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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Contents

ADMINISTRATIVE BODIES

World Intellectual Property Organization
Coordination Committee

Second Ordinary Session

(Geneva, September 27 to October 2, 1971)

Note *

Introduction. The Coordination Committee of WIPO (hereinafter called " the Coordination Committee ") held its second ordinary session at Geneva from September 27 to October 2, 1971.

Twenty-three of the 27 States members of the Coordination Committee were represented: *Ordinary members:* Argentina, Australia, Brazil, Cameroon, Canada, France, Germany (Federal Republic), Hungary, Italy, Japan, Romania, Soviet Union, Spain, Sweden, Switzerland, Tunisia, United Kingdom, United States of America (18); *Associate members:* Congo, Kenya, Mexico, Philippines, Poland (5). Two ordinary members, Pakistan and Senegal, and two associate members, Ceylon and India, were not represented.

The other States and organizations mentioned in the list of participants (see below) were represented in an observer capacity.

The session was opened by the outgoing Chairman, Mr. G. A. Borggård (Sweden). The Coordination Committee elected Mr. Walter Stamm (Switzerland) as Chairman, and Mr. Bruce C. Ladd, Jr. (United States of America) and Mr. Jacek Szomański (Poland) as Vice-Chairmen, for the period 1971-1972.

Program and Budget. The Coordination Committee approved the program of legal-technical assistance and the common expenses budget for the year 1972 as proposed by the International Bureau. As far as the program is concerned, emphasis was placed upon intensifying efforts in the field of assistance to developing countries, particularly by making fellowships available to nationals of such countries, by organizing one or more seminars or courses, by preparing new model laws, and by providing assistance in the form of publications relating to licensing opportunities in order to facilitate the rapid transfer of technology. The close cooperation with the appropriate bodies of the United Nations in this field will be continued.

Headquarters Agreement. The Coordination Committee noted with approval the signature, on December 9, 1970, and the content of the Agreement concluded by the Director General with the Swiss Federal Council in order to determine the legal status of WIPO in Switzerland.

New Headquarters Building. The Coordination Committee adopted unanimously a resolution expressing the urgent wish that the Swiss Authorities, federal and cantonal, would facilitate the starting at the earliest possible date of the construction of the new WIPO headquarters building. It adopted the definitive plan for its financing.

Working Agreement. The Coordination Committee approved the terms and conditions of a working agreement with the African and Malagasy Industrial Property Office (OAMPI) for the purpose of regulating cooperation with that intergovernmental organization, and authorized the Director General to sign it on behalf of WIPO.

Staff Matters. The Coordination Committee adopted a number of amendments to the Staff Regulations and Rules which had been proposed to it by the International Bureau.

It asked the Director General to study the means of correcting some repercussions of monetary fluctuations on the amount of certain payments due to staff members.

As far as the composition of the Secretariat is concerned, several delegations insisted on the need to apply, in the broadest possible manner, the principle of equitable geographical distribution in future recruiting, with particular emphasis on the role of nationals of developing countries.

Next Ordinary Session. The Coordination Committee decided to hold its third ordinary session at Geneva, from September 25 to 30, 1972.

* This Note was prepared by the International Bureau on the basis of the documents of the session.

International Union for the Protection of Literary and Artistic Works (Berne Union)
Executive Committee

Second Ordinary Session

(Geneva, September 27 to October 2, 1971)

Note *

Introduction. The Executive Committee of the Berne Union (hereinafter called "the Committee") held its second ordinary session at Geneva from September 27 to October 2, 1971.

Thirteen of the 15 States members of the Committee were represented: *Ordinary members:* Canada, France, Germany (Federal Republic), Italy, Romania, Spain, Switzerland, Tunisia, United Kingdom (9); *Associate members:* Congo, Mexico, Philippines, Poland (4). One ordinary member, Pakistan, and one associate member, India, were not represented.

The other States and organizations mentioned in the list of participants (see below) were represented in an observer capacity.

The session was opened by the outgoing Chairman, Mr. E. Ulmer (Germany (Federal Republic)). The Committee elected Mr. Rafik Saïd (Tunisia) as Chairman, and Mr. Giuseppe Trotta (Italy) and Miss Delia Domingo (Philippines) as Vice-Chairmen, for the period 1971-1972.

Program and Budget. The Committee approved the program and budget of the Berne Union for the year 1972 as proposed by the International Bureau, with the exception however of the proposal to create an international service of identification of literary and artistic works, which will be reconsidered in connection with the program proposals for 1973. In addition to the usual tasks relating to publications concerning the Berne Union (monthly periodicals, collections of legislative texts, records of the Paris Revision Conference, etc.), the program provides particularly for the establishing of a model law on copyright for developing countries in order to assist them in taking advantage of the possibilities offered by the Paris Act of the Berne Convention and adopting legislation compatible with membership in the Berne Union. The program provides also for further study of possible solutions to the copyright problems posed in connection with the use of electronic computers for storing and reproducing copies of protected works, as well as the convening of a second committee of governmental experts on the questions raised by the use of communications satellites.

The Committee also approved the necessary amendment to the budget of the Berne Union for 1971 so as to permit the holding of a diplomatic conference for the conclusion of a multilateral convention on the protection of phonograms.

Observer Status. The Committee decided to apply to the International Secretariat of Entertainment Trade Unions (ISETU) the rules on participation, in its meetings, of international non-governmental organizations in an observer capacity.

Next Ordinary Session. The Committee decided in principle to hold its third ordinary session at Geneva, from September 25 to 30, 1972.

* This Note was prepared by the International Bureau on the basis of the documents of the session.

List of Participants *

I. States members of one or several bodies convened

Argentina: L. M. Laurelli. **Australia:** K. B. Petersson. **Austria:** F. Bauer; T. Lorenz; P. Klein; G. Gall. **Belgium:** A. Scburmans; J. Degavre; R. Philippart de Foy. **Brazil:** R. Saraiva Guerreiro; T. Thedim Lobo; J. F. da Cosla; O. Soares Carbonar. **Cameroon:** J. Ekedi Samnik. **Canada:** A. M. Laidlaw; A. A. Keyes; R. Auger. **Congo (Democratic Republic):** J.-B. Emany. **Czechoslovakia:** V. Vaniš; J. Prošek; O. Fabián; A. Ringl; J. Slahl. **Denmark:** E. Tuxen; E. Mølgaard. **Egypt:** A. A. Kabesh; Y. Rizk; M. M. Saad. **France:** P. Charpentier; J. Fernand-Laurent; R. Labry; F. Savignon. **Germany (Federal Republic):** S. Schnippenkoetter; A. Krieger; E. Ulmer; H. Masl; R. Singer; G. Rheker (Miss); W. Boecker; G. Ullrich. **Hungary:** E. Tasnádi; J. Bobrovszky. **Ireland:** M. J. Quinn. **Italy:** G. Trolla; C. Ferro-Luzzi; A. Pelizza. **Japan:** T. Shiroshita; Y. Kawashima; K. Takano. **Kenya:** D. J. Coward. **Liechtenstein:** A. F. de Gerliczy-Burian. **Luxembourg:** J. P. Hoffmann. **Mexico:** J. Freymann Castro. **Netherlands:** W. M. J. C. Phaf. **Norway:** L. Nordstrand; S. H. Røer; O. Doerum. **Philippines:** D. Domingo (Miss). **Poland:** J. Szomański; K. Matlaszek (Miss), B. Janicki. **Portugal:** R. Serrão. **Romania:** I. Ionescu; C. Mitran. **Soviet Union:** E. Artemiev; V. I. Ilyin; V. Roslov; V. Kalinine. **Spain:** A. F. Mazarambroz; I. Fonseca-Ruiz (Miss). **Sweden:** G. R. Borggård; C. Uggla; I. Stjernberg. **Switzerland:** W. Stamm; J.-L. Comte; R. Kämpf; P. Ruedin. **Tunisia:** R. Saïd; A. Amri; H. Ben Achour. **United Kingdom:** W. Wallace; T. A. Evans. **United States of America:** B. C. Ladd; R. D. Tegtmeyer; R. A. Wahl; H. J. Winter; H. D. Hoinkes. **Yugoslavia:** S. Prelnar; N. Janković.

II. Other States

Algeria: S. Bouzidi. **Bulgaria:** I. Daskalov. **Finland:** E. Tuuli; R. Meinander. **Greece:** C. Tranos; G. Pilavachi. **Holy See:** S. Luoni; O. Roullet (Mrs.). **Iran:** M. Naraghi; M. Mohseni. **Israel:** M. Gabay; P. Ben-Ami (Mrs.). **Lebanon:** R. Homsy (Mrs.). **Turkey:** O. Besnelli; S. Alsan; N. Yosmaoglu. **Uganda:** G. S. Lule.

* A list containing the titles and functions of the participants may be obtained from the International Bureau upon request.

III. Intergovernmental Organizations

United Nations Organization: A. Ezenkwele; H. Cornil. United Nations Conference on Trade and Development (UNCTAD): C. R. Greenhill; R. Previtali. International Labour Office (ILO): E. Thompson. United Nations Educational, Scientific and Cultural Organization (Unesco): P. A. Lyons (Miss). International Patent Institute (IIB): G. M. Finniss; P. Van Waasbergen; U. Schatz. African and Malagasy Industrial Property Office (OAMPI): C. Johnson. Council of Europe: R. Muller.

IV. International Bureau of WIPO

G. H. C. Bodenhausen *(Director General)*; A. Bogsch *(First Deputy Director General)*; J. Voyame *(Second Deputy Director General)*; C. Masouyé *(Senior Counsellor, Head, External and Public Relations Division, Head a. i., Copyright Division)*; K. Pfanner *(Senior Counsellor, Head, Industrial Property Division)*; B. A. Armstrong *(Senior Counsellor, Head, Administrative Division)*; L. Egger *(Counsellor, Head, International Registrations Division)*.

V. Officers and Secretariat

World Intellectual Property Organization (WIPO)

Coordination Committee: *chairman* W. Stamm (Switzerland); *vice-chairmen* B. C. Ladd (United States); J. Szomański (Poland); *secretary* C. Masouyé (WIPO).

Berne Union

Executive Committee: *chairman* R. Saïd (Tunisia); *vice-chairmen* G. Trotta (Italy); D. Domingo (Miss) (Philippines); *secretary* C. Masouyé (WIPO).

WORLD INTELLECTUAL PROPERTY ORGANIZATION

AUSTRALIA

Application of the transitional provisions (five-year privilege) 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 of the notification deposited by the Government of the Commonwealth of Australia in which that Government indicates its desire to avail itself of the provisions of Article 21(2) of the Convention.

This notification entered into force on the date of its receipt, that is, on September 21, 1971.

Pursuant to the said Article, the Commonwealth of Australia, which is a member of the Paris Union and of the Berne Union but has not yet become party to the WIPO Convention, may, for five years from April 26, 1970, the date of entry into force of the said Convention, exercise the same rights as if it had become party.

WIPO Notification N° 34, dated Septemher 22, 1971.

INTERNATIONAL UNION

AUSTRALIA

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 Commonwealth of Australia 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.

This notification entered into force on the date of its receipt, that is, on September 21, 1971.

Pursuant to the provisions of the said Article, the Commonwealth of Australia, 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 rights provided under Articles 22 to 26 of the Stockholm Act of the Berne Convention, as if it were bound by those Articles.

Berne Notification N° 31, dated September 22, 1971.

UNITED KINGDOM

Declaration concerning the application of the Appendix to the Paris Act (1971) 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, referring to Article VI(1)(ii) of the Appendix to the Paris Act of the Berne Convention, the Government of the United Kingdom of Great Britain and Northern Ireland has declared that it admits the application of the Appendix to works of which it is the country of origin by countries which have made a declaration under Article VI(1)(i) of the Appendix or a notification under Article I of the Appendix.

Pursuant to the provisions of Article VI(2) of the said Appendix, this declaration, made in writing, became effective from the date of its deposit, that is, from September 27, 1971.

Berne Notification No. 32, dated October 6, 1971.

GENERAL STUDIES

Translation rights and translators' rights

In the century in which we are living, which is characterized by a tremendous and rapid development of technology, ever-increasing importance must be attached to both *translation rights* and *translators' rights*. These two prerogatives accruing to the owners of individual rights are closely inter-linked and inter-dependent, because the second derives from the first. Furthermore, they both concern activities which also contribute to the dissemination of culture by developing relations among peoples and strengthening the links between them.

In practice, however, one often finds that the concept of translation rights and that of translators' rights are not sufficiently clear and distinct. In other words, these two author's prerogatives, which are essentially distinct and different, are sometimes the subject of misunderstanding and confusion. This situation has prompted us to examine the problem here, with a view to making the necessary distinction between the two concepts — i. e. in order to draw attention to the charateristics and origins of these two categories of rights.

I. Translation rights

According to the theoretical definition, the right of translation is the exclusive right of the author of an original literary or scientific work to make or authorize the making of a translation of his work into other languages. In parallel with the development of copyright, translation rights have gone through a number of phases where the recognition and term of protection are concerned.

We shall therefore review the various stages of evolution of translation rights, viewed from the aspect of the multilateral international conventions on copyright, comparative law and case law.

1. *Multilateral international conventions.* — The right of translation is necessarily international in character; it follows that international conventions, open for signature by all countries, "represent the most effective method of ensuring the international protection of this right"[1]. Under the original text of the Berne Convention for the Protection of Literary and Artistic Works of September 9, 1886, the term of protection of the right of translation was ten years following publication of the original work (Article 5). Under the Additional Act adopted at Paris on May 4, 1896, supplementing that Convention, the earlier provision was amended so as to afford the same term of protection to the right of translation as to other modes of use of an intellectual work. Subsequently, however, the Convention gave to signatory countries the possibility of making reservations[2], and this was later[3] limited to the right of translation. This means that in countries acceding to the Convention — that is to say those which, having regard to the development of their culture, need to draw on the cultural heritage of more developed countries — it is permissible to translate the works of foreign authors into the languages of their peoples without the authors' authorization if the authors have not made or authorized the making of a translation of those works during a term of ten years from the date of the first publication of the work in question. After the expiration of the ten-year period, where the required condition has been complied with, anyone can translate such a work without obtaining authorization to do so from the author or his sucessor in title. A number of countries have invoked the reservation provision in regard to Article 8 of the Berne Convention upon acceding to that instrument.

In this connection, we should also like to mention one question that is still a subject of discussion and controversy — namely, whether or not countries that have made a reservation should pay remuneration to the author of an original work that is translated, since the Convention does not contain any provision in this respect.

Opinions are divided on this matter. First of all, we should like to record that the question no longer arises so far as Yugoslavia (as a country having invoked the reservation) is concerned, because remuneration is clearly due and must be paid to the author of the original work. This was the conclusion reached after consultation of legal experts, and it has been confirmed by case law[4]. Most of the experts were of the opinion that anyone making use of the right of translation must pay remuneration to the author of the original work. In the statement of considerations, the group of legal experts put forward the following argument: if enjoyment of an author's exclusive right is subject to restriction with respect to use of his work in pursuance of the reservation possibility, the author is nevertheless not deprived of any material remuneration. The group also pointed out that it would be contrary to social progress to benefit from an author's intellectual work without granting him appropriate remuneration or compensation. If the opposite view were accepted, the risk would be that any other infringement of copyright would be justified — for example, infringement of the author's personal (moral) prerogatives. In any case, the reservation was intended not to impoverish the authors of creative intellectual works but, on the contrary, to facilitate their

[1] See *Charter of the Author's Right*, 1956, Chapter V.

[2] By the Berlin revision (November 13, 1908).

[3] By the Rome revision (June 2, 1928).

[4] Decision of the Federal Supreme Court of Yugoslavia, N° 636/53, of February 3, 1954.

creative work in the future by recogniziug their entitlement to remuneration, thus enabling them to contribute more readily to the development of human culture.

In contrast to this approach, another view seems to be prevalent in the other countries that have made reservations: if the original work is not translated by the author himself or by an authorized person within the term of ten years, the right of translation lapses upon the expiration of that term and the work concerned falls into the public domain. Consequently, those other countries have acted as if — with respect to the right of translation — a public domain existed in which neither authorization nor remuneration were required. One of the proofs advanced for such an approach and such a practice was the fact that certain countries hesitated to accede to the Berne Convention because of the restriction on translation rights under the reservation, interpreted as leading to a public domain.

If indeed an original work that has not been translated before the end of the ten-year term following its first publication is deemed to have fallen into the public domain, then understandably no remuneration would be due to the author if the work was translated after the expiration of that period. In our view, however, it would be illogical to consider a work as being within the public domain solely with respect to one mode of use — the right of translation, which is restricted under the reservation — because this would be inconsistent with the general rule adopted by the Convention in respect to the public domain as an institution.

In the Berne Convention as revised at Brussels on June 26, 1948, the term of protection of the translation right was retained and confirmed, as extending throughout the author's lifetime and for fifty years after his death. At the same time, signatory countries were left the possibility of also in future availing themselves of a reservation, in pursuance of Article 5 of the original text of the Convention, as supplemented by the Additional Act of Paris dated May 4, 1896, taken in conjunction with Articles 8 and 25 of the Brussels Act allowing this possibility. In this respect, the Stockholm Act (1967) provides for the possibility of material reciprocity (Article 30 (2)*b) in fine*).

Among the Pan-American conventions, the *Montevideo Convention* of 1889 recognizes the author's right to make or authorize the translation of his works; the *Mexico Convention* of January 28, 1902 (Article 3), and the *Buenos Aires Convention* of August 11, 1910 (Article 4), also make provision for the right of translation as an economic right of the author of the original work; the *Washington Convention* of June 22, 1946, which affords the most extensive protection of author's rights among all the Pan-American conventions, provides for the exclusive right of translation [5], but is open for accession only by American States.

In the *Universal Copyright Convention* of September 6, 1952, Article V refers to the right of translation. In our view, the provisions of that article are the most original and the most important in the entire Convention. The article includes and makes provision for three questions of capital importance that are inherent in the interests of the authors of intellectual works: recognition of the author's exclusive right, protection of the right of translation, and indirect regulation of individual (moral) rights. In the Universal Convention, the only explicit reference to the author's exclusive right is in Article V(1), which reads as follows: "Copyright shall include the exclusive right of the author to make, publish, and authorize the making and publication of translations of works protected under this Convention". But following immediately on this provision in Article V(1), the right of translation is already limited by paragraph 2, and contracting States may, if they so decide, restrict this right by their domestic legislation. Thus from an exclusive right we move on to statutory (compulsory) licensing, which does not preclude the remuneration due to the author of the original work. Under this restriction of the translation right, a publisher or translator may translate a literary or scientific work provided he obtains a license which is not exclusive and may not be transferred, if after the expiration of a period of seven years from the date of first publication of a work the author has not translated the work himself or authorized another person to do so.

In such case, however, although the licensing system has the effect of restricting the author's exclusive right, it is not detrimental to his interests. On the contrary, in such a solution what might at first sight appear negative even becomes positive for, as we have already pointed out, in the procedure established for having recourse to the restriction resulting from the licensing system, very important questions are settled at the same time. Whether or not this was the intention, one right had to be limited in order to regulate the others in a satisfactory and favorable manner.

We refer to the protection of the author's personal (moral) rights to which the Convention makes no specific reference [6] but which it nevertheless regulates when taken as a whole. In view of the fact that, *inter alia*, the Universal Convention was designed to reconcile and harmonize two conceptions (European and Anglo-Saxon) of moral rights and that, furthermore, the copyright legislation of the Anglo-Saxon countries affords protection to moral rights not as such but as rights of the individual in pursuance of common law, protection had to be afforded to these rights implicitly and indirectly, by bringing them in through the back door, so to speak.

Indeed, provision is made for all the component elements of moral rights in the fairly lengthy procedure under which the competent authorities of the State in which the application is made can grant a license for translation of a work by a foreign author, even where it is not possible to contact the author and obtain his authorization. Thus, under Article V(1), the author is authorized to "publish . . . translations of works protected under this Convention" (right of publication). In addition, paragraph 2 states that "the license shall not be granted when the author has withdrawn from circulation all copies of the work" *(droit de repentir* or the right to withdraw). Lastly, among the conditions required for translation of the original work, Article V requires domestic

[5] W. Goldbaum: "Lettre d'Amérique latine", *Le Droit d'Auteur*, 1955, p. 90.

legislation to make due provision " to assure a correct translation of the work " (right of respect for the work and the author's personality); lastly, the original title and the name of the author of the work are required to be printed on all copies of the published translation (right of name or right of paternity).

From the foregoing, one can conclude that the provisions of Article V of the Universal Convention not only tacitly provide for all the component elements of moral rights, but also go even further than the Berne Convention, by taking into account the right to withdraw *(droit de repentir)*. No doubt, in the course of its numerous revisions, the Berne Convention has made express provision for moral rights in a more comprehensive and systematic way.

If one makes a comparison between the restrictions on translation rights resulting from a reservation formulated in pursuance of the Berne Convention and the licensing system provided under the Universal Convention, one arrives at the conclusion that under the reservation system, all the prescribed conditions being fulfilled, a work can be translated without the author's consent and without any compensation being paid to him, whereas under the licensing system both of these are required. Consequently, the licensing system is more advantageous for authors, and the reservation more advantageous for publishers. Under the reservation system of the Berne Convention, if the author of the original work has not exercised his right to make or authorize the making of a translation of that work, then, according to the majority view, that translation right lapses and falls into the public domain; on the other hand, under the Universal Convention, if the work has not been translated within seven years following first publication, it does not thereafter fall into the public domain.

2. *National legislation.* — The Charter of the Author's Right proclaims that " the administration of the singularly international domain of the translation right should be based on the exclusive right of the author of the original work " [7]. This exclusivity is generally expressed as follows: the author has an exclusive right which includes in particular the right to translate the work. In the following countries, including members of the Berne Union, the national legislation is in conformity with this principle:

Ceylon: the term " author's right " designates the exclusive right to produce, reproduce, represent or publish a translation of the work (Article 2(1) of the Copyright Act of 1911), the same provision being applied in Cyprus, Israel and Singapore; Chile (Article 1 of the Copyright Decree-Law of 1925); Colombia (Article 6 of the Copyright Law of 1946); Denmark (Article 2 of the Copyright Law of 1961); Dominican Republic (Article 18 of the Copyright Law of 1947); Finland (Article 2 of the Copyright Law of 1961); Honduras (Article 2 of the Copyright Law of 1919); Iceland (Article 1 of the Copyright Law of 1905); Italy (Article 18 of the Copyright Law of 1941); Liechtenstein (Article 13 of the Copyright Law of 1928); Norway (Article 2 of the Copyright Law of 1961); Philippines (Article 3 of the Copyright Act of 1924); Sweden (Article 2 of the Copyright Law of 1960); Switzerland (Article 13 of the Copyright Law of 1922 including, in particular, the right to translate the work); United States of America (Article 1 of the Code of Laws — Title 17) [8].

In addition, there are countries where authorization to translate the work is expressly granted. This is the case in Argentina, where the right of translation is expressed in the following terms: copyright in a scientific, literary or artistic work entitles the author to translate it or authorize its translation (Article 2 of the Copyright Law, 1933). The following countries have provisions which in essence are more or less similar: Belgium (Article 12 of the Copyright Law, 1886); Costa Rica (Article 7 of Decree-Law of June 27, 1896); Czechoslovakia (Article 3 of the Copyright Law, 1965); Ecuador (Article 5 of the Copyright Law, 1957-1958); El Salvador (Article 68 of the Copyright Law, 1963); France (Article 40 of the Law on Literary and Artistic Property, March 11, 1957); Chad and Madagascar apply the same provision of the French legislation; Greece (Article 6 of the Copyright Law, 1920); Guatemala (Article 10 of the Copyright Law, 1954); Haiti (Article 5 of the Copyright Law, 1885); Hashemite Kingdom of Jordan (Article 6 of the Copyright Law, 1912); Lebanon (Article 145 of the Decree of January 17, 1924); Luxemhourg (Article 12 of the Copyright Law, 1898); Monaco (Article 4 of the Copyright Law, 1948); Panama (Article 1925 of the Administrative Code, 1916); Peru (Article 36 of the Copyright Law, 1961); Portugal (Article 163 of the Copyright Code, 1966); Spain (Article 2 of the Copyright Law, 1879); Syrian Arab Republic (Article 145 of the Decree of January 17, 1924); Tunisia (Article 2 of the Copyright Law, 1966); United Arab Republic (Article 7 of the Copyright Law, 1954); Uruguay (Article 2 of the Copyright Law, 1937); Yugoslavia: the author has the exclusive right to translate and to authorize the translation of his work (Article 29 of the Copyright Law, 1957; but the 1968 Law contains this provision in an amended form: the author has the exclusive right to authorize the translation of his work — Article 43).

In a smaller number of countries, some of which recognize the exclusive right of the author, the domestic legislation also restricts the right of translation, either by the possibility of invoking a reservation (Article 8 is replaced by Article 5 of the Berne Convention in its original version, as supplemented by the Additional Act of May 4, 1896), or in pursuance of Article V of the Universal Copyright Convention.

The countries members of the Union which have formulated a reservation under Article 8 of the Berne Convention are: Iceland, Japan, Mexico, Thailand, Turkey and Yugolavia [9]. Greece, too, had formulated a reservation when acceding to the Convention in 1920 but, upon ratifying the Brussels text

[6] H. Desbois, " La Convention universelle de Genève et la Convention de Berne ", *Le Droit d'Auteur*, 1955, p. 170. See also Th. Ilosvay, " Towards a possible limited revision of the Universal Copyright Convention ", *Revue internationale du droit d'auteur (RIDA)*, XXVI, 1960, pp. 78 *et seq.*

[7] See *Charter of the Author's Right*, 1956, Chapter V.

[8] Unesco Document - INLA/CS/170/3, pp. 11 and 12.

[9] *Copyright*, 1971, pp. 8 and 9.

of the Union Convention in 1956, formally renounced all reservations [10]. Unlike the other countries mentioned, however, throughout the period of the Greek reservation, Greece abided strictly by the original text of Article 5 limiting the term of protection of translation rights to ten years [11], whereas the other countries that had formulated a reservation did so in accordance with the Additional Act of May 4, 1896.

The countries listed below are parties to the Universal Copyright Convention which have adopted a similar solution concerning the right of translation on the basis of Article V of that Convention: Argentina (Decree No. 1155 of January 31, 1958); India (Copyright Act of 1957, Copyright Regulations of January 2, 1958, International Copyright Order of 1958); Japan (Law No. 86 of April 28, 1956) [12]; Mexico (Decree of November 4, 1963); Nepal (Copyright Act, 1966); Pakistan (Copyright Ordinance, 1962); Portugal (Copyright Code, April 27, 1966) [13]; Yugoslavia (Copyright Law, 1968, Articles 46 and 47).

A few countries, such as Burma (Article 4(1) of the Union of Burma Order, 1948) and Luxembourg (Article 12 of the Copyright Law, 1898) have limited the term of protection of translation rights to ten years after first publication of the work [14]. One should also mention the case of Colombia, where the successors in title are not entitled to oppose the translation by a third party of the works of their predecessor *(de cujus)* after the lapse of ten years from his death (Article 10 of Law No. 86 on Intellectual Property) [15].

One particular restriction on the right of translation is provided in the Egyptian Copyright Law of 1954. Under Article 8 of that Law, " if the author of the work or the person who has translated it into a foreign language does not, by himself or through the intermediary of a third person, exercise the right to translate it into Arabic, the protection of this right shall terminate five years after the date of first publication of the original work or its translation into a foreign language " [16].

In Korea, under Article 34 of the Copyright Law of 1957, " if the owner of a copyright does not publish a translation within five years from the date of publication of the original work, his right of translation shall cease to exist ".

In addition, there are some countries where the right of translation is linked to, and depends on, compliance with registration formalities: Chile (Article 1 of the Decree on Intellectual Property of 1942); China (Article 1 of the amended Copyright Law, 1949); Dominican Republic (Article 18 of the Copyright Law, 1947); Panama (Article 1914 of the Administrative Code).

Certain countries make the concept of translation subject to that of adaptation: Australia (Article 10 of the Copyright Act, 1968); Ireland (Article 8(7) of the Copyright Act, 1963); New Zealand (Article 2 of the Copyright Act, 1962); Sierra Leone (Article 4(6) of the Copyright Act, 1965); Turkey (Article 6 of the Copyright Law, 1951); United Kingdom (Article 5 *(f)* of the Copyright Act, 1956).

Ethiopia's legislation (Article 1655 of the Civil Code, 1960) stipulates that " an author cannot object to the translation of his work ". The author's consent is nevertheless needed, since a translation made without the authorization of the author must expressly state this fact at the beginning of the work. Failing such a statement, the translation " shall be deemed to be prejudicial to the author's rights ". The legislation of the Byelorussian SSR states that any published work may be translated without the author's consent (Article 486 of the Civil Code of June 11, 1964) [17].

In the days of Czarist Russia, on June 3, 1909, the Duma had decided by a small majority to include in draft legislation a reference to the principle of complete freedom of translation with respect to foreign works, as a consequence of the " struggle for recognition of the right of translation in foreign works " [18].

In the Soviet Union, too the right of translation is not recognized as having " the character of a genuine right of ownership ". Moreover, the translation is considered quite " independent of the work of creation of the original work " [19]. This accounts for the fact that the USSR produces " more translators than any other country " [20]; Canada could perhaps be compared to it in this respect [21]. In Romania, under Article 15 of the Copyright Law, 1956, one can say that, so far as the right of translation is concerned, only the moral prerogatives of the author are protected.

Lastly, it should be noted that Ghana's Copyright Act does not contain any provisions concerning either the author's translation rights or the rights of the translator.

3. *Case law.* — The right of translation as a patrimonial and moral prerogative of the author of the original work has also found a place in the case law of a number of countries, which is fairly abundant and important. We shall cite a few examples: — An unauthorized translation of a French novel was published in Spain, in a newspaper. On November 19, 1910, the Madrid Appeals Court held that it constituted a punishable offence under the Law of January 10, 1879, and found the defendant guilty [22]. — The Appeals Court of Turin fully confirmed the decision of the lower instance concerning the unauthorized translation of a music-teaching method, and confirmed the full protection of the right of translation [23]. — On April 12, 1910, the Rome Appeals Court gave its judgment concerning the unauthorized publication of a translation of a French work which had appeared in 1893.

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[10] By Decree-law N° 3565, of September 27, 1956.

[11] *Le Droit d'Auteur*, 1928, p. 23.

[12] The relevant provisions are not included in the new Japanese copyright law, which became effective on January 1, 1971.

[13] Unesco Document - INLA/CS/170/3, p. 19.

[14] *Ibid.*, Annex A, pp. 7 and 32.

[15] *Ibid.*, p. 10.

[16] R. Lançon and J. Vilbois, " Copyright in Egypt ", *RIDA*, V, 1954, p. 110.

[17] We have also consulted the Unesco document already indicated to supplement this information.

[18] *Le Droit d'Auteur*, 1911, p. 15.

[19] C. Masouyé, " Copyright in the U. S. S. R. ", *RIDA*, IXXX, 1960, p. 22.

[20] S. Levitsky, " The new Soviet Copyright Law ", *RIDA*, XXXIX-XL, 1963, p. 202.

[21] P. Daviault, " Le rôle du traducteur de l'Etat au Canada ", *Babel*, International Journal of Translation, Vol. II, N° 1, 1956, p. 11.

[22] *Le Droit d'Auteur*, 1911, p. 37.

[23] *Ibid.*, 1912, p. 41.

In the criminal proceedings brought by the first authorized translator, who had published a translation within the ten-year period in accordance with the Additional Act of 1896, the Court recognized the right of translation on that account and at the same time confirmed that assignment of the translation right extended only to performance and not to publication of the translation [24]. — On July 7, 1911, in a case concerning unlawful performance of the protected Italian translation of a French play, the Rome Appeals Court held that complete protection of the right of translation was applicable under the Italo-German Treaty of 1907, on the basis of the most-favored-nation clause [25]. — According to a decision by the Antwerp court of first instance on January 22, 1958, the author has an absolute right in his intellectual creations and may publish or disclose them, or may refuse to allow their publication [26]. — The French publisher of Romain Rolland's work *Jean Christophe* assigned the publication right to a Czech publisher after November 10, 1921, the date of Czechoslovakia's accession to the Berne Convention. Another Czech publisher had already published part of the same work while the earlier Copyright Law (1895) was still in force. The first publisher contested the right of the second to continue to publish the work, on the ground that the publication right had been assigned to him by the party entitled to do so. The Prague Supreme Court upheld the plaintiff's application, recognizing the assignee's right as owner of an exclusive right in the translation [27]. — The title of the German translation of J. B. Priestley's play *The Scandalous Affair of Mr. Kettle and Mrs. Moon* — rendered as *Und das am Montagmorgen* — does not designate the German translation in particular, but merely the comedy written in English by Priestley. The use of the title *Und das am Montagmorgen* for a film does not therefore constitute an infringement of the legal provisions concerning unfair competition (Articles 1 and 16) [28]. — An infringement of the right of translation is committed when the name of the author of a work is altered (Stephen Brand instead of Stefan Zweig), because the alteration constitutes an impairment of his moral rights [29]. — Any alteration to the way in which the title of the original work is written constitutes an infringement of the author's moral right in his capacity as owner of the translation right [30]. — Publication in a weekly magazine of an instalment of the unauthorized translation of a literary work, with a note that the next instalment will appear in the following issue, constitutes unlawful reproduction of the work [31].

4. *Translation rights from the aspect of the developing countries.* — It should be noted that in recent years, the interested circles have given particular attention and devoted real and necessary efforts to matters relating to the right of translation and the right of reproduction in order to meet the needs of developing countries. The problem was to devise a way of helping those countries by enabling them to comply with the obligations deriving from exercise of copyright, in other words from the use by them of works by authors in developed countries, in order to meet their needs in the field of education, research and culture. These efforts can be seen in two stages:

(a) Solution proposed at the Stockholm Conference. — The right of translation is one of the principal constituent elements of the Protocol adopted for the benefit of developing countries, which forms an integral part of the Berne Convention as revised at Stockholm. Under Article 1*(b)* of the Protocol, developing countries may substitute for Article 8 of the Convention the provisions set forth in the Protocol for their benefit; those provisions stipulate, *inter alia*, that " the exclusive right of translation shall cease to exist if the author shall not have availed himself of it, during a term of ten years from the date of the first publication of the original work, by publishing or causing to be published, in one of the countries of the Union, a translation in the language for which protection is to be claimed ". The ten-year term is further divided into three stages, however: during the first three years, the exclusive right of the author of the original work remains without restriction; then comes the second stage in which developing countries can avail themselves of the substitution provision. During this period, which lasts for seven years from the date of the first publication of the work, developing countries can obtain a non-exclusive license to translate the work concerned, by a procedure almost identical to that provided under Article V of the Universal Copyright Convention. " Just compensation " and " payment and transmittal of such compensation " must be assured to the author of the work translated. Upon the expiration of the ten-year term, the exclusive right of translation ceases to exist if the author has not availed himself of it during that term. The compensation in respect of the non-exclusive license also ceases to be due for any use of the work after the expiration of the aforementioned term. In actual fact, the third stage would constitute a new reservation on the right of translation, additional to that provided in Article 30(2)*(b)* of the Stockholm Act.

In view of the fact, however, that certain countries of the Union have not expressed any intention of ratifying the Stockholm Act, and in particular the Protocol Regarding Developing Countries, another way of helping the developing countries had to be devised. For this purpose, the matter had to be referred for consideration in connection with the revision of the Universal Copyright Convention, which Unesco had first proposed. After several preliminary meetings, attended by representatives of countries party to the Universal Convention and members of the Berne Union, including also representatives of developing countries, it was decided to embark on a revision of the Universal Convention and to revise the Berne Convention once more.

(b) Preparatory work and present proposals. — The two intergovernmental bodies mainly concerned with preparing the revision of the two Conventions were the Permanent Committee of the Berne Union and the Intergovernmental Co-

[24] *Ibid.*, 1912, p. 39 and 40.
[25] *Ibid.*, 1912, p. 142.
[26] E. Schulze, *Rechtsprechung zum Urheberrecht*, Ausl. Belg. 3.
[27] *Le Droit d'Auteur*, 1929, pp. 117 *et seq.*
[28] E. Schulze, *op. cit.*, KGZ 30.
[29] *Le Droit d'Auteur*, 1923, pp. 55 and 58.
[30] *RIDA*, LXVI, 1970, pp. 68, 73 and 75.
[31] *Ibid.*, XXXIX-XL, 1963, p. 256.

pyright Committee of Unesco. Two matters of prime importance were the subject of revision: the right of translation and the right of reproduction, both of which are of very great significance for the developing countries. The two Committees, meeting in joint session, appointed the Ad Hoc Preparatory Committees which met at Paris and Geneva in May 1970 to prepare the texts of proposals for revising the two Conventions. It should be noted here that the two Committees agreed to formulate proposals for similar solutions. They met one after the other and on almost the same dates. Thus, with respect to the Berne Convention, the Preparatory Committee's proposal of a derogation from the terms of Articles 8 and 9, and their replacement by new provisions for the benefit of developing countries, was in fact a proposal for a *reservation system* to be contained in an additional Act which would constitute an integral part of the Convention; in the Universal Convention, on the other hand, the provisions of Article V had to be broadened by new articles, numbered V^{bis}, V^{ter} and V^{quater}, providing for *exceptions* from the *optional statutory licensing system*. The two possibilities are parallel to each other both as regards their form and their substance. Lastly, it should be noted that both systems of restriction on translation rights provide for the payment of just compensation to the author of the work and for payment in internationally convertible currency or its equivalent. The procedure is also the same.

These are the new aspects of the right of translation which will be presented in final form upon the occasion of the next revision of the two Conventions.*

II. Translators' rights

The immediate corollary of the right of translation is the right of the translator; it is one of the derived rights in the original work or, to put it differently, the right in an intellectual work " once removed ". This intellectual work, which is a creation in its own right, is of universal significance because it has a mission of its own which is of an essentially international character. The intellectual activity of translators has to a very great extent made possible exchanges of intellectual works among all peoples of the world.

This vocation of the translator has been confirmed in the theory and doctrine of copyright; it has also filled a substantial place in international copyright conventions, in national legislation and in case law.

1. *Doctrine.* — In the theory of copyright as well as in all the instruments mentioned above, a translation is deemed to be an intellectual and artistic creation in its own right, and the translator its author. This is, of course, on the assumption that the translation is of high quality, rendering the work faithfully and artistically, so that the translator has the talent of a writer. Many eminent persons have stated their opinion on this subject. " One can never repeat often enough that anyone who wants to translate a literary work must be a *writer* " [32]. "And it must be affirmed ", says François Hepp, " that the translation of a work — if it can, *so far as the translator is concerned*, be considered as a distinct creation enjoying a special protection and in some ways autonomous — is nothing more than the *work itself* of the original author expressed in another language " [33].

We could cite many more theoreticians and intellectual creators who share the same views on this subject. In the opinion of Edmond Cary, who considers that, in the field of literature, ideas cannot be appropriated and that, consequently, what is protected is the form in which ideas are expressed, it is difficult to deny to a translation as such protection similar to that afforded to the original work [34]. According to Pierre-François Caillé, " the translator makes his own the work whose purport he expresses " [35]. In the view of Marcel Saporta, the translator and other " once-removed " authors (adaptor, arranger, re-arranger) are assimilated to the original author, so that their intellectual achievements are deemed to be new creations. Thus, where his translation is concerned, the translator or " once-removed " author is normally considered by statutory and case law to be a genuine author [36]. The translator takes into consideration only the difference in genius between the language in which the original work was written and the language into which he is translating it [37].

The translation must not betray, but on the contrary must faithfully render, the author's thinking; the translator must grasp the author's thinking perfectly, and find appropriate words to express it accurately. He must therefore have complete mastery of the two languages and of the subject matter of the work, thus expressing his own personality in it. It follows that to translate is to create [38]. " Every artist is an interpreter ", says Charles R. Joy. If that is so, it is not sufficient for the interpreter to understand the language he must translate and the language into which he is translating. Assuming that what he is translating has artistic merit he must somehow produce in the new language something that has equal worth there. His work is not simply imitative, it is also in itself creative [39]. Artistic translation and, in particular, translation of the works of great writers sometimes becomes, because of the language element, a creative task that is more difficult than the writing of the original text. In short, a good translation is a new artistic creation [40].

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* *Editor's Note:* This article was written before the Revision Conferences held in Paris from July 5 to 24, 1971. For the text of the Paris Act of the Berne Convention, the reader is kindly requested to refer to the August issue of this review. The revised text of the Universal Copyright Convention will be published in the next issue.

[32] E. Pocar, " Il compenso ai traduttori ", *Babel*, Vol. II, N° 1, 1956, p. 15.

[33] F. Hepp, " The Universal Copyright Convention ", *RIDA*, VII, 1955, p. 14.

[34] Ed. Cary, " Le droit d'auteur appliqué au traducteur ", *Babel*, Vol. I, N° 2, 1955, p. 69.

[35] P.-F. Caillé, *Babel*, Vol. I, N° 1, p. 4.

[36] M. Saporta, " Les sujets du droit d'auteur ", *Le Droit d'Auteur*, 1954, p. 168.

[37] J. G. Renauld, *Droit d'auteur et contrat d'adaptation*, in the Preface by R. Piret, p. III.

[38] G. Ronga, " Les droits des traducteurs sur le plan international ", *Babel*, Vol. II, N° 2, 1956, pp. 73 *et seq.*

[39] Ch. R. Joy, " Thoughts on Translating Albert Schweitzer ", *Babel*, Vol. II, N° 2, 1956, p. 54.

[40] Isidora Sekulić, *Jezik i govor, kulturna smotra naroda* [Language and tongue as expressions of national culture], Belgrade, 1936, pp. 43, 96 and 97.

2. *International conventions.* — The *Berne Convention* of September 9, 1886, was the first international instrument for the protection of literary and artistic works; at the outset, it did not contain the necessary provisions to safeguard the right of translators. Provisions to that effect were added on the occasion of the Berlin revision (November 13, 1908) and these were supplemented later by the Rome and Brussels provisions. The relevant clause reads as follows:

> Translations, adaptations, arrangements of music and other alterations of a literary or artistic work shall be protected as original works without prejudice to the rights of the author of the original work. It shall, however, be a matter for legislation in the countries of the Union to determine the protection to be granted to translations of official texts of a legislative, administrative and legal nature.

This fundamental clause of the Berne Convention is set forth in Article 2 (paragraph (2) of the Brussels Act, paragraphs (3) and (4) of the Stockholm Act) and is a key provision which is also reflected in the other provisions recognizing the rights of original authors. Thus, the term of protection of translations of literary and scientific works is the same as that afforded to the original works (Article 7). Likewise, the same protection is afforded to personal or moral rights (Article 6^{bis}). The right of public performance of intellectual works, including any communication to the public thereof, also extends to translators (Article 11). The right of broadcasting and any communication to the public, by wire or by rebroadcasting, also concerns translations (Article 11^{bis}). The right of recitation is likewise linked to the translation — in other words, to the translator — if the work recited has been translated. The right of authorizing the cinematographic adaptation and reproduction of works also covers the translations of works that have been thus adapted or reproduced (Article 14). Under Article 8 of the Convention, authors of literary works have the exclusive right of making and of authorizing the translation of their works; translators also have the same right — that is to say, the right of authorizing the translation of their translations (retranslations). — The first important amendment introduced by the Stockholm revision concerns the translation of official texts (Article 2(2) of the Convention as revised at Brussels, and Article 2(4) of the Stockholm Act). The situation of translators of such texts has been improved, to the extent that the possibility left to domestic legislation of determining the protection to be granted to translators of official texts of a legislative, administrative and legal nature has been limited to official translations (which implies that the right to make non-official translations of such texts is recognized *ex jure conventionis*). The Berne Convention has thus gone farther than certain national laws. The Stockholm revision also recognizes the right of the author of the original work to authorize the reproduction of his work, which implies the right of translators to authorize the reproduction of their translations (Article 9). Lastly, another amendment introduced by the Stockholm revision concerns not only the exclusive right of the author to authorize any public recitation of his works, but also the communication to the public of such recitation by any means (Article 11^{ter}); the same rights of authors are recognized with respect to translations of their works, and consequently those rights extend to the translators themselves [41].

The Pan-American conventions. — The Berne Convention was preceded and followed by Pan-American conventions which also explicitly provide for protection of translators' rights. These conventions are: the *Mexico Convention* of January 27, 1902, Article 7 of which provides that: "Lawful translations shall be protected in the same manner as original works. The translators of works, in regard to which there exists no guaranteed right of property, or the right of which may have become extinguished, may secure the right of property for their translations..., but they shall not prevent the publication of other translations of the same work." Article 9 of the *Buenos Aires Convention* of August 11, 1910 is very similar if not identical to Article 7 of the Mexico Convention. The Havana Convention of 1928, which is in fact a revision of the said Buenos Aires Convention, contains the same provision in Article 9. Article 5 of the *Washington Convention* of 1946 contains a provision regarding protection of the right of translators which is similar to that of the Berne Convention as revised at Brussels (Article 2(2)).

The fact that provisions concerning translations are prominently featured in the conventions mentioned above is the best possible proof of the importance of translations in cultural life, and of the creative activity of translators.

The *Universal Copyright Convention* sets forth provisions governing the right of translation in Article V, but contains no provision affording protection to derived works or to translators' rights in particular [42]. On the other hand, Unesco has expressed its views on this subject to the effect that "there is thus no explicit mention of translation among the works to be protected, but... in a State which assimilates translations to original works, translations would enjoy the *traditional protection* (our italics) provided to original works by virtue of the principle of national usage" [43].

3. *National legislation.* — From the aspect of comparative law, specific provisions governing the right of translators are included in the domestic legislation of a great many countries. We shall examine the provisions existing in various countries (by alphabetical order).

First of all, it is interesting to note that in Afghanistan, under the Press Act, the translator's right is considered on an equal footing with the right of the original author, with respect to both the moral and the economic rights (Articles 39-43). Under the Argentina Copyright Law of 1933, the translator of a work in the public domain holds copyright only in his own translation and may not oppose the making of further translations by other persons (Article 24). In Austria, the Copyright Law, 1936, stipulates that the author of a translation is entitled to exploit it, but only to the extent that the author of the translated work has given him the exclusive

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[41] To this effect, the representative of BIRPI provided supplementary information to the Unesco Document - INLA/CS/170/3, pp. 36 to 38 - at the meeting of the Committee of Experts on the rights of translators, which was held in Paris from September 23 to 27, 1968.

[42] G. Ronga, *op. cit.*, p. 74.

[43] Unesco Document - INLA/CS/170/3, p. 35.

right or the permission to do so (Article 14). Under the Civil Code of the United States of Brazil, 1916, the translator of a work in the puhlic domain or the writer of versions of an original work may hold copyright. The translator may not, however, oppose the making of a new translation, except in the case of mere reproduction of his own translation or unless the author has granted him the exclusive right (Article 652). In Bulgaria, the Copyright Law of 1951 provides that a translator has copyright in his translation, but any other person is entitled to translate the same work independently (Article 17). The Chilean Law of 1925 stipulates that translators of any works are entitled to copyright, provided they have not infringed the rights of another person and have clearly indicated their sources (Article 4). In China, the Copyright Law of 1928/1949 provides that in the case of translations of literary works, the translator may secure copyright for twenty years, provided that no other person is thereby prohibited from making further translations of the original work (Article 10). Colombia's Copyright Law, 1946, states that copyright in each translation belongs to the translator thereof (Article 45). In Costa Rica, the Law on Intellectual Property also provides that the translator of a work enjoys the same protection as that granted to authors (Article 18). In Czechoslovakia, the Copyright Law of 1965 stipulates that translations of works into other languages are also the subject of copyright (Article 3). Denmark's Copyright Law, 1961, provides that the person translating a work has the copyright in the work in the new form (Article 4). The Copyright Law of El Salvador, 1963, stipulates that derivative works, such as translations, are protected in so far as they contain original matter (Article 20). The copyright provisions in Ethiopia's Civil Code, 1960, also state that translations are to be protected as original works, without prejudice to the rights of the author of the original work (Article 1649). In Finland, the Copyright Law, 1961, stipulates that a person who translates a work has copyright in the new work in that form (Article 4). In France, the Law on Literary and Artistic Property of March 11, 1957, provides that the authors of translations enjoy the protection provided hy the law, without prejudice to the rights of the author of the original work (Article 4). In the Federal Repuhlic of Germany, the Copyright Law of 1965 provides that translations and other adaptations of a work which constitute intellectual creations are protected in the same manner as independent works, without prejudice to the copyright in the work thus adapted (Article 3). In Guatemala, the Decree-Law concerning Copyright, 1954, states that translations are also considered to he works within the meaning of that law (Article 7). In Hungary, under the 1969 Law, copyright protection is afforded — without infringing the rights vested in the author of the original work — to the translation of the work of another author, provided that the new work has an individual, original character (Article 4(2)). In Iceland, the Copyright Law of 1905 provides that a translation enjoys the same rights as an original work (Article 5). In Italy, the Law of 1941 provides that, without prejudice to the rights suhsisting in the original work, elahorations of a creative character of any such work, such as translations into another language are also protected (Article 4); the Law also expressly provides protection of the translator's moral rights (Articles 70 and 138). In Japan, the new Law of 1970 provides that the protection which it grants to derivative works (including translations) may not prejudice the rights of authors of pre-existing works (Article 11). In Jordan, under the Ottoman Law of 1912 the translator's right in his translation is assimilated with the author's right (Article 14). In Korea, the Copyright Law of 1957 provides that any person who translates a work with the consent of the original author is deemed to be an author under that law (Article 18). In Lebanon, translations are protected under the Copyright Law of 1924 (Article 139). Under Monaco's Copyright Law of 1948/1949, the author of translations enjoys the protection provided by that law, without prejudice to the rights of the author of the original work. Under Morocco's new copyright legislation (1970), translations are assimilated to original works, without prejudice to the rights of the author of the original work (Article 9). In the Netherlands, under the 1912/1958 Law, translations are protected as new works, hut without prejudice to the copyright in thc original work (Article 10). In Nicaragua, the translator has the rights of an author in respect of his translation, hut may not prevent other translations unless the author has also granted this right to him (Article 752 of the Copyright Provisions in the Civil Code, 1904). All provisions relating to authors are equally applicahle to translators (Article 785). In Panama, any person who translates a work owns the rights of his translation, and the name of the translator must be registered (Articles 1927 and 1914 of the Administrative Code, 1916). Paraguay's Law of 1951 protects translations as original works (Article 7). In Peru, the Law of 1961 affords protection of a derived work (including a translation) which results from the authorized transformation of an original work in such a manner that the new work constitutes an independent creation; persons who translate a work with the authorization required under the Law are deemed to be the owners of the copyright in the new derived work (Articles 8 and 14). In the Philippines, the 1924 Act states that translations are deemed to be new works subject to copyright under the provisions of that Act (Article 7). Under Poland's Copyright Law, 1952, copyright subsists in works based on the work of another person. This provision applies, in particular, to translations (Article 3). In Portugal, the Copyright Code, 1966, stipulates that translations are assimilated to original works, without prejudice to the rights of the authors of the original works (Article 3). In Romania, under the Copyright Decree, 1956, translations are protected hy copyright provided they have a creative character and represent an intellectual, creative work. In cases where works are used, mention must be madc of the original work, and the name of its author and its translator (Articles 10 and 15). Spain's Copyright Law of 1879 states that copyright belongs to authors in respect of their own works and to translators in respect of thcir translations (Article 2). In Sweden, under the Copyright Law of 1960, a person who translates a work has copyright in the derived work (Article 4). Under Switzerland's Federal Law of 1922,

translations are protected as original works (Article 4). In the Syrian Arab Republic, translations are protected without prejudice to the rights of the author of the original work (Article 139 of the Copyright Decree of 1924). In Thailand, the 1931 Law affords protection to translations as original works, without prejudice to the rights of the author of the original work (Article 6). In Tunisia, under the Law of 1966, copyright subsists in a work in its original form as well as in a work in a form derived from the original (Article 2). Under the Turkish Law of 1951, works deemed to be adaptations include translations (Article 6) and consequently, the author of an adaptation (translation) is the adapter (translator), provided that the rights of the author of the original work are safeguarded (Article 8). In the USSR, under the Basic Copyright Law of 1961, the translator enjoys copyright in his translation (Article 102). In the United Arab Republic, the Copyright Law of 1954 stipulates that any person who has translated a work enjoys the benefit of protection, without prejudice to the rights of the author of the basic work (Article 3). In the United States of America, under the Code of Laws (Title 17), translations or other versions of works in the public domain or copyrighted works when produced with the consent of the proprietor of the copyright in such works may be subject to copyright (Article 7). Uruguay's Law of 1938 states that, in the absence of any stipulation to the contrary, translators have copyright in their translations, provided the translation has been made with the consent of the original author. They have like rights in respect of translations of works which have passed into the public domain, but in such cases they are not entitled to prevent the publication of other versions of the work in the same or in any other language (Article 34). In Venezuela, under the Copyright Law of 1962, translations are deemed to be intellectual works distinct from the original work (Article 3); the author's right in respect of translations may subsist even when the original works are no longer protected, but this may not confer any exclusive right in respect of such original works (Article 5) [44]. In Yugoslavia, under the Copyright Law of 1968, translations are protected as original works. The same protection is granted to translations of official texts of a legislative, administrative or judicial nature, where such translations are not made for the purpose of official publication and are not published as such (Article 5). The author of a translation is the person who has translated the work (Article 9).

The conclusion to be drawn from the foregoing summary is, first, that most national legislations grant protection to translations and the right of translators by recognizing their creative activity and their status as authors. We can also draw the following rules common to such legislation: (1) most national laws stipulate that translation may be recognized and protected only without prejudice to the rights of the author the original work; (2) the translator may not prevent other translations of the same work, unless the author has also conferred that right upon him; and (3) with respect to a work that has passed into the public domain, the translator has copyright only in his own version of the translation.

[44] *Ibid.*, Annex A.

4. *Case law.* — Case law can hardly be said to be abundant in regard to protection of translators' rights. We shall cite only a few examples.

(a) The Civil Court of Milan gave its judgment in a case between the translator Prati and the publisher Corticelli. The plaintiff — the translator — had brought an action against the publisher, on the ground that the latter, in publishing his translation of Kipling's work *From Sea to Sea* had seriously mutilated the said translation in an arbitrary and unlawful manner and, in addition, had failed to indicate the name of the translator on the published translation. The translator therefore requested that the publisher be ordered to make redress for the prejudice caused to the translator, or which might be caused to him in future, and in particular, (1) to destroy all copies of the edition in question; (2) to republish the translation in full and in a better form; (3) to publish at his expense the court's decision in three daily newspapers to be indicated by the court; (4) to pay to the translator an amount to be determined in addition to the costs incurred.

On the substance, the court found entirely in favor of the plaintiff and rejected the defendant's plea. In the statement of reasons it rightly observed that, in his contractual relations with the publisher, the translator had in no way relinquished paternity in his work or the rights inherent in such paternity. The court also found that general unconditional assignment of copyright in the translation entitled the publisher freely to dispose of the translation not in respect of the personal and intellectual element of the work — which remained the property of its author — but solely as far as the economic or pecuniary content of the said work was concerned. Furthermore, the publisher therefore had no right to trespass in any way on the intellectual integrity of the work.

The publisher had an erroneous conception of his responsibility when he believed that he could relieve himself of it simply by noting that, in the case in question, the work was not the original one, but a translation, and that accordingly he was not responsible for any infringement of the right therein. Consequently, the court upheld the view that an intellectual work is in its entirety a product of intellectual activity, even though its content may be without any originality, provided that from the point of view of form or language it is a product having a novel character. The court observed in addition that the work of the translator concerned must have been rather difficult, because it was well known that translation of Kipling's works involved particular difficulties.

For those reasons, the court held that the prejudice caused by the defendant justified redress, within the meaning of Article 1151 of the Italian Civil Code, but that financial compensation could not indemnify the plaintiff for both the material and moral prejudice which he had suffered. As regards the translator's claim that the publisher should be ordered to present the new edition of the translation in a better and more elegant form, the court accepted the principle that the form of a publication could be of interest to the

translator, but merely declarcd, in general terms, that the edition must be in a correct form [45].

(b) Under a decision by the Civil Court of Buenos Aires dated March 30, 1946, the publisher is held responsible if he fails to indicate the translator's name on published copies of the translation, and likewise if he publishes a translation under the name of a person other than the author thereof [46].

(c) By an order of the State Arbitration Court of the Republic of Serbia (Yugoslavia) dated April 1, 1954, it was confirmed that the term " author's right " covers the right of the author of an original work as well as the translator's right, the translation being deemed to be a form of the literary work. " Works " are therefore translations as well as original works. In its capacity as owner of the copyright, the State was authorized to charge royalties in respect of translations used [47].

(d) Lastly, we should mention an important decision by the Aix-en-Provence Court dated May 25, 1954, to the effect that " in the absence of evidence to the contrary, the sums paid by the autbor of a novel to the translator must be deemed to constitute a lump-sum fee and not an advance on the proceeds of sale, so that the person concerned would thus share in the profits accruing from the translated work ".

Professor Plaisant commented on that decision in the following terms: " In fact, the solution is a wise one. In law, it is to some extent in contradiction with the principle that a translation constitutes a derived work of which the translator is the author " [48].

We would note in this connection that translators customarily receive a lump-sum fee in some cases, along the lines of the decision mentioned above, but they would prefer to bc paid on a percentage basis. Thus, they are striving for a more advantageous material status and at the same time to avoid the contradictory situation which Professor Plaisant has very rightly remarked. Moreover, this corresponds to point 2 of the recommendation formulated by tbe Committee of Experts on Translators' Rights, meeting in Paris in 1968, to the effect that " a translator not paid a salary should be remunerated by a percentage of the economic return on the work translated " [49].

In this connection, we should mention in particular three contributions at international level to the protection of translations and to the cause of translators.

1. *Establishment of the International Federation of Translators (FIT).* — The FIT was founded in 1953 as an international professional organization of translators; since then, it has made great efforts to bring out the importance of translations and to ensure that the rights of translators in their capacity as intellectual creators are protected and observed.

In a resolution adopted by thc FIT at its Second Congress, held at Rome in February 1956, on the topic " Copyright applied to the translator " [50], it was stated that, without prejudice to the original author's rights in his work, the translator is the original owner of the right in the translation which he bas created. The FIT noted that such principles were formally recognized by the Berne Convention and by the Inter-American Washington Convention but were nevertheless often ignored by some national laws and, in practice, even in countries where relevant legal provisions existed, and considered that particularly important problems still arose in practice for translators, including the following:

- *moral rights:* paternity of the work (in particular, indication of the translator's name whenever the work is presented to the public, etc.);
- *respect of the work* (in particular, requirement that the translator he consulted regarding any corrections or amendments, and that his consent he obtained prior to any derived use of his translation);
- *economic rights:* the translator must be associated in what becomes of his translation (in particular, in the event of any advance publication, successive publication, reproduction or derived use he must still be free to dispose of his work after expiration of the terms fixed hy contract for publication of his translation) [51].

In 1955, the FIT commenced publication of its international translation periodical, entitled *Babel*, which contains articles on various questions of interest to translators and their intellectual activities as well as to their constant concerns.

2. *The Translator's Charter.* — One the most significant results of the activities of the International Federation of Translators is the Translator's Charter, adopted at the Federation's Congress at Dubrovnik in 1963. The Charter served to present translators to the general public of the world and to draw attention to their activities which are of universal significance; it speaks of the general obligations of translators as well as of their rights. Among their obligations, they must seek the original author's consent to translation of his work, respect all his rights and maintain proper relations with him. On the other hand, the translator is entitled to recognition as the author of his translation, whose integrity must be guaranteed, to claim paternity of his work. The Charter also contains provisions in regard to the economic and social status of translators, translators' associations and unions, and lastly, national organizations and the International Federation of Translators [52].

3. *The Paris meeting of the Committee of Experts on Translators' Rights.* — Lastly, we must report an event of capital significance for the affirmation of translators' rights. From September 23 to 27, 1968, a Committee of Experts met at Unesco headquarters in Paris to examine problems relating to translators' rights. Since those rights had been recognized and confirmed by national legislation and international agreements, it was the first occasion on which they were the subject of the most comprehensive and detailed examination possible, at a meeting convened on the initiative and held at the headquarters of an international organization so important and so renowned as Unesco.

All the main aspects of translators' rights were considered. First, the problem was approached in the light of the fact

45 *Le Droit d'Auteur*, 1925, pp. 34 *et seq.*
46 *Ibid.*, 1947, p. 59.
47 *RIDA*, XI, 1956, p. 145.
48 R. Plaisant, " Lettre de France ", *Le Droit d'Auteur*, 1955, p. 11.
49 Unesco Document - INLA/CS/170/8, Annex B.
50 Report hy B. Marković, former Professor at the University, at that time Chairman of the Copyright Committee of the FIT.
51 *Babel*, Vol. II, N° 2, 1956, p. 79.
52 See the *Translator's Charter*, of 1963, p. 1 to 19.

that translators constitute a category of intellectual creators. It was recognized that, in practice, the rules and legal provisions on the protection of translators' rights are not always, or not completely, applied. Their moral and economic rights are not adequately respected. Consequently, the Committee of Experts was of the opinion that the necessary measures should be taken to improve the status of translators and thus to assure them of a more stable situation, consistent with their efforts and intellectual merits.

At the end of its meeting, the Committee of Experts formulated its Recommendations under fifteen points, concerning: remuneration of translators; contractual assignment of translators' rights; status of the translation of a work from the copyright aspect; improvement of the quality of translations; intensification of contacts between authors and translators; consultation of the author by the translator in the course of translation; setting up of professional bodies of translators; verification of quality of translations; indication of the translator's name and of the language from which the translation has been made; taking of appropriate action to encourage training of translators; obligation for the user of a translation to undertake to obtain permission to translate the work; the user's responsibility towards the translator; recognition of an unauthorized translation carried out in good faith; amendment of Articles III and V of the Universal Copyright Convention, concerning the moral rights; possibility of improving the economic status of translators; remuneration of translators belonging to developing countries; model translation contracts; mention of the class of scientific and technical translators, their professional classification and their status as translators holding copyright; circulation of translations of works of oustanding importance for the promotion of education, science, technology and culture, and guarantee of adequate remuneration to the translator of such works; consideration of means of including the translator's name in material used for promoting and publicizing the translated work; encouragement of direct translation of an original work with recourse to retranslation only where absolutely unavoidable; means of promoting communication and meetings between translators with a view to improving the national and international organization of their profession, particularly in developing States.

Although these recommendations are not yet decisions, it is nevertheless of exceptional importance for translators that attention has begun to be given to their rights under the auspices of an international organization.

In the light of all the foregoing, one can say that, from the legal and formal aspect, protection is afforded to translations and to translators' rights in an effective manner. Legal doctrine, national and international legal provisions as well as case law have made a most valuable contribution. The translator has been described and appreciated in some circles as being a mediator between cultures.

On the other hand, one can also say that in practice, despite all the measures already mentioned and all the efforts made to date, translators' rights are not adequately protected and respected because, at the present time, the translator's work is still ignored or under-estimated, for lack of either knowledge or the necessary understanding. First of all, infringements of the moral rights of translators are frequent and inevitably have adverse and undesirable effects. Under the theory of copyright, which also concerns translators, the moral rights comprise several component elements — namely, the author's right to decide when and how his work is to be published; *droit de repentir* or the right to withdraw. This right entitles the author to alter his work or to withdraw it from circulation in justified cases — compensation being granted to the publisher or another user — if he considers that it no longer corresponds to his ideal, his aesthetic, scientific, artistic, social or political convictions, or his subsequent creative evolution[53]; the right to respect, or the right to integrity of the work or to respect of the author's personality and, lastly, the right to be recognized and mentioned as being the creator of the work — the right of paternity.

We must also emphasize here once more that the translator is also a creator and his work is an autonomous intellectual creation. On the basis of the existing legal provisions, one must finally dispel the erroneous belief still held by the ill-informed, that the translator's work is merely a reproduction of the original work. On the contrary, the fact is that the translator's work represents the result of an intellectual and creative effort. We have in mind here, of course, translators in the true sense of the word, those having highly-developed artistic and aesthetic abilities. Their work does not consist of a mere transmission of words, it is a faithful transposition of the work from one language into another. The translator endeavors to grasp every subtle detail of the writer's thought, to perceive the music and rhythm of the original text and communicate it through all the nuances of his own language, in his own individual, original, artistic and creative manner. The result is that a two-fold copyright arises in the translated work: the right of translation which is held by the author of the original work, and the right in the translation which belongs to the translator. These two rights are equally valid, but they exist independently of one another — both are within the field of copyright.

The translator is therefore an author. That is why we believe that the irregular proccdures still in existence must be discontinued, if not everywhere, then at least in many places; the copyright of translators, and in particular their moral rights, must be protected against infringements and the need for this protection must be realized, appreciated and upheld by everyone having responsibility in these matters. As far as infringement of the translators' rights is concerned, the extreme case is infringement of the right of paternity (which means that the translator's name must be indicated on the published translation).

We have thought it worth while to draw attention to this problem once more and to continue our efforts to remedy this state of affairs. It is right and necessary that translators should be better known and adequately protected, and that their

[53] H. Hubmann, *Das Recht des schöpferischen Geistes*, Berlin, 1954, pp. 86 *et seq.*

delicate, often tiring and arduous work should receive due recognition.

We hope that this account of translation rights and translators' rights, together with our comments and conclusions, will have served to clarify the two concepts and to demonstrate that they are deserving of the attention of everyone interested in copyright problems in general. The two rights are autonomous and clearly differentiated with respect to authorship and the intellectual creation resulting therefrom. And each of them exercises a prominent and valuable cultural function.

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Doctor of Laws

INTERNATIONAL ACTIVITIES

International Secretariat of Entertainment Trade Unions (ISETU)

(3rd International Congress, Vienna, May 19 to 22, 1971)

The International Secretariat of Entertainment Trade Unions (ISETU) held its 3rd Congress in Vienna from May 19 to 22, 1971.

The Congress was officially opened in the presence of Mr. Leopold Gratz, the Minister of Education and Culture, and other representatives of Austrian public life. It was attended by delegates or observers from the trade union organizations of the following 19 countries: Argentina, Australia, Austria, Canada, France, Germany (Federal Republic), Ireland, Israel, Italy, Mexico, Netherlands, Nigeria, Peru, Philippines, Sweden, Switzerland, Turkey, United Kingdom, United States of America.

Several international organizations sent observers, among them the International Labour Office, Unesco and WIPO. WIPO was represented by Mr. Mihailo Stojanović, Counsellor, Copyright Division.

The agenda included, among other matters, the situation in the cinematographic and live theater industries and the conclusions of the Conference on Copyright, Residual and Performers' Rights, held in Geneva on October 6 and 7, 1970 [1].

The Congress adopted several resolutions, three of which are reproduced below. It also asked Unesco and the competent bodies of the Berne Union to grant the ISETU observer status in meetings dealing with questions of copyright or performers' rights.

At the end of its session the Congress proceeded to elect its new Executive Committee. Mr. R. Richardson (United Kingdom) was elected President of ISETU. In accordance with an amendment to the Statutes, the Director, Mr. A. J. Forrest, becomes Secretary-General.

Resolutions

Videocassettes

Considering that the employment of the entertainment worker must he protected and his welfare taken into consideration upon the introduction of new technological devices; and

Considering that the imminent introduction of the videocassette for private and puhlic use will have a dramatic effect on the rights and economic well-heing of workers whose livelihoods are linked to the television, recording and cinematographic industries, the 3rd International Congress of the ISETU,

Urges governments of those nations in which the protection of the worker is hased on legislation or other governmental action, to adopt the necessary legislative measures or edicts protecting the workers from adverse effects such as loss of employment and deprivation of property rights in their contrihutions to film and videotape productions;

Recommends that ISETU memher unions undertake courses of action in their respective countries to ensure for all workers who contrihute creatively a share in the proceeds ohtained from economic exploitation of the work;

Recommends that memher unions seek to prevent use on cassettes of already recorded programme material (cinematographic films and videotapes) until producers and possessors thereof cxecute agreements providing for initial payments to workers contrihuting to such programme material, and for payments in perpetuity to each contrihutor for so long as, however and whenever such programme material is used in cassette form for home use, or in any other manner now known or hereinafter conceived;

Recommends that memher unions permit the production of programme material for cassettes and its consequent use only in cases where agreements providing initial fees and payment in perpetuity have been reached with the producer and third parties who may in future own or control the product of the services of these workers;

Addresses an urgent appeal to the ILO and other interested bodies to help entertainment workers achieve these ends.

Residual Rights

The 3rd International Congress of the ISETU,

Expresses the view that all workers who contrihute creatively to the making of a visual or audio-visual fixation or a television hroadcast have the right to participate in the proceeds from economic exploitation of the work through legislation and/or collectivc hargaining procedures;

Recommends that affiliated organisations undertake negotiations with a view to obtaining remuneration for these workers, whether freelance personnel or permanent staff memhers of hroadcasting institutions, for the original use, for re-use and for new uses of the work in other media; and

Calls on the secretariat to coordinate the action of affiliated organisations in this regard and, in particular, to consult them as to the

[1] See *Copyright*, 1970, page 283.

description of occupations which may in all or in certain circumstances he considered as contrihuting creatively to the making of the work.

Satellites

With refereuce to the development of television satellites and video-cassettes as well as with reference to new media of transmission and recording,

The 3rd International Congress of the ISETU recommends that no support he given to international treaties which might violate copyright and performers' rights as estahlished under the Rome Convention.

Congress is of the opinion that copyright, performers' rights and rights of transmission and reproduction must remain personal rights, and in the case of new methods of transmissiou and reproduction they should not he conferred directly on the maker, as doing so would open the door to unregulated exploitation on a world-wide scale.

International symposium of jurists organized by the SIAE

On the initiative of its Legal Council, the Italian Society of Authors and Publishers (SIAE) organized an international symposium of jurists in memory of H. E. Filippo Pasquera, formerly Honorary First President of the Italian Supreme Court and a member of the above Council. The symposium was held in Rome, at the International Institute for the Unification of Private Law, on January 29, 1971.

This event, which was attended by the First Presidents of the Supreme Court of Appeal and the Constitutional Court and by magistrates and university professors from Italy and abroad, was organized for the purpose of discussions on a topical legal theme: "Limits of Literary and Artistic Creation as Opposed to the Rights of Personality." To this end, reports on the state of legislation and jurisprudence in Italy and other countries (France, Germany (Federal Republic), Sweden, Switzerland, the United States of America and Yugoslavia) were presented and discussed by the Italian and foreign jurists who took part in the symposium.

BOOK REVIEWS

Dreptul de autor în Repuhlica Socialistă România [Copyright in the Socialist Repuhlic of Romania], hy *Aurelian Ionaşcu*, *Nicolae Comşa* and *Mircea Mureşan*. One volume of 352 pages, 20.5 × 14.5 cm. Bucharest, Editura Academiei Repuhlicii Socialiste România, 1969.

A short introduction to this work is devoted to intellectual creation considered as an essential element of culture and the part played hy copyright in stimulating such creation, to internal sources of copyright and to its place within the system of legal rules; according to the authors, copyright comes under civil law and not under the lahor law, as is sometimes maintained.

Chapter I deals with the Romanian Copyright Statute (Decree No. 321 of June 18, 1956, puhlished in Official Bulletin No. 18 of June 27, 1956). According to the definition given in this chapter, copyright is the aggregate of faculties which the law confers on authors to ensure that they may exercise their right to decide freely whether or not their works should he made availahle to the puhlic; it also covers the exploitation of the results of their creative activity and the protection of their legitimate interests, hoth non-pecuniary (personal) and pecuniary (page 24).

By emphasizing the preponderance of the personal, non-pecuniary aspect of copyright and the dependency of the author's pecuniary rights on his personal, non-pecuniary rights, the authors of this work consider — unlike the supporters of the dualist theory and of the theory according to which copyright is a personal, non-pecuniary right — that "copyright, in its unitary conception, is a personal, non-pecuniary right having implications of a pecuniary nature" (page 37).

The author's right to remuneration for his work and, should the case arise, to redress for material damages occasioned hy its unlawful use, is a right to make a claim, whereas the right of reproduction, dissemination and performance of the work — considered from the pecuniary viewpoint — is a special pecuniary right which is not included in the division of suhjective rights into claims and real rights, hut is covered hy the legal system governing claims, where the law does not provide otherwise (pages 41 and 42).

Since authorship is determined hy the actual fact of creating an intellectual work, it follows that only physical persons may have that status. Legal entities may — by virtue of their activity in the organization and coordination of the efforts of individual authors for the purpose of creating a work — be made owners of copyright hy the law, in respect of the work thus created.

With regard to the author who creates works in compliance with employment ohligations towards a socialist organization of which he is a salaried employee, he has authorship and copyright in respect of those works, notwithstanding the fact that, hy virtue of his contract, he has assigned the exercise of his pecuniary rights to the organization in question for an indeterminate period, under the conditions prescrihed hy the law (pages 71 and 72).

Copyright is deemed to suhsist in any work of intellectual creation — literary, artistic or scientific — regardless of its content, mode of expression, value and purposc, from the time of its heing expressed in a concrete form which may he perceived hy the human senses and in

which it may be communicated to the public (page 75). By giving such a broad meaning to the snbject of copyright, the Romanian legislator sought to stimulate intellectual creation and the development of literary, artistic and scientific production, without at the same time having an indifferent attitude to the intrinsic value of the works created (page 78).

In the absence of special provisions concerning the protection of performers, such protection may be achieved — according to the authors of the work reviewed here — hy means of Article 9 of Decree No. 321/1956, which contains a non-limitative enumeration of works of intellectual creation heing suhjects of copyright, provided that the performance may, hy reason of its intrinsic qualities, he considered a creative work (page 81).

The remuneration of authors according to the standards estahlished hy Decision No. 632/1957 of the Council of Ministers is calculated in relation to the type of work, the amount of creative effort which it represents, its quality and the manner and extent of its use. The author has the right to a basic fee when his work is first used and to an additional fee on each occasion of suhsequent use. The basic fee is considered to form part of the salary when the work is created pursuant to obligations arising from the employment relationship of the author with a socialist organization.

The protection of authorship, of the right to inviolahility and of fair nse of the work devolves, on the death of the author, upon the appropriate union or association of authors or, failing this, to the competent State authority.

As for the right — personal and non-pecuniary in character — to decide whether or not the work is to he made availahle to the puhlic, this belongs to the author alone; if the author is deceased and has left works unpuhlished, it may he assumed, in the ahsence of proof to the contrary, that his intention had been to make them availahle to the puhlic, in view of the fact that works of intellectual creation are, hy their very natnre, intended for the public (pages 118 and 119).

Chapter II of the hook under review is devoted to copyright contracts. The relevant legal provisions, contained in Decree No. 321/1956, concern only contracts between owners of copyright and socialist organizations specialized in the exploitation of works of intellectual creation, which cannot — on pain of nnllity of the contract — go heyond the limits of their specific competence as laid down hy the law (pages 173 and 174).

International copyright protection is covered in Chapter III, which begins with an explanation of the need for such protection, the legal means of ohtaining it and its historical development, including the ratification hy the Socialist Repnblic of Romania of the Berne Convention for the Protection of Literary and Artistic Works, as revised at Stockholm in 1967. A detailed analysis is then made of the provisions of the Convention and the state of relations between the Socialist Repuhlic of Romania and the other memher States of the Berne Union, which gives the authors the opportunity of affirming — with evidence to support the affirmation — the importance which Romania attrihutes, within the framework of its policy of multilateral cooperation with all countries, to international collahoration in the development of culture, science and the arts.

Constantin STANESCO

* * *

Drept civil. Drepturile de creatie intelectuală. Succesiunile [Civil law. Rights of intellectual creation. Succession], by *Stanciu D. Cărpenaru*. One volume of 374 pages, 20.5 × 14.5 cm. Bucharest, Editura Didactică şi Pedagogică, 1971.

The recent appearance in Romania, less than two years after the publication of the book on copyright by Aurelian Ionaşcu, Nicolae Comşa and Mircea Mureşan, of another work dealing to a large extent with the same snbject (and with the rights pertaining to intellectual creation in general) bears witness to the interest shown in this country in measures designed to promote the creation of intellectual works, and consequently in the works themselves. The author of the puhlication reviewed here does not miss the opportunity of drawing attention to this fact.

This hook defines copyright as heing a set of legal rules which regulate the social relationship resulting from the creation and exploitation of scientific, literary and artistic works; regulation encompasses the pecuniary and non-pecuniary relationships brought into play hy the creation and exploitation of the works (page 7).

Under the Romanian socialist legal system, copyright is governed by civil law; it is not incorporated in the lahor law, even when the legal relations arising from anthorship are comhined with a legal employment relationship resulting from the fact that the author is a salaried memher of a socialist organization (pages 7 to 11).

The suhjective aspect of copyright is constituted hy the possihility, guaranteed to the author by the State, of using the work at his discretion in order to satisfy his personal pecnniary and non-pecuniary interests hy legal means, within the limits laid down by the law (page 14).

As for the actual juridical nature of copyright, the author of the hook reviewed here makes it clear at the outset that the coming into existence of rights is the essential factor in the case in point, not their exercise, and that hoth the personal (non-pecuniary) and the pecuniary rights stem from the same fact, namely the creation of the work; he then draws the conclusion that copyright is a complex suhjective right emhodying both personal (non-pecuniary) and pecuniary rights, neither of the two having precedence over the other (pages 21 and 22).

Any person who creates a scientific, literary or artistic work is deemed to he the author of that work, regardless of his capacity, age, etc. (page 26). Legal entities, heing devoid of creative attributes (reason, intelligence, etc.), may not be authors of works of intellectual creation, hut the law grants them the status of owners of copyright hy reason of the role they assume in the organization and coordination of the activity of their collahorators, when such activity is directed towards the creation of intellectual works (pages 26 to 28).

The suhject of copyright is the intellectual creation of the author, the "idea content" of the work which has heen given a definite form (page 36).

The author of the hook reviewed here shares the views of those Romanian jurists who consider that a performance may he protected nnder Article 9 of Decree No. 321/1956 on copyright — which contains a non-limitative list of works of intellectual creation — without need for an express ruling, provided that its value and originality are such that it constitntes creation in itself.

One chapter of the book is devoted to an analysis of the substance of copyright. Special emphasis is placed on the fact that the personal non-pecuniary rights of the author are not suhject to statutory limitation.

Chapter VI deals with the transfer hy inheritance of authors' rights. With respect to the personal non-pecnniary rights of the author, which are not transferahle, the Romanian law contains only a partial ruling, providing that the protection of the authorship, inviolability and fair use of the work devolves, on the author's death, upon the appropriate union or association of authors or, failing this, to the competent State authority.

The right to make the work availahle to the puhlic, heing closely linked to the person of the author, is not transferred, either to the author's heirs or to the association or union of authors, or again to a State authority. The author's unpublished works, on the other hand, may he made available to the public hy his heirs in compliance with his wishes, whether express, tacit or presumed — until proved otherwise. A ruling is suggested, *de lege ferenda*, wherehy the heirs of an author having left unpuhlished works would have the right to make those works availahle to the puhlic unless the author in question expressed specific wishes to the contrary.

The last two chapters deal respectively with the protection of copyright and with copyright contracts. In view of the fact that the direct exploitation of copyright by means of contracts concluded hy the author with individuals or legal entities who are not specialized in that respect is governed by the Civil Code, only copyright exploitation hy means of contracts concluded hetween the author and a specialized socialist orgauization is covered by Decree No. 321/1956 and hy the work reviewed here.

Constantin STANESCO

CALENDAR

WIPO Meetings

October 25 to 29, 1971 (The Hague) — International Patent Classification (IPC) — Working Gronp V of the Joint ad hoc Committee

October 25 to 29, 1971 (Geneva) — ICIREPAT — Technical Committee for Standardization

November 1 and 2, 1971 (Geneva) — Intergovernmental Committee Established by tbe Rome Convention (Neighboring Rights) (3rd Session)
Object: Consideration of varions questions concerning neighhoring rights — *Invitations*: Brazil, Denmark, Germany (Fed. Rep.), Mexico, Niger, United Kingdom — *Observers:* Costa Rica, Czechoslovakia, Ecuador, Paraguay, People's Republic of the Congo, Sweden; intergovernmental and international non-governmental organizations concerned — *Note:* Meeting convened jointly with the International Lahour Office and Unesco

Novemher 3 to 6, 1971 (Geneva) — Executive Committee of the Berne Union — Extraordinary Session
Object: Consideration of various questions concerning copyright — *Invitations:* Canada, Congo, France, Germany (Fed. Rep.), India, Italy, Mexico, Pakistan, Philippines, Poland, Romania, Spain, Switzerland, Tunisia, United Kingdom — *Observers:* All other memher countries of the Berne Union; intergovernmental and international non-governmental organizations concerned

November 9 to 12, 1971 (Geneva) — International Patent Classification (IPC) — Bureau of the Joint ad hoc Committee

Novemher 15 to 18, 1971 (Geneva) — International Patent Classification (IPC) — Joint ad hoc Committee

November 22 to 26, 1971 (Geneva) — Committee of Experts for the International Classification of tbe Figurative Elements of Marks
Invitations: Member conntries of the Nice Union — *Observers:* Member conntries of the Paris Union and international organizations concerned

November 24 to 27, 1971 (Bogotá) — Bogotá Symposium on Patents, Trademarks and Copyright
Object: Discnssion of questions of special interest to the conntries invited — *Invitations:* Argentina, Bolivia, Brazil, Chile, Colombia, Ecnador, Mexico, Paraguay, Pern, Urnguay, Venezuela — *Observers:* Intergovernmental and international non-governmental organizations concerned

December 6 to 8, 1971 (Geneva) — Patent Cooperation Treaty (PCT) — Interim Advisory Committee for Administrative Questions
Members: Signatory States of the PCT

Decemher 8 to 11, 1971 (Geneva) — Patent Cooperation Treaty (PCT) — Standing Subcommittee of tbe Interim Committee for Technical Cooperation
Members: Austria, Germany (Fed. Rep.), Japan, Soviet Union, Sweden, United Kingdom, United States of America, International Patent Institute — *Observers:* Brazil; intergovernmental and international non-governmental organizations concerned

December 13 to 18, 1971 (Cairo) — Arab Seminar on Treaties Concerning Industrial Property
Object: Discnssion on the principal multilateral treaties on industrial property and tbe WIPO Convention — *Invitations:* States members of the Arab League — *Observers:* Intergovernmental and international non-governmental organizations concerned

Jannary 10 to 12, 1972 (Geneva) — ICIREPAT — Technical Coordination Committee

January 17 to 28, 1972 (Munich) — International Patent Classification (IPC) — Working Group I of the Joint ad hoc Committee

January 31 to Fehruary 4, 1972 (Munich) — International Patent Classification (IPC) — Working Gronp III of the Joint ad hoc Commitee

February 21 to 25, 1972 (The Hague) — International Patent Classification (IPC) — Working Gronp II of the Joint ad boc Committee

March 6 to 10, 1972 (Washington) — International Patent Classification (IPC) — Working Group IV of the Joint ad hoc Committee

March 13 to 17, 1972 (Geneva) — Committee of Experts on the Protection of Type Faces
Object: Discnssion of a draft Agreement and draft Regulations — *Invitations:* Member conntries of the Paris Union — *Observers:* Intergovernmental and international non governmental organizations concerned

March 20 to 24, 1972 (The Hague) — International Patent Classification (IPC) — Working Group V of the Joint ad hoc Committee

May 2 to 8, 1972 (Geneva) — Committee of Experts on the International Registration of Marks
Object: Preparation of draft texts for the Vienna Diplomatic Conference in 1973 (see below) — *Invitations:* Memher countries of the Paris Union; organizations concerned

Septemher 25 to 30, 1972 (Geneva) — Coordination Committee of WIPO, Executive Committees of the Paris and Berne Unions, Assemblies of the Madrid and Locarno Unions

May 7 to June 2, 1973 (Vienna) — Diplomatic Conference on (a) the International Registration of Marks, (h) the International Classification of the Figurative Elements of Marks, (c) the Protection of Type Faces

Meetings of Other International Organizations concerned with Intellectual Property

Novemher 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) — International Association for the Protection of Industrial Property — Council of Presidents

May 21 to 25, 1972 (Geneva) — International League Against Unfair Competition — Congress

Novemher 12 to 18, 1972 (Mexico) — International Association for the Protection of Industrial Property — Congress

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

November 15 to 19, 1971 — Working Party I
November 29 to Decemher 3, 1971 — Working Party II