Review of the
WORLD INTELLECTUAL PROPERTY ORGANIZATION (WIPO)
and the United International Bureaux for the Protection of Intellectual Property (BIRPI)

Copyright

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Contents

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ADMINISTRATIVE BODIES

World Intellectual Property Organization

Coordination Committee

Third Ordinary Session

(Geneva, September 25 to 30, 1972)

Note *

Twenty-four of the twenty-seven States members of the Coordination Committee were represented: *Ordinary members:* Argentina, Australia, Brazil, Cameroon, Canada, France, Germany (Federal Republic), Hungary, Italy, Japan, Kenya, Romania, Senegal, Soviet Union, Spain, Sweden, Switzerland, Tunisia, United Kingdom, United States of America (20); *Associate members:* Mexico, Philippines, Poland, Sri Lanka (Ceylon) (4). Pakistan, an ordinary member, and India and Zaire, associate members, were not represented.

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

Report on Past Activities. The Coordination Committee considered the report by the Director General on the activities of the International Bureau since September 1971 and noted it with approval. During the course of this consideration, particular satisfaction was expressed with the work accomplished in the field of technical assistance to developing countries. A number of delegations expressed the continued readiness of their national industrial property Offices to receive trainees from developing countries. The Delegation of Brazil expressed its special appreciation of the cooperation Brazil had received from the Patent Office of Germany (Fed. Rep.) and from the International Bureau in the planning of the modernization of the Brazilian patent system.

Finances in the Year 1971. The Coordination Committee noted with approval the accounts of the International Bureau and the report of the auditors on those accounts as well as other information concerning finances for 1971.

Program and Budget for 1973. The Coordination Committee established the program and budget of the Conference for the year 1973. This includes the expenses for the second ordinary session of the WIPO Conference, an information campaign, study courses, trainees and experts for developing countries, model laws for developing countries, a regional seminar for developing countries in Asia, studies and meetings on patent licensing and other measures designed to facilitate or regulate the transfer of patented and non-patented technology to developing countries and on the application of computer technology for development.

Changes in Contribution Classes. The Coordination Committee approved a solution by which under certain conditions a country availing itself of the five-year privilege provided for in the Stockholm Acts of the Paris and Berne Conventions may choose a new contribution class or make a subsequent change in its class, such choice or such change of class remaining in force until the end of 1975.

Ratifications and Accessions. The Coordination Committee noted with approval the report by the Director General summarizing the state of ratifications and accessions concerning the treaties revised or adopted at or after the Stockholm Conference of 1967 and administered by WIPO. The Coordination Committee also approved measures designed to draw the attention of States to the interest in envisaging, for those which have not already done so, their acceptance of these treaties in the near future and calling for reports by the Director General on the state of ratifications and accessions concerning the WIPO Convention and treaties administered by WIPO.

New Headquarters Building. The Coordination Committee noted with approval the report by the Director General on the progress made since September 1971 with respect to the plans for the construction of the new headquarters building. It approved a proposal that the WIPO Headquarters Building Subcommittee be given the task of authorizing, if it finds the revised estimates of the cost of construction justified, the start of the actual work of construction scheduled for the end of the winter of 1972/1973.

Staff Matters. The Coordination Committee noted the information on the composition of the International Bureau and the progress made by the Director General in improving the geographical distribution of the staff. Furthermore, the Coordination Committee approved certain personnel measures proposed by the Director General and adopted a number of amendments to the Staff Regulations.

Working Agreement with IDCAS. The Coordination Committee approved the terms of a working agreement to be concluded by the Director General with a view to establishing working relations and cooperation with the Industrial Development Centre for Arab States.

Relations between WIPO and the United Nations. The Coordination Committee examined a report by the Director General on the progress of his work under the WIPO General

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

Assembly and Conference resolution concerning the means of securing the most appropriate cooperation and coordination between WIPO and the United Nations, including the possibility and desirability of entering into an agreement under Articles 57 and 63 of the Charter of the United Nations. The Committee adopted a resolution on the subject of a relationship agreement with the United Nations under these Articles. In the resolution, the Committee considers that such a relationship agreement appears desirable and requests the Director General, with a view to exploring the possibilities of entering into such an agreement, to bring the resolution to the attention of the United Nations. The resolution also makes provision for future action by the Coordination Committee and the General Assembly of WIPO.

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

Executive Committee

Third Ordinary Session

(Geneva, September 25 to 30, 1972)

Note*

Twelve of the fifteen States members of the Executive Committee were represented: *Ordinary members:* Canada, France, Germany (Federal Republic), Italy, Romania, Spain, Switzerland, Tunisia, United Kingdom (9); *Associate members:* Mexico, Philippines, Poland (3). Pakistan, an ordinary member, and India and Zaire, associate members, were not represented.

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

Program and Budget. The Executive Committee approved the program and budget for the Berne Union for the year 1973. In addition to the usual tasks relating to publications concerning copyright and related rights (the monthly periodicals, collections of legislative texts, Records of the Paris Revision Conference and of the Geneva Diplomatic Conference (1971) on the Protection of Phonograms, etc.), the program provides particularly for the preparation of model laws for developing countries on copyright based on the Paris (1971) Act of the Berne Convention and the preparation of a model law to facilitate accession to and application of the Rome Convention (neighboring rights). The program also provides for a meeting of a third Committee of Experts on the protection of program-carrying signals transmitted by satellites. The Executive Committee accepted the invitation of the Delegation of Kenya to hold this meeting in Nairobi. The Executive Committee approved the proposal for a study to be carried out on the desirability and feasibility of establishing in the International Bureau an international service for the identification of literary and artistic works. The Executive Committee noted that the next session of the Intergovernmental Committee of the Rome Convention (neighboring rights) would meet in Paris and that the convening of a committee of experts on the problems posed by the photographic reproduction of works protected by copyright, proposed for 1973, would be deferred until a later date.

Admission of Observers. The Committee decided to apply to the Council of the Professional Photographers of Europe (EUROPHOT) and to the International Group of Scientific, Technical and Medical Publishers (STM) the rules on participation, in its meetings, of international non-governmental organizations in an observer capacity.

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

List of Participants*

I. States members of one or several bodies convened

Algeria: S. Bouzidi; G. Sellali (Mrs.); A. Boussaid. Argentina: R. A. Ramayón; E. A. Pareja. Australia: K. B. Petersson. Austria: T. Lorenz. Belgium: A. Schurmans; R. Philippart de Foy. Brazil: T. Tbedim Lobo; S. P. Rouanet; F. Miragaia Perri. Cameroon: J. Ekedi Samnik. Canada: F. W. Simons; J. Corbeil. Czechoslovakia: V. Vaniš; J. Prošek; A. Ringl; J. Springer; J. Stahl. Denmark: E. Tuxen. Egypt: M. M. Saad; S. A. Abou-Ali. Finland: E. Tuuli; R. Meinander. France: J. Fernand-Laurent; A. J. Kerever; F. Savignon; R. M. N. Labry; J. Buffin; E. de Dampierre (Mrs.); P. Guérin. Germany (Federal Republic): A. Krieger; O. von Stempel; H. Mast; G. Rbeker (Mrs.); R. Singer; W. Boecker. Hungary: E. Tasnádi; J. Bobrovszky. Italy: P. Archi; G. Ranzi; G. Trotta; V. Oliva; C. Ferro-

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

Luzzi; V. De Sanctis; M. Vitali (Mrs.); G. Lajolo. **Japan:** K. Otani; T. Koyama. **Kenya:** D. J. Coward. **Liechtenstein:** A. de Gerliczy-Burian. **Luxembourg:** J.-P. Hoffmann. **Mexico:** G. E. Larrea Richerand; J. Sandoval Ulloa; V. C. Garcia Moreno; J. Fraymann Castro. **Netherlands:** W. M. J. C. Phaf; E. van Weel. **Norway:** L. Nordstrand; R. W. Knudsen; S. H. Røer. **Philippines:** C. V. Espejo; D. Domingo (Miss). **Poland:** J. Szomański; B. Janicki; M. Paszkowski. **Portugal:** J. L. Esteves da Fonseca; J. Van-Zeller Garin; F. Lopes Vieira; M. T. Ascensão (Mrs.); J. Oliveira Ascensão; L. M. Cesar Nunes de Almeida. **Romania:** L. Marinete; M. Costin. **Senegal:** N. N'Diaye; J. P. Crespin. **Soviet Union:** E. Artemiev; V. Kalinin; V. N. Evgeniev. **Spain:** A. Fernandez-Mazarambroz; I. Fonseca-Ruiz (Mrs.). **Sri Lanka (Ceylon):** A. Goonasekera. **Sweden:** G. Borggård; C. Uggla; I. Stjernberg; W. G. Skoldefors. **Switzerland:** W. Stamm; P. Braendli; P. Ruedin. **Tunisia:** A. Amri; H. Ben Achour. **United Kingdom:** E. Armitage; W. Wallace; D. Cadman; A. Evans. **United States of America:** B. C. Ladd; R. Gottschalk; R. D. Tegtmeyer; H. J. Winter; M. K. Kirk; H. D. Hoinkes. **Yugoslavia:** D. Bošković; N. Janković.

II. Other States

Bulgaria: I. Ivanov; T. Sourgov; I. Daskalov. **Chile:** A. Alberti; E. Bucchi de Yépez (Mrs.). **Cuba:** J. M. Rodriguez Padilla; E. Pretel; F. Ortiz Rodriguez. **Iran:** M. Naraghi. **Israel:** M. Gabay. **Jordan:** A. Marzonq. **Lebanon:** C. Choneri. **Syrian Arab Republic:** M. Allaf. **Turkey:** S. Adil; Y. Vedat. **Uruguay:** R. Rodriguez-Larreta de Pesaresi (Mrs.).

III. Intergovernmental Organizations

United Nations: P. Casson; V. Fessenko. **United Nations Conference on Trade and Development (UNCTAD):** C. R. Greenhill; T. Ganiatsos. **United Nations Educational, Scientific and Cultural Organization (Unesco):** B. Ringer (Miss). **United Nations Economic Commission for Europe (ECE):** B. Beer (Mrs.). **International Patent Institute (IIB):** G. M. Finniss; L. Knight. **African and Malagasy Industrial Property Office (OAMPI):** D. Ekani. **Benelux Trademark Office:** L. van Bauwel. **Council of Europe:** H. Golsong. **Industrial Development Centre for Arab States (IDCAS):** A. Abdel Hak; A. Shalakany.

IV. International Bureau of WIPO

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

V. Officers and Secretariat

World Intellectual Property Organization (WIPO)

Coordination Committee: *chairman* B. C. Ladd (United States of America); *vice-chairmen* L. Marinete (Romania); A. Goonasekera (Sri Lanka (Ceylon)); *secretary* C. Masouyé (WIPO).

Berne Union

Executive Committee: *chairman* G. Trotta (Italy); *vice-chairmen* F. W. Simons (Canada); (India: not represented); *secretary* T. S. Krishnamurti (WIPO).

CONVENTIONS ADMINISTERED BY WIPO

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

Extraordinary session

(Geneva, September 21 and 22, 1972)

Report

submitted by the Secretariat

Introduction

1. The extraordinary session of the Intergovernmental Committee (hereinafter called "the Committee") of the International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations (hereinafter called "the Rome Convention") was convened in accordance with the provisions of Article 32 of the Rome Convention and Article 2 of the Rules of Procedure of the Committee, by the Directors-General of the International Labour Office, the United Nations Educational, Scientific and Cultural Organization and the World Intellectual Property Organization, on September 21 and 22, 1972, at the International Labour Office, Geneva. This extraordinary session had been proposed by the Chairman of the Committee and had been approved by a majority of the States members of the Committee in accordance with Article 2, paragraph (2), of the Rules of Procedure.

2. The Governments of all States which are members of the Committee were represented: Brazil, Denmark, Germany (Federal Republic), Mexico, Niger, United Kingdom; from among the States party to the Rome Convention, but not members of the Committee, the following States were represented

by observers: Costa Rica, Czechoslovakia, Sweden. The following States, not party to the Rome Convention, were also represented by observers: Canada, France, United States of America.

3. One intergovernmental organization and a number of international non-governmental organizations were also represented by observers.

4. The list of participants is annexed to this report.

Opening of the session

5. The extraordinary session was opened by the Chairman of the Committee, Mr. G.E. Larrea Richerand (Mexico).

6. Mr. Pavel E. Astapenko, Assistant Director-General of the ILO, welcomed the participants to the International Labour Office on behalf of the Director-General, Mr. Wilfred Jenks, and also on behalf of the joint Secretariat of the Committee formed by the ILO, Unesco and WIPO. He recalled that the Committee had been convened to discuss the implications for the Rome Convention of recent developments which raise major problems for the protection of performers, producers of phonograms and broadcasting organizations. The ILO believed that the Rome Convention offered the best framework for satisfactory solution of these complicated questions.

Adoption of the agenda

7. The provisional agenda contained in document ILO/UNESCO/WIPO/ICR/1972 EX/1 was adopted, with the addition of a further item (" Request by an international non-governmental organization for observer status ").

Request by an international non-governmental organization for observer status

8. The Committee decided to grant the request of the International Publishers Association to be admitted to the list of international non-governmental organizations which attend the meetings of the Committee in an observer capacity.

9. The Committee requested the Secretariat to circulate any future request for observer status from international non-governmental organizations in advance of the sessions of the Committee, with brief information about the organization concerned.

Conclusions of 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

10. The Committee had before it document ILO/UNESCO/WIPO/ICR/1972 EX/2 to which was annexed the report of 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 (Paris, May 1972).

11. The Committee proceeded to an exchange of views on the present situation with regard to the problems raised by transmission via space satellites and their implications for the Rome Convention. It noted that a third meeting of governmental experts is to be convened by the Directors-General of Unesco and WIPO in 1973 and that uncertainty persisted as to the possible outcome of that meeting, the second meeting in May 1972 having presented alternative solutions to certain specific problems. The Committee itself was not in agreement on the questions of the necessity of drafting a new international convention to protect signals transmitted by communications satellites. However, it recommended that, should it be decided to adopt a new international instrument in this field, preference should be given in the proposed Article IV to Alternative A, including paragraph 5 without the enclosing brackets.

12. The representative of Brazil said that his Government reserved its position as to whether there should be a new convention but would express its opinion at the proper time; meanwhile he was not prepared to choose between the alternatives proposed in the draft. Furthermore, he recalled that his Government had not expressed an opinion at the third session of the Committee on the question whether the definition of " broadcasting " contained in Article 3 of the Rome Convention covers the transmission of a signal to a satellite with the ultimate purpose of reception by the public, and stated that his Government now expressed an affirmative opinion.

13. Reference was made by a number of members of the Committee and observers to suggestions that the Rome Convention should be revised to facilitate further accessions to the Convention. The Committee concluded that it would be inopportune for the moment to raise the question of the desirability of revising the Rome Convention for some years and that it would be preferable to study in more detail the reasons why many countries have so far found themselves unable to adhere to the Convention. The Committee decided to request the Secretariat to consult the parties protected by the Convention, together with authors' organizations and representatives of other interests affected by the Rome Convention, with a view to ascertaining how progress could be made towards obtaining further ratifications of the Convention. The results of these consultations should be presented by the Secretariat in a report to be circulated to the States party to the Convention in advance of the next ordinary session of the Committee.

Progress Report on the preparation of a draft model law to facilitate ratification and implementation of the Rome Convention

14. The Committee took note of document ILO/UNESCO/WIPO/ICR/1972 EX/4 in which the Secretariat pointed out that the preparation of a draft model law to facilitate ratification and implementation of the Rome Convention raised a number of problems particularly in view of several significant new developments, including the coming into existence of a separate Convention for the Protection of Producers of Phonograms Against Unauthorized Duplication of Their Phonograms; the prevailing uncertainty as to on what lines the contemplated convention governing programs transmitted by satellites may develop and to what extent that convention may overlap the Rome Convention; and the adoption of revised texts of the Berne and Universal Copyright Conven-

tions with special provisions for the benefit of developing countries, which might increase the number of potential accessions to the Rome Convention. Further difficulties for the Secretariat included the uncertainty as to the reasons why many developed and developing countries have generally abstained from acceding to the Rome Convention and what their special difficulties are; and the multiplicity of the possible legal approaches to the problem of preparing a model law.

15. The Committee recognized the difficulties involved in the preparation of the draft model law, but considered that the attempt should continue to be made to provide as simple a text as possible, where necessary taking into account differing legal traditions, and presenting such alternatives as appear necessary. The Committee decided to request the Secretariat to continue the preparation of a preliminary draft or drafts for submission to the representatives of organizations of authors, performers, producers of phonograms and broadcasting organizations, and other interested parties, who would be consulted by the Secretariat in accordance with the decision mentioned in paragraph 13 above. Subsequently, a new draft text, to be prepared by the Secretariat in the light of the observations of these representatives, would be submitted to the next ordinary session of the Committee.

16. In the course of the discussion, the representatives of Brazil and Mexico declared that they would be pleased to place at the disposal of the Secretariat the results of their experience in preparing legislation for the application of the Rome Convention in their countries.

17. In response to questions from members of the Committee, the Secretariat said that all three organizations composing the Secretariat would be ready at all times to provide assistance to any State in overcoming its difficulties in drafting legislation or adopting other measures to implement the Rome Convention.

Increase in membership of the Intergovernmental Committee

18. In accordance with Article 32, paragraph 2, of the Rome Convention, and Articles 15 and 17 of the Rules of Procedure of the Committee, the Committee decided to co-opt as members Ecuador, Fiji and Sweden. The Committee noted that the Secretariat would inform the new members of this decision.

Adoption of the report

19. The Committee unanimously adopted this report.

Closing of the session

20. After words of appreciation of the Chairman's conduct of the meeting by the representative of Denmark on behalf of the members of the Committee and also by certain observers, the Chairman declared this extraordinary session closed.

ANNEX

List of Participants

I. States members of the Committee

Brazil: F. Miragaia Perri; J. C. Müller Chaves. **Denmark:** W. Weincke. **Germany (Federal Republic):** E. Steup (Mrs). **Mexico:** G. E. Larrea Richerand; L. Bastón T.; V. C. Garcia Moreno. **Niger:** G. Straschnov. **United Kingdom:** W. Wallace; D. L. T. Cadman; J. Morton.

II. Observers

(a) States party to the Convention

Costa Rica: M. A. Mena Chaves. **Czechoslovakia:** J. Stahl. **Sweden:** E. Persson.

(b) Other States

Canada: F. W. Simons; J. Corbeil. **France:** P. B. Nollet. **United States of America:** H. J. Winter.

(c) Intergovernmental Organization

International Institute for the Unification of Private Law (UNIDROIT): A. Hennebicq.

(d) International non-governmental Organizations

European Broadcasting Union (EBU): M. Larrue (Mrs.). **International Confederation of Professional and Intellectual Workers (CITI):** G. Poulle; V. Cardinaux. **International Confederation of Societies of Authors and Composers (CISAC):** R. Fernay. **International Federation of Actors (FIA):** P. Boucher; R. Remhe. **International Federation of Film Producers Associations (FIAPF):** A. Brisson; M. Ferrara Santamaria. **International Federation of Musicians (FIM):** H. Ratcliffe; R. Leuzinger. **International Federation of the Phonographic Industry (IFPI):** S. M. Stewart; J. A. L. Sterling; G. Davies (Miss). **International Federation of Variety Artistes (IFVA):** R. Remhe. **Internationale Gesellschaft für Urheberrecht (INTERGU) (International Copyright Society):** J. A. Saladin. **International Hotel Association (IHA):** J. David. **International Law Association (ILA):** A. Françon. **International Literary and Artistic Association (ALAI):** A. Françon. **International Music Council (IMC):** R. Leuzinger. **International Publishers Association (IPA):** J. A. Koutchoumow. **International Secretariat of Entertainment Trade Unions (ISETU):** A. J. Forrest; R. Gupwell. **International Union of Film Exhibitors (UIEC):** J. Handl. **International Writers Guild (IWG):** R. Fernay.

III. Secretariat

International Labour Organisation (ILO):
P. E. Astapenko *(Assistant Director-General)*; E. Thompson *(Chief, Non-Manual Workers' Section, General Conditions of Work Branch)*; R. Cuvillier (Mrs.). *(Non-Manual Workers' Section, General Conditions of Work Branch)*; R. Salmón de la Jara *(General Conditions of Work Branch)*; M. Canova (Mrs.) *(Non-Manual Workers' Section, General Conditions of Work Branch)*.

United Nations Educational, Scientific and Cultural Organization (Unesco):
B. Ringer (Miss) *(Director, Head, Copyright Division)*.

World Intellectual Property Organization (WIPO):
G. H. C. Bodenhansen *(Director General)*; C. Masouyé *(Senior Counsellor, Head, External and Public Relations Division)*; T. S. Krishnamurti *(Counsellor, Head, Copyright Division)*; M. Stojanović *(Counsellor, Copyright Division)*.

NATIONAL LEGISLATION

BULGARIA

I

Constitution of the People's Republic of Bulgaria*

Article 26

(1) Copyrights of works of science, literature and art, as well as the rights of inventors and innovators are protected by the State.

(2) The State, cooperative and public organizations create conditions conducive to the development of the creative activity and to using the works of authors, inventors and innovators for the economic and cultural progress of society.

(3) Authors, inventors and innovators may not use their rights in any way counter to the public interest.

* The Constitution was adopted by national referendum on May 16, 1971, and solemnly proclaimed on May 18, 1971, by the Fifth National Assembly during its 16th session.

II

Law on Copyright

(as last amended on April 28, 1972) [1]

I. Purpose, subject and content

Article 1. — This Law regulates relationships concerning literary, scientific and artistic works in order to facilitate the development and prosperity of socialist culture in the People's Republic of Bulgaria, aiding the making known and dissemination of such works among the working people, and guaranteeing and protecting the interests of authors by harmonizing these interests with those of the people.

Article 2. — Any literary, artistic and scientific work which is the product of creative effort, and is published or expressed in any tangible form, may be the subject of copyright.

Article 3. — The author has an inalienable right to claim authorship in his work.

Any person who publishes or uses the work of another person, where such work may be the subject of copyright, shall, except where the work is anonymous, indicate the name or pseudonym of the author, even after the copyright of the author and his successors in title has expired.

Article 4. — The author shall have the right to decide whether the work created by him is ready for publication, republication, delivery, performance or reproduction in any other way, to use it in any manner permitted by law, to receive payment for its publication and other utilization, to demand protection against any alteration of his work and to authorize its translation and publication in foreign languages.

Article 5. — Publication, delivery, performance or any other use of a work during the existence of the copyright shall be permissible only in the instances specifically stipulated by law.

*Article 6**. — The following shall be permissible without the authorization of the author and without payment of remuneration:

(a) the use of the work of another person in the creation of a new independent work; however, the adaptation of a work of literature into a dramatic work or a scenario and vice versa, or of a dramatic work into a scenario

[1] The basic Law is dated November 16, 1951; it was amended by Decree No. 207 of July 4, 1956. WIPO translation.

Note: Articles followed by an asterisk are those amended by the Law of April 28, 1972.

and vice versa, shall be permissible only with the authorization of the author;

(b) the use in scientific, informatory or other works of quotations from literary, artistic and scientific works already published, provided that the source and the name of the author, if mentioned, are indicated;

(c) the insertion in newspapers and other periodicals of data or excerpts from addresses and reports delivered at public assemblies and meetings;

(d) the reprinting in periodicals of reports and articles originally published in newspapers, provided that the source from which the articles are reprinted and the author's name, if published, are indicated; however, literary and scientific works published in newspapers and other periodicals, and reports of special correspondents, may not be reprinted without the consent of the author;

(e) the reproduction of works of graphic arts by means of sculpture and vice versa;

(f) the public performance of a work by amateur groups, youth clubs, cultural communities and other organizations and institutions having a cultural or educational character, if there is no admission charge;

(g) the reproduction, other than mechanical copying by contact, of artistic works placed in streets and public squares;

(h) the public exhibition of any work unless its public display is prohibited by the author;

(i) the broadcasting by radio and television and the recording on film, photographs or phonograms by the competent State organizations, of literary and artistic works already published, for broadcasting, showing or distribution to the public as reports on current events, to the extent justified by the informatory purpose;

(j) the publication and duplication for informatory purposes, by agencies and organizations engaged in scientific information, documentation and bibliography, of summaries, notes and references relating to scientific, technical and literary works, to separate illustrations and to tables serving to clarify the text.

Article 7. — The following shall be permissible without the authorization of the author but against payment of remuneration:

(a) the insertion of excerpts from scientific, literary and other works, or of the whole of such works if of insignificant size, as well as the insertion of photographs, drawings, and the like if insignificant in number, into newspapers, periodicals, scientific, educational, and political works, collections and other works, provided that the author and the source are indicated;

(b) the use by the composer of a musical work of the literary text of another person. The author of the text is entitled to payment on the publication of the musical work;

(c) the use of artistic and photographic works in the products of industry, the crafts and home industry.

Article 8.* — Excerpts from musical or literary works and short musical and literary works (short stories, poems, serial episodes, humorous dialogues, etc.) already published may be performed in public or otherwise without the consent of the owner of the copyright, on payment of appropriate remuneration, except in cases provided for in Article *6(f)*.

The organization for the protection of copyright shall be informed at once of every performance of works referred to in the preceding paragraph.

Article 9.* — Radio and television organizations shall have the right to broadcast, without change, any literary, artistic or scientific work already published, without the consent of the author but against payment of remuneration, provided that the author has not prohibited the broadcasting of the work.

Radio and television organizations shall be obliged to mention the name of the author in each broadcast.

Literary, dramatic and dramatico-musical works may only be adapted for radio and television broadcasting with the authorization of the author.

For the radio broadcasting of dramatic, dramatico-musical and choreographic works and dumb-show entertainments in their entirety, the author shall be informed in advance.

II. Owners of copyright

Article 10. — Copyright in works published or located in the territory of the People's Republic of Bulgaria shall be recognized for all authors and their successors in title, irrespective of their nationality.

Copyright in works published or located abroad shall be recognized only under a special agreement between the People's Republic of Bulgaria and the State concerned.

An author who is a national of the People's Republic of Bulgaria and his successors in title shall also enjoy protection for their copyright in its territory for works published or located in another State, irrespective of whether there is an agreement of the kind referred to in the preceding paragraph between the People's Republic of Bulgaria and the State concerned.

Article 11. — Copyright in a work created by two or more authors shall belong to all the co-authors as a whole, irrespective of whether the collective work is an indivisible unit or is composed of separable parts. The co-authors shall determine by mutual consent the manner of exploitation and their respective shares of the copyright in the entire work.

Each co-author of a collective work shall retain his copyright in respect of his own contribution if that contribution is separable and the co-authors have not agreed otherwise.

Article 12. — Copyright in a painting, sculpture, engraving or photograph representing another person shall belong to the author. The author, however, may only exercise the right of reproduction and dissemination of the work with the consent of the person portrayed or, upon his death, of his surviving spouse and children.

Article 13. — Copyright in letters shall belong to the person who has written them.

Publication of letters shall be permissible only with the consent of the author and of the person to whom they were addressed or, in case of death of either one of them, with the consent of the surviving spouse and children.

Article 14. — Where individual works are not protected, copyright in a collection thereof shall belong to the compiler, provided the collection is independently compiled and edited.

Such copyright shall not prevent other persons from publishing the same works, provided there has been independent editorship.

Where individual works are protected by copyright, copyright in a collection as a whole shall belong to the compiler, provided that, in making the collection, the copyright of the authors of the individual works was respected. Such authors shall retain the right to publish their works in other publications unless they have agreed otherwise with the compiler of the collection.

Article 15.* — Authors of works created in the execution of official duties shall have copyright in such works according to the general rules.

The competent agencies in the service of which such a work was created shall be entitled, without the author's consent:

(a) to use the work without paying remuneration as material for scientific or other purposes related to the agencies' functions, and to reproduce and disseminate the work free of charge within their services and among their employees;

(b) to publish the work in as many copies as they wish, provided that appropriate remuneration is paid to the author. The competent agency shall be so entitled during two years following receipt of the work by it. The work may also be published by another governmental agency or other public organization prior to the expiration of this period on the basis of an agreement with the author, provided that the agency in the service of which the work was created has given its written authorization.

Note: Remuneration shall be paid for translations when they are made outside the scope of a work contract.

The Press Committee attached to the Council of Ministers shall pay no remuneration for the use and publication in unlimited quantity of photographic works created by its employees in the execution of their official duties.

Article 16.* — Copyright in cinematograph or television films shall belong to the enterprise which has produced the film. Copyright in amateur films shall belong also to the persons who have made them.

The author of the scenario, the composer, the director, the principal operator, the artist responsible for the stage setting and each of the authors of the other works embodied in the film shall enjoy copyright in his own work.

The authors defined in the second paragraph shall not be entitled to separate remuneration for the public showing of the film other than that which is stipulated in the contract between them and the enterprise or organization producing the film, except where the law provides otherwise.

The organizations which are authorized by law to produce films have the right to use sequences or parts of the film to the extent justified by the purpose for the production of other films in their own studios, without the consent of the authors and without paying remuneration.

The use by other enterprises, organizations or persons of sequences or parts of films produced by Bulgarian Cinematography and by the television organization may only be made with the consent of the copyright owners and against payment of remuneration.

Article 17. — A translator shall have copyright in his translation. However, this shall not preclude other persons from translating the same work independently.

III. Duration and disposal of copyright

Article 18.* — The term of copyright shall be the life of the author and fifty years after his death.

The term specified in the first paragraph shall run from the first day of January of the year following that of the death of the author.

For works of joint authorship the term shall be calculated for each of the co-authors in accordance with the foregoing paragraph.

On the death of the author, the copyright shall pass on to his descendants, his spouse and his parents, in accordance with the provisions of the Law of Succession. If the author has no such heirs, or if those heirs die before the expiration of the period provided for in the first paragraph, the copyright shall pass on to the State, which shall exercise it until the expiration of the aforesaid period.

The testamentary disposition of the author in regard to his copyright shall apply in accordance with the provisions of the Law of Succession.

The term of copyright in a film as a whole shall be fifty years from the first day of January of the year following that of the first public showing.

The term of the copyright in works of applied art, artistic photography and phonograms, the copyright of scientific institutes and public and other organizations in collections, encyclopaedias, magazines and other periodicals, considered as a whole, published by them, the copyright of radio and television organizations in their broadcasts, and the copyright of compilers of collections, encyclopaedias and other similar works shall be twenty years for each publication, phonogram or broadcast from the first day of January of the year following that of its first publication.

Copyright in works of artistic photography or works expressed by a process analogous to photography shall be protected under this Law only if the name of the author and the place and year of publication are indicated on each copy.

*Article 19**. — Legal entities may only be owners of copyright in the cases and under the conditions provided for in the law.

Scientific institutes and public and other organizations which publish, alone or through a publishing house, collections of scientific or other works, encyclopaedias, magazines and other periodicals shall enjoy copyright in those publications considered as a whole. Copyright in the separate works included in such publications shall belong to their authors.

Radio and television organizations shall have copyright in the programs broadcast by them. Copyright in works incorporated in radio and television programs shall belong to the authors of those works.

Article 20. — The author may transfer particular rights deriving from his copyright to a publishing house, theater, or other enterprise or organization. Such transfer shall be effected by a publishing contract, a contract for public performance, a contract for a scenario, a commission contract, or any other type of contract.

Contracts for the transfer of particular rights deriving from copyright shall not be effective for more than five years.

Article 21. — The acquisition of a work of figurative art shall not imply the transfer of the copyright to the person acquiring the work.

Such person shall make it possible for the author to copy, publish and disseminate the work if it is of cultural or public interest.

Article 22. — [Repealed by the Law of April 28, 1972.]

*Article 23**. — If the owner of the copyright in a work of great public significance which has been published, performed or used in another manner opposes the subsequent publication, performance or use of the work without a valid reason, and if such opposition is detrimental to the public interest, the court may, at the request of the public prosecutor or the interested State or public organization, authorize the competent State or public organization to publish, perform or use the work, subject to payment of adequate remuneration.

Article 24. — A work shall not be the object of a writ of execution except for damages arising from an offense committed by the author or for support which he owes by law. A writ of execution with respect to the payments due to an author pursuant to a contract of transfer of particular rights shall be carried out in accordance with the general procedure for executions regarding claims receivable.

IV. Protection of copyright

Article 25. — Any person who infringes a copyright shall be liable for damages.

If the infringement has been perpetrated by a governmental agency, public organization or other legal entity, such body shall be jointly liable with the officials involved.

Article 26. — Except for the cases stipulated in Article 23, if a work has been published, publicly performed or exhibited, or used in any other manner without the consent of the author, the author may seek a court injunction to restrain the publication and the dissemination of the work, its further publication, performance, or exhibition, or any other unauthorized use.

Article 27. — In the case of an unlawful publication of a work in any manner whatever, the published copies shall, at the request of the author, either be surrendered to him as part of the damages at a valuation established by mutual agreement or by the court, or shall be rendered unfit for use.

Article 28. — The pecuniary or personal rights of the author of a work published pseudonymously or anonymously shall be protected by the agency or organization which published, publicly performed or in any other manner reproduced the work, until the author reveals his identity.

V. Final and transitional provisions

*Article 29**. — A Copyright Office is hereby created within the Press Committee attached to the Council of Ministers; its organization and functions shall be determined by rules to be approved by the President of the Press Committee attached to the Council of Ministers.

*Article 30**. — The rates of remuneration of authors for the various kinds of use of their works shall be determined by a decision of the Council of Ministers, on a proposal by the Press Committee attached to the Council of Ministers.

*Article 31**. — This Law repeals the existing Copyright Law.

Rules and regulations to be approved by the President of the Press Committee attached to the Council of Ministers shall be issued for its enforcement.

*Article 32**. — This Law shall apply also to copyright in works created or published prior to its entry into force.

The provisions of Article 18 of this Law shall apply also to the works of authors who died before its entry into force if the periods specified in the said Article have not expired.

GENERAL STUDIES

The protection of computer programs under the Italian legal system

by Gino GALTIERI *

1. Since the purpose of these notes is to examine whether, under the current Italian legal system, it is possible to afford protection to computer programs, it must first be established what the object of that protection actually is. In this respect, we consider the most adequate definition to be the one in the Report of the Secretary-General of the United Nations on the Application of Computer Technology for Development (UN document E/4800, paragraph 18), according to which a computer program consists of " a set of instructions specifying a sequence of arithmetical and logical operations to be applied to a given set of data ".

2. Having established what the object of protection is and ascertained that no form of specific protection of computer programs exists in Italian legislation, that legislation must be examined, with particular reference to intellectual property legislation, for provisions which could be applied to this subject-matter by analogy.

Starting from the fact that our aim is the search for legal norms suitable for the protection of computer programs against unauthorized use, we shall review the provisions of Italian legislation on industrial inventions and utility models, followed by those on unfair competition and finally those on copyright and neighboring rights.

As far as the industrial property system is concerned, we find it very difficult to regard computer programs in the same way as industrial inventions, which are protected by patents and are defined and regulated according to a specific Italian law. Indeed that law [1] provides that a patent may be taken out only in respect of new inventions which are susceptible of industrial application, such as industrial work methods or processes, machines, instruments, tools or mechanical devices, industrial products or results, or the technical application of scientific principles, in so far as that application is capable of producing immediate industrial results.

It hardly seems possible, therefore, to include computer programs, which, as mentioned earlier, are regarded as sets of instructions, in any of the various categories of inventions mentioned in the Italian Patent Law. They could perhaps be associated with the " technical application of scientific principles ", yet in our opinion their use does not produce immediate and concrete results.

Having ruled out any possibility of protecting computer programs by means of patents, we do not think that such programs can be protected as utility models [2] either, since the protection of utility models is based on the particular shape of an object, which shape conditions the object's usefulness in practical application. It is obvious that, as far as computer programs are concerned, what has to be protected is not the shape or configuration of an object but, as mentioned earlier, the use of a set of instructions prepared with a view to achieving a specific aim in the field of computer technology.[3]

3. As far as protection against unfair competition [4] is concerned, it should be made clear at the outset that, according to legal doctrine and case law in this field, such protection must be regarded under the Italian legal system as being complementary to the protection provided for inventions and utility models. Recourse to protection against unfair competition (and especially that against slavish copying) is possible when patent rights lapse in respect of the product involved. For this reason, we consider in principle that there is no possibility of protecting computer programs by means of unfair competition provisions in view of the fact that, as we said, the rules on patents and utility models do not apply to those programs. Moreover, it would be difficult to include the unauthorized use of computer programs among the acts of unfair competition listed in the Italian law, since they have as a necessary prerequisite the real possibility of confusion with the products of a rival firm.

4. With regard to Italian copyright legislation, the category of intellectual works to which one might assimilate computer programs is that of scientific works. However, we are well aware that, according to long-standing doctrinal and jurisprudential interpretation of the relevant provisions, the protection which Italian law affords to scientific works covers only the positive presentation and the literary expression of the scientific or technical content of the work, and does not extend either to the content itself or to its practical application. Consequently, the author of the scientific work enjoys the same rights as the author of a literary work, namely the rights of reproduction or " elaboration "; this does not meet the protection requirements of computer programs, however, since their use in a computer must also be protected.

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[1] Law No 1127, of June 29, 1939, Article 12 of which, on the subject of patent rights, is identical in content with Article 2585 of the Italian Civil Code.

[2] Utility models are governed by Law No. 1411, of August 25, 1940, and by Articles 2592 *et seq.* of the Italian Civil Code.

[3] To our knowledge, no application for a patent or utility model in respect of a computer program as such has been filed to date with the Patent Office of the Italian Ministry of Industry and Commerce.

[4] The provisions on unfair competition are contained in Articles 2598 *et seq.* of the Italian Civil Code.

5. It is rather in the field of the rights described as neighboring on copyright that a fairly adequate solution of the problem of protecting computer programs may be found. [5] The Italian Copyright Law [6] provides in its Article 99 for two categories of rights belonging to the authors of engineering projects or other analogous works which constitute original solutions of technical problems. The first is a right of reproduction in respect of the plans and drawings for projects, which is common to all other categories of literary or artistic works, and the second is a right to equitable remuneration from those who realize technical projects for profit-making purposes without the consent of the author of the project. The latter right is strictly economic in character and, to exercise it, the author of the project must make on his work a notice of reservation of his rights. He must also deposit the project with the Literary, Artistic and Scientific Property Office of the Presidency of the Council of Ministers, by signing a statement to which a copy of the project is appended.

The right to remuneration lasts for twenty years from the date of deposit.

We feel that this provision of Italian law can he rightly and properly applied to computer programs, in view of the fact that, in our opinion, such programs can certainly be included among the "engineering projects and other analogous works" which enjoy the specific protection provided for in the Italian Copyright Law.

[5] It should be borne in mind that Italian law includes among neighboring rights not only the rights of performers, prodncers of phonograms and broadcasting organizations, but also the rights pertaining to photographs, titles of works, correspondence by letter and engineering plans.

[6] Law No. 633, of April 22, 1941, for the Protection of Copyright and Other Rights Connected with the Exercice Thereof. The rights in engineering plans or similar works are provided for in Article 99 of that Law, which is identical in content with Article 2578 of the Italian Civil Code.

It must he realized at the outset that "engineering projects and other analogous works" can include any work carried out in connection with the engineer's professional activity or similar activities. We consider that the activity carried on with a view to the programming of computers can legitimately be incorporated in this very wide field of activities.

Naturally, the computer program must, to enjoy protection, meet the condition of heing an original solution to a technical problem, and we feel that it can indeed do so: it already occurs very frequently in practice that computers are used to solve highly important and complex technical prohlems, such as that of ensuring the regularity of air navigation, or traffic discipline in towns, controlling the operation of electricity generating plants, speeding up typesetting processes, devising systems of weather forecasting, etc.

In conclusion, therefore, we can state that the most suitahle provision in current Italian law for application to computer programs appears to be the one which we have just examined, on engineering projects and other analogous works. This provision, which is included among those governing rights connected with the exercise of copyright, combines the advantages of copyright, including the exclusive right of reproduction, with those of the rights in industrial inventions, including the right to remuneration for the implementation of the program.

In addition, the declaration of reservation and the compulsory deposit embodied in the provision seem to provide adequate presumption of priority in favor of the author of the program deposited and, at the same time, a very useful puhlicity medium both for the author and for third parties interested in using computer programs.

National applications of the Rome Convention on neighboring rights

by Clande Alphonse LEDUC *

On October 26, 1961, experts from 34 countries, who had been meeting in Rome since October 10, finally reached agreement on and completed the drafting of an international instrument for the protection of three categories of beneficiaries who at first sight have few economic interests in common. The purpose of the Rome Convention is to protect the creations of performers, producers of phonograms and hroadcasting organizations.

In the words of Professor Deshois, however divergent the interests represented, "impartial minds could not remain indifferent at the thought that a performance could be recorded on a disc, freely and at no cost, and a disc rerecorded or a broadcast retransmitted by a third party without any payment heing made".

After some hesitation, however, copyright doctrine and practice comhined their prerogatives under the heading of "rights neighboring on copyright". Why this name?

First because there is no common denominator between an intellectual work protected hy copyright on the one hand and, on the other hand, the personal contrihution of the performer and the technical contrihutions such as the record and the radio hroadcast. This explains the "neighborhood" concept

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chosen by interpreters of the Rome Convention rather than that of relationship.

Second because, in the manner in which these contributions are exploited, there is a definite relationship with the literary or artistic work which is the basis for the contributions.

Thus neighboring rights seem both connected with and subordinate to copyright. Indeed they should be closely related to the practical means of protecting copyright, since the work and its performance or fixation are communicated to the public by means of joint exploitation, namely public performance and sound reproduction. At the same time they must show respect for the economic and moral rights previously acquired by the creator of the work. This ambiguity gave rise to a certain amount of opposition on the part of authors to the recognition of a "quasi-copyright, in favor of the performer and the auxiliaries of intellectual creation". The drafters of the Rome Convention took this observation into account, and Article I of the international instrument provides as follows:

> Protection granted under this Convention shall leave intact and shall in no way affect the protection of copyright in literary and artistic works. Consequently, no provision of this Convention may be interpreted as prejudicing such protection.

This Article provides simultaneously for the coexistence and the independence of the two rights — copyright and neighboring rights — since States ratifying the Rome Convention must not favor one more than the other.

In other words, national law may not go beyond the limits of the exploitation monopoly conferred on the author of an intellectual work by the national law of the ratifying country; in our opinion, this is expressed by Article 15, paragraph 2, of the international instrument, which is worded as follows:

> ... any Contracting State may, in its domestic laws and regulations, provide for the same kinds of limitations with regard to the protection of performers, producers of phonograms and broadcasting organisations, as it provides for, in its domestic laws and regulations, in connexion with the protection of copyright in literary and artistic works. However, compulsory licences may be provided for only to the extent to which they are compatible with this Convention.

Having made this preliminary observation, we shall see that national legislators have taken great care, in drafting laws to establish their domestic rules, to harmonize them with the provisions of the international instrument.

It should also be noted that misgivings were expressed not only by authors but also by performers. Are not actors, singers and musicians also employees on hire by producers of phonograms and broadcasting organizations when they are engaged for the making of a record or radio broadcast? As such, they are economically dependent on the other party to the contract and cannot discuss freely the terms of their engagement.

Recording firms and broadcasting companies, for their part, fear that an exclusive right conferred on performers may paralyze their traditional business activities, such as the sending abroad of record matrices or broadcasts, or the use of commercial records, on the radio or in public.

For all these divergencies, which have been stressed to show the care with which governments had to act before implementing the provisions of the Rome Convention, it will be remembered that the Convention entered into force on May 18, 1964, after the deposit by Mexico of the sixth instrument of ratification.

We must now look into the options offered by the Rome Convention to national legislations and then, at a later stage, examine the practical problems arising from the secondary use of commercial records, and the manner in which they have been solved in certain countries which grant equitable remuneration to performers and producers of phonograms.

Before embarking on a list of situations which are left to the discretion of the national legislator, it is appropriate to state briefly the prerogatives granted by the Rome Convention as minimum protection to performers, producers of phonograms and broadcasting organizations.

I. Performers are given, under Article 7 of the Rome Convention, the possibility of preventing:

(i) the direct use of their contributions by means of the broadcasting and the communication to the public, without their consent, of their performance, except where the performance used in the broadcasting or the public communication is itself already a broadcast performance or is made from a fixation, in other words, a sound recording;

(ii) the fixation, without their consent, of their unrecorded performance.

These two provisions govern the contractual relationship between the performer and the employer for whom he undertakes to make a live performance of a dramatic or musical work before a certain audience in a concert hall or private studio. The employer may not, without the express consent of the performer, cause his performance to be broadcast, neither communicate it to a different audience by appropriate technical means such as wire transmission, loudspeaker, etc. Moreover, the employer may not record the live performance in any medium — disc, wire, magnetic tape — without first having obtained the express agreement of the performer, indicating at the same time the purpose of the recording.

All these means of disclosure relate to the direct use of the unrecorded and unbroadcast live performance of the performer, as opposed to the secondary use of a phonogram reproducing a performance.

In addition, performers are afforded a certain amount of protection where an already recorded performance is re-used. This applies:

(i) if the original fixation itself was made without their consent;

(ii) if the reproduction is made for purposes different from those for which the performers gave their consent;

(iii) if the original fixation was made in accordance with the provisions of Article 15, and the reproduction is made for purposes different from those referred to in that Article.

The first item presents no difficulties with respect to the interpretation: it concerns the reproduction of an unlawful recording, made without the prior consent of the performer.

The second item concerns the secondary use of a recording, in other words where the performer has consented

only to the reproduction of his performance, with a view to a specific type of commercial exploitation, whether by disc, broadcasting or film. The unlawful use consists in reproduction of the broadcast or the soundtrack of the film on a disc, or vice versa.

The third item concerns the exceptions to the protection of the performer, provided for in Article 15: for the most part they are the same as those to which the author of an intellectual work is subject. These involve either private use, or the use of short excerpts in connection with the reporting of current events, or use solely for the purposes of teaching or scientific research, or even an ephemeral recording made by a broadcasting organization by means of its own facilities and for its own broadcasts.

II. Producers of phonograms, for their part, enjoy the right to authorize or prohibit the direct or indirect reproduction of their phonograms. This provision refers to the reproduction of a disc made either directly, by means of a rerecording from the matrix of a phonogram, or indirectly by recording sounds from a playing apparatus, or from a radio receiver where a broadcast consists in the playing of protected records.

III. Finally, broadcasting organizations enjoy the right to authorize or prohibit:

(i) the rebroadcasting of their broadcasts;
(ii) the fixation of their broadcasts;
(iii) the reproduction of fixations, made without their consent, of their broadcasts, and of fixations, made in accordance with the derogations provided for in Article 15 if the reproduction is made for purposes different from those referred to in that Article;
(iv) the communication to the public of their television broadcasts if such communication is made in places accessible to the public against payment of an entrance fee.

The first item concerns what specialists call the "relay of a program", when another organization relays the original broadcast for either direct or deferred transmission on its own network.

The second item relates to the recording of a broadcast by any means whatever. The provision applies not only to the individual who records the radio or television broadcast but also the phonogram producer or rival television organization, irrespective of the purpose of the sound or visual reproduction recorded on a sound tape or videogram.

The third item applies to the reproduction of a recording of a radio or television broadcast where the broadcasting organization has not lawfully authorized the initial recording of the broadcast. By the same token, if the initial recording was made in accordance with the derogations under Article 15, whether for private use, for information or scientific research, etc., the person reproducing the recording has to be authorized to do so by the broadcasting organization.

The fourth item applies to the receiving in a public place of a television broadcast, which must be authorized by the broadcasting organization where the place is accessible to the public against payment of an entrance fee. The term "place accessible to the public" has a very broad meaning: it covers any entertainment undertakings which might rebroadcast a dramatic or variety broadcast or a sporting event and charge the public directly for the admittance to the place in which the event is taking place.

On the other hand, small-scale users, such as hoteliers and café and restaurant owners, are outside the purview of this provision in so far as they confine themselves to giving their patrons entertainment which is in keeping with the nature of the establishment, even if that entertainment is accompanied by an increase in prices.

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Having thus reached the end of our rapid review of the minimum protection afforded to the three categories of beneficiaries covered by the Rome Convention, we can now draw attention to the preferential treatment accorded to producers of phonograms and broadcasting organizations: indeed these have a genuine exclusive right to authorize or prohibit the exploitation of their technical contribution, whereas the performers themselves, who make a personal interpretation of a work which is thereby imprinted with their personality, are given no more than the "possibility of preventing" the exploitation of their performance. The latter term should not create any illusions: it is very different from the recognition of a subjective right, and sanctions may take the form of a penal provision only and not a civil one, as Professor Desbois points out.

This preferential treatment is also to be found in the options available to national legislations at the time of the respective country's ratification of, or accession to, the Rome Convention.

Considering the performer first, Article 19 provides that his protection under the Convention ceases to be applicable once he consents to the incorporation of his performance in a visual or audio-visual fixation. We may add that the performer loses all his rights when he makes his performance for a television organization or a film or videogram producer, if he himself appears before the camera. This is all the more unjust when one considers that the broadcasting organization enjoys protection for the making of all its sound or visual broadcasts, as well as their communication to the public for profit-making purposes.

Article 7 leaves it to domestic law to settle the question of the contractual relationship entered into by performers and broadcasting organizations. It is therefore for national legislation to decide in what manner the performer is protected with respect to the direct or deferred relaying of broadcasts, where a durable recording is made of the performance, and under what conditions subsequent broadcasts and the transmission of broadcasts abroad may be limited in number, time or space.

Article 7 goes on, however, to provide that domestic law may not operate to deprive performers of the ability to control, by contract, their relations with broadcasting organizations. This is tantamount to saying that, by dint of individual contracts or collective agreements, the performer may be obliged, in exchange for a lump-sum remuneration, to assign all his rights in advance to the broadcasting organization so

that the latter may be enabled to embark on extensive commercial exploitation of his performance without need for further authorization.

In view of the fact that the broadcasting organization is more often than not tbe better economically armed party in contractual negotiations, total assignment of the performer's rigbts is tbe formula most frequently adopted, in return for a mere increase in the remuneration originally paid.

Finally, with regard to performers, the legislator has the possibility of extending the protection provided for in the Convention to artists who do not perform literary or artistic works, in otber words, variety artists such as skaters, acrobats, clowns, sportsmen, horsemen, etc.

It sbould be pointed out that, of all the countries which have ratified the Rome Convention, practically none have availed themselves of this possibility. The reason for this is no doubt that such performances do not really lend themselves to sound recording and are far from being as widely exploited commercially as musical performances.

With regard to broadcasting organizations and the rigbt to authorize communication to the public of their television broadcasts, against payment of an entrance fee, it is a matter for the domestic law of the country where protection of this right is claimed to determine the conditions under which it may be exercised.

The above provision will undoubtedly enahle every State simply to hypass this right, or to limit it to certain hroadcasts such as sporting events or artistic entertainment, or even to set minimum conditions for the entrance fee paid by the public to the organizer of the event.

Finally, the Convention provides that the duration of the rights conferred by the national legislator on performers, producers of phonograms and broadcasting organizations may not be less than 20 years.

In fact, as far as the countries having already ratified or acceded to the Rome Convention are concerned, the term of protection varies considerably from country to country: it ranges from the minimum under the Convention for Mexico, to an average term of 25 years for the majority of European countries, including Czechoslovakia, Denmark, Germany (Federal Republic) and Sweden, reaching as much as 60 years in Brazil; the Paraguayan law of July 5, 1951, provides for a term similar to that of copyright. The starting point of the period is variously set in the different cases: the date when the performance took place, the date on which the recording was made, or the date on which the broadcast took place.

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The second part of this short exposé concerns the provisions of Article 12, which deals with what is commonly known as the secondary use of a commercial record; they concern both phonogram producers and performers.

For tbeir part, the professional organizations of authors and composers fear that, as a result of its application, the royalties paid by users on the hasis of neighboring rights may have the repercussive effect of diminishing the royalties paid for the exploitation of intellectual works.

Article 12 reads:

> If a phonogram puhlished for commercial purposes, or a reproduction of such phonogram, is used directly for hroadcasting or for any communication to the puhlic, a single equitable remuneration shall he paid by the user to the performers, or to the producers of the phonograms, or to hoth. Domestic law may, in the ahsence of agreement between these parties, lay down the conditions as to the sharing of this remuneration.

Article 12 therefore concerns both large-scale users of copyright works, such as radio and television organizations, and small-scale users such as entertainment firms of all kinds, from dance halls to " café-concert " establishments right down to the ordinary café.

The implementation of this system of rules will first entail the payment of equitable remuneration, generally in the form of a lump-sum annual payment, to the record manufacturer and the performers by the broadcasting organization, as in the Federal Republic of Germany and the United Kingdom. It can also he calculated on the basis of a set price per minute of recorded music broadcast, as in Czechoslovakia and Denmark and the other Scandinavian countries.

We should add that this equitable remuneration is even paid in some countries which have no neighboring rights legislation but where the bodies representing the phonographic industry have been powerful enough to impose their will on the broadcasting organizations. This is true of Austria, Belgium, Italy, Spain, Switzerland and even the United Kingdom, whcre earlier practices have continued in spite of the promulgation of a national law on neighhoring rights and the ratification of the Rome Convention.

In this situation, the model contract agreed upon by the International Federation of Musicians and the International Federation of the Phonographic Industry provides that the equitable remuneration paid by broadcasting organizations is to be divided into two inequal shares:

75 percent of the broadcasting fees are allocated to record manufacturers, and

25 percent to all of the performers who participate in the recording of a phonogram.

In the United Kingdom, 12.5 percent of the performers' share is redistrihuted by the producers of phonograms to the conductors and soloists under contract with the phonographic firm, the balance being paid to British musicians' unions.

In other countries which use the same contractual system, the performers' unions receive the full share accruing to the performers, and they decide on the allotment of the amounts thus received, which is generally for collective social purposes such as aid to unemployed musicians, the introduction of study grants or the award of prizes to young performers. These measure are taken as an incentive to the performing professions according to the wish expressed by the international union organizations to the International Labour Office.

By way of information, we would point out tbat in France the FIM-IFPI contract is applied to the extent that the ORTF pays annual remuneration to French record manufacturers with the condition that 25 percent be paid to the performers as a whole. However, for want of agreement between the various union organizations representing the performers, it

has not heen possible since 1954 to decide on the collective or individual allotment of all or part of these sums.

This contractual method of apportioning and distributing equitable remuneration seems to enjoy the favor of the performers' union organizations, which are opposed to the individual remuneration of performers who make commercial recordings, considering that the secondary use of phonograms deprives many performers of work, namely those who do not have the opportunity to make many recordings, owing either to the geographical location of their professional activity or to the undeveloped state of the phonographic industry in their country. Indeed, it should be remembered that recording work provides the major part of the earnings of musicians, singers and conductors, as a result of the downward trend in the exploitation of musical works hy direct performance hefore an audience.

On the other hand, the Federal Republic of Germany and certain Scandinavian countries are still very attached to the principle of individual remuneration, distrihuted among the performers whose performances are reproduced on records made and subsequently exploited hy hroadcasting or public communication.

By way of an interim solution, however, these union organizations allow societies set up for the purpose of managing the rights of performers to allocate a percentage of the total amounts they collect to actions of general or social interest initiated hy performers' unions. In these countries, groups of phonogram producers on the one hand, and performers on the other, have by common agreement set up collecting societies for neighboring rights composed of both producers and performers. The equitable remuneration paid by users is shared equally hy the performers and producers; the producers of phonograms share the sums between themselves either on the hasis of the degree to which the phonograms of the individual producers are actually listened to, or on the hasis of the sale of phonograms under the label of each of the phonographic firms on the national market.

The distribution scales, for each of the various artistic categories, are determined according to the statutes of those societies, such as the GVL for the Federal Republic of Germany, GRAMEX for Denmark and SAMI for Sweden.

The Federal Republic of Germany remuneration is divided among the performers on a pro rata of the fees which they have charged for recordings during the year preceding that of the distribution of the remuneration paid for the use of commercial records on the radio or in public.

In Denmark and Sweden, the collecting societies for neighboring rights have different scales according to the type of recording used, the rank of the performer and the length of time during which the records are used on the air. The number of points used as a basis for the distribution of remuneration to the performers is determined hy the length of time actually occupied hy the playing of the record on the air. A basic calculation unit of ten points is applied to each record and is distrihuted among the performers who took part in the recording. Some examples are given here:

if the record reproduces only the performance of a soloist or group of soloists, the soloist or group of soloists receives ten points;

if the record reproduces the performance of a soloist and an accompanist, the soloist receives six points and the accompanist four;

in the case of a soloist and a group of instrumentalists, each receives five points;

in the case of a soloist, a group of instrumentalists, a chorus and a conductor, the points are shared out as follows: three for the soloist, two for the group of instrumentalists, two for the chorus and three for the conductor;

and so on.

This gives us an idea of the complexity of the machinery and the administrative costs involved in the fair distrihution of individual remuneration.

In other countries, the legislator has used diametrically opposed methods to settle the question. In Norway, for instance, all the remuneration paid by users is deposited in the Norwegian Fund for performing artists, which comes to the aid of all performers without distinction, and to their surviving family after their death. This is an isolated case, however, and Norwegian legislation was submitted for consideration by the Intergovernmental Committee of the Rome Convention, to ascertain whether or not this solution was in conformity with the spirit of the Convention, which has never specifically ruled out the payment of individual remuneration, but refers to the sharing between each category of beneficiaries in the absence of prior agreement.

In Brazil, the law of April 6, 1966, is the one which lays down the procedure for the distribution of the equitable remuneration paid for the use of commercial records on the radio or in puhlic. Royalties are collected by the producers of phonograms, and are shared equally by them and the performers unless previously agreed otherwise. Where several performers have taken part in the recording, two-thirds are awarded to the performer — that is, to the singer, the vocal group, the performer whose name is featured on the label of the phonogram, or the conductor in the case of a phonogram of an instrumental work — and the remaining third is shared equally by the accompanying musicians and members of the chorus. Where the performer is a vocal group, the share accruing to it is divided among its members in equal amounts which are paid to its leader.

Only some of the countries whose national legislation has allowed the Rome Convention to be ratified provide a system of equitahle remuneration for the puhlic use of commercial records in places of entertainment, hotels, caharets and dance halls. One of these is the Federal Republic of Germany, where even the puhlic receiving of hroadcasts is subject to a fee which is paid to the performers. In Czechoslovakia, the Scandinavian countries and the United Kingdom, owing to the great number of small-scale users playing records in public, collecting societies for neighboring rights have for the most part entrusted collection to copyright collecting societies, which already have an operational infrastracture covering the entire country. These increase their general rates of remuneration slightly in order to cover also the share accruing to the

collecting societies for neighboring rights. In the Federal Republic of Germany, the neighboring rights share is in the order of 20 percent of the total charges collected by authors' societies.

Establishing who are the performers who are beneficiaries of records used in public presents serious difficulties; therefore the methods applied to ensure the distribution of the royalties collected in this connection are of two types:

in the Federal Republic of Germany the method used is the same as for the use of commercial records on the radio;

in the Scandinavian countries and the United Kingdom, on the other hand, the sums collected on behalf of performers are paid to the various performers' unions, for collective or social purposes.

It should also be noted that, while all national legislations have accepted the principle of equitable remuneration for the use on the radio of commercial records, to be paid to producers and performers, they have quite often dispensed with the principle of the equitable remuneration of phonogram producers and performers for the use of records in public, evidence of this being the recent Japanese law of May 6, 1970, on copyright and neighboring rights.

* * *

In conclusion to this study, we would point out that the Rome Convention, with its Articles 7 and 12, leaves national legislators considerable latitude for the restriction or broadening of the scope of protection afforded to performers and phonogram producers.

Performers, who are undoubtedly the most deserving of the best place in view of the intellectual and personal contribution they make in the performance of a work, have obtained no more than the possibility of preventing the use of their performances, whereas broadcasting organizations and phonogram producers have for their part obtained the exclusive right to authorize or prohibit the use of their technical contributions.

Although the primary task of the Rome Convention has been to place on an equal footing the three categories of beneficiaries of the rights neighboring on copyright, it seems to work to the disadvantage of performers, towards whom opinion is favorably biased, since on the grounds of fairness it seems more normal to protect their work against the action of third parties; the fact is that they have not the means of action offered by commercial laws which are available to broadcasting organizations and recording firms.

Since 1961, the various national legislators have demonstrated the difficulties with which this situation has presented them: only thirteen countries have ratified or acceded to the Rome Convention, having previously enacted national legislation in conformity with the principles of the international instrument. Those countries are Brazil, Congo, Costa Rica, Czechoslovakia, Denmark, Ecuador, Fiji, Germany (Federal Republic), Mexico, Niger, Paraguay, Sweden and the United Kingdom.

France, for its part, has still not ratified the Convention, although its delegation was noted for the amount of work it contributed at the drafting stage. In spite of this situation, performers and phonogram producers in this country have nonetheless found a certain degree of protection on the strength of governmental texts and court decisions.

The ORTF, for instance, under Article 4 of the Ordinance of February 4, 1959, enjoys the right to prohibit the rebroadcasting by wire or other means, and the recording or reproduction of any kind, in whole or in part, of a broadcast with a view to its communication to the public, whether for payment or gratuitously, except under the same limitations provided for in the Law of March 11, 1957, on Literary and Artistic Property.

Producers of phonograms have the possibility, by means of unfair competition proceedings, of bringing about the prohibition of the reproduction of their phonograms; in addition the ORTF pays them equitable remuneration for the broadcasting of records, under a private-law contract entered into as early as 1945.

By virtue of collective agreements made with their employers, performers have the possibility of obtaining remuneration in exchange for the secondary use of their recordings, with the exception of the playing of records in public places.

Moreover, the famous Furtwängler decision, rendered by the *Cour de cassation* on January 4, 1964, acknowledges that the performer is "right in prohibiting a use of his performance other than that which he has authorized by contract"; this statement is tantamount to protecting the direct secondary use of his performance.

With regard to moral rights, performers have obtained from substantive judgments the right to redress when their performances are used in a manner contrary to their reputation and artistic standing, whereas the Rome Convention, for its part, disregards the moral prerogatives of the performer, such as the right to respect for his name and protection against distortion of his performance.

Be this as it may, the new procedures for the sound and visual exploitation of performances such as videograms, satellite transmission of broadcasts or the transmission by wire of television broadcasts make one wonder whether the time has not come to protect performers by a special law. There is no legal rule to prevent the legislator from affording assistance first to the category of neighboring rights beneficiaries which is most in need of it.

The protection of phonogram producers better known as the protection against record piracy, especially since the signature of the 1971 Geneva International Convention against the unauthorized duplication of phonograms will be achieved in due course. As for the protection of the ORTF, it is already provided by the authorities, which in France have a monopoly on the transmission of broadcasts.

* * *

It is desirable that the new rights which will soon be introduced may be designed with respect for the rights of authors and composers, whose works are the personal and original raw

material to which performers and commercial firms apply their techniques of dissemination.

This means, as Professor Desbois puts it, that they do not have but a mere auxiliary function in the exploitation of intellectual works. The legislator should therefore never lose sight of the fact that the protection of neighboring rights should be afforded with respect for the economic and moral rights previously acquired by the creator of an intellectual work. This is stated in the Rome Convention itself, in the principle written into its Article 1.

BOOK REVIEWS

Satellitensendungen und Urheberrecht. Ein Beitrag zur rechtlichen Problematik von Weltraumübertragungen [Satellite broadcasts and copyright. A contribution to the study of the legal problems arising from space transmissions], by *Urs M. Reinshagen*. One volume of XXX-125 pages, 15 × 22 cm. Schulthess Polygraphischer Verlag AG, Zurich 1971. Zürcher Beiträge zur Rechtswissenschaft, neue Folge, Heft 381.

Undoubtedly one of the most popular topics nowadays in the field of international copyright is that of the problems raised by transmission via space satellites. It comes as no surprise, therefore, that the author of this work should have chosen it as the object of his study.

The book is divided into four parts. In the first part, the author gives an account of the technical, economic, political and legal aspects of this new communication medium, and describes the beginnings of organization and cooperation at the international level.

The second part is devoted to the question whether satellite transmissions come under the definition of broadcasting. This is a key question, and it is examined from several different angles by means of a comparative analysis of the legislation of a certain number of countries and the various international conventions.

In the third part, the author deals with the obstacles in the copyright field which stand in the way of the free transmission of television broadcasts by satellites. In this respect, the situation is different depending on the category of works and the method of their protection.

Finally, in the fourth part, the author studies projected solutions at the international level. The account of the work of the Committee of Governmental Experts convened jointly by WIPO and Unesco naturally stops at the 1971 Lausanne meeting. In his conclusion, the author advocates a sort of compulsory license coupled with certain practical measures intended to simplify the payment of the royalties due to the authors.

A very comprehensive bibliography is appended to this work.

M. S.

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Der urheberrechtliche Lizenzvertrag [The copyright license agreement], by *René Muttenzer*. One volume of VII-66 pages, 15 × 22 cm. Helbing & Lichtenhahn, Basle and Stuttgart, 1970. Basler Studien zur Rechtswissenschaft, No. 90.

Starting with the idea that the copyright license agreement has an economic importance which is beyond dispute, the author of this work observes that the problem has nevertheless been insufficiently dealt with in Swiss case law and literature. The result is a potential lack of legal security which is reflected in the large number of arbitration clauses to be found in this type of agreement.

The purpose of any license agreement, according to the author, consists in the grant of permission to make use of immaterial property. As for its legal nature, it is a *contractus sui generis*, a type of agreement for which no specific legal rules have been provided for in the law.

After discussing the problem in a general manner, the author analyzes the categories into which this type of agreement falls in various spheres of practical activity (performance of musical works, stage performances, presentation of films, publication, reproduction in newspapers and periodicals). He points out that it is in publishing that the word "license" has found its way into everyday language. This field differs from others in that there is a tendency in practice for exclusive licenses to predominate over non-exclusive licenses.

M. S.

CALENDAR

WIPO Meetings

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

November 29, 1972 (Geneva) — Madrid Union — Assembly and Committee of Directors of the National Industrial Property Offices

December 4 to 8, 1972 (The Hague) — International Patent Classification (IPC) — Working Group I of the Joint ad hoc Committee

December 5 to 12, 1972 (Geneva) — Committee of Experts on the International Registration of Marks
Object: Examination of the Draft Regulations (TRT/DC/2) — *Invitations:* Member countries of the Paris Union; organizations concerned

December 13, 1972 (Geneva) — WIPO Headquarters Building Subcommittee
Members: Argentina, Cameroon, France, Germany (Fed. Rep.), Italy, Japan, Netherlands, Soviet Union, Switzerland, United States of America

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 (Stockholm) — International Patent Classification (IPC) — Bureau of the Joint ad hoc Committee

April 2 to 6, 1973 (Stockholm) — 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

April 9 to 13, 1973 (Geneva) — ICIREPAT — Technical Committee for Computerization

April 25 to 30, 1973 (Geneva) — Patent Cooperation Treaty (PCT) — Standing Subcommittee of the Interim Committee for Technical Cooperation

April 30 to May 4, 1973 (Geneva) — ICIREPAT — Technical Committee for Standardization

May 7 to 11, 1973 (Geneva) — ICIREPAT — Technical Committee for Shared Systems

May 17 to June 12, 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 Gronp I of the Joint ad hoc Committee

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

June 27 to 29, 1973 (Geneva) — ICIREPAT — Technical Coordination Committee

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

July 2 to 11, 1973 (Nairobi) — 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
Note: Meeting convened jointly with Unesco.

July 9 to 13, 1973 (*) — International Patent Classification (IPC) — Working Gronp 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

October 22 to 26, 1973 (Tokyo) — Patent Cooperation Treaty (PCT) — Interim Committees

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

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

November 14 to 16, 1973 (Geneva) — ICIREPAT — Plenary Committee

November 19 to 27, 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)

November 28 to 30, 1973 (Geneva) — Working Group on Scientific Discoveries

December 3 to 11, 1973 (Paris) — Sessions of the Executive Committee of the Berne Union and of the Intergovernmental Committees established by the Rome Convention (Neighboring Rights) and the Universal Copyright Convention

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* Place to be notified later.

UPOV Meetings

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

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

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

Meetings of Other International Organizations concerned with Intellectual Property

December 11 to 15, 1972 (The Hague) — International Patent Institnte — 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

September 10 to October 6, 1973 (Munich) — Diplomatic Conference on a European Patent Convention

September 24 to 28, 1973 (Budapest) — International Association for the Protection of Industrial Property — Symposium

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