

Copyright

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WORLD INTELLECTUAL PROPERTY ORGANIZATION

RUMANIA

Ratification of the WIPO Convention

Notification of the Director of BIRPI to the Governments of the countries invited to the Stockholm Conference

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 the Socialist Republic of Rumania deposited, on February 28, 1969, its instrument of ratification dated December 28, 1968, of the Convention Establishing the World Intellectual Property Organization (WIPO), with the following declaration:

“The provisions of Articles 5 and 14(1) of the Convention Establishing the World Intellectual Property Organization

signed at Stockholm on July 14, 1967, are not in accordance with the principle of universality of treaties, by which all States have the right to become parties to multilateral treaties regulating questions of general interest.” (*Translation*)

The Socialist Republic of Rumania has fulfilled the condition set forth in Article 14(2) of the Convention by concurrently ratifying the Stockholm Act of the Paris Convention in its entirety.

A separate notification will be made of the entry into force of the said Convention, when the required number of ratifications or accessions is reached.

Geneva, March 10, 1969.

WIPO Notification No. 9

UKRAINIAN SOVIET SOCIALIST REPUBLIC

Ratification of the WIPO Convention

Notification of the Director of BIRPI to the Governments of the countries invited to the Stockholm Conference

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 the Ukrainian Soviet Socialist Republic deposited on February 12, 1969, its instrument of ratification dated September 30, 1968, of the Convention Establishing the World Intellectual Property Organization (WIPO), with the following declaration:

“The Ukrainian Soviet Socialist Republic declares that the Convention Establishing the World Intellectual Property Organization regulates questions concerning the interests of all countries; and that is why it must be open to participation of all States, in accordance with the principle of their sovereign equality.” (*Translation*)

The deposit of this instrument of ratification is in conformity with the provisions of Article 14(1)(ii) and of Article 5(2)(i) of the said Convention.

Geneva, February 24, 1969.

WIPO Notification No. 7

UNITED KINGDOM

Ratification of the WIPO Convention*Notification of the Director of BIRPI to the Governments of the countries invited to the Stockholm Conference*

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 the United Kingdom of Great Britain and Northern Ireland deposited on February 26, 1969, its instruments of ratification dated November 18, 1968, of the Convention Establishing the World Intellectual Property Organization (WIPO).

The United Kingdom of Great Britain and Northern Ireland has fulfilled the condition set forth in Article 14(2) of

the Convention by concurrently ratifying the Stockholm Act of the Paris Convention in its entirety and by acceding to the Stockholm Act of the Berne Convention with the declaration provided for in Article 28(b)(i) of the said Act to the effect that the accession shall not apply to Articles 1 to 21 and to the Protocol Regarding Developing Countries.

A separate notification will be made of the entry into force of the said Convention, when the required number of ratifications or accessions is reached.

Geneva, March 10, 1969.

WIPO Notification No. 8

INTERNATIONAL UNION

UNITED KINGDOM

**Accession to the Stockholm Act of the Berne Convention
(with the exception of Articles 1 to 21 and of the Protocol Regarding Developing Countries)**

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 above Convention, has the honor to notify him that the Government of the United Kingdom of Great Britain and Northern Ireland deposited on February 26, 1969, its instrument of accession dated November 18, 1968, to the Berne Convention for the Protection of Literary and Artistic Works

of September 9, 1886, as revised at Stockholm on July 14, 1967, with the declaration provided for in Article 28(b)(i) of the said Act to the effect that the accession shall not apply to Articles 1 to 21 and to the Protocol Regarding Developing Countries.

A separate notification will be made of the entry into force of the Stockholm Act of the said Convention when the required number of ratifications or accessions is reached.

Geneva, March 10, 1969.

Berne Notification No. 7

Extraordinary Session of the Permanent Committee of the International Union for the Protection of Literary and Artistic Works (Berne Union)

(Paris, February 3 to 7, 1969)

Final Report

First Part: Report on the Meetings of the Permanent Committee Alone

1. The Permanent Committee of the International Union for the Protection of Literary and Artistic Works (Berne Union) hereafter referred to as "The Permanent Committee" met in extraordinary session from February 3 to 7, 1969, in Paris, at the Headquarters of Unesco, which had extended its hospitality to the Committee because of the fact that an extraordinary session of the Intergovernmental Copyright Committee was being held there at the same time.

2. The twelve States members of the Permanent Committee were represented: Belgium, Brazil, Denmark, France, Germany (Federal Republic), India, Italy, Portugal, Rumania, Spain, Switzerland, United Kingdom.

3. Representatives of the following States, being members of the Berne Union, parties to the Universal Copyright Convention or Members of Unesco, were present as observers: Afghanistan, Algeria, Andorra, Argentina, Austria, Canada, Ceylon, Chile, Costa Rica, Czechoslovakia, Finland, Guatemala, Holy See, Ireland, Israel, Japan, Kenya, Laos, Madagascar, Mexico, Monaco, Netherlands, New Zealand, Nicaragua, Nigeria, Peru, Philippines, Senegal, Sweden, Thailand, Tunisia, Turkey, United States of America, Uruguay and Yugoslavia.

4. Observers had also been sent by three intergovernmental organizations, twelve international non-governmental organizations and three national organizations.

5. The list of participants is appended to this report (Annex C).

6. In the absence of the Chairman, H. E. Ambassador Tristram Alvis Cippico (Italy), the Vice-Chairman of the Permanent Committee, Mr. Jorge Carlos Ribeiro (Brazil) opened the extraordinary session and, stressing the importance of the matters on the agenda, hoped that the discussions would be fruitful.

7. Professor G. H. C. Bodenhausen, the Director of BIRPI, wished the Permanent Committee every success in carrying out the work to be done during the extraordinary session.

8. Mr. H. Saba, representing the Director-General of Unesco, also expressed his good wishes and welcomed the Permanent Committee on behalf of his Organization. He reminded the meeting that it was not the first time that this Committee and the Intergovernmental Copyright Committee had had occasion to co-operate in studying the problems of international copyright.

9. The Director of BIRPI then informed the Permanent Committee of the Chairman's resignation and pointed out

that the Internal Rules (Rule 9) provided a possible basis for a solution in the event of there being no Chairman.

10. On the proposal of the Italian delegation, seconded by the delegation of the Federal Republic of Germany, the Permanent Committee unanimously invited Mr. Jorge Carlos Ribeiro (Brazil), the Vice-Chairman, to act as Chairman.

11. In accordance with Rule 7(3), of the Internal Rules of the Permanent Committee, the International Bureau of the Berne Union (BIRPI) was responsible for the secretariat of the debates.

12. After adopting its agenda, the Permanent Committee proceeded to consider the items on the basis of the working papers prepared and distributed by BIRPI.

13. The Permanent Committee was convened in extraordinary session at the request of the Director of BIRPI, for the special purpose of helping him in formulating the advice which he might be called upon to give to the Intergovernmental Copyright Committee on the revision of the Universal Copyright Convention with respect to matters of concern to the Berne Union (in particular, the amendment of Article XVII of the said Convention and the Appendix Declaration relating thereto).

14. As these matters relate essentially to the protection of copyright in developing countries, the Director of BIRPI first submitted to the Permanent Committee the present results of the inquiry he had carried out, in pursuance of the resolution adopted at the 13th ordinary session (Geneva, December 1967), on the intentions of States members of the Berne Union with regard to the application of the Protocol Regarding Developing Countries, annexed to the Stockholm Act of the Berne Convention.

15. Having considered these replies, the Permanent Committee heard a number of supplementary statements from States which had not yet replied to the above-mentioned inquiry.

16. Mr. de San (Belgium) said that, in this country, the ratification of international instruments was a prerogative of the legislature and that the question would therefore have to be put before the Belgian Parliament. He added that the problem of revision of the Universal Convention seemed to him to be linked with the entry into force of the Protocol and that, in the circumstances, the Belgian Government would not be able to define its position until the results of the work of the joint study group which was to be set up were available.

17. Mr. Stoenescu (Rumania) said that his country's instruments of ratification of the Convention establishing the World Intellectual Property Organization and of the Stockholm Act of the Paris Convention (industrial property) would shortly be deposited. He added that the Protocol and the Stockholm Act of the Berne Convention were under consideration and that information regarding the situation would be given as soon as possible.

18. Mr. Weincke (Denmark) explained that the Danish Government had not yet come to a decision and it was the Danish Copyright Council which had come out in favour of a declaration of application of the Protocol.

19. The Permanent Committee then studied the report of the Director of BIRPI on the consultations he had had with the United Nations Secretariat concerning the definition of "a developing country in conformity with the established practice of the General Assembly of the United Nations" (Article 1 of the Protocol). It emerged from these consultations that the criterion suggested was based on the idea of assessments of Member States and the relaxation from the obligation to pay them. A list of States benefiting from such exemption had been sent by the Secretariat of the United Nations to the Director of BIRPI. The Director had submitted it to the Permanent Committee as a list of countries which might be considered developing countries within the meaning of Article 1 of the Protocol.

20. Mr. Laurelli (Argentina) noted that his country and certain other Latin American countries were not included in the list; he hoped that the criteria of the United Nations Conference on Trade and Development (UNCTAD) would be adopted in preference to the other system, in view of the relationship which exists between social and cultural problems and economic problems. The Chairman of the Permanent Committee pointed out, however, that such a proposal had been expressly rejected by the Stockholm Conference.

21. After taking note of the report by the Director of BIRPI, the Permanent Committee decided, on the proposal of its Chairman, to keep the question of the definition of developing countries on its agenda and, in particular, to reconsider it at its next ordinary session.

22. Having thus examined the matters directly connected with the Protocol adopted at Stockholm (intentions of Member States concerning its application; criterion for determining which countries were to benefit from it) the Permanent Committee then studied the report of the Director of BIRPI concerning a possible revision of Article XVII of the Universal Copyright Convention and the Appendix Declaration relating thereto, the problems which it involved and its possible consequences.

23. Mr. Balakrishnan (India) was worried about the delay in the entry into force of the Stockholm Act of the Berne Convention and feared that the revised Act of the Universal Convention would suffer the same fate. The delay tactics adopted by certain countries in regard to ratification seemed to him regrettable.

24. Mr. Chakroun (Morocco) reminded the meeting that the developing countries were mainly importers of intellectu-

al works; he deplored that the Stockholm revision had not achieved its purpose owing to failure on the part of the advanced countries to ratify it. He hoped that there would be a change in attitude, to avoid the world becoming divided into two opposing groups.

25. Mr. Chaudhuri (India) emphasized the extent of the developing countries' needs, particularly for low-priced educational literature. He thought that the solution lay not in importing books, but in legal measures such as those established at Stockholm. He also drew attention to the problem of regional languages, in connection with the translation of scientific and educational books. He suggested, moreover, that not only should Article XVII of the Universal Convention be revised, but provisions similar to those of the Stockholm Protocol should be introduced into that Convention. He did not believe that there were any grounds for the fears of the developed countries concerning the Protocol, since its application would not mean that every book would be reproduced; what could be translated and reproduced should be clearly defined and specified. In his opinion, copyright did not have absolute force and should be subjected to certain restrictions for the purpose of aiding the developing countries in their national education and advancement policies. In conclusion, he hoped that the spirit which had reigned during the drawing up of the Stockholm Protocol would be preserved in the future.

26. Mr. Charpentier (France) stated that his delegation felt that revision of Article XVII of the Universal Convention was justified all the more so since the ratification of the Stockholm Protocol was encountering difficulties.

27. Mr. Laurelli (Argentina) recalled that the developing countries still had full freedom to decide what their international relations concerning copyright should be; he felt that a close examination of the general situation was necessary, with particular reference to the relations between the two Conventions and the need to avoid clashes in matters of jurisdiction as well as the vulnerability of copyright. He pointed out that while his country was still in favour of an amendment to the provisions of the Universal Copyright Convention such an amendment should be introduced only after a thorough study had been made of the whole range of problems which were arising at the present time with regard to copyright protection in order to avoid any confrontation between poor and rich countries.

28. Mr. Ulmer (Federal Republic of Germany) stated that his Government had submitted the Stockholm Act of the Berne Convention, in its entirety, to its Parliament for ratification; the Parliament has not yet made its decision. His view was that, if that Act entered into force, revision of Article XVII of the Universal Convention was not necessary, as the Protocol would be sufficient. However, in view of the hesitancy in that respect apparent in certain developed countries, the wish to revise the Universal Copyright Convention was understandable. Mr. Ulmer considered that such a revision might impair the universal scope of the Berne Union. He reminded the meeting that, for the Intergovernmental Copyright Conference in Geneva in 1952, the establishment

of the safeguard clause (Article XVII) had been a question of substance and that the preamble to the Universal Convention expressly mentioned the desire of States not to impair the Berne Convention. He suggested that if the link between the two Conventions defined by Article XVII were ended, it would be advisable to replace it by another; the revision should be studied in the general context, having regard to the problems as a whole, with the object of ensuring better development of international copyright.

29. Mr. Archi (Italy) reiterated that the Italian Government was favourable towards a revision, limited solely to Article XVII, of the Universal Copyright Convention. He underlined the fact that the present situation was different from that in 1952 (Geneva Conference), because at that time the idea of developing countries did not exist.

30. Mr. Fernandez de la Mora (Spain) expressed himself along the same lines as the delegate of Italy.

31. The Director of BIRPI stressed the indisputable relationship between the revision of Article XVII of the Universal Convention and acceptance of the Stockholm Protocol. It did not seem to him that there was undue delay between signature and ratification of the latter; in many countries, the decision was subject to Parliamentary procedure; many interests and problems were, moreover, involved, and one group of countries would delay its decision until it knew what another group was doing, and vice versa. The Director of BIRPI also drew attention to the need for developing countries to enact legislation prior to the implementation of the Protocol. He informed the Permanent Committee that, in order to make the situation more flexible, it was planned to prepare certain models which would show how the Protocol might be applied so as to satisfy the various categories of interests involved.

32. The Director of BIRPI also drew the Permanent Committee's attention to the differences that appeared to exist among the countries in favour of a revision of the

Universal Copyright Convention, and to the problems to be solved: To what extent should the Universal Copyright Convention be revised? Which provisions could be amended? What procedure should be followed? What kind of relationship should there be between the two Conventions? He suggested that the Permanent Committee should hold a joint meeting with the Intergovernmental Copyright Committee in order to set up the proposal study group, and that this group should then come to a decision, within the limits of its competence concerning the revision of the Universal Convention.

33. The Chairman noted, in conclusion, that no general opinion of the Permanent Committee had been recorded, but that a number of views had been expressed.

34. Following the meetings of the Intergovernmental Copyright Committee on its own, and the adoption of a resolution establishing a sub-committee to examine the issues raised by the proposals for the revision of Article XVII of the Universal Copyright Convention and its Appendix Declaration, the Director of BIRPI informed the Permanent Committee of his intention to ask the Chairman to call an extraordinary session of the Committee immediately before the meetings of the said subcommittee. The purpose of this extraordinary session would be two-fold: on the one hand to assist the Director of BIRPI in the advice he will be called upon to give to the subcommittee on the issues included in its mandate; and on the other hand to designate the two States members of the Permanent Committee to attend the meetings of the sub-committee as observers.

35. Mr. Ulmer (Federal Republic of Germany) supported the proposal of the Director of BIRPI and emphasized that it would be necessary for the Permanent Committee to formulate its advice on the issues to be considered by the subcommittee which were of direct interest to the Berne Union.

36. The Chairman of the Committee, noting the agreement of the Committee on this proposal, declared that it was so decided.

Second Part: Report on the Joint Meetings of the Permanent Committee and of the Intergovernmental Copyright Committee

37. After separately examining such questions as solely concerned their respective terms of reference, the Committees met together to consider what action should be taken in pursuance of resolutions 3 and 59(IX), adopted respectively by the Permanent Committee of the Berne Union and by the Intergovernmental Copyright Committee at their ordinary sessions held in December 1967, concerning the setting up, composition and terms of reference of a joint study group on international copyright.

38. The United States representative stated that suggestions so far made under existing international agreements to meet the needs of developing States had produced nothing definite, and that short-term and long-term solutions must be envisaged. International copyright agreements should not simply protect, but also facilitate the utilization of intellectual property. The joint study group should therefore give pri-

ority consideration to the immediate problems and to the needs of the developing countries; its terms of reference should be based on the resolutions 3 and 59(IX), adopted by the two Committees in 1967, and it should report back periodically to the Chairman of the Committees.

On behalf of American publishers, he read out a statement referring to the main problems and the publishers' interest in finding solutions for them. This statement is annexed to this report (Annex B).

He invited the joint study group to hold its first session in Washington from September 29 to October 3, 1969.

39. The representative of France recalled that States were hesitant about ratifying the Stockholm Protocol, which did not seem to have justified the hopes placed in it. The establishment of a joint study group should ensure a coherent approach to current problems in international copyright, pro-

vided that its terms of reference were as broad as possible and that a comprehensive examination was made of international copyright relations, for a twofold purpose: to find a legal framework that would take care of the needs of the developing countries and, on the model of the Berne Convention, to ensure a high degree of protection for the products of intellectual creativity. It should fix its own method of work. The qualified representatives of authors should be associated with its deliberations.

40. The representative of Italy supported the United States proposal to set up a joint study group, but recalled that the group should not discuss the revision of Article XVII of the Universal Convention and the Appendix Declaration relating to it.

41. The representatives of Kenya and Mexico agreed with the representative of Italy.

42. The representative of France also agreed. The terms of reference of the joint study group should not concern the revision of Article XVII of the Universal Copyright Convention. France was very much in favour of there being two Conventions.

43. The representative of the Federal Republic of Germany also supported the United States proposal. The two essential questions for examination by the group were the relations between the two existing copyright conventions, and the relations between advanced and developing countries. It seemed to him that the revision of Article XVII of the Universal Convention was also a matter that affected the relations between the two Conventions.

44. The representative of Spain, agreeing with the last speaker, pointed out that there were not only legal and political aspects, but also economic; they should be discussed in the spirit of the Berne Union without prejudice to a right hitherto regarded as universal.

45. The Canadian observer stressed the urgency of solving problems which justified setting up the proposed group, whose terms of reference should be as wide as possible.

46. The United Kingdom representative suggested that one long-term aim of the study group might be to prepare a single Convention affording two different levels of protection, the level as regards the advanced countries being that of the Stockholm Act of the Berne Convention, excluding the Protocol.

47. The representative of India suggested that three points concerning international copyright were at issue: revision of Article XVII of the Universal Convention; matters, other than that revision, which were questions for the joint study group; and Unesco aid in setting up an information centre to provide some immediate way of dealing with the problems of the developing countries. Drawing up a third convention could easily hold up a solution of the existing problems and therefore India would be opposed to it.

48. The representative of Switzerland agreed with previous speakers that the terms of reference should be as wide as possible, but doubted whether the proposed timetable could be respected.

49. The Argentine observer endorsed what had been said by the representatives of the Federal Republic of Germany and the United States and urged that priority be given to examining relations between advanced and developing countries, so as to allow the latter easier access to intellectual property.

50. The representative of Belgium said that the United States proposal offered a promising basis for conciliation and a shared approach.

51. The representative of Denmark and the Swedish observer supported the United States proposal.

52. The observer from Monaco asked whether problems raised by satellite transmission should not also be considered by the group.

53. The Assistant Director-General for International Standards and Legal Affairs of Unesco and the Director of BIRPI informed the Committees of the activities envisaged on this subject by their organizations.

54. After the general exchange of views, the Committees discussed the composition and terms of reference of the joint study group.

55. On the basis of two proposals, regarding its composition submitted by the representatives of India and of Italy, the Committees agreed on the list of twenty-six States named in the resolution relating to the joint study group.

56. The Committees discussed the admission, as observers, of representatives of the interests concerned. The observers from the International Literary and Artistic Association, the International Confederation of Societies of Authors and Composers, the International Writers' Guild and the International Publishers' Association stressed the necessity of having those directly concerned represented at the meetings of the group.

57. Some delegates referred to the desirability of arranging for the representation also of users of property protected by copyright.

58. The Committees finally considered that the question of representation on the group of the interests concerned could be settled at the same time as the group's terms of reference.

59. The Committees set up a working group to draw up precise terms of reference, composed of representatives of France, Federal Republic of Germany, India, Italy, United Kingdom, United States, and with the Chairman of the Committees as Chairman. The working group submitted to the Committees a draft resolution regarding the joint study group on international copyright.

60. When this resolution was adopted, the Committees were unanimous in specifying, in reply to remarks by the representative of Belgium, that the group was to be consultative in character.

61. During the discussion of paragraph 7(a) of the resolution, it was generally agreed that the studies concerning an international mechanism which would enable the developing countries to have easier access to copyrighted works should not bear for the moment on national or international fi-

nancing procedures, which might have implications going beyond the specific problems of copyright.

62. The observer of Sweden proposed that under paragraph 7(b) a reference be made to the principles of the Stockholm Protocol. However, after a discussion, this proposal was withdrawn.

63. With regard to paragraph 7(c), the observers from Monaco and Tunisia were afraid that the terms of reference of the joint study group with regard to the methods which might be used in establishing links between the two existing Conventions might affect those of the sub-committee set up under resolution No. 1(XR) to prepare for the revision of Article XVII of the Universal Convention.

64. The representative of the Federal Republic of Germany pointed out that, besides the question of a possible replacement of the special link of Article XVII of the Universal Convention and the Appendix Declaration by another link, there might be envisaged general links between the two Conventions which the joint study group could examine.

65. The Tunisian observer having raised the question where the joint secretariat of the study group would be located, it was explained that any communications could be sent either to Unesco or to BIRPI, each of these organizations undertaking to transmit immediately to the other any communications so received.

66. The Committees then adopted, each so far as it was concerned, resolutions Nos. 1 and 2 (XR). The text of resolution No. 1 is annexed to this report (Annex A).

67. The representative of France, speaking for all the participants, congratulated the Chairman of the Committees for the patience, competence and flexibility which he had shown in conducting the discussions. He also thanked the Secretariats whose assistance had contributed to the development of the work.

68. The representatives of the United States of America, India and Mexico joined in these remarks.

69. The Chairman thanked the participants for the work they had accomplished. He expressed his gratitude to the Committees for the confidence they had placed in him and observed that the results of the meetings could be considered as the beginning of a constructive period for the future of international copyright.

70. On behalf of the international non-governmental organizations, the President of the International Literary and Artistic Association joined the congratulations addressed to the Committees and to their Chairman.

71. The Chairman then declared the extraordinary sessions of the Committees closed.

ANNEX A

Resolution Concerning the International Copyright Joint Study Group

Resolution No. 1

The Permanent Committee of the International Union for the Protection of Literary and Artistic Works (Berne Union) sitting with the Intergovernmental Copyright Committee,

1. *Considering* the serious present and potential problems of multi-lateral copyright relations, considering the necessity of furthering the betterment of mankind as well as the urgent requirements of developing countries in the educational field and the impact of international copyright arrangements upon them, considering also the economic problems of domestic production and international exchanges of intellectual works;

2. *Recalling* that the Stockholm Conference on Intellectual Property (1967) has adopted the Stockholm Act of the Berne Convention including the Protocol Regarding Developing Countries, and noting that the Protocol has not been adopted by many of the Member States, and recalling resolutions 3 and 59(IX) adopted by the Committees at their thirteenth and ninth sessions respectively, held in December 1967, as well as resolution No. I(XR) adopted by the Intergovernmental Copyright Committee at its present session;

3. *Establishes* a group for the study of the entire situation of international relations in the field of copyright, to be called the International Copyright Joint Study Group;

4. *Accepts* with appreciation the invitation of the representative of the United States of America to hold the first session of the Joint Study Group in Washington;

5. *Adopts* the following decisions concerning the duties and composition of the Joint Study Group, and its procedure during the period preceding the next regular sessions of the Permanent Committee and the Intergovernmental Copyright Committee;

6. The Joint Study Group may examine any questions concerning international copyright relations and their practical implications;

7. The Joint Study Group, shall, as a matter of priority, deal with the following matters which will be included in the agenda of its first session:

- (a) the establishment of an international mechanism for permitting developing countries a greater degree of access to protected works while respecting the rights of authors;
- (b) the needs of developing and developed countries in the international copyright field, particularly that of education, the effect of the régime of international copyright relations on the satisfaction of these needs, as well as any improvements that could be made in this respect, taking into account the interests of authors with a view to encouraging the creation of intellectual works;
- (c) the problems arising from the existence of two copyright conventions of world-wide scope and possible methods for providing links between them;

8. The Joint Study Group shall consist of representatives of the following 26 States: Argentina, Australia, Brazil, Canada, Ceylon, Czechoslovakia, France, Germany (Federal Republic), India, Italy, Ivory Coast, Japan, Kenya, Mexico, Netherlands, Nigeria, Peru, Philippines, Rumania, Senegal, Spain, Sweden, Tunisia, United Kingdom, United States of America, Yugoslavia;

9. The Joint Study Group shall have a joint secretariat furnished by BIRPI and Unesco;

10. The first session of the Joint Study Group shall be held in Washington from 29 September to 3 October 1969;

11. Governments of the States Party to the Berne Convention, the Universal Copyright Convention, or both, and all interested international non-governmental organizations, are invited to communicate to the Joint Secretariat, before 1 May 1969, studies or proposals on any question within the competence of the Joint Study Group, particularly on the matters mentioned in paragraph 7 above;

12. The working documents for the first session of the Joint Study Group shall consist of:

- (a) the studies and proposals referred to in paragraph 11 above, and
- (b) any reports that the Secretariats of BIRPI and Unesco may wish to submit jointly or separately, including, if possible, documentation on the importance of copyright royalties in the economies of different States, particularly the developing countries;

13. The working documents shall be communicated to the members of the Joint Study Group preferably by 1 July 1969;

14. The Joint Secretariat shall convene a one-day information meeting of the interested international non-governmental organizations in July or August 1969. At that meeting the Joint Secretariat shall invite the organizations represented to appoint a total of four persons, who shall be invited to attend the meetings of the first session of the Joint Study Group and to furnish such information or observations as may be requested by the latter. For this purpose the organizations representing authors shall be invited to appoint two persons, the organizations representing publishers shall be invited to appoint one person, and the organizations representing users of copyrighted works shall be invited to appoint one person;

15. The Joint Study Group shall appoint its officers and establish its Rules of Procedure at its first meeting;

16. The meetings of the first session of the Joint Study Group shall be closed;

17. The Joint Study Group shall report on the results of its first session and on its proposals as to its further work to the Permanent Committee and the Intergovernmental Copyright Committee at their next regular sessions. The two Committees shall, in the light of such report and any other relevant developments, make the necessary decisions for the continuation of the Joint Study Group, its procedures, and the representation of international non-governmental organizations.

ANNEX B

Statement of American Book Publishers

American publishers realize there are real and sufficient issues with which private enterprise and governments must quickly come to grips in order to implement policies which will balance the interests of copyright proprietors with the interests of users of copyrighted materials and, at the same time, give vigorous impetus to the dissemination of information and knowledge.

It is an historical and universally accepted fact that copyright protection and an international copyright structure have served as an important stimulus to authors and publishers in the creation of educational, scientific, and cultural works. It is also a matter of historical record that many American publishers, with the support of authors, have waived the generally accepted return on their efforts in order to assist developing countries in various ways, including:

(a) The granting of translation rights to thousands of titles at minimal terms.

(b) The granting of original language reprint rights for the publication of low-cost editions by publishers in developing countries.

(c) The publication of many low-cost editions which sell at a fraction of the U. S. list price.

(d) The participation in publishing and distribution seminars aimed at the development of indigenous publishing in developing countries.

That there can be improvements in certain areas is generally accepted.

American publishers recognize that any revision of existing copyright conventions will take time and they agree that, in the interim, greater recognition should be given to the needs of developing countries which are indeed continuing and urgent. The American publishers look forward to extending greater cooperation during the period when concerted and active efforts are also being made at the intergovernmental level to find long-range, coordinated solutions to the problem of international copyright.

American publishers are eager to facilitate clearances and contractual arrangements for both translations and reprints. To this end, they are prepared to encourage the establishment of an international clearing house. As envisaged, such a clearing house would cooperate actively with publishers in developing countries in order to:

(a) Facilitate the processing of simplified agreements in connection with the granting of rights for translations and original language reprints, at appropriate terms and conditions and with due consideration given to the stage of development and the particular needs of developing countries.

(b) Study with publishers in developing countries the various internal conditions inhibiting the development of indigenous publishing with a view towards extending financial and technical cooperation.

American publishers wholeheartedly support placing on the agenda the prompt study of the problems to which cognizance was given in the text of the resolutions adopted unanimously, at Geneva, in December of 1967 by the Intergovernmental Copyright Committee and the Permanent Committee of the Berne Union.

ANNEX C

List of Participants

I. Member States of the Permanent Committee

Belgium

Mr. Gérard L. de San, Director-General and Legal Counsellor, Ministry of National Education and Culture.

Mr. Jacques Bocqué, Assistant Counsellor, Ministry of Foreign Affairs and Foreign Trade.

Brazil

Mr. Jorge Carlos Ribeiro, Secretary of Embassy, Permanent Delegation of Brazil, Geneva.

Mr. Joracy Schafflör Camargo, Vice-President, National Commission of Brazil to Unesco.

Mr. Daniel da Silva Rocha, Delegate of Brazil.

Mrs. Rachel Proença Doyie, Delegate of Brazil.

Denmark

Mr. Willy Weincke, Chief of Department, Ministry of Cultural Affairs.

France

H. Exc. M. Pierre Charpentier, Ambassador, Ministry of Foreign Affairs.

Mr. André Kerever, Maître des requêtes, Council of State, Technical Advisor, Ministry of Cultural Affairs.

Mr. Jean Raux-Filio, Service of Cultural and Scientific Exchanges, Bureau of Cultural Relations, Ministry of Foreign Affairs.

Germany (Federal Republic)

Professor Dr. Eugen Ulmer, University of Munich.

Dr. H. G. Steinmann, Counsellor, Ministry of Foreign Affairs.

Mrs. Elisabeth Steup, Director, Ministry of Justice, Bonn.

India

Mr. Kanti Chaudhuri, Government Service, Ministry of Education.

Mr. S. Balakrishnan, Central Government Service, Ministry of Law

Italy

H. Exc. M. Pio Antonio Archi, Ambassador, Delegate for Intellectual Property Treaties, Ministry of Foreign Affairs.

Mr. Gino Galtieri, Inspector-General, Head of the Literary, Artistic and Scientific Property Office, Presidency of the Council of Ministers.

Mr. Giuseppe Trotta, Judge at the Court of Appeal, Legal Advisor.

Mr. Antonio Ciampi, Director General, Italian Society of Authors and Publishers, Member of Permanent Consultative Copyright Committee.

Mr. Valerio De Sanctis, Legal Advisor, Italian Society of Authors and Publishers, Member of Permanent Consultative Copyright Committee.

Portugal

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Dr. E. Gomes de Abreu, Attorney.

Rumania

Mr. Dragos Stoencescu, Legal Advisor, Ministry of Foreign Affairs.

Spain

Professor G. Fernandez de la Mora, Deputy Director General of Cultural Relations.

Mr. Alfonso de Borbon y Carralte, Counsellor of Embassy.

Mrs. Isabel Fonseca-Ruiz, Director del Gabinete de Estudios, Department of Archives and Libraries.

Switzerland

Mr. Joseph Voyame, Director, Federal Bureau of Intellectual Property, Department of Justice and Police.

Mr. Jean-Louis Marro, Chief of Section, Federal Bureau of Intellectual Property.

United Kingdom

Mr. William Wallace, C. M. G., Assistant Comptroller of the Industrial Property and Copyright Department, Board of Trade.

II. Observers**(a) States not members of the Permanent Committee***Afghanistan*

Mr. Y. Samad, Attaché to the Embassy in Paris.

Algeria

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Andorra

H. Exc. M. E. Garribues y Diaz Cañabate, Ambassador, Permanent Representative of Spain to Unesco.

Argentina

H. Exc. Dr. Bonifacio Lastra, Ambassador Extraordinary and Plenipotentiary, Permanent Representative to Unesco.

Mr. Luis Laurelli, Secretary of Embassy, Permanent Mission of Argentina in Geneva.

Austria

Professor Dr. Robert Dittrich, Head of Department, Federal Ministry of Justice.

Canada

Mr. A. M. Laidlaw, Commissioner of Patents for the Government of Canada.

Mr. F. W. Simons, Assistant Commissioner of Patents, Patent Office.

Mr. Jacques Corheil, Second Secretary, Permanent Mission of Canada in Geneva.

Ceylon

Mr. N. Balasubramaniam, Deputy Permanent Representative of Ceylon to Unesco.

Chile

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Mgr. Joseph Zabkar, Permanent observer to Unesco.

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Mr. Kichimasa Soda, Deputy Permanent Delegate to Unesco.

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Mr. D. J. Coward, Registrar General.

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Madagascar

Mr. Gabriel Andrianarifetra, Deputy Permanent Representative to Unesco.

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Dr. M. Acosta Romero, Department of Copyright, Ministry of Public Education.

Mr. J. M. Fernandez Unsain, President, Sociedad de Escritores de Cine, Radio y Televisión.

Mrs. Christiane de Diaz, Secretary of Permanent Delegation to Unesco.

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Mr. D. Wechgelaer, Ministry of Cultural Affairs.

Mr. W. J. Blackstone, Ministry of Cultural Affairs.

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Mr. A. Quintana, First Secretary, Embassy in Paris.

Mr. Luis Ibarra, Cultural Attaché.

Nigeria

Mr. Ademola Adeleye, Deputy Permanent Delegate to Unesco.

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H. Exc. M. A. Wagner de Reyna, Ambassador, Permanent Delegate to Unesco.

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Mr. S. A. Barrera, Counsellor, Philippine Embassy, Paris.

Senegal

Mr. C. Dem, Secretary of Embassy, Paris.

Sweden

Mr. Torwald Hesser, Justice of the Supreme Court.
Mr. Hans Danelius, Legal Adviser, Ministry of Justice.

Thailand

Mr. V. Nitihon, Counsellor, Embassy, Paris.

Tunisia

Mr. Rafik Said, Minister Plenipotentiary, Deputy Permanent Delegate to Unesco.
Mr. Ahderrahmane el Amri, Attaché de Cabinet, State Secretary for Cultural Affairs and Information.

Turkey

Mr. S. Gunay, Cultural Attaché in Paris.

United States of America

Mr. Keld Christensen, Chief of the Business Practices Division, Department of State.
Miss Barbara A. Ringer, Assistant Register of Copyrights, Copyright Office, Library of Congress.
Mr. Richard Nohhe, Secretary of Delegation, Office of the U. S. Representative to Unesco.

Uruguay

H. Exc. Dr. Rémolo Botto, Ambassador, Permanent Delegate to Unesco.

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H. Exc. M. Dušan Popovski, Ambassador, Permanent Delegate to Unesco.
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International Labour Office (ILO)

Mr. E. Thompson, Chief, Non-Manual Workers' Section, General Conditions of Work Branch.

United Nations Educational, Scientific and Cultural Organization (UNESCO)

Mr. H. Saba, Assistant Director-General for International Standards and Legal Division.
Miss M.-C. Dock, Head, Copyright Division.
Mr. Y. Matveev, Legal Assistant, Copyright Division.

(c) International Non-Governmental Organizations**European Broadcasting Union (EBU)**

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International Confederation of Societies of Authors and Composers (CISAC)

Mr. Léon Malaplate, Secretary-General.
Mr. Jean-Alexis Ziegler, Deputy Secretary-General.
Mr. Jean-Loup Tournier, Director-General of SACEM.

International Federation of Actors (FIA)

Mr. Rudolf Leuzinger, Secretary-General of FIM.

International Federation of Musicians (FIM)

Mr. Rudolf Leuzinger, Secretary-General.

International Federation of the Phonographic Industry (IFPI)

Mr. Michel Curtil, French Legal Adviser to the IFPI.
Mrs. Michèle Lazare, Permanent Delegate of IFPI to Unesco.

International Federation of Translators (FIT)

Mr. Pierre-François Caille, President.
Mr. Pierre Malinverni, President of the Copyright Committee.

International Federation of Variety Artists (FIAV)

Mr. Rudolf Leuzinger, Secretary-General of FIM.

International Literary and Artistic Association (ALAI)

Mr. Marcel Boutet, President.
Mr. Henri Deshois, Professor, Faculty of Law, University of Paris, Permanent Secretary.

International Publishers Association (IPA)

Mr. Hjalmar Pehrsson, Secretary-General.
Mr. André Geranton, Legal Adviser, French National Publishers Association.

International Writers' Guild (IWG)

Mr. Roger Fernay, President, International Copyright Commission.

Internationale Gesellschaft für Urheberrecht (INTERGU)

Professor Dr. Johannes Overath, Member of the Executive Board.
Mr. Robert Talon, Delegate for France.

Union of National Radio and Television Organizations of Africa (URTNA)

Mr. Mohammed el Bassiouni, Secretary-General.

(d) Representatives of National Non-Governmental Organizations**American Book Publishers Council**

Mr. Leo N. Alhert, Chairman, Joint International Copyright Task Force.
Mr. Dan Lacy, Vice-Chairman, Copyright Committee.

American Educational Publishers Institute

Mr. Leo N. Alhert, Chairman, Joint International Task Force of the American Book Publishers Council.
Mr. Dan Lacy, Vice-Chairman, Copyright Committee of the American Book Publishers Council.
Mrs. Bella L. Linden, Attorney.

Canadian Copyright Institute

Mr. Roy C. Sharp, Executive Director.

III. United International Bureaux for the Protection of Intellectual Property (BIRPI)

Professor G. H. C. Bodenhausen, Director.
Dr. Arpad Bogsch, Deputy Director.
Mr. Claude Masouyé, Senior Counsellor in charge of External Relations, Head a. i. of Copyright Division.
Mr. Robert Hadl, Legal Assistant, Copyright Division.

IV. Officers of the Permanent Committee

Chairman: Mr. Jorge Carlos Riheiro (Brazil).
Secretary: Mr. Claude Masouyé (BIRPI).

pearance in a great many European homes. A few figures illustrating this development are given below.

Great Britain: At the end of 1963, homes subscribing to wire television services numbered 750,000. These services are grouped into the Relay Services Association, an association that has existed in Great Britain for some thirty years and that also handles wire diffusion for sound radio, which has been very popular in that country from the very beginning. At the present time, no foreign television programs are diffused by wire in England.

Belgium: Since 1961, private companies such as Coditel and Electrobel have been experimenting with wire television services in Liège, Verviers, Namur and neighboring areas where normal television reception is not very good. Towards the end of 1964, these companies had about 6,000 subscribers. Difficulties of an administrative nature have somewhat limited a growth that might otherwise have been more spectacular. The programs now carried by wire in Belgium are the two national programs as well as the first German program and the French, Dutch and Luxembourg programs⁷.

Switzerland: Because of the special geographical situation in Switzerland, it has always been difficult to get normal radio and television reception. This explains the success of wire radio in that country and, since 1960, the success of wire television which is in operation in various regions. The principal company in this field is Rediffusion Radibus AG which has been operating wire radio services in Switzerland for years. In addition to the Swiss program, it is possible to receive the German, Austrian or French television programs in various parts of the country.

Federal Republic of Germany: Wire television services are in operation in different towns of the Federal Republic of Germany, for example, Munich-Giesing and Spiegelberg (in the Wurtemberg region). In view of the favorable results, the German Postal, Telephone and Telegraph Service is planning to install several other wire television systems in the Republic, especially in areas where normal reception is unsatisfactory. The Spiegelberg system includes 2,000 subscribers. The broadcasts diffused are those of the three television organizations now operating in the Federal Republic as well as the Austrian program.

Netherlands: Wire television is being operated only on an experimental basis in two districts of The Hague. The 5,000-odd homes subscribing to it receive the two Dutch programs, the two German programs and the Flemish program from Belgium. As in other countries, the results of television diffusion by wire have been good, and the Government has therefore stated that it wishes to extend the system to the whole country. The venture will probably be entrusted to a private company in which the State and the broadcasting organizations will have large holdings. According to official estimates of the Dutch Postal, Telephone and Telegraph Service (PTT), subscribers will be able to get seven or eight television programs once the final system has been installed.

The experiments being carried out by the Dutch PTT recently gave rise to misgivings on the part of the international union of broadcasting organizations (European Broadcasting Union) and the international organizations of performing artists (International Federation of Actors, International Federation of Musicians, International Federation of Variety Artists) in view of the nation-wide implications that are envisaged for wire television in the Netherlands.

3. Definition of Wire Television

Thus far, we have spoken of "wire television" by analogy to wire radio. To give some idea of the legal implications of this new system, a technical explanation is in order of the process of wire diffusion of television broadcasts.

According to a definition taken from a report⁸ presented in August 1963 by the Dutch PTT on prospects in the Netherlands, it is a "system by which signals (sounds and images) can be picked up by a central antenna and carried by a coaxial cable going through an amplifier to the various houses in the same group that are hooked up to the system". Now, there is a distinction that should be made between wire television and other uses of collective antennas. A collective antenna can be used (and is already being so used in many localities) to improve normal reception of television broadcasts. It can, for example, be erected on the roof of a building divided into apartments. It is also being used with increasing frequency in towns or villages to avoid or replace the use of individual antennas which obviously add nothing to the aesthetic appearance of the locality.

To be sure, wire television also uses a collective antenna to pick up television signals, but the difference between it and other collective antennas lies in the fact that this "central antenna"⁹, generally located at the highest point in the vicinity is manifestly more powerful and receives television signals transmitted to it from antennas located near frontiers or, in general, near the broadcasting source. A "central antenna" is, therefore, capable of capturing television signals emanating from broadcasting stations located further away. These signals are amplified and carried by coaxial cable to the houses connected to the system. As a result, the inhabitants of a town such as The Hague, located in the westernmost part of the country, who, at present, are unable to receive German or Belgian broadcasts in the normal way (through the air) even if a common antenna is available to them, will have the possibility of watching programs from Belgium or Germany once the network of telephone cables required for such diffusion has been installed and connected with the PTT's central antenna. Naturally, the one condition is that the authorities must first have decided that the broadcasts coming from these other transmitters are to be carried over the wire television network thus created, and this decision has, in fact, been taken.

Hence, from the technical point of view, the central antenna and coaxial cable open up vast possibilities for the

⁸ *Vervolgrapport Draadomroep*, August 1963.

⁷ On the situation in Belgium, see the article by Albert Namurois, in the *EBU Review*, Nos. 104B and 105B, July and September 1967.

⁹ On the distinction between a "collective antenna" and a "central antenna", see the article by Karl Neufischer in the *EBU Review*, No. 96B, March 1966.

reception and transmission of programs coming from abroad, and, once this system has been fully installed, new possibilities will develop for broadcasting local or regional programs. Any actual broadcasting, however, that might be made by the operator of a wire television system is not within the scope of this study. We shall deal only with the transmission of broadcasts produced by a third party, that is, by a broadcasting organization. We shall therefore proceed from the hypothesis that the wire television system is used exclusively for the carriage of programs produced or distributed by a broadcasting organization.

In brief, we shall use the expression "wire television" to designate systems that capture signals by means of a central antenna and employ cables to send to their subscribers television programs coming from broadcasting organizations.

4. Is Wire Television Simply a "Receiver" Installation?

This raises a problem. Can it be considered that the transmission of programs by means of a central antenna and a cable network simply constitutes normal reception and involves no legal consequences? Or, is this a specific activity in itself that adds a new factor to be reckoned with in the field of television as it exists today?

The practical importance of this question can easily be demonstrated by a concrete case. Take, for example, an American television organization which sells one of its programs to the German television organization. This program can also be seen by television viewers in the Netherlands who subscribe to a wire television service. In the event that this service extends to the whole country (rather than to a relatively limited region), the program in question would be much less attractive to the Dutch organization that might want to purchase it for its own broadcasts. Can the American organization forbid transmission to the Netherlands? Can it demand payment from the wire television operator for this transmission that will reach a much vaster public than the broadcasting organization had expected?

It is my opinion that wire television, as described above, constitutes a specific activity involving legal consequences. These legal consequences will be examined below. The experiment of The Hague does not simply improve normal reception but considerably extends the possibilities of reception now existing under normal conditions. This extension has been made possible by the activities of the Dutch PTT, whose sole purpose is to enable television viewers to see certain programs from abroad which they would normally be unable to see.

The situation in the Netherlands is particularly significant because it illustrates the essential differences between "collective antennas" on the one hand and wire television using a "central antenna" on the other. The Netherlands is a country where the geographical or climatic conditions mentioned above do not require the installation of collective antennas for the reception of national programs in certain regions. There are no difficulties of that type since — contrary to Switzerland, Belgium, the Federal Republic of Germany and the United States of America — the Netherlands is a completely flat country. In regions bordering on the Belgian and German frontiers, the television broadcasts of those

countries can be received on Dutch television sets. One of the reasons for installing a cable network in The Hague was precisely the fact that, in that city, it is at present impossible to receive programs from abroad. It is, therefore, clear that in The Hague, where Dutch programs can be received perfectly well, the installation of a cable network means a broadening of the normal possibilities of reception and not, as in other countries, an improvement of normal reception or a technical necessity resulting from the geographical or climatic conditions of the country.

From the standpoint of the viewer, too, there is a basic difference. In matters of simple reception, it is the viewer himself who chooses the programs he wishes to watch. An inhabitant of a frontier zone in the Netherlands can select the German program, for instance, owing to the range of the German transmitters, but a subscriber to a wire television service in The Hague can only get that same program if the authorities have decided that it is to be carried by the service. If, for one reason or another, it is not carried, television viewers in The Hague will have no possibility of receiving the program. The same situation arises when a subscriber ends his subscription to the service: he will no longer be able to receive programs from abroad.

This shows that the action on the part of the PTT (as a wire television operator) is necessary to ensure transmission of programs from abroad. The wire television operator performs continuous services that are not simply of a technical nature, but also include selecting the programs to be transmitted among those available for transmission. To qualify such specific operations as simple "reception" does not do justice to the nature and importance of these operations which, as is now happening in the United States, could revolutionize the whole field of television as it exists today. It is no wonder that the advent of wire television in Europe, and more particularly in the Netherlands where it will become of nation-wide importance, has caused anxiety among all those who work together to produce television broadcasts that are picked up and then transmitted by cable. This is why we shall first examine the action taken by the European Broadcasting Union against the Dutch PTT.

5. The EBU and the Dutch PTT

When the importance of the Dutch PTT experiments with wire television were realized on the international level, the EBU asked the PTT to pay particular attention to the complex legal problems its experiments involved and requested it to enter into discussions with the EBU with a view to resolving these problems. The EBU stressed that, in principle, the broadcasting organizations had no objection to a wider and technically improved transmission of their programs within a country, especially in countries where normal reception was not very good owing to unfavorable geographical factors. However, once a wire television service developed international importance and diffused, in addition to the national programs of the country, programs from broadcasting organizations located outside the country, the situation became much more delicate. The EBU pointed out that tele-

vision broadcasting was a costly, complex operation involving many rights and contractual relationships (authors, artists, makers of cinematographic works, organizers of sports events, etc.). If these rights and contractual obligations were not respected by the operator of a wire television service, the resulting chaos might paralyze the broadcasting organizations and wire television as well. It was for these reasons that it was urgent for the Dutch PTT to enter into discussions with the EBU.

In October 1964, an agreement was signed between the EBU and the Dutch PTT for the duration of an experimental period following which a further study was to be made on the situation. This agreement, which laid down certain obligations on both sides, provided a framework within which the organizations belonging to the EBU could enter into bilateral agreements with the Dutch PTT. Such agreements were concluded by the BRT and by the German broadcasting organizations.

In essence, what the Dutch PTT undertakes to do under its agreement with the EBU is to safeguard the member organizations of that international Union from any third party claims resulting from the transmission of television programs by wire, including claims based on Dutch copyright. Broadcasting organizations located abroad whose programs are carried by wire television in the Netherlands will receive remuneration, the amount of which will be determined by the organization concerned, but which will take into account the experimental nature currently attaching to wire television in the Netherlands. Certain programs (such as the Eurovision programs) are not to be transmitted at all, and the broadcasting organizations concerned may, for "serious reasons", forbid the transmission of certain broadcasts or certain categories of broadcasts. No advertising will be inserted into programs carried by wire. Lastly, the EBU and its members will make no claims on the Dutch PTT concerning the latter's operations in the field of wire television, except for those resulting from the agreement and/or any bilateral agreements concluded between the PTT and the organizations concerned.

The EBU/PTT agreement is limited to international situations, the use of Dutch television programs being left to national regulation. So far, the Dutch broadcasting organizations have not opposed the PTT's experiments in The Hague and have requested no remuneration for the transmission of their programs. Naturally, the Dutch broadcasting organizations are reserving the legal position they might take at a later date should wire television be offered by a private enterprise.

In the "whereas" clauses of the EBU/PTT agreement, it is expressly stated that the agreement cannot prejudice the legal position of the parties on the subject of wire television. The agreement was conceived solely as a result of the EBU's fear that the television organizations' activities might be hindered or hampered and of the Dutch PTT's desire to avoid any legal complication with the EBU and its members during the experimental period.

In view of the fact that it will not be possible to avoid consideration of the legal problems once the experimental period has expired, and that final regulation of the matter

will necessarily depend on the legal positions taken by the two parties concerned, this is the time to look into the rights of broadcasting organizations which are recognized both internationally and in countries where wire television is in operation.

6. The Legal Position of Broadcasting Organizations

A. In Europe

It is well known that the broadcasting organizations do not in general enjoy copyright but rather a "neighboring" right.

In some countries of Europe (such as Sweden, for example), this neighboring right is recognized by law and seems to include the power to authorize wire transmission¹⁰.

In other countries, such as the *Federal Republic of Germany* and *France*, a legislative provision to this effect has been approved¹¹ or is in the course of preparation.

On the other hand, in the *Netherlands*, *Belgium* and *Switzerland*, there are no regulations on the basis of which broadcasting organizations can claim a neighboring right allowing them to oppose wire transmission.

In *Great Britain*, the broadcasting organizations enjoy copyright, but this copyright does not include the right to authorize or prohibit the transmission by wire of a television program made by an English or foreign broadcasting organization and does not give that organization any possibility of filing complaints¹².

On the international level, the Rome Convention on neighboring rights of October 26, 1961¹³, grants a neighboring right to broadcasting organizations, but this right does not include protection against the transmission of radio and television broadcasts by wire¹⁴, as this question was deliberately left aside in the Convention. For the sake of completeness, however, it should be added that the Convention provides only a minimum of protection, leaving open the possibility of wider protection either through national legislation or through special agreements¹⁵.

Of greater importance in Europe from the practical point of view is the European Agreement on the Protection of Television Broadcasts drawn up within the framework of the

¹⁰ Swedish Law on Copyright in Literary and Artistic Works, of December 30, 1960, Article 48.

¹¹ *Germany*: Article 87 of the new Copyright Law of September 9, 1965. See also the explanatory statement concerning Article 20.

France: Draft Bill on the protection of performers, producers of phonograms and broadcasting organizations (March 1965, Article 12, paragraph 5).

¹² Copyright Act, 1956, Section 14; see also Section 48(5).

¹³ As regards this Convention, see V. De Sanctis, "La Convenzione internazionale per la protezione degli artisti interpreti o esecutori, dei produttori di fonogrammi e degli organismi di radiodiffusione", published in *Quaderni della Rivista Il Diritto di Autore*, 1963; and Ulmer, "Das Rom-Abkommen über den Schutz der ausübenden Künstler, der Hersteller von Tonträgern und der Sendeunternehmer, GRUR, Internationaler Teil, 1961, p. 569.

¹⁴ Article 13 provides for the protection of broadcasting organizations; wire transmission does not appear among the uses that the broadcasting organization has the right to authorize or prohibit. It is certainly not included in the term "rebroadcasting" which refers only to "simultaneous broadcasting by one broadcasting organization of the broadcast of another broadcasting organization" (Article 3(g)). Furthermore, broadcasting simply means "the transmission by wireless means for public reception of sounds, or of images and sounds" (Article 3(f)).

¹⁵ See Articles 21 and 22 of the Convention.

Council of Europe and signed at Strasbourg on June 22, 1960, by a number of States members of that Council¹⁶. So far, seven States have ratified this Agreement which protects television broadcasts against certain uses not authorized by the broadcasting organization. Among the uses which the broadcasting organization may authorize or prohibit under the Agreement are "the diffusion of such broadcasts to the public by wire"¹⁷. Elsewhere in the Agreement¹⁸, however, it is provided that the signatory States have the possibility of withholding protection against the diffusion of broadcasts by wire, that is the possibility of making a reservation concerning this protection. To date, two of the contracting States have availed themselves of this possibility: Great Britain and Belgium¹⁹.

It is clear that, if a great many countries should make this reservation, it could have very unfavorable consequences for the broadcasting organizations. This is why, under the auspices of the Council of Europe, an Additional Protocol was drawn up partially amending the text of the Agreement. This Protocol was signed in Strasbourg on January 22, 1965, and entered into force on March 24, 1965²⁰. It provides that the reservation may be applied to not more than 50 per cent of the average weekly duration of broadcasts from abroad²¹. Only those countries that have already made the full reservation in the act of ratification of the Agreement may, according to a special provision, maintain it. This applies to Great Britain which ratified the Agreement with the full reservation before the Additional Protocol entered into force.

The situation in the Netherlands is somewhat different from the one in Great Britain. The Netherlands favored maintaining the possibility of making the full reservation but did not ratify the original text of the Agreement in time. It signed the document — subject to ratification — only on October 7, 1964, and found it impossible to put the Ratification Bill to a vote before March 24, 1965. Thus, if the Netherlands Government wishes to maintain its reservation on the diffusion of television programs by wire, it will have to subscribe to the new text of the Agreement allowing a reservation of not more than 50 per cent.

From the foregoing, it can be concluded that the regime — both national and international — governing the diffusion of television programs by wire is one of the most controversial questions in Europe today.

Some countries have already taken a position. Such countries include both *Great Britain* and the *Netherlands*, which believe in total freedom for the television diffusion organizations to transmit national programs and programs from abroad. *Belgium* recently ratified the Agreement and the Additional Protocol²², thus agreeing to limit the reservation as provided in that Protocol.

On the other hand, *France*, according to its Draft Bill on neighboring rights, is in favor of protecting the broadcasting organizations against the diffusion of their broadcasts by wire²³, but this protection applies only to national broadcasts²⁴. Internationally, that is, within the framework of the European Agreement, France has ratified both the Agreement and the Protocol, without making use of the reservation on protection against wire diffusion. This seems to indicate that France would also be willing to protect broadcasts coming from organizations located in the territory of the other States members of the Council of Europe. At the present time, this question is a more or less theoretical one in France, as there is no system of wire television in operation in its territory. It does become a practical one, however, as regards French programs transmitted abroad (to Belgium).

In *Germany (Federal Republic)*, the situation is more or less similar to the one in France. The new copyright law recognizes that broadcasting organizations enjoy a neighboring right that, in all likelihood, includes protection against wire diffusion²⁵. On the international level, Germany ratified the European Agreement on the Protection of Television Broadcasts in 1967 without availing itself of the reservation provided in sub-paragraph 1(a) of Article 3 (wire diffusion). Hence, the Federal Republic grants full protection to broadcasts from abroad that are transmitted into its territory²⁶.

Sweden, Denmark and *Norway* ratified the Agreement and the Protocol without making use of the reservation concerning wire diffusion.

Since *Switzerland* was not a member of the Council of Europe, it was not bound by any international agreements regarding wire diffusion of television programs. On the national level, and in contrast to Sweden, Switzerland does not yet recognize any neighboring right that would allow broadcasting organizations to authorize or prohibit wire diffusion. This question is, however, settled in the concession granted to the SSR which provides that the Swiss broadcasting organization is obliged to make its programs available to the diffusion service.

As concerns the diffusion of foreign programs in Switzerland, the concession granted to Rediffusion Radibus AG expressly provides that that company is obliged to obtain the necessary authorizations when foreign programs are transmitted in Switzerland. It thus seems probable that foreign programs are transmitted in Switzerland with the consent of the foreign broadcasting organization.

The above analysis indicates that when considered from the standpoint of existing national legislation or international conventions, the legal bases that can be used by broadcasting organizations as grounds for claims against wire television operators are rather uncertain in Europe as a whole. This does not mean, however, that there are no solid bases from

¹⁶ The text of this Agreement was reproduced, inter alia, in *Le Droit d'Auteur*, 1960, pp. 201 *et seq.*

¹⁷ Article 1, paragraph 1(b), of the Agreement.

¹⁸ Article 3, paragraph 1, of the Agreement.

¹⁹ See *Le Droit d'Auteur*, 1961, p. 152; and *Copyright*, 1968, p. 147.

²⁰ The text of this Additional Protocol was printed, inter alia, in *Copyright*, 1965, pp. 55 and 56.

²¹ Article 2, paragraph 1, of the Protocol.

²² See *Copyright*, 1968, p. 78.

²³ See the above-mentioned Draft Bill of March 1965, Article 12, paragraph 5.

²⁴ See Article 11 of the Draft Bill.

²⁵ The existence of this protection can be deduced from the text of Article 87 of the Law of September 9, 1965, and the explanatory statement accompanying it.

²⁶ Germany ratified the Agreement on September 8, 1967, See *Copyright*, 1967, p. 217.

the practical and economic point of view. As was emphasized, for instance, in the explanatory statement on Article 87 (protection of broadcasting organizations) of the new copyright law of the Federal Republic of Germany, a broadcast involves too much technical and economic investment for a third party to be able to use it for its own profit with no obligations. There is, as a matter of fact, no reason why a wire television operator should be authorized to transmit television programs, often produced at great expense, without participating to some degree in these costs, especially in cases where such an operator is a private person or company operating for profit-making purposes. There is no need to resort to the doctrine of unjustified enrichment or unfair competition to recognize the merits of this claim of the broadcasting organizations, which, moreover, receive a large portion of their financial support from the State.

But, apart from any economic considerations, in a Europe that is becoming increasingly unified through cultural exchanges and trading of information (both of which presuppose close collaboration in the judicial sphere), it is inconceivable that a wire television operator should be able to set up his own system without requesting permission from the private person or legal entity whose production he uses, even if, for the time being, such person or entity cannot make legal claims based on fully codified law. We say "for the time being" because it must not be forgotten that, on both the national and international levels, legislation tending to provide protection for broadcasting organizations is developing rapidly. The Rome Convention on neighboring rights has certainly stimulated this development; yet, long before this Convention was established, there was a conviction that could even be seen in the case law of certain countries that the interests of radio and television had to be protected to some extent. These interests are not solely or even essentially of an economic nature; what is far more important — especially to the viewer — is that broadcasting should function satisfactorily. Such functioning would be seriously compromised if agreements were not made with the operators of wire television services whose systems extend beyond the confines of certain parts of a country.

This is why the agreement concluded between the EBU and the Dutch PTT for the duration of the experimental period (even if it is clearly characterized by expediency rather than by purely legal considerations) seems useful and timely. The agreement represents an attempt to find a common international solution to a problem which will become more and more important in coming years: common because it involves close cooperation among all those concerned in wire television, namely, the wire television operator, the broadcasting organizations and their contracting parties, and the Government; international because television is crossing more and more frontiers and the wire television operator must also take into account obligations contracted on the international level.

B. In the United States

As we have seen above, the FCC, which had originally refused to assert jurisdiction over CATV systems²⁷, now con-

siders that such companies are engaging in unfair competition with regard to television stations²⁸ and has established certain rules and regulations for the CATV systems. Although it is of the opinion that (federal) legislative action would be desirable, there has not as yet been any such action to date.

Some courts in the United States have ruled in recent judgments²⁹ that CATV systems are not committing acts of unfair competition with regard to the television stations. The question whether CATV transmission programs constitutes a "rebroadcast" under the Communications Act has not been settled by the courts. In 1959, the FCC was of the opinion that the prohibition against rebroadcasting without the authorization of the broadcasting organization, as provided under the Act, did not apply to CATV³⁰. It should be observed, however, that, after 1959, the FCC altered its position with regard to the CATV systems.

In the above paragraphs, we have not examined the possibility that the broadcasting organizations, in their capacity as the successors in title of the authors whose works were used in producing the programs, might take action against wire transmission companies. The authors possess absolute rights, and their position is therefore rather special. Let us then examine what their stand is in regard to the phenomenon of wire television.

7. The Legal Position of the Authors

A. In Europe

Unlike the broadcasting organizations, the authors and their organizations (authors' societies) have not yet taken a stand, internationally, on the question of wire television. On the national level, however, the BUMA Society obtained royalties from the Dutch PTT, some time ago. In connection with wire radio, the Netherlands Supreme Court in fact delivered a very clear decision in 1958 obliging the Dutch PTT (which handles such wire transmission not only from the technical point of view but also from that of the selection of programs coming from abroad) to pay royalties to BUMA for the transmission of such musical works included in these programs as belong to the Society's repertory³¹. The Netherlands Supreme Court considered that wire radio was "a possi-

²⁷ See 1959 Report and Order, 26 FCC 426-431. See also "Pay Television", 53 *California Law Review* 1378 *et seq.* (1965).

²⁸ See the FCC's report of April 29, 1965 (*Federal Register*, vol. 30, No. 82, pp. 6040 *et seq.*). The FCC noted, however, that there was no proof that the CATV companies had caused any considerable concrete damage to the television organizations (pp. 6049 *et seq.*).

²⁹ The District Court of Idaho (S. Div.) 135 *U. S. P. Q.* 2 (1962) ruled on July 30, 1962, that the CATV system was committing an act of unfair competition with regard to the television station which had been granted, by contract, the right to broadcast certain television programs first ("right of first call"). This decision, however, was reversed by the Court of Appeals, Ninth Circuit, July 15, 1964, 142 *U. S. P. Q.* 249 (1964) in the case of *Cable Vision Inc. v. KUTV Inc.*, and see *U. S. Supreme Court*, January 25, 1965, 144 *U. S. P. Q.* 780 (1965). A similar opinion was given by the Florida District Court of Appeals (First District) on April 1, 1965, 145 *U. S. P. Q.* 437 (1965) in the case *Herald Publishing Company v. Florida Antenna Inc.*, which held that the transmission of television broadcasts containing works not protected by copyright did not constitute unfair competition or a breach of the contract between the local station and the stations whose programs were transmitted.

³⁰ See 1959 Report and Order, 26 FCC 403, 428-430. See also "The Wire Mire: The FCC and CATV" in 79 *Harvard Law Review* 366 *et seq.* (1965), note 10.

³¹ Judgment of the Netherlands Supreme Court, of June 27, 1958, in the case *BUMA v. the Netherlands State (PTT)*.

bility whereby a different audience circle from the one that listens to wireless broadcasts could listen to works performed in studios and elsewhere . . ." and that it was a "*sui generis* publication process included by the notion of publication in the sense of Article 1 of the Copyright Law"³².

This decision obviously concerns the diffusion of sound radio programs only; it was made at a time when wire television had not yet appeared on the European scene. However, the similarities between the two methods of transmitting broadcasts are remarkable: in both cases, captured hertzian waves are transformed into electrical impulses and sent by cable to the receiver sets of the subscribers to the service³³, that is a different audience from the one that receives programs through the ether. In the case of wire radio, it is of little importance that the subscribers need a special receiver (supplied by the PTT) whereas subscribers to wire television get the programs on their normal television sets. On the contrary, this again clearly shows that wire television as it now is practised in the Netherlands by the PTT constitutes a broadening of the normal possibilities of reception and is not simply an improvement or a technical necessity. In point of fact, if it were possible for the inhabitants of The Hague, for example, to get foreign programs on their own sets without a central antenna and a cable network, why would they also subscribe to a wire television service? For better reception? We have already demonstrated that this argument is not valid in the Netherlands except to a much smaller degree than in Switzerland or Belgium, for example.

Thus, in the *Netherlands*, authors and their societies now receive copyright royalties for the diffusion of their works by wire.

What is the situation in the other countries?

In *Belgium*, the diffusion of radio broadcasts by wire also constitutes a new communication to the public in the sense of the copyright law and involves the payment of royalties to the authors' societies³⁴. As concerns wire television, the SABAM and SGLF societies now require that the wire television operator pay royalties for programs that cannot be received in the normal way (ORTF programs transmitted to Liège, for example).

In *France*, since the diffusion of broadcasts by wire is considered a new communication to the public, it would involve the payment of copyright royalties, but only in cases where such diffusion is carried on by a different organization from the one that made the televised broadcast³⁵.

Until now, no form of wire radio or television has ever functioned in France, and we cannot predict just what the situation would be if a wire television network should be used to transmit ORTF broadcasts.

³² See, in connection with this decision and for the text of its grounds, the report of Mr. J. Van Nus "Le problème de la radiodistribution dans la jurisprudence néerlandaise" presented to the CISAC Legislative Committee in 1958 and published in *Actes du XX^e Congrès de la CISAC* (Knokke-Le-Zoute, September 15-20, 1958), pp. 371 *et seq.* See also on the subject of this decision "Telephonic Radiodistribution", by Professor Henri Desbois, in *RIDA*, No. XXI, October 1958, p. 2.

³³ The above-mentioned report by Mr. J. Van Nus gives a complete picture of the situation in the Netherlands as regards broadcasting and wire radio, as well as the technical process involved.

³⁴ Law on Copyright of March 22, 1886, Articles 15 and 16.

³⁵ See Articles 27 and 45 of the Law on Literary and Artistic Property, of March 11, 1957.

In *Germany (Federal Republic)*, the new copyright law recognizes, among the prerogatives granted to authors, that of authorizing transmission to the public by wire³⁶.

In *Switzerland*, the diffusion of radio broadcasts by wire is considered a new communication to the public when such communication is made by an organization other than the originating organization³⁷. Through its contracts with the authors' societies, the Swiss broadcasting organization acquires the right to diffuse by wire so that its broadcasts can be transmitted by Rediffusion. In the event that foreign programs are transmitted in Switzerland, Rediffusion must obtain the necessary authorizations itself. It seems likely that the same procedure applies to wire television which, as we pointed out previously, is now in the hands of Rediffusion Radiabus AG. If there should be any new licenses for the exploitation of a wire television network, the Swiss broadcasting organization would be obliged to conclude an agreement with these licensees for the transmission of their broadcasts by wire.

In *Great Britain*, the diffusion of a literary or artistic work by wire is subject, in principle, to the permission of the author³⁸. However, it is lawful, according to a special provision of the Copyright Act³⁹, to transmit by wire authorized BBC or ITA broadcasts comprising a literary or artistic work. As regards broadcasts coming from foreign transmitters, the Performing Right Tribunal must set a fair amount for wire transmission into Great Britain of broadcasts not primarily intended for an English audience⁴⁰.

In *Sweden*, the diffusion of a radio or television broadcast by wire constitutes a new communication to the public within the sense of the copyright law⁴¹ and involves payments to the authors' societies.

It can be seen that, in all the European countries mentioned above, authors can claim royalties from the wire radio operators. This also holds true for broadcasting organizations when they act as the successors in title of authors (their collaborators or employees). In view of the similarity between wire radio and wire television, it seems probable that authors will be able to enforce their right to oppose the unauthorized wire transmission of television broadcasts comprising literary or artistic works.

B. In the United States

A recent case in the United States⁴² resulted in a judicial determination of the question whether CATV systems, when they transmit by wire a film that was broadcast by a tele-

³⁶ See Article 15(2), item 2, and Article 20 of the Law of September 9, 1965.

³⁷ Law of December 7, 1922, on Copyright, as amended by the Law of June 24, 1955, Article 12.

³⁸ Section 2(5) of the Copyright Act, 1956.

³⁹ Section 40(3) of the Copyright Act, 1956. This does not mean, however, that the authors' societies receive no payment. The BBC pays them royalties corresponding to the total number of television viewers.

⁴⁰ Section 28 of the Copyright Act, 1956. For example, Radio Luxembourg's broadcasts in English, being primarily intended for an English audience, do not come under this provision.

⁴¹ Article 2 of the Law on Copyright in Literary and Artistic Works, of December 30, 1960.

⁴² *United Artists Television Inc. v. Fortnightly Corporation*, May 23, 1966. This decision was published in 149 *U. S. P. Q.* 758 (1966).

vision organization as one of its programs, are infringing the copyright of the maker of the film. The court of first impression — the District Court of the Southern District of New York (Judge Herlands) — replied in the affirmative and found against the CATV company. The court's decision was based on a very conscientious investigation of fact and law, and it is quite interesting to read. The principal grounds for finding against the CATV company are set forth very clearly. They can be summed up as follows:

1. The expression "community antenna" is misleading. CATV systems are not services to the community; they are large commercial enterprises that exploit television programs for profit making purposes.

2. The activities of the CATV companies do not comprise the mere reception of television programs⁴³. They utilize complicated equipment and highly qualified staff to bring to the public programs that, because of unfavorable geographical or climatic factors or because of great distances, would not normally be accessible. Their function is thus essentially the same as that of a television organization transmitting television signals produced elsewhere.

3. Despite the novelty of the technical method employed, the principle is the same: what is involved is a public performance within the sense of the Copyright Act⁴⁴, as interpreted by the courts and the Supreme Court⁴⁵. Since this public performance took place without the authorization of the copyright owner, the CATV company is guilty of copyright infringement.

Unfortunately, the decision of the court of first impression upheld on appeal⁴⁶, was reversed by the United States Supreme Court⁴⁷.

In a judgment of June 17, 1968, the Supreme Court held that the Fortnightly Corporation was not guilty of copyright infringement. It considered that the transmission effected by that Corporation did not constitute a "public performance" within the meaning of Section 1(c) of Title 17, U. S. Code. It was the opinion of the Supreme Court that the transmission was simply a "reception" and was outside the notion of "public performance," as interpreted by the Su-

⁴³ The FCC came to the same conclusion (see the *Federal Register* cited above, p. 6045). It drew attention to the fact that it is not the viewer who selects the program but the CATV engineer who transmits one program and does not transmit others.

⁴⁴ Title 17, U. S. Code, Section 1(c) and (d).

⁴⁵ See the case law referred to in the decision. It should be noted that the FCC did not give an opinion on the question of copyright infringement. It considered the problem of CATV solely from the standpoint of public interest and unfair competition. The question of copyright infringement was also not settled in a few earlier court cases; the courts ruled exclusively on the question of unfair competition. See note 29.

A curious decision was handed down by the Montana District Court, First District, on June 3, 1960 (*Z Bar Net Inc. v. Helena Television Inc.*) and published in 125 U. S. P. Q. 595 (1960). The Court was of the opinion that the television station in question did not possess any authors' rights (or other economic rights) in its broadcasts. According to the Court, a television station broadcasting programs and giving its consent to the "rebroadcasting" of these programs is effecting, under Section 67-1107 of the Revised Codes of Montana a publication that causes it to lose protection based on copyright. The notion of publication is not interpreted here in its normal sense.

⁴⁶ Court of Appeals, Second Circuit, May 22, 1967; 153 U. S. P. Q. 696 (1967).

⁴⁷ Supreme Court, June 17, 1968. See also Verkuil, "CATV and Copyright Liability: On a Clear Day You Can See Forever", 52 *Virginia Law Review* 1505-1529 (1966).

preme Court itself, *inter alia* in the case *Buck v. Jewell-La-Salle Realty Co.* (283 U. S. 191).

The Supreme Court thus failed to recognize the fact that the operator of a wire television service has to perform specific actions (described at the beginning of this article) in order to make the television broadcasts available to his prospective audience. This audience represents a *new* audience that the television broadcast could not reach without the help of a system of wire television.

Understandably, the Supreme Court's decision was greeted with apprehension in copyright circles. The change of opinion made by the Supreme Court could have drastic repercussions on other "public performance" questions, as was pointed out by Mr. Justice Fortas in his dissenting opinion, a view shared by the writer. Wire television operations are of such importance that they are indeed worthy of the legislature's attention.

In connection with the revision of the copyright law that is still pending before the United States Congress, the Register of Copyrights in 1965 took the position that the operations of the CATV companies should be dealt with as a form of "program transmission" subject to the author's control. The reasons for this position were set forth by the Register as follows: "On balance, however, we believe that what community antenna operators are doing represents a performance to the public of the copyright owner's work. We believe not only that the performance results in a profit which in fairness the copyright owner should share, but also that, unless compensated, the performance can have damaging effects upon the value of copyright. For these reasons, we have not included an exemption for commercial community antenna systems in the Bill"⁴⁸.

In a very interesting series of lectures made at Columbia University, Professor B. Kaplan, who is a self-professed partisan of a system of moderate protection, seems to disagree. He says: "Instead of conjuring with 'transmission', we have to consider whether clamping down copyright controls would have any hurtful anticompetitive effects, or would be consistent with the declared purposes of the Federal Communications Act, or would serve as a desirable means of correcting the hardships which CATV systems may visit on TV stations in the same localities"⁴⁹. This declaration stresses the role to be fulfilled by the CATV companies in television as a whole in the United States.

In other publications, too, attention has been called to the danger that recognition of a copyright owned by the television organization would be to CATV. The television organization could, in fact, forbid program transmission by CATV or authorize it only at prohibitive costs⁵⁰.

Indeed, in the most recent development to date, the FCC has proposed a new rule requiring any CATV system proposing

⁴⁸ Copyright Law Revision, Part 6, Supplementary Report of the Register of Copyrights on the General Revision of the U. S. Copyright Law: 1965 Revision Bill, May 1965. Printed for the use of the House Committee on the Judiciary, 89th Congress, 1st Session, at p. 42.

⁴⁹ B. Kaplan, "An Unhurried View of Copyright: Proposals and Prospects", 66 *Columbia Law Review* 831 (1966).

⁵⁰ See "The Wire Mire: The FCC and CATV", 79 *Harvard Law Review* 375-376 (1965).

to transmit distant signals (i. e. signals beyond the normal range of television receivers) into one of the major television markets of the country to obtain the consent of the originating station⁵¹.

At the present time, however, the attitude that will finally be adopted by the FCC and the Congress cannot yet be predicted. While the question of CATV has become a major obstacle to the passage of the revision program of the copyright law, some resolution of the problem seems likely in the future.

C. The Stockholm Revision of the Berne Convention

All of the foregoing pertains to national situations. On the international level, owing to the fact that wire television is such a recent phenomenon and that it appears only on a relatively limited scale in most European countries, no rules on this type of transmission and on the authors' rights related to it have yet been established. When the Berne Convention was revised at the Diplomatic Conference of Stockholm, no change was made in Article 11^{bis}, at present governing this subject⁵². For that matter, the "Programme of the Conference" had made no proposals regarding it. During the preparations for the revision, however, a rather important amendment to the second item of Article 11^{bis}(1), proposed by the Delegation of the United Kingdom with the support of the Delegations of Israel, India and the Netherlands, was discussed by the Committee of Governmental Experts which met in Geneva from July 4 to 15, 1965. The proposal was worded as follows:

- (ii) any communication to the public by wire or by rebroadcasting of the broadcast of the work, when this communication is made in another country of the Union by an organization other than the original one and is made to an audience not contemplated by the organization that broadcast the work.

The intent of this proposal seems to be to restrict copyright: (a) to international situations (which, of course, leaves the national legislature complete freedom of action), and (b) solely to cases where the radio or television program transmitted by wire originates from an organization abroad whose broadcasts are not primarily intended for the audience receiving the transmission. Thus, the notion of "contemplated audience" would have been introduced into the Convention. This proposal was not adopted, however, for most of the delegations did not vote in favour of such an amendment.

8. The Legal Position of Performing Artists

A. In Europe

Finally, the third category directly affected by the advent of wire television is that of the performing artists. Like the broadcasting organizations whose programs are carried by wire in the Netherlands, the international organizations of performing artists looked into the plans announced by the

⁵¹ Notice of Proposed Rule Making and Notice of Inquiry, FCC 68-1176 (December 13, 1968).

⁵² Article 11^{bis} recognizes the author's exclusive right to authorize the broadcasting (including television) of his work and the communication to the public by wire or by rebroadcasting of the broadcast of the work, when this communication is made by an organization other than the original one.

Dutch PTT for diffusing television programs on the national level. These organizations — the International Federation of Actors (FIA), the International Federation of Musicians (FIM) and the International Federation of Variety Artists (IFVA) — were contacted by the EBU. The object of this step was to safeguard the artists' interests in relation to wire television in the Netherlands and other countries.

In order to understand the full significance of this step, one should first examine the principles on which the legal position of performing artists is based at present, especially as regards transmission by wire of the television programs in which they have participated.

At present, it is generally recognized that performing artists do not enjoy copyright but that their performances give rise to a "neighboring" right allowing them to exert some control over their performances and to receive appropriate remuneration for the use thereof. In the international spheres it is on this principle — already sanctioned in the legislation or case law of a number of countries — that the Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations, signed in Rome on October 26, 1961⁵³, is based. This Convention entered into force on May 18, 1964, and at the present time is binding on ten countries that have ratified it in accordance with the provisions applicable.

The European countries that have ratified it are Great Britain, Sweden, Czechoslovakia, Denmark and the Federal Republic of Germany. The Netherlands has not yet ratified this Convention, nor has it worked out national legislation that would offer protection to artists.

As regards wire transmission, the Convention provides no protection for artists against such use of their performance; Article 7 is silent on the subject of transmission of televised performances by wire. But, here again, the Convention merely sets up minimum standards of protection, and the contracting countries are free to provide further protection⁵⁴.

The result of this situation is that an artist whose performance is televised and transmitted to the Netherlands over the wire television network is unable at present to rely either on an international convention or on a Dutch law in order to oppose such a transmission or to claim appropriate remuneration. As can be understood, the courts have never pronounced an opinion on the question.

A similar situation exists in Belgium.

In Switzerland, performing artists are afforded some protection, but it does not appear that this protection allows them to oppose wire transmission of the television broadcasts in which they have participated⁵⁵.

In France, as we have already seen, a Draft Bill on the protection of performing artists, producers of phonograms and broadcasting organizations is now being prepared. This

⁵³ See note 13.

⁵⁴ See Articles 21 and 22 of the Convention. Furthermore, the last paragraph of Article 7 contains an explicit reference to the principle whereby artists have "the ability to control, by contract, their relations with broadcasting organizations."

⁵⁵ See the study on Switzerland made by Unesco (*Copyright Bulletin*, vol. IX, No. 1, 1956; Comparative Study, pp. 56-57).

Draft Bill provides no protection for artists against the transmission of television broadcasts by wire⁵⁶.

In the Federal Republic of Germany, the new copyright law seems to offer protection against the wire transmission of a live performance; a performance recorded on tape or disc may be transmitted without the consent of the artist if the tapes or discs have been "put out" (*erschienen*), but in this case the artist has the right to equitable remuneration⁵⁷.

In Sweden, the copyright law, which also recognizes certain neighboring rights, does not give performing artists any protection against the wire transmission of their televised performances⁵⁸.

Lastly, the law in Great Britain which protects performing artists by means of penal sanctions, includes no provisions imposing sanctions on the transmission of a televised performance by wire without the consent of the artist⁵⁹.

In the absence of legislative provisions or international conventions protecting artists from the transmission of their televised performances by wire, artists have only the clauses of their contracts with the broadcasting organization on which to rely in trying to oppose wire transmissions or to obtain appropriate remuneration for such transmissions.

Obviously, as far as television broadcasting is concerned a clause on wire radio contained in such a contract cannot be considered to cover wire television, since the latter was created long after the wire radio contracts were negotiated. Besides, it is a matter of principle that authorizations granted by contract are to be interpreted restrictively. Any initiative not explicitly and unequivocally authorized remains forbidden. The artists have therefore by no means authorized wire transmission of the television broadcasts in which they have participated.

B. In the United States

We have no information indicating that American performing artists have ever brought any type of action against the CATV companies. But, in *United Artists Television Inc. v. Fortnightly Corporation*, of May 23, 1966⁶⁰, the Screen Actors Guild and the Directors Guild of America supported the arguments of United Artists, declaring that CATV operations caused appreciable damage to their members in view of the fact that the contracts concluded by the Guilds provide for payment for televising films and such payments are not made by the CATV companies.

C. Bases for Future Regulation

To safeguard their interests and to ensure proper operation of their broadcasts (both on the legal level and on the program level), it can be expected that those broadcasting organizations of the EBU affected by wire television will

require the owners of such systems to conclude agreements with them (independently of the future evolvement of such legal instruments as the European Agreement for the Protection of Television Broadcasts or the Rome Convention, and independently of any copyright they may claim in regard to the owners of these systems). In such agreements, the broadcasting organizations will have to take into account the interests and the legal position of their co-contracting parties. This principle is, moreover, recognized in the EBU/PTT agreement concerning the experimental period; the agreement expressly provides, for example, that the PTT is to refrain from transmitting, over its wire television system, sports events that may not be broadcast by the officially recognized Dutch television organizations. This means events that "may not be broadcast" because of the fact that the sports organizations authorize television transmission of a football game only if the stadium is full. It would thus also be conceivable that performing artists might refuse to participate in simultaneous or prerecorded broadcasts transmitted by wire television. As a matter of fact, under the hypothesis that the operator of a wire television system has complete freedom of action, it is obvious that the artists would be deprived, on the international level, both of control over their televised performances and of the supplementary remuneration they have a right to expect in the event of an international relay, a right that was recognized in the agreement of February 1, 1957, concluded with the EBU on the subject of international television relays⁶¹.

It is our opinion that, as concerns the final regulation of wire transmission of their televised performances, the artists can, with regard to the broadcasting organizations, assert claims to the safeguarding of their interests on both the national and the international level, as these organizations are not authorized to give their consent to transmission of televised performances by wire if such authorization is not granted to them through a contract concluded with the artists.

On the other hand, as long as no agreement has been drawn up between the broadcasting organizations and the wire television owners, is it possible for the artists to oppose the transmission of their televised performances by taking direct action against the wire television owner?

As has been pointed out above, under the EBU/PTT agreement, the PTT provides the EBU members with protection against any appeal that might be made against the latter owing to the use of their productions. The protection given by the Dutch PTT to the EBU members thus also covers claims made by performing artists. For the time being, how-

⁶¹ In actual fact, this agreement merely contains *recommendations* since the broadcasting organizations members of the EBU are autonomous in their relations with their collaborators (or the associations thereof). As a general rule, these recommendations are followed by the members.

In his article "Telephonic Radiodistribution" (see note ³²), Professor Desbois stresses the similarity between wire radio and *relay*. Far from simply lengthening reception, the PTT system, according to the author, is *added* to the broadcast in the manner of a relay.

Professor Desbois's opinion is shared by CISAC (Assemblée Confédérale, Paris, October 1949) which, following a report made by Mr. J. Matthyssens, adopted the following resolution: ". . . considers that wire radio, far from being integrated in the radiophonic process, in an addition to it and represents a foreign *adventitious element* with respect to broadcasting . . .".

⁵⁶ See Article 5, paragraph 1, No. 1, of this Draft Bill. In paragraph 2, the definition given to the word "rebroadcasting" (*réémission*) is the same as that appearing in the Rome Convention (see note 14).

⁵⁷ Article 76 of the Law of September 9, 1965. See also the explanatory statement concerning Article 20.

⁵⁸ Article 45 of the Law of December 30, 1960.

⁵⁹ See the Dramatic and Musical Performers Protection Act, 1925, amended by the Copyright Act, 1956.

⁶⁰ See note ⁴².

ever, this protection does not cover Dutch television organizations, as the EBU/PTT agreement is limited to international situations.

It can, of course, be considered that the development of wire television into a new nationwide phenomenon (that is, no longer a regional one) involves a real danger to the artists. In the matter of radio and television broadcasting, the artists know to whom they should address themselves: they have a contract with the organization that broadcasts their performances; internationally, these broadcasting organizations are grouped together in the EBU, and the artists' organizations have concluded an agreement with the EBU on the subject of television relay. But, in the case of wire television, it is a third party who sets up, as he sees fit, the program of broadcasts to be carried over the cable network. There is no contractual link between that party and the artists whose televised performances are transmitted. For the time being, unlike sound broadcasting the range of television broadcasts is limited, and it is on this fact that the whole legal system is based. If, for example, an American broadcasting organization sells one of its programs to the Belgian television organization, it knows that the program can also be seen in the frontier areas of the Netherlands. If, however, due to the activities of a wire television operator, this range is considerably extended so that the program can be seen throughout the country, the situation becomes entirely different, for it is obvious that the program in question can no longer be sold in the Netherlands. Likewise, an artist who has concluded a contract with the Belgian television organization for a series of broadcasts cannot conclude another contract with the Dutch television organization for that same series if it has already been diffused in the Netherlands by wire television. The artist consequently suffers damage which, as things stand at present, is not compensated in any way.

Can an action for misdemeanor or quasi-misdemeanor be brought on this ground? The question is too difficult to

answer in a general way. Much depends on the relevant case law. Considering the current Dutch case law, it would be uncertain, in our opinion, to bring an action against the PTT on such a ground. Concrete *evidence* would have to be shown of the *damage* caused to the artist because of the diffusion of his performance by wire in the Netherlands. Such a situation is only conceivable if the artist has already concluded an agreement for a performance (in the presence of a live audience or for radio and television) and this agreement has had to be rescinded because the performance, which had taken place previously, for example in Belgium, was transmitted in the Netherlands by wire television. Besides, such a situation could not arise unless wire television were already in service throughout the country.

9. Conclusion

In conclusion, it appears that the copyright and neighboring rights problems caused by the new phenomenon of wire television cannot be resolved satisfactorily except by national and international regulation established in close cooperation with all parties concerned: the respective operators, broadcasting organizations, authors, performing artists, and Governments. The example of the United States of America, cited at the beginning of this study, proves that such cooperation is essential. In Europe, there are even further problems to be dealt with which underline the urgency of international agreements.

Such cooperation is already shown in the EBU/PTT agreement and in the European Agreement on the Protection of Television Broadcasts. It is to be hoped that it will continue in respect of the problems not yet resolved.

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Editor's Note

The article by Mr. Boleslaw Nawrocki, entitled "Electronic Machines and Intellectual Creation" and appearing on pages 29 to 37 of the February 1969 issue of *Copyright*, was originally submitted as a report to the Legal and Legislative Committee of CISAC during its 26th Congress held in Vienna on June 28, 1968 (see *Copyright*, 1968, page 189). This fact was inadvertently omitted from the article.

(b) in the case of contrivances sold as aforesaid after the expiration of that period, five per cent

on the ordinary retail selling price of the contrivance calculated in the prescribed manner, so however that the royalty payable in respect of a contrivance shall, in no case, be less than a halfpenny for each separate musical work in which copyright subsists reproduced thereon, and, where the royalty calculated as aforesaid includes a fraction of a farthing, such fraction shall be reckoned as a farthing:

Provided that, if, at any time after the expiration of seven years from the commencement of this Act, it appears to the Board of Trade that such rate as aforesaid is no longer equitable, the Board of Trade may, after holding a public inquiry, make an order either decreasing or increasing that rate to such extent as under the circumstances may seem just, but any order so made shall be provisional only and shall not have any effect unless and until confirmed by Parliament; but, where an order revising the rate has been so made and confirmed, no further revision shall be made before the expiration of fourteen years from the date of the last revision.

I have quoted the section as it was originally enacted, from which it transpires that the original rate of royalty paid under the Act was 5 per cent on the retail price of the record. But the section provides the provisions for the amendment of the royalty payable, as can be seen from the above quotation.

In fact, the British Board of Trade in 1928 did make an enquiry and, having come to the conclusion that it was necessary to increase the rate of royalty, it made an order that the royalty to be paid was to be 6.25 per cent instead of 5 per cent. This order was duly ratified by the British Parliament and it became part of the Copyright Act then in force in Great Britain.

In 1929, the High Commissioner, then the highest Government authority in Palestine, published a notice saying:

Whereas by the above-mentioned Order in Council the Imperial Copyright Act 1911 is extended to Palestine, subject to the modifications prescribed therein;

And Whereas the Board of Trade in England have made a provisional Order set forth in the schedule hereto under the provisions of the said Act and the order has been confirmed by Act of Parliament;

Notice is hereby given that the provisions of the said Order shall have full validity and force in Palestine.

Then the full text of the Board of Trade Order was given as approved by Parliament. The essence of this Order was of course to apply the 6.25 per cent royalty to Palestine. No changes in the law were made with the establishment of Israel in 1948 and the law in force on the proclamation of the State of Israel was declared to apply to the newly born State.

It was natural of course for ACUM to take the position that the royalty rate under section 19 was 6.25 per cent. But this was not the position of the local industry, as they adopted the view that the royalty to be applied was 5 per cent, their contention being that the above Notice published by the High Commissioner had no legal standing and that British legislation had no force in Palestine, and therefore not in Israel, unless the proper procedure to extend such legislation was adopted. The Notice not being the proper procedure, the amendment from 5 per cent to 6.25 per cent was therefore invalid.

Various other minor objections were pleaded by the local industry against the validity of that notice, but I will mention only one, i. e. that the Copyright Act having been extended

to Palestine in 1924 the proper time to make any amendment of the royalty rate in Palestine, under the provisions of section 19(3) of the Act would have been in 1931, so that the notice published in 1929 was in any case premature.

Obviously ACUM could not accept such a reduction in royalties and the first point put to the Court's decision was therefore whether the amendment of the Act had legal force in Israel so that the industry was bound to pay 6.25 per cent and not 5 per cent as originally provided in 1911.

But as the French say: "*l'appétit vient en mangeant*", so the local industry was not content with demanding a reduction of the royalty rate back to 5 per cent, but they also raised questions as to what the "retail price" mentioned in section 19 meant. As is well known, the world of 1911 was a much nicer and easier world to live in and people in those times were not hounded with such troubles as purchase taxes. In modern times most countries have purchase or consumer taxes on various items, and in Israel records are no exception.

So, the local industry considered it would be unreasonable to include the purchase tax added to the price of the record within the meaning of the "retail price" provided by section 19. Their contention therefore was that the purchase tax be deducted from the retail price. They further contended that certain additional deductions should be made, out of the retail price, as for instance the cost of the covers of the records which, as they put it, could not be considered as part of the price of the record itself.

ACUM rejected all those contentions. It argued forcibly that it was impossible to have a situation where the industry might have to pay one of the lowest royalty rates, and that this was not the intention of the various legislative authorities. The fact that no changes had been made in the law by the State of Israel since 1948 could be presumed to mean that there had been no intention to make such changes. But ACUM also took the position that the British Board of Trade regulations of 1912 also applied to Israel: these regulations had, among other things, defined "retail price" and this definition did not include any reductions for purchase or other taxes.

There was one more point of great significance which ACUM decided to bring before the Court's decision, a point which was of particular importance to BIEM and other foreign repertoires. Should the industry in Israel be free to enjoy compulsory licence status on records made abroad? In other words, if a record of a work were to be made in England, France, Germany or elsewhere, would that fact automatically give the Israel industry the licence also to make a record of that work under the provisions of section 19 of the Act?

ACUM naturally took the position that section 19 could only have local force, and could not be extended to records previously made anywhere outside Israel. ACUM cited *Beechwood, Wisut and Kee Records*, an American case reported in 140 U. S. P. Q. at pages 409 and 449, and which supported this view, where a record of a work recorded in England was argued to give the American industry a licence to produce the record under the compulsory licence provisions of the U. S. Copyright Law.

The local industry took the opposite view. It was obvious to them that unless ACUM's contention was rejected, the entire world repertoire would be out of reach under compulsory licence provisions, and if no compulsory licence applied to these works that would mean that licences would have to be negotiated. Obviously under these conditions the compulsory licence provisions would not be of much help. It might even bring the industry to most undesirable results. A manufacturer in Israel who might obtain "first rights" to make a record might pay 8 per cent on the retail price whilst a week later a second manufacturer would be free to make the same record and pay only 6.25 per cent. It becomes evident why the Court in Israel was called upon to decide these very deep differences between the parties.

Judge Raveh of the Tel Aviv District Court heard the case for three consecutive days, listened to very long arguments on both sides and after a few weeks of deliberations, gave a very thorough and comprehensive judgement.

On the first question the Judge decided in favour of ACUM and concluded that the royalty rate in force in Israel is 6.25 per cent and not 5 per cent. The learned Judge considered the Notice of the High Commissioner for Palestine as properly made and having full force in Israel. The Judge's reasoning was that section 19(3) of the Copyright Act provided for the machinery of amendment of the royalty rate: this machinery having been followed, and the Order of the Board of Trade having been ratified by Parliament, that meant that section 19 stood amended and that this amendment was incorporated in the Act. The Judge further added that section 37(2)(d) of the Act gave the High Commissioner power to proclaim that the amendment would have force in Palestine (now Israel) and that this was done by him by the Notice of 1929.

The Judge also rejected the contention that this Notice had been prematurely published in Palestine as was contended by the industry. The reasoning was that seven years had to be counted from 1911, otherwise the King in Council should have made special provisions for Palestine. In any case, the Judge said that, even if seven years from commencement of the Act in Palestine (1924) had not passed in 1929, they certainly did pass by now, so that if the notice was published prematurely, it could have come into force in 1931 if not in 1929.

On the question of the purchase tax the learned Judge decided against ACUM. For reasons of Palestinian and Israeli constitutional fault the 1912 Board of Trade regulations were never given validity in Israel so that the Judge felt free to give his own definition to the term "retail price". The Judge, basing himself mainly on logic and the probable intention of the legislation, came to the conclusion that purchase tax was to be deducted in order to arrive at the proper retail price, from which 6.25 per cent were to be paid to the copyright owners. On the other hand, he was not prepared to make any other reductions, whether for jackets or otherwise.

The judgement then considered ACUM's contention that compulsory licence could not be extraterritorial. Here the Judge decided in ACUM's favour. The learned Judge agreed with the American decisions quoted above, since he came to the conclusion that there was no substantial difference be-

tween the provisions of American law relating to compulsory licence and the similar provisions of section 19.

Section 19 involved, of course, the interesting question of the exact definition of the words "within the parts of His Majesty's dominions to which this Act extends". These words appear in section 19(2) after the words "for any person to make", but they do not reappear in paragraph (b) of the same section. The Judge concluded that since the territorial reference is not so pertinent in the first part of the section, the legislator wrote the territorial definition once, and then did not repeat it again, this being obviously superfluous.

Under the law of Israel any allusion in any legislation to "Great Britain", "His Majesty", or "His Majesty's dominions" has to be read as "Israel" so the Judge concluded it was obvious that it was the intention of the law that only records produced in Israel could be produced by any other maker under the compulsory licence provisions.

The legal position now therefore is this. Only records produced under licence in Israel can be reproduced under compulsory licence, provided proper notice is given and 6.25 per cent of the retail price, less purchase tax, is paid. This of course means that, unless new contracts are negotiated, the industry has very little to gain out of the compulsory licence provisions.

In the first place the entire foreign repertoire is now out of reach under compulsory licence terms. That leaves BIEM free to negotiate the terms under which records of foreign works will be allowed to be mechanically reproduced in Israel. On the other hand, ACUM's repertoire also may come to be produced at a royalty higher than 6.25 per cent of the compulsory licence provisions, which means discrimination between record manufacturers.

There is very much to be said against the system of compulsory licence, and the industry in the countries where this system does not exist did not collapse. Israel too lived very happily under the BIEM contract system. The difference in percentage of royalties seems, at first sight, considerable (6.25 per cent against 8 per cent), but considering deductions and facilities allowed by BIEM, the actual difference is really much smaller. It seems therefore difficult to understand the motives of the local industry to demand the reduction of the royalty, and to go to the Courts to interpret the compulsory licence provisions. As it turned out it seems like a very "Pyrrhic victory" that the industry has gained. At the moment of writing this "Letter", the industry has yet to decide whether it will appeal against the decision, whether it will revert to the BIEM contract, or whether it will decide to settle for the compulsory law provisions.

It is certain that should the industry decide to work under compulsory law provisions, there will be very many difficulties to solve. There will occur many misunderstandings, especially since, without negotiations, it is very difficult to apply the provisions of section 19. Probably the current year will bring the parties to the Courts again.

It may be hoped that reason will prevail and "peace" will indeed come to the land of Israel — at least within the limited boundaries of mechanical rights.

INTERNATIONAL ACTIVITIES

Extraordinary Session of the Intergovernmental Copyright Committee (Unesco)

(Paris, February 3 to 7, 1969)

Report on the meetings of the Intergovernmental Committee held on its own

1. The Intergovernmental Copyright Committee established under Article XI of the Universal Convention met in extraordinary session at Unesco Headquarters in Paris from February 3 to 7, 1969.

2. The twelve Member States of the Intergovernmental Copyright Committee were represented: Brazil, France, Federal Republic of Germany, India, Italy, Japan, Kenya, Mexico, Spain, Switzerland, United Kingdom, United States of America.

3. The following States, parties to the Universal Convention or members of the United Nations or Unesco, were represented by observers: Afghanistan, Algeria, Andorra, Argentina, Austria, Belgium, Canada, Ceylon, Chile, Costa Rica, Czechoslovakia, Denmark, Finland, Guatemala, the Holy See, Ireland, Israel, Laos, Madagascar, Monaco, Morocco, Netherlands, New Zealand, Nicaragua, Nigeria, Peru, Philippines, Portugal, Rumania, Senegal, Sweden, Thailand, Tunisia, Turkey, Uruguay, Yugoslavia.

4. Representatives of three intergovernmental organizations, twelve international non-governmental organizations and three national non-governmental organizations took part in the meeting as observers.

5. The list of participants is annexed to the present report¹.

6. Mr. Ribeiro (Brazil), Acting Chairman of the Intergovernmental Copyright Committee, declared the session open and expressed his most cordial wishes for the success of its work.

7. Mr. Saba (Assistant Director-General for International Standards and Legal Affairs, Unesco) extended a warm welcome to all members and observers on behalf of the Director-General, Mr. René Maheu. He noted that the current session of the Intergovernmental Committee was of special importance, since it was the first time that the Committee had been called upon to carry out the responsibilities delegated to it under the Universal Convention in regard to the revision of that instrument.

8. He emphasized the complexity of the present situation of international copyright, pointing out that a major cause was that the use of works of the mind played an essential part in development.

9. In conclusion, Mr. Saba remarked that the results of the meeting would undoubtedly have an influence on the future development of international copyright.

10. Professor Bodenhausen (Director of the United International Bureaux for the Protection of Intellectual Property, BIRPI) expressed his pleasure at being present in an advisory capacity at the meetings of the Intergovernmental Committee, in accordance with the provisions of the Universal Convention. He thanked the Director-General of Unesco and his staff for their kind welcome.

1. Composition of the Bureau pending the next regular session of the Intergovernmental Committee

11. The Committee took note of the resignation of its Chairman, H. E. Mr. Cippico, who had been called upon to take up other duties (document IGC/XR/4).

12. Following statements by the representatives of Argentina, Italy, Mexico, Spain, United Kingdom and United States of America, Mr. Ribeiro, Acting Chairman of the Committee, was elected Chairman.

13. Mr. Ribeiro paid tribute to the masterly skill and efficiency with which H. E. Mr. Cippico had presided over the Committee.

14. H. E. Mr. Charpentier (France) joined in the tribute paid to H. E. Mr. Cippico, and welcomed Mr. Ribeiro as Chairman for the current session.

2. Adoption of the final agenda

15. The Intergovernmental Committee adopted the following item for its agenda: "Communication from the Director-General of Unesco concerning comments from States parties to the Universal Copyright Convention with regard to the revision of Article XVII of the Convention".

3. Revision of the Universal Copyright Convention

16. The Secretariat of the Committee presented the report on this subject (document IGC/XR/2) containing comments by thirty-one States parties to the Universal Convention, regarding the desirability of revising Article XVII of the Convention in the light of the consultation carried out by the Director-General of Unesco in pursuance of resolution 5.122 adopted by the General Conference at its fourteenth session.

17. Professor Bodenhausen (Director of the United International Bureaux for the Protection of Intellectual Property, BIRPI) raised two interlocutory questions:

¹ See above, p. 53, the list of participants of the Permanent Committee of the Berne Union. The persons mentioned in this list are the same as the participants of the Intergovernmental Copyright Committee, subject, as regards the States concerned, to the membership of both Committees.

- (i) the definition of the respective spheres of competence of the General Conference of Unesco and the Intergovernmental Copyright Committee. He pointed out that the Intergovernmental Committee was not a Unesco body and should proceed independently in its study of the question of revising the Universal Convention;
- (ii) the legal validity of the requests for revision made by at least ten States parties to the Convention. In that connexion he drew the Committee's attention to the provisions of Article XII of the Universal Convention whereby the convening of a conference for revision might be either mandatory, if requested by at least ten States or, failing ten requests, left to the discretion of the Committee.

18. The representative of India observed that there was no set formula for presenting requests for revisions and that the inference undoubtedly was that replies in favour of convening a conference for revision were legally valid requests.

19. The observer from Argentina, while agreeing with the representative of India that there was no set formula for requests for revision of the Universal Copyright Convention, expressed the view that the legal validity of the replies forwarded to the Director-General of Unesco should be examined.

20. The representative of Spain considered that the questions raised by the Director of BIRPI were fundamental. He explained that the Government of Spain, for its part, was in favour of convening a revision conference but was not making a formal request to that effect.

21. The observers from Czechoslovakia, Kenya, Monaco, Nigeria, Peru and Yugoslavia informed the Committee that their governments were formally requesting that a revision conference be convened.

22. The observer from Chile stated that his government not only agreed with the proposed revision of the Universal Convention but was expressly requesting that revision.

23. The representative of France, for his part, thought that the Intergovernmental Committee should take into account the unanimous stand of the General Conference of Unesco in favour of the revision of Article XVII of the Universal Convention. The stand taken by the Conference carried sufficient weight for the Committee to regard the convening of a revision conference as a necessity.

24. The representative of the United States of America endorsed the statement of the Director of BIRPI concerning the respective spheres of competence of the General Conference of Unesco and the Intergovernmental Copyright Committee.

25. He further suggested that a working group be set up to examine the legal validity of the requests for revision of the Universal Convention.

26. The representative of the Federal Republic of Germany seconded the suggestion made by the representative of the United States of America.

27. The representative of Italy said that the Intergovernmental Committee was not competent to interpret the comments made by the States parties to the Convention. He ap-

proved of the idea of setting up a working group to examine the replies received by the Director-General of Unesco. He suggested that should any doubt remain as to the legal validity of the replies sent by the governments, the Unesco Secretariat should consult the various governments concerned to ascertain whether or not they requested the convening of a revision conference.

28. The representative of the United Kingdom, while not against the establishment of a working group to examine the replies made by States parties to the Universal Convention, wished to know whether the said group would be in a position to interpret such replies.

29. The observer from Ceylon, after recalling the antecedents of the matter before the Intergovernmental Committee, expressed the view that the comments made by the States parties to the Universal Convention constituted formal requests for revision.

30. The observer from Madagascar endorsed the view of the observer from Ceylon.

31. The observer from the Union of National Radio and Television Organizations of Africa reminded the meeting of the position of the African countries and emphasized that for those countries the revision of Article XVII of the Universal Convention was a matter of urgency.

32. The observer from Tunisia thanked the representative of France for having recalled that resolution 5.122 had been adopted unanimously by the General Conference of Unesco which implied that more than ten States were asking for the convening of a revision conference. He drew the Committee's attention to the difficulties of the developing countries, which might find themselves unable to remain parties to any conventional system for the protection of copyright for want of an appropriate solution.

33. At the close of this exchange of views, the Chairman of the Committee noted that there was almost a consensus in the Intergovernmental Committee that a conference should be convened to revise the Universal Convention. He further concluded that since no one had spoken against it, the Committee wished to convene a revision conference.

34. When the discussion was resumed, the representative of France expressed the view that it was important for developing States to be able to take advantage of the protection guaranteed by the Universal Convention. He recalled that the Committee had decided, at its previous session, to convene a revision conference. He considered that a subcommittee, set up under Rule 16 of the Rules of Procedure of the Intergovernmental Committee, might be entrusted with the preparations for the revision conference, whose terms of reference would be limited to the amendment of Article XVII and the Appendix Declaration relating thereto and would not extend to the clauses of substantive law.

35. The representative of the United States of America expressed satisfaction at the Committee's decision to revise the Universal Convention and mentioned that his delegation was submitting a resolution on the subject with a view to implementing that decision. In the resolution it was proposed,

in particular, that a sub-committee be set up in accordance with Rule 16 of the Intergovernmental Committee's Rules of Procedure to examine the following points:

- (1) Whether the suspension of the safeguard clause should be limited to the developing countries and, if so, how that term should be defined;
- (2) Whether the safeguard clause should be suspended indefinitely or for a specified period of time;
- (3) Whether a Berne Union member should be entitled to adjust the level of protection to that offered by a developing country under the suspension;
- (4) Whether any link between the Berne Union and the Universal Copyright Convention could or should be substituted for the safeguard clause;
- (5) The majority necessary at a revision conference to revise the Appendix Declaration.

36. The sub-committee so formed should meet before the Joint Study Group mentioned in resolution 59 (IX) of the Intergovernmental Committee, to which the results of its discussions might be transmitted.

37. The observer from Rumania expressed the view that resolution 59 (IX) of the Intergovernmental Committee should constitute the basis of the work that the Joint Study Group would have to accomplish.

38. The observer from Tunisia recalled that at the previous meeting of the Committee, general agreement had been reached on the desirability of convening a conference to revise the Universal Convention. He drew the Committee's attention to Articles XI and XII of the Convention, laying down the procedure for preparing for revision conferences, and giving the Intergovernmental Committee sole competence in the matter. He also referred to the terms of resolution 5.122 adopted by the General Conference of Unesco at its fifteenth session, authorizing the Director-General to take appropriate steps, firstly to enable the competent bodies to examine the possibility of revising Article XVII of the Universal Copyright Convention and secondly, to set up a joint study group to examine any other changes it might seem necessary to introduce into that instrument.

39. The representative of Kenya submitted a draft resolution proposing the convening of a conference to revise Article XVII of the Universal Convention and the setting up of a sub-committee appointed under Rule 16 of the Rules of Procedure of the Intergovernmental Committee, which would be responsible for preparing for the conference. While acknowledging that it was for the Committee to decide on the membership of the sub-committee, he proposed that it should consist of representatives of the following States: Brazil, France, India, Italy, United States of America.

40. The observer from Morocco referred to the unanimous vote on resolution 5.122 of the General Conference of Unesco and emphasized the importance to be accorded to it, in view of that fact that the Universal Convention had been drawn up and adopted under the auspices of Unesco. He added that as the revision of Article XVII of the Universal Convention would make it possible to prevent developing

countries from withdrawing from any system for the protection of copyright, it should be of service to the Berne Union and the Universal Convention alike.

41. The representative of India agreed with what had been said by the representative of Kenya and the observer from Tunisia.

42. The representative of the United Kingdom appreciated the reasons for modifying Article XVII and the Appendix Declaration relating thereto, but considered it necessary to proceed with caution and to examine that question in conjunction with all the other problems raised in connexion with international copyright.

43. The representative of Mexico seconded the remarks of the representative of the United Kingdom.

44. The representative of the United States of America reminded the Committee that the draft resolution prepared by his delegation took the needs of the developing countries into account.

45. The representative of Italy recalled that his government, when consulted by the Director-General of Unesco in compliance with resolution 5.122 of the General Conference, had stated in its reply that it was in favour of a revision limited exclusively to Article XVII and he explained that the reply should be interpreted as a formal request for revision within the meaning of Article XII of the Convention.

46. At the close of its deliberations, the Intergovernmental Committee set up a Drafting Committee comprising the following States: France, Federal Republic of Germany, India, Kenya, Mexico, United Kingdom, United States of America.

47. The Chairman of the Intergovernmental Committee, being a member *ex officio* of the Drafting Committee, was unanimously elected as its Chairman.

48. The Drafting Committee prepared a draft resolution which was adopted by the Intergovernmental Committee and which is annexed to the present report (Annex A).

49. The Committee having been informed that Tunisia's accession to the Universal Convention was imminent, decided on a proposal by France, supported by Senegal, that should the Convention have come into force for that State by the time of the meeting of the sub-committee appointed under Rule 16 of the Rules of Procedure of the Intergovernmental Committee, Tunisia would be authorized to attend the sub-committee meetings as an observer.

50. The representative of Italy inquired which Member States on the sub-committee had spoken in favour of revising Article XVII of the Universal Convention.

51. The Assistant Director-General for International Standards and Legal Affairs replied that of those States, India and Kenya had asked for the text to be revised.

52. The representative of France stated that his government also was in favour of revision.

53. Resolution 1 (XR) was unanimously adopted.

4. Other business

54. The other items on the Agenda of the Intergovernmental Committee were discussed at a joint meeting with the Permanent Committee of the Berne Union².

ANNEX A

Resolution No. I (XR)

Considering the requests of a number of countries party to the Universal Copyright Convention to convene a conference for revision of the Convention;

Taking note of the fact that these requests were prompted by proposals for changes in the provisions of the Universal Copyright Convention with respect to its relationship to the Berne Convention for the Protection of Literary and Artistic Works;

Recognizing its duty, under Article XI of the Universal Copyright Convention, to make careful and thorough preparations for any revision conference;

Decides to convene a conference for revision of Article XVII of the Universal Copyright Convention and of the Appendix Declaration relating thereto,

Establishes, in accordance with Rule 16 of its Rules of Procedure, a sub-committee to examine the issues raised by the proposals for the revision of Article XVII and its Appendix Declaration. The sub-committee is composed of the following members: France, Federal Republic of Germany, India, Kenya, Mexico, United States of America; the Chairman of the Intergovernmental Copyright Committee is *ex officio* member of the sub-committee; the Director-General of the United Nations Educational, Scientific and Cultural Organization and the Director of the United International Bureaux for the Protection of Intellectual Property may attend meetings of the sub-committee in an advisory capacity; Czechoslovakia and two States members of the Permanent Committee of the Berne Union designated by the latter attend the meetings of the sub-committee as observers,

Express the wish that the following be included among the issues considered by the sub-committee:

- (1) whether the suspension of the safeguard clause should be limited to developing countries and, if so, how that term should be defined;
- (2) whether the safeguard clause should be suspended indefinitely or for a specified period of time;
- (3) whether a Berne Union member should be entitled to adjust the level of protection to that offered by a developing country under the suspension;
- (4) whether any link between the Berne Union and the Universal Copyright Convention could or should be substituted for the safeguard clause; and
- (5) the majority necessary at a revision conference to revise the Universal Copyright Convention and particularly its Article XVII and the Appendix Declaration relating thereto;

Requests that the sub-committee submit its report to the Intergovernmental Committee at the time of its next regular session and recommends that it communicate, as a matter of information, its report to the Joint Study Group established under resolution No. 2 (XR),

Decides that the Intergovernmental Copyright Committee, at its next regular session, shall fix the date for the meeting of the conference for revision of Article XVII of the Universal Copyright Convention and of the Appendix Declaration relating thereto and shall proceed with preparations for that conference, taking into consideration the results of the sub-committee established hereunder.

The documentation prepared by the Secretariat to be submitted to the next regular session of the Intergovernmental Copyright Committee shall include a report of the work accomplished at that time by the Joint Study Group envisaged under resolution 59 (IX) of the Intergovernmental Copyright Committee;

Instructs the Chairman of the Intergovernmental Copyright Committee, in consultation with the Director-General of Unesco, to convene the sub-committee thus constituted.

² See above, p. 50, the second part of the Report of the Permanent Committee of the Berne Union.

