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

INTERNATIONAL UNION

Intergovernmental Committee of the International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations

Third session

(Geneva, November 1 and 2, 1971)

Report

submitted by the Secretariat and adopted by the Committee

Introduction

1. The third ordinary session of the Intergovernmental Committee (hereinafter called "the Committee") of the International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations (hereinafter called "the Rome Convention") was convened, in accordance with the provisions of Article 32, paragraph (6), of the Rome Convention and with Article 2 of the Rules of Procedure of the Committee, by its Chairman, Mr. Torwald Hesser (Sweden), on November 1 and 2, 1971, in Geneva, at the headquarters of the World Intellectual Property Organization (WIPO), the International Bureau of which is the successor to the Bureau of the International Union for the Protection of Literary and Artistic Works referred to in the Rome Convention.

2. The Governments of all States which are members of the Committee were represented: Brazil, Denmark, Germany (Federal Republic), Mexico, Niger, United Kingdom; from among the States party to the Rome Convention, but not members of the Committee, the following States were represented by observers: Costa Rica, Czechoslovakia, Ecuador, Sweden. The following States, not party to the Convention, were also represented by observers: Australia, Belgium, Canada, France, India, Israel, Italy, Yugoslavia.

3. Certain intergovernmental and international non-governmental organizations were also represented by observers.

4. The list of participants is contained in Annex B to this Report.

Opening of the session

5. In the absence of the retiring Chairman and Vice-Chairman, the session of the Committee was opened by Professor G. H. C. Bodenhausen, Director General of WIPO.

Election of Officers

6. On the proposal of the representative of the United Kingdom, supported by the representative of Denmark, the Committee unanimously elected Mr. Larrea Richerand (Mexico) and Mrs. Elisabeth Steup (Germany (Federal Republic)) Chairman and Vice-Chairman respectively.

Adoption of the agenda

7. The provisional agenda contained in document ILO/Unesco/WIPO/ICR. 3/1 was adopted. It was noted that the meeting of governmental representatives referred to in the same document would not take place until after the fourth ordinary session of the Committee.

Amendment of the Rules of Procedure

8. Having considered the proposals contained in document ILO/Unesco/WIPO/ICR. 3/2, the Committee decided to amend Article 3(2) of its Rules of Procedure as follows:

"(2) The Chairman and Vice-Chairman shall remain in office, whether or not the States which they represent are re-elected members of the Committee, until their respective successors are elected at the heginning of the following session. They shall not be immediately re-eligible to the same office."

Consequently, the second sentence of Article 15(1) was deleted, and Article 16(1) begins with the words: "New elections shall be held after each ordinary session of the Committee ...".

9. Irrespective of this partial and interim modification, the Committee considered it necessary to undertake a complete revision of its Rules of Procedure, and, for this purpose, to entrust its Secretariat with the preparation of a draft, which would be communicated to States members of the Committee for their comments. This draft and the comments received would be considered at the next session of the Committee.

Application of the Convention

10. The Committee took note of the information in this regard contained in document ILO/Unesco/WIPO/ICR. 3/3. The Secretariat stated that, since the responses to the questionnaire relating to the application and the working of the Rome Convention received from Czechoslovakia, Denmark, Germany (Federal Republic), Sweden and United Kingdom, and reported to the Committee at its second session, no further information had been received.

11. The representative of Denmark expressed the view that the new Phonograms Convention and the proposed new Satellites Convention created a certain risk for the future of the Rome Convention by ignoring the legitimate interests of performers. It seemed to be in the interests of all countries to grant to performers the basic protection provided for in Article 7 of the Rome Convention, in order to promote national culture. It would therefore be desirable for the Committee and its Secretariat to take all appropriate action with a view to obtaining the widest possible acceptance of the Rome Convention.

12. The Committee approved the idea, put forward at the preceding session, of the preparation of a draft model law to facilitate the application of the Rome Convention or accession to it. For this purpose it decided:

(i) that its Secretariat should prepare a text, in consultation with a limited number of experts;

(ii) that this text should be sent for comments to the States party to the Rome Convention and to the interested international non-governmental organizations;

(iii) that the Committee should, at its next session, consider the text and any comments received.

13. In the course of the discussion it was emphasized that such a model law would be particularly useful for developing countries; it would set out examples of legislative provisions for the implementation of the Rome Convention at the national level. In addition it was proposed that information meetings should be arranged by the Secretariat to make the Rome Convention better known among States and interested circles. The representative of a State member of the Committee considered that such meetings should await the preparation of the proposed model law.

Protection of Phonograms

14. The Committee took note of document ILO/Unesco/WIPO/ICR. 3/4, and received a verbal report presented by its Secretariat upon the International Conference of States on the Protection of Phonograms, held in Geneva from October 18 to 29, 1971, and upon the Convention for the Protection of Producers of Phonograms Against Unauthorized Duplication of Their Phonograms, which had resulted from the said Conference.

15. The question having been raised of compatibility between the new Convention and Article 22 of the Rome Convention, several representatives of States members of the Committee stated that in their opinion the new Convention did not contain provisions contrary to the Rome Convention, and that States party to both instruments would apply the text which gave the stronger protection in their relations with each other.

Problems in the Field of Copyright and of the Protection of Performers, Producers of Phonograms and Broadcasting Organizations Raised by Transmission Via Space Satellites

16. The Committee took note of document ILO/Unesco/WIPO/ICR. 3/5, containing the results of the Committee of Governmental Experts convened jointly by the Directors General of Unesco and of WIPO which met from April 21 to 30, 1971.

17. The Committee decided to express its opinion on this subject in a resolution. This resolution is contained in Annex A to this Report. It reflects the points upon which the Committee adopted a position.

18. On the question of whether the definition of "broadcasting" contained in Article 3 of the Rome Convention covers the transmission of a signal to a satellite with the ultimate purpose of reception by the public, the representatives of Denmark, Germany (Federal Republic), Mexico and the United Kingdom expressed an affirmative opinion. The representative of Brazil declared that he had no instructions from his Government on this point. The representative of Niger was opposed to the point of view expressed by the majority of the Committee and, in addition, considered that the question was one of interpretation of the Rome Convention which was not within the competence of the Committee. On this latter point, the other representatives considered that the opinions expressed did not constitute an interpretation given by the Committee as such; the Committee agreed that interpretation was not within its competence.

19. During the discussion which took place before the adoption of the said resolution, the representative of the United Kingdom expressed doubts as to the necessity for a further meeting of a committee of governmental experts and reserved his position as to the need to prepare a new international instrument. The representative of Denmark also expressed doubts as to the need for such an instrument. The representative of Mexico, supported by the observer from Sweden, drew attention to the concern felt by the interested circles, particularly the authors and performers, as a result of the search for a solution outside the framework of the Rome Convention. This point of view was shared by the observers appointed by the international non-governmental organizations representing authors, performers and producers of phonograms.

20. The representative of Germany (Federal Republic) declared that her Government, sharing the view that separate agreements constitute a certain danger to the Rome Convention, would have preferred to have the protection of transmissions via satellites secured under the Rome Convention alone. However, it considered that worldwide protection of such transmissions was necessary and that a realistic solution of the problem must take into account the fact that the Rome Convention had, until now, received only a relatively small number of ratifications or accessions. The representatives of Brazil and Niger also considered that a realistic solution of the problem must take this factor into account.

21. In this connection the observers appointed by the broadcasting organizations of Africa and Asia recalled that their international organizations had decided to recommend to their members to make approaches to their Governments with a view to advising them against accepting the Rome Convention, and had expressed themselves in favor of the adoption of a separate treaty in respect of transmission by space satellites.

22. The observer from Italy, while reserving the position of his Government upon the appropriateness of a new convention open to all States, recalled a suggestion which still held good to regulate the whole question of the protection of signals in a protocol to be annexed to the Rome Convention.

23. As regards the substance of the provisions of any convention which would govern the questions in issue, the observer appointed by the organizations representing authors drew the attention of the Committee to the fact that a new convention protecting a program-carrying signal, without reference to "broadcasting" as understood in the multilateral copyright conventions and in the Rome Convention, could cause grave damage to the interests of authors and performers. Such a protection, rather than providing benefits also for authors and performers, could well result in the opposite effect for them, in that it would establish an exclusive right in favor of broadcasting organizations which would apply in advance of the rights recognized for authors and performers. The authors, for their part, were firmly opposed to such a situation.

24. At the time of adoption of the resolution, the representative of Denmark said that in any new instrument the choice of the criterion of protection should take into account certain situations resulting from national legislations.

Miscellaneous

25. Under this heading, after having taken note of document ILO/Unesco/WIPO/ICR. 3/6, the Committee decided to grant the request of the International Hotel Association to be admitted to the list of international non-governmental organizations which attend the meetings of the Committee in an observer capacity.

Adoption of the Report

26. This Report was adopted unanimously by the Committee.

Closing of the meeting

27. After the representative of the United Kingdom, on behalf of all the participants, had congratulated the Chairman upon his conduct of the debates, the Chairman declared the session closed.

ANNEX A

Resolution

The Intergovernmental Committee established under Article 32 of the International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations, at its third ordinary session, held on November 1 and 2, 1971,

Having examined the report presented by the Secretariat of tbe Committee concerning the work of the Committee of Governmental Experts on Problems in the Field of Copyright and of the Protection of Performers, Producers of Phonograms and Broadcasting Organizations Raised by Transmissions Via Space Satellites, convened hy tbe Directors General of Unesco and WIPO at Lausanne-Onchy from April 21 to 30, 1971,

Sharing the view of the said Committee of Experts that the unauthorized distribution to the general public of program-carrying signals seriously jeopardizes the development of satellite transmissions and that measures should be adopted to avoid any prejudice, and considering that in any event unauthorized distribution to the public of signals transmitted by satellites should be condemned,

Recognizing tbat the representatives of States members of the Committee have not been unanimous concerning the necessity of drafting a new international instrnment to protect television signals transmitted by communications satellites,

Having noted that the representatives of four of the six States members of the Committee considered that the transmission of the signal, for the ultimate purpose of reception by the public, constitutes "broadcasting" within the meaning of Article 3 of the International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations,

Recommends, shonld it be decided to adopt a new international instrument in this field, that:

1. the words "and in particular in no way to prejudice wider acceptance of the Rome Convention of October 26, 1961, which affords protection to performers and producers of phonograms as well as to broadcasting organizations", snggested as an alternative in subparagraph *(d)* of the Preamble to the draft Convention drawn np by the Committee of Experts mentioned above, be retained after the words "anxions not to impair in any way international agreements already in force";
2. the said instrument must not prejudice the protection otherwise secured to authors, performers, producers of phonograms, broadcasting organizations or other contributors to the programs, under any domestic law or international agreement;
3. the instrument be as simple as possible in order to receive universal acceptance;
4. the instrument be open to any State which is a member of tbe United Nations, any of the Specialized Agencies bronght into relationship with the United Nations, or the International Atomic Energy Agency, or is party to the Statute of the International Court of Justice;
5. the protection be limited to satellite transmissions of images or a combination of sonnds and images and not cover sounds alone;
6. the criterion of protection be, in principle, only tbat of the nationality of the originating organization;
7. the instrnment be founded on the principle of reciprocity;
8. so far as limitations on tbe protection of the transmitted signal are concerned, the needs of developing countries in the fields of teaching and scientific research should be particularly taken into account.

ANNEX B

List of Participants *

I. States members of the Committee

Brazil: J. C. Ribeiro. Denmark: J. Nørup-Nielsen; B. von Linstow. Germany (Federal Republic): E. Steup (Mrs.). Mexico: G. E. Larrea Richerand; J. L. Caballero Cárdenas. Niger: G. Straschnov. United Kingdom: W. Wallace; D. L. T. Cadman.

II. Observers

(a) States party to the Convention

Costa Rica: M. A. Mena Chaves. Czecboslovakia: J. Stahl. Ecuador: R. Valdez-Ballen. Sweden: A. Klum.

(b) Other States

Australia: K. B. Petersson. Belgium: G. de San. Canada: F. W. Simons; A. A. Keyes. France: M. Bontet; J. Bnffin; P. B. Nollet. India: K. Chaudhuri. Israel: M. Gabay. Italy: G. Trotta. Yugoslavia: V. Spaić.

(c) Intergovernmental Organizations

League of Arab States: A. Seif Radi.

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

(d) International Non-Governmental Organizations

Asian Broadcasting Union (ABU): M. Larrue (Mrs.). **European Broadcasting Union (EBU):** M. Larrue (Mrs.). **International Confederation of Professional and Intellectual Workers (CITI):** G. Poulle; J. Mourier; D. Martin-Achard. **International Confederation of Societies of Authors and Composers (CISAC):** R. Fernay. **International Federation of Actors (FIA):** R. Rembe. **International Federation of Film Distributors' Associations (FIAD):** G. Schwaller. **International Federation of Film Producers Associations (FIAPF):** A. Brisson. **International Federation of Musicians (FIM):** H. Ratcliffe; R. Leuzinger; G. Sala-Tardiu. **International Federation of the Phonographic Industry (IFPI):** S. M. Stewart; J. A. L. Sterling; G. Davies (Miss). **International Federation of Variety Artistes (IFVA):** R. Rembe. **International Film and Television Council (IFCT):** R. Leuzinger. **International Literary and Artistic Association (ALAI):** R. R. J. Dupuy. **International Music Council (IMC):** P. Colombo; R. Leuzinger. **Internationale Gesellschaft für Urheberrecht (INTERGU) (International Copyright Society):** W. Jost. **International Secretariat of Entertainment Trade Unions (ISETU):** A. J. Forrest; J. Koelemeij; K. Rössel-Majdan. **International Writers Guild (IWG):** R. Fernay. **Union of National Radio and Television Organizations of Africa (URTNA):** A. Chakroun.

III. Secretariat

International Labour Organisation (ILO):

E. Thompson *(Chief, Non-Manual Workers Section, General Conditions of Work Branch)*; M. Canova (Mrs.) *(Non-Manual Workers Section, General Conditions of Work Branch)*.

United Nations Educational, Scientific and Cultural Organization (Unesco):

C. Lussier *(Director, Office of International Norms and Legal Affairs)*; M. C. Dock (Miss) *(Head, Copyright Division)*; P. A. Lyons (Miss) *(Legal Assistant, Copyright Division)*.

World Intellectual Property Organization (WIPO):

G. H. C. Bodenhausen *(Director General)*; C. Masouyé *(Senior Counsellor, Head, External and Public Relations Division, Head a. i., Copyright Division)*; R. Harben *(Counsellor, Deputy Head, External and Public Relations Division)*; M. Stojanović *(Counsellor, Copyright Division)*.

NATIONAL LEGISLATION

CHILE

Law on Intellectual Property

(No. 17,336, of August 28, 1970) *

TITLE I

Copyright

CHAPTER I

Nature and object of protection. Definitions

Article 1. — This law protects the rights which, by virtue of the sole fact of creating a work, are acquired by the authors of literary, artistic or scientific works, irrespective of the form of expression, and the related rights specified herein.

The author's right shall include the pecuniary and moral rights which protect the utilization, paternity and integrity of the work.

Article 2. — This law applies to the rights of all authors who are either Chilean nationals or foreigners domiciled in Chile. The rights of foreign authors not domiciled in the country shall enjoy the protection accruing to them under the international conventions which Chile signs and ratifies.

For the purposes of this law, authors who are stateless or of unspecified nationality shall be considered as nationals of the country in which they have established their domicile.

Article 3. — In particular, the following shall be protected under the present law:

1. books, pamphlets, articles and other writings, whatever may be the nature or form thereof, including encyclopaedias, guide-books, dictionaries, anthologies and compilations of any kind;
2. lectures, addresses, readings, memoirs, commentaries and like works, whether in oral form or in a written or recorded version;
3. dramatic and dramatico-musical works and theatrical works in general, as well as choreographic works and pantomimes, the development of which is fixed in writing or in any other form;
4. musical compositions, with or without text;
5. adaptations for radio or television of any literary production, works originally produced for radio or television, as well as the librettos and scenarios corresponding thereto;
6. periodicals, magazines or other publications of the same nature;
7. photographic works and works of engraving and lithography;
8. cinematographic works;
9. architectural plans, designs and models, and cartographical systems;
10. geographical and armillary spheres, as well as three-dimensional works relative to geography, topography or any other science, and in general all audiovisual materials;
11. paintings, drawings, illustrations and other similar works;
12. sculptures and works of similar figurative arts, even if applied to industry, provided that their artistic value can be considered independently of the industrial character of the object in which they are incorporated;
13. designs for stage sets and the sets concerned where the author thereof is the designer, and
14. adaptations, translations and other alterations, provided they have been authorized by the author of the original work if the said work does not belong to the common cultural heritage.

Article 4. — The title of a work is an integral part of it and must always be mentioned together with the author's name whenever any public use is made of the work.

The title of a work of another person which could clearly lead to deceit or confusion may not be used to individualize another work of the same kind.

Article 5. — For the purposes of this law

(a) *individual work* means a work produced by one natural person;

(b) *work of joint authorship* means a work produced by the collaboration of two or more natural persons the contribution of which cannot be separated;

(c) *collective work* means a work produced by a group of authors, on the initiative and under the guidance of one natural person or corporate body who coordinates the work and discloses and publishes it under his name;

(d) *anonymous work* means a work in which the name of the author is not mentioned, whether at his own wish, or because it is not known;

(e) *pseudonymous work* means a work in which the author uses a fictitious name to conceal his identity, such name not having been registered in pursuance of Article 8;

(f) *unpublished work* means a work that has not been communicated to the public;

* The original Spanish text of this law was published in the *Diario Oficial de la República de Chile* of October 2, 1970. — WIPO translation.

(g) posthumous work means a work that has been disclosed only after the death of its author;

(h) original work means the work as first created;

(i) derived work means a work resulting from the adaptation, translation or other transformation of an original work, provided that it constitutes an autonomous creation;

(j) performer means the actor, reciter, narrator, speaker, singer, dancer, musician or any other person who interprets or performs a literary or artistic work;

(k) producer of phonograms means the natural person or corporate body responsible for the publication of phonograms;

(l) broadcasting organization means the radio or television undertaking which transmits programs for public reception;

(m) phonogram means a fixation on a material medium of the sounds of a performance or other sounds, and likewise other aural fixations synchronized with images;

(n) broadcasting or *transmission* means distribution, by means of radio-electric waves, of sounds or of images synchronized with sounds;

(ñ) rebroadcasting means the broadcasting by one broadcasting organization of the broadcast of another broadcasting organization, or the broadcast made subsequently by one or the other of the same transmission, and

(o) publication means the reproduction of a work in tangible form and the making available of copies thereof, so that the public can read it or take cognizance of it by sight or hearing.

CHAPTER II

Subjects of copyright

Article 6. — The owner of the copyright has the exclusive right to decide whether the work is to be disclosed, either in part or in its entirety.

Article 7. — The original owner of copyright is the author of the work concerned. The secondary owner of copyright is the person who acquires it from the author on any basis.

Article 8. — The author of a work is presumed to be the person whose name appears as such on the copy which is registered or the person to whom, in accordance with the relevant registration, the pseudonym under which the work is published belongs.

Article 9. — Copyright in a derived work vests in the person who makes the adaptation, translation or transformation of the original protected work with the authorization of the original owner. The name or pseudonym of the original author must be indicated in any publication of the derived work.

Where the original work belongs to the common cultural heritage, the adaptor, translator or transformer enjoys all the rights which this law affords in his version; he may not, however, prevent other persons from using the same original work for the production of different versions.

CHAPTER III

Duration of protection

Article 10. — The protection granted by this law shall extend throughout the life of the author and for thirty years after the date of his death, in respect of his heirs, legatees or assigns. If the right passes to the surviving spouse, the protection granted shall extend throughout the life of the said spouse.

Article 11. — The following belong to the common cultural heritage:

(a) works in respect of which the term of protection has expired;

(b) works by unknown authors, including songs, legends, dances and expressions of folklore;

(c) works whose owners renounce the protection granted by this law;

(d) works by foreign authors domiciled abroad who are not protected in the manner provided for in Article 2, and

(e) works that have been expropriated by the State, except where a beneficiary is designated by law.

The amount of the royalties to be paid by anyone using works belonging to the common cultural heritage shall be established by the Regulations.

Article 12. — In the case of works of joint authorship, the thirty-year term shall run from the date of the death of the last surviving co-author.

Without prejudice to the rights of a spouse as referred to in Article 10, if a collaborator dies intestate and there are no heirs who cannot be totally disinherited *(asignatarios forzosos)*, his rights shall be aggregated with those of the co-author or co-authors.

Article 13. — In the case of an anonymous or pseudonymous work, the term of protection shall run for thirty years from the date of first publication. If the author discloses his identity before the expiry of that period, the provisions of Article 10 shall apply.

CHAPTER IV

Moral rights

Article 14. — The author, as exclusive owner of the moral rights, shall throughout his lifetime have the following prerogatives:

1. to claim authorship of the work, associating his name or known pseudonym therewith;
2. to object to any distortion, mutilation or other modification made without his express and prior consent. Such modifications shall not be deemed to include the conservation, reconstitution or restoration of works that have suffered damage which alters or diminishes their artistic value;
3. to keep a work unpublished;
4. to authorize any other person to complete an unfinished work, subject to prior consent by the publisher or the assign, if any, and

5. to require respect for his wish that the work should remain anonymous or pseudonymous, so long as the work does not belong to the common cultural heritage.

Article 15. — In the event of the author's death, the moral rights are transmissible to the surviving spouse and to the author's heirs *ab intestat.*

Article 16. — The rights mentioned in the foregoing articles are inalienable and any agreement to the contrary shall be null and void.

CHAPTER V

Pecuniary rights; their exercise and limitations

Section I

The pecuniary rights in general

Article 17. — The pecuniary rights confer on the owner of the copyright the right to use the work directly and personally, to transfer his rights therein — in full or in part — and to authorize its use by a third party.

Article 18. — The owner of the copyright or anyone expressly so authorized by him shall have the exclusive right to use the work in any of the following forms:

(a) to communicate the work to the public by publication, recording, radio or television broadcasting, performance, reading, recitation, exhibition and, in general, any other medium of communication to the public that is already known or may become known in the future;

(b) to reproduce the work by any process;

(c) to adapt the work to another medium, or to use it in any other form that involves any variation, adaptation or transformation of the original work, including translation, and

(d) to perform the work in public by means of radio or television broadcasting, phonographic records, cinematographic films, magnetic bands or tape or any other material medium suitable for use in equipment reproducing sound and voice, whether or not with images, or by any other means.

Article 19. — A work in the private domain may not be used in public by anyone unless express authorization has been obtained from the owner of the copyright.

Persons responsible for any infringement of the provisions of this Article shall be liable to the relevant civil and penal sanctions.

Article 20. — *Authorization* means permission granted by the owner of the copyright, given in any contractual form, to use the work in any of the manners and by any of the means provided for under this law.

The authorization must specify the rights granted to the person so authorized, indicating the duration, the remuneration and method of payment thereof, the minimum or maximum number of performances or copies authorized or, if these are unlimited, the territory of application and all other restrictive clauses imposed by the owner of the copyright. In no case may the agreed remuneration be less than the percentage specified in the Regulations.

The person authorized shall not have any rights over and above those specified in the authorization, with the exception of those inherent therein in accordance with its nature.

Article 21. — Subject to the provisions of the preceding articles, any proprietor, concessionary manager, impresario, lessee or person operating any theater, public hall or radio or television station where theatrical works, musical compositions or phonographic recordings of works by national of foreign authors are performed shall be required to pay remuneration, in an amount to be fixed by contract or in pursuance of the Regulations, to the holders of the copyright or of related rights, or to their representatives in accordance with the rules for which provision is made in this law.

Article 22. — Any authorization granted in respect of a literary or musical work shall not confer the exclusive right to use the work; the holder of the copyright shall, unless otherwise agreed, retain the right to grant similar authorizations, also without exclusivity, to third parties.

Article 23. — In the case of a work of joint authorship, the prerogatives deriving from the pecuniary rights and any financial benefits therefrom shall accrue jointly to the co-authors.

Any of the co-authors may require that the work be published. Any co-author who does not agree that it should be published may only require that his name be excluded, while retaining his pecuniary rights.

Section II

Special rules

Article 24. — In the case of the works indicated hereunder the following rules shall be applicable:

(a) in the case of anthologies, chrestomathies and other similar compilations the owner of copyright in the compilation shall be the arranger, who shall be obliged to obtain the consent of the owners of copyright in the works used and to pay the remuneration agreed upon, except where it is expressly agreed that the said authorization is granted free of charge;

(b) the owner of copyright in encyclopaedias, dictionaries and other similar compilations made pursuant to a commission of the arranger shall be the said arranger, in respect of both the compilation as a whole and also the individual contributions;

(c) with respect to newspapers, magazines and other periodical publications:

(1) The publishing firm concerned acquires the right to publish in the newspaper, magazine or periodical to which the author or authors contribute their services the articles, sketches, photographs or other productions presented by the staff operating under a work contract, and the authors concerned retain the other rights protected under this law.

In the event of publication of these productions in newspapers, magazines or periodicals other than those to which the authors contribute their ser-

vices, but which belong to the same publishing firm, the authors thereof shall be entitled to receive a fee additional to that provided for in the Journalists Tariff of Chile. If such publication is made by a publishing firm other than the employer, that firm must pay to the author or authors the fee provided for in the above-mentioned tariff.

Entitlement to the remuneration provided for in the preceding paragraph shall lapse at the end of one year from the date of publication of the productions concerned; it shall nevertheless be suspended for the benefit of the author or authors in respect of the periodicals firm which is the employer, throughout the duration of the work contract.

(2) In the case of productions commissioned by a distributing body from persons not subject to a work contract, the said body shall hold the exclusive right to publish such productions in the first issue following their delivery, unless it has been specified that they are intended for a later issue. After expiration of the relevant time-limit, the author may freely dispose of them;

(d) with respect to news and information agencies, the provisions of paragraph *(c)* above shall be applicable with respect to articles, sketches, photographs or other productions protected by this law, and

(e) in the case of radio or television broadcasting stations, the information medium and the authors of the productions which it communicates to the public shall have the same rights as are provided for in paragraph *(c)* (1) and (2) according to the case.

Article 25. — The producer of a cinematographic work shall own the copyright therein.

Article 26. — The producer of a cinematographic work shall be the natural person or corporate body who takes the initiative and the responsibility for making it.

Article 27. — A natural person or persons who carry out the intellectual creation of a cinematographic work shall have the legal status of author thereof.

Failing proof to the contrary, the authors of the story, scenario, adaptation, dialogue and of music specially composed for the work, as well as the director, shall be deemed to be co-authors of a cinematographic work made in collaboration.

If the cinematographic work has been taken from a protected work or script, the authors of the earlier work shall also be deemed to be authors of the new work.

Article 28. — If one of the authors of a cinematographic work ceases to participate in its making, he shall not lose the rights accruing to him by virtue of his contribution, but he may not prevent the use of that contribution in the completion of the work.

Each of the authors of a cinematographic work may freely work, in a different medium, that part thereof which constitutes his personal contribution.

Article 29. — The contract between the authors of a cinematographic work and the producer shall imply the assignment to the latter of all rights therein, including the right to show the work in public, present it on television, reproduce copies of the work, hire or transfer it, without prejudice to the rights to which the authors of the works used therein and the other collaborators are entitled in pursuance of this law.

In contracts for the hire of foreign cinematographic films, the rental agreed upon shall always be deemed to include the amount of all the royalties and related fees deriving from the cinematographic work concerned; such royalties and related fees shall be the exclusive responsibility of the distributor.

Article 30. — The cinematographic producer shall be required to record on the film, so as to be clearly visible upon projection, his own name or business style together with the names of the director, of the authors of the scenario, the original work, the adaptation, the dialogue, the music and the lyrics of songs, and likewise the names of the principal performers.

Article 31. — The authors of the story, the music, the lyrics of songs, the dubbing and of any work which may have been the subject of cinematographic adaptation shall retain the right to use their respective contributions separately, provided that they have not agreed to the exclusive use thereof for the cinematographic production in question.

Article 32. — The producer shall have the right to alter works used in the cinematographic production, to the extent necessary for their adaptation to this artistic medium.

Article 33. — If the producer has not completed the cinematographic work within two years following receipt of the story and submission of the literary or musical works whose use was intended, the owners thereof shall be entitled to terminate the contract. In such case, the author shall officially notify the producer to that effect and shall be free to dispose of his contributions to the work; this shall not, however, imply any renunciation by him of the right to claim redress for any damage and injury suffered by him because of the delay.

Before the expiration of the period mentioned in the preceding paragraph, the producer may apply to the court at the author's place of domicile for a prolongation, which shall be granted if he can prove that the delay was due to circumstances beyond his control, a contingency or difficulties arising out of the nature of the work.

Article 34. — The photographer shall have the exclusive right to reproduce, exhibit, publish and sell his photographs, with the exception of those made in pursuance of a contract, in which case the said right shall belong to the person who ordered the work, without prejudice to the provisions of Article 24*(c)*(1).

Assignment of the negative or any similar medium for reproduction of the photograph shall imply assignment of the exclusive right recognized in the present Article.

Article 35. — In order to benefit from the afore-mentioned protection, copies of the photograph must bear the following indications:

(1) name of the photographer or of the person who ordered the work;
(2) year of reproduction of the photograph;
(3) name of the author of the work of art photographed, where such is the case, and
(4) the notice "Reproduction prohibited".

If the copy of the photograph does not bear these indications, it may be freely reproduced.

Article 36. — Any Chilean author of a painting, sculpture, drawing or sketch shall, as from the entry into force of this law, have the inalienable right to receive 5 percent of the increase in true value obtained hy any person who had acquired the work concerned, upon sale of the work by public auction or through an established trader.

This right shall he exercised on the occasion of any future sale of the work, and shall belong to the author exclusively and not to his heirs, legatees or assigns.

The author must show proof of the original price of the work and of the prices paid on the occasion of subsequent sales.

Article 37. — Acquisition, on whatever hasis, of a painting, sculpture, drawing or other work of the plastic arts shall not entitle the person thus acquiring the work to reproduce, exhibit or publish it for any profit-making purpose.

The author shall retain the right of reproduction of the work, but may not transfer such reproductions or use them for commercial purposes, except with the consent of the owner of the original. He may likewise allow reproductions of an original work that has been transferred to he puhlished or exhibited for non-commercial purposes, provided it is expressly stated that the reproductions concerned are copies of the original work.

Section III

Exceptions from the foregoing rules

Article 38. — It shall be lawful, without remuneration to the author or obtaining his consent, to reproduce in works of a cultural, scientific or educational character extracts from protected works of another author, provided that the source, title and author are mentioned.

Article 39. — It shall be lawful freely to reproduce photographs in anthologies intended for educational use and in scientific or educational works; provided that the photographer's name and the date of the photograph must be indicated, if they appear on the photograph reproduced.

Article 40. — Lectures and speeches may be published for information purposes; they may not, however, be published in a separate, complete or partial collection without the author's permission.

Article 41. — Lecture courses given in universities, colleges or schools may be annotated or summarized in any form by the persons to whom they are addressed; they may not, however, be published either wholly or in part without the written authorization of their authors.

Article 42. — In commercial establishments in which musical instruments, radio and television sets, phonographs and other similar apparatus for the reproduction of sound or images, or discs or magnetic bands or tapes are displayed and sold, phonograms or scores may be used freely and without payment of any remuneration for the sole purpose of giving demonstrations to clients, provided that such demonstrations are given on the premises or in the particular section of the establishment which is used for this purpose, and in circumstances that preclude any dissemination outside.

Article 43. — The reproduction of works of architecture hy means of photography, cinema, television or any other similar process, and likewise the publication of the relevant photographs in newspapers, periodicals and school-books shall be free and not subject to payment of royalties.

Article 44. — All monuments and, in general, artistic works ornamenting squares, avenues and public places may be freely reproduced by means of photography, drawing or any other process; the publication and sale of such reproductions shall be lawful.

Article 45. — The rules laid down in Articles 30 and 35 shall not be applicahle to advertising or puhlicity films and photographs.

Section IV

Exceptions from the author's right

Article 46. — The author of an architectural work may not prevent the owner from making alterations thereto; he may, however, refuse to allow his name to be mentioned as author of the plan.

Article 47. — For the purposes of this law, the use of a work, including a phonogram, in a private home or in an educational, charitable or other similar institution shall not be deemed to constitute communication of the work to the public or public performance thereof, provided such use is not intended for any profit-making purpose. In such cases it shall not be necessary to pay any remuneration to the author or to obtain his authorization.

CHAPTER VI

Publishing contracts

Article 48. — Under a publishing contract, the owner of copyright furnishes or promises to furnish a work to the publisher and the latter undertakes to publish it at his expense and for his own profit, by printing and distributing it, and to pay a remuneration to the author.

The publishing contract shall be set down in a written deed executed and authenticated by a notary or in a private document signed in the presence of a notary; it must specify:

(a) the name of the author and of the publisher;
(b) the title of the work;

(c) the number of editions agreed upon, and the number of copies in each edition;
(d) a statement as to whether or not the publisher has any exclusive right;
(e) the remuneration agreed upon with the author, which may not be less than that provided for in Article 50, and the mode of payment thereof, and
(f) any other stipulations agreed upon between the parties.

Article 49. — The publishing contract shall not confer on the publisher any rights other than that of printing, publishing and selling copies of the work under the conditions agreed upon. The author shall retain the exclusive rights of translation, public performance, cinematographic, phonographic or television adaptation and all other rights to use the work.

Where a publisher is granted the right to publish a number of separate works, such right shall not entitle him to publish them together in one single volume, and *vice versa.*

Article 50. — Where the remuneration agreed upon consists of a share in the proceeds of sale, such share may not be less than 10 percent of the sale price to the public of each copy.

In such case, the publisher must report to the owner of the copyright at least once a year, by means of a complete account in documentary form stating the number of copies printed, the number sold, the balance remaining in warehouses, book-shops, on deposit or consignment, the number of copies destroyed accidentally or by *force majeure*, and the amount of the share paid or due to the author.

If the publisher fails to report in the manner described above, the entire edition shall be presumed to have been sold and the author shall be entitled to require payment of the percentage corresponding to the entire edition.

Article 51. — The author shall have the right to terminate a publishing contract in any of the following cases:
(a) where the publisher does not comply with the obligation to publish and disclose the work within the period specified or, if no such period has been stipulated, within one year from the date on which the original was furnished to him, or
(b) if the publisher, having been authorized to publish more than one edition and having exhausted the copies available for sale, fails to publish a new edition within one year following a legal notification made at the author's request.

In any case where the contract is terminated on the grounds of non-compliance on the publisher's part, the author may retain any advances that he may have received from the publisher, without prejudice to the right to bring any appropriate proceedings against him.

The publisher, for his part, may request termination of the contract if the author fails to furnish the work within the period agreed upon or, if no such period has been stipulated, within one year following the date of the agreement, without prejudice to the right to plead against him in any legal action concerning the matter.

Subject to the provisions of subparagraph *(b)*, where a work has been published in two or more editions and those editions have been exhausted, the author of the work may require the publisher to bring out a new edition comprising the same number of copies as the last edition published, within one year following the date on which such request is made.

If the publisher refuses to issue a new edition, the author may refer the matter to the Department of Intellectual Rights, established under Article 90, which, after having heard the publisher, may, if it considers that his refusal was unjustified, order him to make the printing requested and offer the edition for public sale; if the publisher fails to comply with the order, the Department may arrange for the printing to be carried out by a third party, at the publisher's expense.

Article 52. — The author may cancel the contract if, within five years following the date on which the edition was first offered for sale, the public has not purchased more than 20 percent of the copies. In such case, the author must purchase all the copies remaining unsold from the publisher, at cost price.

Article 53. — If a work by an unknown author is published and he subsequently identifies himself, the publisher shall be obliged to pay him 10 percent of the selling price to the public of copies already sold, and shall retain the right to sell the remaining copies, subject to payment of the aforementioned percentage or any other agreed to with the author.

The author shall have a priority right to purchase copies in the publisher's possession, subject to deduction of the discount granted by the publisher to distributors and consignees.

If the publisher has acted in bad faith, the author shall in addition be entitled to appropriate indemnity.

Article 54. — The publisher shall be entitled to require, through legal channels, the withdrawal from circulation of any unauthorized editions that may appear during the period of validity of the contract, and even after its expiration, so long as copies of the edition have not been exhausted.

The author shall be entitled to the full price in respect of any additional copies published or reproduced in breach of the contract.

Under the Regulations, measures shall be established in order to prevent the printing and sale of a larger number of copies than that agreed upon between the author and the publisher.

Article 55. — Any person who publishes a work protected within the national territory shall be required to include on all the copies, in a clearly visible place, the following indications:
(a) title of the work;
(b) name or pseudonym of the author or authors, and of the translator or coordinator, unless they have decided to remain anonymous;
(c) copyright notice, indicating the name or pseudonym of the owner of copyright and the number of the inscription in the Register;

(d) year and place of publication, and of any earlier publications;
(e) name and address of the publisher and the printer;
(f) number of copies belonging to the edition.

Failure to indicate the above particulars shall not invalidate the rights deriving from this law, but shall nevertheless be punishable by a fine in accordance with Article 81 of this law, with the requirement that the omission must be made good.

CHAPTER VII
Stage performance contracts

Article 56. — A stage performance contract is an agreement under which the author of a work of any kind grants to an impresario the right to perform the work in public, in exchange for the remuneration agreed upon between the two parties. Such remuneration may not be less than the percentages indicated in Article 61.

The stage performance contract shall be set down in a written deed executed and authenticated by a notary or in a private document signed in the presence of a notary.

Article 57. — The impresario shall be obliged to cause the work to be performed in public within six months following the date of signature of the contract.

If upon the expiration of the legal or agreed term the work has not had a first performance, the author may terminate the contract without being required to reimburse any advance payment that he may have received.

Article 58. — In the absence of any contractual stipulation, the impresario acquires an exclusive license to perform the work only for six months following the first performance, and a non-exclusive license for a further period of six months.

Article 59. — The impresario may terminate the contract, forfeiting any advance payment made to the author, if performances of the work are discontinued during the first seven performances by reason of any cause or circumstance beyond his control, except in case of contingency or *force majeure*.

If performances of the work are discontinued for any cause attributable to the impresario, the author may terminate the contract and request compensation for damages, retaining any advance payment that he may have received.

Article 60. — The impresario shall be obliged:

(1) to perform the work in the conditions stipulated in the contract, without introducing any additions, cuts or modifications to which the author has not consented, and to announce the work to the public with its title, author's name and, where applicable, name of the translator or adapter;
(2) to allow the author to watch the performance of the work, and
(3) to retain the principal performers or the conductors of the orchestra and choir, if they were selected in agreement with the author.

Article 61. — Where the remuneration of the author or authors has not been determined by contract at a higher percentage rate, they shall jointly be entitled to 10 percent of the total value of admissions for each performance, and to 15 percent of total admissions for the first performance, after deduction of any taxes charged on admissions.

Article 62. — If in addition the performance was broadcast or televised, the author shall be entitled to receive, as a minimum, 5 percent of the amount received by the broadcasting organization for the advertizing made during the program or, if there was no advertizing, 10 percent of the amount received by the impresario from the broadcasting organization for broadcasting the performance. This remuneration shall be payable without prejudice to any other remuneration payable by anyone in pursuance of Article 61.

Article 63. — The author's share of box-office receipts shall be deemed to be a deposit held by the impresario at the author's disposal, and shall not be affected by any attachment of the impresario's assets.

If, when so requested by the author, the impresario fails to hand over the share which he holds on deposit, the competent judicial authority may, at the request of the party concerned, order a suspension of performances of the work or seizure of the proceeds from admissions, without prejudice to the author's right to terminate the contract and initiate appropriate proceedings.

Article 64. — The foregoing provisions shall, where applicable, govern the performance of musical works and the recitation or reading of literary works in public.

TITLE II
Rights related to copyright

CHAPTER I
Performers

Article 65. — Rights related to copyright shall be those afforded by this law to performers allowing them to permit or prohibit the communication of their performances to the public, and to receive remuneration in respect of public use of such performances, without prejudice to any rights to which the author of the work is entitled.

None of the provisions of this law regarding related rights may be interpreted as prejudicing the protection which it affords to copyright.

Article 66. — It shall be prohibited to record, reproduce, broadcast or re-broadcast by any radio or television broadcasting organization, or to use by any other means for profit-making purposes, any performance of a performer, without his consent or the consent of his heir or assign.

CHAPTER II
Phonograms

Article 67. — Any person who uses, for profit-making purposes, a phonogram or a reproduction thereof, in order to broadcast it by radio or television or by any other means of communication to the public, shall be required to pay a remuneration to the performers; the amount of the remuneration

and the method of collection shall be established in the Regulations.

In determining the related rights, the Regulations shall accord preferential treatment to national artistic activities, by establishing different amounts depending on whether or not the performers are Chilean nationals, and whether the fixation was made in Chile or abroad.

The sums collected in respect of related rights, in accordance with the provisions of the Regulations, shall be subject to a surcharge not exceeding 100 percent, as determined by the President of the Republic; the proceeds of the said surcharge shall be used for the objectives stipulated in Article 104. The remuneration paid in respect of related rights for the use, for profit-making purposes, of a phonogram or a reproduction thereof which has been produced abroad shall be used for the same objectives.

Article 68. — Producers of phonograms shall enjoy the right to authorize or prohibit the reproduction of their phonograms. The term of this protection shall be thirty years from the thirty-first of December of the year in which the fixation of the phonogram concerned was made.

In addition to indicating the title of the recorded work and the name of its author, producers of phonograms must indicate on the label of the phonogram the name of the performer, the identification mark and the year of publication. Where it is materially impossible to include all these particulars directly on the reproduction, they must be indicated on the cover, sleeve, case or card which customarily accompanies it.

CHAPTER III

Broadcasting organizations

Article 69. — Radio or television broadcasting organizations shall enjoy the right to authorize or prohibit the fixation of their broadcasts and the reproduction thereof.

An organization holding this right shall be entitled to receive a fee, in an amount to be determined by the Regulations, in respect of the rebroadcasting of any of its broadcasts or the communication to the public of such broadcasts in places accessible to the public.

Radio or television broadcasting organizations may make ephemeral fixations of performances, for the sole purpose of using them in their broadcasts, for an agreed number of times; they shall be obliged to destroy the fixations immediately after the last authorized broadcast.

CHAPTER IV

Term of protection of related rights

Article 70. — The term of the protection granted under this Title shall be thirty years from the thirty-first of December of the year in which the fixation was made, with respect to the performances recorded thereon; in which the broadcast was made, in the case of programs of broadcasting organizations; and in which the performance took place, in the case of performances.

Article 71. — Persons holding related rights may alienate them wholly or in part, on any basis. Such rights shall be transmissible in case of death.

TITLE III

General provisions

CHAPTER I

Register

Article 72. — The author's rights and the related rights established by this law must be inscribed in the Register of Intellectual Property.

The duties and functions of the Registrar and the form of and the procedure for inscription shall be determined by the Regulations.

Article 73. — Any transfer in whole or in part of copyright or related rights, on whatever basis, must be inscribed in the Register within sixty days following the date of conclusion of the relevant deed or contract. The transfer must be effected by a written deed or by a private document signed in the presence of a notary.

Within the same period, termination of the contract by which the transfer was operated must likewise be registered.

Article 74. — The publisher shall enjoy the rights afforded by this law only provided that the respective contract is inscribed in the Register established under Article 72; failure to comply with this formality shall not, however, deprive the author of the rights accruing to him under this law or under the contract.

Article 75. — At the time of inscription of a work in the Register of Intellectual Property, a complete copy in manuscript, printed or reproduced form shall be deposited. In the case of works other than literary works, the following provisions shall be applicable:

(a) for works of painting, drawing, sculpture, engineering and architecture, it shall be sufficient to deposit such sketches, photographs or plans of the original as will permit identification, together with the relevant explanations;

(b) for cinematographic works, it shall be sufficient to deposit a copy of the story, scenario and subtitles of the work;

(c) for photographic works, it shall be sufficient to deposit a copy of the photograph;

(d) for phonograms, it shall be sufficient to deposit a copy of the record or of the magnetic tape or band on which the phonogram is fixed;

(e) for performances, it shall be sufficient to deposit a copy of the fixation. Presentation of this copy shall not be required where the performance concerned is incorporated in a phonogram or broadcast registered in accordance with paragraphs *(d)* or *(f)* of this Article;

(f) for broadcasts, a copy of the radio or television program shall be deposited. Presentation of this copy shall not be required where it has been sent to the Information and Broadcasting Office of the Presidency of the Republic in compliance with the legal provisions in force, and

(g) for musical works, a written score shall be required; provided that in the case of orchestral works, a tran-

scription for piano shall be sufficient. Vocal works shall be accompanied by the text.

Article 76. — Inscription in the Register of Intellectual Property shall be subject to payment of the following fees, calculated as percentages of a monthly minimum wage, category A, for the department of Santiago:

(1) engineering and architectural plans, 15 percent;
(2) cinematographic works, 20 percent, and
(3) any other inscription as provided for in this law, 0.5 percent.

All such fees shall be deposited in a special account opened in the name of the Ministry of Public Education in tbe State Bank of Chile, under the responsibility and safe-keeping of an official designated by that Ministry, and shall be allocated for use in cultural activities.

Article 77. — For the purposes of the fees payable for inscription in the Register of Intellectual Property, the following shall be deemed to constitute one single work:

(a) theatrical works, even if comprising more than one act, and
(b) any phonographic record or recorded magnetic band or tape, even if comprising more than one performance.

CHAPTER II

Infringements and penalties

Article 78. — Any breach or infringement of the provisions of this law and its regulations shall be punished in conformity with the rules set forth in this Title.

Article 79. — Infringements of copyright or of related rights shall be punishable by fines equivalent to two to ten times the annual minimum wage, category A, for the department of Santiago.

Notwithstanding this penalty, if the statement referred to in Article 50 contains a false declaration regarding the number of copies effectively sold, the manager or legal representative of the publishing firm shall be held responsible for an offence punishable under Article 467 of the Penal Code.

Article 80. — Any owners of copyright or related rights who, without having registered the work in the manner prescribed by this law, offer for distribution or for sale copies in which they claim such ownership, or in any other manner mislead third parties with respect to the work, shall be liable to pay a fine equivalent to the annual minimum wage, category A, for the department. Anyone who fails clearly to indicate the sources in the cases provided for by the law shall be liable to the same penalty.

Article 81. — Anyone who knowingly publishes or exhibits a work belonging to the common cultural heritage under a name other than that of the true author shall be liable to pay a fine equivalent to two to four times the annual minimum wage, category A, for the department of Santiago.

The plaintiff may, in addition, request that the sale, circulation or display of the copies be prohibited.

Article 82. — When granting compensation to the plaintiff in respect of injury caused by the offence, the Court may order, in response to a request by the injured party:

(1) the delivery, sale or destruction:
  (a) of the copies of the work made or placed in circulation in infringement of copyright;
  (b) of the equipment used exclusively for the unlawful production of copies of the work;
(2) the seizure of the proceeds from recitation, reproduction or performance. During the trial, the Court may order, in response to a request, the immediate suspension of sale, circulation, exhibition or performance.

Article 83. — In response to a request by the injured party, the Court may order publication of the verdict, with or without the reasons therefor, in a newspaper designated by it and at the infringer's expense.

Article 84. — Popular action shall exist for denunciation of the offences punishable under this law. The denouncer shall be entitled to receive one half of the relevant fine.

Article 85. — In cases of infringements of copyright or related rights, the relevant Civil Judge *(Juez de Mayor Cuantía en lo Civil)* shall apply the abridged and summary procedure.

CHAPTER III

General provisions

Article 86. — The patrimonial rights which this law affords to the owners of copyright and related rights shall be inalienable, in particular the percentages referred to in Articles 50, 61, 62 and 67.

Article 87. — The fines imposed by this law shall be added to the amounts received in accordance with the provisions of Article 86 and sball be used for the purposes established thereunder.

Article 88. — The State, municipal authorities, official corporations, semi-fiscal or autonomous institutions and other State corporate bodies shall hold the copyright in works produced by their employees as part of their duties.

Article 89. — The rights afforded by this law to the holders of copyright and related rights shall not affect the protection to which they are entitled under the Law on Industrial Property or other existing legal provisions which have not been expressly revoked.

TITLE IV

Department of Intellectual Rights

Article 90. — There is hereby created a Department of Intellectual Rights which shall be responsible for the Register of Intellectual Property and for all other functions entrusted to it under the Regulations. The Department shall be under the responsibility of the Directorate of Libraries, Archives and Museums and shall have the following staff:

Executive, professional and technical staff

1 Registrar of Intellectual Rights, Lawyer, Category 3
1 Head of Section, Lawyer, Category 5

Administrative staff

1 Officer, Category 5
1 Officer, Category 6
1 Officer, Category 7
2 Officers, Grade 1

Auxiliary staff

1 Chief Clerk, Grade 6
1 Clerk, Grade 8

The relevant staff costs for this year shall be met out of the Current Expenditures Budget of the Secretariat and General Administration of the Ministry of Public Education.

TITLE V

Small rights

Article 91. — Administration of small rights, or performing rights as referred to in Article 21, shall be entrusted to the Small Rights Department *(Departamento del Pequeño Derecho de Autor)* of the University of Chile, in the form and with the responsibilities and prerogatives specified in this law.

Article 92. — The Department shall be under the direction of a Standing Committee, composed of two representatives of the University of Chile, one of whom shall be Executive Director of the Department and Chairman of the Committee, and three representatives designated by Chilean authors and composers.

The Governing Body of the University shall issue Regulations specifying the procedure for appointment and reappointment of members of the Committee, their term of office, the rules of procedure of the Committee, and the remuneration to which members of the Committee shall be entitled.

Article 93. — The Standing Committee on small rights shall have the following terms of reference:

(a) to establish and amend the small rights tariff, subject to approval by the Governing Body of the University;

(b) to establish and amend general rules relating to the procedures for verifying, charging, collection and distribution of small rights royalties;

(c) to collect and distribute, through the Department, all royalties due to Chilean and foreign authors in respect of public performance, in accordance with the provisions of this law;

(d) to collect and distribute, through the Department, all other remuneration due to the holders of related rights in respect of public performance, in accordance with the relevant Regulations, and

(e) to ensure the correct and appropriate application of the rules referred to in paragraphs *(a)*, *(b)* and *(c)*, and order compliance with them, where necessary.

Article 94. — The Small Rights Department may, if it deems necessary, have recourse to the services of the National Directorate of Inland Revenue and the General Treasury of the Republic with a view to the determination and collection of small rights royalties; for such purpose it may delegate the relevant responsibilities in accordance with the procedures established for those Services. In such cases, the General Treasury of the Republic shall open a special account for income from such royalties and the Department shall transfer the income into that account within thirty days following collection.

Article 95. — Failure to pay the royalties mentioned in Article 21, and likewise failure to comply with the rules referred to in Articles 93*(a)* and *(b)* shall be punishable by a fine equivalent to $2^1/_2$ to 10 times the annual minimum wage, category A, for the department of Santiago. Any repetition shall be punishable, if the Department so requests, by temporary or definitive suspension of the municipal permit granted for the functioning of the premises concerned. This same rule shall be applicable in connection with the remuneration provided for in Article 67.

The proceeds from fines imposed by application of these penalties shall be paid into the University Arts Fund referred to in Article 97.

Article 96. — Legal actions arising from the implementation of the rules set forth in this Title shall be brought in accordance with the rules established in Volume III, Title XI of the Code of Civil Procedure.

The sole instance competent to hear such actions shall be the Civil Judge *(Juez de Letras en lo Civil)* of the place of domicile of the plaintiff, in accordance with the amount involved.

The penalty established for any repetition of an offence as referred to in Article 95 shall be applied by the competent court, on the request of the Department, which shall provide evidence of such repetition by means of a certified copy of the earlier verdict.

Article 97. — The Small Rights Department shall transfer to the University of Chile the funds deriving from works belonging to the common cultural heritage, works by unidentified authors, works not inscribed in the Register of Intellectual Property and likewise any royalties not collected within one year following payment thereof.

With these resources and any others available to it, the University shall establish a University Arts Fund to be used for the adoption of measures conducive to the protection, encouragement and promotion of the work of Chilean authors, in the fields of artistic creation and research.

TITLE VI

The Chilean Cultural Corporation

Article 98. — The Chilean Cultural Corporation *(Corporación Cultural Chilena)* is hereby established as an autonomous corporation under public law, in order to coordinate and encourage activities in the field of artistic creation and

the dissemination of culture throughout the country, particularly in the more remote communities or localities.

Article 99. — In the attainment of its objectives, the Chilean Cultural Corporation shall carry out the following activities:

(a) it shall act through existing human and material organizations and facilities and shall coordinate their action, formulating joint programs;

(b) it shall promote the creation, publication and reproduction of works by Chilean authors;

(c) it shall encourage the professional abilities of Chilean artists, in particular through fellowship grants and exchange programs, particularly in the Latin American ambit;

(d) it shall encourage lectures, exhibitions and concerts, in particular by using mass communication media;

(e) throughout the country, it shall give assistance to the establishment of professional or amateur groups for the various forms of artistic expression, and shall give them all appropriate advice;

(f) it shall disseminate knowledge of the most valuable expressions of universal art, and

(g) it shall collaborate with the appropriate authorities in the formulation of cultural policy activities or programs, and shall contribute to their implementation through practical measures.

Article 100. — The Chilean Cultural Corporation shall be directed by a Council of 26 members whose term of office, with the exception of that of the Chairman, shall be two years; they shall be eligible for re-election by the Corporations which appointed them.

In addition, there shall be an Executive Committee composed of the Chairman of the Council, two members of the Council designated by that body, and the Executive Secretary of the Corporation.

The Executive Committee shall be responsible for carrying out the activities stipulated in Article 99 and such other functions as may be assigned to it by the Council.

Article 101. — The membership of the Council shall be as follows:

(1) the Director of Libraries, Archives and Museums, who shall hold the office of Chairman;
(2) two representatives designated by the President of the Republic;
(3) one representative of the Council of Rectors;
(4) one representative of the Municipal Cultural Institutes, designated by the Confederation of Municipalities;
(5) one representative of the Central Office of Workers (CUT);
(6) one representative of the Language Academy;
(7) one representative of the National Society of Arts;
(8) one representative of the Painters' and Sculptors' Association;
(9) one representative of the Chilean Writers' Society;
(10) one representative of the National Association of Musical Composers;
(11) one representative of the Corporation of Authors and Musical Composers;
(12) one representative of the Orchestra Musicians Professional Union;
(13) one representative of the Lyric Arts Corporation;
(14) one representative of the Theater Actors' Trade Union;
(15) one representative of the Chilean Playwrights' Society;
(16) one representative of ballet activities;
(17) the Director *(Conservador)* of the National Museum of the Arts;
(18) one journalist specialized in artistic activities, designated by the Journalists' Association;
(19) one representative of the Academy of History;
(20) one representative of the National Commission for Scientific and Technological Research;
(21) one representative of the Chilean Professional Union of Folklore Artists and Guitarists;
(22) one representative of the Chilean Professional Union of Radio and Television Actors;
(23) one representative of the National Professional Union of Variety Artists;
(24) one representative of the Chilean Association of Broadcasting Organizations; and
(25) one representative of the Chilean Book Chamber.

Article 102. — An Executive Secretary of the Corporation shall be appointed by the President of the Republic from a list of three candidates proposed by the Council; his functions shall be:

(a) to prepare meetings of the Council, which shall meet in regular session once each month and in special session whenever a majority of members so decide or when convened by the Chairman, and to carry out the decisions of that body;

(b) to maintain relations between the Chilean Cultural Corporation and the organizations represented in the Council, and likewise to maintain liaison with persons in foreign organizations, and

(c) to present to the Council for consideration and decision an outline of priorities in an annual program of work, in accordance with the directives established by the Executive Committee and with requests made by the various organizations.

Article 103. — The Council shall encourage the establishment of committees or working groups, both in the capital and in the provinces, by area or subject-matter, for the various cultural specialities.

Article 104. — The Chilean Cultural Corporation shall have its own budget for carrying out its activities, financed out of the following resources:

1. the proceeds of the related rights royalties charged in respect of the public performance of phonograms, in accordance with the provisions of Article 67, third paragraph;
2. 5 percent of the amounts paid to foreign artists in respect of their activities in Chile; the impresario con-

cerned shall be jointly liable for making this payment, and

3. donations, grants and gifts made by natural persons or corporate bodies, whether Chilean or foreign.

Article 105. — The Chilean Cultural Corporation shall be governed by Regulations to be issued by the President of the Republic, on the basis of a proposal by the Council of the Corporation.

TITLE VII

Final provisions and transitional clauses

Article 106. — The Decree-Law on Intellectual Property, No. 345 of March 17, 1925, and Law No. 9,549 of January 21, 1950, are hereby revoked.

Article 107. — Regulations for the implementation of this law shall be issued by the President of the Republic within 180 days.

Article 108. — The present law shall enter into force 180 days after its publication in the Official Gazette.

Article 109. — In order to be eligible for the protection afforded by this law, the holders of related rights whose performances or recordings were published in the national territory prior to the enactement of this law must inscribe such performances or recordings in the Register of Intellectual Property within 180 days following its publication. For the inscription referred to in this Article, presentation of a sworn statement shall be sufficient, without prejudice to proof of the contrary.

Article 110. — The Small Rights Department shall bring together in one single text all the provisions regarding the fixing and collection of small rights royalties, as set forth in Law No. 5,563 of January 10, 1935, Decree No. 35/6,331 of November 19, 1942, and University Decree No. 1,070 of May 16, 1951, and amendments thereto. During the preparation of the said text, the Standing Committee on small rights shall have all the prerogatives, functions and responsibilities formerly held by the Small Rights Department of the University of Chile.

Article 111. — Within 90 days following the establishment of the Chilean Cultural Corporation in pursuance of Title VI of this law, the Executive Committee of the said Corporation shall submit to the Council for consideration draft internal rules concerning its activities, which shall be drawn up, to the fullest extent possible, in consultation with the Corporations represented in the Council.

Article 112. — The persons mentioned in Article 1 of Law No. 15,478 who, on October 27, 1966, had reached 65 years of age and who can show evidence of having been engaged in any of the activities indicated therein for not less than 30 years shall be allowed a further period of 180 days for claiming the benefits afforded under transitional Article 1 of Law No. 16,571.

The Private Employees' Provident Fund shall publish the necessary press notices in order to ensure wide circulation of the provision set forth in the preceding paragraph.

UNITED STATES OF AMERICA

Public Law 92-140 (92nd Congress, S. 646)

(Of October 15, 1971)

An Act to amend title 17 of the United States Code to provide for the creation of a limited copyright in sound recordings for the purpose of protecting against unauthorized duplication and piracy of sound recording and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That title 17 of the United States Code is amended in the following respects:

(a) In section 1, title 17, of the United States Code, add a subsection (f) to read:

"To reproduce and distribute to the public by sale or other transfer of ownership, or by rental, lease, or lending, reproductions of the copyrighted work if it be a sound recording: *Provided*, That the exclusive right of the owner of a copyright in a sound recording to reproduce it is limited to the right to duplicate the sound recording in a tangible form that directly or indirectly recaptures the actual sounds fixed in the recording: *Provided further*, That this right does not extend to the making or duplication of another sound recording that is an independent fixation of other sounds, even though such sounds imitate or simulate those in the copyrighted sound recording; or to reproductions made by transmitting organizations exclusively for their own use."

(b) In section 5, title 17, of the United States Code, add a subsection (n) to read:

"Sound recordings."

(c) In section 19, title 17, of the United States Code, add the following at the end of the section: "In the case of repro-

ductions of works specified in subsection (n) of section 5 of this title, the notice shall consist of the symbol Ⓟ (the letter P in a circle), the year of first publication of the sound recording, and the name of the owner of copyright in the sound recording, or an abbreviation by which the name can be recognized, or a generally known alternative designation of the owner: *Provided*, That if the producer of the sound recording is named on the labels or containers of the reproduction, and if no other name appears in conjunction with the notice, his name shall be considered a part of the notice."

(d) In section 20, title 17, of the United States Code, amend the first sentence to read: "The notice of copyright shall be applied, in the case of a book or other printed publication, upon its title page or the page immediately following, or if a periodical either upon the title page or upon the first page of text of each separate number or under the title heading, or if a musical work either upon its title page or the first page of music, or if a sound recording on the surface of reproduction thereof or on the label or container in such manner and location as to give reasonable notice of the claim of copyright."

(e) In section 26, title 17, of the United States Code, add the following at the end of the section: "For the purposes of this section and sections 10, 11, 13, 14, 21, 101, 106, 109, 209, 215, but not for any other purpose, a reproduction of a work described in subsection 5(n) shall be considered to be a copy thereof. 'Sound recordings' are works that result from the fixation of a series of musical, spoken, or other sounds, but not including the sounds accompanying a motion picture. 'Reproductions of sound recordings' are material objects in which sounds other than those accompanying a motion picture are fixed by any method now known or later developed, and from which the sounds can be perceived, reproduced, or otherwise communicated, either directly or with the aid of a machine or device, and include the 'parts of instruments serving to reproduce mechanically the musical work', 'mechanical reproductions', and 'interchangeable parts, such as discs or tapes for use in mechanical music-producing machines' referred to in sections 1(e) and 101(e) of this title."

Sec. 2. That title 17 of the United States Code is further amended in the following respect:

In section 101, title 17 of the United States Code, delete subsection (e) in its entirety and substitute the following:

"(e) *Interchangeable Parts for Use in Mechanical Music-Producing Machines.* — Interchangeable parts, such as discs or tapes for use in mechanical music-producing machines adapted to reproduce copyrighted musical works, shall be considered copies of the copyrighted musical works which they serve to reproduce mechanically for the purposes of this section 101 and sections 106 and 109 of this title, and the unauthorized manufacture, use, or sale of such interchangeable parts shall constitute an infringement of the copyrighted work rendering the infringer liable in accordance with all provisions of this title dealing with infringements of copyright and, in a case of willful infringement for profit, to criminal prosecution pursuant to section 104 of this title. Whenever any person, in the absence of a license agreement, intends to use a copyrighted musical composition upon the parts of instruments serving to reproduce mechanically the musical work, relying upon the compulsory license provision of this title, he shall serve notice of such intention, by registered mail, upon the copyright proprietor at his last address disclosed by the records of the copyright office, sending to the copyright office a duplicate of such notice."

Sec. 3. This Act shall take effect four months after its enactment except that section 2 of this Act shall take effect immediately upon its enactment. The provisions of title 17, United States Code, as amended by section 1 of this Act, shall apply only to sound recordings fixed, published, and copyrighted on and after the effective date of this Act and before January 1, 1975, and nothing in title 17, United States Code, as amended by section 1 of this Act, shall be applied retroactively or be construed as affecting in any way any rights with respect to sound recordings fixed before the effective date of this Act.

Approved October 15, 1971.

GENERAL STUDIES

Some Notes on Copyright in Latin America

I. Economic and social context. The "developing" countries. General trends in copyright in Latin America. Obstacles to its full development

"Elusive rights" was the term used by the Peruvian writer Ciro Alegría to refer to authors' rights on one occasion, and in particular to the plundering and misuse of which creators of intellectual works are the victims in some parts of Latin America. As we shall see, moreover, the term "Latin America" is primarily a geographical one, and does not represent an entirely homogeneous reality from the social, economic or legal aspects.

That being so, any attempt to describe the overall situation in regard to copyright in Latin America — which is largely Spanish-speaking — cannot be dissociated from the world picture of this problem.

A purely regional approach, which in the past led to the conclusion of pan-American treaties on authors' rights, is inadequate and too limited having regard to worldwide possibilities for disseminating and using intellectual works and having regard also to the fact that the major part of relations in this field have generally been not between American States, but between American States and European countries. To a lesser extent, relations have been established and are steadily developing between Latin America and North America.

For obvious reasons, the cultural influence of Europe has been decisive so far as Spain and Portugal are concerned, because these latter were metropoli for the Latin American countries. For a long time, the cultural influence of France was also very strong in some American countries, particularly Argentina and Brazil. The influence of other countries that had colonies in the American continent — such as England, France and Holland — extended only to limited colonial territories that were set in a general context of Portuguese and Spanish origin (Haiti, Jamaica, Trinidad, Guiana, etc.).

The nature of these influences and these relations was reflected in national legislations. Thus, the Spanish Act of 1879 influenced national laws to varying degrees. The same can be said about the influence on certain national laws of some of the principles of the Berne Convention, although this system did not spread to America for a long time, mainly because most of the countries in that continent were still attached to systems of formalities and were opposed to any strict system of protection for translation rights as being a prerogative of the author.

The principles underlying the United States' copyright legislation had practically no influence on national legislation of the Latin American countries. Nevertheless, the continuing development of economic and cultural relations between the United States and Latin America, and the existence of an inter-American political system in the form of the Pan-American Union (now the Organization of American States) were factors conducive to the conclusion of pan-American agreements on this subject. And yet the United States only ratified the Pan-American Convention of Buenos Aires, which for a long time served as a valuable bridge between Anglo-Saxon America and Latin America (and was ratified by 15 of the Latin American countries). The establishment of the Universal Convention, to which the United States and 13 Spanish-American countries are party, afforded a broad base for relations between North and South America.

Cultural relations between Latin America, on the one hand, and Africa and Asia, on the other, have had no appreciable effects in the copyright field. For obvious ethnic reasons, the cultural influence of Africa has been strong in Brazil, and one should also mention the somewhat limited influence of China in Peru. Inversely, any Latin American influence in Africa and Asia seems very limited in principle and difficult to ascertain, mainly because of the lack of a common language. A noteworthy exception is the popularity of Argentine popular music — more precisely, the tango — in Japan.

In recent years, legislative reforms in various Latin American countries — Mexico, Peru, Venezuela, Chile — have to a very appreciable extent reflected the new world trends in legislation and doctrine.

The concerns felt by European legislators have also been shared by legislators in the Latin American countries with respect to the development of new techniques for the storage, reproduction, dissemination, multiplication, long-distance transmission etc. of intellectual works.

Vast areas of Latin America are affected to a greater or lesser degree by the consequences of economic, social or cultural "underdevelopment" which is nowadays taken into account in international law in general, and international copyright law in particular [1].

One of the proclaimed objectives of almost every government is to promote and attain "development". The world is divided, though without any clear-cut demarcation, into "developed" countries (although these go on developing) and "underdeveloped" countries (or "developing" to use a less crude term).

As a matter of fact, there have always been differences between the various countries of the world in this respect, and the objective has always been to overcome inferiority, as a target for all statistics worthy of the name and throughout history. In earlier times, particularly in the last century, this

[1] See Carlos Mouchet, *El derecho de autor internacional en una encrucijada*, Buenos Aires, 1969, Ed. SADAIC, pp. 103 *et seq.*

objective carried the banner of "progress" and "modernization". The novel contribution of our era is probably an increasingly deep "awareness" of this distinction and of the divergences between nations and sometimes even between regions of one given country. Nowadays, "development" is more and more seen as a deliberate and increasingly urgent process.

In Latin America, the level of economic, cultural and social development varies from one region to another. Certain very large regions are in fact still "underdevelopped". Population growth and the very rapid, and in some cases "explosive", growth of urban areas, which is largely due to the exodus from the country, are two decisive factors. The towns and cities are not prepared to deal with such an increased population, and the housing, assistance and educational facilities available are far short of what is needed. Industrial development is not sufficient to offer adequate new employment opportunities. All these circumstances combine to create serious social problems.

A good indication of the wide differences in development between various regions of Latin American is to be found in economic parameters such as the annual average *per capita* level of gross national product: in Latin America we have one extreme in Bolivia where the average *per capita* income is $160 annually, and the other extreme in Argentina where this income is $780. In Central America and the Caribbean area, average annual *per capita* income is $70 in Haiti, and $1090 in Puerto Rico [2].

The problem is to know when a country is, or is not, "developing", particularly where it is to be accommodated within any system regulating technical and financial assistance at international level.

In "extreme" situations, there are really no difficulties. The latter arise in intermediate situations. On the other hand, there are some countries with great economic potential that from the cultural aspect are relatively poor and without any great influence, and therefore need to draw on the cultural sources of European tradition. The converse situation may also arise.

This problem of determination arises in the application of the wording used in Article 1 of the Protocol to the Stockholm Act of the Berne Convention, which stipulates that "any country regarded as a developing country in conformity with the established practice of the General Assembly of the United Nations ..." may avail itself of the reservations provided in that Protocol. In my view there is a need for more detailed criteria [3]. Mere reference to resolution No. 1897 (XVIII) of the General Assembly of the United Nations (Conference on Trade and Development — UNCTAD — dated November 13, 1963), which in its two annexes lists 82 countries, *including all the Latin American countries,* does not seem to me to be an acceptable criterion where international copyright matters in general, are concerned.

For a very long time, Latin America was considered to be a "culture-importing" area — a status that was equivalent in practice to that of a "developing" country according to present-day concepts and terminology.

That is why there was some resistance to protecting translation rights as a prerogative of the author, and in order to make the protection of foreign works more difficult, formalities were established that were in general not easy to comply with. This accounts for the long delay on the part of the Latin American countries in acceding to the Berne Convention. For many years, Brazil was the only country to have acceded (apart from Haiti's temporary membership). The Universal Convention had a better reception. Countries with some economic potential were opposed to affording full protection to works.

The protection of foreign works was often envisaged as being fundamentally a problem of the international foreign exchange balance. The assumption was that the result would be unfavorable to cultural "imports". That was a niggardly calculation, because in fact international royalty payments are relatively insignificant in amount, and in addition the situation is sometimes reversed in the case of American cultural productions that are published and distributed in Europe. An additional fact that was overlooked and not always properly appreciated is that the absence of any protection for foreign works implies a lack of incentives for national production which is displaced by foreign works, while the "professionalization" of writers and performers is inhibited.

At the time, some people considered it unrealistic on the part of Brazil — a culture-importing country from some aspects — to join the Berne system so early (in 1922), because, they contended, the situation would be to the sole advantage of the European countries. In my view it is quite clear that the economic aspect, in addition to being open to discussion, is not the only one to be taken into consideration. There are reasons of morality and justice, of respect for the creative human person and thereby of interest for mankind, which also come into play. By its very nature, copyright is worldwide and should afford protection in every part of the world in as uniform a manner as possible, as proclaimed in the initial and basic principles of the Berne Convention. In this sense, by joining the Berne Union in 1922, Brazil set an example for all America, and I am happy to commend its action. In Argentina, where protection of foreign authors was possible, certain niggardly interests opposed it for some years. It is contrary to the idea of justice that countries with a strong economic potential should want to exploit foreign intellectual works free of charge or very easily, and thereby, from another aspect, impair their own national cultural development. Liberal treatment is justified only, and provided there is every kind of guarantee, where the beneficiaries are really members of the community, such as in the case of countries at a very much lower level of economic and social development; here

[2] Data for the year 1966 puhlished in *Finance and Development*, International Monetary Fund, Washington D. C., Vol. 6, No. 1, March 1969.

[3] In this connection, see the "Report on the Work of Main Committee II" of the Stockholm Conference and the Report on the Extraordinary Session of the Permanent Committee of the Berne Union at Paris from February 3 to 7, 1969 (*Copyright*, 1969, p. 49). See also my views on the definition of "developing country" in *El derecho de autor internacional en una encrucijada*, already cited, pp. 104 *et seq.* Also very pertinent are Professor Bodenhansen's inquiries from the United Nations Secretariat with a view to ascertaining what is the "estahlished practice" of the United Nations General Assemhly "for determining when a country should be regarded as a developing country".

such treatment is deemed to be a form of indirect financial assistance from more wealthy national communities.

A comparison comes to mind. It is clear that the first countries which, for reasons of social justice or protection of human resources, introduced the eight-hour working day, prohibited child labor or restricted female labor, thereby placed themselves in the initial stage at a disadvantage in competitive markets because their labor costs were higher; in the long term, however, the situation tends to even out everywhere.

From 1967 on, the restrictive attitude towards the Berne Convention was breached: first Argentina, Mexico and Uruguay joined the Berne Union, followed in 1970 by Chile.

In addition to the cases in which it is not feasible for economic and administrative reasons to ensure a high level of respect for authors' rights, another contributory factor to inadequate recognition of these rights — both in legislative work and in the community's response and observance — is the lack of adequate information and collective awareness regarding the legal and social basis for the protection of the work of intellectual creators.

Another relevant element is the fact that often the authors themselves are indifferent to any resolute individual or collective action in order not to be forgotten by the authorities or not to be the victims of abuse of various kinds. Missions have been sent to certain American countries in order to study and promote copyright, under the auspices of the Pan American Council of CISAC; the experience of these missions, of which we were members, brought out certain negative aspects. Many authors adopt a fatalistic attitude which leads to individual sacrifice. In some countries, there is a need for legislation that would protect the author even against his own volition and would consider him as being the weaker and less well-informed party in certain types of agreements and contracts for assignment of rights, along the lines of existing provisions in the field of labor law and social welfare.

Other negative factors are ignorance, lack of understanding, and even bad faith on the part of some users, sometimes powerful ones. I recall that, on the eve of enactment of the Peruvian law of 1961, a strong sector of interest contended that the proposed legislation would be unconstitutional because it restricted freedom of expression by radio and television by requiring the payment of royalties for the use of intellectual works. I was in Lima on that occasion, and it was easy for me to demonstrate that this ridiculous contention — which fortunately did not succeed — was quite unfounded.

One can mention still other adverse factors: *(a)* organizational inadequacies and limited facilities on the part of the State authorities directly concerned with the registration of intellectual works and with supervision of the activities of the various categories of users; *(b)* non-existence or inadequacy of administrative regulations that can be applied easily and rapidly in order to ensure prompt payment of royalties in respect of public performances; *(c)* the virtual non-existence of institutes or courses at university level that can train experts in this field and contribute to bringing existing legislation up to date, thus helping to improve judicial and administrative case law and to encourage scientific development in the field of copyright; *(d)* slow and costly judicial procedures which from the outset discourage the author from defending his own interests when they are in jeopardy.

"Professionalization" calls not only for appropriate legislation and for the establishment of authors' societies, but also for a broad measure of State encouragement for the author to complete his work, particularly in those countries where it is difficult for an intellectual creator to live even modestly on the proceeds of his work. There is a need for institutions that could offer grants and fellowships, promote the establishment of publishing houses, theaters, concert halls, give assistance for book publishing, etc. Clearly also, this would in turn call for broader and better educated sectors of the population to receive and appreciate the expressions of art and literature.

II. National legislation

A brief survey of the legislative situation and the organization of authors' societies will give an idea of some fundamental aspects of the situation in Latin America where these matters are concerned.

Let us look first at the basic legislative provisions existing in Latin American countries:

Argentina: Law No. 11,723 of September 26, 1933, as amended by Decree-Law No. 12,063 of October 2, 1957, and Decree-Law No. 1,224 of February 3, 1958.

Bolivia: Law of November 13, 1909, amended on January 15, 1945.

Brazil: Civil Code of 1916 as amended in 1919, Articles 649 to 673, and Articles 1359 to 1362; Decree No. 4,790 of January 2, 1924; Decree No. 5,492 of July 16, 1928 (Getulio Vargas Law); Decree No. 4,857 of November 9, 1939; Decree No. 1,023 of May 17, 1962; and Decree-Law of October 20, 1969.

Chile: Law of August 28, 1970.

Colombia: Law No. 86 of December 26, 1946.

Costa Rica: Law of June 27, 1896, as amended on May 25, 1948.

Cuba: Spanish Law of January 10, 1879 (extended to Cuba by Royal Order of January 14, 1879), as amended by Order of the Military Intervention of the United States, No. 119, of March 19, 1900; Decree-Law No. 1,918 of January 18, 1955 (National Society of Authors of Cuba) and Law of August 6, 1960 (Cuban Institute of Musical Rights).

Dominican Republic: Law of March 12, 1942.

Ecuador: Law of September 3, 1963.

El Salvador: Decree No. 376 (Copyright Law) of September 6, 1963.

Guatemala: Decree-Law No. 1,037 of February 8, 1954.

Haiti: Law of October 8, 1885.

Honduras: Law of April 1, 1919, as amended on March 20, 1935, and December 14, 1939.

Mexico: Law of December 29, 1956, amended and extended in 1963.

Nicaragua: Chapter II of the Civil Code of 1904.

Panama: Administrative Code of August 22, 1916, Section V, Articles 1889 to 1966.

Paraguay: Law No. 94 of July 5, 1951, approving Decree-Law No. 3,642, of March 31, 1951.

Peru: Law of Septemher 1, 1961.

Uruguay: Law No. 9,739 of Decemher 17, 1937.

Venezuela: Law of December 12, 1962.

Although from the geographical aspect the new States of Jamaica and Guyana form part of Latin America, we shall not examine their legislation here, nor that in force in European possessions still remaining in the American continent. Moreover, their legislation and culture are clearly dependent on the metropole.

Cuba [4], Haiti, Bolivia, Panama and Honduras have legislation that can he considered out of date. Brazil's legislation is dispersed and unsystematic.

Some other countries have laws that were drawn up on a systematic and organized hasis, hut are nevertheless in need of revision.

Mexico, Peru, Venezuela and El Salvador have laws that are relatively recent, drawn up in conformity with present trends in legislation and legal doctrine and consistent with adequate legal technique. The most recent law is that of Chile; although it constitutes an attempt at " modernizing " the legislation previously existing, which was dispersed and unsystematic, it has aroused some criticisms on fundamental questions which, in my opinion, hecause of their nature, would justify a revision in the near future.

As regards the doctrinary trends that have influenced Latin American legislation, these can he seen from the traditional terminology used hy most of the laws enacted in countries of the continent — hoth in the title of laws and in their contents: " intellectual property ", " literary and artistic property ", " literary, scientific and artistic property " — all equivalent to " copyright " [5]. The most recent legislation, such as that of Mexico, Peru and Veneznela, uses the term " rights of authors " in general, on the hasis of its use in the Berne Convention for the Protection of Literary and Artistic Works, thus avoiding any definition in the doctrinary sense. The Paraguayan law sometimes refers to " rights of authors " and sometimes to " intellectual rights ". Honduras includes these matters in a very parsimonious way in a law on patents. Nicaragua includes them in the Civil Code in the chapter on work, while in Panama they are covered hy the so-called " Administrative " Code.

[4] As reported in the world press at the time, the Cnban Prime Minister, Fidel Castro, referred in a speech to the " abolition " of intellectual property in that country. No additional information is available as to whether tbat statement has been translated into any legal provision. It should not be forgotten tbat Cuba is bound by certain international commitments, sucb as tbose deriving from the Washington Convention of 1946 and tbe Universal Convention, which have not been reported to bave been denounced.

[5] I very much doubt the desirability of using the word " property " to designate rights based on intellectual creation. There are pbilosophical reasons and technical considerations against it. To imprison tbe concept of autbor's rights within tbe tbeory of property — in various stages ranging from assimilation to tbe rigbt of " dominion " to " intellectual property " and " immaterial property " would be ontologically wrong and an expression of conservationist tendencies in law. It brings to mind all the traditional concepts surrounding property, and involves all the problems of infringements and restrictions of property.

In the new Chilean law of 1970, the term " intellectual property " covers rights of authors as well as related rights, and this cannot fail to lead to some confusion, in view of the traditional equivalence in Europe and Latin America between " intellectual property " and " rights of authors ".

III. Reform of national legislation. New proposals

The enactment of new and up-to-date legislation in Peru, Mexico and Venezuela points to a growing tendency towards more elahorated, rational and effective protection for the rights of intellectual creators. We must mention hy name jurists like Rafael Morales in Peru and Roherto Goldschmidt in Venezuela, whose work made possihle the enactment of these new provisions.

Some suhsequent examples are not deserving of the same comment, in my view. Thus, draft legislation that originated in the Peruvian Congress and was dealt with remarkahly rapidly, and has heen approved hy hoth Chamhers — though not yet promulgated hy the Executive — would have the effect of abolishing the rights of authors in that country. Under the draft, the reproduction of any intellectual work is in general permitted, the only requirement heing that as a prior formality a proposal to pay royalties must be made, and in case of disagreement the amount of such royalties is to be determined by judicial decision. Promulgation of this draft legislation has been held up not only hecause of the representations made hy the Peruvian Association of Authors and Composers and eminent persons in that country who are concerned with copyright matters, such as Dr. Rafael Morales and Dr. Antero Aspillaga Delgado, hut also because of the intervention of CISAC and the Pan American Council which sent delegations to Lima.

Another proposal that drew serious ohjections from authors' societies was the new Chilean copyright law, presented to Congress by the Executive in 1969. Although account was taken of some remarks made hy Chilean jurists, in particular Dr. Fernando Guerrero, and of those set forth in a study that I puhlished on the suhject [6], and despite the reactions of authors' societies in Chile and the organs of CISAC (such as its Pan American Council and Legal and Legislative Commission), the draft was finally approved by Congress on August 28, 1970, in a text that retains some grave errors that had existed in the original draft together with others added during the process of parliamentary consideration.

The new Chilean law has included texts and provisions taken from up-to-date legislation, hut in a way that is incomplete and not properly consistent with the law as a whole. It contains some instances of terminological confusion and of contradiction with the international commitments already entered into by Chile hy virtue of its accession to the Berne Convention (Brussels Act), on April 9, 1970.

Under the general title of " intellectual property ", this law covers two different fields, under two headings: I. Copyright. II. Rights related to copyright. This combination of terminology is likely to lead to confusion, in Chile and in the

[6] Carlos Mouchet, " Considerations on the new Cbilean copyrigbt bill ", in *Revue internationale du droit d'auteur*, LXIII, January 1970, pp. 135 *et seq.*

rest of America, because it brings under the heading " intellectual property " (equivalent to authors' rights in Spanish-American terminology) not only the rights of performers but also the rights deriving from industrial activities or from services. Is it possible that the nature of certain rights can be changed by legal provisions, or is this a matter for juridical science and philosophy?

Certain institutions have been included which did not appear in the earlier legislation — for example the so-called *droit de suite* and a kind of *domaine public payant.*

Article 36 established the *droit de suite* as a right under which any Chilean author can benefit from a fixed rate of 5 percent on the increase in value whenever a work of " painting, sculpture, drawing or sketch " is sold. It should be noted that the system is (inadvertently) limited to the author alone and does not extend to his heirs; the fact has been overlooked that such works generally acquire their true economic value only after the death of their authors. There is no valid reason for depriving a surviving spouse and children of this right.

A *domaine public payant*[7] is established, although in a somewhat incomplete form, under the designation " common cultural heritage " (Articles 11 and 97); it is limited, however, to works under the authority of the *Departamento del Pequeño Derecho* (Small Rights Department), of the University of Chile. The common cultural heritage includes, *inter alia*, works by unprotected foreign authors, and royalties collected in respect of works not registered in the Intellectual Property Register are paid over to the *domaine public payant*, as are any royalties not collected within one year from the date on which they were paid. These and other resources are earmarked for the constitution of a " University Arts Fund ", to be used for " the adoption of measures conducive to the protection, encouragement and promotion of the work of authors in the country, in the fields of artistic creation and research " (Article 97).

In view of the general character of this article, we cannot examine this law in greater detail; I shall merely add that it contains two contradictory aspects in relation to the Berne Convention (Brussels Act) to which Chile has acceded, as already mentioned.

In the first place, Article 10 has amended the term of 50 years mentioned in the Executive's original draft and established a term of protection of 30 years after the author's death (which in the case of a surviving spouse extends throughout his or her lifetime). Secondly, in a rather imprecise form, inscription in the Intellectual Property Register is made compulsory (Article 73). It would appear that any works not so inscribed fall into the public domain (Article 97). Both these provisions are in contradiction with the Berne Convention.

Because of the serious views expressed and the failure to appreciate certain fundamental principles of the rights of authors, the statements made by one Senator, Dr. Aylwin, during the parliamentary discussion in April 1970 deserve to be mentioned as they undoubtedly influenced the decision to shorten the term of protection. He said: " I consider that the rules set forth in Articles 10, 12 and 13 concerning the duration and protection of rights beyond the author's lifetime are excessive. In my opinion, fifty years after death is too much. The Universal Copyright Convention, concluded at Geneva in 1952, which has been ratified by Chile, establishes a term of protection of not less than 25 years after the author's death. The legislation of the Soviet Union provides a term of 15 years, that of Liberia and Poland provides a term of 20 years. In my belief, what is created by the human intellect must become the common heritage of mankind. It can also justifiably be passed on to the author's spouse, children and other legitimate heirs. But I do not see why this right should be transmissible to other heirs, because there is absolutely no reason why an intellectual work should be a source of continuing profit for anyone who had nothing to do with its creation and has no close blood ties with the author " (official records of the Senate, April 25, 1970).

One cannot but deplore the rather original way in which the Chilean Senator cited examples, making them appear the general rule when they are in fact exceptions. He omitted to mention the great number of countries that offer a term of protection of 50 to 80 years, or the term of 50 years granted by all countries that have acceded to the Berne Convention.

Furthermore, the fact that protection is granted only subject to compliance with certain formalities is also in contradiction with the principles of the Berne Convention. Unregistered works fall into the public domain (Article 97).

Under a Brazilian Decree-Law dated October 20, 1969, a National Cinema Institute has been established; under a legal licensing regime, it intervenes in the collection of royalties and connected fees deriving from the showing of cinematographic films. This system of legal licensing is inconsistent with the Berne Convention, although it was justified to some extent by Dr. Hermano Duval, in his " Letter from Brazil ", published in *Copyright* in May 1969. This regime has been vigorously opposed by authors' societies in Brazil, and, acting in their name, Professor Antonio Chaves, who is an expert in these matters, has written a voluminous study on the Decree-Law of October 20, 1969, which was put before the Brazilian Government and was presented to the Legal and Legislative Commission of CISAC at the Congress of the Confederation held at Las Palmas in June 1970. According to Professor Chaves, this legislation not only disregards copyright where the cinema is concerned, but in addition it impairs copyright in general. It would affect legal principles not only of a domestic character, but also of an international character such as those set forth in the Berne Convention to which Brazil has acceded. The requirement of prior consent by authors is abolished, and, without any intervention on their part, fees are fixed as a percentage of the price of the tickets for admission to public cinemas. The Institute is empowered to determine the percentages for distribution between authors' societies and the beneficiaries of connected fees. The Legal and Legislative Commission of CISAC sent a telegram to the Brazilian Government requesting a suspension of the Decree-Law, which was all the more inopportune in that

[7] On this matter in general, see: Carlos Mouchet, *El dominio público pagante en materia de uso de obras intelectuales*, Buenos Aires, published by the Fondo Nacional de las Artes, 1970. See also *Copyright*, 1970, pp. 197 *et seq.*

it was issued at a time when consideration of a general text concerning copyright had already begun in Congress — namely a preliminary draft Code on Copyright and related rights.

This preliminary draft Code was prepared, under government auspices, by Counsellor Milton Sebastiao Barboza in 1967. It provides for a greater measure of State intervention. Various studies and comments concerning it have been made by authors' societies and other bodies representing interests of various kinds, for example the National Union of Book Publishers.

In Colombia, a draft law for the protection of performers was presented in September 1970. Its scope is in fact broader than the title indicates, because it also provides for protection of the interests of producers of phonograms and broadcasting organizations and establishes other rights regarding authorization for public performance over and above the rights of the authors and performers concerned. The Colombian Authors' and Composers' Society has reacted unfavorably to this draft law, stating *inter alia* that it would be premature to incorporate in the national legislation a system of protection of related rights of an industrial character, inspired by the Rome Convention on this matter, which has not yet been accepted by Colombia, whereas this country is not yet fully participating in the worldwide systems for protection of the rights of authors — namely, the Universal Convention and the Berne Convention, to which it is not a party. The draft failed to secure legislative approval.

I should like next to refer to my own country, Argentina, which has been a subject of criticism since Law No. 11,723 on copyright was enacted in 1933. I have been one of the critics [8], but while I still maintain my comments, I must recognize now that this law has contributed to establishing a climate of respect for the authors of intellectual creations and facilitating their "professionalization", particularly as a result of its implementation by the authors' societies. The principal sponsors of this legislation in Congress were Mr. Roberto J. Noble and Mr. Matías G. Sanchez Sorondo, and we should like to record our gratitude towards them.

Some reforms have been enacted, as follows, but they have not modified the characteristics and fundamental structure of the Law:

— Decree-Law No. 12,063 extending to 50 years the term of copyright protection *post mortem*;
— Decree-Law No. 1,224/956 establishing the National Arts Fund and setting up the *domaine public payant*;
— Law No. 17,753 providing for the use of intellectual works free of charge in the activities of educational establishments.

In 1969, the Director of the Copyright Directorate of Argentina, Dr. Ricardo Tiscornia, prepared a preliminary draft for a new copyright law, which was submitted to the Department of Justice. The latter in turn invited various institutions and a few private persons (including myself) to express their views on the draft.

Curiously enough, the preliminary draft appeared at a time when the authors' societies had not made any representations with a view to revision of the existing legislation. The proposal can no doubt be situated in the context of the government's policy of revising legislation in general — the most noteworthy instances of this being the reform of the Civil Code, of the procedural provisions, of labor legislation, commercial and criminal laws, etc.

By virtue of having acceded to the Berne Convention, Argentina has entered into an international commitment that requires it to make whatever adjustments may be necessary in its legislation in order to bring the latter into conformity with the provisions *jure conventionis* of that multilateral instrument.

While recognizing the need to bring existing legislation up to date, and the technical achievement which the preliminary draft represents, some people criticize the fact that it was published directly by a government department, without any prior consultation of the sectors concerned, and that such consultation has had to take place subsequently. Accordingly, the authors' societies view the preliminary draft as being only a starting-point for discussion and new formulations. It has been suggested that an advisory and drafting committee should be set up, composed of persons representing the responsible bodies in this field — the Copyright Directorate, the National Arts Fund, the Directorate for Cultural Relations of the Ministry of External Relations and such other bodies as may be designated in due course — together with experts representing the authors' societies.

The following hasic objections have been expressed concerning the draft: (1) the protection of foreign works departs from the liberal regime provided for by the existing legislation, under which agreements are not required; (2) the inclusion of a chapter on related or neighboring rights, which includes — in addition to the rights of performers — those of producers of phonograms and of broadcasting organizations; (3) excessive limitations on the rights of the author, because other rights concerning the use of intellectual works in the sphere of education and photocopying are added to those already existing; (4) more detailed rules on the inappropriately termed "assignment" of copyright, in order to afford better protection to the author from the social aspect; (5) need for more detailed provisions on exercise of the right to use intellectual works on radio and television, and also on cinematographic works; (6) in the field of publishing contracts, need for systematic supervision of the number of copies printed, as urged by the Argentine Writers' Society; etc.

Among the welcome innovations which the preliminary draft offers, we may mention the following: (1) elimination of the regime of formalities as a basis for protection; (2) improvements in penal sanctions; (3) institution of *droit de suite*; (4) specific regulations regarding the title of a work, owners of copyright in periodicals and the external appearance of a work; (5) inclusion of a more detailed system of protection for architectural works.

[8] Carlos Mouchet and Sigfrido Radaelli, *Derechos intelectuales sobre las obras literarias y artísticas*, Buenos Aires, Ed. Kraft, Vol. I, p. 50; and Carlos Mouchet, *Los derechos de los autores e intérpretes de las obras literarias y artísticas*, Buenos Aires, Ed. Abeledo-Perrot, 1967, pp. 33 *et seq.*

IV. Latin American and multinational treaties on copyright

The present extent of integration by the Latin American countries in the multilateral systems of protection for literary and artistic works is as follows:

Argentina: Montevideo Convention, 1889; Pan American Convention of Buenos Aires, 1910; Washington Convention, 1946; Universal Convention and Berne Convention (Brussels Act).

Bolivia: Montevideo Convention, 1889; Pan American Convention of Buenos Aires, 1910.

Brazil: Pan American Convention of Buenos Aires, 1910; Washington Convention, 1946; Berne Convention (Brussels Act) and Universal Convention.

Chile: Montevideo Convention, 1889; Pan American Convention of Buenos Aires, 1910; Wasbington Convention, 1946; Universal Convention and Berne Convention (Brussels Act).

Colombia: Pan American Convention of Buenos Aires, 1910.

Costa Rica: Pan American Convention of Buenos Aires, 1910; Washington Convention, 1946; Universal Convention.

Cuba: Washington Convention, 1946; Universal Convention.

Dominican Republic: Pan American Convention of Buenos Aires, 1910; Washington Convention, 1946.

Ecuador: Pan American Convention of Buenos Aires, 1910; Washington Convention, 1946; Universal Convention.

El Salvador: Is not a party to any of these agreements.

Guatemala: Pan American Convention of Buenos Aires, 1910; Wasbington Convention, 1946; Universal Convention.

Haiti: Pan American Convention of Buenos Aires, 1910; Universal Convention.

Honduras: Pan American Convention of Buenos Aires, 1910; Washington Convention, 1946.

Mexico: Pan American Convention of Buenos Aires, 1910; Wasbington Convention, 1946; Universal Convention and Berne Convention (Brussels Act).

Nicaragua: Pan American Convention of Buenos Aires, 1910; Wasbington Convention, 1946; Universal Convention.

Panama: Pan American Convention of Buenos Aires, 1910; Universal Convention.

Paraguay: Montevideo Convention, 1889; Pan American Convention of Buenos Aires, 1910; Wasbington Convention, 1946; Universal Convention.

Peru: Montevideo Convention, 1889; Pan American Convention of Buenos Aires, 1910; Universal Convention.

Uruguay: Montevideo Convention, 1889; Pan American Convention of Buenos Aires, 1910; Berne Convention (Brussels Act).

Venezuela: Universal Convention.

As we have already said, for a long time the Latin American nations looked mistakenly upon the Berne Convention, as being a European system and not as a world system for protecting the rigbts of authors. Tbe tendency in Latin America was therefore towards agreements of a regional, inter-American character.

It is significant that on the eve of the Conference convened at Stockholm in June 1967 to revise the Berne Convention, and within a very short time, three Latin American countries joined the system: Argentina, Mexico and Uruguay. Chile did so last year, and two or three more countries are expected to join in the very near future.

A number of factors have contributed to tbis change of attitude on the part of the Latin American countries. First of all, of course, there is a growing realization that the authors of intellectual works should be protected, and that " intellectual resources " are a source not only of spiritual wealth but also of material prosperity. It can readily be seen that, in countries where a better system of copyright protection has been introduced, a greater degree of " professionalization " of creative activity has developed in parallel. To be a composer, writer or playwright has ceased to be a mere " amateur ", on-the-side or secondary activity in some countries, but has become for many people a central activity that can afford them a livelihood. The work of the societies concerned with " small " and " grand " rights have made a vital contribution to this development. And, as far as accessions to the Berne Convention are concerned, the authors' societies can be said to have played a decisive role and will continue to do so, as can be seen from the statements made at the Inter-American Congresses on Copyright organized by the Pan American Council of CISAC.

As one Northb American author remarked, in an article written before Argentina acceded to the Berne Convention [9], one of tbe causes for the tardiness of this move might have been tbe belief — a mistaken one, in my view — that the national legislation was not consistent with the requirements of the Convention. The truth of the matter is that this was no obstacle to Argentina's accession, because in legal hierarcby a treaty takes precedence over national legislation. The same can be said with respect to many laws of other Latin American countries which are not yet parties to the Convention. Any legal obstacles do not exist or are not insuperable.

With respect to the position of the Latin American countries at the Stockholm Conference, it will be recalled that of the four countries that abstained from voting on the Act, three were Latin American: Argentina, Mexico and Uruguay.

The Stockholm Act of the Berne Convention was the subject of a declaration by Brazil under Article 38(2), while Argentina, Brazil and Cuba made declarations under Article 21(2) of the Convention Establishing the World Intellectual Property Organization.

The Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations has been ratified by Brazil, Ecuador, Mexico and Paraguay.

V. Authors' societies in Latin America

As I have already stated on other occasions, the authors' society is today the real and primary *protagonist* in matters of copyright, like the trade union in matters of labor legis-

[9] Melville B. Nimmer, " The Place of Argentina in the World Copyright Community " in *Revista Jurídica de Buenos Aires*, published by the Faculty of Laws and Social Sciences of the University of Buenos Aires, Buenos Aires, I-III, 1967. That article was written before Argentina's accession to the Berne Convention, but was published afterwards.

lation [10]. In the interest of real security, stability and protection of copyright this role as a protagonist must become increasingly great. In a world populated by masses and dominated by powerful economic and social factors, it is not feasible in practice for the author to benefit from and protect his intellectual creations by means of individual action alone — not only at national level, but also at the level of continents, let alone at world level, because of the essentially ubiquitous character of an intellectual work and its dissemination.

The creation, strengthening and national and international grouping of authors' societies can be viewed as a trend that is a necessary rejoinder to the increasingly mass character of reproduction, multiplication, long-distance transmission and use of intellectual works, as a consequence of new industrial techniques and the existence of vast commercial organizations. Authors no longer have dealings with the individual user or even the general public, but with large and powerful users' organizations in the form of industrial and commercial undertakings, sometimes even integrated in national or international organizations. The authors' societies have to coordinate their activities, make arrangements and, where necessary, argue with organizations " of the other part ".

As far as authors' societies in Latin America are concerned, their influence vis-à-vis users, on the one hand, and the government authorities, on the other, varies widely.

In Argentina, Brazil, Chile, Peru, Colombia, Venezuela, Mexico and Uruguay there are active societies that are organized on a professional basis and are all members of the International Confederation of Societies of Authors and Composers (CISAC). Most of them are active in the field of performing rights.

In Argentina there are three bodies — ARGENTORES (authors of theater, radio, film and television works), SADAIC and SADE — which operate independently and coordinate their activities. Uruguay has the AGADU which is of a general character and represents the three media. The only writers' society in America which operates on a professional basis and is affiliated to CISAC is the Argentine Writers' Society (SADE). Writers' societies are in existence in other countries, but they are politically oriented.

To illustrate the different systems for collecting royalties, we may mention those set up in Chile and Cuba.

The " Small Rights Department " at the University of Chile was established because no decision to set up a collecting society had been taken by the composers in that country. It is a State agency; and until recently the authors had no control over its administration. Under the new law on intellectual property, promulgated in 1970, this Department is to be under the responsibility of a Standing Committee composed of two representatives of the University of Chile, one of whom will hold the office of Executive Director of the Department and Chairman of the Committee, and three representatives designated by Chilean authors and composers (Article 92).

In Cuba, the Cuban National Society of Authors (SNAC) set up under Decree-Law No. 1,918 of January 18, 1955, was in existence until 1960; it was an autonomous public authority, operating as the only body recognized to represent and administer authors' rights in that country and abroad for the purpose of collecting and administering royalties in respect of public performance. Under that Decree-Law, all individual persons and corporate bodies entitled to collect royalties were deemed to be members of the Society, regardless of the form or origin of the royalties concerned.

The Fidel Castro regime abolished the SNAC and ,under a law dated August 6, 1960, an entirely State-controlled organization was set up to collect and administer royalties in respect of musical works, under the title " Cuban Institute for Musical Rights ". Under the same law, all contracts concluded with foreign persons or organizations were cancelled, and any royalties not collected were declared to be subject to prescription.

A long-standing problem in Brazil has been the existence of a large number of authors' societies of the same kind. In addition to the SBAT, there are three other societies with headquarters at Rio de Janeiro which are concerned with the collection of royalties on musical works: UBC, SADEMBRA and SBACEM, SBAT and UBC are members of CISAC. In the absence of any State machinery for collecting royalties, these societies have established a joint " bureau " to collect authors' royalties as well as the fees due to performers and to producers of phonograms. The office is known as the " Authors' Rights Defense Service ". Apart from this group, an independent society — SICAM — has its headquarters at Sao Paulo. Before the Bureau was established, there was considerable confusion and disorder among users, and perplexity on the part of the public authorities.

In Argentina, where there are no comparable societies of the same kind, a law was enacted fairly recently which gives exclusive responsibility in these matters to the Argentine Authors' and Composers' Society (SADAIC). Law No. 17,648 of February 22, 1968, " recognizes the Argentine Authors' and Composers' Society (SADAIC) as a civil and cultural association of a private character, representative of the creators of classical or popular music of Argentina, whether or not with text, of the heirs and beneficiaries thereof and of foreign authors' societies with which they are associated by means of agreements providing for assistance and reciprocal representation " (Article 1). The State will exercise permanent financial supervision by means of auditors designated by the Department of Justice and the Department of Promotion and Assistance of the Community.

Implementing regulations in pursuance of the above-mentioned law were issued in Decree No. 5,146 of September 12, 1969. Physical persons or corporate bodies, whether Argentine or foreign, who are eligible to receive royalties deriving from the use of musical works or literary works set to music must act through SADAIC. The latter is empowered to co-

[10] Appreciating this, BIRPI, in collaboration with CISAC, held a symposium from November 25 to 29, 1968, on the organization and functioning of authors' societies, which included in particular representatives from African and Asian countries. See the interesting publication *Symposium on the practical aspects of copyright, Geneva, 1968*, published by BIRPI, Geneva, 1969, with studies by C. Masouyé, L. Malaplate, J. L. Tournier, E. Schulze, J. Van Nus, R. Whale, J. Novotný, U. Uchtenhagen and A. Ciampi. A meeting devoted to Latin America would be very desirable.

ordinate collection and administration procedures with other authors' societies of a different kind, with bodies having related activities and with the National Arts Fund (to which the *domaine public payant* accrues).

The only laws that envisage the role of authors' societies in the context of these rights are precisely the most recent ones. Thus, in the Mexican law, Chapter VI is devoted to authors' societies (Articles 93 to 117). Article 15 of the Peruvian law recognizes the authors' societies as being competent to represent their members. The Venezuelan law devotes a chapter to " representative associations of authors " (Articles 61 to 64).

One serious negative factor is the non-existence of societies in some countries, or the ineffectiveness of such societies as do exist. Also extremely harmful are the activities of pseudo authors' societies, administered by one or more persons as they please, without any objective and permanent rules to govern relations with authors or users.

The authors' societies of Latin America are grouped in the Pan American Council of CISAC, which carries on continuing responsibilities at the regional American level. This Council is one of the constituent bodies of the CISAC structure (Article 8 of the Statutes).

Latin America is making great efforts towards integration in economic, social, cultural, etc., matters, along the lines of integration in Europe, as one element in the fight against under-development.

It seems clear to me that the Pan American Council of CISAC should be considered as an instrument of such cultural integration, because it coordinates the work of authors' societies in the continent, exercises joint influence on the puhlic authorities, promotes the reform of legislation, tends to raise the place in society and the economic resources of intellectual creators without any distinction between countries, and encourages integration of all countries in the world systems of protection for literary and artistic works, etc.

VI. Trends in legal doctrine

At the present time there are no institutes in Latin America specialized in the scientific study of copyright matters. The subject is considered in an incomplete way in the law faculties of universities, in the context of courses on civil law, commercial law, procedural law, administrative and criminal law, but generally without any detailed development. In Argentina, a private study center — the Argentine Intellectual Rights Institute — has been functioning for some years past, with the cooperation of experts on copyright and patents.

There are only a few jurists who have devoted their attention to this subject in a more or less continuing way in recent years. At the risk of overlooking unjustly some names, we may mention some jurists who have already published studies or are giving legal advisory assistance on a continuing basis to authors' societies or to government departments concerned with these matters.

Brazil: Ildephonso Mascarenhas da Silva (deceased); Pedro Vicente Bobbio; Antonio Chaves; Hermano Duval; Dirceu de Oliveira e Silva; Daniel da Silva Rocha and Claudio de Souza Amaral.

Chile: Ernesto Galliano Mendiburu and Fernando Guerrero.

Colombia: Antonio J. Arrango, Arcadio Plazas, Eduardo Santa and Camilo de Brigard Silva.

Ecuador: Enrique Avellán Ferres.

Mexico: Arturo Gonzales Cosío, Arsenio Farell and David Rangel Medina (the latter is the Director of the *Revista Mexicana de la Propiedad Industrial y Artistica*).

Peru: Rafael Morales.

Uruguay: Romeo Grompone, Estanislao Valdez Otero and Armando Sciarra Quadri.

Venezuela: Roberto Goldschmidt (deceased), Francisco Hung Vaillant and Andrés Rosa.

Argentina: Abel Aristegui, Héctor Della Costa, Eduardo Augusto García, Julio C. Ledesma, Delia Lipszyc, Eduardo Mendilaharzu (deceased), Sigfrido Radaelli, Eduardo J. Ríos, Isidro Satanowsky (deceased), Ricardo Tiscornia, Carlos Villalha, Pedro C. Acebey, etc.

We should also mention the meetings on authors' rights in America which were of a scientific and technical character and have contrihuted to promote the development of legislation and studies in this field [11].

First of all, the Inter-American Meeting of Copyright Experts organized hy Unesco, in cooperation with CISAC, which was held at Rio de Janeiro in 1966.

Special mention should also be made of the second session of the Hispano-American Legal Seminar (Copyright), held at Madrid in 1966 on the initiative of Dr. Fernando Murillo, Director of the Hispano-American Legal Studies Center of the Hispanic Cultural Institute, under the auspices and with the collaboration of BIRPI, in which jurists from Spain and the Hispano-American countries took part.

In addition, the program of meetings for the nine Inter-American Congresses on Copyright, held in various Latin American capitals under the auspices of the Pan American Council of CISAC, has always included seminars or round tables on this subject [12]; we would mention in particular, because of their systematic character, the conclusions of the Seminar held at Lima in 1963.

VII. Prospects

I helieve that the development of authors' rights — which implies better protection of the rights of intellectual creators and therehy an increase in cultural values and resources — will require a whole set of activities and measures of various kinds, both at the national and the regional levels and in regard to Latin America's position in the world.

A reflection and a consequence of what we term " underdevelopment " can be seen in the very limited development in some countries of the influence and social standing of

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[11] The conclusions and records of all the meetings mentioned in the ensuing paragraphs have been brought together in a documentary publication entitled *El derecho de autor en América*, published by the Pan American Council of CISAC, Buenos Aires, 1969. See *Copyright*, 1970, p. 37.

[12] We would commend here ihe decision by the Director General of WIPO, Professor G. H. C. Bodenhausen, that that Organization should be represented, by Mr. Claude Masouyé, at the most recent among ihese Congresses.

authors, composers and playwrights, which should lead to a situation in which their particular activities could constitute a livelihood for them, and not a purely marginal or accessory occupation.

Without attempting to enumerate all the aspects involved in a policy designed to develop and reinforce the rights of authors in Latin America, I shall mention below those activities and measures which would be appropriate on the part of the international organizations, of governments, and of the authors' societies themselves.

At an *international* level, the following aspects should be taken into account:

(a) carrying out of studies and research on the economic and social situation of intellectual creators in Latin America; these should be sponsored by international organizations such as the World Intellectual Property Organization, Unesco, the OAS, the Inter-American development Bank (IDB), etc.;

(b) convening by the World Intellectual Property Organization, Unesco and CISAC of periodic regional conferences, similar to the one organized by Unesco in 1966 at Rio de Janeiro [13];

(c) continuation of the policy of sending study and promotion missions, as already initiated by the Pan American Council of CISAC, to various countries in Latin America in order to publicize the principles of copyright and support the establishment of new authors' societies and the development of existing ones;

(d) ratification of the Berne Convention (Brussels text) by countries that have not yet done so, as recommended by Inter-American Congresses on Copyright; and, where appropriate, the Universal Convention;

(e) provision of technical and financial assistance at an international level, by WIPO, Unesco, IDB, etc. for the establishment of new authors' societies and improvement of existing ones.

At the *national* level, I believe that policies and measures appropriate for the following aspects should be adopted:

(a) action to publicize the guiding principles of copyright and existing legislation on the subject, in universities and cultural institutions as well as in the legal and administrative bodies concerned in the implementation of such legislation. Establishment of specialized courses and seminars;

(b) creation in each country of a Copyright Commission or Institute, to give advisory assistance to the public authorities, keep legislation under continuing review, bring it up to date, and promote the development of studies on this subject;

(c) government recognition of the vocation of authors' societies as institutions for the public good, and State support for the creation and functioning of such societies, on the grounds that without such bodies the legislation is virtually ineffective (subsidies, tax exemptions, technical assistance, etc.);

(d) improved organization of copyright registers in each country, with a view to general registration of works and authors to permit statistical and administrative verification of the legal existence and activities of users;

(e) adoption of administrative rules, where none yet exist, to empower the State authorities (police, municipal authorities, etc.) to take preventive action in order to ensure compliance with the laws and regulations on authors' rights;

(f) revision of judicial proceedings so as to establish simplified economical procedures to guarantee the effective exercise of these rights and their defense in case of infringement;

(g) abolition of taxes on royalties, including a solution to the problem of double taxation at the international level;

(h) promotion of intellectual production through the establishment of funds for cultural development out of which fellowships, subsidies and grants can be accorded to authors and support can be given to authors' societies; such funds would also assist industrial and commercial activities connected with the reproduction, multiplication and dissemination of intellectual works (publishing firms, theaters, recording industry, film production, etc.).

In conclusion, it is appropriate to recall what Cicero said many centuries ago: *Honos alit artes*, " The arts thrive on honor " (*Tusculanas*, 1, 2, 4). Indifference is fatal for writers and artists, while the consideration and esteem which they enjoy spur on their efforts. And this is particularly relevant for all those who are living and creating in the vast Latin American continent.

Dr. Carlos MOUCHET

[13] An inspiring decision is that adopted at the XXVII World Congress of Authors, of CISAC, to hold the XXVIII Congress in Mexico in October 1972.

CONVENTIONS NOT ADMINISTERED BY WIPO

SPAIN

Accession to the European Agreement on the Protection of Television Broadcasts and to the Protocol to the said Agreement

In a letter dated October 18, 1971, the Secretary-General of the Council of Europe informed WIPO that, with the prior approval of the Committee of Ministers of the Council of Europe, Spain acceded to the *European Agreement on the Protection of Television Broadcasts, of June 22, 1960*, and to the *Protocol to the said Agreement, of January 22, 1965*. The instrument of accession of Spain was deposited with the Secretary-General by the Chief of the Special Mission and Consul-General of Spain in Strasbourg, on September 22, 1971.

The Agreement on the Protection of Television Broadcasts and the Protocol to the said Agreement took effect for Spain on October 23, 1971, under the provisions of Article 9(2) of the Agreement and Article 4(2) of the Protocol. These two treaties are already in force with respect to eight Member States of the Council of Europe: Belgium, Cyprus, Denmark, France, Germany (Federal Republic), Norway, Sweden and the United Kingdom.

CALENDAR

WIPO Meetings

December 6 to 8, 1971 (Geneva) — Patent Cooperation Treaty (PCT) — Interim Advisory Committee for Administrative Questions
Members: Signatory States of the PCT — *Observers:* Intergovernmental and international non-governmental organizations concerned

December 8 to 11, 1971 (Geneva) — Patent Cooperation Treaty (PCT) — Standing Subcommittee of the Interim Committee for Technical Cooperation
Members: Austria, Germany (Fed. Rep.), Japan, Soviet Union, Sweden, United Kingdom, United States of America, International Patent Institute — *Observer:* Brazil

January 17 to 28, 1972 (Mnnich) — 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

Fehrnary 5 to 10, 1972 (Cairo) — Arah Seminar on Treaties Concerning Industrial Property
Object: Discnssion on the principal multilateral treaties on industrial property and the WIPO Convention — *Invitations:* States members of the Arab League — *Observers:* Intergovernmental and international non-governmental organizations concerned

Fehrnary 21 to 25, 1972 (The Hague) — International Patent Classification (IPC) — Working Group II of the Joint ad hoc Committee

March 1 to 3, 1972 (Geneva) — ICIREPAT — Technical Coordination 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: Discussion of a draft Agreement and draft Regulations — *Invitations:* Member countries 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

April 10 to 14, 1972 (Geneva) — ICIREPAT — Technical Committee for Standardization

April 17 to 21, 1972 (Geneva) — ICIREPAT — Technical Committee for Shared Systems

April 17 to 21, 1972 (Geneva) — ICIREPAT — Advisory Board for Cooperative Systems

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:* Member countries of the Paris Union; organizations concerned

May 29 to June 2, 1972 (*) — International Patent Classification (IPC) — Bureau of the Joint ad hoc Committee

June 5 to 9, 1972 (*) — International Patent Classification (IPC) — Joint ad hoc Committee

June 26 to July 7, 1972 (The Hague) — International Patent Classification (IPC) — Working Group I of the Joint ad hoc Committee

July 5 to 7, 1972 (Geneva) — ICIREPAT — Technical Coordination Committee

July 10 to 14, 1972 (The Hague) — International Patent Classification (IPC) — Working Group III of the Joint ad hoc Committee

September 4 to 8, 1972 (*) — International Patent Classification (IPC) — Working Group II of the Joint ad hoc Committee

September 11 to 15, 1972 (London) — International Patent Classification (IPC) — Working Group V of the Joint ad hoc Committee

September 20 to 22, 1972 (Geneva) — ICIREPAT — Plenary Committee

September 25 to 29, 1972 (The Hague) — International Patent Classification (IPC) — Working Group IV of the Joint ad hoc Committee

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

October 2 to 6, 1972 (Geneva) — Patent Cooperation Treaty (PCT) — Interim Committees and Standing Subcommittee of the Interim Committee for Technical Cooperation
Members of the Interim Committees: Signatory States of the PCT — *Observers:* Intergovernmental organizations and international non-governmental organizations concerned; *Members of the Standing Subcommittee:* Austria, Germany (Fed. Rep.), Japan, Soviet Union, Sweden, United Kingdom, United States of America, International Patent Institute — *Observer:* Brazil

October 9 to 13, 1972 (Geneva) — ICIREPAT — Technical Committee for Standardization

October 16 to 20, 1972 (Geneva) — ICIREPAT — Technical Committee for Computerization

October 23 to 27, 1972 (Geneva) — ICIREPAT — Technical Committee for Shared Systems

October 23 to 27, 1972 (Geneva) — ICIREPAT — Advisory Board for Cooperative Systems

December 13 to 15, 1972 (Geneva) — ICIREPAT — Technical Coordination Committee

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

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* Place to be notified later.

UPOV Meetings

December 14 and 15, 1971 (Geneva) — Working Party on Fees

January 25 and 26, 1972 (Geneva) — Technical Working Party for Vegetables

May 23 and 24, 1972 (Cambridge) — Technical Working Party for Cross-fertilized Agricultural Crops

May 25 and 26, 1972 (Antibes) — Technical Working Party for Ornamental Plants

November 7 and 10, 1972 (Geneva) — Diplomatic Conference
Object: Amendment of the Convention

November 8 and 9, 1972 (Geneva) — Council

Meetings of Other International Organizations concerned with Intellectual Property

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

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

March 19 to 24, 1972 (Nice) — International Literary and Artistic Association — Congress

April 24 to 28, 1972 (*) — International Association for the Protection of Industrial Property — Council of Presidents

April 25 to 27, 1972 (Helsinki) — International Writers Guild — Executive Council

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

October 16 to 21 (Mexico) — International Confederation of Societies of Authors and Composers — Congress

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

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

January 24 to February 4, 1972 — Intergovernmental Conference
February 22 to 25, 1972 — Working Party IV
June 19 to 30, 1972 — Intergovernmental Conference

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* Place to be notified later.

VACANCY IN WIPO

Applications are invited for the following post:

Competition No. 171 *

Head of Copyright Division

Category and grade: P. 5

Principal duties:

The incumhent will direct the Copyright Division of the International Bureau. In this capacity his duties will include:

(a) formulation of proposals for the preparation and implementation of the WIPO copyright and neighhoring rights program;
(b) writing of legal studies;
(c) acting as editor of " Copyright " and " Le Droit d'Auteur ";
(d) representing WIPO at meetings concerning copyright and neighhoring rights and preparation of working papers for and reports on such meetings;
(e) directing the work of maintaining up to date a collection of copyright and neighhoring rights legislation.

Qualifications:

(a) University degree in law or equivalent legal qualifications.
(b) Wide experience in the field of copyright and neighboring rights, including its international aspects.
(c) Excellent knowledge of one of the following working languages: English or French, and at least a good knowledge of the other. Additional linguistic ahilities would he an advantage.

Nationality:

Candidates must he nationals of one of the memher States of WIPO or of the Paris or Berne Unions. Qualifications heing equal, preference will he given to candidates who are nationals of States of which no national is on the staff of WIPO.

Date of entry on duty:

As mutually agreed.

Applications:

Application forms and full information regarding the *conditions of employment* may he ohtained from the Head of the Administrative Division, WIPO, 32, chemin des Colomhettes, 1211 Geneva 20, Switzerland. Please refer to the number of the Competition.

Closing date:

Februaty 15, 1972.

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* *Note:* This vacancy announcement cancels and supersedes Competition No. 137, of Decemher 1970, for the same post.