstein, G. Ratoff and Vantage Films Ltd. (the production company for the film), to whom later Twentieth Century Fox Film was added as defendant. In that action Warwick and Hodge asked for an *injunction* restraining the defendants from infringing what they alleged to be their rights of copyright in that book; they further claimed *damages*.

(c) Hodge became afraid of the high costs of the proceedings and applied for leave to be struck off as plaintiff. As reported in my "Letter" of 1964 (II, 4 *a*), that application was granted by Mr. Justice Danckwerts on April 2, 1963. From that date on Warwick *alone was plaintiff* in this case. Warwick also claimed rights in an anonymous book called *Oscar Wilde - Three Times Tried*, published in 1911-1912 by Ferresione Press Ltd. (referred to as "Ferresione").

(d) The defendant, Mr. Eisinger, was the script writer of a cinematograph film called "Oscar Wilde". The other defendants had contributed in various ways to that film.

(e) Warwick contended that the defendants had infringed the copyright in the two books by exhibiting and distributing the defendants' film. Warwick also alleged that the material in Mr. Hyde's book was derived from the anonymous book, mentioned above, of which Mr. Millard was the author and that his executor had assigned the copyright to Warwick.

The defendants contested all allegations by Warwick. They denied that any copyright subsisted in Mr. Hyde's book and that Warwick had any rights in that book.

2. *(a)* The case was tried by Mr. Justice Plowman. The hearing started on June 13, 1967, and lasted eighteen days, terminating on July 31, 1967.

The action was *dismissed*. The report on the judgment comprises twenty pages. I can, of course, submit the Judge's arguments only quite briefly — omitting the many authorities referred to by the Judge.

(b) Although both books contain much unoriginal matter, they are literary works in which *copyright* subsists.

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[3]) *The Times, Law Report*, August 5, 10 and 19, 1967.
In West Germany, the magazine *Der Spiegel* obtained at the Hamburg Court an injunction against the *Stern Illustrierte* restricting the latter from publishing Mrs. Allilueva's memoirs. *Der Spiegel*, which had acquired the German rights for DM 480,000, based its claim on copyright infringement and unfair competition. An appeal is pending. Similar steps were undertaken in Vienna against the Viennese branch of the *Stern (Stern-Wiener Illustrierte)*. It has been reported that criminal proceedings for copyright infringement have been instituted against the editor by the Vienna Court.

(c) Under section 20 (4) of the Copyright Act, 1956, Ferresione must be presumed to have been the owner of the copyright in *Oscar Wilde - Three Times Tried*. Warwick has not proved his title in the copyright through Ferresione.

(d) The defendants' film *did not reproduce* a substantial part of Mr. Hyde's book. The Judge, considering Mr. Eisinger's oral evidence, said that he copied only to a limited extent. Such copying does not constitute reproduction of a substantial part of Mr. Hyde's book and does not involve infringement of copyright.

(e) Thus the action *failed*. In his *concluding* words His Lordship pointed out that the seemingly simple case concealed a multitude of complications which extended the trial to three weeks. " I have tried, the Judge said, to meet the broad point equally broadly and it is not out of any disrespect for the arguments addressed to me that I have not pursued them all in my judgment."

4. — *Re: Vinogradoff* v. *Felton (Copyright in letters).*

If a letter is an original creation so that it enjoys copyright under the 1956 Copyright Act, such *copyright* is vested in the *writer* of the letter, whereas the *addressee*, if he has received the letter, is its *owner*.

Earl Bertrand Russell, the famous philosopher, was a good friend of Lady Ottoline Morrell, who died in 1938. She had written many letters to Earl Bertrand; her daughter, Mrs. Julian Ottoline Vinogradoff, claimed under her mother's will ownership of copyright in her mother's letters to Earl Bertrand. The Earl's autobiography had been serialized in *The Observer* and it was feared that the said letters would be published through Felton & Partners, literary agents, with whom negotiations were pending regarding publication of Mrs. Morrell's photographs and the letters. Felton refused to give an undertaking not to publish the letters. Mr. Justice Buckley granted Mrs. Vinogradoff on January 24, 1967, an order directing Felton & Partners to refrain from publishing or authorizing publication of any of the said letters, which had not previously been published [4]).

5. — *Re: Artists and Stamps (Infringement of copyright in artistic works).*

British artists have complained that their copyright has been infringed by illustrations of exotic birds in *postage stamps* issued by foreign governments. One female artist has painted at Wellington exotic birds which paintings were exhibited in the New Zealand museum. She found two of her paintings on New Zealand postage stamps. She complained with the High Commissioner of New Zealand in London and received the reply that the illustrations were taken from the Wellington museum. That is, of course, no valid excuse as there was no evidence of a consent by the artist. A similar experience was made by Cdr. Reid-Henry who found a number of birds, which appeared in his book *The Birds of Arabia*, reproduced on Yemeni postage stamps. In so far as foreign countries are parties to the Berne Convention or the Universal Copyright Convention, the respective artist has the possibility of resorting to legal action, but it is understandable that in remote countries none of these artists has decided to begin a law suit.

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

As reported in my " Letter " of 1966 (II, 3), J. M. Barrie was the author of a play, " Peter Pan ". The copyright is now vested in the Hospital. Walt Disney Productions Ltd. had a licence to make animated cartoons of it. In an agreement of 1919, J. M. Barrie had granted to Walt Disney's predecessors in title " the sole and exclusive licence to produce all his literary and dramatic works, existing and future, of whatever kind, on the terms of the respective copyright thereof in *cinematograph or moving picture films*" (underlining is mine). Walt Disney Productions Ltd. claimed to be the assignees of that licence. In June 1964 the Hospital proposed to grant to Mr. G. Custor and Mr. M. Ferrer the right to make a *sound* film of the play. Walt Disney protested relying on the 1919 agreement; they claimed they had under the 1919 agreement the exclusive right to make *silent* and *sound* films of the play. The Hospital sued them asking for a declaration that the defendants had no right to protest, and claiming damages. Mr. Justice Buckley decided on March 11, 1966, in the plaintiffs' favour and ordered an inquiry as to damages. The defendants appealed. The appeal was heard by the Court of Appeal (The Master of the Rolls Lord Denning, Lords Justices Harman and Salmon) on February 13, 1967. Lord Denning said that, when the agreement was concluded in 1919, the only films on the market were *silent* films. A silent film of the play was made in 1924. His Lordship said he did not see any reason to extend the agreement to *sound* films which were not then in contemplation. He was satisfied that the words did not comprehend sound films. The two other Lords Justices concurred that the appeal should be dismissed [5]).

In this connection I would refer to a passage in the " Letter from France " by Professor A. Françon in the September 1967 issue of this review: " . . . that any transfer must be interpreted restrictively ", a rule which applies also to licences, in particular to exclusive ones, and which justifies the decision arrived at in the present case.

7. — *Re: " The Merry Widow ".*

The first performance of " The Merry Widow " in the English language took place in London in 1907, just half a century ago. This rare jubilee is well worth commemorating. The operetta which still today enjoys popularity had been composed by Franz Lehár, based on a theatrical work by Henri Meilhac and the libretto prepared by Victor Leon and Leo Stein. The work was first performed in its original German language *(Die Lustige Witwe)* in Vienna on December 30, 1905, about two years before the London première. Several years later, on April 28, 1909, the operetta was performed in Paris in the German language; there followed the first performance in a French adaptation *(La Veuve Joyeuse)* in Paris.

4) *Daily Telegraph*, January 25, 1967.

5) *The Times, Law Report*, February 14, 1967. See also *Gewerblicher Rechtsschutz und Urheberrecht*, Second Part, Munich, May 1967, Nos. 966/67.

The fact that so many years after the creation of the work two important *law suits* were conducted in respect of "The Merry Widow" also bears witness of the work's popularity.

(a) The first case happened in Great Britain in 1956-1957. I have reported it in my "Letter" in *Le Droit d'Auteur* of 1958 (II, 1). Reverting to that case quite briefly, I would say that the history of the copyright in the operetta was rather complicated. An array of agreements and/or licenses were executed. Loew's Incorporated, registered in the U. S. A., pretended to have the exclusive right to arrange public performances of the work in the English language in the United Kingdom. The representatives of the successors of the deceased authors (Lehár, Leon and Stein) contested that right. Loew's Incorporated sued the said successors and four other persons, among them the impresario Emile Littler, but did not meet with success. After the hearing of the case on October 7, 1957, before Mr. Justice Vaisey in the Chancery Division of the High Court, a judgment was delivered on October 25, 1957, by which the Judge dismissed the suit brought by Loew's Incorporated, considering the interpretation of the relevant agreements and evidence by legal experts. Thus the plaintiffs lost the right to perform the operetta publicly in the English language; the rights returned to the authors' successors.

(b) The second case occurred in Belgium in 1963-1965. This case has been thoroughly discussed in his "Letter from Belgium" by the learned Mr. Frans van Isacker. The question at issue in this case was quite different from that under *(a)*. At the performance of "*La Veuve Joyeuse*" at the *Théâtre Royal de la Monnaie* in 1963, the successors of the authors regarded the performance as "misrepresenting the spirit of the work". They sued the said *Théâtre*, its director and some other persons who had been dealing with that performance, and asked for damages under Article 6bis, paragraph (1), of the Berne Convention. The Tribunal of first instance of Brussels dismissed the action on June 4, 1964. The Brussels Court reversed the judgment on September 29, 1965. "The Court ... felt compelled to declare that the work had been distorted within the meaning of Article 6bis of the Berne Convention ..." (quotation from Mr. van Isacker). The Court awarded token damages of one franc against some of the defendants.

Regarding all the details of the case, the analysis and criticism of the two judgments, I refer the reader to the instructive explanations by Mr. van Isacker.

8. — *Re: Duchess of Westminster* v. *Harrison and W. H. Allen & Co. (Pending copyright and libel case).*

Mr. Michael Harrison is the author of a book, published by W. H. Allen & Co., called *Lord of London*, a biography of the Duchess's late husband, the second Duke. That book was published in 1966.

Loelia, Duchess of Westminster, alleged that that book reproduced, without her consent, a substantial part of her book called *Grace and Favour*, containing her memoirs. She further complained that by her photograph and caption contained in *Lord of London* she had been injured in her character, credit and reputation, and alleged to have suffered damages. She issued writs for copyright infringement and libel against both defendants, claiming delivery up of copyright infringing material, an account of profits, and stopping further publication and sales of the book *Lord of London*, and as damages payment of any sum so found due.

The defendants have entered an appearance through solicitors, who have delivered a defence [6]).

The case is still *sub judice* so that no details can be given.

9. — *Re: The Net Book Agreement.*

In my "Letter" of 1963 (II, 10) I referred to the above Agreement under which publishers had agreed that if a publisher has fixed a "net" price for his books he would act against anyone selling under the stipulated retail price. The Restrictive Practices Court had decided on October 30, 1962, that the Agreement was not against the public interest. An Agreement on virtually identical terms had been concluded between publishers not members of the Publishers' Association. The Court ruled on February 14, 1964, in the same sense (my "Letter" of 1965 - II, 15).

In 1967, the Publishers' Association applied to the said Court for *exempting books* from the general ban of *resale price maintenance* provided for in the Resale Prices Act, 1964. That application was heard by the Restrictive Practices Court on October 27, 1967. The Registrar of restrictive trading agreements told the Court that, in view of the above decisions, he would not oppose the claim of the Publishers' Association; he added that the facts ascertained by the above decisions were binding unless a material change of facts had happened which was not the case here. Thus, printed books, booklets, brochures, pamphlets, leaflets, children's picture-books and maps retained the right of resale price maintenance, the only class of goods so far exempted by the Court from the ban of resale price maintenance under the 1964 Act [7]).

10. — *Re: Protection of ideas?*

(a) Ideas as such are not protected under copyright law or any other legal title. That was emphasized by the Court of Appeal of Bologna to which I refer although it is an Italian case in order to show its difference from the following case *(b)*. The plaintiff, owner of an advertising company, had communicated to the defendant, owner of a food-stuff business, the *idea* of using *folded* labels the inner side of which contained advertising material. That communication had not been made confidentially. The defendant started to use such folded labels for wrapping his goods without asking the plaintiff's consent. The plaintiff sued the defendant for infringement of *copyright*. The plaintiff's action failed. The Court said quite rightly that the said idea did not have the intellectual character which is required for copyright protection (November 4, 1965) [8]).

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[6]) *Evening Standard*, January 2, and *Daily Telegraph*, January 3, 1967.

[7]) See *The Times*, October 28, 1967; *Financial Times* of the same date.

[8]) *Riv. Dir.*, 1965, II, 327-329; *Gewerblicher Rechtsschutz und Urheberrecht*, Second Part, 1967, No. 480.

(b) Re: Seager v. *Copydex Ltd. (Protection of confidential communication of ideas).*

This case is of importance in particular to *authors*. If, for instance, the author "A" has ideas for a new novel which he discusses in confidence with author "B", and the latter writes the novel based on "A"s ideas: has "A" any remedies against "B"?

(c) The *facts* of the following case were as follows: the plaintiff, Mr. Seager, told Copydex Ltd. in confidence about making a *satisfactory carpet grip* which was not in the public domain and which Mr. Seager proposed to use in his carpet trade. These communications were made by Mr. Seager in the course of negotiations with Copydex, which failed. Mr. Seager told Copydex in particular about the special shape of the teeth. Copydex availed themselves of what Mr. Seager had told them and manufactured the same grip as Mr. Seager and gave the same the name "Invisigrip" which Mr. Seager had mentioned to them.

Mr. Seager *sued* Copydex. The Judge of the first instance dismissed the action, holding that the information given to Copydex was not "significant". The Court of Appeal reversed that decision unanimously and gave judgment for damages to he paid to plaintiff, the damages to be assessed.

The Master of the Rolls Lord Denning referred in his vote to two previous cases and said: "The law on this subject does not depend on any implied contract. It depends on the broad principle of equity that he who has received *information in confidence shall not take unfair advantage* of it (emphasis added). He must not make use of it to the prejudice of him who gave it, without his consent. That principle is clear enough if the whole information is private. The difficulty arises if the information is in part public and in part private, as in this case". His Lordship emphasized that in the present case a good deal of information had not been known by the trade and was, therefore, private, such as the difficulties which have to be overcome in making a satisfactory grip, the necessity of strong, sharp teeth, and the like. Lord Denning continued: "The recipient of private information should not be in a better position than if he had gone to the public source. It may not be a case for injunction or even for an account, but only for damages..." His Lordship added the defendants might not have been aware of the law as to confidential information, but they were not at liberty to use any confidential information.

The appeal was allowed.

In this case, an idea was not protected as such, but protection was granted against the *misuse* of *confidential information* about an idea [9]).

As in the above case *(c)* author "A" in case *(b)* would be entitled to demand damages from "B".

11. — *Re: Regina* v. *Times Newspapers Ltd. (Contempt of Court).*

Proceedings were pending against Michael Abdul Malik, the black Muslim leader, known as "Michael X", under the Race Relations Act. At a time when Malik was awaiting trial, an article appeared in the *Sunday Times* on October 29, 1967, on race relations. That article contained a photograph of Malik with a caption that Malik had an unedifying career as brothel keeper, procurer and property racketeer.

The principles in English law of jurisdiction of the Court in such *contempt* matters are designed, as the Attorney-General explained, to ensure that courts and especially juries are enabled to administer justice according to law and shall not be diverted from that course by having extraneous and prejudicial matter thrust upon their attention by the Press or anyone else. The Attorney-General had brought the matter before the Court. He pointed out that the said rule is liable to be frustrated if juries may have read in their newspapers shortly before the trial, whether true or untrue, matter of the very kind that the courts exclude from their consideration.

The editor, Mr. Evans, recognized his full responsibility although he had no knowledge of the article before it was distributed.

The Divisional Court (Lord Chief Justice Lord Parker, Mr. Justice Widgery and Mr. Justice Chapman) sentenced Times Newspapers Ltd., the publishers of the *Sunday Times*, to a fine of £5,000 for contempt of Court (November 27, 1967) [10]).

Malik was sent to prison for twelve months on November 9, 1967, at Reading Quarter Sessions. His appeal, which was mainly based on the contention that the jury might have been influenced by the above article in the *Sunday Times*, was dismissed by the Court of Appeal on December 21, 1967.

12. — *Re: Regina* v. *X & Y (Obscene novel).*

(*Note:* I omit the title of the novel and the names of the persons involved because I do not wish to contribute to the propaganda for that novel.)

An American author "Z" wrote a novel whose title I will quote as "A". The novel deals — as the prosecution described it — with drug taking, homosexuality and other abnormal sexual activity. The novel was published in Great Britain by a well known publishers' firm to which I will refer as "X & Y". With the consent of the Attorney-General criminal proceedings were instituted against those publishers under section 2 of the Obscene Publications Act, 1959, as amended, because it was alleged that the novel was obscene. An article is held to be obscene if it is likely to deprave or corrupt. The defence lies that the article is of literary merit or to the public good. On April 3, 1967, the two defendants, "X & Y", were committed on trial to the Old Bailey by the competent London Magistrate. The hearing at the Old Bailey before Judge Rogers and an all-male jury started on November 13, 1967, and lasted eight days. Judgment was delivered on November 23. About thirty expert witnesses or so-called expert witnesses were called by the defence and six by the prosecution. The opinions varied considerably.

The judge said in his summing-up that the issue whether the book was obscene was the jury's entire responsibility. The

[9]) *Fleet Street Patent Law Reports*, 211; *Federation of Trade Marks, Patents and Designs, Monthly Reports*, July 1967; *The Times, Law Report*, April 15, 1967. See also above item No. 2, re *Allilueva* v. *Flegon*.

[10]) *The Times, Law Report*, November 17, 18 and 22, and December 22, 1967. The *Press Council* suggested the appointment of a Royal Commission to examine and report whether and which amendments of the Law of Contempt of Court were advisable.

opinions of experts or alleged experts or even of the Magistrate did not concern the jury in the least. Witnesses have variously described the effect of the book on them as "horrifying, shocking, disgusting and nauseating". A book may possibly be all those things and still not be obscene. The defence had contended the book was in the public interest as it had sociological, literary and ethical merit. If the jury felt the defence had satisfied them about those merits the company would be not guilty.

The jury *returned unanimously a verdict* that the book was *obscene* and its publication *not for the public good.*

The Judge fined the defendant company £ 100. The company was ordered to pay £ 500 towards the prosecution costs [11]).

13. — *Re: Pope* v. *Odhams Press Ltd. (Fundamentals in libel actions).*

Mr. W. G. S. Pope, a former Mayor of Chichester, sued Odhams Press Ltd. for libel committed in an article in the *People* of June 1965. The facts of the case are not of general interest, but the case is noteworthy as Mr. Justice Swanwick, who heard the case, defined in a particularly clear manner the questions to be put to the jury.

(a) Are the words complained of defamatory of the plaintiff, either directly or by innuendo? The onus lies on the plaintiff.

(b) If so, are they true in substance and in fact? The defendant has to prove that the substance and the sting are substantially true.

(c) If they are not true, are they fair comment on a matter of public interest, and not a statement of fact?

(d) Was the defendant actuated by malice? The plaintiff has to prove that the defendant was activated by spite, ill-will or improper motives or that the article was published with deliberate disregard for the truth.

(e) For damages which would arise if the plaintiff proved that the words were defamatory, and the defendant failed to prove that the words were true or fair comment, and the plaintiff established that the apparent fairness was destroyed by express malice, an amount should be awarded to the plaintiff as a fair and reasonable compensation for the damage inflicted to the plaintiff's reputation. But punitive damages should be awarded in extraordinary cases only, which question does not arise in the present case [12]). I would refer to my report in section IV below.

14. — *Re: Koolman-Darnley* v. *Gunter (Libel action against a Minister; qualified privilege).*

Mr. Gunter, Minister of Labour, sent on June 2, 1965, a letter to Mr. Robinson, Minister of Health and M. P., in answer to a complaint by the latter about the conduct of the plaintiff, a clerk at the Camden Town employment exchange. The plaintiff claimed that the letter contained remarks defamatory of him. On the verdict of the jury, Mr. Justice Phillimore dismissed on November 3, 1965, the action for libel brought by the plaintiff against Minister Gunter. The plaintiff appealed. The Court of Appeal (Lords Justices Sellers, Danckwerts and Sachs) said (April 18, 1967) there was nothing defamatory on the face of the letter, but it was not required to consider that in some detail as the letter was clearly written on a *privileged* occasion. As to the plaintiff's contention of malice, the only source of evidence of malice would be in the letter itself, but there was nothing in it which indicated malice. The appeal was unanimously dismissed [13]).

15. — *Re: Kesten* v. *Heald (Libel action concerning the pre-recording practice by the BBC).*

Albeit this case was settled, I think I should not fail to mention it shortly because it concerned a certain practice by the BBC. At the beginning of February 1966, there was correspondence in *The Times* on the practice of pre-recording separate television and radio interviews and discussions and then editing them to give the impression that all the persons were present in the studio together at the same time.

On February 11, 1966, Sir Lionel Heald wrote a "Letter to the Editor" of *The Times* in which he was very critical of that practice and said there was little difference between that practice and what was done in the "Twenty-One Quiz" by the producer, Mr. Bob Kesten, some years ago when the questions and answers were arranged beforehand with experts. Mr. Kesten strenuously denied that in the said "Quiz" there had been any disclosure of any specific question. He sued Sir Lionel for libel.

Sir Lionel admitted at the hearing of the case on May 3, 1967, before Mr. Justice Paull that the reference to the "Quiz" was not fully correct. He apologized to Mr. Kesten and agreed to pay a suitable sum as damages to Mr. Kesten; he withdrew any imputation against Mr. Kesten. The case was settled and the record withdrawn [14]).

16. — *Re: Thorne* v. *BBC (Libel writ struck out).*

This is a rather peculiar case, interesting from the political as well as from the legal viewpoint.

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11) That case has attracted much public attention, perhaps more than it deserves. It was reported in *The Times* of November 14, 1967, and the following days. See *inter alia* the correspondence "Test of Book's Value" between David Holloway, A. R. G. Price and John Calder in the same paper of December 2, 1967. David Holloway suggested in an article in the *Daily Telegraph* of November 25, 1967, the introduction of some kind of *licensing*; books of which it was doubtful whether they were obscene could be submitted for a *licence* to an independent authority, representing authors, publishers, critics and readers. If a licence was refused, the book could nevertheless be sold, but under the risk of being prosecuted according to the provisions in the Obscene Publications Act. How much the opinions differ between people who are for and those who are against the decision in the above case can e. g. be seen from the exchange of the following "Letters to the Editor" of the *Daily Telegraph*. Mr. Mark Goulden, who has great experience in publishing matters, writes on November 30, 1967 — in my respectful submission not without exaggeration — that it was "a black week for British literature and a sad and bitter day for English letters ... The jury of twelve undistinguished ratepayers ... have no more knowledge of literary merit than they have of advanced nuclear fission". Mr. H. Montgomery Hyde emphasizes, referring on December 8 to Mr. Goulden's letter, that "it is entirely a question of fact for the jury to determine subject to the judge's guidance on the law ... Maybe Oscar Wilde was right when he said that there was no such thing as a moral or immoral book and that books were either well written or badly written ...". Many more examples could be referred to of wide discrepancy by expert writers.

12) *The Times, Law Report*, May 3 and 10, 1967.

13) *The Times, Law Report*, November 4, 1965, and April 9, 1967.

14) *The Times, Law Report*, May 4, 1967.

Dr. Carl Theo Thorne, of German origin, now stateless, a former *Luftwaffe* pilot, sued the BBC, alleging *inter alia* that the BBC had broadcast *racial abuse* and disparaging remarks about the German people in the television series "The Rat Patrol". Mr. Justice Lyell had decided in the plaintiff's favour. The BBC appealed. The appeal was heard by the Court of Appeal (Master of the Rolls Lord Denning, Lords Justices Danckwerts and Winn) on May 25, 1967. The Master of the Rolls said that nowhere in the statement of claim was there any allegation of the plaintiff being *personally injured*. He claimed that the Race Relations Act, 1965, sustained his action. Dr. Thorne — His Lordship continued — did not plead he had any personal legal rights in the matter and he did not have any such rights. Further, the scope of the above Act was limited to criminal offences which could be prosecuted only with the Attorney-General's consent. The plaintiff had no such consent. The statement of claim and writ should be *struck out* and the appeal allowed. His Lordship added that allegations of racial abuse had been made, but they were not well founded. The two other learned Lords Justices concurred.

To strike out a statement of claim is a measure which is rarely ordered [15]).

17. — *Re: Hambrook* v. *Law Society (Unsuccessful libel action; qualified privilege).*

Mr. H. W. Hambrook had been employed with the Law Society since 1959 as a legal executive in the compensation fund department. He was dismissed in 1961 and applied for unemployment benefits. In such cases the Ministry of Labour is under a statutory duty to ascertain the reason of dismissal. The Law Society answered "for deterioration in the standard and reliability of his work".

Mr. Hambrook found those words defamatory and sued the Law Society for libel.

The case was heard by Mr. Justice Milmo and a jury on February 28, 1967. The plaintiff alleged the Society had been actuated by malice. His Lordship said it was for the Society to prove that the words were true, but for the plaintiff to prove malice. The Judge ruled that the mere fact that the words were not true was not evidence of malice. There was no evidence — the Judge stated — that anyone in the Society bore the plaintiff any ill-will. His Lordship further ruled that the occasion when the words were published was one of qualified privilege. The jury returned a verdict that the words had not been published maliciously. In view of the defence of qualified privilege the action was dismissed [16]).

18. — *Re: Slim and others* v. *Herbert and the Daily Telegraph Ltd. (Libel in "Letters to the Editor").*

Plaintiffs in this case were Mr. Horace Cornelius Slim, a former Town Clerk of the London Borough of Hammersmith and now a solicitor and legal adviser to the second plaintiff, Vitamins Ltd.; the third plaintiff was the chairman of that company, Mr. C. H. Graves.

Defendants were Mr. John Herbert, son of the protagonist for authors' rights, Sir Alan Herbert, and the Daily Telegraph Ltd.

The action concerned *two letters* written by Mr. John Herbert and published in the *Daily Telegraph* on March 30 and April 23, 1964, respectively.

The letters concerned use of vehicles on the riverside of the London Borough Hammersmith, and the attitude taken in this matter by Mr. Slim, now legal adviser of Vitamins Ltd., allegedly contrary to his attitude when he was Town Clerk of Hammersmith. The plaintiffs sued the defendants for libel.

The case was heard by Mr. Justice Paull on April 13, 1967, without a jury, and lasted nine days.

Mr. Justice Paull found that the first letter could be understood in the sense that Mr. Slim "had gone behind the scenes" and used his influence as former Town Clerk in favour of Vitamins Ltd., his clients. This was, the Judge argued, an attack "on Mr. Slim's honesty of motives, sincerity and good faith". He awarded Mr. Slim *damages of £3,500.* The Judge also found the second letter defamatory of Vitamins Ltd. and Mr. Graves, stating that both were innocent of any improper conduct, but the suggestions made against Mr. Slim were more serious. His Lordship awarded to these two plaintiffs *damages of £1,500 and £1,500* respectively [17]).

The defendants had also pleaded fair comment and justification, but those defences had been abandoned.

The defendants *appealed* contending that the letters were not defamatory and that in any case the awarded damages were too high.

The appeal came on for hearing on November 27, 1967. The Court of Appeal (Master of the Rolls Lord Denning, Lords Justices Diplock and Salmon) reserved judgment [18]).

The reserved judgment of the Court of Appeal was delivered on January 17, 1968. The Master of the Rolls Lord Denning gave the following reasons (briefly summarized) for his vote to *allow the defendants' appeal*:

(a) Fair comment is one of the essential elements which go to make up our freedom of speech. When a citizen is troubled by things going wrong he should be free to write to the newspaper and the newspaper should be free to publish the letter.

(b) The matter must of course be one of public interest.

(c) The writer must get his facts right and he must honestly state his real opinion. But that being done, he and the newspaper should be clear of any liability. They should not be deterred by fear of libel action.

(d) The two letters complained of were undoubtedly defamatory, but the matter was clearly one of public interest. The correct approach to the matter was simply: were the letters fair comment on a matter of public interest?

(e) Were the defendants actuated by malice? The defendants, Mr. Herbert and the newspaper, honestly believed what they said, so that malice was outruled. The letters were fair comment on a matter of public interest. The appeal should, therefore, be allowed.

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15) *The Times, Law Report*, May 26, 1967.
16) *The Times, Law Report*, March 1, 1967.
17) *The Times, Law Report*, April 14 and 29, 1967.
18) *The Times, Law Report*, November 28, 1967.

The two other Lords Justices Diplock and Salmon concurred. Lord Justice Diplock adding that he ventured to recommend once more the law of defamation to the attention of the Law Commission; it has passed beyond redemption by the courts.

The three judges ordered that the £ 5,500 damages paid to the plaintiffs following the original trial decision should be repaid to the newspaper and that the total costs of the ten-day libel trial and the four-day appeal, estimated in the region of £ 20,000 should be paid by the plaintiffs [19]).

19. — *Re: Boaks* v. *South London Press Ltd. (A linguistic question: law or fact?)*

In May 1966, the defendants published an article headed " Can juries be made to understand the law of libel? ". In that article the plaintiff, Lieutenant-Commander W. G. Boaks, was described as " *nutty* ". The plaintiff contended that " nutty " was kindred to " mentally ill ", " crazy " or " lunatic ". He sued the defendants for libel. The defendants alleged the meaning of " nutty " was " courageous " and was, therefore, not defamatory of the plaintiff. They further pleaded fair comment and justification. The case was heard by Mr. Justice Melford Stevenson and a jury on October 26, 1967. The Judge ruled against fair comment and that the question of meaning of " nutty " was not a question of law, but of fact to be answered by the jury, to whom was also left the question of justification. The defendants referred to some excentricity shown by the plaintiff. The jury returned the verdict that the plaintiff had *not been libelled* by the defendants [20]).

20. — *Re: Australian Consolidated Press Ltd.* v. *Uren (and other cases as to damages in libel cases).*

1. In *Rookes* v. *Barnard*, the House of Lords had ruled that *punitive* (exemplary) *damages* in libel cases ought to be awarded only in the case of oppressive, arbitrary or unconstitutional conduct of Government servants, or if the defendant's conduct had been calculated by him to make a profit. I would refer to my " Letter " of 1965 (II, 16 - and my note No. 29, *ibid.*) [21]).

2. Mr. Thomas Uren, a Labour Member of the Australian Federal Parliament, sued the Australian Consolidated Press Ltd. for *libel*. The jury awarded the plaintiff £A 30,000 as *damages*. On the defendants' appeal. the full High Court of Australia ordered a re-trial, but declared that the limitations as to the award of exemplary damages enunciated by the House of Lords in the above case *had no application in Australia*. In connection with the case under review, Mr. Edward St. John, Q. C., discussed the question whether *Australian courts are bound by rulings given by the House of Lords* in an article headed " Lords break from precedent — an Australian view " (*International and Comparative Law Quarterly*, July 1967, pp. 808 to 816). The author refers to the statement in the House of Lords by the Lord Chancellor on July 26, 1966, that " their Lordship . . . propose to modify their present practice . . . and *depart from a previous decision* when it appears right to do so ". Referring to that important statement the Australian Chief Justice of the High Court said in a pending case: " Hitherto I have thought that we ought to follow decisions of the House of Lords, at the expense of our own opinions, . . . but I think we cannot adhere to that view of policy ".

3. The Privy Council granted to Consolidated Press Ltd. leave to appeal against so much of the decision as determined that it was competent to the jury to award punitive damages. The case was heard by the Privy Council on April 27, 1967. Judgment was delivered on July 24, 1967. Lord Wilberforce, reading the Opinion of the Board, said the gain that uniformity of law in the Commonwealth might yield, in matters which might considerably be of domestic or internal significance is outruled. In such matters the need of uniformity is not compelling. Their Lordship were, therefore, not prepared to say that the decision of the Australian High Court was wrong. They would accordingly advise Her Majesty that the *appeal be dismissed.*

4. In re *Fielding* v. *Variety*, libel damages had been awarded by the jury at £ 5,000 for the plaintiff and £ 10,000 for his company. Referring to the above ruling by the House of Lords, the Court of Appeal held those sums to be excessive and substituted for them £ 100 and £ 1,500 respectively.

5. Concluding this note I would mention in passing the case of *Mrs. Kathleen Hoar* v. *Ted Allbeury*. Mrs. Hoar had been Mr. Allbeury's first wife who after divorce of her marriage to Mr. Allbeury married Mr. James Hoar. Mr. Allbeury wrote to Mr. Hoar in 1966 a *highly libellous letter* about his former wife, now Mrs. Hoar. Sued by Mrs. Hoar for libel, the jury awarded her £ 2,000 as damages against the defendant. The defendant found that amount excessive and appealed. The Court of Appeal dismissed the appeal on October 18, 1967. Bearing in mind the Decision of the House of Lords referred to above, Lord Justice Sellers said, with the concurrence of the two other Lords Justices, that the letter was of a very cruel character but without any foundation, calculated to do grave injury to Mrs. Hoar's reputation. The Court found no reason to interfere with the award by the jury [22]).

21. — *Re: Davies and another* v. *Rubin (Excessive damages for libel).*

In this case as well as in the cases reported in the preceding note libel damages awarded by the jury were found *excessive.*

Here are the facts quite shortly. The plaintiffs, N. H. Davies and M. I. Gee, chartered accountants of good standard, negotiated with Sir Edwin McAlpine and Sir Robert McAlpine and Sons Ltd. for the lease of their premises in Park Road. London. H. Stanley Rubin who wanted those premises for his company wrote a letter to McAlpines which was defamatory

19) *Daily Telegraph*, January 18, 1968. Many dailies published leading articles on the above decisions of special significance to newspapers and to courts dealing with libel actions.

20) *The Times, Law Report*, October 27, 1967.

21) *The Times, Law Report*, January 22, 1964.

22) *The Times, Law Report*, March 9. 1967. See also *McCarrey* v. *Associated Newspapers Ltd.*, reported in my " Letter " of 1965 (II, 16, and notes Nos. 28 and 29 *ibid.*). See further cases below in this section considering excessive libel damages.

of the plaintiffs. They sued Rubin for libel. The case came before Mr. Justice Swanwick and a jury. Referring to the ruling by the House of Lords in *Rookes* v. *Barnard*, the Judge warned the jury the awarded damages should not be punitive. The jury awarded £ *4,000* to *each* of the two plaintiffs. The defendant appealed. The Court of Appeal (The Master of the Rolls Lord Denning and Lords Justices Diplock and Salmon) *allowed the appeal* and ordered a *new trial* (November 21, 1967). Lord Denning, considering the cases referred to in my last note, said that the damages as awarded were "punitive, exorbitant and extravagant"; he would think £ 1,000 for each would be adequate, but this remark would not be binding on anyone. The two other learned Lords Justices concurred[23]).

22. — *Re: Martelli* v. *Sulzberger and others (Libel in a foreign newspaper).*

On November 21, 1965, the *New York Times* published an article which gave the names of *spies* and among them Giuseppe Martelli. The same article appeared the next day in the *New York Times International Edition*. Each of the newspapers circulated in many countries, including England. Dr. Martelli, Professor at the University of Sussex, had been tried two years before under the Official Secrets Act, and was *acquitted*. When this was brought to the knowledge of the two newspapers, they published a *correction* and *apology* to Dr. Martelli "for the inadvertent and inaccurate inclusion of his name in a list of spies".

Dr. Martelli decided nevertheless to bring an action in England, the only issue could be how much *damages* should be awarded. Dr. Martelli applied for leave to *serve the writs out of jurisdiction* on Dr. Sulzberger, the author of the article, and three other persons who were functionaries of the two newspapers. The Master granted that application and his Order was confirmed in January 1967 by Mr. Justice James. Each of the four defendants lodged an interlocutory appeal which was heard by the Court of Appeal (The Master of the Rolls Lord Denning, Lords Justices Salmon and Winn) on March 21, 1967. The appeal was dismissed. Lord Denning found — with the concurrence of the two other Lords Justices — that in the given circumstances service out of jurisdiction was in accordance with Order 11 of the Rules of the Supreme Court[24]). There was a good arguable case — His Lordship emphasized — that the four defendants committed a *tort within jurisdiction*. Service out of jurisdiction did not mean any injustice to the defendants.

23. — *Re: Goody* v. *Odhams Press Ltd. (Libel action by a convict).*

This case was described in Court as a *unique* one. D. Goody was serving a thirty years sentence for conviction for the Great Train Robbery (mentioned in my "Letter" of 1966 - II, 22 and 23). The *People*, published by Odhams Press Ltd., brought in July 1966 an article in which it was wrongly remarked that Goody had been involved in another earlier robbery at London Airport. Goody sued Odhams Press for libel. This peculiar case was heard by Mr. Justice Widgery on June 20 and 21, 1967. The Judge told the jury they must disregard the plaintiff's part in the Train Robbery. The jury awarded the plaintiff £ 2 as damages and a part of the costs. This verdict means that the article was defamatory of the plaintiff who, however, had not had any damage[25]).

Three other men who had also taken part in the Train Robbery sued Odhams Press for libel in another article, but failed as the jury found the article was not defamatory.

(To be continued)

Dr. Paul ABEL
Consultant on International and Comparative Law
London

23) *The Times, Law Report*, November 22, 1967.

24) *The Times, Law Report*, March 22, 1967.

25) *Daily Telegraph*, Jnne 21 to 23, 1967.

INTERNATIONAL ACTIVITIES

Council of Europe

Consultative Assembly (19th ordinary session)

(January 29 to February 2, 1968)

The Consultative Assembly of the Council of Europe held its 19th ordinary session at Strasbourg and heard the report submitted by Mr. de Grailly (France) on behalf of its Legal Committee. Based on the Committee's proposal, the Assembly adopted unanimously, on January 31, 1968, Recommendation 512(1968) the text of which is reproduced below.

The Assemhly,

1. Considering that the literary and artistic works prodnced by European authors represent an essential feature of the common heritage of the memher countries, the safeguard of which is among the aims of the Council of Europe as set out in Article 1 of its Statute;

2. Emphasizing the consequcnt need to provide adequate safeguards for the rights of intellectual workers, among whom are the authors of literary and artistic works;

3. Recalling its Order No. 261 of April 28, 1967, instructing the Legal Committee to consider the questions relating to the Intellectual Property Conference of Stockholm, and to report hack to it;

4. Takes note of the creation of a World Intellectual Property Organization (WIPO) and expresses the hope that the Council of Europe will maintain and develop the same relations with the new Organization as those it maintained formerly with BIRPI;

5. And, having noted hoth the amendments made at the Stockholm Conference to the Berne Convention for the Protection of Literary and Artistic Works and the Protocol Regarding Developing Countries;

6. Being desirous:

a) of ensuring that the whole brunt of the provisions of the Protocol designed to promote the necessary cultural development of certain countries shall not fall entirely on authors:

b) to see the Council of Europe contribute particularly effectively to the copyright protection;

7. Recommends that the Committee of Ministers invite member Governments:

a) in cooperation with WIPO and following a Recommendation adopted at Stockholm, to study ways and means and the financial machinery wherehy authors could he compensated for the sacrifices which the straightforward application of the provisions of the Protocol as they stand would entail for them;

b) to consider the possibility, within the Council of Europe, of entering into the " special agreements " referred to in Article 20 of the Berne Convention with the ohject of " granting to authors more extensive rights than those granted by that Convention ".

NEWS ITEMS

UNITED STATES OF AMERICA

Notice concerning extension of copyright term in certain cases [1])

A recent Act of Congress, P. L. 90-141, 90th Congress, First Session[2]), extends the length of all copyrights now in their *second* term that would expire before Decemher 31, 1968. Under the Act these copyrights will continue in force through *December 31, 1968.* The extension is *automatic* and does not require any action in the Copyright Office.

Two earlier Acts (P. L. 87-668 and P. L. 89-142) had already extended the second term of copyrights scheduled to expire hetween September 19, 1962, and December 31, 1967, to the end of 1967. The new Act extends the total duration of those copyrights for another year, to Decemher 31, 1968, as shown in Example 1 below. The new Act also extends any second-term copyright that was scheduled to expire during 1968 to December 31, 1968, as shown in Example 2 below.

Examples:

1. A work that was first entered for copyright on October 5, 1907, and renewed in 1935, would normally have fallen into the puhlic domain on Octoher 5, 1963. The first Act extended the copyright to Decemher 31, 1965, the second Act extended it further to Decemher 31, 1967, and P. L. 90-141 now extends the copyright to December 31, 1968.
2. A work that was first copyrighted on April 10, 1912, and renewed in 1940, would normally have fallen into the public domain on April 10, 1968. The new Act now extends this copyright to December 31, 1968.

Note:

This extension *does not* apply to copyrights now in their first 28-year term. *It has no effect on the time limits for renewal registration,* and it does not revive any copyrights that have already expired. The extension *applies only* to copyrights previously renewed in which the second term would otherwise expire.

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[1]) Circular 15X of the Copyright Office (February 1968).

[2]) See *Copyright,* 1968, p. 43.

CALENDAR

BIRPI Meetings

Date and Place	Title	Object	Invitations to Participate	Observers Invited
1968				
June 28 *) Geneva	Committee for International Cooperation in Information Retrieval among Examining Patent Offices (ICIREPAT) - Enlarged Transitional Steering Committee	Questions of technical cooperation	Germany (Fed. Rep.), Japan, Netherlands, Soviet Union, Sweden, United Kingdom, United States of America	International Patent Institute
July 1 to 5 Paris (Unesco Headquarters)	Committee of Experts on the Photographic Reproduction of Works Protected by Copyright, convened jointly with Unesco	To examine the copyright problems raised by the reproduction of protected works by photographic or analogous processes and to formulate appropriate recommendations with a view to possible solutions	Argentina, Bulgaria, Congo (Kinshasa), Czechoslovakia, France, India, Iran, Japan, Lebanon, Mexico, Nigeria, Netherlands, Spain, Sweden, United States of America. Consultants from Germany (Fed. Rep.) and the United Kingdom	*Intergovernmental Organizations:* United Nations and Specialized Agencies *Non-Governmental Organizations:* International Confederation of Societies of Authors and Composers (CISAC); International Congress on Reprography; International Council on Archives; International Federation for Documentation; International Federation of Library Associations; Internationale Gesellschaft für Urheberrecht; International Law Association; International Literary and Artistic Association; International Publishers Association
September 24 to 27 Geneva	Interunion Coordination Committee (6th Session)	Program and Budget of BIRPI for 1969	Argentina, Australia, Austria, Belgium, Brazil, Cameroon, Denmark, France, Germany (Fed. Rep.), Hungary, India, Iran, Italy, Japan, Kenya, Morocco, Mexico, Netherlands, Poland, Portugal, Rumania, Soviet Union, Spain, Sweden, Switzerland, United Kingdom, United States of America	—
September 24 to 27 Geneva	Executive Committee of the Conference of Representatives of the Paris Union (4th Session)	Program and Budget (Paris Union) for 1969	Argentina, Australia, Austria, Cameroon, France, Germany (Fed. Rep.), Hungary, Iran, Japan, Kenya, Morocco, Mexico, Netherlands, Poland, Soviet Union, Spain, Sweden, Switzerland, United Kingdom, United States of America	All the other Member States of the Paris Union; United Nations; International Patent Institute; Council of Europe
October 2 to 8 Locarno	Diplomatic Conference	Adoption of a Special Agreement Concerning the International Classification of Industrial Designs	All Member States of the Paris Union	States not members of the Paris Union *Intergovernmental Organizations:* United Nations; Unesco; Council of Europe *Non-Governmental Organizations:* Committee of National Institutes of Patent Agents; Inter-American Association of Industrial Property; International Association for the Protection of Industrial Property; International Chamber of Commerce; International Federation of Patent Agents; International League Against Unfair Competition; International Literary and Artistic Association; Union of European Patent Agents

*) Changed from May 3 and 4.

Date and Place	Title	Object	Invitations to Participate	Observers Invited
October 21 to November 1 Tokyo	Committee for International Cooperation in Information Retrieval among Examining Patent Offices (ICIREPAT) - Meeting	Particulars to be announced later		
November 25 to 29 Geneva	BIRPI Symposium on Practical Aspects of Copyrigbt (beld witb tbe cooperation of CISAC)	To offer to participants information on practical aspects of copyrigbt protection (collection and distribntion of royalties, organization and working of autbors' societies or otber bodies, etc.)	Personalities from developing countries. Members and officers of autbors' societies. Individual participants against payment of a registration fee	International Labour Office; Unesco; Council of Europe
December 2 to 10*) Geneva	Committee of Experts — Patent Cooperation Treaty (PCT)	New Draft Treaty	All Member States of tbe Paris Union	*Intergovernmental Organizations:* United Nations; United Nations Industrial Development Organization; United Nations Conference on Trade and Development; International Patent Institute; Organization of American States; Permanent Secretariat of tbe General Treaty for Central American Economic Integration; Latin-American Free Trade Association; Council of Enrope; Enropean Atomic Energy Community; European Economic Community; Enropean Free Trade Association; African and Malagasy Industrial Property Office *Non-Governmental Organizations:* Committee of National Institntes of Patent Agents; Conncil of European Industrial Federations; Enropean Industrial Research Management Association; Inter-American Association of Industrial Property; International Association for tbe Protection of Industrial Property; International Cbamber of Commerce; International Federation of Patent Agents; Japan Patent Association; National Association of Manufactnrers (U. S. A.); Union of European Patent Agents; Union des industries de la Communauté européenne

*) Tbis meeting replaces the meetings previously announced for tbe weeks of July 1 to 9, and November 4 to 12, 1968.

Meetings of Other International Organizations Concerned with Intellectual Property

Place	Date	Organization	Title
1968			
Prague	May 1 to 5	International League Against Unfair Competition (LICCD)	Symposium
Strasbourg	Jnne 17 to 21	Council of Enrope	Working Party of the Committee of Experts on Patents
Amsterdam	June 9 to 15	International Pnblisbers Association (IPA)	Congress
Vienna	June 24 to 29	International Confederation of Societies of Anthors and Composers (CISAC)	Congress
Lima	December 2 to 6	Iuter-American Association of Indnstrial Property (ASIPI)	Congress

VACANCIES FOR POSTS IN BIRPI

Applications are invited for the following posts:

Competition No. 60

Second Deputy Director or Assistant Director

Category:

According to the qualifications and experience of the candidate selected, an appointment will be offered either as Second Deputy Director or as Assistant Director.

Duties:

The duties of the post consist, in general, in assisting tbe Director of BIRPI in organizing and implementing the tasks of BIRPI.

Qualifications:

(a) wide experience in the field of industrial property law and in the field of copyright law — particularly in their international aspects — or at least in one of these two fields, preferably witb some experience in the other;

(b) wide experience in administrative matters, preferably in connection with international organizations;

(c) university degree in law or equivalent professional qualification;

(d) excellent knowledge of one of the official languages (English and Frencb) and at least a good knowledge of the other. Knowledge of additional languages would be an advantage.

Nationality:

Candidates must be nationals of one of the member States of the Paris Union or of the Berne Union.

Age limit:

Less tban 55 at the date of appointment.

Date of entry on duty:

January I, 1969, or a later date as mutually agreed.

Applications forms and full information regarding the *conditions of employment* may be obtained from the Head of Personnel, BIRPI, 32, chemin des Colombettes, 1211 Geneva, Switzerland.

Applications forms duly completed should reach BIRPI *not later than July 31, 1968.*

Competition No. 55

Senior Assistant in the Industrial Property Division

Category and grade:

P3/P4, according to qualifications and experience.

Principal duties:

In general, to assist in the implementation of BIRPI's program in the patent field with special emphasis on the preparatory work for the proposed Patent Cooperation Treaty.

The particular duties will include:

(a) legal studies on problems related to the Patent Cooperation Treaty;

(b) study of patent office practice in several countries with a view to proposing adequate solutions for the practical implementation of PCT;

(c) other surveys in the patent field;

(d) drafting, and assistance in drafting, of working papers for and reports on international meetings, especially in connection with the Patent Cooperation Treaty;

(e) participation in meetings of other international organizations.

Qualifications:

(a) university degree in law or qualification equivalent to such degree;

(b) good knowledge in the field of patent law (including its international aspects and the practice of major examining patent offices);

(c) excellent knowledge of one of the official languages (English and French) and at least a good knowledge of the other.

Preference will be given to candidates who, in addition to the above-mentioned law degree, also hold a university or equivalent degree in a given field of technology and have practical experience in the processing of patent applications, especially as a patent examiner.

Date of entry on duty: as soon as possible.

Competition No. 56

Assistant in the Industrial Property Division

Category and grade:

P1/P2, according to qualifications and experience.

Principal duties:

In general, to assist in the implementation of BIRPI's industrial property program.

Under the direction and supervision of a senior staff member, the particular duties will include:

(a) legal studies on industrial property questions, especially in the field of marks and unfair competition;

(b) drafting, and assistance in drafting, of working papers for and reports on international meetings;

(c) participation in meetings of other international organizations;

(d) collecting the material for, and preparing the publication of, a complete collection of industrial property legislation of all countries.

Qualifications:

(a) university degree in law or qualification equivalent to such degree;

(b) at least some familiarity with industrial property, especially in the field of marks and unfair competition (preferably including its international aspects);

(c) 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: as soon as possible.

Competition No. 59

Assistant (Developing Countries)

(Fixed term appointment for two years with the possibility of renewal)

Category and Grade: P 3.

Principal duties:

In general, to assist in the formation and implementation of BIRPI programs concerning assistance to developing countries.

The particular duties will include:

(a) correspondence and contacts with representatives of developing countries;

(b) participation in international meetings dealing with questions of particular interest to developing countries;

(c) studying and preparing documents on questions of technical assistance to developing countries in the field of industrial property and copyright..

Qualifications:

(a) university degree or equivalent qualification;

(b) experience in the field of industrial property or copyright (preferably including their international aspects) with particular knowledge of conditions in developing countries;

(c) experience in the work of intergovernmental agencies would be an advantage;

(d) 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: August 1968.

For the three posts above-mentioned:

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 nationals are on the staff of BIRPI.

Age limit:

The candidates designated must be less than 50 years of age at the date of appointment. (As regards Vavancy No. 56, desirable age: 30/35 years.)

Application forms and full information regarding the *conditions of employment* may be obtained from the Head of Personnel, BIRPI, 32, chemin des Colombettes, 1211 Geneva, Switzerland.

Application forms duly completed should reach BIRPI *not later than May 31, 1968* (as regards vacancies Nos. 55 and 56) or *June 30, 1968* (as regards vacancy No. 59).