

Copyright

Review of the
WORLD INTELLECTUAL PROPERTY
ORGANIZATION (WIPO)

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

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Retirement of Professor Bodenhausen and Appointment of Dr. Bogsch as Director General of WIPO

With effect from November 30, 1973, Professor G. H. C. Bodenhausen retired from the post of Director General of WIPO.

A few days earlier, and with effect from December 1, 1973, the General Assembly of WIPO had appointed Dr. Arpad Bogsch as the new Director General of WIPO.

* * *

Professor Bodenhausen was in office for almost eleven years. He was appointed Director of BIRPI (United International Bureaux for the Protection of Intellectual Property), the organization that was the predecessor of WIPO, with effect from January 15, 1963. After the establishment of WIPO, he became its first Director General on September 22, 1970. As from October 1969, he was also Secretary General of the Union for the Protection of New Varieties of Plants (UPOV).

During his tenure of office, the membership of the Unions administered by BIRPI/WIPO increased considerably (that of the Paris Union grew from 51 to 80, and that of the Berne Union from 50 to 63) and the staff of the International Bureau trebled (from some 50 to approximately 150).

During the same period, all the international treaties which were in existence when he took office (Paris Convention, Berne Convention, two Madrid Agreements, The Hague Agreement, Nice Agreement, and Lisbon Agreement) were revised: the Berne Convention at Stockholm in 1967 and at Paris in 1971, the others in 1967. Eight new international treaties were negotiated and concluded during the same period: the Convention Establishing WIPO in 1967, the Locarno Agreement Establishing an International Classification for Industrial Designs in 1968, the Patent Cooperation Treaty in 1970, the Strasbourg Agreement Concerning the International Patent Classification in 1971, the Phonograms Convention in 1971, the Trademark Registration Treaty in 1973, and the two Vienna Agreements (International Classification of the Figurative Elements of Marks; Type Faces) in 1973.

Also during his tenure of office, two important committees were established: the Paris Union Committee for International Cooperation in Information Retrieval Among Patent Offices (ICIREPAT) in 1968 and the Permanent Committee for the Acquisition by Developing Countries of Technology Related to Industrial Property (ATRIP) in 1973.

Under Professor Bodenhausen's direction, BIRPI, and later WIPO, was particularly attentive to the needs of developing countries. The model laws for such countries were all initiated and completed during this period. They were authored, to a large extent, by Professor Bodenhausen himself. The program of fellowships for nationals of developing countries and of regional seminars for those countries was also started and led to important achievements under his direction.

These impressive achievements were largely due to Professor Bodenhausen himself: to his profound knowledge of all branches of the law of intellectual property, to his fine sense of diplomacy which guaranteed smooth cooperation between the Member States and the International Bureau, to his high sense of duty, his industry and his integrity which set an example to the staff of the International Bureau and inspired confidence in the Member States. Last, but not least, all these achievements were also due to Professor Bodenhausen's ability to identify those questions which, in a context of rapidly changing circumstances, required attention if not solution, and his capacity for introducing the International Bureau, at the right time and in the appropriate manner, to assist the Member States in solving the problems which they have to face in the field of intellectual property.

The eminent services of Professor Bodenhausen to the international community of intellectual property will be long remembered and his achievements will have a permanent effect on international cooperation in the field of patents, trademarks and copyright.

* * *

Dr. Arpad Bogsch was born in Hungary in 1919 and became a citizen of the United States of America in 1959. He holds law degrees from Hungary, France and the United States, and was a member of the bar of Budapest and of Washington.

He joined BIRPI on March 1, 1963, and was Professor Bodenhausen's closest collaborator during the latter's tenure, first as Deputy Director of BIRPI and then, from 1970, as First Deputy Director General of WIPO.

The decisions of the WIPO General Assembly and the Assemblies of the Paris and Berne Unions concerning the appointment of Dr. Bogsch as Director General of WIPO were unanimous.

ADMINISTRATIVE BODIES

Administrative Bodies of WIPO and of the Unions Administered by WIPO and BIRPI

Fourth Series of Meetings

(Geneva, November 19 to 27, 1973)

Note*

Introduction. During the fourth series of meetings of the Administrative Bodies of the World Intellectual Property Organization (WIPO) and of the Unions administered by WIPO and the United International Bureaux for the Protection of Intellectual Property (BIRPI), held at Geneva from November 19 to 27, 1973, the following sixteen bodies held their ordinary sessions:

- WIPO General Assembly, second session (2nd ordinary),
- WIPO Conference, second session (2nd ordinary),
- WIPO Coordination Committee, fifth session (4th ordinary),
- Paris Union Assembly, second session (2nd ordinary),
- Paris Union Conference of Representatives, fourth session (2nd ordinary),
- Paris Union Executive Committee, ninth session (9th ordinary),
- Berne Union Assembly, second session (2nd ordinary),
- Berne Union Conference of Representatives, second session (2nd ordinary),
- Berne Union Executive Committee, fifth session (4th ordinary),
- Madrid Union Assembly, fourth session (1st ordinary),
- Madrid Union Committee of Directors, fourth session (new series) (1st ordinary),
- Nice Union Assembly, second session (2nd ordinary),
- Nice Union Conference of Representatives, second session (2nd ordinary),
- Lisbon Union Assembly, first session (1st ordinary),
- Lisbon Union Council, eighth session (8th ordinary),
- Locarno Union Assembly, third session (1st ordinary).

The following sixty-two States, members of WIPO or of the Paris Union for the Protection of Industrial Property or the Berne Union for the Protection of Literary and Artistic Works, were represented either as members or in an observer capacity in one or several of the Administrative Bodies concerned: Algeria, Argentina, Australia, Austria, Belgium, Brazil, Bulgaria, Byelorussian SSR, Cameroon, Canada, Chad, Chile, Cuba, Czechoslovakia, Denmark, Egypt, Finland, France, Gabon, German Democratic Republic, Germany (Federal Republic of), Greece, Holy See, Hungary, India, Iran, Ireland, Israel, Italy, Ivory Coast, Japan, Kenya,

Liechtenstein, Luxembourg, Madagascar, Mexico, Monaco, Morocco, Netherlands, Nigeria, Norway, Pakistan, Philippines, Poland, Portugal, Romania, Senegal, South Africa, Soviet Union, Spain, Sweden, Switzerland, Syrian Arab Republic, Togo, Tunisia, Turkey, Uganda, United Kingdom, United States of America, Uruguay, Yugoslavia, Zaire.

The following eleven States, not members of WIPO or of the Paris or Berne Union but members of the United Nations or of a Specialized Agency of the United Nations, were represented in an observer capacity: Bolivia, China, Colombia, Guatemala, Iraq, Khmer Republic, Kuwait, Libyan Arab Republic, Republic of Korea, Saudi Arabia, Sudan.

Eleven intergovernmental organizations and nine international non-governmental organizations were represented in an observer capacity.

A list of the participants is set forth below.

At the beginning of each of their respective sessions, the Administrative Bodies elected their officers. A list of the officers is set forth below.

The principal decisions taken by the Administrative Bodies concerned are as follows.

Director General. The Coordination Committee of WIPO and the General Assembly of WIPO noted that Professor G. H. C. Bodenhausen had decided not to seek an extension of his appointment as Director General of WIPO.

On the basis of the nomination made by the Coordination Committee of WIPO, the General Assembly of WIPO appointed, unanimously and by acclamation, Dr. Arpad Bogsch as Director General of WIPO.

Reports on Past Activities. The General Assembly of WIPO and the Assemblies of the Paris and Berne Unions reviewed and approved, respectively, the reports and activities of the Coordination Committee, the Executive Committee of the Paris Union and the Executive Committee of the Berne Union for the years 1971 to 1973. The Administrative Bodies also reviewed and approved or noted, each as far as it was concerned, the reports and activities of the Director General since their last sessions.

Finances and Final Accounts. The Assemblies of the Paris, Madrid, Nice, Locarno and Berne Unions and the Council of the Lisbon Union, each as far as it was concerned, approved the accounts of the International Bureau and the report of the

* This Note was prepared by the International Bureau on the basis of the documents of the sessions of the Administrative Bodies.

auditors on those accounts and noted with approval other information concerning finances for the years 1970, 1971 and 1972.

Headquarters Building. The Coordination Committee of WIPO expressed its sincere gratitude to the Swiss Government for the decisions it had made concerning the financing of the extension of the headquarters building and noted the progress achieved in the work of construction.

Administration of New International Agreements. The General Assembly of WIPO approved the measures provided in the Convention for the Protection of Producers of Phonograms Against Unauthorized Duplication of Their Phonograms (1971) and in the Vienna Agreement for the Protection of Type Faces and their International Deposit (1973) for the administration by WIPO of these international agreements.

Agreement between the United Nations and WIPO. The General Assembly and the Conference of WIPO considered a progress report on the question of concluding a relationship agreement with the United Nations. The General Assembly and the Conference of WIPO noted, in particular, the decisions which had been reached by the Coordination Committee and by the Economic and Social Council of the United Nations (ECOSOC) to the effect that it was desirable that such an agreement should be concluded in the form of a specialized agency agreement under Articles 57 and 63 of the United Nations Charter. The General Assembly and the Conference of WIPO further noted that the details of such an agreement were currently under consideration by the representatives of governments appointed as negotiators by the Coordination Committee and ECOSOC.

The General Assembly and the Conference of WIPO approved the actions taken by the Coordination Committee at its third and fourth (extraordinary) sessions¹.

The General Assembly of WIPO decided to hold an extraordinary session for the approval of a specialized agency agreement if the draft of such an agreement resulted from negotiations between WIPO and the United Nations.

Agreement between Unesco and WIPO. The Coordination Committee of WIPO approved a new agreement concerning working relations and cooperation with the United Nations Educational, Scientific and Cultural Organization (Unesco). The new agreement replaces the working agreement concluded in 1950 between the International Bureau of the Berne Union and Unesco.

Directorial Posts. The General Assembly examined the question of the geographical distribution of directorial posts in the International Bureau and suggestions for possible solutions. The General Assembly decided that three posts of Deputy Director General should be created, of equal rank and remuneration, one to be occupied by a national of a socialist country, one by a national of a developing country and one by a national of the other countries.

Staff Matters. The Coordination Committee of WIPO 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.

Several delegations expressed the wish that the International Bureau continue and increase its efforts to ensure an equitable geographical distribution of the staff in the professional and higher categories. It was suggested that the International Bureau should favor appointments of nationals from developing countries, through in-house training if necessary.

Program and Budget of the Conference of WIPO. The Conference of WIPO adopted the triennial budget (1964 to 1976) and established its triennial program of legal-technical assistance.

In addition to the Permanent Program (see below), the following are the main features of the program of legal-technical assistance:

Training in the fields of industrial property and copyright will be offered to nationals of developing countries.

Experts will be sent, on request, to developing countries to assist them in improving their industrial property and copyright legislation and in administering their laws in these fields.

Regional seminars on industrial property and copyright matters will be organized by WIPO.

Model laws for developing countries will continue to be prepared, particularly in the field of copyright and neighboring rights, and those on inventions and trademarks will be revised. The establishment of model regional agreements for regional cooperation in the administration of industrial property laws will be studied on request.

Cooperation with the *United Nations bodies* concerned with technical assistance will continue. This applies in particular to the United Nations Development Programme (UNDP), the United Nations Conference on Trade and Development (UNCTAD), the United Nations Industrial Development Organization (UNIDO), the United Nations Institute for Training and Research (UNITAR) and the regional economic commissions.

Permanent Program. The Conference established a Permanent Legal-Technical Program for the Acquisition by Developing Countries of Technology Related to Industrial Property and adopted the Organizational Rules of that Program². The Permanent Program forms a part of the legal-technical assistance program of WIPO. The objective of the Permanent Program is to promote and facilitate, by all means within the competence of WIPO, the acquisition by developing countries, under fair and reasonable terms and conditions, of technology related to industrial property. The Organizational Rules set up a Permanent Committee, consisting of all member States of WIPO or the Paris Union which desire to be members, whose task will be to keep the Permanent Program under review and to make recommendations in this connection to the Conference and the Coordination Committee of WIPO.

¹ See *Copyright*, 1972, p. 218, and 1973, p. 106.

² See, on this subject, *Industrial Property*, 1973, p. 199.

Program and Budget of the Paris Union and the Special Unions. The main features of the program for the period 1974 to 1976, adopted by the Assembly and Executive Committee of the Paris Union and by the Assemblies of the Madrid, Nice, Lisbon and Locarno Unions are set forth in *Industrial Property*, 1973, December issue.

Program and Budget of the Berne Union. The main features of the program for the period 1974 to 1976 adopted by the Assembly, and noted with approval by the Conference of Representatives, of the Berne Union are the following:

A Diplomatic Conference for the adoption of a convention relating to the distribution of programme-carrying signals transmitted by satellite will be convened jointly with Unesco in Brussels in 1974.

Work on the preparation of model laws for developing countries in the field of copyright and neighboring rights will continue, in most instances, in cooperation with Unesco and, as far as neighboring rights are concerned, with both ILO and Unesco.

An information meeting will be held in a developing country to make the Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations better known among States and interested circles. This meeting will be arranged by the Secretariat of the Rome Convention which is assured by WIPO, ILO and Unesco.

The study of the desirability and feasibility of establishing in the International Bureau an international service for the identification of literary and artistic works will continue in working groups or committees of experts.

The study of questions concerning the reprographic reproduction of copyright works will also continue.

The Assembly of the Berne Union adopted the triennial (1974 to 1976) budget of the Berne Union corresponding to the program as approved. The Conference of Representatives noted with approval the triennial budget and fixed the ceiling of contributions in the Berne Union for the years 1974 to 1976. In addition, the Executive Committee of the Berne Union approved the budget of the Berne Union for the year 1974.

Official texts. The Director General was instructed to establish official texts of the Convention Establishing WIPO and the Stockholm Act of the Paris Convention in the Arabic language and to establish official texts of the Stockholm Act of the Lisbon Agreement in the Arabic, English, German, Italian, Portuguese and Spanish languages.

Elections of the Executive Committees of the Paris and Berne Unions. The Assembly of the Paris Union elected the following ordinary members of the Executive Committee of the Paris Union: Australia, Brazil, Cameroon, Egypt, France, German Democratic Republic, Japan, Kenya, Mexico, Netherlands, Romania, Soviet Union, Sweden, United Kingdom, United States of America (15). The Conference of Representatives of the Paris Union elected the following States as associate members of the Executive Committee of the Paris Union: Algeria, Iran, Nigeria, Sri Lanka (4).

The Assembly of the Berne Union elected the following ordinary members of the Executive Committee of the Berne Union: Argentina, Canada, France, Germany (Federal Republic of), Hungary, India, Israel, Italy, Morocco, Senegal, Spain, United Kingdom, Yugoslavia (13). The Conference of Representatives of the Berne Union elected the following States as associate members of the Executive Committee of the Berne Union: Philippines, Poland (2).

Switzerland will continue to occupy its ex officio ordinary seat on the Executive Committees of the Paris and Berne Unions.

Composition of the Coordination Committee of WIPO. As a consequence of the elections of the Executive Committees of the Paris and Berne Unions, the following States will be members of the Coordination Committee: Algeria, Argentina, Australia, Brazil, Cameroon, Canada, Egypt, France, German Democratic Republic, Germany (Federal Republic of), Hungary, India, Iran, Israel, Italy, Japan, Kenya, Mexico, Morocco, Netherlands, Nigeria, Philippines, Poland, Romania, Senegal, Soviet Union, Spain, Sri Lanka, Sweden, Switzerland, United Kingdom, United States of America, Yugoslavia (33).

List of Participants *

I. States Members of One or Several Bodies Convened

Algeria: H. Bencherchali; G. Sellali (Mrs.); S. Bouzidi; M. Kechiche (Miss). Argentina: R. A. Ramayón; C. A. Passalacqua. Australia: K. B. Petersson; J. McKenzie. Austria: R. Dittrich; T. Lorenz; O. Leherl; O. Auracher; G. Rubitschka. Belgium: A. Schnrmans; R. Philippart de Foy. Brazil: T. Thedim Loho; J. F. da Costa; A. Gngel de Alencar; A. Teixeira Cardoso Filho. Bulgaria: D. Atanassov; K. Jelev; T. Sourgov. Byelorussian SSR: N. Androsovitsh. Cameroon: J. Eked Samnik. Canada: A. A. Keyes; A. Gariepy; J. O. Caron. Chad: J. Abdulahad; D. Salomé. Chile: J. M. Ovalle. Cuba: J. M. Rodríguez Padilla; F. Ortiz Rodríguez; H. Rivero Rosario. Czechoslovakia: M. Bělohávek; V. Vaniš; J. Prošek; A. Ringl; J. Springer. Denmark: E. Tuxen; R. Carlsen (Mrs.); D. Simonsen (Mrs.). Egypt: A. Kahesh; Y. Rizk; S. A. Abou-Ali; M. A. M. Rizk. Finland: E. Tuuli; B. Norring; R. Meinander. France: J. Fernand-Laurent; P. Fanre; A. Kerever; F. Savignon; R. Labry; J. Buffin; P. Guérin; R. Leclerc; S. Balous (Mrs.). Gabon: J. Engone; J.-J. N'Zigon-Mahika. German Democratic Republic: J. Hemmerling; D. Schack; K. Zschiedrich; H. Konrad; G. Schumann; M. Förster (Mrs.). Germany (Federal Republic of): A. Krieger; H. Mast; R. Singer; T. Roetger; H. Graeve; R. von Schleussner (Mrs.); S. Schumm; G. Ullrich; M. von Harpe. Greece: S. Roditis. Holy See: S. Luoni; O. Rouillet (Mrs.). Hungary: E. Tasnádi; I. Timár; A. Benárd; G. Pálos. India: K. Chaudhuri; G. Shankar. Iran: F. Nasser. Ireland: M. J. Quinn. Israel: M. Gabay. Italy: P. Archi; M. Vitali (Miss); N. Faiel Dattilo; A. Ciampi; I. Dini-Del Gnzzo (Mrs.); Ivory Coast: B. Nioupin; B. Dadié; Y. Bakayoko; C. Bosse; M.-L. Boa (Miss). Japan: K. Adachi; H. Saito; N. Shikaumi; Y. Hashimoto; T. Hotta; Y. Kawashima; Y. Oyama. Kenya: D. J. Coward. Liechtenstein: A. F. de Gerliczy-Burian. Luxembourg: J.-P. Hoffmann. Madagascar: R. Razafimhelo. Mexico: G. E. Larrea Richerand; V. C. Garcia Moreno; E. Sanchez Rodriguez; M. de Maria y Campos; M. S. Wionczek. Monaco: J.-M. Notari. Morocco: M. S. Ahderrazik; S. M. Rahhali. Netherlands: J. B. van Benthem; J. Dekker. Nigeria: O. Omotosho; A. G. Adoh. Norway: L. Nordstrand, S. H. Røer, J. B. Heggemesnes. Pakistan: M. J. Khan. Philippines: C. V. Espejo. Poland: J. Szomański; H. Wasilewska (Mrs.); D. Januszkiewicz (Mrs.); M. Paszkowski. Portugal: J. L. Esteves da Fonseca; J. de Oliveira

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

Ascensão; J. Van-Zeller Garin; L. Nunes de Almeida. Romania: L. Marinete; V. Tudor; D. Stoenescu; M. Costin (Mrs.). Senegal: A. M. Cissé; J. P. Crespin; N'D. N'Diaye; S. Kandji. South Africa: C. J. Wessels; F. Stroebel. Soviet Union: E. Artemiev; J. I. Plotnikov; A. Zaitsev; V. Roslov. Spain: A. Fernandez-Mazarambroz; J. Delicado Montero-Rios; I. Fonseca-Ruiz (Miss); C. Gonzalez-Palacios. Sweden: G. Borggård; C. Ugglå; C. E. Tryse; L. Norberg. Switzerland: W. Stamm; P. Braendli; P. Ruedin. Syrian Arab Republic: A. Jouman-Agha. Togo: I. Johnson. Tunisia: A. Amri; H. Ben Achour. Turkey: R. Arim; A. Erman. Uganda: C. Sebitosi (Miss). United Kingdom: E. Armitage; I. J. G. Davis; A. Holt; T. A. Evans; O. M. O'Brien. United States of America: D. M. Searby; R. Tegtmeyer; H. J. Winter; M. K. Kirk; H. D. Hoinkes; E. Lyerly; H. C. Wamsley. Uruguay: R. Rodriguez-Larreta de Pesaresi (Mrs.). Yugoslavia: D. Bošković; D. Čemalović. Zaire: Y. Yoko. Total: 62 States

II. Other States

Bolivia: J. Eguino-Ledo; V. Banzer Lopez (Mrs.). China: Jen Tsien-Hsin; Yang Po; Lu Lung; Wang Cheng-Fa. Colombia: J. Fonseca. Guatemala: C. A. Steiger Tercero. Iraq: T. Al-Khudhairi. Khmer Republic: S. Rethnara. Kuwait: N. Al-Refai. Libyan Arab Republic: T. Jerbi. Republic of Korea: S. M. Cha. Saudi Arabia: M. Kurdi, M. Abu Al-Samh. Sudan: K. H. Friegoun, A. Deng. Total: 11 States

III. Intergovernmental Organizations

United Nations (UN): A. Dollinger; A. Ezenkwele; T. Zoupanos; B. Beer; F. Brusick; S. J. Patel; P. Roffe-Rosenfeld. World Health Organization (WHO): G. G. Meilland; E. Kamath. United Nations Educational, Scientific and Cultural Organization (Unesco): C. Lussier; M.-C. Dock (Miss). International Patent Institute (IIB): G. M. Finnis. African and Malagasy Industrial Property Office (OAMPI): D. Ekani. Benelux Trademark Office: P. J. V. Rome. Council for Mutual Economic Assistance (CMEA): I. Schunin; I. Tcherviakov. European Economic Communities (EEC): E. Tuxen; K.-D. Jagstaidt; M. Gleizes; P. Luyten; G. Maurel. European Free Trade Association (EFTA): G. Aschenbrenner. Industrial Development Centre for Arab States (IDCAS): A. Abdel Hak. Organization of American States (OAS): R. T. Freire.

IV. Non-Governmental International Organizations

International Association for the Protection of Industrial Property (AIPPI): H. Wichmann. International Chamber of Commerce (ICC): D. A. Was. International Copyright Society (INTERGU): G. Halla. International Federation of Inventors Associations (IFIA): H. Romanus; F. Burmester; K. E. Sundström. International Federation of Patent Agents (FICPI): A. Braun. International Hotel Association (IHA): R. Perego; J. E. David. International Organization for Standardization (ISO): R. W. Middleton. International Publishers Association (IPA): J. A. Koutchoumov. Union of European Patent Agents (UNEPA): A. Braun.

V. International Bureau of WIPO

G. H. C. Bodenhausen (*Director General*); A. Bogsch (*First Deputy Director General*); C. Masouyé (*Senior Counsellor, Head, External 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*).

VI. Officers and Secretariat

World Intellectual Property Organization (WIPO)

General Assembly: *Chairman*: G. Borggård (Sweden); *Vice-Chairmen*: A. M. Cissé (Senegal); L. Marinete (Romania); *Secretary*: C. Masouyé (WIPO).

Conference: *Chairman*: G. Sellali (Mrs.) (Algeria); *Vice-Chairmen*: A. Fernandez-Mazarambroz (Spain); R. A. Ramayón (Argentina); *Secretary*: I. Thiam (WIPO).

Coordination Committee: *Chairman*: A. Krieger (Germany, Federal Republic of); *Vice-Chairmen*: E. Artemiev (Soviet Union); K. Chaudhuri (India); *Secretary*: R. Harben (WIPO).

Paris Union

Assembly: *Chairman*: T. Thedim Lobo (Brazil); *Vice-Chairmen*: F. Savignon (France); A. A. Keyes (Canada); *Secretary*: K. Pfanner (WIPO).

Conference of Representatives: *Chairman*: A. G. Adoh (Nigeria); *Vice-Chairmen*: R. Rodriguez Larreta de Pesaresi (Mrs.) (Uruguay); C. V. Espejo (Philippines); *Secretary*: K. Pfanner (WIPO).

Executive Committee: *Chairman*: D. M. Searby (United States of America); *Vice-Chairmen*: J. Ekedí Samnik (Cameroon); H. Saito (Japan); *Secretary*: K. Pfanner (WIPO).

Berne Union

Assembly: *Chairman*: I. Timár (Hungary); *Vice-Chairmen*: E. Armitage (United Kingdom); E. Tuxen (Denmark); *Secretary*: T. S. Krishnamurti (WIPO).

Conference of Representatives: *Chairman*: Y. Yoko (Zaire); *Vice-Chairmen*: J. Szomański (Poland); R. Razafimbelo (Madagascar); *Secretary*: T. S. Krishnamurti (WIPO).

Executive Committee: *Chairman*: G. E. Larrea Richerand (Mexico); *Vice-Chairmen*: A. Kerever (France); K. Chaudhuri (India); *Secretary*: T. S. Krishnamurti (WIPO).

Madrid Union

Assembly: *Chairman*: J. Hemmerling (German Democratic Republic); *Vice-Chairmen*: M. S. Abderrazik (Morocco); T. Lorenz (Austria); *Secretary*: L. Egger (WIPO).

Committee of Directors: *Chairman*: M. A. M. Rizk (Egypt); *Vice-Chairman*: A. Amri (Tunisia); *Secretary*: L. Egger (WIPO).

Nice Union

Assembly: *Chairman*: E. Artemiev (Soviet Union); *Vice-Chairmen*: J. B. van Benthem (Netherlands); K. B. Petersson (Australia); *Secretary*: L. Egger (WIPO).

Conference of Representatives: *Chairman*: A. Amri (Tunisia); *Vice-Chairmen*: J.-M. Notari (Monaco); J. Szomański (Poland); *Secretary*: L. Egger (WIPO).

Lishon Union

Assembly: *Chairman*: J. Prošek (Czechoslovakia); *Vice-Chairmen*: P. Archi (Italy); S. Bouzidi (Algeria); *Secretary*: L. Egger (WIPO).

Council: *Chairman*: J. M. Rodríguez Padilla (Cuba); *Vice-Chairman*: E. Sanchez Rodríguez (Mexico); *Secretary*: L. Egger (WIPO).

Locarno Union

Assembly: *Chairman*: P. Braendli (Switzerland); *Vice-Chairmen*: D. Čemalović (Yugoslavia); M. J. Quinn (Ireland); *Secretary*: L. Egger (WIPO).

BERNE UNION

SPAIN**Ratification of the Paris Act (1971) of the Berne Convention**

The Director General of the World Intellectual Property Organization (WIPO) has notified the Governments of member countries of the Berne Union that the Government of Spain deposited on November 14, 1973, its instrument of ratification dated July 2, 1973, of the Berne Convention for the Protection of Literary and Artistic Works of September 9, 1886, as revised at Paris on July 24, 1971.

Pursuant to the provisions of Article 28(3) of the Paris Act (1971) of the said Convention, Articles 22 to 38 will enter into force, with respect to Spain, three months after the date of this notification, that is, on February 19, 1974.

A separate notification will be made of the entry into force of Articles 1 to 21 and the Appendix, when the conditions provided for in Article 28(2)(a) are fulfilled.

Berne Notification No. 50, of November 19, 1973.

Application of the transitional provisions (five-year privilege) of the Paris Act (1971) of the Berne Convention**INDIA**

The Director General of the World Intellectual Property Organization (WIPO) has notified the Governments of member countries of the Berne Union of the notification deposited by the Government of the Republic of India in which that Government indicates its desire to avail itself of the provisions of Article 38(1) of the Paris Act (1971) of the Berne Convention.

This notification entered into force on the date of its receipt, that is, on November 19, 1973.

Pursuant to the provisions of the said Article, the Republic of India, which is a member of the Berne Union, may, until the expiration of five years from the date of entry into force of the Convention Establishing the World Intellectual Property Organization (WIPO), that is to say until April 26, 1975, exercise the rights provided under Articles 22 to 26 of the Stockholm Act of the Berne Convention, as if it were bound by those Articles.

Berne Notification No. 51, of December 10, 1973.

URUGUAY

The Director General of the World Intellectual Property Organization (WIPO) has notified the Governments of member countries of the Berne Union of the notification deposited by the Government of the Eastern Republic of Uruguay in which that Government indicates its desire to avail itself of the provisions of Article 38(1) of the Paris Act (1971) of the Berne Convention.

This notification entered into force on the date of its receipt, that is, on November 19, 1973.

Pursuant to the provisions of the said Article, the Eastern Republic of Uruguay, which is a member of the Berne Union, may, until the expiration of five years from the date of entry into force of the Convention Establishing the World Intellectual Property Organization (WIPO), that is to say until April 26, 1975, exercise the rights provided under Articles 22 to 26 of the Stockholm Act of the Berne Convention, as if it were bound by those Articles.

Berne Notification No. 52, of December 10, 1973.

CONVENTIONS ADMINISTERED BY WIPO

**Convention for the Protection of Producers of Phonograms
Against Unauthorized Duplication of Their Phonograms**

UNITED STATES OF AMERICA

Ratification of the Convention

The Director General of the World Intellectual Property Organization (WIPO) has informed the Governments of the States invited to the Diplomatic Conference on the Protection of Phonograms that, according to the notification received from the Secretary-General of the United Nations, the Government of the United States of America deposited on November 26, 1973, its instrument of ratification of the said Convention.

Pursuant to the provisions of Article 11(2), the Convention will enter into force, with respect to the United States of America, three months after the date of this notification, that is on March 10, 1974.

Phonograms Notification No. 10, of December 10, 1973.

NATIONAL LEGISLATION

ICELAND

Copyright Act

(Of May 29, 1972) *

CHAPTER I

Authors' rights, etc.

Article 1. — The author of a literary or artistic work shall have copyright therein within the limitations specified in this Act.

Literary and artistic works shall comprise any composed text, be it expressed in writing or in speech, dramatic work, musical work, fine art, work of architecture, cinematographic work, photography, applied art and other similar art forms, by whatever technique and in whatever form the work is disseminated.

Maps, drawings, mouldings, models and other similar devices, which provide instruction on and explanation of any matter, shall enjoy copyright protection in the same manner as literary works.

Article 2. — It shall be considered as production of copies when a literary or artistic work is attached to physical devices, one or more in number.

The work shall be considered as published when copies thereof, with the proper authorization and in a considerable number, are publicly offered for sale, loan or lease, or when they are distributed to the public by some other means. In the case where protection of the work is subject to the condition that it has first been published in this country, such a condition shall be regarded as fulfilled if it is published in this country within thirty days from its first publication abroad.

The work is considered made available to the public when it is performed or exhibited in public, or copies of it have been published, all with proper authorization, as specified in the foregoing paragraph.

It shall be considered as an independent public performance when a wireless broadcast of a work of music or a literary work is disseminated to the public by means of a loud-speaker, or by some other means.

In the case where the work is performed or exhibited at a place of business where ten people or more are employed, then this shall be considered as a public performance.

When reference is made in this Act to the performance or the publication of a work on the radio, this shall comprise

both sound and television broadcasting, unless otherwise specified.

Article 3. — An author has the sole right to make copies of his work and to make it available to the public in its original or changed form, in translation or other types of adaptation.

Article 4. — The name of the author must be properly indicated, both on copies of the work and when it is made available to the public, as may be appropriate.

The work must not be altered nor made available to the public in a manner or in a context which is prejudicial to the author's literary or artistic reputation, or to his individuality.

The right of the author under this Article cannot be waived, except under special circumstances which are clearly indicated both in regard to their nature and extent.

Article 5. — The person translating a work, adapting it for a certain use, converting it from one literary or artistic form to another or carrying out other types of adaptation thereof, shall have copyright in the work in the new form. His right shall in no way affect the author's copyright in the original work.

In the instance where a work has been used as a model or in some different manner in creating another work, which may be regarded as new and independent, then the new work shall be independent of the older work in respect of copyright.

Article 6. — When a work or parts of works by one or more authors are incorporated into a composite work, which by itself may be regarded as a literary or an artistic work, then the person making the composite work shall have copyright therein. His copyright does not infringe on the author's copyright to the works which were incorporated into the composite work.

The provisions stated in the first paragraph of this Article shall not apply to newspapers and periodicals, cf. Article 40.

Article 7. — When a work has two or more authors, without the individual contributions being separable as independent works, the copyright in the work shall be held jointly.

Article 8. — Unless stated otherwise, the author shall be considered as the person whose name is indicated in the usual

* The official Icelandic text of this Act was published in the *Law Gazette*, Series A, No. 73/1972. The Copyright Act came into force on November 29, 1972. Authorized English translation communicated to WIPO by courtesy of the Ministry of Culture and Education of the Republic of Iceland.

manner on copies of the work, or whose name is declared as that of the author, when the work is made available to the public. This shall apply equally to authors using generally known pseudonyms or symbols.

If a work is published without the author being indicated in accordance with the foregoing paragraph, then the publisher shall act on behalf of the author, until the latter is named in a new edition of the work or by notification to the Minister of Education.

Article 9. — Acts, regulations, administrative directives, legal decisions and other similar official documents are not subject to copyright according to the provisions of this Act, nor official translations of such documents.

Article 10. — Patterns and designs shall be protected as applied art, provided they fulfill the conditions of utility and artistic characteristics.

CHAPTER II

Limitations on copyright

Article 11. — Single copies of a disseminated work may be produced for private use only. However, no one shall be allowed to produce, or engage anyone to produce, more than three such copies for use in his place of business.

The provisions of the foregoing paragraph do not entitle anyone to engage in the construction of architectural works which are protected under the rules governing architectural works, nor do they entitle anyone to engage other persons to copy works which are protected under the rules pertaining to sculptures, applied art or to drawings.

Article 12. — It may be decided by the issuance of official regulations that specified official libraries, archives and scientific and research institutions are permitted to make photographic copies of works for use in their own activities. The conditions under which this shall be permissible must be stipulated therein, including the disposal of the copies and their safe-keeping. Such copies must not be lent or disposed of outside the establishment concerned.

Article 13. — If a construction is protected under the rules for architectural works then the owner shall nevertheless be permitted to alter it without the consent of the author, in so far as this may be considered necessary for its practical utilization, or for technical reasons.

Articles protected by the rules pertaining to applied art may be altered without the consent of the author.

Article 14. — It is permitted to quote from a disseminated literary work, including dramatic works, as well as disseminated cinematographic works and works of music, if this is done in the context of critical and scientific treatises, general information or some other recognized purpose, provided the quotation is correct and of reasonable length.

With the same limitations it is permitted to reproduce pictures and drawings of disseminated works of art and documents mentioned in the third paragraph of Article 1.

If pictures or drawings of two or more works by the same author are reproduced in the context of a text for general information, then the author is entitled to remuneration.

Article 15. — It is permitted to reproduce in newspapers or periodicals, or in broadcasting, popular articles on the subject of economics, politics or religion, taken from other newspapers or periodicals, or from other broadcasts, unless it is specifically stated in the articles or the broadcasts that such reproduction is forbidden. When such a reproduction is made mention shall always be made of the source.

It is permitted to reproduce in newspapers, periodicals, television programmes and in films pictures or drawings of disseminated works of art in connection with narrative accounts of current events. This does not, however, apply to works which are made for the purpose of dissemination by the aforementioned methods.

When the performance or the exhibition of a work is part of a daily event, which is being related to the public by means of a broadcast or by film, it is permitted to include brief excerpts of the work in a display or narrative account of the event.

Article 16. — It is permitted to take and reproduce pictures of buildings, and of works of art, which have been situated permanently out-of-doors in a public place. If a building, which enjoys protection under the rules applying to architectural art, or a work of art such as that mentioned in the preceding sentence, constitutes the chief motif of a picture which is used for commercial purposes, then the author shall be entitled to remuneration, unless the pictures are intended for reproduction in newspapers or on television.

Article 17. — It is permitted to reproduce in composite works, consisting of works of a large number of authors compiled for use in divine services, for classroom instruction or for educational broadcasting, the following types of works:

- (1) single literary works or musical works, if short in length, and chapters of longer works, when five years have elapsed from the end of the year in which they were published;
- (2) pictures or drawings of works of art or documents, listed under the third paragraph of Article 1, in connection with main texts, according to the provisions of the foregoing paragraph, provided five years have elapsed from the end of the year in which the work was made public.

Works created for use in education must not be reproduced in any form in a composite work compiled for the same purpose, without the consent of the author.

When a work or a part thereof is reproduced in a composite work in accordance with the provisions of this Article, the author shall be entitled to remuneration.

Article 18. — The educational authorities shall be permitted to allow sound recordings to be made in an official educational establishment of disseminated works for temporary use in education. The copies produced must not be utilized for other purposes.

The provision of the first paragraph of this Article does not justify the direct copying of gramophone records or other sound recordings, which are produced for sale.

The Minister of Education lays down further rules concerning the implementation of the provisions of this Article, including the use and storage of the aforementioned temporary sound recordings.

Article 19. — Copies in braille may be printed and published of published literary or musical works. These works may likewise be photographed for educational use in schools for the deaf and sufferers from speech impediments.

Article 20. — When songs are performed in public concerts it is permitted to use as text individual published poems or parts of larger published works. Such texts may then also be printed in programmes without the music, for the use of the audience.

The author shall be entitled to remuneration for use made in accordance with the provisions of this Article.

Article 21. — A published literary or musical work, which is not a dramatic work, may be publicly performed in the following instances:

- (1) for educational purposes. The author shall be entitled to remuneration if a special admission charge is collected for such performance;
- (2) on occasions at which the performance is conducted in aid of charity, for a general reunion, for the furtherance of education and culture or for purposes which otherwise support the common good, and provided no payment is made for the performance;
- (3) on occasions which are not organized for commercial purposes or financial gain, such as at meetings in schools or of societies, and on other similar occasions, provided no payment is made for the performance and the admission charged is no higher than to cover the direct costs incurred;
- (4) at divine services and other official church functions. The author shall be entitled to remuneration under the provision of this paragraph in accordance with rules laid down by the Minister of Education.

Article 22. — The printing, sound recording and other types of copying and publication shall be permitted of proceedings conducted in public meetings of official representatives, as well as of documents publicly disseminated in such meetings, and which concern the work conducted there. The same shall apply to legal proceedings, which are conducted in public, except where a court of law forbids the publication of certain specified documents.

The provisions of the foregoing paragraph also apply to debates on matters which concern the common good and which are discussed in meetings open to the public, or on the radio.

The author shall have the exclusive right to publish a compilation of his own statements made as a contribution to the

discussions listed under the two foregoing paragraphs, and of the documents he may have disseminated in such meetings.

Article 23. — If a professional society of authors or an organization of authors' societies has obtained a general title to or the right to act as agents for the copyright on literary works or musical works or particular branches thereof, for which the Minister of Education has laid down specific rules, then it shall be permitted, without specific permission from the author in each instance, to produce over the radio previously published single poems, short stories and essays, or excerpts from larger works, and single songs and musical works, if these are short in length, and excerpts from longer musical works, provided the conditions for remuneration to the author are fulfilled. In the event where an author is not a member of a professional society, then he shall enjoy the same rights as are provided for in the general rules, and neither more nor less. The foregoing provisions on the right of performance do not apply to dramatic works, or to other works the broadcasting of which has been forbidden by the author.

When a broadcasting organization is permitted to broadcast a work, it shall also be free to make sound recordings or films thereof for its own use, but for no other purposes. The Minister of Education lays down rules on the use and storage of such recordings. The rules aforementioned shall not be implemented, however, if it has been the general practice to make a contract on such matters between the broadcasting organization and the professional organization of authors.

Article 24. — The sale, loan, lease and other distribution to the public of copies of published literary works or musical works shall be permitted. The lease and loan of musical works on sheets to the public shall be forbidden, however, without the author's consent.

Article 25. — If a copy of an artistic work has been handed over for ownership, then the owner shall be permitted, unless otherwise stipulated, to dispose of it and exhibit it to the public. A public showing of it in art exhibitions shall not be permitted, however, without the author's consent, except in public art galleries, which are open to the public in accordance with approved administrative regulations. The provisions of this paragraph shall apply equally to published copies made of an artistic work.

The owner of an artistic work shall be permitted to reproduce it, or allow the reproduction thereof, to be included in a film or a television programme, when the reproduction of it is of minor importance in relation to the contents of the film or television programme.

When an artistic work belongs to an art collection, it shall be permitted to depict it in catalogues of the collection.

If an artistic work is offered for sale, then it may be depicted in notices concerning the sale.

If a portrait has been painted, sculptured or formed in some other manner by commission, then the author shall not be permitted to exercise his exclusive right according to the provisions of Article 3, without the consent of the person who

commissioned the portrait, or his heirs, if he is no longer living.

Article 26. — The provisions of this Chapter, with the exception of Article 13, do not limit the rights of an author pursuant to the provisions of Article 4.

When a work is publicly produced according to the provisions of this Chapter, the name of the author and the source shall be stated, in accordance with the requirements of proper usage.

When copies are made of a work in accordance with the provisions of this Chapter, the work may not, without the consent of the author, be altered more extensively than is required for the purpose of the reproduction of copies.

CHAPTER III

Transfer of copyright

General provisions

Article 27. — Subject to the limitation of Article 4, the author may transfer wholly or partially his right of disposal in the work.

If a copy of a work is handed over for ownership, then this action does not constitute the transfer of the author's right of disposal in the work, unless this is specifically so stated.

Article 28. — When not otherwise agreed, the transfer of copyright does not entitle the assignee to alter the work.

Neither may the assignee further transfer the copyright, without the consent of the author. If the copyright forms a part of the assets of a business enterprise, then it may be transferred together with the business, or a specified branch thereof. Despite such transfer the transferor shall remain liable for the fulfilment of his obligations towards the author.

Article 29. — An agreement on the transfer of copyright may be wholly or partially repudiated, if it appears to lead to obviously unreasonable consequences. The same shall hold true if the conditions agreed upon for the transfer are contrary to proper copyright usage.

Article 30. — If an author is married then the copyright shall constitute his personal property, which cannot be restricted by postnuptial settlement or in any other manner, including the dissolution of a joint estate or a change of residence, during the author's lifetime. Copyright royalties and payment for transfer of copyright become joint property of the spouses, unless otherwise determined by a postnuptial settlement. Upon the author's death the copyright shall constitute a part of his estate, unless the postnuptial settlement of a married couple stipulates otherwise, cf. also the provisions of the second paragraph of Article 31.

Copyright shall not be subject to legal seizure, neither when remaining with the author nor when with any person who has acquired the copyright by virtue of marriage or inheritance. In the event where a person has acquired the copyright by virtue of transfer, then it shall be subject to legal seizure only to the extent of the right which he is authorized

to retransfer, cf. the provisions of the second paragraph of Article 28.

The provisions of the first and second paragraphs of this Article shall also apply to single works of art which an author has not exhibited in public, placed publicly on sale or otherwise authorized for dissemination, and with respect to manuscripts.

Article 31. — The usual rules of the inheritance laws shall apply to the copyright upon the author's death, cf. also the provisions of Article 30.

The author may give directions in his will concerning the exercise of the copyright upon his death, and he may also authorize somebody else to exercise the copyright. Such provisions shall have binding effect for all the heirs, including legal heirs, and also as regards the spouse's part of the estate.

The provisions of the second paragraph of this Article shall also apply to such works as are mentioned under the third paragraph of Article 30.

Right to public performance

Article 32. — When an author has transferred the right to perform a work publicly, the transfer shall not include exclusive rights, unless this has been agreed upon.

If the transfer is made for an indefinite period of time, whether or not it includes exclusive rights, it shall be valid only for a period of three years. This provision shall not apply to contracts for public performance, if the professional organizations of the owners of such rights are parties to such contracts.

If exclusive rights to public performance have been agreed upon for a specified period of time which exceeds three years, then the author himself shall nevertheless be permitted to perform the work, or transfer the right of performance to others, if the exclusive rights have not been exercised for three consecutive years, provided no different agreement has been made.

These provisions shall not apply to cinematographic works.

Publishing contracts

Article 33. — It shall constitute a publishing contract when an author transfers to a specified person (the publisher) the right to produce copies of a literary or artistic work by printing or a similar process, and the right to publish it.

The publishing contract does not transfer to the publisher property rights in the manuscript or another type of copy of the work being reproduced, unless this has been specifically agreed upon.

Article 34. — The publisher shall, unless otherwise agreed upon, have the right to publish one edition, which may not exceed 2,000 copies of a literary work, 1,000 copies of a musical work, and 200 copies of an artistic work.

By an edition is to be understood the copies which the publisher produces at one time.

Article 35. — The publisher shall be required to publish the work within a reasonable period of time and shall see to

its distribution to the extent made possible by circumstances and according to the usage normal in the case of similar works.

Article 36. — If a literary or artistic work has not been published within two years, or in the case of a musical work within four years, from the time at which the author had submitted to the publisher a complete manuscript or other copy for reproduction, the author may, if a longer period of time has not been agreed upon for publication, rescind the publishing contract, irrespective of whether or not he is entitled to do so according to the ordinary rules of law. The same rule shall apply when copies of the work are exhausted and the publisher, who has been granted the right to publish a new edition, fails to republish the work within two years from the time the author requested him to do so.

When a publishing contract is rescinded according to the provisions of the first paragraph of this Article, the author may retain the fee he has already received. If the author has sustained a loss because of a reprehensible default by the publisher, which is not fully compensated for by such payment, he shall have the right to make claim for further damages.

Article 37. — The publisher shall be required to forward to the author a statement in writing from the printer, or whoever is reproducing the work, concerning the number of copies produced.

If the author is entitled to royalty on the sales or rentals during a financial year, then the publisher shall submit to him, within nine months from the end of the financial year, a statement showing sales or rentals during the financial year and the number of copies remaining in stock at the end of the financial year.

Even though an author is not entitled to royalty, in accordance with the provisions of the foregoing paragraph, he is nevertheless entitled to receive a statement showing the number of copies remaining in stock at the end of the financial year, when nine months have elapsed from that time.

An author cannot by agreement waive the rights he is entitled to in accordance with the provisions of this Article.

Article 38. — If the production of a new edition is commenced more than one year after publication of the previous edition, the publisher shall allow the author to make such changes in the work which do not entail unreasonable cost or alter the character of the work.

Article 39. — Unless otherwise agreed upon, the publisher obtains the exclusive rights to publish the work in the manner and form specified by the publishing contract. If a publisher has obtained the exclusive rights to publication, then the author shall not have the right to publish the work again in the form or manner stated in the contract, or permit somebody else to do so, until the edition or editions contracted for are out of stock.

Notwithstanding the provisions of the foregoing paragraph, the author shall be entitled to include the literary work in an edition of his collected or selected works, when fifteen

years have elapsed from the year of the first publication of the work. The author may waive this right by agreement.

Article 40. — The publishers of newspapers and periodicals hold the exclusive right to reprint these publications, either in whole, or single numbers or issues.

The rights of publishers do in no way impair the copyright to single articles, pictures or other works made public in newspapers or periodicals. The approval of authors for the reprinting provided for under the first paragraph of this Article need not be sought, unless this has been agreed upon.

The provisions of this Chapter concerning publishing contracts shall not apply to contributions to newspapers and periodicals beyond what is stipulated in the first and second paragraphs of this Article.

The provisions of Articles 35 and 36 shall not apply to contributions to composite works.

Film contracts

Article 41. — If an author has by contract made a contribution to a cinematographic work he cannot, unless otherwise specifically agreed upon, prevent the reproduction of copies, dissemination, public performance, any type of distribution to the public by wire or wireless, or any other use of the work.

The provisions of the foregoing paragraph do not apply to musical works, film manuscripts or dialogues, which have been made for use in a film, or to the contribution of the principal director.

Article 42. — When a contract has been concluded for the use of a literary or musical work for the production of a film for public exhibition, the person acquiring the right to utilize the work in this manner shall, unless otherwise agreed upon, produce the film within a reasonable time, and see to it that it be exhibited, as circumstances permit and in accord with proper usage for similar works.

If the film has not been produced within five years from the time at which the author has carried out his obligations under the contract, he may rescind the contract, unless a longer period of time has been agreed upon, irrespective of whether he is entitled to do so according to the ordinary rules of law. The provisions of the second paragraph of Article 36 shall likewise apply, as seen to be fit.

CHAPTER IV

Duration of copyright

Article 43. — Copyright shall extend until fifty years have elapsed after the year of the author's death. In the case of the works mentioned under Article 7, the aforementioned fifty-year period shall be counted from the end of the year of the death of the last surviving author.

Article 44. — When a work has been disseminated without indication of the author's name, cf. the second paragraph of Article 8, the copyright shall extend until fifty years have elapsed since the end of the year in which it was first disseminated. If the work has been published in several parts which nevertheless form one whole according to its contents, the

copyright shall continue for fifty years after the end of the year in which the last part was disseminated.

If the author is indicated in accordance with the provisions of the second paragraph of Article 8, before the aforementioned fifty-year period has elapsed, or if it is established that the author had died before the work was disseminated, the duration of the copyright shall be as provided by Article 43.

CHAPTER V

Other rights related to copyright

Article 45. — The following activities shall be prohibited without the consent of a performing artist:

- (1) sound recordings for the purpose of reproducing his direct artistic performance. That which a performing artist performs personally, including a broadcast performance, shall be regarded as a direct artistic performance. If a broadcasting organization has made a provisional recording of a personal artistic performance, then the broadcasting of such a recording shall be subject to the same rules as if it were a direct artistic performance;
- (2) the broadcasting of a direct artistic performance;
- (3) the distribution of a direct artistic performance by technical means, by wire or wireless, from the place of performance to other specified places accessible to the public;
- (4) the copying of a recording of an artistic performance, which has been made with the consent of the artist. The rights of a performing artist in accordance with the provisions of this paragraph shall continue for twenty-five years from the end of the year in which the recording was made.

The provisions of Article 4, the first paragraph of Article 11, the first paragraph of Article 14, the third paragraph of Article 15, Article 18, Article 21, of the second paragraph of Article 23, Articles 26 to 31 and of Article 53 shall likewise apply, as seen to be fit, to recordings, distribution and re-recording of artistic performances mentioned in the first paragraph of this Article.

Article 46. — A gramophone record or other sound recordings may not be copied without the consent of the producer, until twenty-five years have elapsed from the end of the year in which the recording was made.

The provisions in the first paragraph of Article 11, the first paragraph of Article 14, the third paragraph of Article 15, Article 18 and of the second paragraph of Article 23 shall likewise apply, as seen to be fit.

Article 47. — When a sound recording, which has been published for commercial purposes, is used within the period stated in Article 46: (1) in radio broadcasts or (2) in other public dissemination of artistic performances for commercial purposes, whether by direct use or by radio, then the user

shall be required to pay a composite remuneration both to the producer and to the performing artists.

Further rules may be laid down by administrative regulations concerning these matters, including who shall act on behalf of artistic performers, if two or more performers have taken part in the same performance, the collection of their remuneration and how this shall be divided between the producer and the performers. These rules shall not be applied, however, if a joint organization of producers and artistic performers, approved by the Minister of Education, has made a composite contract with a user or users, or if separate contracts exist in individual instances.

With the consent of a joint organization of artistic performers and producers, mentioned under the second paragraph of this Article, it may be decided by administrative regulations that the remuneration paid in accordance with the first paragraph shall revert to a special fund operated in two separate divisions, one for the artistic performers, the other for the producers. The custody of this fund, and allocations from its divisions, shall be governed by rules laid down in administrative regulations, with the consent of the aforementioned organization.

The provisions in the first paragraph of Article 14, the third paragraph of Article 15 and of Article 21 shall likewise apply, as seen to be fit. The same shall hold true of the provisions in Articles 27 to 31, as regards artistic performers.

The provisions of this Article do not apply to sound films.

Article 48. — The following activities shall be prohibited without the consent of a broadcasting organization:

- (1) the rebroadcasting (simultaneous transmission) of its broadcast and its distribution by wire;
- (2) a recording for the purpose of reproducing its broadcast;
- (3) the dissemination of its television broadcast for commercial purposes;
- (4) the reproduction of a previously made recording of its broadcast. The rights of a broadcasting organization shall hold for a period of twenty-five years from the year in which the broadcast took place.

The provisions of the first paragraph of Article 11, the first paragraph of Article 14, the third paragraph of Article 15, Article 18, Article 21 and of the second paragraph of Article 23 shall likewise apply, as seen to be fit.

Article 49. — The reproduction of photographs, which do not enjoy the protection of this Act as artistic works, cf. the provisions of the second paragraph of Article 1, shall be prohibited without the consent of the photographer or the person who has acquired his rights. If such a photograph is made available to the public for commercial purposes, then the photographer, or the subsequent holder of his rights, shall be entitled to remuneration. The protection of a photograph in accordance with the provisions of this Article shall be valid until twenty-five years have elapsed from the end of the year in which it was made.

The provisions of Chapter II of this Act shall likewise apply to the photographs mentioned under the first paragraph of this Article, as seen to be fit.

Article 50. — In the case where the rules of copyright do not apply to a printed work, which has been published, its reprinting or other reproduction thereof shall be prohibited until ten years have elapsed from the end of the year in which it was published.

The provisions of Chapter II of this Act shall likewise apply, as seen to be fit.

CHAPTER VI

Various provisions

Article 51. — In the case where an author has used a special title, pseudonym or sign on a work, which has been made available to the public, then anyone else shall be forbidden to make a work available to the public under a title, pseudonym or sign which is the same or so similar as to cause confusion of the works or their authors.

Article 52. — The name, mark or symbol of the author may not be placed on a work of art by others than himself, unless he has given his consent thereto.

The name, mark or symbol of the author may not in any case be added to a reproduction, either by the author or somebody else, so that the reproduction could be confused with the original.

Article 53. — The provisions of the second paragraph of Article 4 shall apply to literary and artistic works which are not subject to copyright.

Legal proceedings arising from infringement of the provisions of the first paragraph shall only be instituted by the demand of the Minister of Education, provided also he considers this necessary from the consideration of public cultural interests.

CHAPTER VII

Penalties, damages, rules of legal proceedings, etc.

Article 54. — Penalties for the violation of the provisions of this Act shall only be imposed provided such violation constitutes an act of premeditation or gross negligence.

The following violations shall be subject to fines or ordinary imprisonment of up to three months:

- (1) action in violation of an author's exclusive rights in accordance with the provisions of Article 3;
- (2) violation of the provisions of the first and second paragraphs of Article 4, the second and third paragraphs of Article 26, the first paragraph of Article 28, the first paragraph of Article 39, Article 53, and the directions given under the second paragraph of Article 31;
- (3) violation of the provisions of the first paragraph of Article 45 and the second paragraph of the same Article, cf. references therein to Article 4, the first paragraph of Article 28, and the directions given under the second paragraph of Article 31;

- (4) violation of the provisions of the first paragraph of Article 46, the first paragraph of Article 48, the first paragraph of Article 49, the first paragraph of Article 50, and of Articles 51 and 52;
- (5) the importation into this country of copies of individual works or other productions which are protected in accordance with the provisions of Chapter V of this Act, if these copies are produced abroad under such circumstances that a similar production in this country would have been contrary to the law, while the copies are being imported with a view to public exhibition and general distribution.

If the offence is committed by a joint-stock company, or other type of business enterprise, the enterprise as such may be imposed a fine.

Article 55. — If copies of works have been made, imported into this country or made available to the public in violation of the provisions of this Act, or directions issued in accordance with the provisions of the second paragraph of Article 31, then the courts may order that such copies be seized in favour of the injured party, or be surrendered to him against payment not exceeding production costs. The same rule shall apply to type matter, printing blocks, forms and other material to serve the unlawful production or use of the work or production.

Instead of seizure or transfer in accordance with the provisions of the foregoing paragraph, it may be decided that the property shall be wholly or partially destroyed, or in other ways made unserviceable for unlawful use.

The provisions of the first and second paragraphs above shall not apply to persons who have acquired a copy or copies in good faith for private use.

The provisions of seizure or destruction shall not apply to buildings.

Article 56. — When a violation subject to penalty has inflicted financial losses, damages may be claimed under the usual rules governing compensation.

A person who has criminally infringed the rights of an author or a performing artist, may be ordered by the court to pay compensation to the injured party for mental suffering.

The injured party may be awarded compensation payable by the person who has committed the infringement even if it was committed in good faith. However, in such cases, the compensation may not exceed the profit gained by the infringement.

Article 57. — When the use of a protected work is permitted by the provisions of the Act on condition that the author be paid a remuneration, and also when a producer of a sound recording or a performing artist is entitled to remuneration in accordance with the provisions of Article 47, then the compensation shall be decided according to a collective agreement, if this exists, concluded between the professional organization of the interested copyright holders, on the one hand, and the payer or his professional organization, on the other.

If the conditions for deciding on a remuneration, in accordance with the provisions of the foregoing paragraph, are not at hand, then the interested parties, if they so agree, may refer the dispute to a court of arbitration, made up of three members named by the Supreme Court for a term of five years at a time. The ruling of the court of arbitration shall serve as a final settlement of the dispute. The Minister of Education shall issue further rules on this point, including remuneration from the Treasury to members of the court of arbitration.

If a dispute arises concerning the remuneration mentioned in the first paragraph of this Article, then the use of a work shall be permitted against payment of a remuneration in accordance with older rules, until a final solution has been found before the law courts or a court of arbitration, while a court of law or a court of arbitration can decide on additional remuneration for the time which has elapsed since older provisions were supposed to become void upon termination, or by their own provision.

Article 58. — A copyright committee appointed by the Minister of Education for a term of four years at a time shall serve as an advisory body to the Minister on copyright affairs. Each one of the parties who have been legally authorized by the Ministry as having interest in copyright shall name one person, who shall then be appointed to sit on the committee. One committee member shall be appointed on the basis of a nomination from the State Broadcasting Service. In addition, the Minister appoints one or more members to sit on the committee, without an external nomination. The Minister lays down further rules concerning the committee and its functions.

Article 59. — Legal action against infringement of the provisions of this Act may be instituted by the injured party.

After the author's death, action may be initiated by the person whom the author has authorized to exercise his copyright in accordance with the provisions of the second paragraph of Article 31. Likewise, action may be brought by the spouse of the deceased author, his parents, children, brothers and sisters against infringement of the provisions of the first and second paragraphs of Article 4, the second and third paragraphs of Article 26, the first paragraph of Article 28, and the directions of the author in accordance with the provisions of the second paragraph of Article 31, or of a performing artist, in accordance with the same provision, cf. the provisions of the second paragraph of Article 45.

Legal action for violation of the provisions of Article 53 shall be taken by the public prosecutor upon the demand of the Minister of Education.

CHAPTER VIII

Applicability of the Act

Article 60. — The provisions of this Act on copyright shall apply to:

- (1) works of Icelandic nationals;
- (2) works of foreign nationals domiciled in this country;
- (3) works of stateless persons and refugees, who have their habitual residence in this country;

- (4) works which have been first published in this country, cf. also the provisions of the second paragraph of Article 2;
- (5) buildings constructed in this country and works of art affixed to such buildings;
- (6) cinematographic works if the business enterprises of their producers have their headquarters in this country, or if the producer himself has a permanent residence in this country.

The provisions of the second paragraph of Article 4 and of Articles 51 to 53 shall apply to all works mentioned under Article 1, irrespective of their origin or the nationality of the authors.

Article 61. — A. The provisions of Article 45 shall apply to:

- (1) the artistic performance of Icelandic nationals, irrespective of where it has taken place;
- (2) the artistic performance of foreign nationals and stateless persons, as follows:
 - (a) if an artistic performance has taken place in this country,
 - (b) if a sound recording has been made of an artistic performance, which is protected under the provisions of section C (2) below;
 - (c) if an artistic performance, of which no sound recording has been made, has been broadcast by a broadcasting organization which enjoys protection under the provisions of section D below.

B. The provisions of Article 46 shall apply to sound recordings, wherever and by whomever they have been produced.

C. The provisions of Article 47 shall apply to:

- (1) the artistic performance of Icelandic nationals, of which sound recordings have been made;
- (2) sound recordings, as well as the artistic performance which they may contain, if the producer of the sound recording is an Icelandic national, or a business enterprise resident in this country.

D. The provisions of Article 48 shall apply to broadcasting organizations, provided they fulfill one or the other of the following conditions:

- (1) that the headquarters of the organization are stationed in this country;
- (2) that a broadcast has been made with a transmitter stationed in this country.

Article 62. — The provisions of sections (1) to (4) of the first paragraph of Article 60 shall, as seen to be fit, apply to paragraphs and printed works mentioned under Articles 49 and 50.

Article 63. — The provisions of this Act shall also apply to literary and artistic works which have been created before the coming into force of the Act. The same shall hold true of artistic performances, sound recordings and broadcasts mentioned under the provisions of Chapter V of the Act.

Article 64. — As from the time when the Act comes into force, the following legal provisions are rescinded:

Royal Decree of December 11, 1869, on the production of copies of photographs, etc.

Announcement of February 10, 1870, concerning a notice concerning exclusive rights for the production of copies of photographs.

Act No. 13 of October 20, 1905, on the rights of authors and printers.

Act No. 127 of December 9, 1941, on an addendum to Act No. 13 of October 20, 1905, on the rights of authors and printers.

Act No. 49 of April 14, 1943, on the amendment of Act No. 13 of October 20, 1905, on the rights of authors and printers.

Act No. 74 of June 5, 1947, on the accession of Iceland to the Berne Union, Article 2.

Act No. 11 of February 2, 1956, on the amendment of Act No. 13 of October 20, 1905, on the rights of authors and printers.

Finally all older provisions of law, which may be in conflict with the provisions of this Act, are rescinded.

Article 65. — This Act shall come into force when six months have elapsed from the date of its ratification.

UNITED KINGDOM

The Copyright (International Conventions) (Amendment No. 5) Order 1973

(No. 1751, of October 24, 1973, coming into force on October 31, 1973)

1. — (1) This Order may be cited as the Copyright (International Conventions) (Amendment No. 5) Order 1973, and shall come into operation on 31st October 1973.

(2) The Interpretation Act 1889 shall apply to the interpretation of this Order as it applies to the interpretation of an Act of Parliament.

2. — The Copyright (International Conventions) Order 1972¹, as amended², shall be further amended by including in Schedule 2 (which names the countries party to the Universal Copyright Convention but not Members of the Berne Union) a reference to Algeria and a related reference to 31st October 1973.

3. — This Order shall extend to all the countries mentioned in the Schedule hereto.

¹ See *Copyright*, 1972, p. 180.

² The amendments are not relevant to the subject matter of this Order.

SCHEDULE

Countries to which this Order extends

| | |
|--|------------------------------------|
| Bermuda | Isle of Man |
| Belize | Montserrat |
| Cayman Islands | Seychelles |
| Falkland Islands and its Dependencies | St. Helena and its Dependencies |
| Gibraltar | Virgin Islands |
| Hong Kong | |

EXPLANATORY NOTE

(This Note is not part of the Order)

This Order further amends the Copyright (International Conventions) Order 1972. It takes account of the accession by Algeria to the Universal Copyright Convention.

This Order extends to dependent countries of the Commonwealth to which the 1972 Order extends.

CORRESPONDENCE

Letter from Belgium

by Jan CORBET*

The last "Letter", written by Professor Frans van Isacker (*Copyright*, July 1967), was entirely devoted to the well known case concerning *La Veuve Joyeuse*. One must therefore go back to the "Letter" contributed by the late Pierre Recht (*Le Droit d'Auteur*, June 1960), in order to find a general picture of the evolution of copyright in Belgium.

This, therefore, is what we shall do with a view to giving our readers the fullest possible information.

Legislation

The basic legislation, the Law of March 22, 1886, has not been the subject of any amendments since those of 1958, which Recht examined in his above-mentioned "Letter".

Since 1960, Belgium has ratified two international conventions: firstly, the Universal Copyright Convention, by the Law of April 20, 1960 (*Moniteur*, August 30).

Secondly, the European Agreement on the Protection of Television Broadcasts (Strasbourg, 1960), with the Protocol annexed thereto (Strasbourg, 1965), by the Law of January 14, 1968 (*Moniteur*, March 6). On that occasion, however, Belgium formulated four reservations: protection against diffusion is not granted to Belgian broadcasting organizations and is limited to 50 percent of the average duration of the weekly transmissions of foreign broadcasting organizations; protection against public communication is limited to cases where an admission fee is charged; protection against fixation does not extend to private use nor to use for educational purposes; finally, on the occasion of reporting current events, short extracts from a broadcast forming part of such events may be rebroadcast, fixed, diffused, or communicated to the public.

By a Law dated April 8, 1965 (*Moniteur*, June 18), legal deposit was introduced in Belgium; under the Law, all publications made in Belgium must be deposited with the Royal Library. The same requirement applies to publications made abroad where the author is a Belgian national domiciled in Belgium.

One copy must be deposited, together with a declaration, in duplicate.

Publishers must have their names inscribed in a register, a reference number being allocated to them. In turn, they must keep a register and record in it all their publications. At the foot of the first or the last page, publications must bear the following annotation: the letter D followed by the year of deposit, the publisher's reference number, and the reference number of the publication in the publisher's register.

Periodicals are subject to a different system.

It should be emphasized, of course, that this legislation is totally unconnected with copyright. Any infringement of these provisions has no bearing on copyright.

By a Royal Decree of November 17, 1972 (*Moniteur*, December 20), a public films register was established. For each film intended for screening in Belgium, including television films, the title of the film and the identity of the holder of the economic exploitation rights therein must be recorded in the register. All contracts concerning use of the film must also be filed. Contracts including reservation clauses (for example, concerning use on television, in video cassettes, or limitation of the producer's rights whether in time or in space) are invalid unless they have been duly filed.

The producer is responsible for accomplishing the formalities. If he fails to do so, any person having a contract or a court decision concerning the exploitation rights in the film concerned may take action directly, after giving final notice.

The register is kept at the Ministry of Economic Affairs, Trade Administration.

Here again, it should be noted that any infringement of these provisions has no bearing on the copyright coming into existence.

Case Law

In the period under review, some ten decisions deserve our special attention. We shall not revert to the decisions made in the case of *La Veuve Joyeuse* (Brussels Court of First Instance, June 4, 1964; Brussels Appeals Court, September 29, 1965), because they were examined in detail by van Isacker in his "Letter" referred to above.

1. Catalogues — judgment of the Antwerp Court of First Instance of June 29, 1965 (*RIDA*, 1966, No. LI, p. 3)

In the initial text of the Belgian Law of March 22, 1886, reproduction of a work of art was prohibited, for whatever purposes and regardless of the circumstances. Article 13 of the Law, which allows the reproduction of quotations for the purposes of criticism, polemics or teaching, is applicable only to literary works.

When the painter Strebelle brought an action against the *Journal de Charleroi*, for having published a photograph taken on the occasion of the private viewing of the "Salons des artistes wallons" in 1964 and representing one of his works, the newspaper was inevitably found guilty (Appeals, December 4, 1952, *Pasicrisie*, I, 215).

Recht rightly pointed out (*Le droit d'auteur en Belgique*, Larcier, Brussels, 1955, p. 136) that this situation was no lon-

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ger consistent with present-day information media in which illustration plays a role as important as the text. As a consequence of this legal precedent, established at the time when television was coming into existence, the Law was amended by a law dated March 11, 1958, which subsequently became Article 21^{bis} of the Copyright Law. This Article stipulates that:

The authorization of the author is not required for the reproduction, recording and public communication of short extracts from literary and artistic works for the purpose of reporting current events by means of photography, cinematography, broadcasting or television.

The same shall apply as regards the reproduction and public communication of works of plastic art in their entirety, but only within the limits of the needs of reporting current events.

It is quite clear from the preparatory documents that the legislator's intention was to provide an exception only in favor of modern information media which must be able to go to press or be broadcast at a few hours' notice and which lack the material time for obtaining the necessary authorization from the authors whose works they reproduce in an accessory manner, in the course of reporting.

Following an amendment, the final text as it appears in the Law is not flawless, in that the first paragraph (concerning literary and musical works) and the second (concerning works of plastic art) were drafted differently. As a result one could, interpreting the text literally and taking no account of the preparatory work, contend that the exception clause is broader for works of plastic art than for literary and musical works.

That was why the directors of art galleries, who publish catalogues before holding public sales, wanted to assimilate them to "current events information", even though no "reporting" was involved, the reproductions were made for their own purpose, and time was not lacking for their preparation.

The judgment under reference dismissed that reasoning and re-established the principles. The judge rightly pointed out that the Law of March 11, 1958, constitutes an exception to the principles and must be interpreted in the strictest sense.

It is perhaps to be regretted that the judge sought an argument in the criterion of "lasting value". Even if they have no "lasting value" (on newsprint, in a weekly magazine, for example), reproductions made otherwise than in connection with the reporting of current events should be condemned. This criterion was not mentioned by the drafters of the Law, and doctrine rejects it (cf. Recht, "The pseudo-quotation in the field of the plastic and figurative arts", in *Revue internationale du droit d'auteur (RIDA)*, 1957, No. XVII, p. 95 et seq.).

On the other hand, the judge could have strengthened his theory by emphasizing that there had been no lack of time for requesting permission from the authors whose works had been reproduced. True, he did reject the publisher's contention that the catalogue was intended "to fulfil a mission of rapid information in the modern world", rightly pointing out that catalogues are printed and distributed months in advance.

This consideration deserved further development, however, because lack of time, a factor with which modern information media have to reckon, was precisely the principal motive underlying the provision affording an exception, and is

moreover the only criterion accepted in doctrine (cf. Recht, *op. et loc. cit.*).

In conclusion, it is felicitous to see that the judge quickly dismissed the customary banality that publicity in the form of a catalogue is also beneficial to the artist. Such pseudo-arguments are still all too frequently invoked in order to deny the artist his rightful remuneration.

2. Photographs — judgment of the Hasselt Court of First Instance, March 28, 1966

This judgment confirms a judgment by the Justice of the Peace of Herk-la-Ville on January 8, 1965.

The text begins by enumerating some principles which had been neglected in the Herk-la-Ville judgment or were being contested by the defendant. First, a photographer can create something eligible for copyright protection, even if his work is commissioned and even if the person who commissioned it gives certain indications.

The judgment also confirms that the transfer of a work of art does not imply transfer of the right of reproduction. This principle is, in fact, explicitly stated in Article 19 of the Law on Copyright.

So far, the considerations put forward are beyond reproach. Then, however, the Court considers that in order to deserve copyright protection, a photograph must be original; and, making a *de facto* judgment, the Court holds that the photograph under dispute is not original, hence not eligible for copyright protection.

This decision seems to us inequitable as case law, and we shall explain why. The Belgian Law on Copyright of 1886 makes no mention of photographs, although these had been considered in the course of the preparatory work (speech by Mr. de Moreau, Minister, session of the Chamber of November 26, 1885, Benoidt and Descamps, *Commentaire législatif*, p. 216). As early as 1894, Wauwermans, in his fundamental work *Le droit des auteurs en Belgique* (p. 143), called for a law specifically concerning photography. Furthermore, since the Berlin revision (1908), the Berne Convention, which was ratified by Belgium, required the member States to give legal protection to photographs.

Nothing was done, however, and in Belgian case law the Copyright Law was applied to photographs only where they could be deemed to be "works of art" (Brussels, November 3, 1893, Pas. 1894, II 5, Paix, Brussels, April 18, 1910, JT 1910, col. 745; Commerce, Antwerp, April 5, 1913, JPA 1913 I, 106; Bruges, January 10, 1913, JT 1933, 265; St. Josse, July 25, 1935, JJP 1935, p. 400).

The consequence of this system was that the courts behaved as panels evaluating artistic merits, with all the defects inherent therein.

In other countries too, similar case law existed, and it soon came under attack from those concerned with doctrine (Pouillet, *Traité théorique et pratique de la propriété littéraire et artistique*, 105). After a slow evolution, the courts abandoned the criterion of "artistic character" in favor of that of "originality". Even before the war, certain Belgian court decisions were tending in that direction (Brussels, February 8, 1933, PP 1936, 172).

Then in 1948, at Brussels, came the revision of the Berne Convention and the complete assimilation of photographs with other literary and artistic works. Examination of the "artistic character" of a photograph became a thing of the past. Rightly, therefore, the Justice of the Peace of Ghent held in a judgment dated October 20, 1954 (RW 1954/55 col. 1961, confirmed by the Ghent Court on February 23, 1955, RW 1954/55 col. 1682), that the criterion of "originality" is sufficient for the purpose of granting copyright protection to a photograph. The great merit of that judgment lies in the fact that it mentions a number of elements that can help to determine the existence of such originality (lighting, exposure, angle, diaphragm, background, choice of emulsions and papers, etc.).

This system has the advantage of permitting *a priori* the protection of any photograph on objective basis. Even an inexperienced photographer chooses the exposure, distance and diaphragm stop. With the most modern cameras, one of these three elements must always be selected.

In its judgment, the Hasselt Court first accepts the characteristics of originality as being sufficient — as indeed it is obliged to do now — but then declares the photograph under dispute to be lacking in originality without examining any of the component elements (although some of them are mentioned in the judgment). In other words, the Court simply bases itself on its own conviction.

Clearly, in practice, this implies a return to the old system which has been condemned by doctrine and abandoned by the Berne Convention. The terminology has changed no doubt, but the result amounts to the same: the judge examines the photograph and declares it ineligible for protection because, in his personal opinion, it is not worthy of protection.

It is surprising that the courts should be so obstinate where photography is concerned. No court would hesitate over recognizing as a "work of art" a painting in the most vulgar style; no court would deny protection to the most fatuous lucubrations. But photographs have no place in the sanctuary of the fine arts!

This is all the more striking in Belgium because the Royal Decree of January 29, 1935, grants copyright protection to designs and models. An article suitable for everyday use would therefore be protected, but a photograph of that article would not be? Surely that is unthinkable.

There is only one equitable solution, therefore: namely, protection for all photographs that are the result of personal work (to the exclusion of photographs made automatically). That is the contention of the French Supreme Court of Appeals (December 7, 1961, summarized in *Le Droit d'Auteur*, 1963, p. 46). Even before the war, certain Belgian court decisions were in that sense: Corr., Liège, April 16, 1937, PP 1938, 118 and Boom, May 5, 1937, RW 1937/38, col. 51. Any other system would verge on arbitrariness and injustice.

In addition, it should be pointed out that the court is losing sight of a principle of general law when it states that "in the first place the plaintiffs are required to establish their right and hence the existence of the necessary elements (of originality)". In fact, the originality of a work must always be presumed to exist; it is a matter for the defendant to prove

that the work is either commonplace, or inspired by a work already in existence. The court is requiring proof of something that cannot be proven!

3. *Nature of the rights of film producers — decision by the Supreme Court of Appeals of February 8, 1966*

In connection with a tax dispute, the Supreme Court of Appeals considered the nature of the rights of film producers, and of the contract between the producer and the distributor.

It is a known fact that, as a general rule, producers do not present their films to the public directly, but leave the distributors to do so, in principle one in each country. In turn, the distributors conclude contracts with the cinema managers.

It sometimes happens that, as a result of the establishment of vertical trusts, the producer and distributors, sometimes even a number of cinemas, constitute a single business entity; legally, however, they are separate entities that enter into contractual arrangements with each other.

The contract entered into between a cinema manager and a distributor is a simple contract of hire. The contract entered into between the distributor and the producer is more complicated and is not always the same. Sometimes, the rights are assigned to the distributor and sometimes he acts as representative (Lyon-Caen and Lavigne, *Traité théorique et pratique de droit du cinéma français et comparé*, II, p. 138 et seq.). In any case, there is always a price to pay in exchange for an exploitation opportunity.

What is now the nature of this payment?

The plaintiff contended that it was a matter of royalties and, as such, exempt from a certain tax.

The Court dismissed that argument and held that "the sums paid, as in the present case, by the plaintiff to producers in no way remunerate the authors by reason of the transfer of their rights and being only the counterpart of a grant of rights belonging to the producers who are not authors . . .".

The Court thus declared that producers are not authors; this view is consistent with Belgian doctrine and with earlier decisions of the Court (February 13, 1941, Pas. I, 40; and November 11, 1943, Pas. 1944, I, 47).

But what, then, are the rights of producers that allow them to furnish films on a concession basis? It cannot be denied that, at least in some part, these are author's rights.

In practice, the composers of film music are the only co-authors of cinematographic works who allow an author's society (in Belgium, the Sabam) to collect their royalties. These are collected from cinemas in the form of a percentage of box-office receipts.

All the other co-authors — the director, scenario-writer, script-writer, author of the pre-existing work (if any), novel, play, etc. — transfer their rights to the producer. It would be going beyond the scope of this article to examine the reasons for this state of affairs. The other co-authors are remunerated by the producer, either by payment of a lump sum, or of a proportional amount collected through the distributors. Be that as it may, the transfer concerns author's rights, and the rights that the producer (and subsequently the distributor) exercises are (transferred) author's rights.

True, the coverage of the contract between producer and distributor, and distributor and cinema manager, is broader. The producer also transfers the right to use a material object, the film. Part of the sums paid is in respect of such use. But another part undoubtedly constitutes royalties and it should be possible, in view of the entire chain of contracts running from the author, at one end of the chain, to the cinema, at the other end, to determine that part with great precision.

We believe that the Council of State had a better vision of the problem in a decision dated June 10, 1960 (*L'Ingénieur-Conseil*, July-August 1960). It concerned a dispute between a group of distributors and the Belgian State over a ministerial decree issued in pursuance of the Law of January 22, 1945, setting certain maximum conditions which distributors could impose on cinemas. The Council of State held that in fact royalties were involved and that these fell outside the scope of the Law in question.

"A cinematograph film", said the Council of State "is a work of art whose value is not in relation with the cost of production" and, further on, "a film cannot be projected without the consent of its authors, and such is generally given only against payment; film distributors are empowered by the authors to permit the projection of films; the hire of a film is above all consent given by the authors of the film, their assignees or transferees to project the work".

That is what the Supreme Court of Appeals lost sight of.

4. *Quotations — decision of the Brussels Appeals Court of November 16, 1966*

Article 13 of the Copyright Law allows quotations to be made for the purposes of criticism, polemics or teaching. It should be inferred from the location of this Article in the Law, i. e., in Section II, concerning copyright in literary works, that only quotations from literary works are permitted. This view was upheld in an unpublished judgment by the Bruges Court on March 20, 1957, finding quotations from musical works to be unlawful.

One may well ask whether anthologies are covered by the provisions of Article 13. These must, of course, be anthologies used for teaching purposes, otherwise the exception provided in Article 13 would in any case not be applicable. But anthologies for teaching purposes sometimes include relatively long quotations; certain short works, such as poems, are often reproduced in full.

Are not the limits of Article 13 exceeded in this case? Doctrine holds that view and believes that the author's consent should always be obtained (Recht, *Le droit d'auteur en Belgique*, p. 92; Poirier, *Le droit d'auteur*, p. 124). The author should at least be able to exercise his moral right and be able to select personally the extracts and short works to be reproduced.

Case law, however, does not follow this strict line and extends the provisions of Article 13 to cover anthologies (for educational use). A judgment of the Brussels Court of June 20, 1949 (Pas. III, 40), held that an anthology was permissible provided that reproduced extracts not exceeding four pages in length, having no link between them and when read

in an uninterrupted manner, do not give any indication of the general plan of the work. The judgment stated, moreover, that in order to ensure understanding of the beauties of form of a poetic work, it may be necessary to reproduce a poem in its entirety.

The dispute under reference concerned an anthology of a special kind, entirely devoted to one author, and comprising extracts from four of his works that were respectively 25, 31, 21 and 13 pages in length.

In the Court of First Instance, the publication had been found unlawful by the Antwerp Court in a judgment of November 25, 1965 (RW 1967/68, col. 1543). The Court held that the anthology could indeed be used for teaching purposes, but that it was not intended specifically for teaching; it could also serve as a popular work.

Since the criterion stipulated by Article 13 was found lacking, a finding of illegality had to follow. But the Court said nothing about the length of the extracts, and apparently did not find it excessive. This can be seen in particular in the references made by the Court to the preparatory work and to the statements made to the Chamber by the Minister of Justice concerning the meaning of the word "quotation".

In its decision of November 16, 1966, the Brussels Court acquiesced in the judgment but reversed its reasons. It held that the anthology is intended for the purpose of teaching, but that the length of the extracts exceeded the limits set by Article 13.

We prefer the reasons stated by the Court. First, because the criterion of the length of a quotation is objective and clear; in practice, authors and publishers can apply it easily. It is a much more delicate matter to determine whether use in teaching is intended; the decision is bound to be subjective. Furthermore, the decision sets reasonable limits even for anthologies intended for teaching purposes. Teaching is a highly respectable thing, but nevertheless the school-books business is extremely profitable and one wonders in vain why the authors should pay the piper. Article 13 is only an exception to the rule, a tolerance that must not degenerate into abuse.

5. *Droit de suite — decision by the Ghent Court of First Instance of June 26, 1967*

This right was introduced in Belgium by the Law of June 25, 1921. Under it, the artist and his successors in title are entitled to a share, at a rate established by the Law, in the sale price of a work of art on the occasion of each sale (public sale only, in Belgium) by the successive owners.

Outside Belgium, this right exists only in the following countries: Czechoslovakia, Federal Republic of Germany, France, Italy, Luxembourg, Poland and Uruguay. Some of these countries have extended it to private sales; some countries also apply it to the sale of writers' and composers' manuscripts.

The *droit de suite* is inalienable, and indeed this must be so if the desired objective is to be achieved. Otherwise dealers would have quickly understood that, together with the work of art, they could have obtained a deed transferring this right. Does such inalienability extend to transfers in case of death?

In other words, can the artist bequeath by will his *droit de suite* to someone else? In France, a difference soon emerged on this point. Some authorities considered that the right could only be transmitted to the heirs-at-law. The leading authority in this field, Desbois (*Le droit d'auteur*, 1950 edition, No. 453) does not, however, share that opinion.

And rightly so, we believe. Indeed, the dangers to which is exposed a living artist no longer exist after his death. The law should protect the artist against third parties who might attempt to obtain the *droit de suite* by assignment, sale or gift. This dangerous interest is not so evident in the case of legacies. And moreover, why should not the artist be able to express his gratitude or his affection in this way?

Nevertheless, the new French Copyright Law of 1957 opted for the first solution. Legatees and irregular heirs are specifically excluded from inheriting the *droit de suite*, and the surviving spouse only has a usufruct.

It so happened that a few years later, on November 18, 1964, a further decision was made by the High Court of Nice (*Revue trimestrielle de droit commercial*, 1966, p. 338) based on the earlier Law, since it concerned an artist (Dufy) who had died in 1953, when the earlier Law was still in force. The Court held that legatees could not be excluded. It is to be regretted that this legal precedent was not made a few years earlier, for it might have influenced the authors of the new Law. In Belgium, legal authorities in general consider that the inalienability of the right of pursuit does not apply to transmissions in case of death (Recht, *Le droit d'auteur en Belgique*, p. 208, and van Isacker, *De exploitatierechten van de auteur*, 353). Only Poirier seems to concur in the other opinion (*Le droit d'auteur*, 67).

Until now, case law was limited to a decision by the Justice of the Peace of the 2nd Canton of Brussels, dated April 25, 1945 (JT 1945, 367), to the effect that legatees should not be excluded. This tendency is now strengthened by a decision by a court of First Instance. The likelihood is that case law will now remain consistent. Apart from the moral considerations mentioned above, there is a satisfactory legal argument in favor of the dominant concept, and which has moreover been used by the Court: Article 1, paragraph 2, of the Law of June 25, 1921, establishing the *droit de suite*, stipulates: "The same right shall belong to the heirs and successors in title of artists, as designated by the Law of March 22, 1886, . . .". Now, Article 2 of that Law states: "This right shall continue for fifty years after the death of the author, for the benefit of his heirs or successors in title". Article 3 then goes on: "Copyright is movable property, and is assignable and transmissible in whole or in part, in accordance with the rules of the Civil Code".

Accordingly, the text does not exclude irregular heirs; and "successors in title" are generally deemed in doctrine to include legatees.

6. *The right of withdrawal (droit de repentir) — decision of the Brussels Appeals Court of April 11, 1969 (RIDA, No. LXI, p. 76)*

The decision of the Brussels Court is interesting on two counts.

First, this is the first time that the right of withdrawal has been recognized in Belgian case law. No doubt, such recognition is implicit and this right of the author is not explicitly designated as such; but it is clear that the Court examined at length the retroactive effects of prohibition and of its infringement to justify the validity of the author's sovereign and non-arbitrary decision in changing his political ideas after publication of the work.

Let us briefly recall the facts and the procedure.

For a long time, J. P. Sartre, the author, forbade any performance of his play *Les Mains Sales* which had achieved a resounding success in the immediate post-war period and had even been filmed, because, in the current political context, the play could be misinterpreted.

The Antwerp Fakkelttheatre, a small theater group known for its progressive opinions, had already performed most of Sartre's theatrical works and, wishing to add *Les Mains Sales* to its repertory, took the view that the prohibition was not of an absolute character, since other performances in the Netherlands, Germany and Switzerland had been reported.

The author nevertheless maintained his decision and, with the assistance of the Sabam, brought two parallel actions.

The first, a civil action brought in chambers, resulted in the grant of an injunction against any performance by the President of the Court of First Instance of Antwerp, of December 19, 1966. The text of the decision was published in *Interauteurs* (No. 166, p. 63).

Yet the judge seems to have made his decision with some reluctance; after having compared the author's right of consent to the "king's pleasure" of former times, he even tried to apply the theory of abusive exercise of a right.

One may think that ill-humor on the part of the judge may be attributable to the performance in the Netherlands, Germany and Switzerland and also to the manifestly pure intentions of the theater.

It is therefore not unduly surprising that one of the courts for minor offenses of the same city on June 4, 1968, acquitted the theater director in proceedings arising from a complaint filed by the author and by the Sabam, in parallel with the civil action in Chamber.

We did not publish that judgment, which was very succinct and merely recorded the absence of any harmful or fraudulent intention on the part of the defendant.

In spite of our sympathy with the theater concerned, it is fitting that the Brussels Court restored the principles. Among moral rights, the right of amendment is perhaps the most appealing one. We cannot remain indifferent, after all, "to matters of conscience, to the anguish suffered by a writer or a composer who regrets having communicated one of his works to the public" (Desbois, *Le droit d'auteur en France*, 1966 edition, p. 435).

No doubt, the exercise of this right must not be arbitrary and must not prejudice a user in good faith.

In this respect, the case at issue was beyond reproach: Sartre's motives were worthy of respect, were well-known and the author did not inopportunistically change his earlier decision

on authorization; Sabam had informed the theater of the prohibition as soon as the intention of performing *Les Mains Sales* became known.

The decision of the Brussels Court assumes another interesting aspect. In Belgian law, infringement of copyright is complete where it is committed with fraudulent or ill intent. One or other of these elements is sufficient: there is no need for the intent to have been both fraudulent and mischievous (Supreme Court of Appeals, November 13, 1893). Fraudulent intent is more frequent than ill intent; even if no profit has been realized, the desire for lucre is sufficient evidence (cf. Recht, *Le droit d'auteur en Belgique*, p. 165). To our knowledge, the decision is one of the very few among those published to mention the element of ill intent as a criterion for determining the existence of violation of copyright.

Ill intent must be taken to mean intention to cause prejudice to the artistic reputation of the author (Recht, *ibid.*). The Court stated that the theater director was well aware of the personality and the work of J. P. Sartre, that he must also have been aware of the motives underlying the prohibition, and should therefore have known that the performances would be prejudicial to the author's moral rights.

7. *Radiodistribution — decision of the Brussels Appeals Court of June 3, 1969 (RIDA, No. LXV, p. 124)*

The question of radiodistribution in copyright has been taken up in Belgian case law at a rather late stage.

At a rather late stage, first, because this technique of communication passed its heyday long ago and will perhaps go out of existence, now that individual receivers that meet the most stringent standards concerning sound quality and reception capacity are available relatively cheaply. Radiodistribution is therefore gradually losing its *raison d'être*, and it is surprising that a dispute should have arisen only now. In the Netherlands, for example, a first dispute was settled when the Amsterdam Court dismissed the complaint on October 12, 1929 (*Le Droit d'Auteur*, 1932, p. 22). Another action was successfully brought before the Supreme Court of Appeals of the Netherlands and settled on June 27, 1958 (*Le Droit d'Auteur*, 1959, p. 74).

At a rather late stage, also because for some years now the positive law is formulated in such specific terms that, in our view, the procedure was no longer of any significance and a differing decision was simply inconceivable.

In the Copyright Law of 1886, radio was unknown. The general rule in Article 16 that a work may not be publicly performed without the author's consent was adapted in case law to the new techniques of communication. No dispute ever arose in regard to radio broadcasting.

Apart from the Belgian law, however, one must also consider the international conventions, and in particular the most important among them, the Berne Convention. The latter, also dating from 1886, naturally made no mention of broadcasting at the outset. The first reference to broadcasting is in the text resulting from the Rome revision in 1928, where an Article 11^{bis} was incorporated, stating that:

Authors of literary and artistic works shall enjoy the exclusive right of authorizing the communication of their works to the public by radio-diffusion.

In the Brussels revision of 1948, this Article was further developed and reads as follows:

Authors of literary and artistic works shall have the exclusive right of authorizing: (i) the radio-diffusion of their works or the communication thereof to the public by any other means of wireless diffusion of signs, sounds or images; (ii) any communication to the public, whether over wires or not, of the radio-diffusion of the work, when this communication is made by a body other than the original one; (iii) . . .

The second item undoubtedly covers radiodistribution.

Until the Rome text (1928), it was not certain that broadcasting constituted public performance; and until the Brussels text (1948) it was not certain that radiodistribution should be deemed to constitute a new communication, but thereafter there was no room for doubt.

Since, under the Law of July 27, 1953, Belgian citizens may invoke the text of the Convention wherever it is more favorable than the Belgian law, the Convention has become part of Belgium's legislation.

The second action in the Netherlands resulted from the fact that that country had not ratified the Brussels text of the Berne Convention, but in Belgium any other decision would no longer have been possible.

8. *Adaptations — decision by the Brussels Appeals Court of November 12, 1969*

In general, the problem of adaptation gives rise to disputes between the authors of the original work and the adaptors, the former accusing the latter of having taken their inspiration too slavishly from their work; and the latter denying any relationship and claiming authorship of works that they contend are entirely new and original.

In the case at issue, the original work had fallen into the public domain. The disagreement arose because of opposition raised by two adaptors, or rather two groups of adaptors, the ones accusing the others of having drawn their inspiration from their version.

There is no doubt that an adaptor can claim a copyright for himself. In Belgium, although there is no specific provision to that effect in the Copyright Law of March 1886, yet it follows in any case from Article 2, paragraph 2, of the Berne Convention (Brussels text) which can be invoked by Belgian citizens in pursuance of the Law of July 27, 1953.

Like any other work, an adaptation must be original in order to merit copyright protection. Since it is a derived work, its originality will be only relative but must nevertheless exist in some measure. As Desbois has put it (*Le Droit d'auteur en France*, 1966 edition, p. 28), "relative originality is discernable either in both the composition and the expression, or in one or other of these".

Adaptations necessarily fall within the first category. The question of the extent to which the composition and expression of an adaptation are original is very delicate, of course, and the judges who have to settle the issue must have an extensive cultural background and a feeling for nuance.

An adaptation of a work in the public domain may be eligible for protection, provided it is sufficiently original (cf. Brussels April 22, 1959, and article by van Isacker "Atomium

et droit d'auteur", published in *L'Ingénieur-Conseil*, August-September 1959).

In a judgment dated September 24, 1968, the Brussels Court of First Instance (JT 1969, p. 177; RIDA, No. LXI, p. 80) had held that the first adaptor, Pierre Fresnay, had not fulfilled the conditions of originality. He had made no essential alterations in Diderot's work but had merely made some cuts. He had, moreover, publicly stated that he had taken care to respect Diderot's work as far as possible. Consequently, the Court found that there had been no creative activity and that, in the absence of originality, the work was not worthy of copyright protection; accordingly, Fresnay could not prevent any third party from using the same version. The Brussels Appeals Court reversed that judgment, for reasons that were not different from the legal aspect, of course, but solely having regard to the facts.

9. *Authors under a work contract and the rights of the director of television films — decision by the Brussels Appeals Court of December 9, 1969 (RIDA, No. LXIV, p. 138)*

This decision is of great importance in two fields, namely, the rights of an author under a work contract, and the author's rights of a film director (for television).

The plaintiff had been employed by the RTB for some years and had filmed a number of plays. After his departure, the RTB had rebroadcast some of those programs and had also sold them to foreign broadcasting stations. The plaintiff claimed additional remuneration. The RTB refused, on the grounds that the film director was not an author and that copyright could not be claimed; and that, even if the plaintiff had had copyright, he would implicitly have transferred it to his employer, the RTB.

The Brussels Court rejected both contentions.

First, the Court recognized the film director as being a true author. It examined the component elements of creation and enumerated some of them. It found a striking phrase by referring to the plaintiff as a "creator of images". In respect of films and television, in addition to the author of the text and the composer of the music, there is a third kind of author, the creator of the image. The Court held that this is a matter of "the production of a work in which the sequence of images is a mode of expression just as important as the dialogue".

This approach, which seems to us only logical, was opposed for a long time in other countries, particularly those with a substantial output of television films. In countries where the producer is considered to be the sole author of a film (the United States and others), the director has clearly never won recognition as an author. But even in countries where the intellectual creators are considered to be authors of a film (France, etc.), the director was excluded for a long time. According to this theory, he was assimilated to a mere stage manager.

Case law of these countries first recognized the director as being an author. One example was the decision of April 6, 1949 (*Gazette du Palais* 1949, 1, 249), concerning the film *Les Enfants du Paradis*, made by Carné and Prévert.

A decision of the Paris Appeals Court dated June 14, 1950 (*Dalloz* 1951, 9), states that "the director intervenes at the very heart of a cinematographic work" and that he "participates fundamentally in the artistic creation of a cinematographic work".

The new French Law of March 11, 1957, now includes the director in its enumeration of the authors of a cinematographic work (Article 14). Lyon-Caen goes so far as to consider (*op. cit.*, Volume I, p. 273), that the day may come when the director will be deemed to be the sole author of a cinematographic work.

The decision of the Brussels Court is timely, now that production in Belgium is gaining in importance. Indeed, there is no need to make a distinction between a traditional film, intended for showing in cinemas, and a television film. The nature of the works is absolutely identical; the only difference concerns the technical process of fixing sounds and images on a medium, the "film". The question of copyright in a cinematographic work must be considered separately.

After having established the plaintiff's rights as author, the Court examines his situation vis-à-vis his employer, the RTB. In general, it is recognized in doctrine that employers can acquire the authors' rights of their employees by means of transfer. Belgian doctrine (Wauwermans, Poirier, van Isacker) even accepts the ideas of implicit transfer. Case law is scarce and concerns designs (Courtrai, January 8, 1959, RW 1958/59 col. 1308; Commerce, Ghent, June 5, 1965, JT September 26, 1965).

In France, on the other hand, most legal experts had for years been calling for explicit transfer by means of a special contract. Under the new French Law of March 11, 1957, this principle has been explicitly accepted in Article 1. The new German Law of September 9, 1965, has adopted the same solution (Article 43).

The Court thus concurs in this view, after having examined the contracts and determined that these concerned only the material acts that the director has to perform in carrying out his task, but did not concern the intellectual creation which was a separate matter. The Court rejected any comparison with the case of designs, the RTB having invoked the precedent mentioned above on the subject, stating that large-scale reproduction was inherent in the nature of the contract in that case but not in respect of a television broadcast, which in principle was a one-time event.

On a subsidiary point, the Court also rejected an argument advanced by the RTB, according to which that organization, having taken the initiative for a collective work, should also be entitled to the author's rights. That view is sometimes maintained in other countries in respect of the preparation of encyclopedias, in particular. The principle is to be found in the legislation of France and the Netherlands. But where films are concerned, doctrine rejects this view, and the French law similarly makes separate provision to cover the case of authors of films (cf. above).

For television films, and television broadcasts in general, the comparison with collective works is not relevant and the Court fully realized that. The various individual co-authors

retain their freedom and independence, which is not the case where collective works are concerned.

10. *Status of foreigners — decision of the Brussels Appeals Court of March 10, 1970 (RIDA, No. LXVII, p. 176)*

This decision confirms the main points of a judgment of the Brussels Court of First Instance dated March 17, 1969 (RIDA, No. LX, p. 155), with a slightly different motivation.

It makes a novel application of Article 38 of the Belgian Copyright Law of 1886. Hitherto, in practice, the country of origin of a work was sought, in pursuance of the Berne Convention (Article 7(2)), in order to compare the term of protection in that country with that of Belgium, and thereafter to apply the shorter of the two.

Only in respect of works not published for the first time in a State having ratified the Berne Convention is the nationality of the author sought for the purposes of applying Article 38 of the Law.

This procedure is based on Articles 4, 5 and 6 of the Berne Convention and is approved by doctrine (Recht, *Le droit d'auteur en Belgique*, pp. 50 to 53 and pp. 186 to 190, also Note 2 on page 188).

To date, case law concerned only designs and had examined only the question of reciprocity in respect of the scope of protection, not the duration thereof.

The Court, upheld by the Appeals Court, has now abandoned the criterion of territoriality of the work and applied the criterion of the author's nationality, which has in fact always been the line taken by the Belgian law.

This is not in contradiction with the Berne Convention (Brussels Act, 1948): Article 4 of the Convention grants to authors who are nationals of any of the countries of the Union, in the countries other than the country of origin, and for their works whether unpublished, or first published in a country of the Union, the same protection as is granted by the law of those countries to their own nationals.

In this case, the Convention explicitly refers back to domestic legislation. Furthermore, Article 19 of the Convention provides in general that authors may invoke domestic legislation wherever the latter is more favorable than the rules of the Convention. These rules are to be considered as a minimum.

So far, the decision seems to be above criticism.

As regards the other two points in the motivation, we should nevertheless like to make some comments.

First of all, to determine the term of protection in Belgium, the Court takes the general term of fifty years, as provided under Article 2 of the Copyright Law, and adds thereto the ten-year term provided under the Law of June 25, 1921, prolonging, by reason of the war, the original term. The Court does not seem to consider whether this Law is likewise applicable to foreigners and does not seem to be aware of discussions that have taken place among legal experts at international level (cf. Masouyé, "The War Extensions", RIDA, Nos. III, IV, IX, XV and XX).

There are a number of opinions to be considered:

- prolongation is applicable to foreigners under Articles 7(2) and 19 of the Berne Convention;

- prolongation is applicable to foreigners only if there are bilateral agreements in existence on the subject;
- prolongation is applicable to foreigners under the general principle of assimilation;
- prolongation is applicable subject to reciprocity which can be ascertained through diplomatic channels or by the judge.

A number of countries, perhaps for reasons of prudence, have opted for the second solution. Thus, Italy has concluded treaties with Greece, Yugoslavia, France, Norway and Spain; France in addition with Norway and Spain; Norway in addition with Spain, Austria and Brazil.

Belgium has not concluded any such treaties.

Personally, we have always supported the last opinion, specifying that reciprocity can be ascertained by the judge, which is moreover the general principle underlying Article 38.

It is regrettable that the Court expresses no opinion on this important matter.

Or, should one believe that the Court contents itself with a reference to Articles 7(2) and 19 of the Berne Convention and thus implicitly adopts the first opinion?

The other matter to which we shall refer concerns *La Chauve-Souris* and, in particular, the status of the work. When deciding that the work was still protected at the time of the performances in question, the Court held that the term of protection ran as from 1908, the year in which Halévy, the last surviving co-author, had died.

The Court based itself on Article 5 of the Belgian Law and Article 7^{bis} of the Berne Convention. Those Articles indeed indicate that solution in respect of a work of joint authorship. But is that in fact the case here? Meilhac and Halévy together created a light comedy entitled *Le Réveillon* and, from it, Haffner, Genée and Strauss derived an operetta that is *La Chauve-Souris*. Meilhac and Halévy, on the one hand, and Haffner, Genée and Strauss, on the other hand, are certainly co-authors. But are they all five together? Not in our opinion, for we believe that this is simply a case of a derived work. It is correct, of course, as the Court mentions in its first consideration, that a derived work as such enjoys protection, but that term of protection can lapse before, and irrespective of, the term of protection of the first work (and *vice versa*, which of course is more frequently the case).

Halévy's heir could, of course, claim rights in respect of *Le Réveillon* and even of course of *La Chauve-Souris*; but only in part as regards the latter, that is to say, as regards the libretto which was derived from *Le Réveillon*.

Here, we cannot concur with the Court when it regards an operetta as being an indivisible work. An indivisible work, the special case of a work of joint authorship, is one where the individual contributions of the various collaborators cannot be distinguished one from the other. That is not the case in respect of works comprising words and music.

This does not, of course, change anything in regard to the principle underlying the Court's verdict against the Théâtre de la Monnaie; but for evaluation of the damages, these arguments could nevertheless have had some measure of influence.



INTERNATIONAL ACTIVITIES

East Asian Seminar on Copyright

(Tokyo, October 27 to November 2, 1973)

An East Asian Seminar on Copyright was organized by the Government of Japan at Tokyo from October 27 to November 2, 1973. WIPO and Unesco extended their cooperation by furnishing documentation to the participants and by enabling their representatives to deliver lectures and to participate actively in the deliberations.

The objectives of the Seminar were, in the light of the prevailing trend in the field of international copyright, to discuss general principles of copyright and related rights and to provide for an exchange of information on the situation in the East Asian countries in this field, with a view to promoting a better understanding on the subject in the East Asian region and to establish a basis of respect for international copyright.

The Governments of the following States were represented: Australia, Indonesia, Japan, Khmer Republic, Malaysia, Philippines, Republic of Korea, Republic of Viet-Nam, Thailand, as well as the territory of Hong Kong. Some international non-governmental organizations (International Confederation of Societies of Authors and Composers (CISAC), International Federation of the Phonographic Industry (IFPI) and International Music Council (IMC)) had sent observers. The Seminar was furthermore attended by lawyers, legal advisers and representatives of authors' associations or organizations, publishers, record manufacturers, film producers, artists, journalists, etc. The total number of participants was about one hundred.

WIPO was represented by Mr. Claude Masouyé, Senior Counsellor, Head, External and Public Relations Division, and Unesco by Ms. Barbara Ringer, Director, Copyright Division.

The Seminar was also assisted by two consultants, well known in the international copyright circles, Professor Eugen Ulmer of the University of Munich and Mr. William Wallace, former Assistant Comptroller, Industrial Property Department, Department of Trade and Industry of the United Kingdom.

On behalf of the Government of Japan, the Seminar was opened by Mr. Kenji Adachi, Commissioner of the Agency for Cultural Affairs; it was chaired by Mr. Yoshio Nomura, member of the Copyright Council of Japan. The Heads of Delegations of the Khmer Republic and the Republic of Viet-Nam were elected as Vice-Chairmen. The report of the deliberations was entrusted to the Secretariat of the Seminar under the direction of Mr. Moriyuki Kato, Head of the Copyright Division at the Agency for Cultural Affairs.

Lectures were delivered (in chronological order) on the following subjects:

- international protection of intellectual property, by Mr. C. Masouyé (WIPO);
- copyright protection under the Universal Copyright Convention, by Ms. Barbara Ringer (Unesco);
- copyright protection under the Berne Convention, by Professor E. Ulmer;
- protection of "neighboring rights", by Mr. W. Wallace.

Thereafter, each of the governmental delegations represented at the Seminar submitted a report on the present situation, in its country, of the legislation on copyright and neighboring rights and the administration of these rights.

These lectures and reports gave rise to a large exchange of views. No formal resolution was submitted to the Seminar for approval; nevertheless, the deliberations resulted in a general feeling that the East Asian countries were interested in becoming, if they had not already done so, party to multi-lateral copyright conventions and that it was desirable that similar meetings be organized in the near future in this part of the world with a view to promoting the protection of intellectual property.

The East Asian Seminar on Copyright was also an occasion for the Japanese authorities to demonstrate their kind hospitality through various cultural and social events.

International Federation of Actors (FIA)

(IXth Congress, Stockholm, September 10 to 14, 1973)

The International Federation of Actors (FIA) held its IXth Congress at Stockholm, from September 10 to 14, 1973. Participants in the Congress included 81 representatives of 37 Unions from 30 countries. The International Confederation of Societies of Authors and Composers (CISAC) and the International Federation of Musicians (FIM) also sent observers.

The agenda of the Congress included several questions of interest to actors and, among others, multinational film productions, transmissions by direct broadcast satellites, cable television and the status of the ratifications of the Rome Convention.

The Congress decided to incorporate into the FIA the International Federation of Variety Artistes (IFVA), provided that two-thirds of the Unions adhering to the latter agree to it.

The Congress elected Mrs. France Delahalle (France) President; the outgoing President, Mr. Pierre Boucher, became Honorary President. The Congress also decided to establish a permanent secretariat with its headquarters in London. Mr. Gerald Croasdell (United Kingdom) was elected Secretary General. Pending the assuming of his functions, Mr. Rolf Rembe (Sweden) will be acting Secretary General.

CONVENTIONS NOT ADMINISTERED BY WIPO

Universal Copyright Convention

GERMAN DEMOCRATIC REPUBLIC

Accession to the Convention of September 6, 1952

The International Bureau of WIPO has been informed by the United Nations Educational, Scientific and Cultural Organization (Unesco) that the instrument of accession by the German Democratic Republic to the Universal Copyright Convention (1952) was deposited with that Organization on July 5, 1973.

In accordance with its Article IX, paragraph 2, the Convention came into force for the German Democratic Republic on October 5, 1973, that is, three months after the deposit of the instrument of accession.

UPOV Meetings

March 12 and 13, 1974 (Geneva) — Technical Steering Committee

April 2 to 4, 1974 (Geneva) — Consultative Working Committee

October 21 to 25, 1974 (Geneva) — Council

Meetings of Other International Organizations concerned with Intellectual Property

January 18, 1974 (Paris) — International Literary and Artistic Association — Executive Committee and General Assembly

February 24 to March 2, 1974 (Melbourne) — International Association for the Protection of Industrial Property — Executive Committee

March 18 to 20, 1974 (Rijswijk) — International Patent Institute — Administrative Board

May 6 to 30, 1974 (Luxembourg) — Conference of the Member States of the European Communities concerning the Convention on the European Patent for the Common Market

November 11 to 15, 1974 (Santiago) — Inter-American Association of Industrial Property — Congress

May 3 to 10, 1975 (San Francisco) — International Association for the Protection of Industrial Property — Congress

ANNOUNCEMENT OF VACANCY

Competition No. 225

Counsellor
(or "Assistant"*)

Office of the Director General

Category and grade: P. 4/P. 3, according to qualifications and experience of the selected candidate.

Principal duties:

The incumbent will, under the supervision of the Director of the Office of the Director General, assist the Director General and the said Director by performing in particular the following tasks:

- (a) contacts with the various services of WIPO, particularly as regards the control of progress on various assignments and liaison among such services on questions requiring coordinated activity;
- (b) collaboration in the preparation of WIPO meetings;
- (c) representing WIPO in international meetings; contacts with representatives of Member States and other visitors.

Qualifications:

- (a) University degree in Social Sciences (law, economics, political sciences, business and public administration, etc.) or equivalent qualifications.

* Title applicable if appointment at P. 3 level.

- (b) Experience in the diplomatic service or international organizations.

- (c) Excellent knowledge of English or French; knowledge of the other is desirable; knowledge of other languages would be an advantage.

Nationality:

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

Type of appointment:

Probationary period of two years after satisfactory completion of which a permanent appointment will be offered.

Age limit:

Less than 50 years of age at date of appointment.

Date of entry on duty:

As mutually agreed.

Applications:

Application forms and full information regarding the *conditions of employment* may be obtained from the Director of the Administrative Division, WIPO, 32, chemin des Colombettes, 1211 Geneva 20, Switzerland. Please refer to the number of the Competition and enclose a brief curriculum vitae.

Closing date: March 15, 1974.