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World Intellectual Property Organization

Committee of Experts to Draft Model Statutes for Institutions Administering Authors' Rights in Developing Countries

(Paris, June 9 to 13, 1980)

Report

I. Introduction

1. Pursuant to paragraph 5028 of the work plan relating to resolution 5/9.2/1/I adopted by the General Conference of Unesco at its twentieth session (October/November 1978) and to the decision taken by the Governing Bodies of WIPO at their sessions in October 1979, the Secretariat of Unesco and the International Bureau of WIPO convened a Committee of Experts to draft model statutes for institutions administering authors' rights in developing countries with a view, in particular, to bringing up to date the "Draft Model Statute for Societies of Authors in African Countries" adopted at Abidjan in 1969 under the co-sponsorship of the two Organizations. This Committee of Experts met at Unesco Headquarters in Paris from June 9 to 13, 1980.

2. The participants were high officials of authors' societies, nationals of nine Member States of Unesco and WIPO as follows: Algeria, Argentina, Egypt, India, Mexico, Philippines, Senegal, United Republic of Cameroon, Venezuela. These experts were invited to participate in a personal capacity by the Directors General of Unesco and WIPO. Observers from four international non-governmental organizations also attended the meeting. The list of these participants is appended as an annex to this report (Annex 3).

II. Opening

3. The meeting of the Committee of Experts was opened, in the name of the Director-General of Unesco, by Miss Marie-Claude Dock, Director, Copyright Division, and, in the name of the Director General of WIPO, by Mr. Claude Masouyé, Director, Public Information and Copyright Department, who welcomed the participants.

III. Election of Chairman

4. The Committee of Experts unanimously elected Mr. Ndéné Ndiaye, Director General of the Senegalese Bureau for Authors' Rights, as its Chairman.

IV. Documentation

5. The Committee of Experts was provided with documents containing two drafts of Model Statutes for Institutions Administering Authors' Rights in Developing Countries, prepared by the Secretariats of Unesco and WIPO (document UNESCO/WIPO/SSA/2) and intended to govern public institutions and private societies, respectively, administering authors' rights. The Abidjan Model Statute was likewise put at its disposal (document UNESCO/WIPO/SSA/INF.2).

V. General observations

6. Before beginning work on drafting the model statutes, the Committee of Experts noted that developments during recent years in the field of authors' rights in general, and as regards organizing of authors in developing countries in order to ensure effective safeguard of their rights, made it necessary that the Abidjan Model Statute be revised with the aim of bringing it up to date and also extending it as regards its geographic applicability to the whole Third World. In fact, the existence of a national law on authors' rights in a given country is not enough to guarantee effective protection of these rights. It is also necessary that this law should be implemented, and in this respect an essential task rests with the authors' organizations. The observers representing various fields concerned associated themselves with this point of view and congratulated Unesco and WIPO for their initiative.

7. Having noted that the Model Statute of Abidjan was drafted along the lines of authors' societies constituted as civil or commercial societies and inasmuch as the experience of recent years had shown that several developing countries had indicated a preference for the creation of public copyright bureaux or offices, the Committee of Experts, recognizing both approaches, indicated its preference for the first type of organization. But it underscored the fact that in any case the texts resulting from these discussions were only general frameworks and that it was up to

the States to decide on the nature of the organizations that would be created in their territories, while organizations other than civil or commercial societies or copyright bureaux or offices, such as cooperative societies, societies of a mixed legal character or others, could also be established.

8. The Committee of Experts then proceeded to examine, article by article, the drafts which had been submitted by the Secretariats and to draw up the two texts of the Model Statutes which appear in Annexes 1 and 2 of this Report.

9. It also entrusted the Secretariat of Unesco and the International Bureau of WIPO with writing, subsequently, commentaries to accompany these texts. These commentaries must, among other things, take account of the many points that emerged in the course of the debates.

VI. Adoption of the report and closing of the meeting

10. After the adoption of this report and after the usuals thanks, the Chairman declared the meeting closed.

ANNEX 1

Draft Model Statute for Public Institutions Administering Authors' Rights

Article 1

Constitution — Name

(1) An office, called (name and abbreviated name), is established in accordance with the provisions of the copyright legislation of (name of country).

(2) The office is a public, non-profit-making body of professional character, having legal personality and financial autonomy.

(3) It has its headquarters in (name of city); it may set up branch offices within the national territory.

(4) It is under the trusteeship of the Ministry (name of the Ministry).

Article 2

Purpose

The purpose of (abbreviated name) shall be:

- (i) to ensure the representation and defense of the professional, economic and moral interests of authors of literary and artistic works who are nationals or residents of (name of country) or their successors in title, within the country and abroad;
- (ii) to contribute to the promotion of national creativity by all appropriate means that are within its terms of reference.

Article 3

Functions

The functions of (abbreviated name) include:

- (i) administering, on an exclusive basis, within the country and abroad, where appropriate by means of reciprocity agreements, all rights relating to the

public performance, broadcasting, communication to the public by wire or wireless, graphic or mechanical reproduction, translation, adaptation and any other form of use of the protected works of nationals or residents of (name of country) [including the "droit de suite"]; acting to that end as exclusive intermediary for the conclusion of contracts between copyright owners and users of their works;

- (ii) administering the aforementioned rights on an exclusive basis within the country on behalf of foreign authors by virtue of reciprocity agreements concluded with the representatives of the latter;
- (iii) receiving and recording to that end all statements serving to identify the said works and their authors or successors in title;
- (iv) collecting copyright fees from the users of the said works;
- (v) distributing the said fees among the authors or successors in title;
- (vi) ensuring that the conditions laid down for the grant of compulsory licenses are complied with and respected, through intervention prior to such a grant [where national legislation provides for such licenses];
- (vii) safeguarding and asserting rights relating to the use of the folklore heritage of (name of country) where those rights are protected by copyright;
- (viii) establishing model forms for contracts with the users of protected works or with their representative bodies;
- (ix) acting on behalf of authors or their successors in title to secure respect for the conditions governing authorization to use protected works, and, in the event of violation, to assert all rights recognized by national legislation or by international conventions to which (name of country) is party, either in its own name where the rights concerned are administered by (abbreviated name) in any form what-

ever, or at the express request of the parties concerned in all other cases;

- (x) providing authors or their successors in title with information or advice on all matters relating to copyright;
- (xi) providing the competent authorities with information or opinions on all legislative or practical problems relating to copyright;
- (xii) establishing and administering a Provident and Benevolent Fund or any other similar welfare, or mutual aid scheme for authors or their heirs, the modalities of the establishment and administration of such a fund or scheme being determined in separate regulations drawn by the Management Board;
- (xiii) fostering such harmony and understanding between authors and the users of their works as are necessary for the protection of the authors' rights;
- (xiv) promoting better copyright relations between (name of country) and other countries, and contributing thereby to the broadening of cultural exchanges, notably by the conclusion of reciprocity agreements with foreign copyright management bodies and by accession to international organizations grouping such bodies;
- (xv) exercising activities to promote the dissemination of national works in (name of country) and abroad;
- (xvi) performing such other lawful acts as are conducive to the attainment of the aforementioned objectives.

Article 4

Administration of the Office

The administration of (abbreviated name) shall be exercised by:

- (i) the Management Board, and
- (ii) the Director General.

Article 5

Management Board

(1) The Management Board shall consist exclusively of authors. It will be composed of members appointed for . . . years by the competent authority with due regard to equitable representation of the various categories of authors. Members of the Management Board may neither be employed by (abbreviated name) nor be made permanently or occasionally responsible in any way for the management or administration of an establishment that uses works the rights in which are managed by (abbreviated name).

(2) The President of the Management Board shall be nominated by an act of the competent authority. He shall be discharged of his functions in the same manner.

(3) The Management Board shall meet at least (once) (twice) (. . . times) in ordinary session. It shall meet in extraordinary session at the request of the competent authority, its President or . . . of its members, or at the instigation of the Director General.

(4) The Management Board may not conduct business unless it is represented by at least one-half of its members. Decisions shall be taken by the majority of the members present. In the event of equally divided votes, the President shall have a casting vote.

(5) The Management Board shall hear the reports of the Director General on the operation of (abbreviated name). The subjects of its deliberations shall include:

- (i) the income and expenditure forecasts of (abbreviated name);
- (ii) the annual management report and the final accounts;
- (iii) employment and social security matters;
- (iv) staff regulations and their application;
- (v) agreements between (abbreviated name) and other foreign authors' bodies that pursue the same aims;
- (vi) the establishment of Committees and the appointment of their members;
- (vii) the creation of the branch offices referred to in Article 1(3);
- (viii) the acquisition, sale, exchange or rental of premises, which may not take place until the approval of the competent authority has been obtained;
- (ix) gifts or bequests made to (abbreviated name) subject to the approval of the competent authority;
- (x) the transfer of the headquarters to any place within the country, subject to the approval of the competent authority.

(6) A report shall be drawn up of each session of the Management Board; it shall contain the minutes of the discussions and decisions; a copy of the report shall be addressed to the competent authority within a period of . . .

Article 6

Director General

(1) The Director General of (abbreviated name) shall be appointed by an act of the competent authority. His appointment may be terminated in the same manner.

(2) The Director General shall be the legal representative of (abbreviated name) in dealings with third parties, in all civil acts and in all judicial action.

(3) The Director General shall have the task of leading, managing and administering (abbreviated name) in accordance with the decisions of the Management Board.

(4) The Director General may not be a member of the Management Board; however, he shall attend all its meetings, report to it and take part in its deliberations, *ex officio*, in an advisory capacity.

(5) The Director General shall make and revoke appointments to all posts, under conditions specified by the Staff Regulations.

Article 7

Administration of Rights

(1) (abbreviated name) shall ensure the administration of the rights mentioned in Article 3(i) on the basis of contracts made in writing with the users of works.

(2) Fees shall be fixed according to scales drawn up by (abbreviated name) in relation to the type of use and the activities of the user, which scales shall be approved by the competent authority.

(3) Contracts made with users shall provide for the communication to (abbreviated name), on declaration forms prepared by the latter, of appropriate information on works actually used by virtue of the authorization. (abbreviated name) shall organize the monitoring of such use.

(4) (abbreviated name) shall collect, on the basis of declarations of use or corresponding to its own monitoring, the fees provided for in the contracts.

(5) The authors of (name of country) or their successors in title shall file a declaration with (abbreviated name) on a form drawn up by the latter, on which form all the necessary information shall be given for the identification of the work, its authors and, where applicable, the proportionate contribution of the various authors or successors in title.

(6) Fees collected shall be distributed (once) (twice) (. . . times) a year, according to the declarations of use of the works and ownership of the rights in those works, in conformity with rules of distribution laid down by the Management Board.

(7) The amount of expenditure incurred by (abbreviated name) in the fulfilment of its functions shall be withheld from the amounts collected or received within limits set by the Management Board. From these amounts an additional amount shall be withheld for the benefit of the purposes of the Provident and Benevolent Fund, within limits set by the Management Board.

(8) All other procedures related to the principles stated above shall be laid down in appropriate Rules of Procedure, established by the Management Board.

Article 8

Promotion and Information Activities

(1) In the framework of its functions provided for in Article 3(xv) (abbreviated name) shall provide foreign users with all the necessary information on authors or their successors in title, publishers, the title and content of works in which copyright is owned by a national of (name of country).

(2) National users wishing to make use of foreign works shall approach (abbreviated name) in order to obtain the necessary rights; the applications of foreign users concerning national works shall be addressed to (abbreviated name), which, in both cases, shall provide assistance in the conclusion of contracts.

Article 9

Administration of the Use of Works of National Folklore

(1) Without prejudice to the powers conferred by the law on other bodies, (abbreviated name) shall be empowered to receive applications for authorization to

use, in any form whatever, works of national folklore that are protected by copyright. It shall approach the said bodies in order to discuss with them the possibilities and conditions for the grant of such authorization. The authorization or its refusal, the latter accompanied by a statement of reasons, shall be communicated to the applicant in writing.

(2) (abbreviated name) has the right and obligation to safeguard and assert by all appropriate means the copyright in works of the national folklore of (name of country).

(3) (abbreviated name) shall collect copyright fees for the use of works of the national folklore of (name of country) which shall be calculated according to the rules of collection, without prejudice to other charges that those bodies competent for conservation and preservation of folklore might be authorized to make on other grounds. These fees shall be allocated in conformity with legislative or regulatory provisions being in force in (name of country) and corresponding to the modalities laid down by the Management Board in accordance with the competent authority.

Article 10

Resources of the Provident and Benevolent Fund

Resources of the Provident and Benevolent Fund include in particular:

- (i) amounts withheld from sums collected or received within limits set by the Management Board;
- (ii) gifts, bequests or other donations;
- (iii) damages secured by (abbreviated name) following judicial action where distribution proves technically impossible;
- (iv) amounts withheld in application of Article 9(3);
- [(v) amounts resulting from the implementation of the system of "domaine public" subject to payment;]
- (vi) interests on investments of the resources mentioned in the preceding subparagraphs.

Article 11

Rendering and Auditing of Accounts

(1) (abbreviated name) shall draw up at the end of each financial year an annual balance sheet and a management report.

(2) The annual balance sheet and the management report shall be approved according to legislative and regulatory provisions being in force in (name of country).

Article 12

Regulation by Competent Authority

Questions not regulated by this Statute shall be brought under regulation by a ruling of the competent authority.

Article 13

Dissolution

The dissolution of (abbreviated name) may be pronounced in the form provided for in national legislation for the dissolution of public bodies.

Article 14

Transitional Provisions

(abbreviated name) shall in all respects continue the work of any body of authors previously authorized in (name of country) to carry on any action related to the functions specified in Article 3.

ANNEX 2

**Draft Model Statute
for Private Societies Administering Authors' Rights**

Article 1

Constitution — Name

(1) A society, called (name and abbreviated name), is established in accordance with the provisions of the copyright legislation of (name of country).

(2) The Society is a non-profit-making body having legal personality.

(3) It has its headquarters in (name of city); it may set up bodies within the national territory.

[(4) It is under the supervision of the Ministry (name of the Ministry).]

Article 2

Purpose

The purpose of the Society is:

- (i) to ensure the representation and defense of the professional, economic and moral interests of authors of literary and artistic works, members of the Society or their successors in title, within the country and abroad;
- (ii) to contribute to the promotion of national creativity by all appropriate means that are within its terms of reference.

Article 3

Functions

The functions of the Society include:

- (i) administering, on an exclusive basis, within the country and abroad, where appropriate by means of reciprocity agreements, all rights relating to the public performance, broadcasting, communication to the public by wire or wireless, graphic or mechanical reproduction, translation, adaptation and any other form of use of the protected works of its members [including the "droit de suite"]; acting to that end as exclusive intermediary for the

conclusion of contracts between copyright owners and users of their works;

- (ii) administering the aforementioned rights on an exclusive basis within the country on behalf of foreign authors by virtue of reciprocity agreements concluded with the representatives of the latter;
- (iii) receiving and recording to that end all statements serving to identify the works and their authors or successors in title;
- (iv) collecting copyright fees from the users of the said works;
- (v) distributing the said fees among the authors or successors in title concerned;
- (vi) ensuring that the conditions laid down for the grant of compulsory licenses are complied with and respected, through intervention prior to such a grant [where national legislation provides for such licenses];
- (vii) safeguarding and asserting rights relating to the use of the folklore heritage of (name of country) where those rights are protected by copyright;
- (viii) establishing model forms for contracts with the users of protected works or with their representative bodies;
- (ix) acting on behalf of authors or their successors in title to secure respect for the conditions governing authorization to use protected works, and, in the event of violation, to assert all rights recognized by national legislation or by international conventions to which (name of country) is party, either in its own name where the rights concerned are administered by the Society in any form, or at the express request of the parties concerned in all other cases;
- (x) providing its members or their successors in title with information or advice on all matters relating to copyright;
- (xi) providing the competent authorities with information or opinions on any legislative or practical problems relating to copyright;
- (xii) establishing and administering a Provident and Benevolent Fund or any other similar welfare, or mutual aid scheme for authors or their heirs, the modalities of the establishment and administration

of such a fund or scheme being determined by separate rules laid down by the Management Board;

- (xiii) fostering such harmony and understanding between authors and the users of their works as are necessary for the protection of the authors' rights;
- (xiv) promoting better copyright relations between (name of country) and other countries, and contributing thereby to the broadening of cultural exchanges, notably by the conclusion of reciprocity agreements with foreign copyright management bodies and by accession to international organizations grouping such bodies;
- (xv) exercising activities to promote the dissemination of the works of its members in (name of country) and abroad;
- (xvi) performing such other lawful acts as are conducive to the attainment of the aforementioned objectives.

Article 4

Membership

(1) The Society shall admit to full membership:

- (i) any author who at the time of this application:
 - (a) has within the previous . . . months had a play, a scenario, one or more musical compositions or a choreographic work, produced or performed publicly on stage, by radio, by television, by cinematography or by any other medium, including mechanical reproduction;
 - (b) has had a book published within the previous . . . years;
 - (c) has within the previous . . . months had works of fiction or non-fiction published by one or more major magazines or major, wide-circulation newspapers, or communicated to the public by radio or television;
 - (d) has, within the previous . . . months, had works of plastic or graphic art exhibited or communicated to the public;
 - (e) has, in the opinion of the Management Board, such professional standing in the field of art and literature as entitles him to membership;
- (ii) any other author complying with the conditions of admission laid down by the Management Board;
- (iii) any heir of an author entitled to full membership.

(2) The Society shall admit to associate membership any publisher who is a national of (name of country) and who is entitled to claim a share in the remuneration deriving from uses as provided in Article 3(i).

Article 5

Rights of Members

- (1) Full members shall have the right:
 - (i) to benefit from the services and aid offered by the Society;
 - (ii) to participate fully in the affairs of the Society, including participation in the meetings of the General Assembly;

(iii) to propose the inclusion of matters in the agenda of the General Assembly, according to the procedure specified in the Rules of Procedure.

(2) Associate members shall have the same rights as full members, except that they may not [be elected to the Management Board,] benefit from the Provident and Benevolent Fund or be represented by the Society in disputes that concern full members.

Article 6

Obligations of Members

(1) All members shall:

- (i) pay an annual subscription (and/or a membership fee) the amount of which shall be fixed by the Management Board;
- (ii) assign to the Society the exclusive right, in respect of all countries and for the duration of . . . , to act as their sole representative and to authorize or forbid all uses of those of their works in respect of which it exercises exclusive administration of rights or in respect of which they have requested its intervention;
- (iii) provide the Society with all information and documents available to them which it might need in order to carry out the management of the rights entrusted to it;
- (iv) to abstain from any professional conduct that might be detrimental to the interests of the Society.

(2) In the event of a serious violation of professional ethics, the Management Board may refuse admission to membership of the Society or exclude a member from the Society, subject to the approval of the General Assembly.

Article 7

Administration of the Society

The administration of the Society shall be exercised by:

- (i) the General Assembly,
 - (ii) the Management Board, and
 - (iii) the Director General,
- who shall be assisted by the Committees set up under this Statute.

Article 8

General Assembly

(1) The General Assembly is composed of all the members of the Society. It shall meet in ordinary session each year, in the month of . . . It may hold extraordinary sessions at the request of the Management Board or of no fewer than . . . % of the members of the Society.

(2) Ordinary and extraordinary sessions of the General Assembly shall be convened no fewer than . . . days prior to the date thereof by the President, who shall communicate the agenda by all suitable information means, written or oral. If the General Assembly is asked

to decide on amendments to this Statute or to the Rules of Procedure, the text of the proposed amendments shall be transmitted with the agenda.

(3) The General Assembly shall be competent to conduct business provided that at least . . . of its members are present or represented, failing which another session shall be convened within the following 30 days. Decisions shall be made by a majority vote of the members present, provided that the adoption of amendments to this Statute and to the Rules of Procedure shall require a majority of two-thirds. Voting by proxy shall be allowed. However, no proxy may represent more than two members.

(4) The General Assembly shall have the power to adopt or amend this Statute and the Rules of Procedure. It shall approve the accounts of the Society every year and shall pronounce on the general and audit reports. It shall establish the funds intended to serve the purposes of the Society. It shall elect the members of the Management Board and fix the amount of the allowance, if any, granted them to cover expenses incurred in the exercise of their duties; it shall also elect the members of the Committees set up under this Statute. In general, it shall rule on all questions included in the agenda and submitted to it by the Management Board.

Article 9

Management Board

(1) (i) The Management Board, renewable by thirds every . . . years, shall be composed of . . . members who shall be nationals of (name of country), elected for . . . years by the members constituting the General Assembly, in the manner specified in the Rules of Voting Procedure, allowing for the participation in the voting of as many of them as possible. [Furthermore, the Supervisory Authority shall designate one representative.]

(ii) [At least . . . % of the members of the Management Board shall be authors.] Members permanently or even occasionally responsible in any way for the management or administration of an establishment that uses works the rights in which are managed by the Society may not be elected to the Management Board.

(2) The Management Board shall elect, from among its members, a President, a Vice-President, a Secretary General and a Treasurer, who together shall constitute its Officers. The Officers shall be responsible for preparing meetings of the Management Board and discharging current business in the intervals between such meetings.

(3) The Management Board shall be convened by its President to meet in ordinary session at least once every . . . It shall meet in extraordinary session at the request of its President or . . . of its members.

(4) The Management Board shall not be competent to conduct business unless one-half of the members constituting it are present. Decisions shall be made by a majority vote of the members present. In the event of equally divided votes, the President shall have a casting vote.

(5) The Management Board shall conduct the affairs of the Society and in general perform all administrative acts. It shall adopt the budget, control all the funds of the Society and decide as to their investment and employment. [It may request the assistance of the Committee in charge of the administration of the Provident and Benevolent Fund insofar as any welfare or mutual aid fund or scheme is concerned.]

(6) The Management Board may, at the written request of the parties concerned, arbitrate any disputes among authors and publishers; its decisions shall be final.

(7) The Management Board shall report to the General Assembly on its management and on important decisions that it has made in the course of its duties. It shall propose to the General Assembly such decisions as are within the latter's competence.

Article 10

Committees Set Up Under this Statute

(1) The Committees set up under this Statute are:

- (i) the Accounts Committee, responsible for supervising the income and expenditure of the Society and auditing its accounts; it shall be assisted by an auditor specially appointed for the purpose [by the Supervisory Authority]; it shall report to the General Assembly on its work;
- (ii) the Work Identification Committee, responsible for identifying works declared to the Society; it shall report to the Management Board on its work;
- [(iii) the Committee for the Administration of the Provident and Benevolent Fund; it shall report to the Management Board on its work.]

(2) Each of the Committees shall be composed of . . . members elected by the General Assembly for . . . years [except for the Committee provided for in paragraph (1) (iii) hereabove, which shall be composed by the Management Board] and renewable by thirds.

Article 11

Reports

Every session of the General Assembly, the Management Board and the Committees set up under this Statute shall be the subject of a report which shall contain the minutes of debates and decisions and shall be entered in a special register kept for the purpose.

Article 12

President

The President of the Management Board shall be the legal representative of the Society. He shall preside over meetings of the society's organs and of the Officers of the Management Board.

Article 13

Director General

(1) The Director General shall be appointed by the Management Board; his appointment may be terminated in the same manner.

(2) The Director General's functions shall consist in leading, managing and administering the Society in accordance with the instructions and decisions of the Management Board. The Director General shall also exercise all powers delegated to him by the President of the Society with a view to its representation in dealings with third parties and in any judicial action.

(3) The Director General [may not be a member of the Society;] [, if a member of the Society, shall renounce his rights arising from such membership for the period of his tenure of office and . . . years thereafter;] he shall take part in the deliberations of its organs, ex officio, in an advisory capacity.

(4) The Director General shall make and revoke appointments to all posts, according to the requirements specified in the Staff Regulations.

Article 14

Administration of Rights

(1) The Society shall ensure the administration of the rights mentioned in Article 3(i) on the basis of contracts made in writing with the users of works.

(2) Fees shall be fixed according to scales drawn up by the Management Board in relation to the type of use and the activities of the user, which scales shall be approved by the General Assembly [and by the Supervisory Authority].

(3) Contracts made with users shall provide for the communication to the Society, on declaration forms prepared by the latter, of appropriate information on works actually used by virtue of the authorization. The Society shall organize the monitoring of such use.

(4) The Society shall collect, on the basis of declarations of use or corresponding to its own monitoring, the fees provided for in the contracts.

(5) Members shall file a declaration with the Society on a form drawn up by the latter, on which form all the necessary information shall be given for the identification of the work, its authors and, where applicable, the proportionate contribution of the various authors or successors in title.

(6) Fees collected shall be distributed (once) (twice) (. . . times) a year, according to the declarations of use of the works and ownership of the rights in those works, in conformity with the Rules of Distribution laid down by the Management Board.

(7) The amount of expenditure incurred by the Society in the fulfilment of its functions shall be withheld from the amounts collected or received within limits

set by the Management Board. From these amounts an additional amount shall be withheld for the purposes of the Provident and Benevolent Fund within limits set by the Management Board.

(8) All other procedures related to the principles stated above shall be laid down in appropriate Rules of Procedure, established by the Management Board.

Article 15

Promotion and Information Activities

(1) In the framework of its functions provided for in Article 3(xv) the Society shall provide foreign users with all the necessary information on authors or their successors in title, publishers, the title and content of works in which copyright is owned by one of its members.

(2) National users wishing to make use of foreign works shall approach the Society in order to obtain the necessary rights; the applications of foreign users concerning national works shall be addressed to the Society, which, in both cases, shall provide assistance in the conclusion of contracts.

Article 16

Administration of the Use of Works of National Folklore

(1) Without prejudice to the powers conferred by the law on other bodies, the Society is empowered to receive applications for authorization to use, in any form whatever, works of national folklore that are protected by copyright. It shall approach the said bodies in order to discuss with them the possibilities and conditions for the grant of such authorization. The authorization or its refusal, the latter accompanied by a statement of reasons, shall be communicated to the applicant in writing.

(2) The Society has the right and obligation to safeguard and assert by all appropriate means the copyright in works of the national folklore of (name of country).

(3) The Society shall collect copyright fees for the use of works of the national folklore of (name of country) which shall be calculated according to the rules of collection without prejudice to other charges that bodies competent for conservation and preservation of folklore might be authorized to make on other grounds. These fees shall be allocated in conformity with legislative or regulatory provisions being in force in (name of country) and corresponding to the modalities laid down by the Management Board in accordance with the Supervisory Authority.

Article 17

Resources of the Provident and Benevolent Fund

Resources of the Provident and Benevolent Fund include in particular:

- (i) amounts withheld from sums collected or received, within limits set by the Management Board;

- (ii) gifts, bequests or other donations;
- (iii) damages secured by the Society following judicial action where distribution proves technically impossible;
- (iv) amounts withheld in application of Article 16(3);
- [(v) amounts resulting from the implementations of the system of "domaine public" subject to payment;]
- (vi) interests on investments of the resources mentioned in the precedings subparagraphs.

Article 18

Presentation and Auditing of Accounts

(1) The Society shall draw up at the end of each financial year an annual balance sheet and a management report. The annual balance sheet and the management report shall be submitted for approval to the yearly General Assembly which will discharge the Management Board of its responsibilities concerning the financial year in question.

(2) Financial operations shall be verified by the Accounts Committee assisted by the auditor appointed [by the Supervisory Authority].

Article 19

Duration

(1) The duration of the Society is set at . . . years from the date of the meeting of the first constituent General Assembly.

(2) On expiry of the current period, this duration shall be extended as of right for an identical period as provided in civil legislation.

Article 20

Dissolution

(1) The Society may be dissolved before the expiry of the period of . . . years provided for in Article 19(1) of this Statute.

(2) Dissolution shall be effected by voting by . . . % of the members present at the extraordinary General Assembly convened to deliberate solely on the expediency of the proposed dissolution [or by an act of the Supervisory Authority].

(3) In case of dissolution the net assets of the Society shall be allocated in conformity with the national legislation in force in (name of country).

Article 21

Transitional Provisions

The Society shall in all respects continue the work of of any body of authors previously authorized in (name of country) to carry on any action related to the functions specified in Article 3.

ANNEX 3

List of Participants

I. Experts

- | | |
|---|---|
| <p>M. Salah Abada
Directeur général
Office national du droit d'auteur (ONDA), Algérie</p> <p>Sr. Ricardo Antequera Parilli
Asesor Jurídico
Sociedad de Autores y Compositores de Venezuela (SAVCEM)</p> <p>Sr. Carlos Gómez Barrera
Director General
Sociedad de Autores y Compositores de Música (SACM), Mexico</p> <p>M. Ibrahim Mahmoud Loutfi
Directeur général et Conseiller juridique
Société des auteurs, compositeurs et éditeurs de la République arabe d'Égypte (SACERAU)</p> | <p>Mr. Dinker Rao Mankekar
Secretary General
Authors Guild of India</p> <p>Sr. Areal H. Naggi Brown
Director General
Sociedad Argentina de Autores y Compositores de Música (SADAIC)</p> <p>M. Ndéné Ndiaye
Directeur général
Bureau sénégalais du droit d'auteur (BSDA)</p> <p>M. Robert Sanding Beng
Directeur adjoint
Société camerounaise du droit d'auteur (SOCADRA)</p> <p>Mr. Simplicio U. Suarez
Corp. Secretary and Executive Director
Filipino Society of Composers, Authors and Publishers (FILSCAP)</p> |
|---|---|

II. Observers

International Non-Governmental Organizations

International Confederation of Societies of Authors and Composers (CISAC): J.-A. Ziegler; M. Pickering; L. J. Sturman; J.-M. Segovia Galindo; M. Martin; W. Duchemin; N. Rouart; M. Segréтин; D. de Freitas; R. Abrahams. **International Copyright Society (INTERGU):** G. Halla. **International Literary and Artistic Association (ALAI):** A. Françon; W. Duchemin. **International Writers Guild (IWG):** R. Fernay; E. Le Bris.

III. Secretariat

World Intellectual Property Organization (WIPO)

C. Masouyé (*Director, Public Information and Copyright Department*); G. Boytha (*Head, Division for Copyright Development Cooperation Projects*).

United Nations Educational, Scientific and Cultural Organization (UNESCO)

M.-C. Dock (*Director, Copyright Division*); A. Amri (*Head, International Copyright Information Centre*); A.M.N. Alam (*Legal Officer, Copyright Division*).

Seminar on Intellectual Property for Newly Independent African Countries

(Bissau, May 19 to 22, 1980)

In cooperation with the Organization of African Unity (OAU) and the United Nations Economic Commission for Africa (ECA), WIPO organized a Seminar on Intellectual Property for Newly Independent African Countries in Bissau from May 19 to 22, 1980, at the invitation of the Government of Guinea-Bissau and with the financial support of the United Nations Development Programme (UNDP).

The aim of the Seminar was to contribute to the implementation of resolution 32/19 adopted by the United Nations General Assembly at its 1979 session under the heading "Cooperation Between the United Nations and the OAU." Its purpose was to inform participants on the role of intellectual property in development and to present to them WIPO's development cooperation program and the benefits they could derive from it.

Of the eight newly independent African States invited (Angola, Cape Verde, the Comoros, Djibouti, Guinea-Bissau, Mozambique, Sao Tome and Principe, and the Seychelles) three, Angola, Cape Verde and Guinea-Bissau, were represented. In addition, the United Nations Educational, Scientific and Cultural Organization (UNESCO), the UNDP, the West African Economic Community (CEAO) and the Union of National Radio and Television Organizations of Africa (URTNA) were represented by observers. There were also fourteen observers from Guinea-Bissau. Invited lecturers from Brazil and Portugal and officials of WIPO introduced the working papers and led the discussions. The list of participants appears at the end of this note. The working languages of the Seminar were French and Portuguese.

The Seminar was opened by the Prime Minister of Guinea-Bissau. Mr. J. Gomes Cardoso, delegate representing the Ministry of Trade, Industry and Crafts of Guinea-Bissau, was elected Chairman.

After a lively discussion, in which the relevance to development of national systems of intellectual property and international cooperation in that field was fully explored, the participants adopted a vote of thanks to the host Government and the following recommendation:

Recommendation

The participants at the Seminar on Intellectual Property for Newly Independent African Countries, meeting at Bissau from May 19 to 22, 1980,

- Having noted the role that industrial property and literary and artistic property can play in their development,
- Wishing to see the newly independent African countries organize themselves efficiently in those two fields,
- Taking into account WIPO's technical-legal assistance program in favor of developing countries,

1. *Recommend the Governments of the newly independent African countries to take the following measures:*

- (a) train intellectual property personnel;
- (b) draw up and promulgate national laws on industrial property and literary and artistic property;

- (c) set up the structures needed to implement those laws;
- (d) participate more extensively in the activities of WIPO and consider the possibility of acceding to the Convention establishing that Organization (WIPO Convention);
2. *Recommend WIPO*
- (a) to increase its assistance to the newly independent African countries and, in particular,
- (b) to make available to them, as far as possible, a larger number of training fellowships,
- (c) to consider, with the assistance of the OAU, ECA and UNDP, the organization of further seminars to enable them to acquire a better understanding of those aspects of intellectual property that could not be discussed in depth at Bissau;
3. *Noted with satisfaction* that WIPO plans to organize, for all African countries, a seminar on industrial property at Khartoum and, jointly with Unesco and ILO, a seminar on copyright and neighboring rights at Lomé;
4. *Appreciated* at the Seminar the cooperation existing between WIPO, OAU and ECA, which could be extended to other African organizations, such as the CEAO;
5. *Noted with satisfaction* the offer made by the National Institute of Industrial Property of Brazil to contribute to WIPO's program of assistance in their favor.

List of Participants

I. States

Angola: A. Fernandes Junior; M.M. Sousa Monteiro Oliveira e Silva. **Cape Verde:** V. V. Benros de Melo Duarte (Mrs.). **Guinea-Bissau:** *Delegates:* J. Gomes Cardoso; L. Gomes; H. Proença Mendes Tavares; *Observers:* U. d'Avila Branco (Mrs.); P. Kanfome; L. A. Ventura; F. J. de Castro Fernandes; A. A. Duarte; M. L. Buscardine (Mrs); D. Mendoga; R. J. Dias Cabral; B. Correia; J. M. Jaquite; S. Arsenic (Mrs.); M. M. Mendes; L. Ferreira Monteiro; L. A. Ramosa Monteiro.

II. United Nations Organizations

United Nations Educational, Scientific and Cultural Organization (UNESCO): A. Amri. **United Nations Development Programme (UNDP):** A. Tchitov.

III. Intergovernmental Organizations

West African Economic Community (CEAO): M. Maiga.

IV. Non-Governmental Organizations

Union of National Radio and Television Organizations of Africa (URTNA): A. Marzouki.

V. Invited Speakers

A. C. Bandeira (Brazil); A. M. Pereira (Portugal).

VI. WIPO and Cooperating Organizations

World Intellectual Property Organization (WIPO)

K.-L. Liguier-Laubhouet (Mrs.) (*Deputy Director General*); I. Thiam (*Director, External Relations and Development Cooperation Policy Division*).

Organization of African Unity (OAU)

M. Diouf (*Head, Cultural Section, Addis Ababa*).

United Nations Economic Commission for Africa (ECA)

Y. Diakite (*Professeur IDEP, Dakar*).

ARGENTINA

Accession to the WIPO Convention

The Government of the Argentine Republic deposited, on July 8, 1980, its instrument of accession to the Convention Establishing the World Intellectual Property Organization (WIPO).

The Convention Establishing the World Intellectual Property Organization will enter into force, with

respect to the Argentine Republic, three months after the date of deposit of its instrument of accession, that is, on October 8, 1980.

WIPO Notification No. 113, of July 8, 1980.

Berne Union

ARGENTINA

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

The Government of the Argentine Republic deposited, on July 8, 1980, 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, with a declaration to the effect that its accession shall not apply to Articles 1 to 21 and the Appendix.

Articles 22 to 38 of the Paris Act (1971) of the said Convention will enter into force, with respect to the Argentine Republic, three months after the date of this notification, that is, on October 8, 1980.

Berne Notification No. 99, of July 8, 1980.

National Legislation

DENMARK

I

Copyright Act, 1961

(Act No. 158, of May 31, 1961, as amended by Act No. 174, of March 21, 1973,
and Act No. 240, of June 8, 1977) *

CHAPTER I

Subject Matter and Scope of Copyright

1. The person producing a literary or artistic work shall have copyright therein, be it expressed in writing or in speech as a fictional or a descriptive representation, or whether it be a musical, dramatic or cinematographic work, or a work of fine art, architecture, applied art, or expressed in some other manner.

Maps and drawings and other works of a descriptive nature executed in graphic or plastic forms shall be considered as literary works.

2. Within the limitations specified in this Act, the copyright shall carry with it the exclusive right of disposal of a work by producing copies thereof and by making it available to the public, whether in the original or in an amended form, in translation, adaptation into another literary or artistic form or into another technique.

The recording of the work on devices which can reproduce it shall be considered as a production of copies.

The work is made available to the public when it is performed in public, or when copies of it are offered for sale, lease or loan, or otherwise distributed to the public or publicly exhibited. The performance of a work at a place of business before a large group, otherwise regarded as being not open to the public, shall also be considered as a public performance.

3. Both in copies of the work and when it is made available to the public, the author is entitled to be mentioned by name in accordance with the requirements of proper usage.

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 section cannot be waived except in respect of a use of the work which is limited in nature and extent.

4. The person translating, revising or adapting a work, or converting it into some other literary or artistic form, shall have copyright in the work in the new form, but his right to control it shall be subject to the copyright in the original work.

Copyright in a new and independent work created through the free use of another work shall not be subject to the copyright in the work of which use has been made.

5. A person combining works or parts of works, to create a literary or artistic composite work, shall have copyright therein, but his right shall not limit the copyright in the individual works.

6. 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. Each of the authors, however, may bring an action for infringement.

7. Unless stated otherwise, the author shall be considered as the person whose name or generally known pseudonym or signature is indicated in the usual manner on copies of the work, or when the work is made available to the public.

If a work is published without the author being indicated in accordance with the foregoing paragraph, the editor, if named, and otherwise the publisher, shall act on behalf of the author until the latter is named in a new edition of the work or notified to the Ministry of Cultural Affairs.

8. A work is considered disseminated when, with the consent of the author, it has been made available to the public.

It is considered published when copies of the work have been lawfully placed on sale or otherwise distributed to the public.

* Revised English translation furnished by the Danish Ministry of Cultural Affairs.

9. Acts, administrative orders, legal decisions and other official documents are not subject to copyright.

10. Protection under the Act on Designs does not preclude copyright.

Photographs do not enjoy protection under this Act but are protected according to the rules in the Act on Rights in Photographic Pictures.

CHAPTER II

Limitations on Copyright

11. Single copies of a disseminated work may be produced for private use, but must not be used in other ways.

This provision does not entitle anyone to engage other persons to copy applied art or sculptures or to produce artistic reproductions of other works of art; nor does it entitle the construction of architectural works.

12. Archives, libraries and museums may be permitted by Royal Decree, under conditions stipulated therein, to make photographic copies of works for use in their activities.

13. Buildings may be altered by the owner without the consent of the author, for technical reasons or with a view to their practical utilization. Articles of everyday use may be altered by the owner without the consent of the author.

14. It is permitted to quote from a disseminated work in accord with proper usage and to the extent required for the purpose.

With the same limitation, it is allowed to reproduce, in connection with the text in critical and scientific treatises or works of popular science, any previously disseminated works of art or works such as are mentioned in the second paragraph of section 1. If two or more works by the same author are reproduced in a work of popular science, the author is entitled to remuneration.

15. Disseminated works of art may be reproduced in newspapers and periodicals in connection with the reporting of current events. This does not apply, however, to works created with a view to reproduction in newspapers and periodicals.

16. Minor parts of literary or musical works, or short works of this nature, may be reproduced in a composite work consisting of works of a large number of authors compiled for use in divine services or education, when five years have elapsed from the year of their publication. Artistic works, and the works mentioned in the second paragraph of section 1, may also be reproduced in connection with the text when five years have passed from the year of

their dissemination. Works created for use in education may not be reproduced without the consent of the author in a composite work compiled for teaching purposes.

The author shall be entitled to remuneration.

17. In educational establishments, it is permitted by means of sound or video recording to make copies of works broadcast by radio or television. Such copies may be used for educational purposes only. The Minister for Cultural Affairs may lay down rules on the storage and use of the recordings made.

The author shall be entitled to remuneration whenever works which are part of non-educational radio and television broadcasts are recorded.

Claims of remuneration can be advanced only through a joint negotiating and collecting institution, which has been approved by the Minister for Cultural Affairs and which represents the authors, performers, and record producers whose works and performances are part of the radio or television broadcasts referred to in the second paragraph. By this approval, it must be controlled that the institution is bound by its statutes to look after the rights specified in the second paragraph of any author having proof that he is entitled to remuneration in conformity with the said provision.

The provision laid down in the first paragraph shall not apply to cinematographic works which are part of the general cinema repertoire of feature films except where only brief excerpts of the work are shown in the telecast.

18. Copies in braille may be produced of published literary or musical works. Copies of these works may likewise be photographed for educational use in schools for the deaf and sufferers from speech impediments.

For loan to the blind, sufferers from defective vision, and others unable to read ordinary books due to their disability, it is permitted to make sound recordings of published literary works, when this is not done for commercial purposes. The author shall be entitled to remuneration for such recordings.

19. When a musical work is performed with a published text, it is permitted to reproduce the text in concert programmes and the like, for the use of the audience. The author shall be entitled to remuneration if more than 300 copies are produced.

A few published song texts may be freely reproduced in small song sheets produced solely for the use of participants in a particular meeting or series of meetings.

20. A published work, other than dramatic or cinematographic works, may be publicly performed in the following instances:

- (a) at divine services;
- (b) for educational purposes;

- (c) when the audience or spectators pay no admission charge and when the performance of works like those specified herein are not the main feature of an event conducted for other than commercial purposes;
- (d) on occasions at which the performer of the work or, if there are several, all the performers, receive no payment for their services and the performance is conducted in aid of charity, for popular education or for other purposes for the common good.

21. A film, a radio or television broadcast or a communication to the public by wire of a current event may include works which are performed or exhibited in connection with the event, to the extent the inclusion of the work forms a natural part of the rendering of the event.

22. If Danmarks Radio or the official radio services in the Faroe Islands or Greenland be entitled, under an agreement with an organization comprising a considerable proportion of the Danish authors of works of a certain nature, to broadcast the works of authors represented by the organization, then published works of a similar nature by authors not represented by the organization may also be broadcast against payment. This rule shall not apply to dramatic works, nor to other works the broadcasting of which the author has prohibited.

The provision in the first paragraph shall likewise apply when an author of an artistic work has transferred one or more copies of the work to other parties.

Radio or television organizations may record works for use in their broadcasts, on tape, film or other devices able to reproduce them, provided they have the right to broadcast such works. The right to make works so recorded available to the public shall be subject to the rules generally in force.

By Royal Decree, further rules can be laid down for the conditions under which such recordings are to be made and for their use and storage.

23. When a literary or musical work has been published, copies included in the publication may be further distributed or exhibited publicly. Sheet music, however, may not be distributed to the public through lease without the author's consent.

The rule in the foregoing paragraph does not restrict in any way the author's right to remuneration for books loaned to the public through the libraries, cf. statutory order No. 128 of April 16, 1959, section 7, subsection 2(b).

24. Proceedings in Parliament, municipal councils and other elected public authorities, in legal suits and in public meetings held to discuss public matters, may be reproduced without the author's consent.

However, the author shall have the exclusive right to publish a compilation of his own statements.

The rule in the foregoing paragraph also applies to discussions broadcast over the radio and television, during which public matters are discussed.

25. When an author has transferred one or more copies of an artistic work to other parties, or when the work has been published, the transferred or published copies may be further distributed and exhibited publicly, except on television or by showing of films. The work may, however, be included in the production and showing of a film or a television programme if the rendering of the work is immaterial in relation to the substance of the film or the television programme.

Works of art included in a collection, or exhibited, or offered for sale, may be depicted in catalogues of the collection and in notices concerning the exhibition or sale. Works of art may also be depicted when they are permanently situated in a public place or road, but if the artistic work is the chief motif and its reproduction is used for commercial purposes, the author shall be entitled to payment unless the reproduction is for insertion in newspapers.

Pictures of buildings may be made freely.

26. The provisions of this chapter do not limit the author's rights under section 3, except as provided in section 13.

When a work is publicly reproduced according to the provisions of this chapter, the source shall be stated in accordance with the requirements of proper usage.

Without the consent of the author, the work may not be altered more extensively than is required for the purpose of the reproduction.

CHAPTER III

Transfer of Copyright

General Provisions

27. Subject to the limitation of section 3, the author may transfer wholly or partially his right of disposal in the work. The transfer of copies shall not include a transfer of the copyright. If the author has transferred to another person the right to make the work available to the public in a specified manner or through certain media, the transfer does not give the assignee the right to do so in another manner or through other media.

Rules governing the transfer of copyright in certain special cases are provided in sections 32-42; these rules may be deviated from by agreement between the parties, as far as section 37 is concerned though not to the detriment of the author.

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

Neither may copyright be further transferred without consent, unless it is included in a business or a part thereof, and is transferred together with the business. The transferor remains liable for the fulfillment of the contract with the author.

29. (This section has been repealed. See Annex)

30. The usual rules of the inheritance laws shall apply to the copyright upon the author's death.

The author may give directions in his will, with binding effect for the spouse and issue, concerning the exercise of the copyright, or may authorize somebody else to give such directions.

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.

The same rule shall apply to works of art which have not been exhibited, placed on sale, or otherwise authorized for dissemination, and with respect to manuscripts.

Right to Public Performance

32. If the right to perform a work publicly has been transferred, the transfer shall be valid for a period of three years and shall not include exclusive rights. If exclusive rights have been agreed upon, the author himself may nevertheless perform the work or transfer the right of performance to others, if the right has not been exercised for three consecutive years.

These rules shall not apply to cinematographic works.

Publishing Contracts

33. Through a publishing contract the author transfers to 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 manuscript or other copy from which the work is being reproduced shall remain the property of the author.

34. The publisher shall have the right to publish one edition, which may not exceed 2000 copies of a literary work, 1000 of a musical work, and 200 of an artistic work.

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

35. The publisher shall publish the work within a reasonable time and shall see to its distribution to the extent made possible by marketing conditions and other circumstances.

36. If the 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 a complete manuscript or other copy for reproduction, the author may rescind the contract irrespective of whether he is entitled to do so according to the ordinary rules of Danish law. The same rule shall apply when the copies of the work are exhausted and the publisher has the right to publish a new edition, if he fails within one year to comply with the author's request to do so.

If the author is entitled to rescind the contract due to default or deficiency in the publishing of his work, he may retain the fee already received, irrespective of any claim by him for damages.

37. The publisher shall 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 fiscal year, the publisher shall submit to him, within nine months from the end of the year, a statement showing sales and other uses during the year and the number of copies remaining in stock at the end of the year.

After the expiry of this time limit, the author shall always be entitled to receive, at his request, a statement of the number of copies left in stock at the end of the fiscal year.

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 nor alter the character of the work.

39. The author shall not have the right to publish the work again in the form or manner stated in the contract, until the edition or editions contracted for are out of stock.

When fifteen years have elapsed from the year of the first publication of a literary work, the author shall be entitled to include it in an edition of his collected or selected works.

40. The provisions concerning publishing contracts shall not apply to contributions to newspapers and periodicals.

The provisions in sections 35-36 shall not apply to contributions to composite works.

Film Contracts

41. When a contract is 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 produce the film and make it available to the public within a reasonable time.

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 irrespective of whether he is entitled to do so according to the ordinary rules of Danish law.

The provision in the second paragraph of section 36 shall likewise apply.

42. A transfer of the right to produce a film of a literary or artistic work shall include the right to make the work available to the public by means of the film, and also the right to subtitle or to dub the film in another language.

This provision shall not apply to musical works.

CHAPTER IV

Duration of Copyright

43. Copyright shall extend until fifty years have elapsed after the year of the author's death or, in the case of the works mentioned in section 6, after the year of the death of the last surviving author.

44. When a work has been disseminated without indication of the author's name or generally known pseudonym or signature, the copyright shall extend until fifty years have elapsed since the end of the year in which it was disseminated. If the work consists of several concomitant parts, 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 section 7 during the course of the said period, or if it is established that he had died before the work was disseminated, the duration of copyright shall be as provided for in section 43.

CHAPTER V

Other Rights

45. The performance of a literary or artistic work by a performing artist may not without his consent

- (a) be recorded on gramophone records, sound tape, films or other devices by which it can be reproduced;
- (b) be broadcast directly over radio or television;
- (c) be communicated to the public by some other technical means to another group than that before which the artist is giving a direct performance.

When a performance has been recorded as stated in point (a) of the foregoing paragraph, such recording may not without the artist's consent be re-recorded until twenty-five years have elapsed from the year in which the performance took place.

The provisions of section 3, first paragraph of section 11, first paragraph of section 14, sections 17,

20 and 21, second and third paragraphs of section 22, and sections 27-31, shall likewise apply to recordings, broadcasts, communication and re-recordings as mentioned in the first and second paragraphs of this section.

Notwithstanding the rule in (b) of the first paragraph, the Royal Theatre may arrange for the Danmarks Radio to broadcast gala performances, or performances in honour of official visits, over sound radio and television.

46. A gramophone record or other sound recording may not be copied without the consent of the producer, until twenty-five years have elapsed from the year in which the recording was made. Re-recording shall be regarded as copying.

The provisions in the first paragraph of section 11, first paragraph of section 14, sections 17 and 21, and the second and third paragraphs of section 22, shall likewise apply.

47. When gramophone records or other sound recordings within the period stated in section 46 are used in radio or television broadcasts or when they are played publicly for commercial purposes, both the producer of the recording and the performing artists whose performances are reproduced shall be entitled to remuneration. If two or more performers have taken part in a performance, their claim of remuneration may only be made jointly. The rights of the performers may only be claimed through the producer or through a joint organization for producers and performers, approved by the Minister for Cultural Affairs.

The provisions in the first paragraph of section 14, and in sections 20 and 21, shall likewise apply. The rights of performers are similarly governed by sections 27-31.

The provisions in this section do not apply to sound films.

48. A radio or television broadcast may not be re-broadcast by other parties without the consent of the radio or television organization. Without such consent it may neither be photographed nor recorded on gramophone records, sound tape, film or other devices by means of which it can be reproduced, nor made available to the public for commercial purposes.

If a broadcast has been photographed or recorded as stated in the foregoing paragraph, it may not be re-recorded without the consent of the organization until twenty-five years have elapsed from the year in which the broadcast took place.

The provisions in the first paragraph of section 11, first paragraph of section 14, first and fourth paragraphs of section 17, sections 20 and 21, and the second and third paragraphs in section 22, shall likewise apply.

49. Catalogues, tables and similar productions in which a great number of items of information have been compiled, as well as programmes, may not be reproduced without the consent of the producer until ten years have elapsed from the year in which the production was published.

If productions of the said nature or parts thereof are subject to copyright or other protection, such may also be applied for.

The provisions in the first paragraph of section 11, and in sections 14 and 17, shall likewise apply. The same applies to the rule in section 9 though not as regards the programmes of the Royal Theatre.

50. Press communiqués supplied under contract with foreign news agencies or from correspondents abroad may not without the consent of the recipient be made available to the public through the press, the radio or other similar manner, within 12 hours after they have been disseminated in this country.

CHAPTER VI

Various Provisions

51. A literary or artistic work may not be made available to the public under a title, pseudonym or signature capable of causing confusion with a previously disseminated work or with its author.

If the dissemination of the latter work had taken place less than three months prior to the publication of the other work, the provision in the foregoing paragraph shall not apply unless it may be presumed that the confusion was intentional.

52. The name or signature of the artist may not be placed on a work of art by others than himself, unless he has given his consent thereto.

The name or signature of the artist may not in any case be added to a reproduction so that the reproduction could be confused with the original.

53. Even if copyright has expired, a literary or artistic work may not be altered nor made available to the public contrary to the first and second paragraphs of section 3, if cultural interests are thereby violated.

The Ministry of Cultural Affairs shall make a statement upon request as to whether a use of a work might be regarded as contrary to the rules given in the foregoing paragraph or constituting such infringement of section 3 as is liable to public prosecution, cf. the seventh paragraph in section 55.

54. If agreement cannot be reached on the amount of the remuneration as provided for under sections 14, 16, 17, 18, 19, 22, 25 and 47, either party may submit the question to a board specially

appointed by the Minister for Cultural Affairs. The board shall have the final administrative decision. The Minister shall lay down detailed rules for the activities of the board.

CHAPTER VII

Legal Proceedings

55. A person is liable to fine or in aggravating circumstances to ordinary imprisonment of up to three months, if he

1. disposes of a literary or artistic work in a manner described in section 2 and thereby infringes another person's exclusive right thereto,
2. violates the provisions in the first and second paragraphs of section 3, the second and third paragraphs of section 26, the first paragraph of section 28, the first paragraph of section 39, or directions given in accordance with the second paragraph of section 30.

The same penalties are impossible upon a person

1. who disposes of a performing artist's performance of a literary or artistic work in a manner described in section 45 without the necessary consent provided for therein,
2. who violates the provisions in the third paragraph of section 45, cf. section 3 and the first paragraph of section 28, or directions given in accordance with the third paragraph of section 45, cf. the second paragraph of section 30,
3. who violates the first paragraph of section 46, the first and second paragraphs of section 48, the first paragraph of section 49, or sections 50-53.

Similar penalties are furthermore impossible upon a person who, with a view to general distribution or public exhibition or performance, imports copies of works or of productions which are protected in accordance with Chapter V, when the copies are produced outside Denmark under such circumstances that a similar production in this country would have been contrary to the law.

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

The foregoing penalty rules shall not apply to negligence unless there is gross negligence.

Action against infringement shall be instituted by the injured party. After the author's death, action for violation of section 3, or directions given in accordance with the second paragraph of section 30 or in accordance with the third paragraph of section 45, cf. second paragraph of section 30, may also be brought by the heir to the author's right and by the author's surviving spouse, relatives in the ascending or descending line, or brothers and sisters.

After the author's death, action against violations of sections 3 and 51-52 may also be brought by the public prosecutor, though in the case of section 3 only when cultural interests may be considered to be injured by such violation.

Action for violation of section 53 shall be taken by the public prosecutor.

56. Damages for losses inflicted by one of the violations mentioned in section 55 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 and other injury.

In so far as it is deemed reasonable, the injured party may be awarded compensation even if the infringement was committed in good faith. However, in such cases the compensation may not exceed the profit gained by the infringement.

57. The courts may order that copies of works, or of the productions mentioned in Chapter V, which are produced, imported or made available to the public in this country, contrary to this Act or to directions given in accordance with the second paragraph of section 30, 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 able to serve the unlawful production or use of the work or the production.

Instead of seizure or transfer, it may be decided that the property shall be wholly or partially destroyed or in other ways made unserviceable for unlawful use. If due to the artistic or financial value of the copies, or if otherwise deemed reasonable in the circumstances, the courts may allow the copies produced to be made available to the public against damages and compensation to the injured party.

The provisions in this section shall not apply to persons who have acquired copies in good faith for private use.

Seizure or destruction of buildings may not be demanded.

CHAPTER VIII

Applicability of the Act

58. The provisions of this Act shall apply to:

- (1) works of Danish nationals or of persons domiciled in Denmark,
- (2) works first published in Denmark, or first published simultaneously in Denmark and in another country,
- (3) cinematographic works, the maker of which has his headquarters or is domiciled in Denmark,

- (4) buildings situated in Denmark,
- (5) artistic works incorporated in a building or other structure located in Denmark.

By application of the first paragraph, No. (2), of this section, publication shall be considered as simultaneous if the work is published in Denmark within 30 days of its publication in another country.

By application of the first paragraph, No. (3), of this section, the person or body corporate whose name appears on the cinematographic work in the usual manner shall, in the absence of information to the contrary, be presumed to be the maker of the said work.

The provision in section 42 shall not apply to cinematographic works the country of origin of which, according to the revised Berne Convention for the Protection of Literary and Artistic Works of July 24, 1971, is another country of the Berne Union than Denmark, which has acceded to the Convention of 1971. Special provisions on contracts concerning participation in the production of such cinematographic works may be established by Royal Decree.

The provisions of sections 51-53 shall apply to all works mentioned in section 1.

59. The provisions of sections 45, 47 and 48 shall apply to performances, sound recordings, and radio or television broadcasts which take place in Denmark. The rule in section 46 shall apply to all sound recordings. The right to remuneration pursuant to the second paragraph of section 46, cf. the second paragraph of section 17, shall apply only to sound recordings made in Denmark.

The provisions of sections 49 and 50 shall apply in favour of Danish nationals, persons domiciled in Denmark, and of companies or corporations under Danish management and domiciled in Denmark. Section 49 shall also apply to productions first published in Denmark.

60. By Royal Decree, the application of this Act may be extended to other countries conditional upon reciprocity.

By Royal Decree, the Act may also be made applicable to works first published by international organizations and to unpublished works which such organizations are entitled to publish.

61. The Act shall also apply to works and other productions which are already subject to copyright under older laws.

Copies lawfully produced before the coming into force of the Act may continue to be exhibited publicly and distributed, though the rule in section 23 on the leasing of sheet music shall be observed.

The protection against the copying of a sound recording, produced before the coming into force of the Act and which would be protected under older

laws, shall not be terminable earlier than October 1, 1966, notwithstanding the time limit specified in section 46.

62. The special privileges and prohibitions prescribed under older legislation shall remain in force.

63. This Act shall come into force on October 1, 1961.

Act. No. 149 of April 26, 1933, on the Rights of Authors and Artists is hereby repealed. The second paragraph of section 11 in Act No. 215 of June 11, 1959, on Radio Broadcasting is rescinded. The second paragraph of section 15 in the same Act is amended by substituting “and” for the comma after the work “such”, and by deleting the words “and concerning the commercial exploitation of matter broadcast in Greenland”. References in other laws to earlier laws on the rights of authors and artists shall apply to the corresponding provisions in this Act.

ANNEX

Pursuant to section 4 of Act No. 250 of June 12, 1975, amending the Civil Penal Code, the Law of Contracts, et al., section 29 of the Copyright Act has been repealed. Hereafter, the relevant provisions are contained in section 36 of the Law of Contracts and Other Legal Transactions in the Purview of the Law of Property:

36. An agreement may be wholly or partially disregarded where its implementation would be unreasonable or in violation of honest conduct. This principle shall apply to other legal transactions as well.

In any decision pursuant to the first paragraph, account shall be taken of the conditions attendant upon the conclusion of the agreement, the contents of the agreement, and any subsequent circumstances.

II

Act on Rights in Photographic Pictures, 1961

(Act No. 157, of May 31, 1961, as amended by Act No. 175, of March 21, 1973, and Act No. 239, of June 8, 1977) *

1. Within the limitations stated hereinafter, a person who produces a photographic picture shall have the exclusive right to make copies thereof by photography, printing, drawing, or other process, and to exhibit it publicly.

A picture produced by a process analogous to photography shall be considered to be a photographic picture.

The producer shall be designated as the photographer in this Act.

2. The photographer shall be entitled to be mentioned by name in accordance with the requirements of proper usage, both on copies of the picture and when it is exhibited publicly.

The picture may not be altered nor exhibited publicly in a manner or in a connection which is prejudicial to his reputation as a photographer.

3. When not otherwise stated, the person whose name, firm, or generally known signature is stated in the usual manner on copies of the picture, or when the picture is publicly exhibited, shall be deemed to be the photographer.

4. A photographic picture is considered disseminated when it is lawfully published, exhibited in public, or otherwise made available to the public.

5. Single copies of a photographic picture may be produced for private use, but they may not be used for other purposes.

6. By Royal Decree, and in accordance with the conditions prescribed therein, copies of photographic pictures may be made by archives, libraries and museums for use in their activities.

7. Disseminated photographic pictures may be reproduced in connection with the text of a critical or scientific treatise or a work of popular science, when this is done in accordance with proper usage and only single pictures by the same photographer are inserted. The photographer is entitled to remuneration for the reproduction if it is in a work of popular science.

Disseminated photographic pictures may be reproduced against remuneration in connection with the text of works intended for educational use.

Disseminated photographic pictures may also be reproduced against remuneration in connection with the reporting of events of general interest in newspapers.

* Revised English translation furnished by the Ministry of Cultural Affairs.

7.a. In educational establishments, it is permitted by means of video recording to produce copies of photographic pictures which are reproduced in television broadcasts. Such copies may be used for educational purposes only. The Minister for Cultural Affairs may lay down rules on the storage and use of the recordings made.

The photographer shall be entitled to remuneration whenever photographic pictures which are part of non-educational telecasts are recorded.

Claims of remuneration can be advanced only through a joint negotiating and collecting institution, which has been approved by the Minister for Cultural Affairs and which represents the photographers whose photographic pictures are reproduced in the telecasts referred to in the second paragraph. By this approval, it must be controlled that the institution is bound by its statutes to look after the rights specified in the second paragraph of any photographer having proof that he is entitled to remuneration in conformity with the said provision.

8. A film, a television broadcast or a communication to the public by wire of a current event may include photographic pictures exhibited in connection with the event or if they happen to appear as the background thereof, to the extent the inclusion of the work forms a natural part of the rendering of the event.

9. Danmarks Radio may show disseminated photographic pictures in its television broadcasts, unless the photographer has prohibited their showing. The photographer is entitled to remuneration.

This provision shall not apply to films.

10. When a photographer has transferred one or more copies of a photographic picture to another person, or when the picture has been published, the copies transferred or published may be exhibited publicly.

A disseminated photographic picture may also be exhibited publicly when this is done in connection with education. It may likewise be exhibited publicly in connection with a lecture if admission is free and the lecture serves no commercial purpose, or if the lecture is held solely in aid of charity, for popular education, or other purposes for the common good.

The provisions in the foregoing paragraph shall not apply to films.

11. If a television organization has the right to broadcast a photographic picture the organization may also, for use in its own broadcasts, record the picture on film or similar instrument. The right to show such a recorded picture in a television broadcast shall be subject to the rules otherwise in force.

By Royal Decree, further rules may be laid down for the conditions under which such recordings are to be made and for their use and storage.

12. Unless otherwise agreed, the right in a photographic picture which is executed to order shall be held by the person ordering it. However, the photographer may exhibit the picture in the usual manner for advertising purposes, unless the person who has commissioned it prohibits such display.

Even if it is agreed that the right in a photographic picture executed to order shall belong to the photographer, the person who has commissioned it may have the portrait reproduced in newspapers, periodicals or biographical writings, unless the photographer has expressly made reservations thereon.

The provisions in the two foregoing paragraphs shall not entail any limitation on the photographer's rights under section 2.

13. Photographic pictures may be freely used in the interests of the administration of justice and public safety.

14. When a photographic picture is reproduced publicly without the photographer's consent, as provided for under sections 6-10, the source shall be stated in accordance with the requirements of proper usage.

15. The right in a photographic picture shall continue until twenty-five years have elapsed after the end of the year in which the picture was produced.

16. If agreement is not reached as to the amount of remuneration, as provided for under sections 7, 7.a, and 9, either party may submit the question to a board appointed by the Minister of Education. The board shall have the final administrative decision. The Minister shall lay down detailed rules for the workings of the board.

17. A fine, or in aggravating circumstances ordinary imprisonment of up to three months, may be imposed upon a person who

- (1) produces copies of a photographic picture or exhibits it publicly and thereby infringes another person's exclusive right thereto,
- (2) violates sections 2 or 14,
- (3) offers for sale, or distributes to the public in some other way, copies of photographic pictures produced in violation of the Act.

Similar penalties shall be imposed upon a person who, with a view to general distribution or public exhibition, imports into Denmark copies of photographic pictures, when such copies have been produced outside Denmark under such circumstances that a similar production in this country would have been contrary to the Act.

If the offence be committed by a joint-stock company or the like, the enterprise as such may be imposed a fine.

The penalty rules provided for in the foregoing shall not apply to negligence, unless there is gross negligence.

Action against infringement shall be taken by the injured party.

18. Damages for losses incurred through one of the offences mentioned in section 17 may be claimed under the ordinary rules for compensation. A person who has committed a criminal infringement of the right of a photographer, or of a person who has commissioned a photograph, may be ordered by the courts to pay compensation to the injured party for mental suffering and other injury.

When deemed reasonable, the injured party may be awarded damages even if the offence was committed in good faith. In such cases, however, the compensation may not exceed the profit gained through the infringement.

19. The courts may decide that copies of a photographic picture, which are produced, imported or made available to the public in contravention of this Act, shall be seized in favour of the injured party or made over to him against payment not exceeding the production costs. The same rule shall apply to negatives, printing blocks and other material able to serve the unlawful production of the photograph.

Instead of seizure or making over, it may be decided that the property shall be wholly or partially destroyed or otherwise rendered unserviceable for unlawful use. If due to the artistic or the financial value of the copies, or if otherwise deemed reasonable in the circumstances, the courts may permit the copies produced to be made available to the public against the awarding of damages and compensation to the injured party.

The provisions in this section shall not apply to persons who have acquired photographs for private use in good faith.

20. This Act shall apply to photographic pictures, which are

- (1) produced by Danish nationals or by persons domiciled in Denmark,
- (2) first published in Denmark, or published in Denmark within 30 days of their first publication in another country,
- (3) incorporated in a building or other structure located in Denmark.

Conditional upon reciprocity, the applicability of the provisions in this Act may be extended to other countries by Royal Decree.

By Royal Decree, the Act may also be made to apply to photographic pictures first published by international organizations and to unpublished pictures which such organizations are entitled to publish.

21. The Act shall also apply to photographic pictures which would have been able to secure protection under the legislation hitherto in force.

Unless otherwise agreed, newspapers and periodicals may again use photographic pictures for which they had acquired the reproduction rights before the coming into force of this Act.

22. This Act shall come into force on October 1, 1961.

Act No. 131, of May 13, 1911, on Exclusive Rights in Photographic Works is hereby repealed.

General Studies

Employees' Rights in their Capacity of Authors

Th. LIMPERG *

1. The position of the author (or "maker") of works of literature, science and art, who does not work as an independently creative person but as an employee under permanent employment, deserves special attention for two reasons.

In the first instance we see that in the course of the years the social position of the author has gradually undergone a structural change. The formerly so well known picture of the freelance, in full freedom creating, author makes more and more way for the author, who lives in social dependence on principal or employer. He who tries to live as a freely creative artist can do so either in addition to a permanent employment (for example as a teacher or as an ordinary office clerk) or with aids from the government or supported by certain funds.

For a long time authors could operate and be considered as free — although small — enterprisers and try to strengthen their position by joining and forming a position of power, like composers and lyrics writers did in many countries (however, together with music editors). In some countries (such as in the Federal Republic of Germany) this encounters objections with regard to the cartel right. Hence, it is aimed to also include independent authors into the social legislation as "arbeitnehmerähnliche Personen" or "faux salariés" and if possible have them entered into collective labor agreements, which seems to be normal practice in, for example, the Federal Republic of Germany and in France.¹ These quasi employees will not be further considered.

2. A second reason for paying special attention to the position of the author-employee lies in the unmistakable fact that most of the authors perform their creative work under permanent employment and that many works of literature, science and art are realized within the framework of a labor agreement. We think of mass media such as newspapers and periodicals (with their editors, reporters, photo-

graphers, etc.), radio and television (with their reporters, designers, scene and costume designers, arrangeurs, etc.), the film industry, the industries (with their own design departments equipped with industrial designers, etc.), firms of architects, publicity agencies (with their designers of publicity, advertisements, posters and other publicity), institutions for scientific research, universities, and last but not least the government may be the biggest employer.²

The fact that, in order to earn a living, authors are more and more obliged to enter into the service of "grandes bureaucraties, publiques ou privées" added to the evolution of technics, makes that authors are robbed of one of their prerogatives: the check on the use of their works. This prerogative clearly distinguishes the freelance author from the author-employee.³

3. As far as the Netherlands is concerned, the part of the working population under permanent employment is estimated at about 80 percent, among whom we find many authors.⁴ Hubmann is of the opinion that the majority of the mental performances are achieved within the framework of a "Werk- oder Dienstvertrag"⁵ without separately estimating the share therein of the works made on instruction of third parties (commissioned work; Werkvertrag; louage d'ouvrage). Although the copyrights of the relevant works made on instruction are often mentioned in the relating legal acts in one breath with the works made under permanent employment, the former will not be further considered.

4. If we like to know by which laws the position of the author as an employee and the relationship between employer and author-employee is governed, we shall not only have to consider the Acts in the various countries but also the jurisprudence and last but not least the existing international treaties.

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Author's Note: The number before the point refers to the work according to the numeration indicated in the literature list, the number after the point to the page(s).

¹ 9.2/4; 10.53/54; 11.385/386; 22.17; 53.262 and 265.

² 9.1; 10.53 and 57; 18.112; 22.64; 25.13; 37.41; 47.1 and 27; 51.211; 52.37; 53.262; 59.69; 58.1.

³ 18.131.

⁴ 47.1.

⁵ 37.45.

5. To begin with the latter we should in the first instance think of the 1886 Berne Convention for the Protection of Literary and Artistic Works (lately revised at Paris in 1971) and of the 1952 Universal Copyright Convention (lately revised at Paris in 1971). As far as industrial designs are concerned, we also have to think of the 1883 Paris Convention for the Protection of Industrial Property (lately revised at Stockholm in 1967) but also of the 1925 Hague Agreement Concerning the International Deposit of Industrial Designs (lately revised at Stockholm in 1967 and provided with a Protocol in Geneva in 1975), which may be considered a "daughter" of the Paris Convention.

In all these treaties you will not find a definition of the concept of author or creator. We should, however, assume that according to the Berne Convention as well as to the Universal Convention the author (Urheber; auteur) is primarily or originally a natural person, viz., the person who has made the work or created it. This appears from the fact that the duration of the copyright is related to life and death of the author.⁶ As an author of a literary work, a work of science or art is considered, in the absence of proof to the contrary, the person whose name is mentioned in or on the work in the usual way.⁷

The Berne Convention and the Universal Convention, however, do not exclude the possibility that a legal person (juristische Person; personne juridique ou personne morale) can be entitled to the copyright, but according to Troller there may never be question of a primary or original authorship but only of a derivative one.⁸

With respect to cinematographic works, the Berne Convention provides for a special regulation in Article 14^{bis} which leaves it to the legislation of the member States to determine who has the ownership of copyright in a cinematographic work but does not exclude the possibility that the entitled is a legal person (for example, the producer), who in that case "shall enjoy the same rights as the author of an original work."

In view of the special complications related to "cinematographic works" and their copyright I will not enter into further details. The Hague Agreement only speaks of the applicant (déposant), who can be both the real industrial designer and his employer or principal, who may be a legal entity.⁹

6. Considered from a national point of view, the position of the author-employee and his relationship towards his employer is dominated on the one hand by the copyright (Urheberrecht; droit d'auteur) or the design copyright (Geschmacksmusterschutz; droit des

dessins et modèles) and on the other hand by the labor contract or employment contract (Arbeitsvertrag oder Dienstvertrag; contrat de travail ou de louage de services).

If it concerns the agreement between employees and employer, the stipulations of the law of contracts (Obligationenrecht; droit des obligations) are applicable. And in order to further complicate matters, I add that as far as the rights of authors-employees and those of employers abroad or, inversely, of foreign persons entitled in another country are concerned, difficult questions of international private law (internationales Privatrecht; droit privé international) may arise.

I will now confine myself to both main questions of the relating legal regulations: the copyright and the labor contract.

7. As objective of the copyright and of the legislation with regard to the copyright Dietz quotes:

... to grant to ... creatively active people protection for the results of their creation, i. e., works of literature, music and art.¹⁰

In view of this objective the structure of the copyright is twofold:

On the one hand, it serves the author in that, by granting him exclusive but transferable exploitation rights, he can participate proportionately in the financial exploitation of his work and thereby within the framework of what he can achieve in competition with other authors, ensure for himself a financial basis of subsistence for his creative activities or secure for himself an additional income. On the other hand, copyright must also ensure safeguarding of those intangible interests that associate the author with his work, under which it is not immaterial to him how his work is used when commercially exploited, in what form and under what circumstances, and who is in this process described as the intellectual father.¹¹

In other words, the copyright is an exclusive right with two aspects: patrimonial rights (Nutzungsrecht; droit patrimonial) and moral rights (droits moraux) for maintaining which two rights the author has a prohibitory right. I prefer such a concrete description of the objective to a vague and incomplete, and utilitarian description as can be found in the Constitution of the United States of America:

... to promote the progress of science and useful arts by securing for limited times to authors ... the exclusive rights to their respective writings.¹²

The principle of the copyright is "that only the creator of a work can be the author" (according to Dietz).¹³ We can only speak of a copyright if the work is characterized by originality: it must be

⁶ Art. 7 B.C.; Art. IV 2a U.C.C.; 18.128

⁷ Art. 15.1; 18.128.

⁸ 1.63/64; 60.II 814; 6 sub II 6.

⁹ Art 7.

¹⁰ 22.41.

¹¹ 22.66.

¹² 25.43; 46a 3/4.

¹³ 10.57; 22.41/64/65; 27.28; 37.110; 38.127/128; 47.31; 53.263; 58.6; 62.157; 63.483.

stamped with the personality of the author, who has given form and contents to the work.¹⁴

A rough-and-ready rule of the copyright is that the art value of a work does not play any part. Consequently, when establishing the relationship between author-employee and employer, there is no sense in distinguishing between works belonging to the "great" art, on the one hand, and "minor or utilitarian arts" (*œuvres mineures*), on the other hand, to which some authors reckon the applied arts (*arts appliqués à l'industrie*), architecture, publicity (*publicité*) and design (*dessins et modèles*).¹⁵ There is even less sense in taking the consequences of that distinction with regard to this relationship between author-employee and employer.

8. The labor law has in common with the copyright law that the employee is entitled to an income, in the form of a salary, which in principle is paid timewise and not in accordance with the outcome of the performance, as is normal procedure in case of an order.

Seen from the employer's point of view, the results of the employee's work are originally at his disposal with respect to their exploitation.

We speak of a labor agreement if the employee is subordinate to the employer and is obliged to perform certain services or make certain works for a salary.¹⁶ It always concerns future services or works, which implies that the employer takes certain risks and just has to see whether the works made by his author-employee prove to be satisfactory in the sense that they are exploitable, successful.¹⁷

9. It would not surprise anybody that, if an author enters into the service of an employer right from the start but also during employment and even after its termination, the question will arise how the prerogatives and powers of the author-employee are settled, on the one hand, and his rights and obligations by virtue of the labor agreement, on the other hand. They cannot but influence each other. There can even be question that the copyright and the labor right partly overlap and that a field of tension will arise between the two of them, as is often mentioned in literature.¹⁸

10. How has this controversy been solved in the different national legislations? The answer to this question can usually be found in principle in the relating Copyright Acts, since these Acts determine who is originally or primarily entitled to the copyright and in how far on behalf of third parties the

person entitled can claim or abandon the exclusive rights, to which he is entitled by virtue of the law, with regard to exploitation rights as well as to moral rights (*droits moraux*).

We apparently have to do with a wide variety, but we can, however, distinguish three systems.

11. Following the footsteps of the Tunis Model Law on Copyright for developing countries¹⁹ we can first of all distinguish between:

- (a) the Roman legal approach and
- (b) the Anglo-Saxon approach.

12. The Roman legal approach implies that

... copyright vests *originally in the author* of the work except where, in the employment contract ..., the author and the employer ... have agreed ... to the contrary, namely that original copyright vests in the employer ... The contracts ... could also provide simply for assignment of the author's rights to the employer ...²⁰

This Roman legal approach is followed by, among others: France, Italy, Belgium, Switzerland and the Federal Republic of Germany.²¹

13. The Anglo-Saxon approach implies that

... the rights vest *originally in the author* of the work but, unless otherwise agreed, they are *deemed by operation of the law to be transferred to the employer* ... This presumption of assignment causes the burden of proof to be reversed: in the event of dispute, it is for the author to prove that he has not transferred his rights.²²

14. Mostly we consider as belonging to the Anglo-Saxon approach the regulations in the Netherlands, the United States of America, Turkey, India, Ireland, Liberia and Canada, although this approach shows a remarkable difference with the Anglo-Saxon approach by determining that with regard to works of literature, science and art, made in the employment of another, *the employer* is considered to be the maker and consequently *the original copyright holder* (first owner) without there being question of a transfer by operation of the law. Parties can, however, agree otherwise.²³

¹⁹ Edition of Unesco and WIPO, 1976.

²⁰ 48.14 sub 60.

²¹ The original copyright remains vested in the employee in amongst others Albania, Argentina, Austria, Byelorussian SSR, Bulgaria, Burundi, Chad, Colombia, Congo, Costa Rica, Cuba, Czechoslovakia, Denmark, Dominican Republic, Egypt, Ethiopia, Finland, German Democratic Republic, Haiti, Holy See, Libyan Arab Jamahiriya, Madagascar, Monaco, Morocco, Norway, Portugal, Romania, Senegal, South Africa, Soviet Union, Spain, Sweden, Tanzania, Tunisia.

²² See 18.113/114; 40.47; 47.33; 51.211; 53.263/264; 61.107/108; 64.16/17.

²³ The employer is considered to be entitled to the copyright in Algeria, Australia, Bangladesh, Canada, Cyprus, Ecuador, Fiji, Ghana, Guatemala, Jordan, Kenya, Liberia, Malawi, Malaysia, Malta, Nepal, New Zealand, Pakistan, Peru, Philippines, Sierra Leone, Sri Lanka, Sudan, Thailand, Uganda, United Kingdom, United States of America, Zambia. See also 3.19-25; 39.15.

¹⁴ 22.33/34; 37.110.

¹⁵ 18.117/120; 53.262/265.

¹⁶ 10.57; 18.121-122; 25.22, 63 and 96; 32.131; 38.128; 44.15; 47.27; 49.38; 51.37; 58.2; 62.33.

¹⁷ 25.29; 31.232; 37.194; 58.33/34 and 49.

¹⁸ 10.57; 18.10-22; 36.102; 53 passim; 58.11; 61.107.

15. In both versions of the Anglo-Saxon approach a legal fiction is used: in the first case a *cessio legis* (legal assignment; cession de plein droit), in the second case a legal presumption (Vermutung, présomption légale). In both cases the end result will be the same: the real author is expropriated, a third party who was not familiar with the creation of the work is made the author, but the possibility always remains that the author-employee and the employer agree otherwise.²⁴

16. Only Brazil takes a special place by granting a joint copyright to the author-employee and the employer.²⁵

17. Finally, there is a third category of legal regulations, which usually consider the author-employee as the original and primary copyright holder, but which assign the copyright to the employer for certain organizations or institutions or for certain employers. This is usually effected by way of a *cessio legis*. These special regulations particularly concern the State or the authorities, in general public bodies, socialist organizations (for example, in Bulgaria, Czechoslovakia, Rumania, Yugoslavia), international bodies (for example, in Kenya, Nigeria, Tanzania, Zambia, South Africa), academies and other scientific or literary institutions (for example, in Nicaragua, Poland) and the employers exploiting newspapers, magazines and other periodicals (for example, in Chile, Greece, Mexico, Peru, Portugal) or in whose employ the employee takes photographs (for example, in Italy, Peru and Portugal). A single country also provides for an amusing note in the legislation. Peru stipulates:

The employees of historical archives and public libraries may not claim copyright in respect of historical documents which they may discover in them.²⁶

18. Meanwhile the establishment where the primary copyright is vested — either in the author-employee or in the employer — does not at all complete the picture of the factual situation in the various countries.

For, in the Roman legal approach and in the Anglo-Saxon approach, the Copyright Act leaves room for contractual provisions between employee and employer. These contractual provisions can first be found in the individual labor contracts, but also in collective contracts (Tarifverträge oder kollektive Verträge; contrats collectifs de travail) and possible contracts concluded in addition to the labor contract.

19. In the Roman legal approach provisions have to be made which of the exclusive rights the employee assigns to the employer and within which

limits. In various countries this can be effected in two ways: either by the *transfer* of certain powers with regard to the copyright, or by granting a *license*. In some countries (for example, the Federal Republic of Germany) transfer of copyright among the living by virtue of coercive law (zwingendes Recht; droit coercitif) is excluded and there can only be question of granting rights of exclusive use (Nutzungsrechte),²⁷ which can have the effect of a transfer.

20. In the Anglo-Saxon legal approach there is already question of an attribution or transfer of copyrights or of a *cessio legis* of rights of exclusive use to the employer, but usually the possibility exists for employer and employee to deviate by agreement. The objective of such an agreement will in general be to entirely or partly exclude the legal attribution or transfer of copyright or license and to reassign the relating sole rights to the author-employee.

21. We shall have to consider two factors.

In the first place the employee occupies a socially and economically weaker position towards the employer.²⁸ The author-employee insufficiently finds a strengthening of his position in joining other authors and the collectivization of their exploitation rights,²⁹ in which case we think in the first place of "collecting societies" as the Performing Right Society (PRS), GEMA, SACEM, SABAM, BUMA/STEMRA, ASCAP, BMI, etc. Such a network of "collecting societies" so far only exists for composers and lyrics writers, but has far from reached the same level of organization in the field of visual arts, photography and literary works.

Neither have all the authors-employees been able to get the support of a trade union (Arbeitergewerkschaft; syndicat ouvrier).³⁰

22. In the second place, it must be considered that these agreements are often very brief and can also be concluded orally. This creates a great extent of uncertainty on the contents of the concluded (labor) contract, the more so if you bear in mind that, on the one hand, it concerns a great number of powers with regard to the copyright and, on the other hand, an almost infinite variance of employer-companies with their specific interests. Lack of a written agreement can have one advantage: if, in the interest of the author, a written agreement is compulsory for disposing of any prerogative, the author remains the proprietor in case a written agreement fails. This does not exclude that if a written agreement is not compulsory, for example for granting licenses, there may be great uncertainty on the nature and extent of the powers assigned to the employer

²⁴ 12.425/426; 22.62; 25.45-53/54; 28.173; 29.82; 47.31; 49.36; 56.159; 61.107; 62.483.

²⁵ Law No. 5.988 of 14. 12. 1973, Art. 15.

²⁶ Law No. 13714 of 1961, Art. 16(d).

²⁷ Urheberrechtsgesetz (1965), § 29.

²⁸ 18.113; 22.17; 25.45/52; 41.13; 58.40.

²⁹ 22.17-19.

³⁰ 22.18; 58.4.

under license. In case of a dispute the court shall mostly have the final decision with regard to the contents of the agreement between parties.

23. It concerns a multitude of rights:

- (a) the right of reproduction (Vervielfältigung);
- (b) the right of distribution (Verbreitungsrecht);
- (c) the right of exhibition (Ausstellungsrecht) of a work not yet published;
- (d) the right of public communication (Recht der öffentlichen Wiedergabe; *exécution ou représentation publique*);
- (e) *droit de suite* (Folgerecht);

together forming the exploitation rights (Verwertungs- oder Nutzungsrechte; *droits patrimoniaux*).

24. At least equally important are the moral rights (*Persönlichkeitsrechte*; *droits moraux*):

- (f) the right of publication (Veröffentlichungsrecht; *droit de divulgation*);
- (g) the right of recall because of a change of opinion (*Rückrufrecht*; *droit de repentir*);
- (h) recognition of authorship (*Anerkennung der Urheberschaft*; *droit à la paternité*);
- (i) integrity of the work (*Entstellung oder Beinträchtigung*; *droit au respect*).

25. All these rights can be split up and put at the employer's disposal according to room (geographically), time and method of use. In practice it must be considered from case to case (and decided in court in case of dispute) whether and, in the affirmative, to what extent the employer is entitled to the rights or these rights have remained with or have been given back to the author-employee.

26. If the Court is called upon to interpret a labor contract between an author-employee and an employer, all legal aspects prescribed or admitted by the law and jurisprudence in the relating country shall be considered. Good faith and use can also play a part. However, in many countries the Court shall be inclined to restrictively explain the agreement in the interest of the author-employee with respect to the powers of the employer as far as the copyright is concerned.

In addition this can be implicitly or explicitly attuned to what has become known in the Federal Republic of Germany as the "Zweckübertragungstheorie."³¹ This useful doctrine implies that, for establishing the extent to which the employer has title to exploitation rights, the *objective* aimed at by the parties' mutual consent is decisive; in case of doubt it is assumed that the author-employee did not wish to grant more rights than necessary for achieving that goal.

³¹ 5.23; 10.58; 18.113; 22.63; 31.252; 37.111/112; 37.192; 53.265; 58.9/39/44, 103; 59.69; 63.483. See also *Urheberrechtsgesetz* (1965), § 43.

27. The outcome of such interpretations by the Court remains doubtful. How doubtful may, for example, appear from the study of the French jurisprudence. France belongs to the countries where the author-employee is entitled to the copyright (Article 1 of Law No. 57-501 on Literary and Artistic Property). Nevertheless Gautreau points out verdicts of French Courts accepting a "*transfert de plein droit*" according to which the same situation arises as in the countries of the Anglo-Saxon approach.

On the other hand, Robert Plaisant states two verdicts in which it is decided that a legal entity can only acquire copyright derivatively by a cession and that the employer must always supply written proof that he has acquired copyright in works made by his employee.³²

28. The exploitation rights and moral rights are summed up sub 23 and 24 in some global conceptions hiding many practical problems. As far as the exploitation rights are concerned, the following questions may arise:

- When does an exploitation right become effective: on signing the labor contract or on delivery of the work by the author-employee?
- What is legally right if the company of the employer operates other companies in addition to the firm for which the employee works?
- Has the employer the right to pass the work of the author-employee on to third parties against payment or free of charge?
- Is the employer allowed to also exploit the work in addition to the exploitation aim? (*merchandising*)
- Is the author-employee entitled to a special remuneration in addition to his salary, for example if this salary does not include an adequate remuneration for the right of use, according to the profit obtained by the employer in merchandising the work?³³
- Has the employer the exclusive right of exploitation and, in the negative, to what extent is the author-employee allowed to have free use of his work either for third parties or for himself?³⁴
- What is legally right if the employer does not merchandise the work and keeps it in the "fridge"?
- What is legally right if the employer disapproves of the work?³⁵
- Is the employee entitled to call the employer to account?³⁶

³² 32.129-133; 53.265/266.

³³ 18.119/123; 21.149; 25.87/88; 31.233; 32.165; 36.103; 53.266; 58.38/39,91; 59.70/71; 61.108; 62.483.

³⁴ 18.123; 25.98/107; 32.145; 58.41/42; 61.108.

³⁵ 38.129; 44.16; 49.41.

³⁶ 25.92.

- Has the employee access to the work delivered (*corpus mechanicum*)?³⁷
- In how far is the employer allowed to change, revise or translate the work?³⁸
- Is the author-employee allowed to require or prohibit mention of name?³⁹
- Is the employee allowed to perform additional duties not belonging to the agreement during the duration of the labor contract; is he obliged to offer to the employer work made in his spare time (not belonging to the agreement) and what is legally right with respect to uncompleted work?⁴⁰
- What is legally right after termination of the labor contract or if the employer ceases to exist?⁴¹

29. I could continue for a while by mentioning problems which might occur in practice, without even considering the questions apart from any copyright, such as freedom of opinion of the employee, censorship by the employer and the imposition of internal or external publication restrictions or a publicity ban, questions that are more applicable to certain employees (in particular those working for the mass media) than to other employees.

30. It is obvious that all such problems added to the uncertainty on the interpretation of the concluded labor contract can heavily affect the social security that the employee expects of his labor contract, as well as the control of the risks which an employer can run as an enterpriser.

Fortunately there are some methods to avoid, or at least to reduce, all these uncertainties.

31. First of all it is recommendable to conclude all agreements between author-employee and employer never only verbally but always in writing. Collective labor agreements as well as specimen of standard contracts (*Musterverträge* oder *Vertragsmustern*; *contrats types*) can also play a useful part.⁴²

I would like to draw the readers' special attention to the publications of Sabine Rojahn, which include amongst others a thorough analysis of the agreements prevailing in the Federal Republic of Germany with respect to press, radio and television and giving a good inventory of the existing problems and solutions found.

32. Furthermore, much uncertainty can be avoided by explicitly regulating the subsequent mat-

ter by law, as is the case in various acts with, for example, the publication contract, the cinematographic works and the "droits voisins." Also beneficial may be the experiences met in various countries where a legal provision exists with respect to employed inventors (*Arbeitnehmererfindungen*; *inventeurs salariés*) with the necessary jurisprudence.⁴³

In addition I would like to draw attention to an exemplary book entitled "Arbeitnehmer und Urheberrecht" by Prof. Dr. Robert Dittrich, an advice to the Austrian Bundesministerium für soziale Verwaltung printed and published in 1977. This book contains the draft for a legal provision of the matter preceded by a thorough analysis and inventory of the problems.

33. Finally an earnest attempt has been made with respect to harmonization of the legal provisions, also as far as the copyright in general and of the employee in particular is concerned. A start to this effect has been made by the Commission of the European Communities ex Article 100 of the EEC Treaty, who instructed Dr. A. Dietz to make an extensive report which he named "Copyright Law in the European Community" with many carefully considered suggestions with respect to the "rapprochement des législations" in the EEC countries. This harmonization is not superfluous in spite of the existence of the Berne Convention and the Universal Copyright Convention.

Each provision should have two poles. On the one hand, maintaining and respecting the relation between the author-employee and his work and, on the other hand, assuring utmost commercial negotiability of the work of the author-employee by the employer.⁴⁴ This harmonization does not concern a choice either in favor of the copyright (the author) or in favor of the labor law (the employer) but a weighing out of interests respecting the rights essential and indispensable to either party. It may be comforting that providing for or disposing of a right by one party can often be compensated by a financial, at least material compensation by the other.

34. I would dispose of one thing, namely, of the Anglo-Saxon approach, especially in the extreme form as amongst others applicable in the Netherlands, by originally granting to the employer the copyright of a work made under employment. The 1912 Copyright Act provides for this in Article 7 and the Benelux Act with respect to designs in Article 6 for the exclusive right of design related to the copyright.

³⁷ 25.92; 31.233; 58.143.

³⁸ 10.59; 25.104; 31.234; 37.111; 47.33; 58.116; 59.75; 61.109.

³⁹ 10.59; 25.101; 31.233; 37.112; 47.33; 58.109.

⁴⁰ 17.4; 25.79/82-83/93; 31.232; 32.243/245; 35.143/144; 49.41; 58.127/150-152; 59.74.

⁴¹ 25.31/117; 58.42-43; 61.109.

⁴² 9.8; 10.56. See also Herman Cohen Jehoram, *Copyright contracts*, Vol. 2 in the series *Monographs on industrial property and copyright law*, 1977.

⁴³ 2. passim; 13.

⁴⁴ 5.26; 8.116; 9.13; 10.58; 22.66; 25.22/29/42/63; 27.28; 44.28; 56.159; 58.12.

Dietz rightly states that

the ... rules appear to be contrary to the system, because ... they desert the basic intention of legal policy in copyright that only the creator of a work can be the author.⁴⁵

According to Troller this provision is contradictory to the Berne Convention.⁴⁶ The last few years practically all Dutch authors have commented adversely on maintaining this provision,⁴⁷ to which I agree. Without granting the copyright to the employer, he can fully benefit from the work of his employee. A license, explicitly or implicitly resulting from the labor contract, is sufficient to the employer. This is even the case when there is question of teamwork of employees. Also for acting in or out of court against third parties infringing the copyright or right of design, the employer needs not be the original copyright owner; he can contractually provide himself with the necessary powers. A further objection is that, owing to the fiction of the employer as creator-author, the employer is not only entitled to the exploitation rights but also to the moral rights.⁴⁸ In practice the employer will practically not be bothered if these rights are vested in the employee as the actual creator. Harm is also done to the employer and employee with respect to the duration of the copyright: the employer will normally be a legal entity, so that the protection period will lapse after 50 years (in the Berne Convention countries) after the first publication of the work, with the result that the time during which the employee is still alive after having created his work will be deducted from the normal protection period. From the point of view of international private law, the number of legal conflicts is considerably restricted by granting the copyright to the author-employee: the foreign author can claim protection independently of the Dutch law pursuant to the Berne Convention.⁴⁹ Finally: insurmountable objections and problems have not occurred in the countries of the Roman legal approach.

35. This applies to both the United Kingdom and the Netherlands. Unfortunately, according to the Whitford Report,⁵⁰ section 4, subsections (2), (3) and (4) should be maintained, although the British Copyright Council

... in its submissions to the Whitford Committee, urged that these presumptions were unreasonable and should be deleted.

Denis de Freitas concluded that "it apparently seemed unable to resist the pressure of the employer lobby and its recommendations" and calls the result "a typical British pragmatic compromise."⁵¹

All this reminds me of a statement of the British author Jeremy Philips:

Commentators on the common law have often pointed out that the Englishman has no rights. He does not need them if a remedy will be granted wherever he nurtures a complaint which all feel to be deserving of legal support and sympathy. The continental has his blanket protection — his rights; they are all of one size and do not fit the contours of the citizen.⁵²

At any rate, there is one English citizen who has got a cloth fitting his contours: mister employer!

⁵² J. Philips, Copyright: towards a positive approach? In RIDA 1974, No. 82, p. 37.

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⁴⁶ 49.36; 60.814. See also in the text sub 5.

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International Activities

International Federation of Musicians (FIM)

10th Ordinary Congress

(Geneva, May 5 to 9, 1980)

The International Federation of Musicians (FIM) held its 10th Ordinary Congress from May 5 to 9, 1980, at the ILO Headquarters in Geneva.

Delegates representing member organizations from the 23 following countries participated in the work of the Congress: Australia, Austria, Czechoslovakia, Denmark, Finland, France, German Democratic Republic, Germany (Federal Republic of), Greece, Hungary, Iceland, Israel, Italy, Japan, Mexico, Netherlands, Norway, Poland, Spain, Sweden, Switzerland, United Kingdom, Yugoslavia. The meeting was also attended by observers from the United States of America as well as from some of the above-mentioned countries.

Several intergovernmental or international non-governmental organizations had sent observers, including ILO, Unesco, the International Federation of Actors (FIA), the International Federation of Producers of Phonograms and Videograms (IFPI) and the International Federation of Unions of Audio-Visual Workers (FISTAV). WIPO was represented by Mr. S. Alikhan, Director, Copyright Division, and Mr. M. Stojanović, Head, Legislation and Periodicals Section, Copyright Division.

A report on the activities covering the period between the two congresses (September 1976 to April 1980) was submitted to the participants. The agenda included a number of items dealing with the problems raised in the field of copyright and neighboring rights and also with many questions of importance for the professional organizations of musicians and their contractual policy.

A great number of motions were submitted, either by the member organizations or by the Executive Committee of FIM. Some of the resolutions adopted are reproduced below.

At the end of its debates, the Congress reelected Mr. J. Morton (United Kingdom) as President, and Mr. Y. Akerberg (Sweden), Mr. P. Fürst (Austria) and Mr. H. Heusi (Switzerland) were elected Vice-Presidents.

Resolutions

Extension of protection time of copyright and performers' rights

Congress

- Expresses the view that all rights related to recorded performances should have a duration of at least 50 years;
- Calls upon the FIM Executive Committee to work for the realization of such duration;
- Recommends to member unions to pursue in their countries the objectives of this motion.

Taxes for the benefit of performers on sound and sound/video recording devices and blank cassettes

The FIM Executive Committee is directed to take appropriate steps, in close cooperation with FIA and with the assistance of international organizations such as ILO, Unesco and WIPO, to ensure that governments in countries where this practice has not yet been introduced issue regulations to the effect that, when sound or sound/video recording devices as well as blank cassettes are purchased, a tax (license fee or similar charge) must be levied for the benefit of performers.

Such tax (license fee, etc.), or an essential part of it, to be remitted to the professional performers' organizations for the purpose of preserving, safeguarding and promoting the professions they represent.

Utilization of remuneration for broadcasting and public performance of recordings

Congress declares that, in accordance with the guidelines agreed between FIM, FIA and IFPI, remuneration paid by IFPI or its national groups in respect of public and broadcast use of commercial sound recordings to performers or their organizations should be used in accordance with the decisions of those performers or their organizations and subject only to the restrictions contained in the 1976 Protocol to the 1954 FIM/IFPI Agreement.

Rights of employed performers

Congress declares itself as strongly opposed to the concept that the rights of an employed person should be automatically regarded as belonging to her/his employer.

Congress calls upon member unions to resist this concept, if necessary by seeking changes in legislation, in other cases by ensuring that agreements and contracts specify precisely the ownership of any rights.

Independent right for performing artists

Congress, recognizing the value of the performers' interests having in some countries formed part of a producers' or a joint right, now feels that the moment has come for the principal introduction of an independent performers' right. Such a right will enable the necessary voluntary cooperation with other right owners to be set up on a basis of equality.

Agreements with record producers

Congress welcomes the attention now being drawn by the Intergovernmental Committee of the Rome Convention to the importance of the protection afforded to performers by Article 7 of the said Convention. Congress calls upon member unions to ensure that, in their collective agreements and contracts with record producers, only those reproduction rights that are necessary for the production and sale of commercial sound recordings are ceded. Wherever practicable, the authority to grant or withhold reproduction rights for other purposes should be vested in the union. Congress calls upon member unions to inform the Secretariat of any deficiencies in national legislation that prevent this cause of action from being followed.

Remuneration for the broadcast and public use of commercial sound recordings

Congress believes that it is now desirable for international minimum standards to be established in respect of the levels of remuneration paid for the uses of commercial sound recordings for public performance and broadcasting. Congress requests the Executive Committee to discuss this possibility with the IFPI with a view to securing the adoption of this principle by the Intergovernmental Committee of the Rome Convention in a similar way to the "Guidelines" for collecting societies. Congress recognizes that such standards can only be advisory and minima, and emphasizes that they need to be expressed in such a form as not to derogate from FIM's main objective, which remains the control and limitation of public and broadcast use of commercial sound recordings.

Consequences of application of microtechnology

Congress calls upon the Executive Committee to set up a working group to study the consequences of introducing and applying so-called microtechnology for society in general, and for the performers in particular.

Conventions Not Administered by WIPO

Universal Copyright Convention as revised in 1971

Ratifications and Accessions

COSTA RICA

The instrument of ratification by Costa Rica of the Universal Copyright Convention as revised at Paris on July 24, 1971, was deposited with the Director-General of Unesco on December 7, 1979.

The Convention came into force, in respect of Costa Rica, on March 7, 1980.

CZECHOSLOVAKIA

The instrument of accession by Czechoslovakia to the Universal Copyright Convention as revised at Paris on July 24, 1971, and annexed Protocol 2 was deposited with the Director-General of Unesco on January 17, 1980.

The instrument of accession contained the following declaration:

"Acceding to the Convention we declare that the provisions of its Article XIII is contrary to the Declaration of the United Nations General Assembly on Granting Indepen-

dence to Colonial Countries and Peoples and that the provision of its Article XV on the obligatory jurisdiction of the International Court is contradictory to the principle of the international law on free selection of means for the settlement of disputes between States."

The Convention came into force, in respect of Czechoslovakia, on April 17, 1980. Protocol 2 entered into force on the same date.

HOLY SEE

The instrument of ratification by the Holy See of the Universal Copyright Convention as revised at Paris on July 24, 1971, and annexed Protocols 1 and 2 was deposited with the Director-General of Unesco on February 6, 1980.

The Convention came into force in respect of the Holy See on May 6, 1980. Protocols 1 and 2 came into force on the same date.

ITALY

The instrument of ratification by Italy of the Universal Copyright Convention as revised at Paris on July 24, 1971, and annexed Protocols 1 and 2 was deposited with the Director-General of Unesco on October 25, 1979.

The deposit of the instrument of ratification by Italy was effected under cover of a letter dated October 19, 1979, containing the following declaration:

"With reference to Article IV, paragraph 4, of the Universal Copyright Convention as revised at Paris on July 24, 1971, the Italian Government declares that within the Italian Republic protection to a work shall not be granted for a period longer than that fixed for the class of works to which the work belongs, in the case of unpublished works by the law of the Contracting State of which the author is a national, and in the case of published works by the law of the Contracting State in which the work has been first published.

If the law of any Contracting State grants two or more terms of protection, and a specified work is not protected

by such State during the second or any subsequent term for any reason, that work shall not be granted protection within the Italian Republic during the second or any subsequent term."

The Convention came into force in respect of Italy on January 25, 1980. Protocols 1 and 2 came into force on the same date.

PANAMA

The instrument of accession by Panama to the Universal Copyright Convention as revised at Paris on July 24, 1971, was deposited with the Director-General of Unesco on June 3, 1980.

The Convention came into force in respect of Panama on September 3, 1980.

Calendar

WIPO Meetings

(Not all WIPO meetings are listed. Dates are subject to possible changes.)

1980

September 22 to 26 (Geneva) — Governing Bodies (WIPO Coordination Committee; Assemblies of the Paris, PCT, TRT and Budapest Unions; Conference of Representatives of the Paris Union; Executive Committees of the Paris and Berne Unions)

October 6 to 10 (Geneva) — Locarno Union — Committee of Experts

October 14 to 17 (Geneva) — Permanent Committee on Patent Information (PCPI) — Working Group on Patent Information for Developing Countries

October 20 to 24 (Geneva) — Permanent Committee on Patent Information (PCPI) and PCT Committee for Technical Cooperation

November 17 to 21 (Geneva) — Berne Union and Universal Copyright Convention — Working Group on the overall problems posed for developing countries concerning access to works protected under copyright conventions (convened jointly with Unesco)

November 24 to 28 (Vienna) — Permanent Committee on Patent Information (PCPI) — Working Group on Search Information — Subgroup on IPC Class B 60

November 24 to December 5 (Geneva) — Nice Union — Committee of Experts

December 1 to 3 (Lomé) — Development Cooperation — African Regional Seminar on Copyright (convened jointly with Unesco)

December 4 and 5 (Lomé) — Development Cooperation — African Regional Seminar on Neighboring Rights (convened jointly with ILO and Unesco)

December 1 to 5 (Paris) — Permanent Committee on Patent Information (PCPI) — Working Group on Search Information — Subgroup on IPC Class G 01, etc.

December 8 to 12 (Geneva) — International Patent Classification (IPC) — Committee of Experts

December 15 to 19 (Paris) — Berne Union — Committee of Governmental Experts on Problems Arising from the Use of Computers (convened jointly with Unesco)

UPOV Meetings

1980

October 14 (Geneva) — Consultative Committee

October 15 to 17 (Geneva) — Council

November 10 to 12 (Geneva) — Technical Committee

November 13 and 14 (Geneva) — Administrative and Legal Committee

Other Meetings in the Field of Copyright and/or Neighboring Rights

Non-Governmental Organizations

1980

International Federation of Producers of Phonograms and Videograms (IFPI)
Council — October 13 to 15 (New Delhi)

International Confederation of Societies of Authors and Composers (CISAC)
Congress — November 3 to 7 (Dakar)

1981

International Confederation of Societies of Authors and Composers (CISAC)
Legal and Legislation Committee — April 27 to 29 (Sidney)

International Federation of Translators (FIT)
Congress — May 6 to 13 (Warsaw)

Internationale Gesellschaft für Urheberrecht (INTERGU)
Congress — September 21 to 25 (Ottawa)