

Copyright

Review of the
WORLD INTELLECTUAL PROPERTY
ORGANIZATION (WIPO)

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Ratifications of the WIPO Convention

GABON

The Director General of the World Intellectual Property Organization (WIPO) has notified the Governments of the countries invited to the Stockholm Conference that the Government of the Gabonese Republic deposited, on March 6, 1975, its instrument of ratification of the Convention Establishing the World Intellectual Property Organization (WIPO).

The Gabonese Republic has fulfilled the condition set forth in Article 14(2) of the Convention by concurrently ratifying the Stockholm Act (1967) of the Paris Convention in its

entirety and acceding to the Paris Act (1971) of the Berne Convention, as provided for in Article 29^{bis} of that Act.

Pursuant to Article 15(2), the Convention Establishing the World Intellectual Property Organization will enter into force, with respect to the Gabonese Republic, three months after the date of deposit of the instrument of ratification, that is, on June 6, 1975.

WIPO Notification No. 78, of March 10, 1975.

NIGER

The Director General of the World Intellectual Property Organization (WIPO) has notified the Governments of the countries invited to the Stockholm Conference that the Government of the Republic of the Niger deposited, on February 18, 1975, its instrument of ratification of the Convention Establishing the World Intellectual Property Organization (WIPO).

The Republic of the Niger has fulfilled the condition set forth in Article 14(2) of the Convention by having previously

ratified the Stockholm Act (1967) of the Paris Convention and by concurrently acceding to the Paris Act (1971) of the Berne Convention as provided for in Article 29^{bis} of that Act.

Pursuant to Article 15(2), the Convention Establishing the World Intellectual Property Organization will enter into force, with respect to the Republic of the Niger, three months after the date of deposit of the instrument of ratification, that is, on May 18, 1975.

WIPO Notification No. 77, of February 21, 1975.



BERNE UNION

Accessions to the Paris Act (1971) of the Berne Convention

GABON

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 the Gabonese Republic deposited, on March 6, 1975, its instrument of accession to 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(2)(c) and (3), the Paris Act (1971) of the said Convention will enter into force, with respect to the Gabonese Republic, three months after the date of this notification, that is, on June 10, 1975.

Berne Notification No. 71, of March 10, 1975.

Title II — National Commission on New Technological Uses of Copyrighted Works

Establishment and Purpose of Commission

Section 201. — (a) There is hereby created in the Library of Congress a National Commission on New Technological Uses of Copyrighted Works (hereafter called the Commission).

(b) The purpose of the Commission is to study and compile data on:

- (1) the reproduction and use of copyrighted works of authorship —
 - (A) in conjunction with automatic systems capable of storing, processing, retrieving, and transferring information, and
 - (B) by various forms of machine reproduction, not including reproduction by or at the request of instructors for use in face-to-face teaching activities; and
- (2) the creation of new works by the application or intervention of such automatic systems or machine reproduction.

(c) The Commission shall make recommendations as to such changes in copyright law or procedures that may be necessary to assure for such purposes access to copyrighted works, and to provide recognition of the rights of copyright owners.

Membership of the Commission

Section 202. — (a) The Commission shall be composed of thirteen voting members, appointed as follows:

- (1) Four members, to be appointed by the President, selected from authors and other copyright owners;
- (2) Four members, to be appointed by the President, selected from users of copyright works;
- (3) Four nongovernmental members to be appointed by the President, selected from the public generally, with at least one member selected from among experts in consumer protection affairs;
- (4) The Librarian of Congress.

(b) The President shall appoint a Chairman, and a Vice-Chairman who shall act as Chairman in the absence or disability of the Chairman or in the event of a vacancy in that office, from among the four members selected from the public generally, as provided by clause (3) of subsection (a). The Register of Copyrights shall serve *ex officio* as a nonvoting member of the Commission.

(c) Seven voting members of the Commission shall constitute a quorum.

(d) Any vacancy in the Commission shall not affect its powers and shall be filled in the same manner as the original appointment was made.

Compensation of Members of Commission

Section 203. — (a) Members of the Commission, other than officers or employees of the Federal Government, shall receive compensation at the rate of \$100 per day while engaged in the actual performance of Commission duties, plus

reimbursement for travel, subsistence, and other necessary expenses in connection with such duties.

(b) Any members of the Commission who are officers or employees of the Federal Government shall serve on the Commission without compensation, but such members shall be reimbursed for travel, subsistence, and other necessary expenses in connection with the performance of their duties.

Staff

Section 204. — (a) To assist in its studies, the Commission may appoint a staff which shall be an administrative part of the Library of Congress. The staff shall be headed by an Executive Director, who shall be responsible to the Commission for the Administration of the duties entrusted to the staff.

(b) The Commission may procure temporary and intermittent services to the same extent as is authorized by section 3109 of title 5, United States Code, but at rates not to exceed \$100 per day.

Expenses of the Commission

Section 205. — There are hereby authorized to be appropriated such sums as may be necessary to carry out the provisions of this title until June 30, 1976.

Reports

Section 206. — (a) Within one year after the first meeting of the Commission it shall submit to the President and the Congress a preliminary report on its activities.

(b) Within three years after the enactment of this Act the Commission shall submit to the President and the Congress a final report on its study and investigation which shall include its recommendations and such proposals for legislation and administrative action as may be necessary to carry out its recommendations.

(c) In addition to the preliminary report and final report required by this section, the Commission may publish such interim reports as it may determine, including but not limited to consultant's reports, transcripts of testimony, seminar reports, and other Commission findings.

Powers of the Commission

Section 207. — (a) The Commission or, with the authorization of the Commission, any three or more of its members, may, for the purpose of carrying out the provisions of this title, hold hearings, administer oaths, and require, by subpoena or otherwise, the attendance and testimony of witnesses and the production of documentary material.

(b) With the consent of the Commission, any of its members may hold any meetings, seminars, or conferences considered appropriate to provide a forum for discussion of the problems with which it is dealing.

Termination

Section 208. — On the sixtieth day after the date of the submission of its final report, the Commission shall terminate and all offices and employment under it shall expire.

Approved December 31, 1974.

Letter from Poland

Boleslaw NAWROCKI *

Introduction

In the year 1974, Poland, with a proud history reaching back for over a thousand years, celebrated the thirtieth anniversary of its new existence. Over the centuries it has been several times invaded, destroyed and divided up but has always come to life again, rising like the phoenix from its ashes.

The Polish People's Republic, the State which was born after the Second World War, has undergone major changes in every field during the thirty years of its existence.

The principal objectives of the immediate post-war years were to heal the wounds of the years 1939 to 1945 and to build the bases of socialism. The adjustment to the new situation of the legal provisions in force did not proceed simultaneously and in like manner in all the various fields of law. The thirtieth anniversary of the Polish People's Republic therefore affords an excellent occasion for reviewing the situation, the successes and failures of the past, as well as the tasks still to be accomplished in the near future in one field or another.

This "Letter from Poland" on the subject of copyright, while not attempting to be exhaustive, will endeavor to give a general picture of the present situation in this respect in the Polish People's Republic. The few articles published in *Le Droit d'Auteur* regarding Polish copyright in the years following the end of the last world war were concerned with only a few selected problems, and were in general somewhat fragmentary in character¹. Hence the interest of a study that can fill, to some extent at least, the insufficient coverage in this review.

The abundance of material obliges us to limit our examination to the most important problems. In this "Letter from Poland", we shall therefore focus our attention on four major topics, as follows:

1. Situation of copyright in the legal system of the Polish People's Republic, and the state of Polish copyright legislation
2. The 1952 Copyright Law

* Doctor of Law.

¹ Articles published in *Le Droit d'Auteur* and *Copyright* in the period 1945-1974 on the subject of copyright in the Polish People's Republic: "Trente années d'activité de la ZAIKS", 1949, pp. 22 *et seq.*; W. J. Rudnicki, "Modification des lois et de la pratique dans le domaine du droit d'auteur après la seconde guerre mondiale en Pologne", 1960, pp. 258 *et seq.*; E. Modrzejewski, "Lettre de Pologne", 1964, pp. 207-209 *et seq.*; B. Nawrocki, "Some problems raised by the publication abroad of scientific works by Polish authors", 1973, pp. 38 *et seq.*

3. Copyright research centers and scientific publications in this field
4. The Polish People's Republic and the multilateral international conventions on copyright.

1. Situation of copyright in the legal system of the Polish People's Republic and the state of Polish copyright legislation

No particular difficulties would seem to be involved at present in determining where the copyright provisions are situated within the general legal system, although doctrine is somewhat divided over the problem of distinguishing between the various branches of socialist law².

The majority of Polish authors consider that, taken as a whole, the copyright provisions governing social relationships connected with the creation of an intellectual work and its subsequent utilization by third parties do not form part of any particular branch of law — in the traditional sense of the word — although the concepts of civil law play a preponderant role therein. The copyright provisions therefore have the character of provisions of civil, administrative, financial or criminal law, civil procedure, private international law, etc. In contrast with the legislation of certain countries — the Soviet Union, for example — the new Polish Civil Code of 1964 does not contain any specific provisions concerning copyright assembled in a separate chapter³. In many cases, however, there is no alternative but to have recourse to those provisions and likewise to the provisions of the Criminal Code, etc., in order to settle an individual problem of copyright.

The copyright provisions in effect in Poland are generally considered to be based on the principle set forth in Article 65 of the Constitution of the Polish People's Republic of 1952, reading as follows:

The Polish People's Republic extends special protection to the creative intelligentsia: those working in science, education, literature and art, as well as to the pioneers of technical progress, to rationalisers and inventors.

The copyright provisions can be broadly classified in the following categories:

the basic legal instrument, which is the Copyright Law of July 10, 1952;

² S. Grzybowski, A. Kopff, J. Serda, *Zagadnienia prawa autorskiego* [Copyright problems], Warsaw, 1973, pp. 67 *et seq.*

³ *Kodeks Cywilny. Komentarz* [Civil code. Commentary] — collective work, *Wydawnictwo prawnicze* [Legal edition], Warsaw, 1972, Vol. 1, pp. 23 and 24; M. M. Boguslavsky, *Voprosy avtorskogo prava v mezhdunarodnykh otnosheniyakh* [Copyright problems in international relations], Moscow, 1973, pp. 186 *et seq.*

legislative provisions issued in pursuance of Article 33 of the 1952 Copyright Law, which take effect *erga omnes* regardless of the content of contractual clauses; these include, in particular, provisions establishing model contracts and principles concerning the conclusion and execution of contracts as well as the rate of remuneration of authors;

legislative provisions which, while not issued in pursuance of Article 33 of the Copyright Law, take effect *erga omnes* (for example, provisions concerning relations with other countries and certain operations with foreign exchange obtained by authors by way of royalties);

legislative provisions that have the character of instructions and which the organizational units under the responsibility of the issuing authority are obliged to apply in the conclusion of contracts. Nevertheless, authors party to such contracts are not bound by these provisions if the latter are not taken into consideration in the contractual clauses;

provisions of international multilateral and bilateral conventions concerning the protection of copyright and to which the Polish People's Republic is a party.

It must be recognized that Poland's copyright legislation as a whole is evidently lagging behind the other fields of intellectual property, in particular industrial property. The Copyright Law of July 10, 1952, is still in force without amendment, although its provisions no longer correspond to social, economic and cultural circumstances which have evolved over the past twenty years.

In order to meet the most pressing needs and improve the situation of Polish authors, some legislative instruments have been adopted recently which, though of an executive character, are of fundamental importance. These are:

Ordinance of the Council of Ministers of September 9, 1972, concerning the principles and rate of remuneration of authors, and the conclusion and execution of publishing contracts for works in book form (adopted in pursuance of Article 33 of the 1952 Copyright Law)⁴;

Ordinance of the Minister for Culture and the Arts of June 19, 1973, concerning principles in regard to the conclusion and execution of contracts for editing non-periodical publications, and the remuneration of such editing activities⁵;

Ordinance of the Minister for Finance of June 23, 1973, concerning authorization for certain foreign exchange operations and exchange control at the frontier (of which Articles 6 to 13, 17, 19 to 23, 27 to 29 and 34 to 36 are directly concerned with copyright)⁶.

In addition to the legislative instruments mentioned above, a number of other instruments of an executive character which also came into effect in 1973 contain certain provisions relating to copyright. Among them, the following may be mentioned by way of example:

⁴ *Dziennik Urzędowy Polskiej Rzeczypospolitej Ludowej* [Official Gazette of the Polish People's Republic], No. 40/1973, text No. 259.

⁵ *Monitor Polski, Dziennik Urzędowy Polskiej Rzeczypospolitej Ludowej* [Polish Monitor, Official Gazette of the Polish People's Republic], No. 28/1973, text No. 176.

⁶ *Ibid.*, No. 29/1973, text No. 184.

Decree of the Minister for Finance of January 11, 1973, concerning the methods of payment of taxes by persons exercising a craft in the field of artistic creation and popular creation;

Decree of the Minister for Culture and the Arts of February 15, 1973, concerning principles in regard to the exchange, free-of-charge transfer and sale of works forming part of library collections;

Decree of the Ministers for Foreign Trade and of Finance of March 16, 1973, concerning the sale abroad of works of the plastic arts by their authors and the possibility of disposing of the corresponding foreign exchange receipts;

Decree of the Minister for Culture and the Arts of March 28, 1973, concerning audio-visual collections in public libraries.

All these provisions affect only in a fragmentary way the copyright provisions in force to date, without amending the provisions of the basic legal instrument, which is the Copyright Law of 1952.

The Polish authorities are fully aware of present-day requirements and of the urgent need to set in order all the legislative and legal problems pertaining to the realities of a socialist country such as the Polish People's Republic. In early 1974, in accordance with the directives of the Sixth Congress of the Unified Polish Workers' Party, the Council of Ministers took the necessary measures and established a law reform plan for the coming years (Order No. 46/74 of the Council of Ministers of February 8, 1974, concerning the law reform plan for the years 1974 to 1980).

The plan covers all the various fields of law and provides for the preparation of new legal instruments that would, in most cases, constitute a codification of the existing provisions as adapted to the new situation. An important place is assigned to the field of intellectual property, and to copyright in particular.

The Central Legislative Council attached to the President of the Council of Ministers has been entrusted with responsibility for coordinating the work of the various ministries and other supreme organs of the State administration concerning the draft legislation, examining the proposals submitted and presenting progress reports.

Order No. 46/74 of the Council of Ministers, dated February 8, 1974, recalls certain principles to be taken into consideration during the preparatory work for draft legislation and regulations:

all State administration organs concerned should participate actively in the work;

draft legislation and other instruments should take account of all the various aspects of a given legal field and cover them fully, while avoiding excessively detailed regulations. The impressive number of legal instruments that have been issued in the various fields of law, and bear on the same problems, should be reduced considerably;

draft legal instruments of particular social significance should be the subject of public consultation in the sectors concerned;

the legal solutions proposed should be designed, in particular, to simplify procedure. In principle, administrative decisions of the first instance should be made by the authority lowest in the hierarchy;

draft implementing instruments should be prepared at the same time as the relevant bills, where the latter provide for the adoption of such instruments;

all ministers and heads of central offices should simultaneously carry forward the improvement and updating of the internal rules and regulations of their ministries and central offices.

The above directives underline the important role that legal science can play in the process of perfecting Polish legislation that got under way in 1974.

It should be noted that in the Polish People's Republic there is a clear distinction between the various principal fields of intellectual property and, in particular, at the structural and administrative level.

The field of copyright and the so-called neighboring rights remains, in principle, under the responsibility of the Ministry of Culture and the Arts as does, *inter alia*, the Authors' Society ZAIKS which is the only national body concerned with the exercising and protection of authors' rights.

The Patent Office of the Polish People's Republic is under the direct responsibility of the Council of Ministers.

For the moment, there is no administrative unit attached to the supreme organs of State administration with overall responsibility for problems of intellectual property, including information, coordination and legislative initiatives in this field.

To date, the organizational structure of the Ministry of Culture and the Arts does not comprise any separate unit dealing with problems of copyright and neighboring rights; any such matters are referred to the legal service of the ministerial cabinet and the departments concerned. Nor is there yet any committee of experts on copyright, similar to that existing in Hungary, for example, which was established under the supervision of the Minister for Culture and which advises on legal and technical points arising from legal disputes over copyright⁷.

The task of implementing the directives set forth in Order No. 46/74 of the Council of Ministers dated February 8, 1974, concerning the legal reform program for the years 1974 to 1980 in the field of copyright and neighboring rights, has been entrusted by the Minister for Culture and the Arts to the Institute for inventive activities and the protection of intellectual property of the Jagellonian University of Cracow, which is directed by Professor Andrzej Kopff (see section 3, below). A number of Polish lawyers (including the author of this "Letter from Poland") have been invited to participate in the Institute's work, with a view to drawing up a draft "Copyright Code" (*Kodeks autorski*).

⁷ Hungary, Copyright Act, section 55. For English text of the Act, see *Copyright*, 1969, pp. 236 *et seq.*

2. The 1952 Copyright Law

The new draft legislation cannot be prepared without taking into account the legal provisions at present in force. The starting-point must therefore be an examination of the existing legislation.

For a better understanding of the origin and significance of certain provisions of the 1952 Copyright Law, we must look back in time and outline very briefly the development of copyright in Poland during the inter-war period.

After the end of the First World War, Poland retrieved its national independence. For more than a century, the territory of the new Polish State had been under occupation by the three powers which, in the nineteenth century, had taken part in the partition of the Kingdom of Poland. As a result, several legislative texts on copyright, based on different legal systems for protecting authors' rights, were in force at that time in the territory of the new Polish State⁸. It should also be borne in mind that Austria and Hungary, as well as Russia, were not parties to the Berne Convention and, in numerous respects, the provisions of their national legislation were not consistent with those of the Convention.

In Article 19 of the Treaty concluded with the allied and associated powers, signed at Versailles on June 28, 1919 (the so-called "Treaty concerning national minorities"), Poland undertook to accede to the Berne Act of 1908 of the Berne Convention, as completed by the Berne Additional Protocol of 1914⁹.

In pursuance of this undertaking, Poland signed the Convention on January 28, 1920. The first task incumbent on the Polish legislator was therefore to introduce national legislation consistent with the provisions of the Berne Convention and uniform for all regions of the country. This difficult task was completed only after six years of work.

On March 29, 1926, the Polish Diet finally adopted a first Polish copyright law which, at that time, was considered to be one of the most up-to-date of its kind, representing excellent legal drafting and offering a high level of protection to authors¹⁰.

With the development of the principles of international copyright protection and also technical progress, factors that led to the revision of the Berne Convention at the Rome Diplomatic Conference of 1928, it became necessary to amend the 1926 Law. On March 22, 1935, a Law amending the Copyright Law of March 29, 1926, was adopted, taking into account not only the provisions of the Rome Act of 1928 and adapting Poland's legislation to it, but also of certain wishes expressed by the Rome Diplomatic Conference. We may mention here, by way of example, that the provisions of Article 63 of the unified text of April 25, 1935, of the 1926 Law as amended by the Law of March 22, 1935, was in fact considered to be a confirmation of the principle of an unlimited term for moral

⁸ Until 1926, the following copyright laws were in force on Polish territory: German Laws of June 19, 1901, and January 9, 1907, amended by Law of May 22, 1910; Austrian Law of December 26, 1895; Hungarian Law of April 26, 1884, and Russian Law of March 20, 1911.

⁹ F. Zoll, *Polska ustawa o prawie autorskiem i Konwencja berneńska* [Polish Copyright Law and Berne Convention], 1926, p. 153.

¹⁰ F. Zoll, *op. cit.*, pp. 12 *et seq.*; "La nouvelle loi polonaise sur le droit d'auteur du 29 mars 1926", in *Le Droit d'Auteur*, 1926, pp. 97 *et seq.*

rights, which principle at the same time was taking account of the public interest, whereas Article 6^{bis} of the Rome Act of 1928 of the Berne Convention made no reference to copyright protection after the authors' death¹¹.

In spite of certain concessions — considered surprising at the time — granted under pressure from users such as the radio and cinema (presumption of authorization for public performance of a film in favor of the cinema industry — Article 50^{ter}, and the legal license in the field of the communication of broadcast works to the public by loudspeakers — Article 50^{quater}), the unified text of the Polish Copyright Laws of 1926 and 1935 remained one of the most up-to-date of its time. That was the legislation applied without amendment until 1952, except of course during the period of occupation by Hitler's forces.

The far-reaching changes that occurred in Poland's political, economic and social situation after 1945 naturally made it necessary to amend its copyright legislation. It should be pointed out here that the work with a view to preparing the new draft legislation was undertaken at a time when Poland's new civil, criminal and administrative codes and other legislative instruments adapted to the new situation had not yet come into existence. The legal concepts of the socialist countries had not yet been formulated or even crystallized in the Polish People's Republic; nevertheless, action had to be taken relatively rapidly.

The text of the Polish Law of 1926/1935 was therefore taken as a basis, and certain amendments were made to it in haste which were not always justified or adequately harmonized¹². In particular, the amendments had the effect of limiting the author's exclusive rights quite considerably, without any well-determined theoretical conception being logically observed throughout and without any adequate solution being found to the new problems arising out of the development of technology. Furthermore, the 1952 Law was not precisely drafted and its terminology was not uniform. The fact that it came under sharp criticism even at the time of its adoption is therefore not surprising¹³. Not having been revised in the 22 years of its existence despite some attempts on the part of a legal committee of ZAIKS to draw up new draft legislation in the years 1958 to 1961, the 1952 Law was becoming farther and farther removed from the up-to-date laws adopted in many other countries. At the present time, it is the oldest copyright law in force in any socialist country and, moreover, the one that provides the shortest term of protection.

¹¹ J. Lesman, "Lettre de Pologne", in *Le Droit d'Auteur*, 1934, pp. 91 et seq., and 1935, pp. 68 et seq.; G. Groeger, *Prawo autorskie. Ustawa o prawie autorskiem z r. 1926 w brzmieniu jednolitego tekstu z 1935r. z objaśnieniami i dodaniem Konwencji berneńskiej* [Copyright. Copyright Law of 1926, unified text of 1935 with commentaries and Berne Convention as a supplement], Warsaw, 1937; S. Ritterman, *Komentarz do ustawy o prawie autorskim* [Commentary on the Copyright Act], Cracow, 1937.

¹² For French text of Copyright Law of March 29, 1926, see *Le Droit d'Auteur*, 1926, pp. 133 et seq. See also the correction to that text (in French), in *ibid.*, 1927, p. 89, and the 1926 Copyright Law with amendments introduced thereto by the Act of March 22, 1935, in *ibid.*, 1935, pp. 62 et seq.

¹³ W. J. Rudnicki, *op. cit.*, Jan Brzechwa (literary pseudonym of Jean Lesman), "Modifications projetées au droit d'auteur en Pologne", report presented at the 20th Congress of the International Confederation of Societies of Authors and Composers (CISAC), Knokke-le-Zoute, September 15 to 20, 1958.

Once the work of codifying civil law had been completed in 1964, the lack of harmonization of the copyright provisions with other legal instruments that had meanwhile come into effect in the Polish People's Republic made itself particularly felt.

The situation was further aggravated by the existence of a great many legal instruments, in particular of an executive character, dating from various times prior to 1952 and still applied in spite of the fact that they were clearly inconsistent with the provisions of the 1952 Law¹⁴.

The situation now is very different from what it was in 1952. Thirty years have elapsed since the foundation of the new socio-economical and political system of the State, and the bases of the socialist legal system are well defined. It is no longer permitted to adopt legislative texts that are not homogeneous from the ideological and juridical aspects.

Today, if we examine the text of the 1952 Law and the role it has played, despite all its shortcomings, over the past twenty years in well-defined historical and social conditions, we can arrive at conclusions that are perhaps less harsh¹⁵. This is understandable in view of the fact that the provisions limiting most rigorously the author's exclusive right have never been applied (for example, Articles 12(2), 16 and 17) and, furthermore, that the decisions of the Polish courts have contributed to an interpretation and application of certain provisions of the 1952 Law (Article 14, for example) in favor of the author.

Having thus outlined the origins and general characteristics of the 1952 Law, we shall now go into somewhat greater detail and examine some specific problems.

(a) The lack of correlation between the provisions of the 1952 Law and those of other Polish legislative instruments is manifest particularly if one considers, for example, the provisions of the new Polish Civil Code of 1964 and certain legislative instruments concerning industrial property such as the Inventions Act of May 31, 1962, the Law on Inventive Activity of October 19, 1972, the Ordinance of the Council of Ministers on the Protection of Industrial Designs of January 29, 1963, and the Law on Trademarks of March 28, 1963. We shall cite a few examples.

The new Polish Civil Code makes no mention, among other matters, of the problem of absolute rights which affects intangible assets and contracts concerning such assets. The 1952 Law has numerous lacunae in this respect. Hence the need to extend the scope of the next copyright law as far as its subject matter is concerned.

The problem of financial compensation for any infringement of the creator's personal rights is not solved in the same manner in the various legal texts at present in force in the Polish People's Republic. The relevant provision in the 1926 Copyright Law (Article 59) was not maintained in the 1952 Law, although a similar provision was inserted some years later, first in the Inventions Act of May 31, 1962 (Articles 55

¹⁴ For English text of the Copyright Law of the Polish People's Republic of July 10, 1952, see *Copyright Laws and Treaties of the World*, 2nd Vol., Poland, item 1.

¹⁵ S. Grzybowski, A. Kopff, J. Serda, *op. cit.*, p. 71.

and 56), and then in the Law on Inventive Activity of October 19, 1972 (Articles 52 and 53)¹⁶.

The problem of reciprocal relations between the legislative provisions regarding copyright and the various fields of industrial property law takes on particular significance at a time when, no doubt as a result of the "scientification" and "technicization" of the process of creating intellectual works, the dividing-line between the traditional fields of intellectual property is becoming less and less perceptible.

In the intellectual property fields that are considered to be on the borderline — such as the applied arts, or industrial designs — the idea of cumulative protection of certain results of man's creative work by various forms of protection is gaining more and more support in the Polish People's Republic. Nevertheless, the problem of the relationship between certain provisions of the 1952 Copyright Law (in particular, Article 12), on the one hand, and those of the Ordinance of the Council of Ministers on the Protection of Industrial Designs of January 29, 1963, and the Law on Trademarks of March 28, 1963, on the other hand, still needs clarification. Article 12 of the 1952 Law refers to the copyright of a nationalized economic unit in artistic patterns for industrial use, in projects, plans, technical or architectural drawings prepared for industry or building, and in works prepared for advertising or propaganda in the sphere of economic activity where the said works are executed by a worker in the economic unit "under a contract of employment or service, or under a commission by the aforesaid unit". Clearly, in the future such provisions of copyright legislation should not be adopted until a concordance has been established between the respective positions and intentions of the Ministry of Culture and the Arts (in its capacity as the ministry with responsibility for copyright matters) and the Patent Office of the Polish People's Republic.

(b) There are a number of lacunae in the 1952 Copyright Law. For example, there are absolutely no provisions concerning the administration of authors' rights by the national bodies responsible for the exercise and protection of authors' rights, the role of such bodies in the general system of copyright protection in the Polish People's Republic, their obligations as regards the exercise of authors' rights for all persons eligible for legal protection, regardless of whether or not they are members of ZAIKS and, lastly, the legal situation of publishers as copyright owners¹⁷.

These lacunae, *inter alia*, led to the decisions taken by the authorities of ZAIKS regarding publishers, which have had a significant impact. It should be noted here that ZAIKS, the only national body for copyright protection in the Polish People's Republic, is a civil-law entity of a "unitary" character. Under its constitution, its task is not only to protect and work authors' rights in all the various fields of literary, scientific and artistic creation, but also to engage in wide-

spread activities of a social and cultural character for the benefit of its members, the Polish authors. The ZAIKS, which celebrated its fiftieth anniversary in 1968, enjoys a *de facto* monopoly. Until 1952, its members also included publishers who, in accordance with a common practice in various countries, shared in the distribution of public performance royalties. We have in mind here mainly the publishers of musical works who are normally responsible for divulging and popularizing a work.

The 1952 Law did not make any formal changes in the status of ZAIKS since, as already mentioned, it does not contain any provision concerning the legal status of the national bodies concerned with copyright protection. Nor does it contain any provision preventing a Polish publisher — whether a natural person or a State-owned publishing house — from being a member of the society concerned with collecting and distributing royalties and from sharing in the distribution of public performance royalties, in pursuance of contracts concluded with the authors concerned. The 1952 Law confirmed the principle that the economic rights of authors may be assigned by him to another person (Article 30(1)), stating that its provisions are applicable to copyrights existing at the time of its entry into force that is, on July 31, 1952 (Article 61). The legislator decided that any contracts assigning an author's economic rights that were concluded prior to July 31, 1952, would continue to be governed by the provisions in force before that date (Article 62), subject to the following exception. With the aim of adapting copyright to the country's new social, economic and political situation, the 1952 Law stipulates, in Article 63(1), that

Contracts assigning the property rights of an author made prior to July 22, 1944, are hereby rescinded by operation of law, and the property rights of the author shall revert to the author or to his heirs. The author shall not be obliged to refund the sums received as remuneration, and shall retain the right to claim the amounts due to him as remuneration for works which have been used by the assignee.

Although the above provisions did not specifically mention publishers, they were clearly the parties directly concerned. It should be borne in mind that this was the period when former Polish publishers — often natural persons — were going out of business and new publishing houses were being established, mostly owned by the State or by one or other of the socialist cooperatives.

From a comparison of the provisions of Articles 61, 62 and 63 of the 1952 Law, it appears that contracts concerning assignment of economic rights that were concluded between July 22, 1944, and July 31, 1952, were not rescinded by operation of law, with all the consequences accruing from Article 63(1) of the Law. Other solutions had to be found in order to "release" authors from certain obligations which, at that time, were considered to be "a left-over from the economic and social relationships in the copyright field that were characteristic of the bygone period of capitalism", and to improve the situation of certain categories of authors — categories determined, *inter alia*, by the strict tariffs of authors' remuneration established by the Council of Ministers under Article 33 of the 1952 Law.

¹⁶ For English text of the Inventions Act of May 31, 1962, see *Industrial Property*, 1962, pp. 278 *et seq.* and 1963, pp. 95 *et seq.* For English text of the Act on Inventive Activity of October 19, 1972, see *Industrial Property*, 1973, pp. 296 *et seq.*

¹⁷ B. Nawrocki, "Réalisation des droits d'auteur par les organismes nationaux de la protection des droits d'auteur", in *Il Diritto di Autore*, No. 4/1969, pp. 552-572.

On December 14, 1952, ZAIKS amended its constitution so as to exclude, in particular, Polish publishers from its membership. Instead of being the "authors', composers' and publishers' society", it became the "Authors' Society ZAIKS" whose members were "Polish creators and their heirs" (item 1 of the constitution). Under the new constitution, the interests of an author's successors in title other than his heirs were protected only in the case of foreign authors protected under international agreements (item 2(a) of the constitution).

The exclusion of Polish publishers from membership of ZAIKS ended any protection by the Society of economic rights acquired by publishers under contracts concluded with the authors concerned. As from January 1, 1953, ZAIKS ceased paying any share of public performance royalties to publishers, and the entire amount collected by the Society on these grounds was distributed among the authors themselves.

According to the official justification of ZAIKS, the exclusion of publishers from the Society's membership made it impossible for the Society to observe certain clauses of the contracts concluded between authors and publishers and, moreover, was "contrary to the general cultural policy determined at the time by the Ministry of Culture and the Arts, and observed by ZAIKS".

The decision of ZAIKS was the subject of several actions brought before the Polish courts by publishers in the period 1953 to 1955. But the court decisions had no influence on the practice followed by ZAIKS. Unlike the situation in other people's democracies (for example, the German Democratic Republic), State publishing houses in the Polish People's Republic do not at present share in the distribution of public performance royalties.

The decision of the authorities of ZAIKS, which was possible because of the lacunae in the provisions of the 1952 Law and was tacitly sanctioned by the competent Polish authorities, has also had some unexpected consequences from the financial aspect.

In accordance with the practice of CISAC, some foreign societies having reciprocity arrangements with ZAIKS, not seeing the names of Polish publishers on the ZAIKS lists of members or on the distribution cards, followed their local practice and withheld for several years the share earmarked for the Polish publisher, considered to be unknown, transferring that part of the public performance royalties due to the authors mentioned on the membership lists and distribution cards.

The activities of publishing houses, which in the Polish People's Republic are in general State enterprises, is largely financed, whether directly or indirectly, out of the State budget. Unable to share in the distribution of public performance royalties and, in particular, in sums received from abroad in foreign exchange, publishing houses such as *Polskie Wydawnictwo Muzyczne* (Polish Music Publishers) have neither sufficient funds in foreign exchange to publicize and promote sales abroad of Polish works published by them, nor any economic incentive to develop such activities. This state of affairs gave rise to discontent on the part of certain Polish composers — mainly composers of so-called "serious" music

— who are well known the world over and who have often preferred to have their works published for the first time in score form abroad, by publishers having an efficient publicity and sales machinery. For this reason, increased support is being given to the idea of giving Polish music publishers the right to share in the distribution of public performance royalties, with a simultaneous increase in the rate of authors' remuneration.

(c) Some solutions adopted by the 1952 Law are giving rise to serious objections today, either because they constitute a kind of anachronism and cannot be adapted to present-day conditions, or because they do not correspond to the socialist conception of copyright protection. Let us examine, for example, a few provisions, referring respectively to the subject of copyright, to "adaptations for mechanical musical instruments", and to the content of copyright. In accordance with Article 1(1), "Copyright shall subsist in every literary, scientific or artistic work, in whatever form". Article 1(2) gives a non-exhaustive enumeration of the various subjects of protection, though without specifying what the term "work" denotes. This definition is entirely different from the one on which the 1926 Law was based and according to which "Any manifestation of intellectual activity having the character of an individual creation is the subject of copyright, as from the day when it was fixed in any form (speech, writing, print, drawing, painting, statue, music, mime, rhythmic)". The wording of Article 1 of the 1926 Law is sufficiently broad to cover works that cannot be deemed to come within the purview of literature, art or science in the strict traditional sense. Their field of utilization, in the case of certain avant-garde works or the results of creative work, for example, computer programs devised specially for the purpose of creating literary or artistic works, is comparably wider than that allowed under the wording of the corresponding provision in the 1952 Law. Polish lawyers point out that the reversion, in the new Polish copyright legislation, to the synthetic definition of the concept of "intellectual creation" ("work", etc.) presents still other advantages. It could also facilitate determination of the legal status of all sorts of persons such as stage producers, performing artists, editors of literary and scientific works, and also certain adapters and arrangers.

An example of anachronism can be found in Article 3(1) of the 1952 Law, which states that: "Copyright shall also subsist in works based on the work of another person" and provides further on that: "This provision shall apply, in particular to... adaptations for mechanical musical instruments, and films".

This provision undoubtedly has its origin in Article 2 of the German Act concerning Copyright in Literary and Musical Works of June 19, 1901, as amended on May 22, 1910, and December 13, 1934, which has been the subject of numerous discussions and publications. Today, the possibility of assimilating a sound or audio-visual recording with "an adaptation for mechanical musical instruments and films" is entirely ruled out. The recording of a work does not constitute an arrangement or adaptation, but simply a reproduction of the work. Phonographic recording is an industrial activity, not an act of intellectual creation. Consequently, the record manufacturer

cannot be vested with an exclusive copyright as such, similar to that of the author of a recorded work¹⁸.

The wording of Article 15, specifying the content of copyright, has given rise to much criticism. It provides that:

Within the limits fixed by law, copyright shall consist of the right:

1. to the protection of the personal rights of the author;
2. to the exclusive disposal of the work;
3. to remuneration for any use of the work by other persons.

As a number of Polish lawyers have pointed out, the absence, in Article 15 and in other provisions of the 1952 Law — which was based in principle on the dualistic construction — of any clear differentiation between moral rights (personal rights) and economic rights, constitutes proof of the absence of any general theoretical conception underlying the text of the Law as a whole¹⁹.

Nevertheless, some supporters of the dualistic theory try to justify the present wording of Article 15, pointing out that it is appropriate to distinguish a separate category of mixed rights, in addition to personal rights and economic rights.

Problems of monism and dualism in copyright are of particular interest to Polish doctrine underlining the need to choose a well-defined theoretical conception and to observe it strictly in the solutions proposed by the various legislative provisions.

(d) We have already mentioned the non-uniform terminology and vague wording of the 1952 Law. Here we shall cite just one example, concerning communication of an intellectual work to the public by various means, and the consequences deriving therefrom.

The 1952 Law uses synonyms of a general character in a rather imprecise manner, for example:

ukazanie się utworu [appearance of the work] - Article 6(2);

publikacja utworu [publication of the work] - Articles 6(3), 16(2), 18(3) and (7), 19(3), 26(2) and (3), 27(1) and (4); 29, 52(5);

ogłoszenie utworu [work made public — which expression is generally translated by the term “publication of the work”] - Article 18.

On the other hand, it uses what is considered to be “specialized” terminology in respect of certain categories of works, for example:

wydanie utworu [publication of the work] - Articles 14(1), 18(2) and (6), 19(1) and (2), 34 — in respect of “written” works (*utwory piśmiennicze*) — in other words, literary, scientific and, in part, musical works;

publiczne wystawienie, publiczne wykonanie (generally translated by the term “public performance”) - Articles 27(2), 46, 47 — in respect of dramatic, musical, choreographical works and even cinematographic works (in this latter case, the term *projekcja publiczna filmu* — “public showing of a cinematographic work” is not used in the Act)²⁰.

¹⁸ H. Deshois, “The right of adaptation of the phonograph industry according to the German Law of May 22, 1910”, in *Revue internationale du droit d'auteur*, No. IX/1955, pp. 4 et seq.

¹⁹ S. Grzybowski, *Zalozenia oraz zakres tematyczny przyszlego kodeksu autorskiego* [Principles and thematic scope of the future copyright code], 1974 report (stencilled copies), p. 9.

²⁰ S. Grzybowski, A. Kopff, J. Serda, *op. cit.*, pp. 100 et seq.

Quite clearly, all these terms should be made uniform at the first opportunity.

The legal problems that were raised on the occasion of the accession, in 1973, of the Soviet Union to the 1952 Universal Copyright Convention underline the theoretical and practical importance of a clear differentiation, in legislative texts, between, on the one hand, “publication” of a work in the broad sense, meaning the disclosure of a work by whatever means (publishing, public performance, broadcasting or communication by wire, public exhibition, etc.) and, on the other hand, “publication” in the strict sense, generally implying that a work is made available to the public in a well-defined manner. Because of the fact that such a differentiation exists in the Soviet copyright legislation, and because of the wording of Article VII of the Universal Convention, the provisions of the latter are not applied in the Soviet Union to works that were published in the broad sense (for example, performed in public) prior to May 27, 1973, and its field of application is thereby considerably restricted²¹.

3. Copyright research centers and scientific publications in this field

The first and for the moment the only research institute in the Polish People's Republic dealing, *inter alia*, with copyright was established in Cracow under the auspices of the Jagellonian University in 1972, and is entitled “Inter-Universitarian Institute for Inventive Activity and the Protection of Intellectual Property”.

As stated in the Ordinance of March 24, 1972, of the Minister for Education and Higher Educational Establishments, concerning the creation of the Institute, and in the Institute's statutes annexed thereto, its prime objective is “scientific research and the training of scientific personnel for the country's higher educational establishments, in particular those of the city of Cracow”²².

The Institute is responsible for initiating, planning and carrying out scientific research, in accordance with the needs of science and the national economy and, in particular, in the field of inventive activity and the transfer of know-how. Copyright problems are also within the Institute's purview.

It is placed under the authority of a Director, who is responsible to the Rector of the Jagellonian University for all the Institute's activities. The Rector acts as a direct supervisory authority. In addition, he determines the prerogatives

²¹ B. Nawrocki, “La modification de la législation soviétique sur le droit d'auteur par le décret du 21 février 1973 et l'adhésion de l'URSS à la Convention universelle sur le droit d'auteur de 1952”, in *Il Diritto di Autore*, No. 2/1973, pp. 122 et seq. (particularly, pp. 126 to 128); VAAP — Illustrated information bulletin of the USSR Copyright Agency, No. 1/1974, p. 50 (Legal consultation with the VAAP. Which works (published abroad or not) are concerned in the USSR by the Universal Copyright Convention?)

²² The Polish text of the Ordinance of March 24, 1972, of the Minister of Education and Higher Educational Establishments, concerning the setting up of the Inter-Universitarian Institute for Inventive Activity and the Protection of Intellectual Property, annexed to the Jagellonian University of Cracow, was published in *Dziennik Urzędowy Ministerstwa Oświaty i Szkolnictwa Wzszszego* [Official Gazette of the Ministry of Education and Higher Educational Establishments] — DU-5-0142-17/72, text No. 36. The aims of the Institute are set forth in paragraph 1.2 of the Ordinance and in paragraph 1 of the Statutes annexed to the Ordinance.

of the Council of the Institute, which gives advisory assistance to the Director²³.

The results of the Institute's research activities are published in the "Scientific papers of Jagellonian University" in a series entitled *Prace Wynalazczości i Ochrony Własności Intelktualnej* [Studies on inventive activity and the protection of intellectual property], published several times each year. Each study is accompanied by a summary in one or more foreign languages.

The Institute organizes symposia, scientific lectures and various advanced courses (particularly in the field of industrial property), in addition to carrying out tasks assigned to it by the organs of the State administration and by units of the socialized economy. It maintains contact with similar institutes in other countries and with international organizations and, in particular, non-governmental organizations specialized in the field of intellectual property.

Apart from the Cracow Institute which is at university level, there is at present no other copyright research center in the Polish People's Republic, nor any national information center on copyright of the kind envisaged by the Appendix to the Paris Act (1971) of the Berne Convention (Article IV(1)) and the 1971 revised text of the Universal Copyright Convention (Article V^{ter}(1)(c)).

It should be noted, however, that in recent years copyright has been included in the curricula of the law faculties of three Polish universities. The University of Warsaw offers a copyright course in its regular curriculum (the intellectual property course is given within the framework of civil law or administrative law), as does the Jagellonian University of Cracow (two hours weekly for one semester). In the Faculty of law and administration of the University of Poznan, supplementary courses and lectures are given on copyright, also two hours weekly for one semester²⁴.

Although the Authors' Society ZAIKS has no official copyright research center attached to it, the activities of the Society are worthy of mention. This is quite understandable in view of the fact that propagation of copyright and improvement of the level and efficacy of protection of the rights of creators are among the Society's fundamental statutory aims. In fact, therefore, ZAIKS plays a very important role in the field of copyright research. One fact deserves special emphasis. In order to encourage scientific research in this field, promote training of future specialized personnel and add to the rather scanty specialized documentation existing in Poland, for some years now ZAIKS has been organizing from time to time competitions for the best scientific works on copyright, written in the context of advanced studies in Polish universities, doctors' theses and degree papers.

Polish literature on copyright problems published in the past thirty years is unfortunately not very abundant.

²³ Professor Andrzej Kopff has been appointed Director of the Institute. The Chairman of the Council of the Institute is Professor Stefan Grzybowski, formerly Rector of the Jagellonian University.

²⁴ See *Teaching of intellectual property throughout the world* (List of universities and other higher education establishments teaching the law of industrial property and copyright). 3rd Ed. (1972). Publication of the International Bureau of WIPO.

Among the studies published in book form, the following may be mentioned (written in Polish):

- A. Kopff, *Dzielo sztuk plastycznych i jego twórca* [Works in the field of plastic arts and their creators], Cracow, 1961;
- B. Nawrocki, *Reprodukcja fotograficzna w świetle prawa autorskiego* [Photographic reproduction in the light of copyright], Warsaw, 1965;
- M. Pozniak-Niedzielska, *Autorstwo dzieła filmowego* [Authorship of cinematographic works], Warsaw, 1970;
- J. Serda, *Prawo autorskie do dzieła filmowego* [Copyright in cinematographic works], Warsaw, 1970;
- B. Michalski, *Przedruk prasowy w świetle prawa* [Reproduction in the press in the light of the law], Cracow, 1971;
- S. Grzybowski, A. Kopff, J. Serda, *Zagadnienia prawa autorskiego* [Copyright problems], Warsaw, 1973 (456 pages).

Since the war, this last work is the only one that has attempted to examine copyright problems as a whole, though with the exception of studies of questions concerning certain individual categories of intellectual works (for example, musical works and photographic works) as well as studies of executive provisions currently in force in the Polish People's Republic and certain penal provisions that are applicable in the case of copyright infringements.

In addition to the works listed above, a number of articles concerning copyright and neighboring rights have been published in Polish specialized periodicals²⁵.

Lastly, one should mention the quarterly bulletin entitled *Wiadomości ZAIKSu* [ZAIKS News], published by the Office of the Authors' Society ZAIKS, and which contains news about the Society's activities as well as the texts of legislation and regulations bearing directly or indirectly on copyright, often with a commentary, and also legal articles on selected topics.

Polish court decisions constituting case law in matters of copyright and neighboring rights, together with accompanying notes, are published in specialized periodicals entitled *Orzecznictwo Sadu Najwyzszego — wydanie urzedowe* (OSN) [Supreme Court case law — official edition] and *Orzecznictwo Sadów Polskich i Komisji Arbitrazowych* (OSPIKA) [Case law of Polish courts and arbitration tribunals]. For the moment, there is no series devoted exclusively to Polish case law in matters of intellectual property.

²⁵ Among Polish periodicals specialized in legal matters and publishing articles on copyright and neighboring rights, one may mention in particular: *Panstwo i Prawo* [The State and the Law], published monthly by the Institute of Legal Sciences of the Polish Academy of Sciences; *Studia Cywilistyczne* [Civil law studies] — periodical published by "Państwowe Wydawnictwo Naukowe PWN" (State publishing house for scientific works); *Zeszyty Naukowe Uniwersytetu Jagiellońskiego* [Jagellonian University scientific notebooks]; *Zeszyty Naukowe Uniwersytetu Lodzkiego* [Lodz University scientific notebooks].

In most cases, published studies are accompanied by a brief summary in foreign languages.

Articles on problems of interest for us are occasionally published in *Palestra* [The Bar], *Nowe Prawo* [New law], *Zeszyty Prasoznawcze* [Research notebooks in the press field] and *Prawo i Zycie* [Law and life]; in the latter case, mainly articles for the popular taste.

A fairly comprehensive list of Polish writings on copyright and neighboring rights, written and published in the Polish People's Republic during the period 1949-1969, may be found in the following publication of the German Federal Republic: Möhring, Schulze, Ulmer, Zweigert, *Quellen des Urheberrechts*, Alfred Metzner Verlag (Vol. II).

Concluding this brief review of Polish publications on copyright, we may mention also the series *Prawo autorskie. Przepisy i orzecznictwo — Wydawnictwo prawnicze* [Copyright: Provisions and case law — Legal Editions], prepared by E. Drabienko, the most recent issue of which dates from 1965 and is now partly outdated, and the series *Prawo teatralne. Teatry zawodowe i amatorskie — Wydawnictwo prawnicze 1970* [Theater law: Professional and amateur theaters — Legal Editions 1970] prepared by A. Badkowski and J. Staniewicz, partly devoted to copyright in the theatrical field in the Polish People's Republic.

It is to be hoped that the work of reforming Polish copyright legislation, which was undertaken in 1974, will contribute greatly to Polish documentary material in this field.

4. The Polish People's Republic and the multilateral international conventions on copyright

It must be acknowledged that the post-war period was not particularly conducive to the development of international conventional relations of the Polish People's Republic in the copyright field. Preoccupied with other problems, the Polish People's Republic has not yet ratified or acceded to any international multilateral convention on copyright adopted or amended since 1945. This state of affairs was comprehensible to some extent during the first ten to fifteen years after the war, but is no longer justified today. It is not surprising, therefore, that now that the preparatory work is in hand for amending Poland's copyright legislation, people are speaking more and more about the need for the Polish People's Republic to accede to the most recent texts of the international conventions in the field of intellectual property.

We shall briefly review below the situation of the Polish People's Republic after the entry into force of the 1967 Convention establishing WIPO, the Paris Act (1971) of the Berne Convention and the 1971 revised text of the Universal Copyright Convention, as well as the arguments advanced in favor of the Polish People's Republic's acceding to these Conventions.

The Government of the Polish People's Republic deposited, on December 23, 1974, its instrument of ratification of the Convention establishing WIPO. The Convention will therefore enter into force with respect to the Polish People's Republic, three months after the date of deposit of the instrument of ratification, that is, on March 23, 1975.

The Polish People's Republic is still bound by the Rome Act (1928) of the Berne Convention. Although a Polish delegation participated in the 1948 Brussels Diplomatic Conference, the Polish People's Republic did not sign the Brussels Act of the Berne Convention nor did it accede thereto subsequently. It is relevant to mention in particular two of the reasons put forward against acceding to the Brussels Act as from 1952, the year in which the Polish Copyright Law was adopted:

- (a) Article 7(1) of the Convention provides a minimum term of protection of fifty years after the author's death — which was, of course, incompatible with Article 26 of

the Polish Law of 1952, providing a term of twenty years;

- (b) Article 27^{bis} of the Convention provides for compulsory jurisdiction of the International Court of Justice of The Hague in the case of any dispute between two or more countries of the Berne Union concerning the interpretation or application of the Convention which has not been settled, by negotiation or other means, by the countries concerned. At the time, the application of such a clause in the field of intellectual property was considered unacceptable by the socialist countries.

Today, these two obstacles really exist no longer. Under Article 7(7), inserted in the Stockholm Act of the Berne Convention precisely to permit ratification of that Act by merely a few countries and, in particular, by the Polish People's Republic, countries bound by the Rome Act which accede to the most recent Act of the Berne Convention may maintain a term of protection shorter than fifty years after the author's death where such shorter term was provided in their national legislation in force at the time of signature of the Act. Article 7(7) of the Stockholm Act was maintained without amendment in the Paris Act of the Berne Convention. Furthermore, the people's democracies are now clearly advocating a term of protection of fifty years after the author's death, and there is therefore reason to hope that the new Polish copyright legislation will also adopt this latter solution.

As regards the clause providing for compulsory jurisdiction of the International Court of Justice, the position of the socialist countries has evidently changed; this seems to be corroborated by the fact that socialist countries have accepted this clause in several international conventions concluded recently, and in particular by the accession, in 1973, of the Soviet Union and the German Democratic Republic to the Universal Copyright Convention of 1952.

Following the entry into force of the Paris Act (1971) of the Berne Convention (Articles 1 to 21 and the Appendix) on October 10, 1974, the Polish People's Republic can accede only to the substantive provisions of that Act.

The Paris Act of the Berne Convention contains in Article 36 a provision that has no equivalent in the Rome Act, to the effect that:

(1) Any country party to this Convention undertakes to adopt, in accordance with its constitution, the measures necessary to ensure the application of this Convention.

(2) It is understood that, at the time a country becomes bound by this Convention, it will be in a position under its domestic law to give effect to the provisions of this Convention.

The Constitution of the Polish People's Republic does not contain any provisions specifically concerning the application, on the national territory, of international conventions to which the Polish People's Republic is a party.

It is widely held that the provisions of international conventions ratified by the Polish People's Republic are binding upon that country's territory and are applicable directly, without any formal need for amendment of existing legislation or for adoption of new legal provisions. This opinion seems to be confirmed by the Polish Copyright Law of 1952,

which states that "The author's rights shall be protected if . . . (4) copyright protection is granted under international conventions . . ." (Article 6), and also that "The provisions of this Law shall not affect copyrights resulting from international agreements" (Article 64).

For practical reasons, the provisions of Polish legislation are frequently harmonized with those of international conventions to which the Polish People's Republic is, or intends to become, a party.

Among the considerations mentioned in support of accession by the Polish People's Republic to the Paris Act (1971) of the Berne Convention, one may mention in particular the broadened application of the principle of nationality (Article 3(1)), which was one of the major amendments introduced into the Convention at the Stockholm Diplomatic Conference. It is interesting to note here that the system of international protection of authors' rights provided under the Rome Act (1928) of the Berne Convention was based, in particular, on the criterion of publication of the work.

Unpublished works of authors who were nationals of one of the countries of the Berne Union enjoyed, without exception, protection under the Convention in the territory of all the countries of the Union, while as regards published works (within the meaning of the Rome Act of the Berne Convention) by those same authors protection was granted exclusively in cases where the work had been first published in the territory of one of the countries of the Berne Union.

This means that the works of an author who is a national of the Polish People's Republic (which is still bound exclusively by the Rome Act (1928) of the Berne Convention), published first in the territory of a country not a party to the Berne Convention (for example, the Soviet Union), are not eligible for protection under the Convention in the territory of the Berne Union countries (of course, those other than the Polish People's Republic). This fact is of great importance from the political and economic aspect, and may even prove to be decisive for ratification by the Polish People's Republic of the conventions as revised at Paris in 1971.

Under the Stockholm Act, the distinction between published and unpublished works has lost its earlier significance. As a result of the extension of application of the criterion of nationality, the most recent Act of the Berne Convention protects all the works of an author who is a national of one of the countries of the Berne Union, whether published or not, and regardless of where they were first published. Similar provisions are set forth in the 1952 Universal Copyright Convention. One may therefore wonder whether in this respect the socialist countries bound by the provisions of the Universal Convention (Soviet Union, Czechoslovakia, German Democratic Republic, Hungary and Yugoslavia) are not in a much more advantageous position than the countries bound exclusively by the Rome Act of the Berne Convention (Poland and Romania).

A further question arises in this connection: is it necessary, in the international legal situation of the Polish People's Republic at the present time, to accede simultaneously to the most recent texts of the Berne Convention and of the Uni-

versal Copyright Convention? Would not accession solely to the Universal Convention (1971 text) be sufficient?

From the analysis which we shall present very briefly, it results clearly that in the case of a country already bound by one of the earlier texts of the Berne Convention — in particular, by the Rome Act — accession to the Paris Act of the Berne Convention (quite independently of accession to the Universal Convention of 1971) is virtually essential, by reason of a very special legal mechanism established under Article XVII of the Universal Convention and the Appendix Declaration relating to Article XVII.

Article XVII, paragraph 1, confirms the principle according to which the Universal Convention "shall not in any way affect the provisions of the Berne Convention . . ." while paragraph 2 states that the declaration annexed to Article XVII is an integral part of the Universal Convention. The said Declaration provides in paragraph (c) that the Universal Copyright Convention

shall not be applicable to the relationships among countries of the Berne Union in so far as it relates to the protection of works having as their country of origin, within the meaning of the Berne Convention, a country of the Berne Union.

The definition of the concept of "country of origin of the work" varies in the Rome (1928) and Paris (1971) Acts of the Berne Convention.

According to the Rome Act:

The country of origin of the work shall be considered to be: in the case of unpublished works, the country to which the author belongs; in the case of published works, the country of first publication; . . . (Article 4(3)).

While, according to the Paris Act:

The country of origin shall be considered to be:

(a) in the case of works first published in a country of the Union, that country; . . . ;

(c) in the case of unpublished works or of works first published in a country outside the Union, without simultaneous publication in a country of the Union, the country of the Union of which the author is a national, . . . (Article 5(4)).

It follows from these provisions that, in the event that the Polish People's Republic accedes solely to the 1971 Universal Convention, then in its relations with other countries that are party to both Conventions simultaneously only the provisions of the Rome Act (1928) of the Berne Convention would be applicable. Under the latter Act, the Polish People's Republic would not be considered to be a country of origin for works by Polish nationals published first in the territory of a country not a member of the Berne Union (for example, the Soviet Union), and such works could be formally deprived of the protection under the Convention in the territory of Berne Union countries (other than the Polish People's Republic), even if such countries are party both to the Universal Convention and to the Berne Convention.

Following the entry into force, on July 10, 1974, of the 1971 revised text of the Universal Copyright Convention, accession to the 1952 text of the same Convention is no longer possible. For the Polish People's Republic, accession to the 1971 Universal Convention offers undoubted advantages, particularly as regards relations with the countries which are not

yet members of the Berne Union (in particular the United States of America and certain developing countries).

As regards relations with the United States of America, it should be borne in mind the existence of the Proclamation of February 14, 1927, of the President of the United States, concerning the protection of citizens of Poland, and the note of the same date addressed by the Polish Minister in Washington to the Secretary of State of the United States concerning the protection of United States citizens in Poland; these two unilateral instruments are still formally in force, though not always strictly observed.

The Proclamation of the President of the United States of America does not, of course, afford a solution to the problem of the formalities required under that country's domestic legislation.

As regards the relations of the Polish People's Republic with the Soviet Union, the two countries signed, on October 4, 1974, a bilateral agreement on the reciprocal protection of copyright. It was provided that the agreement should enter into force on January 1, 1975, after the approval of its text by the respective authorities of the two countries.

A working agreement between the Society of Authors ZAIKS and the Copyright Agency of the USSR (VAAP) was also signed on the same date. We shall therefore revert to this matter on another occasion, and examine more closely the theoretical and practical problems of bilateral agreements in the copyright field and certain aspects of the relationship between such agreements and the relevant multilateral conventions.

One conclusion must be drawn at the end of this part of the "Letter from Poland" on the subject of international problems. Clearly, in order to ensure maximum copyright protection for the works of Polish authors over a broader territorial area, it is not sufficient, in present conditions, to accede only to one Convention, be it the Paris Act (1971) of the Berne Convention or the 1971 revised text of the Universal Copyright Convention. Despite certain appearances, the two Conventions are not purely competitive in character, and for certain countries (*inter alia* the people's democracies) they constitute a valuable complement. For these reasons, the opinion is beginning to prevail in the Polish People's Republic that accession to both these Conventions would be highly desirable.



INTERNATIONAL ACTIVITIES

International Literary and Artistic Association (ALAI)

Working Session

(Paris, February 6 and 7, 1975)

This session, which was held under the chairmanship of the President of ALAI, Professor Henri Desbois, was devoted to a study of the problems raised by the reprography of works protected by copyright.

WIPO, which, like Unesco, had been invited in an observer capacity, was represented by Mr. Mihailo Stojanović, Counselor, Copyright Division.

Reports on the subject were presented by various national groups of ALAI. At the end of the discussions it was recalled

that, if international conventions were to be respected, the fundamental principle in the field of reprography had to remain that of the author's exclusive right. It was considered that this exclusive right should be exercised, even in cases of private use, preferably by means of collective negotiations which would enable the author to obtain fair remuneration without hampering the development of a reasonable use of reprography.

Executive Committee and General Assembly

(Paris, February 8, 1975)

Under the same chairmanship, ALAI held a session of its Executive Committee and of its annual General Assembly.

Delegates of national groups of ALAI from the following countries took part in the sessions: Belgium, France, Germany (Federal Republic of), Greece, Italy, Netherlands, Sweden and the United Kingdom. There were also observers from Unesco and some international non-governmental organizations concerned.

WIPO was represented by its Director General, Dr. Arpad Bogsch, and by Mr. Claude Masouyé, Director, Office of the Director General.

Apart from matters of an administrative or internal nature, discussions covered the current problems of international

copyright, particularly with regard to reprography, and the results of the Brussels Diplomatic Conference (May 1974) which adopted a new convention in the field of transmissions by space satellites.

At the invitation of the group of the Federal Republic of Germany, a working session will be held in Berlin in October 1975 on the manner in which contractual relations in the copyright field are governed by legislation and case law. At the invitation of the Greek group, ALAI will hold its next Congress in Greece in May 1976.

UPOV Meetings in 1975

Council: October 7 to 10 — **Consultative Committee:** March 5 and 6; October 6 and 10 — **Technical Steering Committee:** April 17 and 18; November 6 and 7 — **Committee of Experts on International Cooperation in Examination:** April 14 to 16; November 3 to 5 — **Committee of Experts on the Interpretation and Revision of the Convention:** December 2 to 5.

Note: All these meetings will take place in Geneva at the headquarters of UPOV

Technical Working Parties: (i) for Vegetables: May 28 to 30 (Lund - Sweden); (ii) for Agricultural Crops: June 4 to 6 (Cambridge - United Kingdom); (iii) for Fruit Crops: June 17 to 19 (Bordeaux - France); (iv) for Forest Trees: August 19 and 20 (Hannover - Federal Republic of Germany); (v) for Ornamental Plants: September 9 to 11 (Hornum - Denmark)

Meetings of Other International Organizations concerned with Intellectual Property

April 21 to 25, 1975 (Hamburg) — International Confederation of Societies of Authors and Composers — Congress

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

June 2 and 3, 1975 (Paris) — United Nations Educational, Scientific and Cultural Organization (UNESCO) — Intergovernmental Copyright Committee established by the Universal Copyright Convention (as revised at Paris in 1971)

June 12 and 13, 1975 (Stockholm) — Union of European Professional Patent Representatives — Executive Committee

June 15 to 22, 1975 (Madrid) — International Chamber of Commerce — Congress

June 18 to 20, 1975 (Rijswijk) — International Patent Institute — Administrative Board

September 16 to 19, 1975 (Budapest) — International Federation of Musicians — Executive Committee

September 17 to 20, 1975 (London) — Union of European Professional Patent Representatives — General Assembly

October 1 to 3, 1975 (Berlin) — International Literary and Artistic Association — Working Session

November 17 to 26, 1975 (Paris) — United Nations Educational, Scientific and Cultural Organization (UNESCO) — Committee of Governmental Experts on the Double Taxation of Copyright Royalties

May 25 to June 1, 1976 (Tokyo) — International Publishers Association — Congress