

Copyright

Review of the
WORLD INTELLECTUAL PROPERTY
ORGANIZATION (WIPO)

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

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WORLD INTELLECTUAL PROPERTY ORGANIZATION

KENYA

Ratification of the WIPO Convention

The Director General of the World Intellectual Property Organization has notified the Governments of the countries invited to the Stockholm Conference that the Government of the Republic of Kenya deposited, on July 5, 1971, its instrument of ratification dated June 7, 1971, of the Convention Establishing the World Intellectual Property Organization (WIPO).

The Republic of Kenya 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.

Pursuant to Article 15(2), the Convention Establishing the World Intellectual Property Organization (WIPO) will enter into force, in respect to the Republic of Kenya, three months after the date of the deposit of the instrument of ratification, that is, on October 5, 1971.

WIPO Notification No. 33, of July 26, 1971.

Publication

Teaching of the Law of Intellectual Property Throughout the World

With a view to promoting a better knowledge of the law of intellectual property — industrial property and literary and artistic property — the International Bureau of WIPO is trying to identify those universities and other higher education establishments in the world in which courses are offered in the field of industrial property law (patents, trademarks, industrial designs, etc.) and copyright, by preparing and publishing a list of such establishments, and making it available to any interested organization or person.

Such list also indicates where information is available, the nature of the course (regular, seminar, etc.), its duration (one semester, two semesters, etc.), the number of hours per week during the semester, as well as any special information, for example, the year of his studies in which the student may

take the course and whether the course is required for obtaining a degree.

The preparation of the list is, of course, a continuing undertaking, since the situation in any university or other such establishment may change from year to year or from semester to semester.

The first edition of the list was prepared in 1970. A second, considerably expanded edition was published recently (July 1971). It lists 379 universities or other higher education establishments in 37 different countries offering a total of 476 courses: 317 industrial property, 77 copyright, and 82 mixed (industrial property and copyright) courses.

The list, contained in a 72-page brochure, may be ordered from the Publications Service of WIPO. Its price is 4 Swiss francs.

INTERNATIONAL UNION

I. Berne Convention

ARGENTINA

Application of the transitional provisions (five-year privilege) of the Stockholm Act of the Berne Convention

The Director General of the World Intellectual Property Organization (WIPO) has notified the Governments of member countries of the Berne Union of the notification deposited by the Government of the Argentine Republic in which that Government indicates its desire to avail itself of the provisions of Article 38(2) of the Stockholm Act of the Berne Convention.

That notification entered into force on the date of its receipt, that is, on July 23, 1971.

Pursuant to the provisions of the said Article, the Argentine Republic, which is a member of the Berne Union, may, for five years from April 26, 1970, the date of entry into force of the Convention Establishing the World Intellectual Property Organization (WIPO), exercise the right provided under Articles 22 to 26 of the Stockholm Act of the Berne Convention, as if it were bound by those Articles.

Berne Notification No. 29, dated July 26, 1971.

CHAD

Accession to the Stockholm Act of the Berne Convention

The Director General of the World Intellectual Property Organization (WIPO) has notified the Governments of member countries of the Berne Union that the Government of the Republic of Chad deposited on August 4, 1971, its instrument of accession dated June 8, 1971, to the Berne Convention for the Protection of Literary and Artistic Works of September 9, 1886, as revised at Stockholm on July 14, 1967.

The Republic of Chad indicated that, for the purposes of Articles 25(4)(b) of the Convention, it wished to belong to Class VII.

In accordance with the provisions of Article 29 of the Stockholm Act, the Republic of Chad will, three months after

the date of this notification, that is, November 25, 1971, be bound by:

- (a) Articles 1 to 20 of the Brussels Act of the Berne Convention pending the entry into force of Articles 1 to 21 of the Stockholm Act of the same Convention;
- (b) Articles 22 to 38 of the Stockholm Act of the Berne Convention.

A separate notification will be made on the entry into force of Articles 1 to 21 of the Stockholm Act when the required number of ratifications or accessions is reached.

Berne Notification No. 30, of August 25, 1971.

II. Rome Convention

COSTA RICA

Accession to the Rome Convention for the International Protection of Performers, Producers of Phonograms and Broadcasting Organizations

The Secretary-General of the United Nations informs us that the instrument of accession to the Convention by the Government of Costa Rica was deposited on June 9, 1971, in accordance with Article 24, paragraph 3.

Pursuant to Article 25, paragraph 2, the Convention comes into force for Costa Rica three months after the date of deposit of its instrument of accession, that is to say, on September 9, 1971.

NATIONAL LEGISLATION

MALTA

I

The Copyright (International Conventions) Regulations, 1970

(No. 1, of 1970)

In exercise of the powers conferred by section 16 of the Copyright Act, 1967, the Minister of Trade, Industry and Agriculture has made the following regulations:—

Citation

1. — These regulations may be cited as the Copyright (International Conventions) Regulations, 1970.

Extension of application of the Copyright Act, 1967

2. — The provisions of the Copyright Act, 1967, relating to literary works, musical works, artistic works, cinematograph films and sound recordings shall apply in the case of each of the countries mentioned in the Schedule hereto as follows:—

- (a) in relation to literary, musical or artistic works, or cinematograph films, first published, or sound recordings made, in that country as they apply in relation to such works or films first published, or sound recordings made, in Malta;
- (b) in relation to individuals who are citizens of, or are domiciled in, that country as they apply in relation to individuals who are citizens of or are domiciled in, Malta;
- (c) in relation to bodies of persons constituted and vested with legal personality under the laws of that country and established therein as they apply in relation to bodies of persons constituted and vested with legal personality under the laws of Malta and established in Malta;
- (d) in relation to commercial partnerships registered in that country in accordance with the law thereof as they apply in relation to commercial partnerships registered in Malta in accordance with the provisions of the Commercial Partnerships Ordinance, 1962.

Interpretation

3. — The words and expressions used in these Regulations shall have the same meaning as is assigned to them in the Copyright Act, 1967.

Note: The official English text of these three Regulations was published in the *Supplement to the Government Gazette of Malta*, No 12,366, of January 2, 1970, which is the date of their entry into force. For the text of the Copyright Act, see *Copyright*, 1970, pp. 68 *et seq.*

SCHEDULE (Regulation 2)

PART I

Countries of the Berne Copyright Union

Argentina	Liechtenstein
Australia	Luxembourg
Austria	Madagascar
Belgium	Mali
Brazil	Mexico
Bulgaria	Monaco
Cameroon	Morocco
Canada	Netherlands
Ceylon	New Zealand
Congo (Brazzaville)	Niger
Congo (Kinshasa)	Norway
Cyprus	Pakistan
Czechoslovakia	Philippines
Dahomey	Poland
Denmark	Portugal
Finland	Roumania
France	Senegal
Gabon	South Africa
Germany (Federal Republic)	Spain
Greece	Sweden
Holy See (Vatican City)	Switzerland
Hungary	Thailand
Iceland	Tunisia
India	Turkey
Ireland	United Kingdom of Great Britain and Northern Ireland
Israel	Upper Volta
Italy	Uruguay
Ivory Coast	Yugoslavia
Japan	
Lebanon	

PART II

Parties to the Universal Copyright Convention

Andorra	India
Argentina	Ireland
Australia	Israel
Austria	Italy
Belgium	Japan
Brazil	Kenya
Cambodia	Laos
Canada	Lebanon
Chile	Liberia
Costa Rica	Liechtenstein
Cuba	Luxembourg
Czechoslovakia	Malawi
Denmark	Mexico
Ecuador	Monaco
Finland	Netherlands
France	New Zealand
Germany (Federal Republic)	Nicaragua
Ghana	Nigeria
Greece	Norway
Guatemala	Pakistan
Haiti	Panama
Holy See	Paraguay
Iceland	Peru

Philippines
Portugal
Spain

Sweden
Switzerland
Tunisia

United Kingdom of Great Britain
and Northern Ireland
United States of America

Venezuela
Yugoslavia
Zambia

II

The Copyright Board Proceedings Regulations, 1970

(No. 2, of 1970)

In exercise of the powers conferred by section 17 of the Copyright Act, 1967, the Minister of Trade, Industry and Agriculture, with the concurrence of the Minister of Finance, Customs and Port, has made the following regulations:—

Citation

1. — These regulations may be cited as the Copyright Board Proceeding Regulations, 1970.

Interpretation

2. — In these regulations, unless the context otherwise requires:—

“Act” means the Copyright Act, 1967;

“Board” means the Copyright Board established under section 17 of the Act.

Application to the Board

3. — (1) Any matter which is due to be dealt with by the Board under any of the provisions of the Act shall be referred to the Board by application filed in the Registry of the Board.

(2) The application shall be signed and filed by the applicant or by an advocate or legal procurator on his behalf.

(3) The Board may, at any time, allow any amendment to be made in the application for the purpose of making it clearer.

Service of application

4. — The application shall be filed with as many copies as are required to be served on the parties with whom there is contestation and a copy, with an indication therein of the date and time of the first hearing of the application, shall be served on each such party at least fifteen working days before such date.

Notice to applicant on first hearing of application

5. — The date and time of the first hearing of an application shall be communicated to the applicant by notice served upon him at least seven working days before such date.

Registry fee and costs of services

6. — An applicant shall, on filing the application, pay the cost of service of the copies and of the notice respectively referred to in regulations 4 and 5, and shall in addition pay a Registry fee of five pounds.

Registry fee if application is withdrawn

7. — Where the application is withdrawn, the applicant shall be entitled to a refund of three pounds, two pounds or

one pound of the Registry fee paid under the last preceding regulation if the application is withdrawn respectively before the date fixed for its hearing, after the date fixed for its hearing but before it is adjourned for judgement, or after that it has been adjourned for judgement.

Advocate's or legal procurator's fee

8. — Where any party to proceedings before the Board is assisted by an advocate or legal procurator, there shall be payable to him a fee of from three to five pounds for each sitting of the Board at which he attends, as the Board having regard to the duration of the sitting and to the difficulties inherent in the matter to be decided shall fix:

Provided that where the duration of any sitting is of less than thirty minutes the Board may fix for attendance at such sitting a fee lesser than three pounds but in any case not less than one pound.

Record of proceedings

9. — There shall be kept a record of all the proceedings of the Board and all evidence shall be taken in writing.

Service of the acts of the Board

10. — Save where otherwise expressly provided in the Act or in any regulations thereunder, the service of all warrants, orders or other acts of the Board shall be carried out in accordance with the provisions of the Code of Organization and Civil Procedure and those provisions shall, as far as possible apply to proceedings before the Board.

Other costs and fees

11. — Except where otherwise provided, the costs of the proceedings before the Board and the Registry fees chargeable for acts filed in connection with such proceedings shall be assessed in accordance with the tariffs annexed to the said Code.

Registry of the Board and place where sittings are held

12. — The Board shall hold its sittings in the Superior Courts of Malta and the Registry of those Courts shall be the Registry of the Board.

Registrar of the Board

13. — The Registrar of the Superior Courts or any person acting in his stead or on his behalf in accordance with the provisions of the Code of Organization and Civil Procedure (in these Regulations referred to as “the Registrar”) shall be the Registrar of the Board.

Duties and powers of officials assigned to the Board

14. — The Registrar shall provide the necessary personnel for the holding of sittings and for the execution of the orders of the Board: the officials so designated shall, in the execution

of their duties, enjoy and exercise all such powers as are vested by the Code of Organization and Civil Procedure in officials performing similar duties.

III

The Copyright (Sound recordings) Regulations, 1970

(No. 3, of 1970)

In exercise of the powers conferred by section 16 of the Copyright Act, 1967, the Minister of Trade, Industry and Agriculture has made the following regulations: —

Citation

1. — These regulations may be cited as the Copyright (Sound recordings) Regulations, 1970.

Notice to be given by manufacturer

2. — Any person (hereinafter referred to as “the manufacturer”) who intends to make a sound recording (hereinafter also referred to as “record”) of a literary or musical work, or to reproduce such sound recording, in accordance with paragraph (i) of the proviso to subsection (1) of section 7 of the Copyright Act, 1967 (hereinafter referred to as “the Act”), shall, not less than forty days before any record on which the work is reproduced is delivered to a purchaser or otherwise supplied for the purpose of retail sale, give notice of his intention as follows: —

- (a) if the name and address in Malta of the owner of the copyright in such work, or of his lawful representative, are known to or can by reasonable inquiry be ascertained by the manufacturer, the notice shall be sent by registered post to such owner or representative at such address;
- (b) if such name and address are not known and cannot by reasonable inquiry be ascertained by the manufacturer, an advertisement shall be inserted in the Government Gazette through the Comptroller of Industrial Property, giving the particulars specified in paragraphs (a), (b), (c) and (d) of the next following regulation and stating an address from which the particulars specified in paragraphs (e), (f) and (g) may be obtained.

Contents of notice to be sent to owner of copyright

3. — (1) The notice referred to in paragraph (a) of the last preceding regulation shall contain the following particulars: —

- (a) the name and address of the manufacturer;
- (b) the name of the work to which the notice refers (hereinafter referred to as “the work”), a description sufficient to identify it and the name of the author or publisher;

- (c) a statement that the manufacturer intends to make records of the work and the address at which he intends to make such records;
 - (d) sufficient particulars to identify a record of the work made in Malta or abroad in such circumstances that paragraph (i) of the proviso to subsection (1) of section 7 of the Act applies to the records which the manufacturer intends to make;
 - (e) the type or types of records on which it is intended to reproduce the work and an estimate of the number of records of each type initially intended to be sold or otherwise supplied for the purpose of retail sale;
 - (f) the ordinary retail selling price (as hereinafter defined) of the records or, where it is intended to reproduce the work on more than one type of record, the ordinary retail selling price of each type of record the manufacturer intends to make and the royalty payable on each record;
 - (g) the earliest at which any of the records will be delivered to a purchaser or otherwise supplied as aforesaid.
- (2) Where two or more works are to be reproduced on the same record, the particulars mentioned in sub-paragraphs (b), (c) and (d) of the last preceding paragraph shall be given in respect of each such work.

Payment of royalties

4. — (1) Royalties may be paid in such manner and at such times as are specified in any agreement which may be made between the manufacturer and the owner of copyright or his lawful representative if empowered to that effect.

(2) In the absence of any agreement to the contrary, the following provisions of this regulation shall apply to the manner in and time at which royalties shall be paid and the steps to be taken to ensure the receipt of royalties by the owner of copyright.

(3) (a) If within fifteen days of notice prescribed in regulation 2 the owner of copyright or his lawful representative intimates to the manufacturer, by notice in writing sent by registered post, some convenient place in Malta from which adhesive labels can be obtained, the manufacturer shall by notice in writing sent by registered post specify the number and denomination of the labels he requires and at the same time tender a sum equivalent to the amount of royalty represented by the labels required.

(b) If, within seven days of the notice required by sub-paragraph (a) of this regulation to be given by the manufacturer, the owner of copyright or his lawful representative supplies the labels required, the manufacturer shall not deliver to a purchaser or otherwise supply for the purpose of its being sold by retail any record made by him to which the notice prescribed in regulation 2 refers unless there is attached thereto, or (if the type of the record is such that it is not reasonably practicable to attach an adhesive label thereto) to the container in which it is intended to be delivered to a retail purchaser, a label supplied as aforesaid and representing the amount of the royalty payable in respect of that record.

(4) (a) If the owner of copyright or his lawful representative does not take the steps specified in sub-paragraphs (a) and (b) of the last preceding paragraph within the times therein respectively specified, the manufacturer may deliver to a purchaser or otherwise supply for the purpose of retail sale any record to which the notice specified in regulation 2 hereof refers without complying with the requirements of the last preceding paragraph.

(b) The manufacturer shall keep an account of all records delivered by him to a purchaser or otherwise supplied as aforesaid in accordance with the last preceding sub-paragraph and the amount of royalties due to the owner of copyright in respect of such records, unless they have been already tendered and paid, shall be by the manufacturer set aside and paid to the owner of copyright or his lawful representative immediately he is requested to effect such payment.

(5) In the case of a record which comprises two or more works in which copyright subsists—

(a) if the lawful representative in Malta of all the owners of copyright in such works is the same person and if the manufacturer is aware or should, after reasonable inquiry, be aware of such fact, then the provisions of the foregoing regulations shall apply as if such representative were the sole owner of copyright in all such works and it shall be his responsibility to pay or credit to the owners of copyright in the different works included in the record their respective share of the royalties paid to him in respect of that record in such proportion as they may agree or, in default of such agreement, as the competent Court may decide;

(b) if all the owners of copyright in such works are not lawfully represented in Malta or are not so represented by the same person or if, although they are so represented, the manufacturer is not aware and could not, after reasonable inquiry, be aware of such fact, then the manufacturer shall only be required to comply with the provision of paragraph (b) of regulation 2 and to set aside the royalties due in respect of the works included in the record and to pay them to the owners of copyright of such works immediately he is requested by them, in such proportion as may be agreed between them or, in default of such agreement, as the competent Court may decide.

(6) If the manufacturer takes in relation to any records the steps specified in the foregoing regulations as the case may require, the taking of those steps shall be deemed to constitute the payment of royalties on those records in accordance with paragraph (i) of the proviso to subsection (1) of section 7 of the Act.

Amount of royalty

5. — The royalty mentioned in these Regulations shall be, irrespective of the number of works included in a record, of an amount equal to six and one-quarter per centum of the ordinary retail selling price of the record:

Provided that it shall be lawful for the manufacturer and the owner of copyright in a work or his lawful representative empowered to that effect, to agree upon a greater or lesser amount.

Ordinary retail selling price

6. — The ordinary retail selling price of any record shall be calculated at the marked or catalogued selling price of single records of the same type to the public or, if there is no such marked or catalogued selling price, at the highest price at which single records of the same type are ordinarily to be sold to the public.

Adhesive label

7. — The adhesive label supplied in terms of sub-paragraph (b) of paragraph (3) of regulation 4 shall—

- (a) be square in shape, the design to be entirely enclosed within a circle and the side of the label to be not greater than three-quarters of an inch in length;
- (b) not contain the effigy of any person or any word, mark or design such as to suggest that the label is issued by or under the authority of the Government for the purpose of denoting any duty payable to the Government or any purpose other than the purpose of these Regulations.

Date from which terms for notice are to run.

Person includes body of persons

8. — In these Regulations—

- (i) any term which is to commence to run from the receipt of a notice shall commence to run—
 - (a) where such notice is required to be advertised in the Government Gazette, from the date of publication of such advertisement;
 - (b) where such notice is required to be sent by registered post, from the date on which it is actually received by the person to whom the notice is directed, which date, in the absence of proof to the contrary, shall be deemed to be the date when the notice would in the ordinary course of post be delivered;
- (ii) “person” includes a body of persons.

CORRESPONDENCE

Letter from France

For some time circumstances have prevented us from giving readers of this Review news on the development of copyright in France. We apologize for our silence, and shall endeavour to make up for it in this "Letter".

I. National Law

1. Legislation

The Copyright Law of March 11, 1957, has not undergone any amendment since our last "Letter" (see *Copyright*, 1969, pages 15 *et seq.*). However, it would appear desirable to say a few words on certain provisions of a law dated July 17, 1970, which strengthened the protection of the rights of the individual. This Law contains a certain number of texts designed to protect the personal rights of the artist's model, and thereby limits the freedom of publication of works created, if not the freedom of actual literary and artistic creation (in connection with this reform, see Lindon: "*Les dispositions de la loi du 17 juillet 1970 relatives à la protection de la vie privée*", *Jurisclasseur périodique*, 1970, I, 2357).

The new law has codified and strengthened previous jurisprudential solutions by inserting a new Article 9 in the Civil Code to ensure the protection of private life. However, while paragraph 1 of that Article embodies the affirmation, in general terms, of the protection of private life, paragraph 2 of the same Article provides for civil sanctions only in a more restrictive manner, since it confines itself to envisaging such sanctions only in the case of prejudice of the privacy of one's life. Subject to this reservation, it is important to note that the measures provided for (in particular, confiscation and seizure) may be ordered not only by the *juge du fond* but also, especially in cases of urgency, by the *juge des référés*.

By inserting a certain number of new provisions in the Penal Code, the 1970 Law organizes restrictive measures to supplement the protection of privacy. Article 368 of the new Penal Code makes it an offence to capture, without authorization, the image or words of a person in a private place. Article 369 of the same Code incriminates the keeping, disclosure or use of recordings or documents obtained in the conditions referred to in Article 368. Article 370 of the Penal Code now makes indictable the offence consisting in the publication of "montages" made of words or images of a person without that person's knowledge and where the fact that it is a montage is not clearly evident or expressly mentioned. Finally, the new Article 371 of the Penal Code provides that the manufacture, importation, offering or sale of certain appliances which might serve to commit one of the offences referred to in the above-mentioned Article 368 may be made subject to limitation by rules of public administration, failure

to observe such rules being punishable by penal sanctions. The intention here is to enable the authorities to control effectively the marketing of certain miniature appliances known as "bugs".

2. Court Decisions

(a) General Principles

In recent months the French Courts have frequently had cause to apply Article 2 of the Law of March 11, 1957, in terms of which copyright accrues to the authors of intellectual works, "regardless of their kind, form of expression, merit or purpose".

The first thing worthy of note in this formula is that copyright protects *creations of form*. According to the tradition of French law, it follows, *a contrario*, that copyright confers no monopoly in respect of *ideas*. These are available to all, and the person having expressed them first cannot prevent another person from using them for his own account. In recent months some eminent legal experts have raised the question whether this problem should not be reconsidered. The modern world is going through a phase dominated by publicity, and publicity ideas have become an important capital asset. Consequently the question has arisen whether they should not enjoy copyright protection (in this connection, see Lindon: "*L'idée artistique fournie à un tiers en vue de sa réalisation*", *Jurisclasseur périodique*, 1970, I, 2297).

However, such a possibility does not appear to exist with the texts in their present form (for refusal of copyright protection in respect of publicity ideas, see, most recently: Crim., October 15, 1969, *Dalloz*, 1970, *Jurispr.*, page 15). Besides, it does not follow at all that the publicity idea is deprived of any kind of protection. All that can be said is that, until further notice, the only protection it can enjoy is that which is provided by proceedings on the grounds of unfair competition, provided of course that the conditions of eligibility of such proceedings are met (on the protection of a publicity idea by unfair competition proceedings, see, in particular: Paris, April 22, 1969, *Jurisclasseur périodique*, 1970, II, 16148, note Greffe, and *Dalloz*, 1970, *Jurispr.*, page 214, note Mousseron).

Another point which should be mentioned is that the protection of a work under the 1957 Law cannot be refused on the sole grounds that it is devoid of *merit*. In a recent action the *juges du fond* denied copyright protection to a cartoonist whose humorous works depicted animals, considering that the banality of the reflections expressed by those animals and the meagreness of the captions accompanying the drawings were an indication more of commercial interest than of originality. The Criminal Chamber quashed this decision, stating that "the terms of Article 2 of the Law of March 11, 1957, did

not allow the Court of Appeal to invoke the form of expression chosen by the author of the drawings, or the artistic value or commercial purpose of his work, to deny him the benefit of the protection which is granted by Article 1 of that Law to any intellectual creation" (Crim., February 13, 1969, *Dalloz*, 1969, Jurispr., page 324).

Finally, as far as general principles are concerned, large numbers of court decisions continue to confirm the fact that a work is covered by literary property even if its purpose is *utilitarian*, in other words even if it is a work of applied art (in this connection see, most recently: Com., March 18, 1970, *Revue internationale du droit d'auteur (RIDA)*, October 1970, page 63).

These considerations bring us close to the 1909 Law on Designs. In connection with this Law, we have frequently had cause to mention in this Review Article 2, paragraph 2, of the 1909 Law, according to which there is no room for the application of the 1909 Law (or for that matter the 1957 Law on Copyright) "if the same object may be regarded as both a design and a patentable invention". Contrary to what this text would appear to mean, it is quite possible for a design to enjoy no protection at all. If the design has no ornamental character, neither the 1909 Law nor the 1957 Law can be applied. Seen from another angle, the utilitarian character of the form is not sufficient in itself to guarantee the latter's patentability, since the law on patents imposes strict conditions of patentability which not every utilitarian design can meet. In such circumstances, the only protection on which the owner of the design can rely is that which might result from unfair competition proceedings.

This was pointed out in a most interesting decision rendered by the Court of Grenoble on September 30, 1968 (*Jurisclasseur périodique*, 1969, II, 15 979, note M^{me} Perot-Morel; obs. Chavanne, *Revue trimestrielle de droit commercial*, 1969, page 967, No. 6 and obs. Desbois, *eod. loc.*, page 973, No. 1), in an action involving the design of a cover for rolls of paper, the shape of which was by no means determined by considerations of ornamentation, but corresponded to strictly utilitarian requirements, yet without actually qualifying for the grant of a patent.

(b) Protected Works

On the subject of protected works, mention should first be made of a recent decision concerning *architectural plans* (see: Cass., June 18, 1969, *RIDA*, April 1970, page 142). Article 3 of the Law of March 11, 1957, provides that "the following shall in particular be considered intellectual works within the meaning of this Law: . . . illustrations, maps, plans, sketches and plastic works, relating to geography, topography, architecture and the sciences". Since the formula was a very general one, it has sometimes been wondered (see, in particular, Plaisant, *Jurisclasseurs Propriété littéraire et artistique*, fasc. 4, Nos. 109 et seq.) whether the legislative body had not intended to protect plans even when they embodied no original features. If this theory had been accepted it would necessarily have followed that the protection of plans, although established by the 1957 Law, could exist in certain cases even when the author of the plans had not in fact fur-

nished any creative effort. The protection of plans would thus have come close to that which the Law provides in respect of either non-original titles (see Article 5, paragraph 2) or photographs of a documentary character (see Article 3). There is nothing, however, in the preparatory work on the Law to indicate the intention of the legislative body to give plans legal treatment governed by other than ordinary copyright criteria. This is why jurisprudence shows little inclination to take this theory into account, as is apparent in the case mentioned above.

Indeed, in this particular case the *juges du fond* had refused to grant copyright in the topographical plans of a surveyor on the grounds that they were devoid of originality. The appeal from this decision invoked the documentary character of the plans. The Supreme Court rendered a decision of rejection, stating that if the *juges du fond* had established the absence of originality of the plans in question, they were right in denying them protection under the 1957 Law. This amounts to saying that the protection of plans is governed by the general rules of copyright law.

The protection of *titles* has given rise to so many actions recently that only one example can be mentioned here. It has been chosen because it is a decision on appeal, whereas the majority of the decisions rendered in this field have been injunctions or mere decisions on the question of substance. It offers the additional advantage of showing clearly the different forms which the protection of titles can take in French law (see: Paris, January 24, 1970, *RIDA*, July 1970, page 131). A group of film producers had chosen the title "Du rififi à Amsterdam" for one of their productions. Le Breton, who has written a certain number of novels with titles beginning "Du rififi", generally followed by the name of a town or country, maintained that since the producers had chosen the title without consulting him, he had cause to accuse them of having infringed Article 5 of the 1957 Law. The Court supported his contention. It considered at the outset that the title "Du rififi" was original, or at least was when Le Breton chose it, and that the latter could therefore invoke against the producers the protection provided for in paragraph 1 of Article 5 in respect of any title of an intellectual work, in so far as it is original in character. However, the Court added that Le Breton was also entitled to invoke against the producers paragraph 2 of Article 5, in terms of which no one may utilize the title of a work in order to distinguish another "of the same kind under conditions capable of creating confusion". In this connection the Court observed that, in the past, several novels of Le Breton had been filmed under titles beginning with the words "Du rififi". Consequently the producers, by proceeding as they did, had created the risk of confusing the public by leading it to believe that their film was also based on a novel by Le Breton.

It should also be mentioned under the heading of protected works that there is still some uncertainty in case law as regards the question of the protection of *photographs*. The French legislative body had expected to achieve its aim of limiting the number of photographs enjoying copyright protection by granting such protection only to "photographic

works of an artistic or documentary character" (Article 3). In practice this legal formula is virtually useless. It is true that a "photographic work of artistic character" can be defined if necessary, although the expression is difficult to reconcile with Article 2 of the Law, according to which copyright protection may not be made dependent on the merit of a work. It is extremely difficult, however, to determine what a "photograph of documentary character" really is, and to decide what photographs are devoid of that character and consequently may be reproduced without restriction.

In case law there are two contrary trends of opinion in this matter. According to one, any photograph is protected by copyright in so far as it has documentary character, and no evidence of creative effort is required. Proof of its documentary character raises no problem, since it follows from the very fact that someone has considered it worthy of reproduction (in this connection see: *Crim.*, December 7, 1961, *Dalloz*, 1962, *Jurispr.*, page 550 note Desbois; Paris, April 26, 1969, obs. Desbois, *Revue trimestrielle de droit commercial*, 1969, page 982, No. 3). This first trend is open to one objection in that it gradually results in a situation where copyright is invested in all photographs, which is contrary to the avowed intention of the drafters of the Law.

This accounts for the second trend, which attempts to demarcate more strictly the concept of the photograph of a documentary character. This is what the *Conseil d'Etat* tried to achieve some years ago, in a noted decision rendered on April 26, 1963 (*Dalloz*, 1964, *Jurispr.*, page 124, concl. Chardeau). Two more recent decisions demonstrating the same restrictive outlook were rendered by the Amiens Court on May 23, 1969 (obs. Desbois, *Revue trimestrielle de droit commercial*, 1969, page 985, No. 9), and by the Paris Court on June 30, 1970 (*Gazette du Palais*, October 31-November 3, 1970, note Sarrante). However, while these decisions are the result of commendable intentions, it must still be admitted that they leave the reader dissatisfied. For instance, the case judged by the Paris Court involved photographs depicting the lives of film stars. The decision denied them copyright for the double reason that they lacked originality and were too superficial to have documentary character. The first reason is certainly not convincing, since Article 3 of the Law protects photographs of artistic or documentary character. Therefore the absence of originality is not sufficient to disqualify a photograph from copyright protection. As for saying that the photographs were too superficial to constitute a document, that argument should also be used with care. When a photograph has informatory value, it would seem impossible to deny it documentary character.

Finally, a few decisions should be reported in this chapter on protected works on the subject of the *rights of performers in their interpretation*. These decisions tend to clarify somewhat the rather equivocal situation which the Furtwängler decision created in France (see *Copyright*, 1965, page 212) when the Supreme Court of Appeal spoke of the "rights of the artist in the work which constitutes his interpretation", thus leading some to believe that it intended to invest copyright in performers' interpretations. A decision rendered by

the *Tribunal de Grande Instance* of Paris on October 17, 1970 (*RIDA*, January 1971, page 187, note M^{me} Gaudel), stated that an actress had rights in her performance in a film and that consequently the producer could not make gramophone records based on the soundtrack of the film without that actress's consent. In view of the fact that the decision is so phrased as not to state that the actress owned copyright, one might consider, as did the commentator, that the Court intended to grant the actress a neighbouring right, which comes close to a literary property right without actually being assimilated to it. It is recalled, however, that the party in question was a film performer. It frequently occurs that legal doctrine, while refusing to treat performers in general as creators, is more favourably inclined towards cinema authors, and regards them as co-authors in view of their important part in the creation of a cinematographic work.

There is at any rate one hypothesis in which the performance quite irrefutably qualifies for designation as a genuine work covered by copyright. This is when the performer departs from his accustomed role as the faithful interpreter of an existing work and becomes a creator himself. An example of this is when a guitarist makes improvisations on his instrument. If it is established that the improvisations take on a personal character and indicate creative activity on the part of the improviser, they should be considered genuine works. This was the position adopted by the Supreme Court of Appeal in a decision on the improvisations of the guitarist Manitas de Plata (see *Civ.*, 1e, July 1, 1970, *Dalloz*, 1970, *Jurispr.*, page 734, note Edelman).

(c) Protected Persons

As we know, Article 1, paragraph 3, of the Law of March 11, 1957, provides that "the existence, or the conclusion by the author of an intellectual work, of a contract to make a work, or an employment contract, shall imply no exception to the enjoyment of the right" (copyright). This is tantamount to saying that, in particular, the fact that an author is bound by an employment contract and has created his work in accordance with that contract, does not prevent him from being invested with copyright.

It frequently occurs, of course, that the employer makes the conclusion of the employment contract subject to the condition that the author assigns to him his rights in the work thus created. It could be argued, therefore, that the net result is the same as if the law laid down at the outset that copyright in such cases belonged to the employer. Yet this would be an inaccurate appraisal of the situation because, under the French system, while it is true that the law does not prevent the employer from inserting a clause in the contract concluded with the author according to which the latter assigns his rights in the work to the former (although the assignment has nevertheless to be proved, and in any event interpreted restrictively — see *Copyright*, 1966, page 232), it is important to note that such assignment is necessarily partial. It affects only the pecuniary rights and not the moral rights, since the latter are unassignable in any case. This was pointed out in a recent decision of the Paris Court (Paris, May 17, 1969, *Dalloz*, 1969, *Jurispr.*, page 702, note J. F. P.), concerning in particular the

right of authorship of a photographer in respect of his photographs, which Article 6 of the Law of March 11, 1957, declares inalienable.

Some new decisions have been rendered in recent months concerning *collective works*, a category which enjoys a certain uniqueness within the legal structure of copyright in France, since it is the only instance in which the principle of original copyright belonging to a legal entity has been accepted in France (Article 13 of the Law). Logically, this consideration should lead jurisprudence to develop a restrictive conception of the collective work, yet this has not been the direction taken by a large number of decisions. The Supreme Court of Appeal, for instance (Civ., 1e, July 1, 1970, *Dalloz*, 1970, *Jurispr.*, page 769, note B. E. and Edelman: "*Liberté et création dans la propriété littéraire et artistique, esquisse d'une théorie du sujet*", *Dalloz*, 1970, *Chr.*, page 197) recently dismissed an appeal in a case where designation as a collective work had been acknowledged by the *juges du fond*, whose decision had been criticized in this respect by doctrine (see Desbois, *Revue trimestrielle de droit commercial*, 1968, page 351, No. 3; for the decision of the *juges du fond* in this matter, see *Copyright*, 1969, page 15). Another case reveals a further drawback for authors when a work is designated as a collective work: the principle of proportional remuneration can be replaced by flat-rate remuneration, which is lawful, in terms of Article 36 of the Law, when the work is the first edition of an anthology or encyclopaedia. Although this represents an appreciable reduction in the profits which the author derives from exploitation, the courts have an unfortunate tendency to interpret the collective work concept in its broadest sense, thereby applying it in cases where designation as a work of joint authorship would appear more appropriate as well as more accurate (in this connection, see Paris, January 26, 1970, *Dalloz*, 1970, *Jurispr.*, page 294, concl. Lecourtier and obs. Desbois, *Revue trimestrielle de droit commercial*, 1970, page 404, No. 3).

(d) Legal Nature of Authors' Rights

It is well known that the prevailing opinion on this subject in French law is in favour of the dualistic concept of copyright, regarded as embodying moral rights and pecuniary rights. This opinion, which the Law of March 11, 1957, seems to have endorsed in its Article 1, paragraph 2, has had occasion to assert itself particularly in connection with the status of copyright belonging to a married creator living under the joint property régime. Over the years a long series of classic decisions has dealt with this problem in France, but there is one delicate question which was not settled until relatively recently: that of deciding, under the joint property régime, on the fate of the object constituting the work, for instance the canvas of a married painter. In the famous Bonnard case, the Supreme Court of Appeal established a principle according to which all works of art created by a spouse should be regarded as *joint property*, provided that the married author of the work subsequently exercises his moral rights. On the other hand the Orléans Court, to which the case was transferred, departed to a large extent from the opinion of the Supreme Court of Appeal by considering the works in ques-

tion to be *personal* property, not becoming joint property until the author decided to disclose them. In the meantime the Bonnard case ended in a transaction.

The Paris Court, in its turn, rendered a decision on May 24, 1969, which favoured the opinion of the Orléans Court, in a case concerning the succession of the painter Picahia (see *Gazette du Palais*, October 15-17, 1969; *RIDA*, January 1970, page 191). In connection with this case it should be noted that, since the painter died before the entry into force of the Law of March 11, 1957, his succession was settled by the application of provisions in force prior to that Law.

Opinions differ on how the problem should be dealt with under the provisions of the 1957 Law relating to the status of copyright belonging to a married author; there is also doubt as to whether or not the Law of July 13, 1965, which reformed the matrimonial régimes, modified the fundamental elements of the question. There have not yet been any court decisions on these various points.

(e) Moral Rights

Recently there have been a considerable number of actions involving moral rights. We mentioned above the case of the moral rights of the salaried author and especially his *right of authorship*. Other cases concerning moral rights are worthy of mention largely because we have commented on some of them in previous "Letters", and the proceedings have continued in the meantime.

For instance, in a previous "Letter" (see *Copyright*, 1967, page 213), we reported a decision rendered by the Paris Court on April 25, 1966, in which a historian was accused of having infringed Article 19 of the Law of March 11, 1957, concerning the *right of disclosure*. In a work on Malesherbes, he had reproduced without the permission of the heirs certain documents from their private archives which they had allowed the National Archives Administration to microfilm. The historian filed an appeal against the decision condemning him, which was rejected by the Supreme Court of Appeal (see Civ., 1e, January 15, 1969, *Dalloz*, 1969, *Jurispr.*, page 476).

In mentioning this case we pointed out, in the "Letter" referred to above, that the right of disclosure was not absolute, as Article 20 of the Law of 1957 provided for the possibility of legal proceedings in cases of "manifest abuse of the exercise or non-exercise of the right to disclose a work by the deceased author's representatives referred to in the preceding Article". Some light is thrown on the meaning of this provision by a recent decision involving the posthumous publication of letters of Roger-Gilbert Lecomte, an avant-garde poet. After the poet's death, his father and heir also died, having appointed his housekeeper sole legatee. The housekeeper vetoed the publication of the writer's unpublished letters on the grounds that they contained offensive remarks concerning the family. The *Tribunal de Grande Instance* of Rheims considered this to be a manifest abuse of the non-exercise of the right of disclosure, and therefore authorized publication (*Trih. Gr. Inst.*, Rheims, January 9, 1969, *Gazette du Palais*, May 7-9, 1969, obs. Sarraute; *Dalloz*, 1969, *Jurispr.*, page 569, note Deshois; *Revue trimestrielle de droit commercial*, 1969, page 754, No. 3, obs. Deshois). It gave

several reasons in support of its decision. It may be considered, as it was by Prof. Desbois, that one of these is sufficiently conclusive on its own: it was established that the deceased author wished to have his correspondence published. His heirs were therefore bound to respect his wishes. The question of whether exercise or non-exercise of the right of disclosure constitutes manifest abuse would only really become delicate if the deceased had not expressed any opinion during his lifetime on the disclosure of his letters.

The Rheims decision is also interesting from another point of view. The proceedings against the sole legatee were instituted by a friend of the deceased, by an association founded in his memory and by the Minister for Cultural Affairs in charge of Arts and Letters. The question arose as to whether these various parties were eligible to take action in terms of Article 20. As regards the Minister there could be no doubt, as he is specifically mentioned in Article 20 as one of the persons who may refer to the Court under that Article. But what of the other two parties bringing action? Since Article 20, paragraph 2, provides that "the matter may be referred to the tribunal particularly by the Minister in charge of Arts and Letters", one would be justified in believing that the adverb "particularly" implied also the validity of action brought by other parties. Yet the judges considered that, apart from the Minister, the only parties entitled to bring action were the representatives of the deceased author referred to in paragraph 1 of the Article. They therefore declared invalid both the action brought by the friend of the deceased author and that brought by the association founded in his memory. This restrictive interpretation, while justified by the desire to prevent the multiplication of actions of this kind, is nevertheless open to argument in that it results in the exclusion of professional authors' organizations, in particular, from the benefit of Article 20. Yet we know that French jurisprudence is reluctant, except in connection with the *Caisse Nationale des Lettres*, to allow action to be brought by those who, while not members of the deceased author's family, wish to ensure the protection of his moral rights (in connection with this tendency, see *Copyright*, 1967, page 213).

While on the subject of the moral rights, we will also mention a decision concerning the *right to respect*. In one of our earlier "Letters" (*ibid.*, 1967, page 212), we reported a decision of the Nîmes Court concerning relations between painters and picture dealers. A painter fell out with his dealer, and the latter, out of spite, contributed to the spoiling of the former's reputation after the termination of the contract by selling at very low prices the canvases which he had supplied under the contract. In order to put a stop to these doings, the *juges du fond* decided that, in the future, the dealer might only sell the canvases under the control of an expert who would determine whether he was offering them at a fair price. The Supreme Court quashed this decision. It held that the protection of the right to respect derived from Article 6 of the Law, and that the disputed judgment had applied that Article wrongly by referring to it for protection of the painter's reputation (Civ., 1e, December 3, 1968, *Dalloz*, 1969, *Jurispr.*, page 73, concl. Lindon; obs. Desbois, *Revue trimestrielle de droit commercial*, 1969, page 498, No. 3).

This decision is interesting when one compares it with the decision rendered by the Supreme Court of Appeal in the Buffet case (see *Copyright*, 1966, page 234). It makes it possible to determine to what extent the right to respect belonging to the author may be invoked against the party acquiring the object constituting the work, and may result in a restriction of the latter's right of ownership. Consideration of the two decisions together suggests that the party acquiring the work makes himself liable to legal proceedings on the part of the author when he prejudices the material integrity of the work (Buffet case); on the other hand he is beyond all possible reproach in so far as he respects that material integrity (as in the case reported above).

(f) Pecuniary Rights

(i) On the subject of the right of *reproduction*, we would first draw attention to a decision of the Supreme Court of Appeal, considered important by the Court itself since it is mentioned in the report compiled by it of its most characteristic decisions of the year. The decision in question concerns the *obligations assumed by a publisher* under a publishing contract. In the case in point a publisher undertook, by contract, to publish a certain work on Picasso. What in fact happened was that he not only failed to publish the book which he promised its author to make available to the public, but actually marketed another, written by a different author, which dealt with the same subject in a different form. In an action brought by the author of the first work, the *juges du fond* convicted the publisher on the grounds of both his failure to publish the first work and his having published another work on the same subject. It was in connection with the latter point that the decision was quashed on appeal. While admitting that the publisher had done wrong by not publishing the first work after having undertaken to do so, the Supreme Court held that he was nevertheless free to publish another book on the same subject, in so far as there was no clause in the contract with the first author which prohibited such action on the part of the publisher (Civ., 1e, January 5, 1970, *Dalloz*, 1970, *Jurispr.*, page 281, note Breton; obs. Desbois, *Revue trimestrielle de droit commercial*, 1970, page 699, No. 1). This decision shows that jurisprudence wishes to narrow the scope of Article 57 of the 1957 Law which, in the case of a publishing contract, requires the publisher to "ensure the sustained exploitation of the work without any interruption and its distribution through commercial channels according to the customs of the trade". According to the Supreme Court of Appeal, this provision should not be understood as preventing a publisher, in principle, from publishing several works on the same subject by different authors.

On the subject of the right of reproduction, there would be a serious gap in our panorama of French law if we did not say a few words on an important sector of legal activity which has been growing steadily in France over the last few years, namely that concerning *phonographic recording*. Many recording firms obtain from authors of musical works the right to make phonographic recordings of those works. However, as the marketing of a record is an operation fraught with hazards, it has often occurred that the assignees have confined

themselves to building up a repertoire and have not in fact availed themselves of the rights granted to them. The musicians have taken umbrage and have occasionally instituted proceedings against the other party to the contract, alleging that the latter has not respected the obligation to exploit the work, imposed on the publisher by Articles 56 and 57 of the 1957 Law. Although a controversy exists on the extent of the obligations assumed by the publisher under such a contract, it can be said that the most recent court decisions have tended to consider that the publisher to whom recording rights have been assigned must actually make the recording (in this connection see, most recently: Paris, December 23, 1969, *Dalloz*, 1970, *Jurispr.*, page 119; for a bibliography on the question, see Plaisant: *Le droit des auteurs et des artistes exécutants*, pages 125 *et seq.*).

Finally, still on the subject of the right of reproduction, it should be pointed out that there have been a certain number of decisions recently on the *right of quotation* granted to third parties by Article 41, paragraph 3, of the Law of 1957. We shall only make special mention of one such decision, rendered by the Paris Court on March 17, 1970 (*RIDA*, January 1971, page 179). This decision recalls three conditions for the lawfulness of quotations which derive from the terms of Article 41, paragraph 3. One is that "the name of the author and the source are clearly indicated". The other two follow from the fact that the text of the Law authorizes quotations only if, on the one hand, they are "brief", and, on the other hand, they seem "justified by the critical, polemical, pedagogical, scientific or informational character of the work in which they are incorporated". It follows that quotation is lawful only if it represents a small part both of the work from which it is taken and of that in which it is incorporated. These conditions were not met in the case in point. Thirteen of the thirty-five lines of a song had been reproduced without either the name of the author or the source having been indicated. Moreover the borrower had added only five lines of his own to the quotation, which was too little.

(ii) The right of *public performance* has also been invoked many times recently before the French courts. In this connection it should be noted, first and foremost, that several decisions have pointed out the need to make a narrow interpretation of the concept of the family circle within which a performance may take place without being subject to copyright provisions, at least when that performance is free of charge (Article 41, paragraph 1, of the Law). The first decision, although rendered by the Court of Douala, may nevertheless be quoted in connection with French law, to the extent to which the 1957 Law was made applicable to Cameroon. A firm allowed members of its staff to listen to recorded music while taking refreshments seated in a circle. The judges rightly considered that such a meeting had no family character whatever, and that consequently the music sessions were subject to copyright. Another decision, rendered by the Grenoble Court, can be likened to the one just mentioned. This time a rest home for children was involved. A recreation room was provided, where the young inmates and those who came to visit them had access to a record library, a record player and

a television set. The Grenoble magistrates, in what would appear to be a correct interpretation of the law, held that only chance or illness brought the children together in the institution in question. It could not be considered, therefore, that a family circle existed (Douala, March 3, 1967; Grenoble, February 26, 1968, *RIDA*, July 1968, page 164, obs. Desbois). It would no doubt be somewhat extreme to assume, on the basis of these decisions, that a performance is outside the realm of copyright only if the listeners are persons united one to another by bonds of blood relationship or marriage. The presence of members of a family does not alter the character of the performance. What is essential, however, is that those family members be grouped around a family nucleus, failing which exemption is not possible.

In connection with the right of public performance, disputes continue to arise on the question of the status of radio receivers installed by hoteliers in their clients' rooms. A noted decision rendered by the Paris Court on June 20, 1962 (obs. Desbois, *Revue trimestrielle de droit commercial*, 1963, page 100, No. 3), considered a hotel room to be a private place, and therefore held that the reception of radio broadcasts, being thus private also, was not subject to copyright. The question arose as to what should be decided when the hotelier assumed a more active part in the process by retransmitting radio broadcasts by an internal telephone system for the benefit of his clients. It was widely thought that such a system made the hotelier into an actual organizer of performances, in that he might make a choice as to what broadcasts he would transmit, thereby justifying the payment of royalties in application of Article 27 of the 1957 Law. However, the Paris Court, following the precedent of lower courts which had already made similar decisions previously, did not consider itself obliged to distinguish between the case before it and that in which the hotelier did no more than install radio receivers in his clients' rooms. It held that the hotelier did not have to pay royalties in any of these instances (Paris, May 13, 1970, *Gazette du Palais*, July 4-7, 1970).

(iii) In connection with the *droit de suite*, the main difficulties encountered in France still concern its transmission by succession. The first remark that should be made is that the Dufy case, which we mentioned in a previous "Letter" (see *Copyright*, 1966, page 233), was finally settled before the Supreme Court of Appeal. This Court rejected the appeal entered against the decision on first appeal, the latter having upheld the judgment in first instance which we analysed in this review. From now on, therefore, it is established that, in order to determine the transmission by inheritance of the *droit de suite*, the law to be applied is the one in force at the time of the artist's death. It follows from this that, in the case in point, since the law in force at the time of the author's death was that of May 20, 1920, which authorized the bequeathing of the *droit de suite*, his sole legatee should be regarded as having become the owner of the right, despite the fact that Article 42, paragraph 2, of the Law of March 11, 1957, later made the *droit de suite* inalienable, consequently prohibiting its disposal by bequest (Civ., 1e, June 10, 1968, *Dalloz*, 1968, *Jurispr.*, page 633, concl. Lindon; obs. Desbois,

Revue trimestrielle de droit commercial, 1969, page 78, No. 1). The circumstances of the intervening death also of the author's sole legatee could not result in the reversion of the *droit de suite* to the first of Dufy's heirs-at-law.

Another case involving the *droit de suite* recently caught the attention of specialists in France. This one concerned the fate of the *droit de suite* subsisting in the works of the famous painter Claude Monet. Monet died in 1926. His son inherited as next of kin, but he died on February 3, 1966, after having appointed the Marmottan Museum sole legatee. On December 8, 1966, when one of the painter's canvases was sold by public auction, a niece of his claimed the *droit de suite*. The *Tribunal de Grande Instance* of Paris, in a decision rendered on July 3, 1968 (*Jurisclasser périodique*, 1968, II, 15 569, concl. Favre; obs. Desbois, *Revue trimestrielle de droit commercial*, 1968, page 1041, No. 1), upheld her claim, considering that, by reason of the inalienability of the *droit de suite*, as provided for in Article 42 of the Law of 1957, Monet's son was not entitled under that Law to bequeath it to the Marmottan Museum, and that in those circumstances the painter's niece, being the testator's first cousin and closest relative, should be regarded as having acquired the *droit de suite* in intestacy. However, the Paris Court invalidated the decision (Paris, January 7, 1970, *Dalloz*, 1970, *Jurispr.*, page 350, note Plaisant; obs. Desbois, *Revue trimestrielle de droit commercial*, 1970, page 703, No. 2). It rejected the plaintiff's claims, giving as its reason the fact that she could not claim to be the heir either of Claude Monet, since she had ranked after his son at the time of the former's death, or as that of the son himself, because, in the opinion of the Court, the *droit de suite* had ceased to exist on the death of the painter's heir when no other heirs were forthcoming at that time. In conclusion, the Paris Court considered the *droit de suite* to have disappeared on the death of Claude Monet's son.

As has been pointed out in commentaries on this decision, the reasoning behind it amounts to giving a restrictive interpretation to Article 42 of the 1957 Law, and the term "heirs" which it contains, and to deciding that the *droit de suite* subsists only for a generation after the death of the artist. Some commentators (see Plaisant, *op. cit.*, *loc. cit.*) welcomed the solution, attributing to it the double advantage of being simple and of keeping the *droit de suite* within reasonable limits. This has been objected to (see Desbois, *op. cit.*, *loc. cit.*) on the grounds that the interpretation thus given to Article 42 departs from that generally given to Article 21, in connection with the transmission of the right of reproduction and the right of public performance. Indeed, in relation to the latter text, it is generally accepted that the transmission of economic rights goes on from generation to generation until expiration of the period of fifty years following the death of the author. The only way in which a different decision in respect of the *droit de suite* may be justified is by regarding the latter as a right which is essentially different from the author's economic rights. It is doubtful, however, that the undeniable nonconformity which characterizes the legal régime of the *droit de suite* should lead to it being removed from the copyright field.

(g) Procedure and Sanctions

Under this heading we shall confine ourselves to quoting a decision of the Supreme Court of Appeal (*Crim.*, February 12, 1969, *Dalloz*, 1969, *Jurispr.*, page 296), since it was rendered in a case which we have already discussed in a previous "Letter" (see *Copyright*, 1966, page 233). It involved the lighting direction for a *Son et Lumière* presentation. The organizers of the presentation, after using the arrangement of one lighting director later replaced it by that of another. The first director claimed that the work of his successor was a fraudulent imitation of his own, and consequently instituted penal proceedings against his competitor. After a series of contradictory developments, the case ended in the dismissal of the appeal which the first director filed against the decision of the *juges du fond* exonerating the second. The allegation of imitation was rejected. First of all it was not established that there had been actual reproduction by one person of the work of another, and therefore the material evidence of infringement was lacking. As far as the moral grounds for the charge are concerned, the decision recalled that fraudulent imitation was a deliberate offence and that in this respect, contrary to the general principles of penal law, bad faith was indeed presumed when the fact of reproduction was established. It added, however, that the presumption was removed if the accused succeeded in proving his good faith. Such proof having been provided in the case in point, the moral element of the offence was wanting and a discharge was ordered. Another noteworthy point arising from this case is that the Criminal Chamber did not seem to doubt that the lighting direction for a *Son et Lumière* presentation might be considered a work protected by copyright. However, reservations have been made on the subject in legal doctrine (see the "Letter" mentioned above, page 233).

II. International Law

In the field of international law, we shall mention first a decision of the *Tribunal de Grande Instance* of Paris, rendered on November 15, 1968, which gave rise to a number of comments (see Desbois, *Journal de droit international*, 1970, page 77, and obs. *Revue trimestrielle de droit commercial*, 1970, page 711, No. 4, and our note in the *Revue critique de droit international privé*, 1969, page 677). Performances of the opera "Prince Igor" had taken place at the Théâtre des Champs-Élysées in Paris in 1966 and the company owning the theatre, which had failed to pay the royalties to which the performance was subject, was sued by the *Société des auteurs et compositeurs dramatiques* and by the widow of Glazounov, one of the co-authors of the opera performed.

Basing its defence on the *status of foreigners*, the company owning the theatre sought refuge in the Law of July 8, 1964, on the application of the principle of reciprocity in the field of copyright. It maintained that, since the authors of "Prince Igor" were Russian and the Soviet Union did not protect French authors, it followed that the Russian musicians who had composed the opera could not benefit from copyright in France, and that performances of their works did not entail payment of royalties to the authors' successors in title. The

Court rejected this argument. The criterion for reciprocity under the 1964 Law is not the nationality of the authors but the place in which the work appeared for the first time. "Prince Igor" appeared for the first time in Leipzig, in other words in a country party to the Berne Convention. This was sufficient to rule out the application of the 1964 Law, which excludes the reciprocity condition in respect of any work protected under an international copyright convention ratified or acceded to by France. This, naturally, is the case with the Berne Convention.

There still remained the problem of the *conflict of laws*. It had to be established whether the opera was subject to German law, in other words that of the country of origin of the work, or French law, that of the country in which protection was claimed. Referring to the Berne Convention and taking into account the fact that the latter favoured application of the law of the country in which protection was claimed, the Court decided to apply French law to the case in point. It concluded that, under French law, the opera should be treated as a work of collaboration, with Borodin, Rimsky-Korsakov and Glazounov as co-authors. It is certain that the two last-named worked together to complete their contributions to the opera, thereby justifying the capacity

attributed to them by the Court. Borodin, on the other hand, died well before the completion of the work, and his co-authorship is therefore open to discussion (see *op. cit.*, *loc. cit.*).

Another recent case is also worthy of mention. It concerns the legal régime of *copyright exploitation contracts*. From the point of view of conflict of laws, the Supreme Court of Appeal had occasion in this instance to state that, as regards substance, the autonomy rule should be applied to such contracts. It is therefore important to establish where the contracts are concluded. In the case in point the exploitation contract was concluded in Italy. By application of Italian law, the *juges du fait* had considered that the plaintiff, who had caused seizure for infringement to be effected in France, did not justify his having obtained, for that country and in respect of the work in question, the exploitation rights which he accused another party of having ignored. Rightly, therefore, the seizure for infringement undertaken by him was quashed by the judgment on the main issue, on account of its having been initiated by a party who did not have the capacity to act (Civ., 1e, April 29, 1970, *Journal de droit international*, 1970, page 936, with our note).

A. FRANÇON

Professor at the University of Paris X

BOOK REVIEWS

Schutz des Werktitels. Rechtsvergleichende Untersuchung des Titelschutzes in Belgien, Deutschland, Frankreich, Italien, Österreich und der Schweiz [Protection of the title of the work. Comparative law study on title protection in Belgium, Germany, France, Italy, Austria, and Switzerland], by *Hein Röder*. One volume of XXII-159 pages, 21 × 15 cm. Cologne, Carl Heymanns Verlag. Max-Planck-Institut, Schriftenreihe zum gewerblichen Rechtsschutz, Vol. 20.

Mr. Röder's work is a systematic study on the possibilities of legal protection of the title in these six countries of western Europe. It is in three parts, each of which deals with the problem in a different context: the law on unfair competition, trademark law and copyright. In each of the three parts the author makes a general survey of the situation, covering, in particular, legislative considerations, the scope of protection and its duration, the transfer of rights, etc.

In the part devoted to copyright, the two sections which deal respectively with the title as a work in its own right and the title as part of a work are worthy of special attention.

In his conclusions the author reviews the situation in relation to the three possible systems of protection. While admitting that, at first sight, copyright would appear suitable for this kind of protection, he points out that it does not place sufficient emphasis on the distinctive characteristics of the title, since such a system does not take into account the strikingness (*Schlagkraft*) or the impressiveness (*Einprägsamkeit*) of the title, or the familiarity it may acquire from long use. On the other hand, the author considers that unfair competition law is capable of affording adequate protection to the majority of titles. The only titles which cannot enjoy this type of protection are those which are not sufficient to identify and distinguish the work. As for protection under trademark law, this is theoretically possible and indeed applied in practice to the titles of periodicals; however, it refers more to an enterprise than to a work.

Thus the author reaches the conclusion that, while copyright and trademark law afford protection only to small groups of titles, unfair competition law is capable, in the majority of cases, of providing the protection which is required and which best corresponds to the many and varied interests of the parties concerned. M. S.

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Die Zitierfreiheit im Recht Deutschlands, Frankreichs, Grossbritanniens und der Vereinigten Staaten [Freedom of quotation in the law of Germany, France, Great Britain and the United States], by *Demetrius Oekonomidis*. One volume of 286 pages, 23 × 15 cm. Verlag Franz Vahlen, Berlin/Frankfurt am Main. Internationale Gesellschaft für Urheberrecht, Schriftenreihe No. 42.

At the Stockholm Diplomatic Conference in 1967 the rule on quotations, which already existed in the Berne Convention (Article 10), was extended to cover all categories of works, instead of applying solely to articles in newspapers and periodicals. Other amendments were also made to this provision in order to adapt the old rule to modern circumstances, and especially to the introduction in the Convention of a new exclusive right of the author — that of authorizing the reproduction of his works (Article 9).

The work of Mr. Oekonomidis therefore comes at a very suitable time, since his comparative analyses supplement the comments on the revised provisions of Article 10 of the Berne Convention. It could perhaps he regretted that the author confined himself to an examination of the situation in four countries only, for, despite the importance of the countries he has chosen, it is nonetheless true that his conclusions would have had that much more general value if the work had referred to a certain number of other countries whose legislation also provides for "freedom of quotation".

In the first part of the book, before embarking on the problem which is the subject of this study, Mr. Oekonomidis describes the essential features of copyright, with a brief historical outline.

In the second part, after some introductory comments, he undertakes a country-by-country analysis of the problem. Naturally this analysis is not confined to the legislative provisions concerned; it includes also solutions adopted by doctrine and jurisprudence.

In his conclusion the author subscribes to the opinion according to which the right of quotation is, "for every intellectual worker, a natural right of which he cannot be deprived". He further points out that — apart from the slight prejudice to the author's interests which might result from the free quotation of his work — the fact that a work is the subject of a general discussion is an advantage for the author which should not be underestimated. This limitation of the author's rights is therefore one which derives from the social aspect of copyright.

A comprehensive bibliography further enhances the value of this study. M. S.

UPOV Meetings

September 22 and 23, 1971 (Geneva) — Working Group on Cross-Fertilized Plants

October 14 and 15, 1971 (Geneva) — Council

Meetings of Other International Organizations concerned with Intellectual Property

September 14 to 17, 1971 (Nice) — Union of European Patent Agents — General Assembly

September 20 to 22, 1971 (The Hague) — International Patent Institute — Administrative Council

October 4 to 9, 1971 (Paris) — Unesco — Conference on Scientific Information Systems

October 10 to 17, 1971 (Kuwait) — Industrial Development Centre for Arab States — Arab Symposium on Industrial Development

November 3 to 6, 1971 (Geneva) — Unesco — Intergovernmental Copyright Committee

December 13 to 16, 1971 (Brussels) — International Association for the Protection of Industrial Property — Council of Presidents

April 24 to 28, 1972 (Dubrovnik) — idem — Council of Presidents

November 12 to 18, 1972 (Mexico) — idem — Congress

International Conference for the Setting Up of a European System for the Grant of Patents (Luxembourg):

September 13 to 17, 1971 — Working Party I

October 11 to 22, 1971 — Working Party I

November 15 to 19, 1971 — Working Party I

November 29 to December 3, 1971 — Working Party II
