

# Copyright

Review of the  
WORLD INTELLECTUAL PROPERTY  
ORGANIZATION (WIPO)

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

Published monthly  
Annual subscription: Sw.fr. 50.—  
Each monthly issue: Sw.fr. 6.—

8<sup>th</sup> year - No. 7  
JULY 1972

## Contents

	Page
<b>WORLD INTELLECTUAL PROPERTY ORGANIZATION</b>	
— Mexico. Application of the transitional provisions (five-year privilege) of the WIPO Convention . . . . .	142
— Second 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 Transmission Via Space Satellites (Paris, May 9 to 17, 1972) . . . . .	142
<b>CORRESPONDENCE</b>	
— Letter from Israel (Victor Hazan) . . . . .	155
<b>CONVENTIONS NOT ADMINISTERED BY WIPO</b>	
— Universal Copyright Convention: Morocco. Accession to the Convention and annexed Protocols 1, 2 and 3 . . .	158
<b>CALENDAR</b>	
— WIPO Meetings . . . . .	159
— UPOV Meetings . . . . .	159
— Meetings of Other International Organizations concerned with Intellectual Property . . . . .	160



Cameroon, Canada, Central African Republic, Chile, Cyprus, Denmark, Ecuador, Egypt, Finland, France, Federal Republic of Germany, Greece, Guatemala, Hungary, India, Ireland, Israel, Italy, Japan, Kenya, Lebanon, Mexico, Monaco, Morocco, Netherlands, Nigeria, Norway, Spain, Sweden, Switzerland, Tunisia, Turkey, United Kingdom, United States of America, Yugoslavia;

(ii) observers from the following four States: Holy See, Philippines, Poland, Ukrainian Soviet Socialist Republic;

(iii) observers from the International Labour Organisation (ILO), from the International Telecommunication Union (ITU), and from 20 international non-governmental organizations.

The complete list of participants is reproduced in Annex C of this report.

#### Opening of the Meeting

5. The meeting was opened by Mr. René Maheu, Director-General of Unesco, and by Dr. Arpad Bogsch, First Deputy Director General of WIPO, on behalf of their respective Organizations.

#### Election of the Chairman

6. On the proposal of the Delegation of France, supported by the Delegations of Belgium, Kenya, Morocco, and the United States of America, Mrs. Elisabeth Steup, Head of the Delegation of the Federal Republic of Germany, was unanimously elected Chairman of the Committee.

#### Adoption of the Rules of Procedure

7. The Committee then adopted its Rules of Procedure as they appear in document UNESCO/WIPO/SAT.2/2, it being understood that the drafting of the report of the meeting would be entrusted to the Secretariats of Unesco and WIPO.

#### Election of other Officers

8. On the proposal of the Delegation of the United States of America, supported by the Delegation of the Federal Republic of Germany, the Committee unanimously elected as Vice-Chairmen the Heads of the Delegations of Japan, Kenya, and Mexico.

#### Adoption of the Agenda

9. The Agenda proposed in document UNESCO/WIPO/SAT.2/1 was unanimously adopted by the Committee.

#### Documentation

10. The working documents of the Committee consisted of the report of the first meeting of the Committee of Experts at Lausanne (document UNESCO/WIPO/SAT/22), the text of the resolutions adopted, respectively, by the Intergovernmental Copyright Committee and the Executive Committee of the Berne Union (document UNESCO/WIPO/SAT.2/INF.3), and by the Intergovernmental Committee of the Rome Convention (document UNESCO/WIPO/SAT.2/INF.4), as well as the comments received from governments (document UNESCO/WIPO/SAT.2/4) and from intergovernmental or international non-governmental organizations (document UNESCO/WIPO/SAT.2/5).

#### General Discussion

11. As at Lausanne, the Committee undertook a general discussion as to whether the best solution of the problems under consideration should consist of a revision of the International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations (hereinafter called "the Rome Convention"), of modifications in the international instruments administered by the International Telecommunication Union, of the conclusion of a new and independent treaty, or of other means.

12. In general, the delegations indicated at the outset that they agreed as to the need for preventing the unauthorized use of programme-carrying signals. It was agreed that this would not only be in the interest of broadcasting organizations, but equally in the interests of all contributors to the production of programmes transmitted by these signals other than those whose contributions are of a purely physical or technical nature.

13. On the assumption that neither the proposal of the Delegation of the United Kingdom — to adopt, in the expectation of a broader ratification of the Rome Convention, a simple resolution condemning the unauthorized use of signals — nor the suggestion of the Delegation of Italy — to enact, with the aim of providing simple and universally-applicable standards, under the established rules of international public law, a rule without specific penalties obliging States to prohibit the piracy of signals — had the support of the majority of the Committee, the discussion, as at Lausanne, was focussed on the issue of whether the Rome Convention should be revised or whether a new and independent treaty should be prepared.

14. On the other hand, certain delegations expressed their hesitation as to the necessity for adopting, at the international level, new measures for regulating the transmission by satellite of programme-carrying signals. In this connection, they called to the attention of the Committee the problems that would arise from a proliferation of treaties in the field of copyright and neighbouring rights.

15. A certain number of delegations indicated that they would prefer to find a solution to the problems under consideration by means of a revision of the Rome Convention, because in their opinion that international instrument assures a balance among the interests principally concerned with satellite transmissions. Within this group, certain delegations took the further position that the present text of the Rome Convention should be construed as sufficient to prevent piracy of signals. All delegations in this group emphasized that the preparation of a new treaty intended to satisfy the needs of broadcasting organizations, when added to the recently-adopted Convention for the protection of producers of phonograms, could have the effect of reducing future adherences to the Rome Convention. They declared that, should a new instrument be prepared, in any event it would be wise to find means of establishing a link between it and the Rome Convention.

16. Several delegations observed that, in their view, the Rome Convention in any event does not provide the appropri-

ate legal framework because, in its present version, it is not capable of gaining the universal acceptance that any instrument dealing with as universal a phenomenon as satellites must receive. Up to now, it has been ratified by only a small number of States; and this number does not appear likely to be greatly increased if several assumptions are correct: first, as a number of delegations stated, the Rome Convention is not acceptable to their country for economic, juridical, or political reasons; second, as some delegations noted, only States party to the Berne Convention or the Universal Copyright Convention are entitled to accede to it; and finally, that the Rome Convention cannot be applied without first adopting national legislation to implement it.

17. Some delegations declared that the possibility of a revision of the Rome Convention did not appear to them to offer an adequate solution, because the delays necessarily involved in such a revision are inconsistent with the urgency of resolving, at the international level, the problems being examined by the Committee. These delegations noted that no proposal for a revision of the Rome Convention had been officially presented and that, moreover, the goals of any such revision have not yet been sufficiently defined. In response to certain delegations that had sought to bring out the reasons why the Rome Convention had not received wide acceptance, they stated that in their opinion, a consideration of this sort was not within the competence of the Committee.

18. At this stage of the discussion, most of the delegations, including those that would have preferred to deal, in the context of the Rome Convention, with a matter which concerns that Convention, declared that if the majority of the Committee expressed itself in favour of the preparation of a new and independent treaty, they would be willing to co-operate in the consideration of such a treaty.

19. Certain of these delegations reaffirmed the points of view already expressed by them at Lausanne, to the effect that any such international agreement should be simple, should give to the Contracting States broad discretionary power to choose the juridical means for implementing it, should include provisions safeguarding the interests of authors, of performers, and of phonogram producers, that it should not in any way prejudice the future of the Rome Convention, and that it must be open to all States.

20. Certain delegations regarded it as important to make clear that the discussion of a new international instrument and its eventual adoption should not impair in any way the possibility of a revision of the Rome Convention under the conditions provided by the latter.

21. Other delegations reaffirmed that, in their opinion, the problems in question should be resolved within the framework of the administrative agreements of the International Telecommunication Union, and that this solution should not be unconditionally rejected.

22. During the course of the discussions, two schools of thought became apparent. The first, which is expressed in paragraphs (2) to (4) of Alternative A of Article IV, is based

on the theory that the new instrument must be made to serve a double purpose: to prevent the growth of piracy of signals and, at the same time, to assure that the interests of the contributors to the programmes transmitted by the signals are safeguarded. According to this theory, such a safeguard is necessary because there is no assurance that it exists under the international conventions on copyright and neighbouring rights, whose interpretation on this point is very problematical. Concerning this subject, the Delegation of France stated expressly that, should the scope of the instrument be limited to the protection of signals, the importance of the instrument would be considerably lessened in the eyes of the French Government.

The other school of thought, which is reflected in Alternative B of Article IV, is in favour of an instrument as simple as possible, aimed essentially at prohibiting the unauthorized distribution of signals without prejudicing in any way the prerogatives recognized by national legislation and the appropriate international conventions dealing with copyright and neighbouring rights. Under the second theory, these conventions here and now allow for the contractual regulation of the relationships among the interested parties. Taken as a whole, the discussion demonstrated that the question of whether, in addition to providing protection of the signal, the new instrument should also safeguard the rights of contributors to programmes constitutes a decisive issue.

#### Draft Convention

23. After this exchange of views, the Committee proceeded to examine, article by article, the draft Convention drawn up by the First Committee of Experts at its Lausanne meeting.

24. In the course of its deliberations, the Committee entrusted to a Working Group the task of reworking the provisions concerning the definitions of certain terms used in the draft Convention, the nature of the obligations to be undertaken by the Contracting States, the juridical means by which the new treaty is to be implemented, and the minimum period during which it would be illicit to distribute programme-carrying signals. This Working Group, under the chairmanship of Mrs. E. Steup, Chairman of the Committee, was composed of the Delegations of the following States: Australia, Canada, France, Kenya, Mexico, Nigeria, Spain, Tunisia, United States of America.

25. In addition, a Drafting Committee was appointed to put in final form the provisions of the draft Convention as they emerged from the deliberations of the Committee. Under the chairmanship of Mr. Haardt (Netherlands), it was composed of the Delegations of the following States: Argentina, Austria, Canada, France, India, Kenya, Netherlands, Spain, Tunisia, and the Chairman of the Committee, *ex officio*.

#### Title

26. Because of the terminology used to determine the obligations imposed upon Contracting States, which terminology no longer included the concept of prohibition, the Committee took the position that the title should not refer to this con-

cept; instead, the title should simply characterize the draft as a Convention against the unauthorized distribution of programme-carrying signals. Moreover, in conformity with the terms used in the definition of "satellite", the title substitutes the phrase "transmitted by satellites" for "communicated by satellites" in specifying the nature of the signals involved.

#### Preamble

27. Aside from its substitution of the word "transmitted" for the word "communicated", the Committee retained the text of paragraph (a) as drafted at Lausanne.

28. With respect to paragraph (b), it was understood that the term "author" must be broadly construed, and that in particular it includes composers of music and other creators of intellectual works. In addition, certain delegations noted that the reference to "other contributors to the programmes" is needed in neither the Preamble nor in paragraph (1) of Article IV, because of the new provisions in the other paragraphs of Article IV. Other delegations, and in particular the Delegation of the United States of America, indicated their preference for retaining the reference to "other contributors". In view of their hesitancy to drop this phrase entirely, the Committee took no decision on the point, and maintained the phrase in the text within square brackets. Finally, the majority of the Committee took the position that it was not its intention to extend the benefits of the Convention to those whose contributions to the emission and distribution are essentially technical. The Delegation of the United States of America, however, pointed out that a convention which simply seeks to protect signals automatically benefits all those with any interest whatever in the signals.

29. Paragraph (c) of the Preamble, as it appeared in the Lausanne text, was changed in a way to bring out more clearly that the purpose of the Convention involves the protection of programme-carrying signals against their unauthorized distribution, and that this protection in turn is in the interest of the persons and organizations referred to in the preceding paragraph.

30. With regard to paragraph (d), the Committee decided to retain the alternative referring to the concern that there in no way be any prejudice to the wider acceptance of the Rome Convention, and to refer to that Convention by its official title. The Delegations of Canada and Egypt wished to go on record as opposed to including this reference.

#### Article I: Field of application of the Convention

31. The text adopted at Lausanne contained a series of definitions of terms used in the draft Convention. The Committee decided that, before the article defining certain expressions, it would be advisable to specify, in an introductory article, the field of application envisaged by the new treaty. The Committee also took the view that this field of application should include the case where a signal that has passed through a satellite is fixed before being used, and that this should be stated expressly in the wording of Article I.

#### Article I<sup>bis</sup>: Definitions

##### Item (i): "Signal"

32. On the assumption that the proposed new treaty was to be aimed at preventing the piracy of programme-carrying signals, the Committee considered that it would be appropriate to define not only the term "programme", as had been done in the Lausanne text, but also the term "signal", to avoid any ambiguity. It was suggested by some delegations that this definition should include the limitation "which, after their emission, pass through a satellite". The majority, however, while agreeing that the definition was only given in this sense, considered that the limitation was effectively extended throughout the Convention by the language of Article 1.

##### Item (ii): "Programme"

33. Having considered the text prepared at Lausanne, the Committee was of the opinion that the reference to "ultimate reception by the general public, including any segment thereof" concerned the distribution of signals and should not be included in the definition of "programme".

34. The First Committee of Experts had taken the view that the words "bodies of material" should not be taken to imply that the "body" or the "material" must exist in the form of a fixation; thus, the signals may carry both "live" (unfixed) and fixed programmes. The Committee decided that it would be useful to specify in the same definition that a "programme" is "a body of live or recorded material".

35. It was understood that a programme embodied in signals emitted for the purpose of ultimate distribution could incorporate material originally produced for other purposes.

36. The First Committee of Experts had been divided on the question whether the Convention should cover signals carrying sounds only, and had decided to present two alternatives: one would cover sounds even if unaccompanied by images; the other would cover sounds only if combined with images; both would cover images. The majority of the Committee declared itself in favour of images alone or of a combination of sounds and images. However, the Delegations of Australia, Austria, France, Italy, Spain and the United States of America expressed reservations on this point, and stated their preference for the other alternative. Ultimately, the Committee took no position on the question, and decided to retain the two alternatives.

##### Item (iii): "Satellite"

37. With regard to the definition prepared at Lausanne, the Committee considered it necessary to specify that the satellite must be located in "extraterrestrial space". It was understood, however, that this expression should not be interpreted as excluding the possibility of using a system in which the satellite is located in extraterrestrial space only at certain times.

##### Item (iv): "Originating organization"

38. Certain delegations observed that the definition in the Lausanne text, which provided for the two concepts of "makes" and "orders the making", could lead to the conclu-

sion that a double liability had been contemplated. Other delegations noted that it would be a matter for the national legislation of each Contracting State to determine the only person liable. To avoid any possibility of misinterpretation, the Committee decided that, to define the "originating organization", it should refer to the person or entity that decides what programme the signals will carry.

39. This act by which a person or entity "decides" should be distinguished from a decision concerning the content of a programme that may result, for example, from the way the programme is put together by a director, or from the manner in which the cameraman captures the images contained in the programme. This concept must also be distinguished from the decision-making process involved in the sending of the signal; the latter is a decision that can be controlled by telecommunications authorities or common carriers of signals. Thus, under the definition adopted, the term "originating organization" refers only to the person or entity making the decision as to what programme the signal will carry.

40. The Delegation of the United Kingdom pointed out that in the British legislation, protection for broadcasts was given not to programme contractors but to organizations owning the antennae from which the signals are emitted.

*Item (v): "Distribution"*

41. The First Committee of Experts had defined "distribution" as any act whereby signals are transmitted to the public. During the discussion of this definition, a number of delegations noted that, in the case of direct broadcasting satellites, it seemed difficult to contemplate that an "act" can be accomplished by the satellite. The Committee thus decided that distribution should be defined as the transmission of signals to the public.

42. Certain delegations inquired as to whether the first phase of the transmission, that is, the transmission made from the earth to the satellite, could be considered as part of the distribution. It was understood that the definition as contained in the draft Convention should not prejudice the answer to be given to this question.

43. Moreover, the Committee expressed the opinion that the Convention should be applicable not only where the distribution takes place simultaneously with the original emission, but also in cases where no such simultaneous distribution occurs.

44. As at Lausanne, it was agreed that the term "distribution" was not limited to distribution by wire, cable, or traditional forms of wireless broadcasting, since future technology may make distribution possible through other methods.

45. Finally, the Committee adopted without change the viewpoint adopted at Lausanne under which transmission "to the general public or any segment thereof" includes not only the traditional forms of broadcasting, but also transmittal through community antenna television systems, cable and closed-circuit television, and any other means of transmission through wires, cables, or other communications channels to subscribing members of the public. The Committee also noted that the expression "subscribing members of the public" did

not imply that such members of the public were required to pay a fee or charge.

**Article II: Obligations imposed upon Contracting States**

46. The Lausanne draft of the Convention provided that each Contracting State was obliged to prohibit and provide for sanctions against the distribution of signals carrying programmes under certain conditions. The words "prohibit and provide for sanctions" seemed to a number of delegations to have an essentially penal connotation, even though it was generally agreed that the States should be able to choose the juridical means for implementing the Convention; these means would not necessarily be penal in nature, but could also be civil or administrative.

47. Under these circumstances, the Committee took the view that the obligation imposed on the States by the Convention should merely be stated as considering as "illicit" the distribution of programme-carrying signals without the authorization of the originating organization where said organization is a national of another Contracting State. In this connection, the nationality of the originating organization was retained as the sole criterion, it being understood that the Convention would contain a provision under which any Contracting State could apply the place of emission as the sole criterion when its national legislation in force on a particular date, which could be the date of the Convention, provides for this as the only criterion.

48. The Committee did not consider it worth while to cover expressly, in this article, the case where the distribution was made "simultaneously with the original emission or otherwise", since Article I specifies that the Convention is applicable to signals that pass through a satellite, whether or not they are derived from a fixation. In effect, this provision covers not only the case where the signals are distributed simultaneously with the original emission but also the case where they are "otherwise" distributed, as, for example, where the distribution takes place after the signals have been fixed.

49. The Delegation of the Netherlands observed that, in contrast to the Lausanne draft, Article II no longer refers expressly to the use of satellites. It agreed that such a reference was no longer necessary since the language of Article I provides that the Convention applies to signals that pass through a satellite.

50. The Committee retained the criterion provided in the draft as prepared at Lausanne, covering the case where the distribution has not been derived directly or indirectly from a distribution that was authorized by the originating organization, and that took place after the passing of the signals through the satellite. However, it chose to cover this situation as an exception to the general rule. On the other hand, it did not consider it necessary to retain the alternative covering the case where the signals have not previously been distributed in a Contracting State. It was considered necessary to drop this condition to avoid legalizing a secondary distribution that might be derived from a primary distribution considered as illicit because the authorization of the originating organization was lacking.

**Article III: Implementation of the Convention**

51. The Committee found it advisable to specify that the means by which the Convention is implemented by the Contracting States may include civil, penal or administrative measures, which measures may possibly be cumulated.

52. The Committee accepted the position adopted at the Lausanne meeting, that it would be necessary to provide a minimum period during which it would be considered illicit to distribute any programme-carrying signal when the conditions provided by the Convention have been met.

53. Several delegations emphasized that, for States party to the Rome Convention, the adoption of such a requirement was necessary because of Articles 14 and 22 of that Convention, and specified that the term must not be less than twenty years from the end of the year in which the signal was emitted to the satellite. Certain delegations among this group asserted that such a term would be necessary because programmes might be recorded and held in reserve by the distributing organization or, because of the need for delayed broadcasting, might even be stored in the satellite itself.

54. The Delegations of Australia, Canada, India, Mexico, Nigeria, the United Kingdom and the United States of America reserved the positions of their Governments with respect to the need for including in the Convention a provision concerning duration.

55. The Delegation of Italy associated itself with the delegations mentioned above, and observed that the purpose of the proposed new treaty was not to establish a form of protection for the benefit of broadcasting organizations but was to prevent certain reprehensible actions in the area of satellite transmissions. The Delegation of Italy took the view that, even though a requirement governing the duration of protection was included in the Rome Convention, no such provision was required in the instrument under discussion.

56. The Delegation of the United Kingdom declared that, if any term were to be stipulated in the Convention, it should begin to run from the date of the first distribution of the signals, whether that distribution be made by means of a satellite or not. This would be necessary to avoid giving the benefit of protection to broadcasting organizations for emissions which, under the provisions of some national legislation, would have fallen into the public domain because the period of protection, calculated from their first emission, had expired.

57. It was understood that the term provided concerned only the distribution of programme-carrying signals, and not the programme carried by it. It was also the understanding that the period of twenty years was only a minimum term, and that Contracting States remain free to adopt a longer term. Moreover, it was the understanding of the Committee that the term "national legislation", where it appears in Article III and elsewhere in the Convention, refers not only to statutory enactments but also to bodies of general jurisprudence such as the common law. The Delegation of the United Kingdom declared that "signals" are ephemeral and that, in his opinion, what were protected for a term of twenty years were the sounds and images carried by the signal.

**Article IV: Safeguard of the interests of contributors to programmes**

58. The Committee decided to retain, without modification, the text of paragraph (1) as prepared at Lausanne but, as in the preamble, the reference to "other contributors to the programmes" was put in square brackets.

59. The Committee further decided to retain, in the form of the Lausanne text, the paragraph concerning the non-retroactivity of the Convention, which had appeared in each of the three alternatives formulated by the First Committee of Experts. However, it was considered preferable to include this principle in a separate article to follow Article IV.

60. With respect to the other provisions of Article IV, the Committee received at the outset a proposal presented by the Delegations of Austria, the Federal Republic of Germany, India, Israel and the Netherlands. In the first place, this proposal sought to establish, vis-à-vis authors, performers and producers of phonograms, the responsibility of the originating organization in cases where a direct broadcasting satellite is used, and that of the distributing organization in cases where point-to-point satellites are employed.

61. The Committee accepted this proposal, adding broadcasting organizations to the list of those to which the responsibility of the originating organization or the distributing organization, as the case may be, is owed.

62. Moreover, the proposal sought to substitute for the responsibility imposed on the distributing organization, under certain conditions, the responsibility of the originating organization when the distribution takes place in a State not bound by a multilateral convention or a bilateral copyright treaty. It also sought to confer on authors the right to prohibit the originating organization from authorizing the distribution of the signal in another Contracting State which is bound by a multilateral convention or a bilateral copyright treaty, when the distribution of their works has not been authorized in that State. Finally, the proposal was intended to impose on the originating organization the obligation of giving notice, before the distribution of programme-carrying signals, to the owners of copyright in works intended to be used in the distribution.

63. With respect to the remuneration that authors are entitled to claim from the originating organization under the conditions provided in paragraph (3) (b) of this Article, the Delegation of Austria declared that in its opinion it should be expressly stipulated that the distribution of the signals does not entitle the authors to an appropriate remuneration under the national legislation of the Contracting State on whose territory the distribution is made, i. e., the remuneration paid by the distributing organization must be an adequate one to relieve the originating organization from this subsidiary liability.

64. In response to the observation by the Delegation of Australia that the rights of the author might be exercised by different persons as copyright owners in different parts of the world, it was understood that the term "author" should be

construed broadly to include all of the individual copyright owners.

65. At the suggestion of the Delegations of Denmark and Mexico, the Committee took up the question of whether, as in the case of authors, performers should also be informed of any use of their live performances included in programme-carrying signals emitted to a satellite. After discussion, it was decided to adopt this suggestion as paragraph (4<sup>bis</sup>). The majority of the Committee took the view that this information should be given by the originating organization before the distribution of the signals, rather than before their emission as some delegations would have preferred. On this point, the Delegation of Denmark reserved the position of its Government.

66. The notification in question must be given in time to allow the performers to exercise whatever rights they have. In this connection, one delegation observed that it was not clear whether in determining what rights the performers have, one should refer to the legislation in force in the country of which the originating organization is a national, or that in force in the country of the distributing organization, or both. Some delegations declared that in their opinion it could as well be the one as the other.

67. In connection with these obligations of giving notifications to authors and performers, one delegation observed that the giving of advance notification could be difficult, if not impossible, in the case of the reporting of current events. It expressed the hope that this question be given further consideration to determine whether it would not be appropriate to provide in this situation either that there is no obligation or that it could be withheld by national legislation.

68. The Committee decided to include, within square brackets and as paragraph (5), a suggestion of the United Kingdom to add to Article IV a provision safeguarding the interpretation of the concept of "broadcasting" for purposes of other international instruments and the national legislation of certain countries. It appeared to the sponsors of this proposal, and to those supporting it, that this paragraph could be regarded as a kind of safeguard clause with respect to the interpretations that may be given to the concept of "broadcasting", and that the proposed new instrument should in no way prejudice these interpretations.

69. The Delegation of France asserted that distribution is manifestly an act subject to copyright control under the international conventions, and this proposition implicitly but necessarily carries with it the recognition that satellite communication of programmes gives rise to two exclusive rights for the benefit of the author, the first derived from the emission of the signals to the satellite, and the second resulting from the distribution, without any need to distinguish between direct and point-to-point transmissions. The recognition of two rights seemed to the Delegation of France to be inconsistent with paragraphs (2) to (4), and it therefore suggested that paragraph (5) be presented, not as a complement, but as an alternative solution to be substituted for that of paragraphs (2) to (4). Moreover, it noted that it would be preferable to

emphasize that the eventual recognition of a double right is solely a matter for national legislation. Finally, the Delegation of France declared that the impression it had received from the debates was that even those countries that accept paragraph (5) do not thereby support the recognition of a double right, or at the very least that they would exclude the payment of a double remuneration to authors in every case.

70. The Delegation of Kenya considered that paragraph (5) was intended to preserve for certain countries the possibility of considering the emission to the satellite as being "broadcasting" itself, and did not result in the concept of a double right (emission and distribution) or in the necessity for a double remuneration.

71. In addition, the Committee received a proposal from the Delegation of Italy seeking to express the position stated above in paragraph 22, under which the new instrument should be limited to preventing the unauthorized distribution of programme-carrying signals.

72. The Delegation of the United States of America, supported by other delegations, took up this proposal, which was aimed at substituting for paragraphs (2) to (4) a provision declaring simply that the originating organization is required to precede any emission with an indication of the organizations for which the signals are destined. Moreover, the Delegation of the United States of America made the most express reservations with respect to paragraphs (2), (3) and (4) of Article IV, which are in conformity with the opposing theory favouring a convention that explicitly protects owners of copyright and neighbouring rights.

73. In recognition that this involved a matter of fundamental importance, the Committee decided to include in the draft Convention, as Alternative B, this proposal of the Delegation of Italy.

74. It was further understood that the proposed new treaty does not concern in any way the right of reproduction, the exercise of which remains entirely reserved in cases where this right is involved in satellite transmissions.

#### Article IV<sup>bis</sup>: Non-retroactivity of the Convention

75. With respect to this Article, see paragraph 59 above.

#### Article V: Exceptions

76. On the basic principle of whether there should be exceptions, the Delegations of Italy and the United States of America expressed the view that the essential purpose of the proposed new treaty was, in their opinion, to prevent the piracy of programme-carrying signals and that, therefore, the entire idea of exceptions did not have a proper place in such an instrument, because it would result in legalizing certain acts that should be considered reprehensible.

77. However, the majority of the Committee declared itself in favour of including in the draft Convention certain exceptions, and for this purpose retained Alternative A of the Lausanne text. With respect to the reporting of current events, it limited the scope of the exception by adopting the

suggestion of the Delegation of the Federal Republic of Germany that the distribution of short excerpts from programmes containing reports of such events is permitted only to the extent justified by the informatory purpose. On the other hand, the Committee did not consider it appropriate to retain the provision permitting the distribution only if attendance at the event is free of charge. The Delegations of Canada and Japan reserved the position of their Governments on this point.

78. The Committee also discussed the question of whether it would be appropriate to provide for an equitable remuneration for the distribution of short excerpts from programmes containing reports of current events, in cases where the distribution was made under the conditions provided for in the Convention. The majority of the delegations declared themselves against such a system, but the Delegations of Japan and the United States of America also reserved the position of their Governments on this point.

79. With respect to the distribution of programmes for the purposes of teaching or scientific research, some delegations took the position that the benefit of this exception should not be limited to developing countries, but that any State should be entitled to take advantage of this benefit, on condition that provision is made for an equitable remuneration in favour of the interested parties.

80. With respect to the concept of a developing country, the Committee maintained the reference to the established practice of the General Assembly of the United Nations, it being understood that the interpretation to be given to this criterion should be the same as that which was developed for the application of analogous provisions in the texts of the Berne Convention and the Universal Copyright Convention as revised in July 1971.

81. It was understood that the term "teaching" also includes adult education.

82. The Delegation of the United States of America declared that in its opinion reports of sporting events could not be considered as coming within the concept of "teaching".

#### Article VI: Adherence and implementation

83. The Delegation of Canada expressed the view that paragraph (4) of this Article should be deleted, as it is an established principle of international law, recognized in the Vienna Convention on the Law of Treaties, that States be in a position to fulfil the obligations of conventions to which they become party, and that the inclusion of this provision in this and other conventions may raise doubts as to the application of the established principle of international law. However, since the Vienna Convention has not yet come into effect, the Committee believed that it should maintain this provision, which also appears in the recently revised texts of the copyright conventions and the new Convention for the protection of phonogram producers.

#### Article VII: Entry into force of the Convention

84. The Committee retained, without change, the text of Article VII as formulated at Lausanne.

85. The Delegation of Tunisia proposed to entrust to Unesco the administration of the proposed new treaty, as a counterpart of the decision to bestow the administration of the phonogram Convention on WIPO. However, the Committee was of the opinion that consideration of a question of this kind came within the competence of the eventual diplomatic conference.

#### Article VIII: Denunciation of the Convention

86. The Committee adopted the Lausanne text of this provision without change.

#### Article IX: Reservations

87. Paragraph (1) of the Lausanne text remained unchanged.

88. Since Article II of the draft Convention retained, as the sole criterion for the applicability of the Convention, the nationality of the originating organization, it seemed to certain delegations that it was not necessary to refer to any other criterion. However, at the request of other delegations, and taking into account the countries whose national legislation applies the criterion of the place from which the signals are emitted, the Committee decided to retain paragraph (2) of the Lausanne text, and to delete the alternatives covering the possibility of two criteria in Article II.

89. With respect to the question of distribution by wire and similar means, certain delegations expressed the opinion that the scope of the reservation provided in the Lausanne text seems much too broad. Other delegations declared, however, that such a reservation appeared to be indispensable in the face of the national legislation in their countries.

90. Several delegations proposed to limit the situations covered by the reservation to the case where the distribution by wire or similar means in a given country consists of relaying a wireless distribution received in the same country, whether authorized by the originating organization or not, where the signals were intercepted by the wireless distributor.

91. Some delegations were of the opinion that the reservation should apply only to the extent that the national legislation expressly withholds, limits, or denies protection in cases of distribution by wire and similar means. They added that the Convention should provide that such a reservation will cease to have effect when, as the result of revisions, the national legislation of the State in question assures the protection of such distributions.

92. Other delegations noted that it was also important to limit the right to make reservations by providing that a State availing itself of the right can declare that it will derogate from the obligations provided by the Convention only to the extent that it limits protection under its national legislation.

93. Doubts were expressed by the representative of WIPO as to whether this reservation, even if limited in scope, would be

compatible with Article 11 of the Berne Convention, which provides for the exclusive right of authors to authorize transmission to the public, by any means, of the performance of their works. The Delegation of Canada, however, pointed out that the reference made was to the Brussels and later texts of the Berne Convention and that Canada, presently bound by the Rome text, is not required to provide, in its national legislation, the exclusive right referred to and that Canada is one of the countries which consider it necessary, at the present time, to maintain the possibility of the reservation in the text.

94. To avoid problems of compatibility with copyright provisions, certain delegations suggested that all reference to these provisions should be deleted; they maintained that this would be consistent with the specific purpose of the Convention which is to prevent the piracy of programme-carrying signals.

95. At this stage of the discussion, the Committee received from the Federal Republic of Germany a suggestion under which the privilege of making reservations provided in the Lausanne text could be invoked only when the distribution takes place simultaneously with or after a wireless distribution on the territory of the State making the reservation, or, if the distribution is made by the satellite itself, when the signals can be received by the public in that State. The Committee decided to include this suggestion but to place it within square brackets. On this point, the Delegations of Canada and the United States of America declared that, should these provisions be adopted in the Convention, their Governments would have great difficulty in ratifying it.

#### Article X: Notifications

96. The Committee retained the Lausanne text of Article X without change.

#### Link with the Rome Convention

97. The Delegation of Italy declared that it would not maintain the proposal it had put forward at Lausanne, envisaging the adoption of the provisions of the proposed new treaty in a protocol to be attached to the Rome Convention. On the other hand, it reserved the possibility that its Government might present, at an eventual diplomatic conference, a proposal to include in the instrument to be adopted, a clause providing that any Contracting State would automatically cease, upon its adherence to the Rome Convention, to be linked under the satellite convention in its relations with other Contracting States party to the Rome Convention, on condition that the latter had meanwhile been revised in a way that dealt effectively with the problems raised by satellite transmissions.

#### Resolution adopted by the Committee

98. With respect to the next steps to be taken following its work, the Committee was presented with two draft resolutions. The first was presented by the Delegations of India, Israel, Nigeria and the United States of America; while recognizing the progress that had been made towards finding a solution to the problem in question, it recommended the convening of a third Committee of Experts.

The other draft resolution was presented by the Delegations of Algeria, Austria, Egypt, France, the Federal Republic of Germany, Kenya, Monaco, Morocco, Tunisia, Turkey and Yugoslavia. It recommended that the Secretariats of Unesco and WIPO prepare a commentary to accompany the draft Convention, that this commentary and other documentation be communicated to governments and interested organizations for their comments, and that the competent organs of Unesco and WIPO take all necessary measures for the convening of a diplomatic conference on the matter.

99. The representative of the Director-General of Unesco, and the Director General of WIPO, declared in turn that the adoption of either of these draft resolutions would raise no difficulties with respect to carrying out the tasks involving their respective Organizations.

100. The Delegation of Italy emphasized that it was in complete agreement with the considerations underlying the first of these draft resolutions. It referred again to the two theories that had manifested themselves during the Committee's deliberations: the one favouring a composite instrument including specific provisions concerning copyright and neighbouring rights, and dealing with the content of the programme rather than the signal itself; the other contemplating a simple instrument aimed exclusively against the unauthorized distribution of signals. It recalled that the Italian Government had declared itself in favour of the second solution which, while permitting the contractual arrangements under principles of copyright or neighbouring rights, avoids any overlapping with other international instruments. However, in view of these differing theories and the difficulties involved in finding a universally-acceptable solution, it felt that a pause for reflection and study was justified.

101. After discussion, and in response to a suggestion by the Director General of WIPO, the Committee decided that, after the Secretariats of Unesco and WIPO have prepared the necessary documentation and the governments and interested organizations have made their comments, a third Committee of Experts should be convened in 1973. In the light of its deliberations, that Committee should take a decision on the desirability of holding a diplomatic conference in 1974 on the subject. The Committee also asked that the competent organs of Unesco and WIPO meanwhile take the necessary administrative and budgetary steps to permit the convening of such a conference. The resolution adopted by the Committee appears as Annex B of this report.

102. The Director General of WIPO indicated that the draft programme and budget of his Organization for 1973 already included provisions for holding such a diplomatic conference at Geneva in 1973, and that he believed the competent organs of WIPO would see no objection in carrying these provisions over into 1974.

103. The representative of the Director-General of Unesco explained that the draft programme and budget of Unesco for 1973-1974 contained provisions to permit the convening by Unesco and WIPO of the diplomatic conference during this period, and that the Director-General will inform the General

Conference of Unesco, at its 17<sup>th</sup> Session, of the results of the work of the present Committee, so that the General Conference may take the appropriate measures to implement the resolution as adopted.

#### Adoption of the Report

104. A draft report of the meeting, prepared by the Secretariats, was examined paragraph by paragraph. After certain modifications the present Report was adopted, and it in-

cludes, as Annex A, the draft Convention against the unauthorized distribution of programme-carrying signals transmitted by satellites, as formulated by the Committee.

#### Closing of the Meeting

105. After the Delegations of France, the United Kingdom and the United States of America had expressed the appreciation and thanks of the Committee to the Chairman and Secretariats, the meeting was declared closed.

## ANNEX A

### Draft Convention

#### Against the Unauthorized Distribution of Programme-Carrying Signals Transmitted by Satellites

The Contracting States,

(a) Aware that the distribution of programme-carrying signals transmitted by satellites is rapidly developing both in volume and in geographical coverage;

(b) Noting that the lack of effective worldwide legal protection against the unauthorized distribution of such signals presents an increasing danger to the interests of authors, performers, producers of phonograms, [and] broadcasting organizations [and other contributors to the programmes];

(c) Convinced that protection of programme-carrying signals against unauthorized distribution will benefit the said persons and organizations;

(d) Anxious not to impair in any way international agreements already in force and in particular in no way to prejudice wider acceptance of the Rome Convention of 26 October 1961, which affords protection to performers, producers of phonograms and broadcasting organizations,

Have agreed as follows:

#### Article I

This Convention applies to programme-carrying signals which, after their emission, pass through a satellite, including the case where they are derived from a fixation of the emitted signals.

#### Article I<sup>bis</sup>

For the purposes of this Convention:

- (i) "signal" is an electronically-generated carrier capable of transmitting programmes;
- (ii) "programme" is a body of live or recorded material, consisting of [*Alternative A*: images or a combination of sounds and images] [*Alternative B*: images, sounds or both] embodied in signals emitted for the purpose of ultimate distribution;
- (iii) "satellite" is any device in extraterrestrial space capable of transmitting signals;
- (iv) "originating organization" is the person or entity that decides what programme the signals will carry;
- (v) "distribution" is the transmission of signals to the general public or any segment thereof.

#### Article II

(1) Each Contracting State shall ensure that it is illicit to distribute on its territory programme-carrying signals without the authorization of the originating organization where such organization is a national of another Contracting State.

(2) However, paragraph (1) shall not apply where the distribution is directly or indirectly derived from a terrestrial distribution that was authorized by the originating organization.

#### Article III

(1) The means by which the obligation provided for in Article II is implemented shall be a matter for the national legislation of each Contracting State. These may include civil, penal or administrative measures.

(2) The national legislation of any Contracting State may provide that it shall not be illicit to distribute any given programme-carrying signal after the expiration of twenty years from the end of the year in which the signal was emitted to the satellite.

#### Article IV

##### Alternative A

(1) This Convention shall in no way be interpreted to limit or prejudice the protection otherwise secured to authors, performers, producers of phonograms, [or] broadcasting organizations [or other contributors to the programmes] under any national legislation or international agreement.

(2) Without prejudice to paragraph (1),

- (a) the originating organization which is a national of a Contracting State and which uses a satellite for the distribution of programme-carrying signals made directly by the satellite itself shall be responsible vis-à-vis the authors, performers, producers of phonograms and broadcasting organizations, in accordance with the legislation of the State of which the organization is a national, if and to the extent that such legislation grants to them rights in the case of the broadcasting of their works, performances, phonograms, or broadcasts;
- (b) where the distribution of programme-carrying signals is made on the territory of a Contracting State, the orga-

nization making the distribution shall be responsible vis-à-vis the authors, performers, producers of phonograms and broadcasting organizations, in accordance with the legislation of the said State, if and to the extent that such legislation grants to them rights in the case, respectively, of the broadcasting or other distribution of their works, performances, phonograms, or broadcasts.

(3) Without prejudice to paragraph (1), the authors, whose works, protected in the Contracting State of which the originating organization is a national, are used in an emission of programme-carrying signals to a satellite,

(a) may forbid the originating organization to authorize the distribution of such signals in another Contracting State which is a party to the Universal Copyright Convention or a member of the International Union for the Protection of Literary and Artistic Works or bound to the State of which the originating organization is a national by a bilateral copyright treaty, where the distribution of these works is not authorized by their authors or is not otherwise lawful under the legislation of that other Contracting State;

(b) shall be entitled to claim from the originating organization, for the distribution of such signals, an appropriate remuneration, where the said organization has authorized such distribution in another Contracting State which is neither a party to the Universal Copyright Convention nor a member of the International Union for the Protection of Literary and Artistic Works nor is bound to the State of which the originating organization is a national by a bilateral copyright treaty, on condition that the distribution does not entitle the said authors to a remuneration under the national legislation of that other Contracting State and that it is not subject to the provisions of Article V.

(4) In the cases provided for in paragraph (3), the originating organization is required to inform the authors of works which are intended for use in a distribution of programme-carrying signals before the said distribution and in time to allow them to exercise the prerogatives granted to them in paragraph (3). It shall be a matter for national legislation of each Contracting State to determine the sanctions for non-compliance with the preceding provision.

(4<sup>bis</sup>) Unless otherwise agreed, the originating organization which is a national of a Contracting State is required to inform the performers whose live performances of literary or artistic works it intends to use in a distribution of programme-carrying signals before the said distribution and in time to allow them to exercise any rights they may have. It shall be a matter for national legislation of each Contracting State to determine the sanction for non-compliance with this provision, and each Contracting State may, by its national legislation, specify the manner in which performers will be represented for the purpose of this provision, if several of them participate in the same performance.

[(5) Nothing in this Article shall be construed as acceptance by Contracting States of the proposition that the emission of

programme-carrying signals to a satellite is not broadcasting for the purposes of other international conventions relating to copyright or neighbouring rights and national legislation dealing with such subjects.]

#### Alternative B

(1) This Convention shall in no way be interpreted to limit or prejudice the protection otherwise secured to authors, performers, producers of phonograms, [or] broadcasting organizations [or other contributors to the programmes] under any national legislation or international agreement.

(2) The originating organization shall be required to indicate, before the emission of the programme-carrying signals, the organizations for which the signals are destined. It shall be a matter for the national legislation of each Contracting State to determine the sanctions for non-compliance with the preceding provision.

#### *Article IV<sup>bis</sup>*

No Contracting State shall be required to apply the provisions of this Convention with respect to any programme-carrying signals emitted before this Convention entered into force in that State.

#### *Article V*

Notwithstanding the provisions of this Convention,

- (i) any Contracting State may, in its national legislation, permit the distribution, for the purpose of reporting current events, and only to the extent justified by the informatory purpose, of short excerpts from programmes containing reports of such events;
- (ii) any Contracting State regarded as a developing country in conformity with the established practice of the General Assembly of the United Nations may also, in its national legislation permit the distribution of programmes solely for the purposes of teaching or scientific research.

#### *Article VI*

(1) This Convention shall be deposited with the Secretary-General of the United Nations. It shall be open until . . . for signature by any State that is a member of the United Nations, any of the Specialized Agencies brought into relationship with the United Nations, or the International Atomic Energy Agency, or is a party to the Statute of the International Court of Justice.

(2) This Convention shall be subject to ratification or acceptance by the signatory States. It shall be open for accession by any State referred to in paragraph (1).

(3) Instruments of ratification, acceptance or accession shall be deposited with the Secretary-General of the United Nations.

(4) It is understood that, at the time a State becomes bound by this Convention, it will be in a position in accordance with its national legislation to give effect to the provisions of the Convention.

#### *Article VII*

(1) This Convention shall enter into force three months after deposit of the . . .<sup>th</sup> instrument of ratification, acceptance or accession.

(2) For each State ratifying, accepting or acceding to this Convention after the deposit of the . . .<sup>th</sup> instrument of ratification, acceptance or accession, this Convention shall enter into force three months after deposit of its instrument.

(3) (a) Any State may, at the time of ratification, acceptance or accession or at any later date, declare by notification addressed to the Secretary-General of the United Nations that the present Convention shall apply to all or any one of the territories for whose international affairs it is responsible. This notification shall take effect three months after the date on which it is received.

(b) However, sub-paragraph (a) may in no case be interpreted as implying recognition or tacit acceptance by any one of the Contracting States of the actual situation in any territory to which the present Convention is made applicable by another Contracting State by virtue of the said sub-paragraph.

#### Article VIII

(1) Any Contracting State may denounce this Convention by written notification addressed to the Secretary-General of the United Nations, on its own behalf or on behalf of all or any of the territories referred to in Article VII (3).

(2) Denunciation shall take effect twelve months after the date of receipt by the Secretary-General of the United Nations of the notification of denunciation.

#### Article IX

(1) Subject to paragraphs (2) and (3), no reservation to this Convention shall be permitted.

(2) Any Contracting State which on . . . prohibits the unauthorized distribution of programme-carrying signals solely on the basis of the place from which the signals are emitted may, by a notification deposited with the Secretary-General of the United Nations, declare that it will apply this criterion instead of the criterion provided for in Article II.

(3) (a) Any Contracting State that, on . . . , limits or denies protection with respect to the distribution of programme-carrying signals by means of wires, cables or other communication channels to subscribing members of the public, may, by a notification deposited with the Secretary-General of the United Nations, declare that, to the extent that and as long as its domestic legislation limits or denies protection, it will not apply this Convention to such distributions [, provided that:

- (i) the distribution in question takes place simultaneously with or after a distribution of the programme-carrying signals by wireless means on the territory of the State, or
- (ii) if the distribution in question is derived from a distribution made by the satellite itself, the signals can be received by the general public in that State, or any segment of that public].

(b) Any State that has deposited a notification in accordance with sub-paragraph (a) shall notify the Secretary-General of the United Nations, within six months of their coming into effect, of any changes in its national legislation whereby the reservation under that sub-paragraph becomes inapplicable or more limited in scope.

#### Article X

(1) This Convention shall be established in a single original in English, French, Russian and Spanish, all four versions being equally authentic.

(2) In addition, official versions of this Convention shall be established in . . . .

(3) The Secretary-General of the United Nations shall notify the States to which reference is made in Article VI (1), as well as the Director-General of the United Nations Educational, Scientific and Cultural Organization, the Director General of the World Intellectual Property Organization, the Director-General of the International Labour Office [*Alternative: add: and the Secretary-General of the International Telecommunication Union*] of:

- (i) signatures of this Convention;
  - (ii) deposits of instruments of ratification, acceptance and accession;
  - (iii) the date of entry into force of this Convention;
  - (iv) the deposit of notifications relating to Article IX, with the text of the declarations made;
  - (v) the receipt of notifications of denunciation.
- (4) The Secretary-General of the United Nations shall transmit two certified copies of this Convention to all States to which reference is made in Article VI (1).

IN WITNESS WHEREOF, the undersigned, being duly authorized, have signed this Convention.

DONE at . . . . ., this . . . day of . . . . ., . . . . .

#### ANNEX B

The Second 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 Transmission Via Space Satellites, meeting in Paris from May 9 to 17, 1972, recommends that:

- (i) the Secretariats of Unesco and WIPO prepare explanatory notes on the draft text of the Convention adopted by the Committee and, if, in the course of preparing such notes, it appears to them that provisions in the text could be simplified or clarified, propose such simplifications or clarifications;
- (ii) the said draft text, notes and possible proposals, as well as the report of the Committee, be communicated by the Secretariats of

#### Resolution

- Unesco and WIPO for comments to the governments and interested organizations;
- (iii) Unesco and WIPO convene a third Committee of Governmental Experts during 1973 to examine the documentation mentioned above and the comments received;
- (iv) this Third Committee take a decision upon the advisability of holding in 1974 a diplomatic conference for the purposes of adopting a convention concerning programme-carrying signals passing through satellites;
- (v) the competent organs of Unesco and WIPO take the necessary administrative and budgetary steps to permit the convening of such a conference in 1974.

## ANNEX C

## List of Participants

## I. Delegations

Algeria: B. Zerrouki. Argentina: J. P. Pico. Australia: E. M. Haddrick. Austria: R. Dittrich; K. Roessl-Majdan; H. Thoma; W. Dillenz. Belgium: G. L. de San; F. van Isacker; A. Namurois; J. Vermeire. Burundi: J. Nindorera. Cameroon: J. A. Ndong. Canada: F. W. Simons; A. A. Keyes; H. Hindley; W. H. Montgomery. Central African Republic: B. Makombo. Chile: M. Núñez. Cyprus: A. Christofides. Denmark: W. Weincke; J. Nørup-Nielsen; E. Carlsen. Ecuador: G. Ponce-Benavides. Egypt: Y. Rizk. Finland: R. Meinander; B. Godenhielm; T. Grönberg; A.-R. Ketokoski (Miss). France: A. Kerever; H. Deshois; J. Buffin; M. Cazé; P. Lunet; P.-B. Nollet; J.-L. Tournier. Germany (Federal Republic): E. Steup (Mrs.); E. Bungeroth; W. H. Conrad. Greece: C. Georgiou. Guatemala: O. Bertholin y Gálvez; R. E. Ortiz Sáenz de Tejada. Hungary: I. Timár; G. Jelenik. India: K. Chandhuri. Ireland: M. J. Quinn; F. O'Hannracháin. Israel: M. Gahay; N. Cohen; V. Hazan. Italy: P. Archi; G. Trotta; A. Ciampi; V. De Sanctis; C. Zini-Lamberti; M. Mantovani; S. Loi. Japan: M. Kato; Y. Nomura. Kenya: D. J. Coward; G. Straschnov. Lebanon: S. Stétié. Mexico: G. E. Larrea Richerand; J. R. Bnstillos; J. L. Caballero. Monaco: C. Solamito. Morocco: A. Chakroun. Netherlands: W. L. Haardt; F. Klaver (Miss); J. A. W. Schwan; J. Verhoeve. Nigeria: G. A. Idowu. Norway: V. Holmsøy (Miss); C. Hambro. Spain: I. Fonseca-Ruiz (Mrs.); A. Serrano de Haro; J. M. Calviño; L. Sagi Vela; F. Pérez Pastor; G. Salas Tardiú; F. Roses Janer; A. Miserachs Rigalt. Sweden: H. Danelins. Switzerland: C. Hummel; J.-L. Marro; T. Moeckli; V. Hauser; R. de Kalbermatten. Tunisia: A. Abdeljaouad; A. Amri. Turkey: N. Özeken (Mrs.); A. Besiroglu; N. Belger. United Kingdom: W. Wallace; D. L. T. Cadman; E. C. Rohhins; D. de Freitas. United States of America: B. C. Ladd; G. D. Cary; R. V. Evans; R. D. Hadl; C. E. Lahiguera; A. Scalia; H. J. Winter. Yugoslavia: P. Tipsarević.

## II. Observers

## 1. States

Holy See: L. Conti; M. S. de Chalns (Mrs.). Philippines: P. A. Castro. Poland: T. Kozlnk. Ukrainian Soviet Socialist Republic: Y. Kotchoubéi.

## 2. Organizations of the United Nations system

International Labour Organisation (ILO): E. Thompson. International Telecommunication Union (ITU): C. Stead.

## 3. International non-governmental Organizations

Asian Broadcasting Union (ABU): G. Hansson. European Broadcasting Union (EBU)\*: H. Brack. International Alliance for Distribution by Wire

(AID)\*: G. G. S. Moreau. International Confederation of Professional and Intellectual Workers (CIT): G. Poulle; R. Berquier; F. Delahalle (Mrs.). International Confederation of Societies of Authors and Composers (CISAC)\*: J.-A. Ziegler; M. J. Freegard. International Federation of the Phonographic Industry (IFPI): S. M. Stewart; G. Davies (Miss); M. Lenoble. International Federation of Translators (IFT): R. Dupuy. International Film and Television Council (CICT): P. Chesnais; R. Leuzinger. FIA: R. Rembe. FIM: H. Ratcliffe; R. Lenzinger. IFVA: R. Rembe. Internationale Gesellschaft für Urheberrecht (INTERGU) (International Copyright Society): H. Boursigot. International Law Association (ILA): A. Françon. International Literary and Artistic Association (ALAI): A. Françon; R. Blaustein (Mrs.); R. Castelain. International Music Council (IMC): J. Bornoff; R. Leuzinger. International Publishers Association (IPA): J. A. Kontchoumow; A. Géranton; C. Smit. International Secretariat of Entertainment Trade Unions (ISETU): G. T. Rhys; A. J. Forrest. International Theatre Institute (ITI): J. Darcante. International Writers Guild (IWG): R. Fernay; E. Le Bris. Union of National Radio and Television Organizations of Africa (URTNA): A. Chakroun.

## III. Secretariat

United Nations Educational, Scientific and Cultural Organization (Unesco): R. Maheu (*Director-General*); C. Lussier (*Director, Office of International Norms and Legal Affairs*); B. Ringer (Miss) (*Director, Copyright Division*); M.-C. Dock (Miss) (*Head, International Copyright Information Centre*); D. de San (*Lawyer, Copyright Division*); P. A. Lyons (Miss) (*Assistant Lawyer, Copyright Division*).

## World Intellectual Property Organization (WIPO):

G. H. C. Bodenhausen (*Director General*); A. Bogsch (*First Deputy Director General*); C. Masonyé (*Senior Counsellor, Head, External and Public Relations Division, Head a. i., Copyright Division*).

## IV. Officers of the Committee

*Chairman*: E. Steup (Mrs.) (Federal Republic of Germany). *Vice-Chairmen*: D. J. Coward (Kenya); M. Kato (Japan); G. E. Larrea Richerand (Mexico). *Secretaries*: M.-C. Dock (Miss) (Unesco); C. Masouyé (WIPO).

\* Organization invited only by the Director General of WIPO.



Because of this opinion the learned judge of the District Court took the view already described above. But the Supreme Court, having quoted the passage above, had this to say of it:

While generally we agree with the opinion of the learned judge, there are two points on which we do not agree:

(a) We do not think the parable of the paved road is applicable here. In our opinion, notwithstanding the limitations applied to the lyricist, there is still a wide field in which the author can use his imagination and there exist unlimited possibilities of composition of the song from the point of view of its contents, form, language and so on. Therefore, even in the case of a song written subject to the said limitation, the test of similarity has to be applied for a *prima facie* case of copying.

(b) Though it is true that the limitations of language may explain the use of the same words, the importance of such explanation is greater when the subject in question is of technical nature. Not so when we speak of poetry or prose.

This was demonstrated to us by the production of a book of a work by Goethe translated into thirty-six different Hebrew versions, where each translation is completely different from the others.

There is therefore no need to prove actual copying. This can be deducted from the possibility that the defendant had access to the work of the plaintiff and when the similarity between the two works is such that it is not reasonable to presume that such similarity is merely a coincidence.

One more interesting judgement, though not final, on an unusual case of copyright infringement is worthy of note. The Israel Broadcasting Authority has broadcast by television some quite old cartoon movies of the internationally famous feature of "Popeye the Sailor". These programmes were such a tremendous success with children of various ages, that some shirt manufacturers thought it good business to produce and sell shirts, of various shapes and forms, with the famous Popeye character printed on them. The idea was so good that pretty soon it was estimated that there was no child between the ages of 2 and 14 who did not own or want to own such a shirt.

It was not long before the copyright owners of the Popeye feature were on the tracks of the manufacturers, and the courts to which the matter was referred issued warrants to seize quantities of infringing shirts and also issued interlocutory injunctions to stop the production and sale of shirts.

The case is still pending and it may compromise, but I am writing about it for the curious experience that whoever said "there is nothing new under the sun" should know that this applies to copyright just as to anything else. "Popeye" has had to fight "legal matches" before and in different countries<sup>2</sup>; Israel is now being invaded by "Popeye culture", and it remains to be seen whether he will be the winner, as is the case in all his famous cartoons.

In a more serious vein, there are also three important legislative developments worth consideration. Two concern direct legislation by the Israeli Parliament (the *Knesset*) and the other is more in the field of legislative research.

Some years ago there were instituted by a public body various television broadcasts directed to schools. These broadcasts were totally made for the purpose of televising lessons in various courses studied in elementary and secondary schools. Thus, those broadcasts concerned lessons in geography, history, mathematics, etc. But in between those lessons and as

background the television station had to use music and some literary works.

The public body responsible for those television broadcasts, which is a government-sponsored agency, could not manage to undertake complicated negotiations, not only with performing right societies, such as ACUM, but also with such other copyright owners in the scientific and artistic fields. In addition, various difficult questions of whether the lessons broadcast by television would be considered by the courts as "fair dealing" under the meaning of the law applicable in Israel arose, so it was decided that legislation was the most expedient way to arrange for the copyright involved.

The Government therefore proposed to amend the Copyright Law by adding the following section to the Law:

7A. (a) In this section —

"broadcast" means radio and television broadcasts;

"background use of a work" means the use of a work or part of it which is secondary to the main subject of the broadcast, as background, or for the purpose of connection with or demonstration or illustration of the subject of the broadcast.

(b) There is no infringement of copyright:

- (i) in the background use of a literary, dramatical, musical or artistic work to which copyright applies, to be included in a broadcast intended for schools within the framework of their study programme;
- (ii) in the broadcasting of such a work used as aforesaid;
- (iii) in the public performance of such a work used as aforesaid, mainly before pupils within the functions of the school.

(c) The owner of a copyright in a work used as defined in subsection (b) will be entitled to a royalty for such use from the broadcaster at a rate which will be agreed upon by the parties and, failing agreement, at a rate to be fixed by the Board as hereinafter defined in subsection (d); however, the Board may exempt the broadcaster from payment of royalties if, in the opinion of the Board, the use of the work was so inconsiderable as not to affect the right of the author to receive royalties for the use of his work.

(d) The Minister of Justice will appoint, for the purposes of subsection (c), a Board of three: a judge of the District Court who will act as chairman, and two members, of which at least one must be a representative of the public.

(e) In order to fix the royalties due under subsection (c), the Board will give the parties proper opportunity for a hearing at which evidence may be brought at a time and in a way and manner to be defined in regulations.

(f) The Board will not hear any petitions by a broadcaster to fix royalties under subsection (c) unless the broadcaster has previously applied to the representative of the author of the work in question with an offer to conclude a contract and has not arrived at an agreement as to the royalties to be paid.

(g) The Board's jurisdiction will be:

- (i) to ask for any oral or written evidence which it will consider necessary;
- (ii) to invite any person to appear before it to give evidence or to produce any document in his possession, to examine him and to order him to produce any document in his possession;
- (iii) to order the appearance of any person who has not complied with the Board's summons and has not provided a reasonable explanation for his non-appearance, to order him to pay all expenses caused by his non-appearance or to force his appearance and to fine him up to I£ 75.

(h) Nothing in the permission to use a work granted by subsection (b) is to be interpreted as permission to use the work in a way or manner liable to affect the good name of the author or his honour as an author or artist.

<sup>2</sup> *King Features Inc. v. Kleeman*, 2 AELR 20, p. 403; *King Features Inc. v. Fleischer*, Ball, *op. cit.*, p. 356.

Several important provisions are to be noted in the above amendment, the most important of which is the granting of a compulsory licence to the broadcasting organization. This is a complete departure from the customary provisions of the copyright law, and obviously various copyright bodies, including ACUM, raised objections to the amendment. Because of ACUM's intervention several important amendments were introduced in the above Bill, and these are worthy of note.

First, the use of literary, dramatic, musical or artistic works in a broadcast made under a compulsory licence has been limited to background use only, or for purposes of giving examples connected with the subject of the broadcast. Second, the broadcasts in question must be directed to schools within the framework of the educational programme.

But by far the most interesting amendment introduced in the Bill is the provision that the broadcasting organization must first apply to the representative society of the authors of the work to be broadcast in order to try to reach an agreement as to the royalties to be paid to the authors. Failure to do so may jeopardize the broadcasting organization's claim to pay royalties other than those demanded by the society of authors concerned, because the arbitration will not consider any application unless it is proved that (a) application was made to the authors' society and (b) no agreement was reached.

It is not clear whether, by failing to apply to the representative society of authors in order to arrive at an agreement as to royalties, the broadcasting organization would forfeit its right to the defence that no infringement was caused by the broadcasting of the work. The section in question was introduced into the law to avoid claims against the broadcasting of musical or other works used as background, to what is meant to be a broadcast of a lesson, say geography, history or mathematics. The law therefore makes such a broadcast an exception to the rule of infringement of copyright by means of broadcasting. What it does want to assure is that reasonable royalties should be paid. It follows that the broadcasting organization is due to apply to the representative society before it can apply to arbitration, not to obtain a licence from it, but to come to an agreement as to the royalties to be paid. It is therefore submitted that failure to fulfill this duty may entitle the authors' society in question to demand the arbitration tribunal to fix royalties at the rate demanded by it.

The important provision of this amendment is, however, the fact that this is the first time that the legislative body in Israel has recognized the important role played by the authors' societies in the field of copyright. It is to be noted that the law specifically speaks of an application to the authors' society only and not to the author himself. This does not mean that the author of a work who is not a member of a society is not protected. He may ask for payment of royalties due to him, but the duty to apply to him for an agreement is not provided for, and this is an obvious advantage granted to authors' societies.

The last, but not least, provision worthy of note is the establishment of a compulsory tribunal which will be composed of a District Court judge as chairman and of two

members, of whom at least one must be a representative of the public. What is meant by a representative of the public is that at least one of the members of this special tribunal should not be a member of the government or its administration. It is this tribunal which will decide what is the proper remuneration to be paid to the copyright owner when no agreement is reached by the parties.

Authors' societies do not look favourably on such compulsory tribunals, and Israel is, of course, no exception. It is to be hoped that a similar provision of law will not be introduced into the new Bill being prepared to amend the Copyright Law. The fact that so far no use whatsoever has been made of this tribunal, since no cases have come before it, may help convince the legislature that there is no need for such tribunals.

Finally, the fact that the whole amendment is made subject to the lack of agreement between the parties has made this amendment largely unnecessary as the main parties concerned have come to an agreement. Of course, once a contract is signed, the relations between the parties are no longer regulated by the provisions of the amendment but by the contractual relations specified between the parties themselves. It is to be noted that the whole amendment is of a temporary nature, since it was originally enacted for a period of three years. Though it has now been prolonged for a further period of three years (until March 31, 1974), it is obvious that, once these special educational broadcasts will end or will be made by the regular broadcasting authority, there will no longer be need for this amendment and it will in all probability disappear from the statutes.

The next important change in the Copyright Law to be noted is that Israel has changed the duration of the *post mortem* rights from fifty to seventy years. Under the recently adopted amendment to the law, authors' heirs in Israel will enjoy protection of the rights inherited for a period of seventy years from the date of death of the author of a work. The amendment is not retroactive in so far as the rights in works already in the public domain at the time of adoption of the amendment (August 5, 1971) will continue to be unprotected, but authors who died before the law came into force and less than fifty years therefrom, will continue to have their inherited rights protected until the expiration of the full period of seventy years. This means that authors who died in 1921 and whose rights were about to end in 1971 will now continue to be protected for a further period of twenty years.

The amendment has also extended the protection of pseudonymous and anonymous works to seventy years instead of fifty, but beginning from their publication and not from the death of the author, unless the identity of the author is disclosed within the period of seventy years from publication, in which case his protection will also be seventy years from his death.

The last matter on which I would like to write a small note deals with the field of research rather than actual legislation. At the last CISAC Congress in Las Palmas, in June 1970, I had occasion to give a talk on "The origins of copyright law in ancient Jewish law". This lecture was based on





## Meetings of Other International Organizations concerned with Intellectual Property

August 4 to 15, 1972 (Libreville) — African and Malagasy Industrial Property Office — Administrative Council

October 13 to 21, 1972 (Mexico) — International Confederation of Societies of Authors and Composers — Congress

October 23 to 26, 1972 (The Hague) — International Patent Institute — Administrative Council

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

December 11 to 15, 1972 (The Hague) — International Patent Institute — Administrative Council

May 20 to 26, 1973 (Rio de Janeiro) — International Chamber of Commerce — Congress

---