

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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CONVENTIONS ADMINISTERED BY WIPO

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

FIJI

Declaration with respect to Article 12

The International Bureau of the World Intellectual Property Organization has been informed, by a circular letter dated July 24, 1972, that the Secretary-General of the United Nations received, on June 12, 1972, a communication according to which the Government of Fiji declared:

“ . . . the Government of Fiji, having reconsidered the said Convention, hereby withdraws its declaration in respect of

certain provisions of Article 12¹ and in substitution thereof declares in accordance with Article 16(1) of the said Convention that Fiji will not apply the provisions of Article 12.”

This declaration, pursuant to paragraph (2) of Article 16, will take effect on December 12, 1972.

¹ See *Copyright*, 1972, p. 88.

NATIONAL LEGISLATION

UNITED KINGDOM

I

Copyright (Amendment) Act 1971

(Of February 17, 1971)

An Act to amend the Copyright Act 1956 so as to make provision for the subsequent variation by the Performing Right Tribunal of orders made pursuant to section 27 of that Act

Amendments to 1956 c. 74

1. — For the purpose of making provision for the subsequent variation by the Performing Right Tribunal of orders made by the tribunal under section 27 of the Copyright Act 1956 —

(a) Part IV of that Act shall have effect as if there were included after section 27 the following further section:—

“Applications for review by tribunal of orders”

27A. — (1) Where the tribunal has made an order under subsection (5) of the last preceding section, then subject to the next following subsection, at any time while the order remains in force,—

(a) the licensing body in question, or

(b) the original applicant

may apply to the tribunal to review its original order.

(2) An application shall not be made pursuant to subsection (1) of this section, except with the special leave of the tribunal, at a time earlier than—

(a) the end of a period of twelve months beginning with the date on which the original order was made, in the case of an order made so as to be in force indefinitely or for a period exceeding fifteen months, or

(b) the beginning of the period of three months ending with the date of expiry of the order in the case of an order made so as to be in force for fifteen months or less.

(3) The parties to an application under this section shall be—

(a) the parties to the original application proceedings; and

(b) any organisation or person who is made party thereto pursuant to subsection (5) of this section.

(4) The tribunal, on any application under this section, after giving all the parties an opportunity of presenting their cases shall make such order in relation to the application either by way of confirming or varying the order in question as—

(a) in the case of an order made pursuant to an application under subsection (2) of the last preceding section, the tribunal may determine to be applicable in accordance with the licence scheme, or

(b) in the case of an order made pursuant to an application under subsection (3) of the last preceding section, the tribunal may determine to be reasonable in the circumstances.

(5) Subsection (4) of section 27 (applications by organisations and persons to be made party to proceedings) shall apply in relation to proceedings under this section as it applies in relation to proceedings under that section.

(6) The preceding provisions of this section shall have effect in relation to orders made under this section as they have in relation to orders made under the last preceding section.”

(b) In subsection (3) of section 29 of the Act there shall be inserted after the word “twenty-seven” the words “or section twenty-seven A”.

Short title and extent

2. — (1) This Act may be cited as the Copyright (Amendment) Act 1971.

(2) It is hereby declared that this Act extends to Northern Ireland.

II

The Copyright (International Conventions) Order 1972

(No. 673, of April 28, 1972, coming into force on May 31, 1972)

Her Majesty, by and with the advice of Her Privy Council, and by virtue of the authority conferred upon Her by sections 31, 32 and 47 of the Copyright Act 1956 and of all other powers enabling Her in that behalf, is pleased to order, and it is hereby ordered, as follows:—

PART I**Citation, commencement and interpretation**

1. — This Order may be cited as the Copyright (International Conventions) Order 1972, and shall come into operation on 31st May 1972.

2. — (1) In this Order—

“the Act” means the Copyright Act 1956, as amended by the Design Copyright Act 1968¹ and the Copyright (Amendment) Act 1971²; and

“material time” means—

- (i) in relation to an unpublished work or subject-matter, the time at which such work or subject-matter was made or, if the making thereof extended over a period, a substantial part of that period;
- (ii) in relation to a published work or subject-matter, the time of first publication.

(2) The Interpretation Act 1889 shall apply to the interpretation of this Order as it applies to the interpretation of an Act of Parliament and as if this Order and the Orders hereby revoked were Acts of Parliament.

PART II**Protection for literary, dramatic, musical and artistic works, sound recordings, cinematograph films and published editions**

3. — Subject to the following provisions of this Order the provisions of Parts I and II of the Act (except section 14) and all the other provisions of the Act relevant to those Parts, shall in the case of any country mentioned in Schedule 1 or 2 hereto apply—

- (a) in relation to literary, dramatic, musical or artistic works, sound recordings, cinematograph films or published editions first published in that country, as they apply to such works, recordings, films or editions first published in the United Kingdom;
- (b) in relation to persons who, at any material time are citizens or subjects of, or domiciled or resident in, that country, as they apply to persons who at such time,

are British subjects or are domiciled or resident in the United Kingdom; and

- (c) in relation to bodies incorporated under the laws of that country, as they apply to bodies incorporated under the laws of any part of the United Kingdom.

4. — (1) Subject to the following provisions of this Article, the relevant provisions of Schedule 7 to the Act shall have effect in relation to any work or other subject-matter in which copyright subsists by virtue of this Part of this Order as if for any references therein to the commencement of the Act or any of its provisions or to the date of the repeal of any provision of the Copyright Act 1911 or of any other enactment there were substituted references to 27th September 1957 (being the date on which the Copyright (International Conventions) Order 1957 came into operation).

(2) Subject to the following provisions of this Article, in the case of any country mentioned in Schedule 2 hereto in relation to which a date is specified in that Schedule—

- (a) paragraph (1) of this Article shall have effect as if, for the reference to 27th September 1957, there were substituted that date (if different); and
- (b) copyright shall not subsist by virtue of this Part of this Order in any work or other subject-matter by reason only of its publication in such a country before the date so specified.

(3) This Article shall not apply—

- (a) in the case of Ghana, Kenya, Malawi, Mauritius, Nigeria or Zambia; or
- (b) to any work or subject-matter first published in the United States of America, if, immediately before 27th September 1957, copyright under the Copyright Act 1911 subsisted in such work or subject-matter by virtue of either an Order in Council dated 9th February 1920, regulating copyright relations with the United States of America, or the Copyright (United States of America) Order 1942, as amended.

5. — The acts restricted by section 12 of the Act as applied by this Part of this Order shall not include—

- (a) causing the recording to be heard in public; or
- (b) broadcasting the recording;

except in the case of the countries mentioned in Schedule 3 to this Order.

6. — Where any person has before the commencement of this Order incurred any expenditure or liability in connection with the reproduction or performance of any work or other

¹ See *Copyright*, 1968, p. 234.

² See above.

subject-matter in a manner which at the time was lawful, or for the purpose of or with a view to the reproduction or performance of a work at a time when such reproduction or performance would, but for the making of this Order, have been lawful, nothing in this Part of this Order shall diminish or prejudice any right or interest arising from, or in connection with, such action which is subsisting and valuable immediately before the commencement of this Order unless the person who, by virtue of this Part of this Order, becomes entitled to restrain such reproduction or performance agrees to pay such compensation as, failing agreement, may be determined by arbitration.

7. — Nothing in the provisions of the Act as applied by this Part of this Order shall be construed as reviving any right to make, or restrain the making of, or any right in respect of, translations, if such right has ceased before the commencement of this Order.

PART III

Protection in respect of broadcasts

8. — The provisions of section 14 of the Act, so far as they relate to sound broadcasts, and all the other provisions of the Act relevant thereto, other than section 40(3), shall apply, in the case of each of the countries mentioned in Schedule 4 to this Order, in relation to sound broadcasts made from places in any such country by an organisation constituted in, or under the laws of, the country in which the broadcast is made, as they apply in relation to sound broadcasts made from places in the United Kingdom by the British Broadcasting Corporation; so, however, that paragraphs 17 and 18 of Schedule 7 to the Act shall have effect as if for the references therein to the commencement of section 14 there were substituted references to the relevant date set out in the said Schedule 4 (being the date on which the provisions of section 14 of the Act so far as they relate to sound broadcasts were first applied in the case of that country).

9. — The provisions of section 14 of the Act, so far as they relate to television broadcasts, and all the other provisions of the Act relevant thereto, other than section 37(4), section 40(3) and Schedule 5, shall apply in the case of each of the countries mentioned in Schedule 5 to this Order, in relation to television broadcasts made from places in any such country by an organisation constituted in, or under the laws of, the country in which the broadcast was made, as they apply in relation to television broadcasts made from places in the United Kingdom by the British Broadcasting Corporation or the Independent Television Authority; so, however, that—

(a) section 24(3)(c) of the Act shall have effect as if for the reference to the Corporation or the Authority or any organisation appointed by them there were substituted a reference to any owner or prospective owner of copyright in television broadcasts; and

(b) paragraphs 17 and 18 of Schedule 7 to the Act shall have effect as if for the references therein to the commencement of section 14 there were substituted references to the relevant date set out in Schedule 5 to this Order (being the date on which the provisions of section 14 of the Act so far as they relate to television broadcasts were first applied in the case of that country).

PART IV

Extensions and revocations

10. — Parts I and II of this Order shall extend to the countries mentioned in Schedule 6 to this Order subject to the modifications mentioned in that Schedule and Part III shall extend to Gibraltar and Bermuda subject to the modifications mentioned in Schedule 7 to this Order.

11. — The Orders mentioned in Schedule 8 to this Order are hereby revoked insofar as they form part of the law of the United Kingdom or any country mentioned in Schedule 6 to this Order.

SCHEDULE 1

Countries of the Berne Copyright Union

(The countries indicated with an asterisk are also party to the Universal Copyright Convention.)

| | |
|---|--|
| Argentina * | Lebanon * |
| Australia * (and Papua, New Guinea, Nauru and Norfolk Island) | Liechtenstein * |
| | Luxembourg * |
| | Madagascar |
| Austria * | Mali |
| Belgium * | Malta * |
| Brazil * | Mexico * |
| Bulgaria | Monaco * |
| Cameroon | Morocco |
| Canada * | Netherlands * (and Surinam and Netherlands Antilles) |
| Ceylon | New Zealand * |
| Chad | Niger |
| Chile * | Norway * |
| Congo (Peoples' Republic) | Pakistan * |
| Cyprus | Philippines * |
| Czechoslovakia * | Poland |
| Dahomey | Portugal * (including Portuguese provinces overseas) |
| Denmark * | Romania |
| Fiji * | Senegal |
| Finland * | South Africa (and South West Africa) |
| France * (and French territories overseas) | Spain * (and its Colonies) |
| Gabon | Sweden * |
| Federal Republic of Germany (and Land Berlin) * | Switzerland * |
| Greece * | Thailand |
| Hungary * | Tunisia * |
| Iceland * | Turkey |
| India * | Uruguay |
| Republic of Ireland * | Vatican City * |
| Israel * | Yugoslavia * |
| Italy * | Zaire |
| Ivory Coast | |
| Japan * | |

SCHEDULE 2

Countries Party to the Universal Copyright Convention but not Members of the Berne Union

| | |
|--|---------------------|
| Andora | 27th September 1957 |
| Costa Rica | 27th September 1957 |
| Cuba | 27th September 1957 |
| Ecuador | 27th September 1957 |
| Ghana | — |
| Guatemala | 28th October 1964 |
| Haiti | 27th September 1958 |
| Kenya | — |
| Khmer Republic | 27th September 1957 |
| Laos | 27th September 1957 |
| Liberia | 27th September 1957 |
| Malawi | — |
| Mauritius | — |
| Nicaragua | 16th August 1961 |
| Nigeria | — |
| Panama | 17th October 1962 |
| Paraguay | 11th March 1962 |
| Peru | 16th October 1963 |
| United States of America (and Guam, Panama Canal Zone, Puerto Rico and the Virgin Islands of the United States of America) | 27th September 1957 |
| Venezuela | 18th November 1966 |
| Zambia | — |

SCHEDULE 3

Countries in whose case Copyright in Sound Recordings includes Exclusive Right to Perform in Public and to Broadcast

| | |
|---|---------------------|
| Australia | Republic of Ireland |
| Brazil | Israel |
| Ceylon | Italy |
| Costa Rica | Mexico |
| Cyprus | New Zealand |
| Czechoslovakia | Nigeria |
| Denmark | Norway |
| Ecuador | Pakistan |
| Federal Republic of Germany (and Land Berlin) | Paraguay |
| Fiji | Spain |
| India | Sweden |
| | Switzerland |

SCHEDULE 4

Countries whose Organisations are protected in relation to Sound Broadcasts

| | |
|---|--------------------|
| Brazil | 5th November 1965 |
| Congo (Peoples' Republic) | 21st May 1964 |
| Costa Rica | 19th November 1971 |
| Czechoslovakia | 14th August 1964 |
| Denmark | 1st July 1965 |
| Ecuador | 21st May 1964 |
| Federal Republic of Germany (and Land Berlin) | 18th November 1966 |
| Fiji | 31st May 1972 |
| Mexico | 21st May 1964 |
| Niger | 21st May 1964 |
| Paraguay | 26th February 1970 |
| Sweden | 21st May 1964 |

SCHEDULE 5

Countries whose Organisations are protected in relation to Television Broadcasts

| | |
|---|--------------------|
| Belgium | 8th March 1968 |
| Brazil | 5th November 1965 |
| Congo (Peoples' Republic) | 21st May 1964 |
| Costa Rica | 19th November 1971 |
| Cyprus | 5th May 1970 |
| Czechoslovakia | 14th August 1964 |
| Denmark | 1st February 1962 |
| Ecuador | 21st May 1964 |
| Federal Republic of Germany (and Land Berlin) | 18th November 1966 |
| Fiji | 31st May 1972 |
| France | 1st July 1961 |
| Mexico | 21st May 1964 |
| Niger | 21st May 1964 |
| Norway | 10th August 1968 |
| Paraguay | 26th February 1970 |
| Spain | 19th November 1971 |
| Sweden | 1st July 1961 |

SCHEDULE 6

Countries to which Parts I and II of this Order extend

| | |
|---------------------------------------|--------------------|
| Bahama Islands | 11th February 1963 |
| Bermuda | 6th December 1962 |
| British Honduras | 16th October 1966 |
| Cayman Islands | 4th June 1966 |
| Falkland Islands and its Dependencies | 10th October 1963 |
| Gibraltar | 1st October 1960 |
| Isle of Man | 31st May 1959 |
| Montserrat | 5th March 1966 |
| Seychelles | 10th October 1963 |
| St. Helena and its Dependencies | 10th October 1963 |
| Virgin Islands | 11th February 1963 |

Modifications to this Order as extended

- Article 3 shall have effect as part of the law of any country to which it extends as if for references to the United Kingdom there were substituted references to the country in question.
- Article 4 shall have effect as part of the law of any country to which it extends as if in paragraphs (1) and (3) there were substituted for "27th September 1957" the date indicated in relation to that country in the preceding provisions of this Schedule (being the date when the Act was first extended to that country).
- Schedule 2 to this Order shall have effect as part of the law of any such country as if for any date in that Schedule which is earlier than the date mentioned in this Schedule in relation to the relevant country there were substituted that later date.

SCHEDULE 7

Modifications of Part III of, and Schedules 4 and 5 to, this Order in its Extension to Bermuda and Gibraltar

- (a) In Article 8 the words "other than section 40(3)" shall be omitted;
- (b) in Article 9 the words "other than section 37(4), section 40(3) and Schedule 5" shall be omitted.
- Insofar as Part III is part of the Law of Bermuda —
 - in Schedule 4 to this Order, the date mentioned in the second column shall be altered to 23rd August 1969 in the case of every country except Costa Rica, Fiji and Paraguay;

- (b) in Schedule 5, the names of Belgium, Cyprus, France, Norway and Spain shall be omitted; and
- (c) the date mentioned in the second column of that Schedule shall be altered to 23rd August 1969 in the case of every country not so omitted except Costa Rica, Fiji and Paraguay.

3. Insofar as Part III is part of the law of Gibraltar—

- (a) in Schedule 4 to this Order, the date mentioned in the second column shall be altered to 28th October 1966 in the case of every country except Costa Rica, the Federal Republic of Germany (and Land Berlin), Fiji and Paraguay; and
- (b) in Schedule 5, the date mentioned in the second column shall be altered to 28th October 1966 in the case of every country except Belgium, Costa Rica, Cyprus, the Federal Republic of Germany (and Land Berlin), Fiji, Norway, Paraguay and Spain.

SCHEDULE 8

Orders Revoked

- The Copyright (International Conventions) Order 1964
- The Copyright (International Conventions) (Amendment) Order 1964
- The Copyright (International Conventions) (Amendment No. 2) Order 1964
- The Copyright (International Conventions) (Amendment) Order 1965
- The Copyright (International Conventions) (Amendment No. 2) Order 1965
- The Copyright (International Conventions) (Amendment No. 3) Order 1965
- The Copyright (International Conventions) (Amendment) Order 1966
- The Copyright (Gibraltar: Protection of Foreign Broadcasts) Order 1966
- The Copyright (International Conventions) (Amendment No. 2) Order 1966
- The Copyright (International Conventions) (Amendment No. 3) Order 1966
- The Copyright (International Conventions) (Amendment) Order 1967

- The Copyright (International Conventions) (Amendment No. 2) Order 1967
- The Copyright (International Conventions) (Amendment) Order 1968
- The Copyright (Bermuda: Protection of Foreign Broadcasts) Order 1969
- The Copyright (International Conventions) (Amendment) Order 1970
- The Copyright (International Conventions) (Amendment No. 2) Order 1970
- The Copyright (International Conventions) (Amendment) Order 1971

EXPLANATORY NOTE

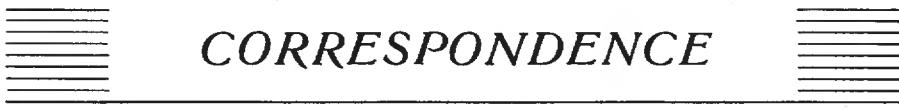
(This Note is not part of the Order.)

This Order revokes the Orders mentioned in Schedule 8 (being Orders providing for the protection, in the United Kingdom and the countries to which the Copyright Act 1956 has been extended, of works and other subject-matter originating in other countries party to international copyright conventions) and re-enacts the revoked provisions with minor modifications.

The Order also takes account of—

- (a) the accession of Fiji to the Berne Union, the Universal Copyright Convention and the International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations,
- (b) the confirmation by Mauritius of its adherence to the Universal Copyright Convention and
- (c) the fact that Western Samoa is no longer a member of the Berne Union.

Parts I and II of the Order are extended to the countries named in Schedule 6, being countries in which the Copyright Act 1956 is in force by virtue of Orders in Council made under that Act. In the case of Bermuda and Gibraltar Part III of the Order, which relates exclusively to sound and television broadcasts, is also extended (with modifications).



CORRESPONDENCE

Letter from the United Kingdom

by Denis de FREITAS *

This "Letter" records the developments in, and touching, the field of copyright during the two years ending December 31, 1971.

I. Legislation

A. Acts of Parliament

Copyright (Amendment) Act 1971

This Act filled a lacuna in Part IV of the Copyright Act, 1956 which contains the provisions relating to proceedings before the Performing Right Tribunal. These proceedings fall into three categories, viz.:

- (i) the reference of a licence scheme operated by a licensing body, either by an organisation representing the class of persons to whom the scheme applies or by an individual who claims that he requires a licence under the scheme (section 25);
- (ii) an application by an individual in a case covered by a licence scheme alleging that the licensing body has refused or failed to grant him a licence in accordance with the terms of that scheme (section 27(2));
- (iii) an application by an individual in a case not covered by a licence scheme alleging that the licensing body has refused to grant a licence or has proposed to grant one on terms which the individual claims to be unreasonable (section 27(3)).

Section 26 of the Act provides that while an order made by the Tribunal on the reference of a licence scheme (i. e. proceedings in category (i)) remains in force either the licensing body or a representative organisation or an individual claiming to require a licence under the scheme may refer the scheme back to the Tribunal at any time with the special leave of the Tribunal or, without the leave of the Tribunal, within certain prescribed time-limits.

The Act made no provision, however, for the review by the Tribunal of an order made in any proceedings in either category (ii) or (iii). There was no apparent reason for the distinction. The likelihood that the circumstances taken into account by the Tribunal when making an order in proceedings in categories (ii) and (iii) may subsequently vary, and thereby require a review of the order, is just as great as in the case of proceedings in category (i).

The 1971 Act amends the principal Act so as to provide, in relation to proceedings under section 27, the same rights of reference back and review as exist in relation to proceedings under section 25.

The Act came into operation on February 17, 1971.

B. Subsidiary Legislation

The Copyright (International Conventions) (Amendment) Order 1970 (S. I. No. 290) (see *Copyright*, 1970, p. 87).

The Copyright (International Conventions) (Amendment No. 2) Order 1970 (S. I. No. 637) (see *ibid.*, 1971, p. 49).

The Copyright (Isle of Man) Order 1970 (S. I. No. 1437) (see *ibid.*, 1971, p. 49).

The Performing Right Tribunal (Amendment) Rules 1971 (S. I. No. 636). This amends the Performing Right Tribunal Rules 1965 (1965 S. I. No. 1506) as a consequence of the enactment of the Copyright (Amendment) Act 1971 (supra) so as to regulate the procedure on the review of orders made under section 27 of the principal Act; it also makes a minor amendment relating to written answers. It came into force on May 1, 1971.

The Copyright (International Conventions) (Amendment) Order 1971 (S. I. No. 1850) (see *ibid.*, 1971, p. 256).

The Copyright (Isle of Man) Order 1971 (S. I. No. 1848). This extends the Copyright (Amendment) Act 1971 to the Isle of Man. It came into force on December 1, 1971.

II. Court Decisions

1. *Blair v. Alan S. Tomkins and Frank Osborne (trading as Osborne & Tomkins) and another*
Court of Appeal — Decision given November 12, 1970
Reported: 1971 — 1 *All England Reports* 469

Facts:

The owners of a plot of land wished to build two houses on it. To do this they required permission from the planning authority, and their application for permission had to be supported by detailed plans of the houses proposed to be built. They engaged an architect, the plaintiff, to prepare such plans. The plaintiff prepared plans, submitted an application and obtained full planning permission, and forwarded the certificate of planning permission together with a copy of his plans to the owners; he also sent them his account for fees payable in respect of all work done up to that stage. The owners paid his account in full.

The owners then sold the land to a building firm and furnished them with the certificate of planning permission and the plaintiff's plan. The new owners proceeded to build, using the plaintiff's plan but without engaging the plaintiff.

The plaintiff brought an action against the new owners, and their surveyors, for infringement of the copyright in his plans.

The contract between the plaintiff and the original owners incorporated standard conditions laid down by the Royal

* Legal Adviser and Secretary, The Performing Right Society Limited, London.

Institute of British Architects. These conditions provided, *inter alia*, that

- (a) the copyright in any plan produced by the architect belonged to him;
- (b) the contract could be terminated at any time by either party on reasonable notice; and
- (c) the fees payable to the architect would be determined by a fixed scale related to the amount of work actually done by him.

Held:

Although it was clear from the contract between the architect and the first owners that the architect retained ownership of the copyright in his plans, nevertheless there was an implied promise by him that having prepared plans for the erection of two houses, and having been paid in full the fees attributable to the work actually done by him, the first owners obtained a licence to use those plans for the erection by them, or by anyone to whom they sold the land, of the houses in accordance with the plans.

2. *Merchant Adventurers Limited v. M. Grew & Co. Ltd. (trading as EMESS Lighting)*

Chancery Division — Graham J. — Decision given March 22, 1971

Reported: 1971 — 2 *All England Reports* 657

Facts:

The plaintiffs made electric light fittings. One particular design called "Trimline 1020 series" and "Trimline 1030 series" was especially successful. The design was based on an original drawing by an outside designer who had been paid by the plaintiffs to make it. The fittings as marketed by the plaintiffs were produced from further drawings made by draftsmen employed by the plaintiffs for this purpose.

The defendants imported and sold fittings alleged by the plaintiffs to be copies of the "Trimline" series and to constitute infringements of the drawings from which the plaintiff's fittings were produced.

The plaintiffs sought an interim injunction prohibiting the defendants from importing and distributing the alleged infringing copies pending trial of the main action. The defendants contended, *inter alia*,

- (a) that no copyright in the plaintiffs' drawings subsisted as they were not published works within the meaning of the Copyright Act, 1956;
- (b) that the original drawing made by the outside designer was not made by a qualified person within the meaning of section 3(2) of the Act;
- (c) that if copyright did subsist in any of the drawings the plaintiffs were not the owners of it;
- (d) that copyright in sectional drawings could not be infringed by a complete three-dimensional object constructed from those drawings.

Held:

(i) For the purposes of section 3(3) of the Copyright Act, 1956, the reproduction in three-dimensional form as light fittings and their subsequent sale to the public constituted

sufficient " publication "; and that the requirement of section 49(2)(c) that an artistic work should only be taken to have been published if reproductions of the work had been issued to the public did not mean that the drawings themselves must have been published.

(ii) Alternatively, the evidence established *prima facie* that all the drawings other than the original one made by the outside designer had been made by " qualified persons " under a contract of service by virtue of which the plaintiff would be the owner of the copyright in those drawings.

(iii) *Prima facie* the outside designer appeared to be a qualified person by reason of residence in the United Kingdom at the time when he made his original drawing, but as he made the drawing for the plaintiffs and claimed no ownership in its copyright the plaintiffs were entitled to claim an assignment from him to them of that copyright and could therefore properly be regarded as the equitable owners of the copyright.

(iv) Although under section 17 of the Copyright Act only the " owner " of copyright could sue for an infringement the word " owner " included both the equitable as well as the legal owner and therefore the plaintiffs had capacity to sue.

(v) In judging whether the two-dimensional drawings were infringed by the three-dimensional reproduction in the shape of finished fittings, the proper test, having regard to section 9(8) of the Copyright Act, was stated by the judge in the following terms:

There is infringement of drawings by a three-dimensional reproduction of those drawings if they are sufficiently clear for a man of reasonable and average intelligence to be able to understand them from an inspection of them to such a degree that he will be able to visualise in his mind what a three-dimensional object, if made from them, would look like.

In the judge's view, the fittings imported by the defendants were *prima facie* infringements of the plaintiffs drawings when judged by this test.

(vi) On all other relevant questions of fact the court decided in favour of the plaintiff and granted the injunction.

Comment:

(a) The court commented on the considerable difficulty of interpreting and applying section 9(8) of the Copyright Act, the terms of which are as follows:

The making of an object of any description which is in three dimensions shall not be taken to infringe the copyright in an artistic work in two dimensions, if the object would not appear, to persons who are not experts in relation to objects of that description, to be a reproduction of the artistic work.

As a judge in the Court of Appeal in an earlier case of *Dorling v. Honnor Marine Limited* (1964—1 *All England Reports* 241) commented " the courts are well used to matters depending on the evidence of experts, whose opinion can thus be readily obtained, even if they are not often in agreement. But how is the impact of the appearance of an object on a non-expert (perhaps " the man on the Clapham 'bus ") to be ascertained? "

(b) Although these proceedings were interlocutory, it appears that the defendants have agreed to abide by the findings and the main action will not proceed to trial.

3. *Re: A private prosecution of Industrial Commercial Plastics Limited, David Zimmerman and Jeffrey Collins*
 Leicester Magistrates Court — March 25, 1971
 Unreported

Facts:

This was a private prosecution brought by Electrical Musical Industries Limited on behalf of the record industry under the Performers' Protection Acts, 1958 and 1963. The case concerned a bootleg recording of songs by the late Jimmy Hendrix on a record called "Live Experience 1967/68". A "bootleg" record is one made without permission from taped recordings of concerts and broadcasts, as distinguished from a "pirate" record which is one made without permission from a recording already lawfully on sale to the public. The defendant Zimmerman had been notified by the Mechanical Copyright Protection Society Limited that the record "Live Experience 1967/68" was bootleg but he nevertheless ordered 13,944 pressings from ICP Limited of which 9,666 had been delivered to him; he then proceeded to distribute to several retailers including the defendant Collins.

The defendant Collins traded under various names including "The Bootleg Record Company". He had advertised the availability of a variety of bootleg records, including "Live Experience 1967/68" and from a retail shop in London had sold copies of this record and had continued to offer for sale and to sell copies despite warnings that they were bootleg and that he would be prosecuted.

Decision:

The defendant ICP Limited gave an undertaking to the court that all records in their possession had already been destroyed together with the master tapes and that they would hand over to the prosecution all the stampers from which records had been pressed, and in view of this the summons against them was withdrawn.

The other two defendants pleaded guilty. Counsel for the prosecution told the court that the prosecution had been brought for two purposes:

- (a) to bring to Parliament's attention the inadequate protection afforded to performers by the law at present in view of the small fines which would be imposed and the fact that the law did not provide a civil remedy, and
- (b) as a warning to any other "bootleggers" that the record companies would not tolerate bootlegging or piracy in the United Kingdom.

The court convicted Zimmerman under section 1(a) of the Act as the person responsible for making the bootleg records, and Collins under section 1(b) for selling five of the records, and imposed the maximum fines of £50 against Zimmerman and £10 against Collins (£2 maximum for each sale). The court also made a destruction order against both defendants in respect of all copies of the records still in their possession and they were each ordered to pay £180 costs.

4. *Sifam Electrical Instrument Co. Ltd. v. Sangamo Weston Ltd.*
 Chancery Division — Graham J. — Decision given May 21, 1971
 Reported: 1971 — 2 All England Reports 1074

Facts:

The plaintiffs were manufacturers of ammeters; so were the defendants. An employee of the plaintiffs under a contract of service, created a sketch for the front of a meter at some time prior to 1967. From 1967 the design in the sketch was incorporated in meters marketed by the plaintiffs. From some date prior to October 25, 1968, the defendants commenced marketing a meter which incorporated a design alleged by the plaintiffs to infringe the copyright in their sketch.

Prior to October 25, 1968, the effect of section 10 of the Copyright Act, 1956 was that where copyright subsisted in an artistic work which also qualified for registration under the Registered Designs Act 1949 but had not been so registered, any remedy for infringement of the copyright in the design was lost once it had been "applied industrially". The incorporation in 1967 of the design in meters marketed by the plaintiffs amounted to "industrial application". Section 1(1) of the Registered Designs Act 1949 provides:

A design may ... be registered under this Act in respect of any article or set of articles specified in the application.

Section 44 of the Act defines "article" as including "any part of an article if that part is made and sold separately".

The plaintiffs brought an action against the defendants seeking an injunction to stop them infringing the plaintiffs' copyright sketch, and also for delivery and destruction of the infringing copies and sketches, and for damages.

The issues raised by these facts, and the findings of the court upon them, were as follows.

Held:

(i) There was a sufficient degree of originality in the sketch of the meter front to entitle it to copyright protection as an artistic work.

(ii) As the meter front was not intended to be made and sold separately from the entire meter of which it formed part, it was not an article within the definition in section 44 of the Registered Designs Act 1949 and therefore was not registrable under that Act.

(iii) After the amendment to section 10 of the Copyright Act, 1956 (which took effect on October 28, 1968, and under which the copyright protection in a design which had been applied industrially no longer depended upon registration), even if the sketch had been registrable under the Act, the plaintiffs were entitled to exercise their copyright to prevent infringement. On this issue the court held that the effect of section 10 of the Copyright Act, 1956, before it was amended, was not to extinguish the rights of the copyright owner but simply to prevent him, for as long as that particular provision remained in force, from exercising them; once the provision was amended this fetter on his right to exercise copyright was removed.

5. *Slovin-Bradford v. Volpoint Properties Ltd. and another*
 Court of Appeal — Decision given May 24, 1971
 Reported: 1971 — 3 *All England Reports* 570

Facts:

The principal defendants were property developers. They had prepared plans for the development of a property owned by them but had not been able to obtain permission from the planning authority for the development proposed. The plaintiff was an architect and a Fellow of the Royal Institute of British Architects with a reputation for the successful design of industrial buildings.

The defendants asked the plaintiff whether he would modify their plans for developing the property in such a way as to persuade the planning authority to grant permission. After a consultation between the plaintiff and the defendants, the plaintiff agreed to suggest architectural improvements to the defendants' plan and to charge 100 guineas (£105) for his services in this respect. The agreement was an oral one. The plaintiff prepared modified plans, which incorporated a special and distinctive feature which was diamond-shaped; he submitted the plans to the planning authority.

At this stage, because of certain information received by the plaintiff about the defendants, the plaintiff decided to submit his account at once to the defendants, expressly marking on the account:

- (i) that it was for an agreed nominal fee of 100 guineas;
- (ii) that the copyright of the design remained with the plaintiff and could not be reproduced without his prior written consent.

The defendants paid the account.

Initially, the planning authority refused permission. The plaintiff was dissatisfied with the manner in which the defendants were handling the project and he withdrew from it entirely. Subsequently, the defendants renewed their application for planning permission and it was finally granted. The defendants proceeded with the development incorporating the distinctive diamond-shape feature in the plaintiff's plan, but made no other use of his design. If the development had been carried out in accordance with the plaintiff's plans, the estimated cost would have been about £90,000 and, under the RIBA scale of fees, his full fee up to the stage of preparing the plans would have been about £900 as compared with the £105 actually paid.

The plaintiff sued the defendants for infringement of the copyright in his plans.

Held:

The court decided that the facts in this case must be distinguished from the facts in *Blair v. Alan S. Tomkins and Frank Osborne* reported above. In Blair's case, the architect had been engaged under the standard RIBA terms and had charged full scale fees for all work done; in this case the contract was a simple oral one providing for a fixed fee of 100 guineas. The defendants, as property developers, would be aware of the standard RIBA conditions and scale of fees and would know that the fee charged by the plaintiff was far less than the full scale fee.

Where, therefore, the plaintiff architect had charged only a nominal fee, it was not reasonable to imply, as in Blair's case, a licence from the architect to the defendants to use the plan for subsequent implementation of the development if and when planning permission was obtained.

The court decided, therefore, that the plaintiff's copyright had been infringed and approved the award of £500 damages given by the court of first instance.

6. *Hubbard and another v. Vosper and another*

Court of Appeal — Decision given November 19, 1971
 Reported: *The Times* November 20, 1971

Facts:

The plaintiff Hubbard had invented the word "scientology" which described the philosophy or cult preached by the Church of Scientology of California. He had written a number of works advocating scientology, including a dictionary and an *Introduction to Scientology Ethics*. The Church of California held a number of courses at Saint Hill Manor in Sussex for those wishing to study scientology.

The defendant had been engaged at Saint Hill for some fourteen years and had now written a book entitled *The Mind Benders* which was severely critical of scientology. In his book he quoted extensively from the *Introduction to Scientology Ethics*, and also used information relating to the courses given at the Manor which had become available to him under conditions of confidentiality.

The plaintiffs applied for an interim injunction to prevent the publication of *The Mind Benders* on two grounds:

- (i) because it infringed the plaintiff Hubbard's copyright in his own works, and in particular in *Introduction to Scientology Ethics*;
- (ii) the disclosure of some of the information was a breach of confidence.

In the Court of first instance, an interim injunction was issued against the defendants. The defendants entered an interlocutory appeal against this decision.

This report is concerned only with the copyright issues raised by the appeal.

Held:

(i) The use made by the defendant in his book of material from *Introduction to Scientology Ethics*, amounting to as much as a tenth, was substantial enough to constitute infringement.

(ii) However, the defendant was protected by section 6(2) of the Copyright Act, 1956, which is in the following terms —

No fair dealing with a literary, dramatic or musical work shall constitute an infringement of the copyright in the work if it is for purposes of criticism or review, whether of that work or of another work, and is accompanied by a sufficient acknowledgment.

The defendant had certainly acknowledged the source of the quotations; so, the sole question was whether his dealing with Mr. Hubbard's works was "fair dealing". The Court of Appeal considered that the treatment in the defendant's book by giving quotations, sometimes long, sometimes short, from Mr. Hubbard's books followed by explanations, elaborations and eventually criticism and condemnation was fair.

The plaintiff contended that criticism of a literary work could only amount to fair dealing if it was criticism of the literary work itself and not of the thoughts communicated by the work. The court rejected this, holding that fair dealing with a work includes criticism of the ideas underlying the work, as distinct from criticism of the conduct of the individual himself.

(iii) As the defendants also succeeded on the breach of confidence point, the appeal was allowed and the injunction discharged.

Comment:

Although these were interlocutory proceedings, i. e. an appeal against an interim injunction issued pending hearing of the main action, the issues determined by the Court of Appeal were essentially those which would have to be determined in the main action and it is unlikely that the main action will be pursued.

7. Bodley Head Ltd. v. Flegon (trading as Flegon Press)

Chancery Division — Brightman J. — Decision given November 25, 1971

Reported: *The Times* November 26, 1971

Facts:

The plaintiffs were publishers and sought an interim injunction, pending the hearing of the main action, to restrain the publication by the defendant, also a publisher, of an allegedly pirate English translation of the novel *August Fourteen* by the Russian writer Alexander Solzhenitsyn.

A Swiss lawyer, Dr. Fritz Heeb, obtained through an intermediary a power of attorney written in German, expressed to be governed by Swiss law, signed by Solzhenitsyn in Moscow, appointing Dr. Heeb to deal with his literary works outside Russia. Dr. Heeb licensed a French publisher, YMCA Press, to publish the novel in Russian in France and this edition was published in June 1971. On June 18, 1971, Dr. Heeb assigned to a German company the right to authorise publication, and serialisation, in the United Kingdom and, on June 26, 1971, the German company granted these rights to the plaintiffs on condition that no published English translations should appear before August 1972. In August 1971, the plaintiffs sold serialisation rights to a Sunday newspaper for publication in September 1972, and paperback rights to a paperback publisher.

The defendant challenged the plaintiff's rights, proposed to publish his own English translation in September 1971 and offered his version of the book to the Sunday newspaper and paperback publisher on better terms than those offered by the plaintiffs.

The defence to the plaintiff's application for an injunction rested on three grounds:

(i) that the YMCA Press publication in France was not a first publication because the work had already been published in Russia under the system known as *samizdat*;

- (ii) that the court should not assist someone whose claim was based on acts known to him to be unlawful according to the law of the foreign country with which those acts were connected;
- (iii) under Russian law Solzhenitsyn lacked capacity to contract with Dr. Heeb.

Held:

(i) As conceded by the plaintiffs, if first publication had taken place in Russia, the plaintiffs' claim would fail as the work would not be protected under the copyright law of the United Kingdom but, as the defendant conceded, the onus of proving such publication lay upon him.

(ii) The only evidence submitted by the defendant that the work had been published in Russia by the underground and illegal system of *samizdat* was contained in statements by the defendant himself unsupported by any evidence that he had been to Russia at the relevant time, or had met or corresponded with the author. The court ruled that this evidence established nothing.

(iii) Similarly, the production by the defendant of a cutting from the French newspaper *Le Monde* of June 12, stating that the work had been published in Russia in *samizdat*, but without any attempt to check the source of the report, was also worthless as evidence.

(iv) Again the statement by the defendant that other persons, who at the time of the trial were back in Russia, had told him that they had read the book in Russia was equally worthless. As publication by *samizdat* would involve criminal offences, the court could only regard such publication as proved by clear and reliable evidence.

(v) Although, in view of the court's finding that publication by *samizdat* had not been proved, it was not necessary to rule as to whether such publication could properly be regarded as first publication for the purposes of the copyright law, the court expressed doubt as to whether publication by *samizdat* would in fact satisfy the requirements of the law in this respect.

(vi) As regards the second ground of defence, the court held that the plaintiff's agreement with the German company did not, in fact, require any illegal act to be done as it did not require anything to be done within Russian frontiers, but merely the payment of royalties partly in Germany and partly in Switzerland.

(vii) As regards the third ground of defence, the court held that although the power of attorney signed by Solzhenitsyn might be invalid under the Russian law, the court did not accept that the contract was made in Russia. The court found that there was no intention on the part of either the author or Dr. Heeb that any act should be performed in Russia. The agency was constituted in Switzerland, was intended by both parties to be governed by Swiss law and had no connection with Russia; there was therefore no reason why Swiss law should not govern and, under Swiss law, Solzhenitsyn was not incapacitated from signing the power of attorney.

In view of these findings the court granted the injunction.

Comment:

These proceedings are only interlocutory and the purpose of the interim injunction is simply to prevent publication of the defendant's version of *August Fourteen* until the issues are fully argued at the trial of the main action. The findings of the court as reported above are therefore subject to possible modification in the light of further evidence and argument when the main action is heard.

8. *Moore v. News of the World Ltd. and another*

Court of Appeal — Decision given December 9, 1971

Reported: 1972 — *All England Reports* 915.

(N.B. A report on preliminary proceedings in this case was included in the "Letter from Great Britain" in the June 1970 issue of *Copyright*.)

Facts:

The plaintiff was a professional singer whose life has been the subject of considerable publicity. She was interviewed by a reporter from the Sunday newspaper, *News of the World*, for the purpose of publishing an article about her. The reporter took notes of the interview, but the plaintiff did not see the article and was unaware of its contents until she read it in the *News of the World*. The article was principally about the plaintiff's relationship with her divorced husband. It was written in the first person as if the plaintiff was herself talking, and head-lines both on the front page and on an inner page, where the article was printed, referred to it as "by" the plaintiff although on the inner page the words, in smaller print, "talking to" the reporter were added.

The plaintiff brought an action for libel and was awarded damages of £4,300 by the jury. In her action she also claimed damages under section 43 of the Copyright Act, 1956, and it is on this issue only that this case is reported here. The whole section is too long to set out in full; its effect is to make it a civil wrong for any person falsely to attribute the authorship of a work to a person who is not the author. However, subsection (10) of the section is important and is in the following terms —

Nothing in this section shall derogate from any right of action or other remedy (whether civil or criminal) in proceedings instituted otherwise than by virtue of this section:

Provided that this subsection shall not be construed as requiring any damages recovered by virtue of this section to be disregarded in assessing damages in any proceedings instituted otherwise than by virtue of this section and arising out of the same transaction.

Held:

(i) Although in most cases of false attribution of authorship under section 43 there would also be a cause of action for libel, the award of damages for libel did not necessarily prohibit in every case an additional award for the annoyance and irritation caused by the false attribution. Thus, although section 43(10) prohibited duplication of damages in respect of the same complaint, where the facts indicated that, in addition to the injury suffered by the plaintiff from the libel, there was an additional injury caused by the false attribution, it would be proper for an additional amount of damages to be awarded. The court upheld the award by the jury of £100 in respect of the false attribution.

(ii) Section 43 of the Copyright Act did not apply, as the defendants contended, only to professional authors. The provision protected everybody.

Comment:

This is the first occasion when the courts have had to consider section 43 of the Copyright Act. In practice it may not be easy to distinguish those cases of false attribution of authorship where there is additional injury, distinct from that caused by the libel, justifying additional damages from cases where the libel damage covers everything. In the Court of Appeal, one of the three judges, Megaw L.J., was in fact doubtful whether this case did warrant a separate award under section 43 but did not hold this opinion strongly enough to dissent formally.

III. Performing Right Tribunal Decision***The British Broadcasting Corporation (BBC) and the Performing Right Society Limited (PRS) — PRT 24/71***

On March 27, 1972, the Performing Right Tribunal gave its decision in the dispute between the PRS and the BBC over the terms of the current licensing agreement between them. The previous agreement, which applied terms fixed by the Tribunal in proceedings heard in 1967, expired on March 31, 1971. Under that agreement, the annual royalty payable by the BBC was calculated by multiplying a fixed sum each month by the current number of paid receiving licences, no distinction being made between radio, monochrome television or colour television licences. In December 1967, when the Tribunal gave its first decision, the annual amount of the sum per receiving licence was fixed at 8.9583 p., but by the end of the contract, on March 31, 1971, this had increased to 10.244 p. as a result of the operation of an automatic cost of living adjustment clause in the agreement. This "fixed sum per receiving licence" formula had been in use between the PRS and the BBC since 1937. The following table shows the total royalty paid under the formula for each of the calendar years 1967, 1968, 1969 and 1970 and the total number of receiving licences in issue on December 31, of each of those years.

| | Royalty paid £ | Total number of licences as at December 31 |
|------|-------------------|---|
| 1967 | 1,520,184 | 17,445,645 |
| 1968 | 1,588,937 | 17,871,601 |
| 1969 | 1,630,103 | 18,125,356 |
| 1970 | 1,747,380 | 18,356,477 |

In the negotiations between the PRS and the BBC, and in the proceedings before the Tribunal, the contentions of the two parties may be summarised as follows.

The PRS case

1. The last negotiated agreement between the PRS and the BBC, in 1964, was, when judged in retrospect, unfair to the PRS as it did not adequately take into account

(a) the rise in the cost of living, nor

(b) the increased use of PRS music by the BBC

which had occurred since the previously negotiated agreement in 1957.

2. The Tribunal's award in 1967 was too low because:

- (a) it was based on the level of payments set by the 1964 agreement, which was itself too low;
- (b) even on the basis of the 1964 level, the 1967 Tribunal award was too low as it did not adequately implement the conclusions of the Tribunal itself regarding the factors which should be taken into account in determining the royalty payable.

3. The "per licence" formula was no longer appropriate because:

- (a) it could not, during the currency of a contract, reflect significant changes in the extent or pattern of use by the BBC of the PRS repertoire;
- (b) with the abolition of radio receiving licences in January 1971, the continued use of the formula, which would now have to be related solely to the television receiving set licences, was quite artificial particularly for calculating the royalty payable for the major use made by the BBC of the PRS repertoire which was on its radio services.

4. The PRS proposed therefore that the royalty paid by the BBC to the PRS in the opening years of the agreement negotiated in 1957 should be regarded as a reasonable starting level and that the royalties payable under the new contract should be calculated by adjusting the 1957 levels to take account of changes in relevant circumstances since 1957. The relevant circumstances and other factors principally relied upon by the PRS were as follows:

- (a) The rise in the cost of living from 1957 to 1971 (65%).
- (b) The rise in the standard of living between 1957 and 1971, as measured by the rise in average earnings and incomes (125%).
- (c) The general public demand for, and consequential increase in value in, music as a commodity illustrated by, *inter alia*, the growth in the numbers of radios manufactured and imported, juke-boxes in operation, background music service installations, and so on.
- (d) The increase in the value of the PRS repertoire consequent upon the increase from 124,848 in 1957 to 225,416 in 1971 in the number of composers, authors and publishers represented by the PRS and its affiliated societies.
- (e) The decline between 1957 and 1971 in the real value (i. e. after taking account of inflation) of the amount which the Society was able, from the global payment made by the BBC, to pay in respect of each work broadcast.
- (f) The comparison between the amount paid by the commercial television companies for the right to broadcast the PRS repertoire over one channel (approximately £936,000 in 1972), and the amount which the PRS was able to allocate to BBC television broadcasts of PRS repertoire (over two channels) out of the global royalty paid by the BBC.
- (g) Having regard to the terms on which broadcasting rights in music are licensed in Europe by other performing right societies (for example, West Germany and Switzerland):

 - (i) it was not unreasonable for the PRS to license the BBC on a percentage basis rather than on a "fixed sum per licence" basis;

(ii) the level of royalties proposed by the PRS to be paid by the BBC was not unreasonable by comparison with payments made to other societies.

5. The terms finally offered in the negotiations by the PRS to the BBC were, at the option of the BBC, any one of the following four formulae:

A. *Percentage of music use income.* — The total annual royalty to be calculated at 12% of the BBC's "music use income" each year.

"Music use income" meant the aggregate of: (i) 40% of the BBC's income allocated by it to domestic radio services, (ii) 20% of the income allocated to television services, (iii) 10% of the Government grant received in respect of external radio services.

If the use by BBC of the PRS repertoire varied by more than 12.5% from 40% in respect of domestic radio services, 20% in respect of television services or 10% in respect of the external radio services, during the currency of the agreement, those percentages would be varied accordingly.

B. *Percentage of total income.* — The annual royalty to be calculated at 2.75% of the total income of the BBC each year.

Total income meant the aggregate of the total licence fee income received by the BBC in respect of its domestic radio and television services, and the Government grant in respect of the external radio services.

If the use by the BBC of the PRS repertoire varied by more than 12.5% from the basic assumed use (40% on domestic radio, 20% on television and 10% on external radio services) the 2.75% royalty rate could be renegotiated.

C. *Percentage of music use expenditure.* — The royalty to be calculated at 13% of the BBC's "music use operating expenditure" each year.

"Music use operating expenditure" meant the aggregate of 40% of the operating expenditure on domestic radio services, 20% of the operating expenditure on television services, and 10% of the operating expenditure of external radio services.

This formula also incorporated a variation clause corresponding to that in formula A.

D. *Fixed sum per licence.* — The annual royalty to be calculated at the rate of 19 p. per paid receiving licence provided that:

- (i) the fixed sum to be adjusted in accordance with changes in the cost of living during the currency of the agreement;
- (ii) the annual royalty would be adjusted by either supplemental payments by the BBC, or refunds by the PRS, in the event of the use by the BBC of the PRS repertoire on: (a) television services, (b) domestic radio services excluding local radio, (c) the local radio services, and (d) the external radio services varying by more than 5% from the 1970/1971 level of use on the respective services.

The PRS proposed that the increased royalty payable under whichever of the four alternative formulae the BBC

selected should be limited in the first year of the new agreement to an amount which did not exceed by more than 40% the actual royalty paid in the last year of the expired agreement, and in the second year of the new agreement to an amount which did not exceed by more than 50% the actual royalty paid in the last year of the expired agreement.

The BBC case

1. The Tribunal had already given full consideration, in the 1967 proceedings, to both questions, viz.:

- (a) what amount of royalty it was reasonable for the BBC to pay the PRS for the use of its repertoire;
- (b) what was the appropriate formula by which that amount should be calculated,

and there was no justification for these issues to be reopened.

2. The PRS should not be allowed to go behind the 1964 agreement and question the reasonableness of terms which it had itself accepted.

3. The royalty payable by the BBC to the PRS should therefore continue to be calculated as a fixed sum per receiving licence at the rates fixed by the Tribunal in 1967 adjusted only:

- (a) to take account of changes in cost of living as they occurred, and
- (b) to take account of the disappearance of the radio licences.

4. In particular the BBC contended:

- (i) the licensing arrangements existing in other countries were not relevant to a consideration of the terms of the licensing agreement between the PRS and the BBC;
- (ii) even if such evidence was relevant, the circumstances varied so much from one country to another that it was impossible to carry out a comparison of any true significance;
- (iii) as the BBC was carrying on public service broadcasting financed by licence fees, there was no justification for regarding the royalties paid by commercial broadcasting companies as relevant when considering what the BBC should pay;
- (iv) in so far as it was reasonable for the PRS to receive increased payment because of increased use of the PRS repertoire by the BBC, the annual increase in the royalty resulting from the growth each year in the total number of licences was a satisfactory way of dealing with this factor.

5. The BBC, therefore, contended that all four alternative formulae proposed by the PRS were unreasonable, both as to the nature of the formula and as to the total royalty which would be payable.

The Tribunal's decision

The hearings before the Tribunal lasted two weeks and the decision was given six weeks after the hearings ended. In addition to fixing the levels of royalty to be paid by the BBC, and the formulae by which the payments should be calculated, the Tribunal settled a number of important points. The salient features of the decision may be summarised as follows.

1. Although the PRS would naturally be bound by the terms of an agreement during its currency, nevertheless if, after the agreement had expired, the PRS could show that in fact it had made a bad bargain, it was not unreasonable for it to be free to do so and for this to be taken into account when future terms were being settled.

2. In addition to inflation (agreed by the BBC as a relevant factor), it was also relevant to take into account changes in the standard of living.

3. Evidence of the licensing arrangements between the performing right societies and broadcasters in other countries was relevant, although it is not clear from the decision how much guidance the Tribunal actually drew from the evidence tendered on this aspect.

4. The value of the PRS repertoire should properly be regarded as enhanced by the increase in the number of composers, authors and publishers represented by the PRS and its affiliated societies.

5. The royalties paid by the commercial television companies to the PRS should be regarded as relevant.

6. The fixed sum per licence formula for calculating the royalty was no longer appropriate. Of the three other formulae offered by the PRS, the Tribunal considered that both formula A and C were open to the objection that the BBC itself by its own internal accounting procedures or policies could influence the amount of royalty paid. The Tribunal decided that formula B was, in principle, the most satisfactory and decided that it should be adopted subject to the following modifications:

- (a) the percentage should be reduced from 2.75% to 2%;
- (b) there should be no specific variation clause, but either party could refer back to the Tribunal under section 27A of the Copyright Act if it was considered that there had been a significant change in circumstances during the currency of the agreement;
- (c) the ceilings for the first two years of the agreement should be changed from the percentages proposed by the PRS to fixed sums which the Tribunal set at £2.35 million for 1971/1972 and £2.55 million for 1972/1973.

In 1967 and in the proceedings just completed, both the PRS and the BBC had agreed that the Tribunal's decision should refer back to the commencing date of the licensing agreement under reference. In 1967, the Tribunal took the view that it could not make a retrospective award (although both parties had agreed); on this occasion, however, the Tribunal directed that its award should relate back to April 1, 1971, i. e. the commencing date of the new contract which will run for five years and, unless there is a reference back to the Tribunal under section 27A, will terminate on March 31, 1976.

On the basis of estimates of income presented to the Tribunal by the BBC the royalty payable for each of the first four years of the agreement is likely to be

| | | |
|-----------|--------------|---------------------------|
| 1971/1972 | £ 2,350,000 | (ceiling set by Tribunal) |
| 1972/1973 | 2,550,000 | " " " |
| 1973/1974 | 2,800,000 | |
| 1974/1975 | 3,000,000 | |
| | £ 10,700,000 | |

Under the BBC's proposals the total amount payable during the first four years of the agreement was estimated to be £8,959,920.

IV. Other Developments

1. Public Lending Right

As reported in the last "Letter from Great Britain" (June 1970) the movement in the United Kingdom for the establishment of a public lending right has been gathering momentum. Since then the British Government agreed with the proposal in principle and, in March 1971, Lord Eccles, the Paymaster General and Minister responsible for cultural affairs, appointed a working party with the following terms of reference:

The task of the Working Party is to consider how an amendment to the Copyright Act, 1956, which added lending to the public to the acts restricted by copyright might be implemented. The Working Party are not required to recommend particular courses of action, but to consider what form the amendment to the Act might take, to define possible methods by which it could be implemented and to set forth and compare their detailed implications. The Working Party's conclusions should be embodied in a report to the Paymaster General, designed to provide a basis for a decision of policy on whether such an amendment to the Act would be a practical and worthwhile step.

The working party has now completed its studies; its report has been submitted to the Government and it is expected that it will be published shortly. Until publication, the findings and recommendations of the working party are not known. However, two points can be made.

Firstly, as appears from the terms of reference, it was not the responsibility of the working party to examine whether or not a public lending right as such was desirable (as the Government had already accepted this in principle), but to examine how such a right could be constituted by incorporation in the law of copyright and what might be the most convenient practical arrangements for implementing the right if so established.

Secondly, it is known that full information of the blanket licensing system, and distribution procedures, operated by the Performing Right Society in the field of the performing and broadcasting rights in music, was submitted to the working party and it is not unlikely that the working party will recommend the adoption of a similar system, not only for the lending by public libraries of musical works (which takes place extensively both by means of sheet music and records and tapes) but also for books as well.

2. Value Added Tax

One of the consequences of the entry by the United Kingdom into the European Economic Community is the obligation to introduce the value added tax system. An outline of this new system and the general principles which the Government contemplated should govern its operation in the United Kingdom were set out in a Green Paper presented to Parliament in March 1971 (Command 4621 published by Her Majesty's Stationery Office). This Green Paper invited all interested parties who wished to do so to make representations to the Government. In the copyright field, the British Copyright Council on behalf of copyright interests generally, as well as a number of organisations, including for example the Publish-

ers Association, the Institute of Journalists, the Performing Right Society, made submissions to the Government. Because of the wide variety of the special interests and the differences between the nature of the businesses carried on by the members of the various bodies, it is not practicable to summarise the details of the representations. Generally speaking, however, it was the submission of the British Copyright Council that copyright transactions ought, in principle, to be "zero-rated". The effect of placing a particular transaction in a "zero-rated" class is that the person selling or licensing the interest is within the VAT system, but is required to collect tax from the person to whom the interest is sold or licensed at zero rate; in other words he does not have to collect any tax at all. However, as he is within the system he is entitled to recover from the Government any VAT which he has paid on goods or services purchased by him for the purpose of his business.

In the Green Paper, the Government had indicated that relief, either by way of exemption or by way of zero rating, would only be given in a limited number of cases and, in the copyright field, the only instance mentioned was relief for newspaper, periodicals and books. This had been anticipated by a policy declaration some years previously by the Conservative party that, if and when it was in a position to introduce VAT, special provision would be made to ensure that it did not become a tax on knowledge.

The Government has now presented to Parliament a White Paper (Command 4929 published by Her Majesty's Stationery Office) setting out the Government's firm proposals formulated in the light of all the representations it received following the Green Paper, and the text of the actual legislation is included. The legislation is somewhat complex, and the concepts are somewhat unfamiliar, so it is too early to identify all the implications for copyright interests. However, it is quite clear that the Government did not accept the general submission that all copyright transactions should be given relief. The special protection for the dissemination of knowledge, foreshadowed by the Government in earlier announcements, has been implemented in the draft legislation by including amongst the items which will be zero-rated the following:

Group 3 — Books, etc.

Item No.

1. Books, booklets, brochures, pamphlets and leaflets.
2. Newspapers, journals and periodicals.
3. Children's picture books and painting books.
4. Music (printed, duplicated or manuscript).
5. Maps, charts and topographical plans.
6. Covers, cases and other articles supplied with items 1 to 5 and not separately accounted for.

Note: This Group does not include plans or drawings for industrial, architectural, engineering, commercial or similar purposes.

Group 4 — Newspaper Advertisements

Item No.

1. The publication in any newspaper, journal or periodical of any advertisement.
2. The preparation of any advertisement intended for publication solely or mainly in one or more newspapers, journals or periodicals.
3. The supply of services for the purpose of securing such a publication or a preparation as is mentioned in item 1 or 2.

Group 5 — News Services**Item No.**

1. The supply to newspapers or to the public of information of a kind published in newspapers.

Note: This item does not include the supply of photographs.

Generally speaking, therefore, apart from these special cases, all transactions involving the sale or licensing of copyright interests will be within the scheme, and tax at the standard rate, expected to be about 10%, will have to be collected. The full implications for all copyright interests and in particular for individual authors will take some time to assess and I hope to include a fuller report in the next "Letter".

V. Books and Other Publications

This section is not intended to be a series of reviews on the books and other publications mentioned. Its purpose is simply to draw attention to the publications indicating very briefly their nature and scope so that anyone interested may pursue his interest by obtaining a copy.

A. Books

Copyright — Evolution, theory and practice, by R. F. Whale. Published by Longman Group Limited (217 pages)

The author, Royce Whale, is a former General Manager of the Performing Right Society with great practical experience of copyright matters, particularly in the field of music, and who for many years was a well-known participant at meetings of CISAC and other international bodies concerned with copyright matters. For administrators and others responsible for the copyright aspects of a business, and also for lawyers needing a quick and handy source of copyright information, this book provides in a convenient compass a full account of the copyright law of the United Kingdom.

Photocopying Practices in the United Kingdom, by Ronald E. Barker. Published by Faber & Faber Limited (104 pages)

The author is the Secretary of the Publishers Association and Chairman of the British Copyright Council; he is also an internationally respected authority on copyright and this book is an analysis of the present law and practices, in the United Kingdom, relating to photocopying prepared for the meeting of a Committee of Experts convened by Unesco and BIRPI (WIPO) in July 1968.

Public Lending Right — A Matter of Justice. Edited by Richard Findlater. Published by André Deutsch Limited (112 pages)

This is an anthology of articles on the common theme that, in the words of the introduction by Lord Goodman (Chairman of the Arts Council in the United Kingdom) "it is a social wrong to allow a book still in copyright to be borrowed from a public library without any payment of any kind to the living author". The contributors include distinguished authors, publishers and librarians.

B. Other Publications

The following articles on various aspects of copyright have been published during the period covered by this "Letter":

Performing Right, May 1970 (Journal of the PRS)

- (a) Some Aspects of Copyright, by Laurence Swinyard, Chairman of the General Council of PRS
- (b) Legal Notes on
 - Family Law Reform Act, 1969,
 - Tax Concessions — Irish Republic, by Denis de Freitas
 - Software Protection, by Gavin McFarlane, Barrister-at-Law, PRS

Law Guardian, September 1970

Artists and the droit de suite, by Gavin McFarlane

Performing Right, November 1970

Audio Visual Systems, by Denis de Freitas

Journal of Business Law, January 1971

Public Lending Right, by Gavin McFarlane

Performing Right, May 1971

- (a) Music Copyright and the Videocassette Systems, by B. W. Pratt, Managing Director of the Mechanical Copyright Protection Society
- (b) Public Lending Right — Musical Parallels, by Michael Freegard, General Manager of PRS
- (c) The Meaning of Publication, by R. F. Whale, former General Manager of PRS
- (d) The droit moral in the UK, by Gavin McFarlane
- (e) Reproductions: Private, Educational, Library, by Denis de Freitas

New Law Journal, September 2, 1971

Architects' Drawings and Plans, by Ian S. Blackshaw, FRCA, Solicitor

Law Guardian, July 1971

Obscenity and Copyright, by Gavin McFarlane

The Bookseller, July 17, August 14 and 21, 1971

Copyright — The New International Conventions, by Ronald E. Barker

Solicitors Journal, August 27, 1971

International Copyright: The Crisis Resolved, by Gavin McFarlane

International and Comparative Law Quarterly, Vol. 20, p. 675

Authors Status in the United Kingdom and France; Common Law and the Moral Right Doctrine, by C. A. Marvin, Professeur adjoint, Université Laval, Quebec; former lecturer in law, University of Kent

Performing Right, November 1971

- (a) The Revision of the Berne and Universal Copyright Conventions — Paris 1971, by R. F. Whale
- (b) Legal Notes on — Arrangements, by Denis de Freitas



CALENDAR

WIPO Meetings

September 21 and 22, 1972 (Geneva) — Intergovernmental Committee Established by the Rome Convention (Neighboring Rights) — Extraordinary Session

Object: Consideration of various questions concerning neighboring rights — *Invitations:* Brazil, Denmark, Germany (Fed. Rep.), Mexico, Niger, United Kingdom — *Observers:* Congo, Costa Rica, Czechoslovakia, Ecuador, Fiji, Paraguay, Sweden; intergovernmental and international non-governmental organizations concerned — *Note:* Meeting convened jointly with the International Labour Office and Unesco

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

September 26 to October 6, 1972 (Berne) — International Patent Classification (IPC) — Working Group IV of the Joint ad hoc Committee

October 2 to 9, 1972 (Geneva) — Patent Cooperation Treaty (PCT) — Standing Subcommittee of the Interim Committee for Technical Cooperation

Members: Austria, Germany (Fed. Rep.), Japan, Netherlands, Soviet Union, Sweden, United Kingdom, United States of America, International Patent Institute — *Observer:* Brazil

October 4 to 9, 1972 (Geneva) — Patent Cooperation Treaty (PCT) — Interim Committee for Technical Assistance, Interim Committee for Technical Cooperation and Interim Advisory Committee for Administrative Questions

Members: States which have signed or acceded to the PCT — *Observers:* Intergovernmental and international non-governmental organizations concerned

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

October 16 to 20, 1972 (Nairobi) — African Seminar on Intellectual Property

Object: Discussion on the role of intellectual property in the development of African States — *Invitations:* Botswana, Burundi, Cameroon, Central African Republic, Chad, Congo, Dahomey, Equatorial Guinea, Ethiopia, Gabon, Gambia, Ghana, Guinea, Ivory Coast, Kenya, Lesotho, Liberia, Madagascar, Malawi, Mali, Mauritania, Mauritius, Niger, Nigeria, Rwanda, Senegal, Sierra Leone, Somalia, Swaziland, Togo, Uganda, United Republic of Tanzania, Upper Volta, Zaire, Zambia — *Observers:* Intergovernmental and international non-governmental organizations concerned

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

October 30 to November 3, 1972 (Geneva) — Committee of Experts on a Patent Licensing Convention

Object: Study of problems concerning the transfer of technology to developing countries and patent licensing — *Invitations:* Algeria, Argentina, Brazil, Chile, Colombia, Czechoslovakia, Egypt, France, Germany (Fed. Rep.), India, Indonesia, Iran, Japan, Kenya, Mexico, Pakistan, Philippines, Senegal, Soviet Union, Spain, Sudan, Sweden, Switzerland, Thailand, United Kingdom, United States of America, Venezuela, Zaire — *Observers:* Intergovernmental and international non-governmental organizations concerned

November 20 to 25, 1972 (Munich) — International Patent Classification (IPC) — Bureau of the Joint ad hoc Committee

November 28 to December 1, 1972 (Munich) — International Patent Classification (IPC) — Joint ad hoc Committee

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

February 12 to 16, 1973 (London) — International Patent Classification (IPC) — Working Group V of the Joint ad hoc Committee

March 20 to 30, 1973 (*) — International Patent Classification (IPC) — Bureau of the Joint ad hoc Committee

April 2 to 6, 1973 (*) — International Patent Classification (IPC) — Joint ad hoc Committee

April 9 to 13, 1973 (Geneva) — Committee of Experts on a Model Law for Developing Countries on Appellations of Origin

Object: To study a Draft Model Law — *Invitations:* Developing countries members of the United Nations — *Observers:* Intergovernmental and international non-governmental organizations concerned

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

June 4 to 8, 1973 (*) — International Patent Classification (IPC) — Working Group I of the Joint ad hoc Committee

June 18 to 22, 1973 (*) — International Patent Classification (IPC) — Working Group II of the Joint ad hoc Committee

July 2 to 6, 1973 (*) — International Patent Classification (IPC) — Working Group III of the Joint ad hoc Committee

July 9 to 13, 1973 (*) — International Patent Classification (IPC) — Working Group IV of the Joint ad hoc Committee

September 10 to 14, 1973 (*) — International Patent Classification (IPC) — Working Group V of the Joint ad hoc Committee

September 24 to October 2, 1973 (Geneva) — Administrative Bodies of WIPO (General Assembly, Conference, Coordination Committee) and of the Paris, Berne, Madrid, Nice, Lisbon and Locarno Unions (Assemblies, Conferences of Representatives, Executive Committees)

October 29 to November 2, 1973 (*) — International Patent Classification (IPC) — Bureau of the Joint ad hoc Committee

November 5 to 9, 1973 (*) — International Patent Classification (IPC) — Joint ad hoc Committee

UPOV Meetings

October 10 and 11, 1972 (Aarslev) — Technical Working Party for Vegetables

November 7 to 10, 1972 (Geneva) — Diplomatic Conference

Object: Amendment of the Convention

November 8 and 9, 1972 (Geneva) — Council

December 5 to 7, 1972 (Geneva) — Working Group on Variety Denominations

March 13 and 14, 1973 (Geneva) — Technical Steering Committee

July 2 to 6, 1973 (London/Cambridge) — Symposium on Plant Breeders' Rights

Meetings of Other International Organizations concerned with Intellectual Property

October 9 to 11, 1972 (The Hague) — International Patent Institute — Administrative Council

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

October 16 to 27, 1972 (Brussels) — European Economic Community — "Community Patent" Working Party

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

February 13 to 23, 1973 (Brussels) — European Economic Community — "Community Patent" Working Party

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

October 28 to November 3, 1973 (Jerusalem) — International Writers Guild — Congress

VACANCY IN WIPO

Applications are invited for the following post:

Competition No. 190

External Relations Officer

(External and Public Relations Division)

Category and grade: P. 3

Principal duties:

The incumbent will, in general, assist the Head of the Division in the matter of WIPO's relations with Member States and inter-governmental organizations as well as in the accomplishment of other tasks devolving upon the Division.

In this connection his duties will include in particular:

- (a) contacts with Government authorities, concerning matters within the competence of the Division;
- (b) participation in preparation and organization of meetings held by WIPO and drafting of documents, particularly when they concern the field of intellectual property rights in developing countries;
- (c) contacts with inter-governmental organizations, especially those of the United Nations system;
- (d) participation in meetings of such organizations;
- (e) drawing up of reports and other working documents dealing with the activities of those organizations, to the extent that such activities are of interest to WIPO.

Qualifications required:

- (a) University degree in law or other university qualification in a relevant field (in particular, political science or public administration).
- (b) Familiarity with the activities and procedures of the United Nations, its bodies and specialized agencies. Some knowledge of intellectual property, especially its international aspects, would be an advantage.
- (c) Excellent knowledge of English and at least a good knowledge of French.

Nationality:

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

Date of entry on duty:

To be agreed.

Applications:

Application forms and full information regarding the *conditions of employment* may be obtained from the Head of the Administrative Division, WIPO, 32 chemin des Colombettes, 1211 Geneva, Switzerland. Please refer to the number of the competition.

Closing date: November 30, 1972.