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# Copyright

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## Contents





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World Intellectual Property Organization

PANAMA

**Accession to the WIPO Convention**

The Government of the Republic of Panama deposited, on June 17, 1983, 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 Republic of Panama, three months after the date of deposit of its instrument of accession, that is, on September 17, 1983.

WIPO Notification No. 122, of June 29, 1983.

# Regional Committee of Experts on Means of Implementation in Africa of Model Provisions on Intellectual Property Aspects of Protection of Expressions of Folklore

(Dakar, February 23 to 25, 1983)

**Report**

prepared by the Secretariat and adopted by the Committee

## I. Introduction

1. In pursuance of Resolution 5/01 adopted by the General Conference of Unesco at its twenty-first session (Belgrade, September-October 1980) and the decisions taken by the Governing Bodies of WIPO at their November 1981 sessions, the Directors General of Unesco and WIPO convened a Regional Committee of Experts on Means of Implementation in Africa of Model Provisions on Intellectual Property Aspects of Protection of Expressions of Folklore (hereinafter referred to as "the Committee"). The Committee met at the Regional Office for Education in Africa in Dakar from February 23 to 25, 1983. The meeting was organized in cooperation with the African Cultural Institute (ACI).

2. The purpose of the meeting was to consider the text of Model Provisions for National Laws on the Protection of Expressions of Folklore against illicit exploitation and other prejudicial actions, adopted by the Committee of Governmental Experts convened by the Directors General of Unesco and WIPO from June 28 to July 2, 1982, in Geneva, and to make suggestions on the possible means of implementation in Africa of the said text.

3. Experts from seven countries of the African region (Cameroon, Cape Verde, Ghana, Kenya, Senegal, Tanzania, Zaire) had been invited to participate, in a personal capacity, in the Committee. Three international non-governmental organizations, International Confederation of Societies of Authors

and Composers (CISAC), International Literary and Artistic Association (ALAI), Union of National Radio and Television Organizations of Africa (URTNA), attended the meeting as observers.

4. The list of participants appears as annex to this report.

### II. Opening of the Meeting

5. On behalf of the Directors General of WIPO and Unesco, Mr. C. Masouyé, Director, Public Information and Copyright Department, WIPO, and Mr. A. Amri, Copyright Division, Unesco, respectively, welcomed the participants at the meeting. Mr. E. Apronti, Deputy Director-General, African Cultural Institute, also welcomed the participants in the name of his organization.

### III. Election of Officers

6. On the proposal of Mr. Lungela, the expert from Zaire, Mr. Ndiaye, the expert from Senegal, and Mr. Athiambo, the expert from Kenya, were elected Chairman and Vice-Chairman of the Committee, respectively.

### IV. General Discussion

7. The Secretariat of the meeting introduced document UNESCO/WIPO/FOLK/AFR/2 containing the text of the model provisions, accompanied by a commentary. It recalled the background of the work which led to the adoption of this text. It also gave explanations about the contents and the scope of the said document.

8. The experts expressed their appreciation at the achievement. This document enables the national legislators to have at their disposal a model law intended to protect expressions of folklore. This is particularly important in view of the fact that such a protection at the legal level is not yet fully set up in Africa.

9. It was recalled that the matter has been dealt with by several African legislations (for instance, the laws of Cameroon, Congo, Guinea, Ivory Coast and Senegal), but mainly in a copyright approach. In this connection, it was noted that the system established in Senegal is based on the principle of a declaration (instead of a prior authorization) and that the amounts collected for the use of works of folklore were put into a fund managed by the Senegalese Copyright Office (BSDA) and used for cultural and social purposes in favor of intellectual creators.

10. It was stressed that legislations are insufficient if there is no implementation machinery allowing for a control in the use of expressions of folklore and for the collection of the appropriate fees. Such machineries already exist in certain African countries; it seems, however, highly desirable that they be set up everywhere.

11. The experts also underlined the scope of the use of the various forms of folklore, as with the development of technical means of reproduction and dissemination folklore is more and more fixed on a material support. The multiplicity of languages and dialects, especially in Africa, increased the richness and variety of folklore which is widely used. Furthermore, the experts emphasized that this utilization mostly goes beyond national frontiers and develops at the international level. The impact of a law being in principle limited to national territory, it is essential to search for means of establishing also protection in the international relations.

12. The Secretariat stated that, subject to the approval of competent bodies, Unesco and WIPO have provided in their future activities the study of means of ensuring an international protection of expressions of folklore. On the other hand, the Secretariat recalled that the model provisions do not offer any definition of the notion of folklore, in order to avoid possible conflict with relevant definitions which are or may be contained in other documents or legal instruments. For this purpose, the model provisions simply define the expressions of folklore and set up a system of protection against their illicit exploitation. Other problems, such as identification, conservation and preservation of folklore, call for a global and interdisciplinary study which is undertaken by Unesco.

13. Finally, the Secretariat reminded the experts that the purpose of model provisions was to provide national authorities with a model, not at all compulsory, leaving national legislators free to adopt the type of provisions which according to them is better adapted to the conditions existing in their own country. In this respect, the experts expressed the view that it is essential to see whether the model provisions are compatible with existing legislations, as well as with the Bangui Agreement of 1977 which constitutes at the African level an attempt to a regional solution.

### V. Discussion Section by Section

14. The general discussion was followed by an examination, section by section, of the model provisions and the relevant commentary, submitted to the Committee. The experts made a number of observations and suggestions, which are summarized as

follows. Before starting to discuss each provision, the Secretariat introduced the text and its commentary and informed the Committee of the results of the previous regional meetings held in Bogotá in October 1981 and in New Delhi in January/February 1983.

*Preamble*

15. Some experts stated that it is not in the legal tradition of African countries to have the legislations preceded by preamble; the proposed text may, however, be used to summarize the main reasons of the statutes.

*Section 1: Principle of protection*

16. One expert stressed that the expressions of folklore are not only developed and maintained in a given country but may also be created in that country. Consequently, he proposed that the scope of the protection include also the creation. Other experts noted that the notion of expressions of folklore covers both the expressions created in a community and those originating elsewhere but have been adopted, further developed or maintained through generations by that community. What is essential is the development of the expressions as defined in Section 2, the notion of development covering, as the case may be, the notion of original creation and the legislator remaining free to indicate it, expressly or not.

*Section 2: Protected expressions of folklore*

17. The experts preferred that the definition of the term "expression of folklore" be focused on the cultural heritage and not limited to the artistic heritage of the nation. It was underlined that the latter is a narrower notion and does not permit to include into the said definition traditional beliefs, scientific traditions and substance of legends, which should also be granted protection.

*Section 3: Utilization subject to protection*

18. The experts felt that it was not realistic to give to the community concerned the power of granting authorizations and that the African countries unanimously prefer the system of the competent authority.

*Section 4: Exceptions*

19. One expert was of the opinion that exceptions should also be provided for public bodies which utilize expressions of folklore, without making profit, for their own needs, for instance in the case of radio or television broadcasts. It was however remarked that there was no reason why broadcasting organizations should not comply with the regulations established for the protection of expressions of folklore. Another expert raised the question as to what would be the situation in which expressions of folklore were used in the form of postage stamps, the user being the State itself. Reference was also made to postcards reproducing expressions of folklore. In a general manner, it was considered abnormal that operations of a commercial nature may not fall under the regulations, which is a prejudice to the communities concerned.

*Section 5: Acknowledgment of source*

20. The experts noted that the requirement of the acknowledgment of source was conceivable only in the case of identifiable expressions and that in such a case the country from which the expressions utilized are derived could also be mentioned.

*Sections 6 to 8: Offenses, seizure and civil remedies*

21. The experts expressed the view that, in the case of seizure and damages, all sums collected should be assigned to the competent authority for cultural or social purposes.

*Section 9: Authorities*

22. It was unanimously agreed that it was more wise, economical and efficient to use the existing structures in Africa, in particular, the societies of authors, and to entrust them with the responsibilities provided for the competent authority. Some experts, on the other hand, considered that the cumulation of a competent authority with a supervisory authority would turn out to be complicated and could lead to administrative procedures of a cumbrous nature.

*Section 10: Authorization*

23. As a general rule, it was recommended that the fees collected should be used by the societies of authors in the most appropriate manner for the purpose of promoting national culture.

*Section 11: Jurisdiction*

24. No comments. The question as to which court is, in any given country, to be appointed, largely depends on the existing court system of that country.

*Section 12: Relation to other forms of protection*

25. The wish was expressed that if several means of protection are established under national laws they should be complementary rather than competitive.

*Section 13: Interpretation*

26. Some doubts were raised as to the usefulness of inserting this provision into the national legislation.

*Section 14: Protection of expressions of folklore of foreign countries*

27. The experts, referring to the Bangui Agreement adopted under the auspices of the African Intellectual Property Organization (OAPI), expressed the wish that this regulation be extended to the whole African continent. Furthermore, they stressed the need to elaborate an instrument protecting expressions of folklore at the international level.

**VI. Adoption of the Report**

28. The Committee unanimously adopted this report.

**VII. Closing of the Meeting**

29. After the usual thanks, the Chairman declared the meeting closed.

## List of Participants

### I. Invited Experts

Mr. Rautta Athiambo
Senior Assistant Registrar General, Mombasa, Kenya

Mme Vera Valentina Duarte
Juriste, Ministère de la justice, Cabinet d'études, de législation et de documentation, Praia, Cap Vert (absente)

M. Ndiangani Sibu Lungela
Directeur général, Société nationale des éditeurs, compositeurs et auteurs (SONECA), Kinshasa, Zaïre

Mr. E. R. Mukerebe
Cultural Documentation Officer, Ministry of Information and National Culture, Dar-es-Salaam, Tanzania (absent)

M. Ndéné Ndiaye
Directeur général, Bureau sénégalais du droit d'auteur (BSDA), Dakar, Sénégal

M. Samuel Nelle
Directeur, Société camerounaise du droit d'auteur (SOCADRA), Douala, Cameroun (absent)

Mr. Joseph H. Kwabena Nketia
Former Director, Institute of African Studies, University of Ghana, Accra, Ghana (absent)

### II. Intergovernmental Organization

**African Cultural Institute (ACI):** E. O. Apronti.

### III. International Non-Governmental Organizations

**International Confederation of Societies of Authors and Composers (CISAC):** J.-A. Ziegler. **International Literary and Artistic Association (ALAI):** J.-A. Ziegler. **Union of National Radio and Television Organizations of Africa (URTNA):** S. Ngom.

### IV. Secretariat

**World Intellectual Property Organization (WIPO)**

C. Masouyé *(Director, Public Information and Copyright Department).*

**United Nations Educational, Scientific and Cultural Organization (UNESCO)**

A. Amri *(Copyright Division).*

# Seminar on Intellectual Property Rights of Performers — WIPO/FLAIE *

(Buenos Aires, May 25 to 28, 1983)

Following the decisions taken by their respective governing bodies, the World Intellectual Property Organization (WIPO) and the Latin American Federation of Performers (FLAIE), with the cooperation of the United Nations Educational, Scientific and Cultural Organization (UNESCO), held a Seminar on the Intellectual Property Rights of Performers which took place in the Argentine Republic from May 25 to 28, 1983.

The purpose of the Seminar was to study in more detail all aspects of the intellectual property rights of performers, with particular emphasis on those aspects relating to the legal nature of such rights and the implications of their economic exploitation by other persons.

The participants included performers, administrators of associations of performers, administrators and officials of copyright administration societies, lawyers specializing in intellectual property rights and government officials, who had responded to the comprehensive invitation which the organizers had issued to the experts concerned.

Experts from eight Latin American countries (Argentina, Brazil, Chile, Colombia, Mexico, Peru, Uruguay and Venezuela) participated in the Seminar, including the Copyright Directors of Argentina and Mexico, observers from copyright and neighboring rights societies and specially invited speakers. WIPO invited eight of these experts to attend and bore their respective costs.

The sittings were held at the headquarters of the Argentine Association of Performers (AADI) that had kindly made its premises available.

After the words of welcome by the President of AADI, José Cacopardo, the Seminar was opened by Dr. Raúl Noailles, Under-Secretary of Justice of the Argentine Government, who stressed the importance of the meeting and emphasized the broad protection afforded to performers by the Argentine Intellectual Property Law (whose 50 years of existence was celebrated this year) and the advanced studies of his Government with a view to ratification of the 1961 Rome Convention.

The opening meeting was chaired by Mr. Pascual Naccarati, President of FLAIE, who delivered an address. Speeches were also made by the representatives of the Directors General of WIPO and of Unesco.

Dr. Jaime R. Echavarría, President of ACINPRO, Colombia, was elected Chairman of the Seminar and Dr. Jorge Costa, Director General of SOCINPRO, Brazil, was elected Deputy Chairman. The Secretariat of the Seminar was entrusted to Messrs. Claude Masouyé, Arcadio Plazas and Antonio Millé, representing WIPO, Unesco and FLAIE, respectively.

Representatives of the 12 Latin American societies of performers present at the meeting submitted reports on the status of performers' intellectual property rights in the eight respective countries from which they came.

Mrs. Hilda Retondo and Messrs. Hesiquio Aguilar de la Parra, Luis T. Gentil, Miguel Angel Emery, Claude Masouyé, Antonio Millé, Walter Moraes, Arcadio Plazas and Carlos Alberto Villalba submitted papers on various aspects of the subject, dealing with:

1. the legal nature of the intellectual property rights of performers who fixed their performances on a physical medium;

2. means of exploitation of the artistic work fixed on a physical medium and its specific problems;

3. Communication to the public of performances fixed on a physical medium.

Numerous participants put forward motions on aspects connected with the topics of the Congress, leading to exchanges of ideas and debates on both these motions and on the views expressed by the invited speakers and other participants.

The conclusions drawn from these exchanges of information and subsequent debates, as from the proposals made by the participating specialists, were recorded by the Secretariat, in consultation with the Chairman and Deputy Chairman, in a draft Report and in Recommendations. After having been examined at the closing meeting, on May 28, 1983, the final Recommendations reproduced below were adopted by the participants at the Congress.

## Recommendations

In view of the problems faced by performers in the Latin American region, the participants at the Seminar on Intellectual Property Rights of Performers, jointly organized by the World Intellectual Property Organization (WIPO) and the Latin American Federation of Performers (FLAIE), with the cooperation of the United Nations Educational, Scientific and Cultural Organization (UNESCO), have formulated the following Recommendations:

* The Spanish title was: *Congreso sobre los derechos intelectuales de los artistas intérpretes y ejecutantes.*

1. The experts in intellectual property rights should be encouraged to pursue and complete their studies on the intellectual property rights of performers as an independent institution within the general family of intellectual property rights. It is important for an improved understanding and application of the law concerning performers to emphasize the independence of such rights as regards their legal origin, although there exists a connexity or parallelism in their exercise.

2. Although the Latin American legal tradition is particularly rich in provisions protecting the economic and moral rights of performers, there are countries in the area in which such principles are as yet absent from positive law. The Congress strongly exhorts the governments of those countries to promote the appropriate studies and reforms to ensure that the performers concerned receive from the law the protection they both deserve and need. In the case of those countries where the existing provisions cannot be applied in the absence of adequate regulations or because of the ineffectiveness of the structures required to apply them, the Seminar exhorts them not to leave unused in practice the guarantees afforded by the legislator for lack of implementing provisions or of the administrative measures essential to give them effective force.

3. The work towards establishing and developing the doctrine undertaken by the federations and societies representing authors, producers of phonograms and performers in Latin America, continually supported by the indispensable collaboration and valuable assistance of WIPO and Unesco, demonstrates the importance and value of joint action in order to obtain more effective protection for all holders of intellectual property rights. As regards, in particular, the rights of communication to the public of phonograms and videograms, collected by a large number of the societies of performers and phonogram producers represented at the Seminar, the "cake theory" has proved an exaggerated concern that has been disproved by the facts.

4. Recognizing the great merit and special importance of the official publications — guides and glossary — of WIPO, which constitute a valuable source of legal interpretation and tend towards the consolidation of a common language linking the experts of the various countries, the Seminar agrees to recommend to WIPO that the future revisions and editions should include a larger number of terms currently used by specialists to refer to the specific problems connected with the intellectual property rights of performers.

5. Concerned by the unemployment resulting from technical progress and victims of the effects of piracy and private copying, the performers attach great importance to obtaining equitable and adequate remuneration for their performances fixed on a physical medium when the sounds and/or the images are exploited by communication to the public by any means whatsoever. The Seminar requests those legislators of the region that have not yet done so to promulgate the necessary provisions to enable the collection of such remuneration to be carried out in an effective and economic way.

6. The right of performers who are cinema or television actors as regards the exploitation of the mediums containing their performances does not enjoy the same level of practical application in the Latin American region as the right of their musician colleagues who have succeeded in instituting the collection of remuneration for communication to the public in a more complete and effective form. The Seminar appeals to the legislators to take into account this unjust situation and to promulgate corresponding legislation where such is lacking or pertinent regulations where their absence constitutes an obstacle to the full exercise of the rights afforded by the law.

7. Latin American experience shows that it is recommendable for the remuneration for communication to the public of performances fixed on a physical medium to be collected by entities set up and administrated by the performers themselves. It is therefore recommended that overall societies be set up grouping together all performers, actors and musicians. Unified collection with other sectors of owners of neighboring rights (such as the producers of phonograms) has given satisfactory results and has proved to be an advisable procedure for ensuring the full exercise of those rights in the countries in which they remain a dead letter.

8. Phonogram piracy affects not only international artists whose fixed performances are distributed and reproduced in a Latin American country but also turns into a force which stifles the creativity of authors and dries up the source of work for Latin American performers since the reduction in the resources of the phonogram producers of the area seriously restricts the development of new productions in the region. This effect, added to that of loss of sales and royalties in respect of recordings made in the region, constitutes a serious prejudice against which the performers should be protected by specific legislation and by accession of the countries of the region to the relevant international treaties.

9. The greater availability and the fall in prices of household sound and video recorders have led to an enormous increase in private copying for personal use, which the Latin American legislation considers lawful and which the various holders of intellectual property rights concerned are in no position to control or prevent. The Seminar recommends to the governments of the region that provisions be studied similar to those in force in the Federal Republic of Germany, Austria and Hungary, where appliances suitable for copying sounds or television signals and blank tapes intended for use with them bear a surcharge on the sales price, the proceeds of which are intended to compensate authors, performers and producers of phonograms and videograms for losses incurred due to the appropriation of their rights by those who make home copies.

10. Bearing in mind the concern expressed by those affected, it is recommended that the experts carry out an in-depth survey of the situation of those artists known as "musical arrangers" and "orchestrators" in order to define and acknowledge their corresponding rights in such a way that the product of their art may not be unlawfully appropriated or exploited by other persons and that in any event they receive the economic compensation to which they are entitled by law.

11. The 1961 Rome Convention has proved an effective instrument for guaranteeing at international level a minimum level of protection for the rights of performers. Ratification of this Treaty by 11 States of Latin America and the Caribbean has made its application particularly effective at regional level. For this reason, the Seminar appeals most strongly to the governments of the Latin American countries that have not yet done so to ratify or accede to this Treaty and to promulgate without delay the legislation which may prove necessary to harmonize national laws with its provisions.

# Conventions Administered by WIPO

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

### BARBADOS

### Accession to the Convention

The Secretary-General of the United Nations has informed the Director General of the World Intellectual Property Organization that the Government of Barbados deposited, on June 18, 1983, its instrument of accession to the International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations, done at Rome on October 26, 1961.

Pursuant to Article 25(2), the Convention will enter into force, for Barbados, three months after the date of deposit of the instrument of accession, that is, on September 18, 1983.

### PANAMA

### Accession to the Convention

The Secretary-General of the United Nations has informed the Director General of the World Intellectual Property Organization that the Government of the Republic of Panama deposited, on June 2, 1983, its instrument of accession to the International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations, done at Rome on October 26, 1961.

Pursuant to Article 25(2), the Convention will enter into force, for the Republic of Panama, three months after the date of deposit of the instrument of accession, that is, on September 2, 1983.

# National Legislation

CONGO

## Law on Copyright and Neighboring Rights

(No. 24/82 of July 7, 1982) *

*(Articles 49 to 107)*

CHAPTER 8

### Authors' Contracts

*Article 49.* Contracts by which an author or his successors in title authorize the performance or publication of his works shall be drawn up in writing, failing which they shall be void. The same shall apply to gratuitous authorizations to perform. Such contracts must state the type of exploitation and the mode of remuneration laid down by the author or his successors in title. They shall be subject to the law of civil and commercial contract. Transfer of authors' rights shall be subject to separate mention being made of each of the assigned rights in the instrument of assignment and to the field of exploitation of the rights being specified as to its scope, its purpose, the place and the duration.

*Article 50.* A publishing contract is a contract under which the author of a work or his successors in title assign to the publisher, under specified conditions, the right to manufacture or have manufactured sufficient number of copies of the work, on condition that the latter ensures publication and dissemination thereof.

*Article 51.* A publishing contract must be in writing. The form and mode of expression, the terms of execution, of publication and, where applicable, of the termination clauses shall be specified in the contract.

*Article 52.* The author shall be required to:

— guarantee the publisher the undisturbed and, except as otherwise agreed, exclusive exercise of the assigned right;
— have that right respected and defend it against any infringement;
— permit the publisher to fulfill his obligations and, in particular, deliver to him within the period of time stipulated in the contract the subject matter of the publication in a form permitting normal manufacture.

*Article 53.* The publisher shall be required to carry out or have carried out the manufacture of the work in accordance with the conditions stipulated in the contract, to effect no modification of the work without written authorization from the author, to have, unless otherwise agreed, the name, pseudonym or symbol of the author appear on each of the copies, to effect publication, unless agreed otherwise, within the period of time that is usual in the trade and to ensure permanent and sustained exploitation of the work and commercial distribution in accordance with the practices of the trade.

*Article 54.* The publisher shall also be required to provide accounts and appropriate proof to establish the accuracy of his accounts. Failing this, he shall be compelled to do so by the competent court.

*Article 55.* Notwithstanding Article 44, it shall be unlawful for the author to give a publisher a right of preference for the publication of his future works of a given kind in excess of five new works for each kind as from the date of signature of the publishing contract concluded for the first work, or within a period of five years from that same date for the completed production.

*Article 56.* A publishing contract shall end, independently of the cases set out in general legal pro-

visions or in the preceding articles, when the publisher carries out the complete destruction of the copies.

Termination shall take place automatically when, upon formal notice by the author fixing a suitable period, the publisher has not effected publication of the work or, should the work be out of print, its republication.

A work shall be deemed out of print if two orders for the delivery of copies addressed to the publisher have not been met within six months.

If, in the event of the author's death, the work is incomplete, the contract shall be rescinded as regards the unfinished part of the work, except where otherwise agreed between the publisher and the author's successors in title.

*Article 57.* The following shall not constitute publishing contracts within the meaning of Article 50:

— a contract for publication at the author's expense (*"à compte d'auteur"*). Under such contract, the author or his successors in title pay to the publisher an agreed remuneration against which the latter manufactures copies of the work in the quantity, form and according to the modes of expression specified in the contract, and ensures its publication and dissemination. Such a contract shall constitute an agreement for work by contract;

— a shares contract *("de compte à demi").* Under such a contract, the author or his successors in title commission a publisher to manufacture, at his expense and in quantity, copies of the work in the form and according to the modes of expression specified in the contract, and to ensure their publication and dissemination in accordance with the agreement reciprocally contracted to share the profits and losses of exploitation in the agreed proportion. Such contract shall constitute a joint undertaking.

*Article 58.* A stage performance contract is a contract under which the author of a work or his successors in title authorize a natural or legal person to perform such work under the conditions they stipulate.

*Article 59.* A general performance contract is a contract under which the professional body of authors referred to in Article 68 grants to an entertainment promoter the right to perform, for the duration of the contract, the existing or future works constituting the repertoire of such body under the conditions stipulated by the author or his successors in title. In the case referred to above, the requirements of Article 44 may be waived.

*Article 60.* An entertainment promoter who performs or has performed works protected under this Law shall be required to obtain prior authorization under Article 58 and to settle the corresponding royalties.

The contract shall be concluded for a limited duration or for a specified number of communications to the public.

Save where exclusive rights are expressly stipulated, the contract shall not afford to the entertainment promoter any exploitation monopoly. The entertainment promoter may not transfer the benefit of his contract without the formal consent in writing of the author or his representative.

The entertainment promoter must ensure that the public performance takes place under technical conditions which guarantee respect for the author's intellectual and moral rights.

The validity of the exclusive rights afforded by a playwright may not exceed five years. The interruption of performances for two consecutive years shall automatically terminate those rights.

The entertainment promoter shall be required to inform the author, his successors in title, or the professional body of authors referred to in Article 68, of the exact program of public performances and to supply a documented statement of receipts and to pay to them, at the agreed times, the amount of the stipulated royalties.

## CHAPTER 9

### Duration of Economic Rights

*Article 61.* The rights referred to in Article 28 shall be protected for the lifetime of the author and for 50 years after his death.

*Article 62.* In the case of a work of joint authorship, the rights referred to in Article 28 shall be protected for the lifetime of the last surviving joint author and for 50 years after his death.

*Article 63.* In the case of a work published anonymously or under a pseudonym, the rights referred to in Article 28 shall be protected until expiry of a period of 50 years as from the date on which such work has been lawfully published for the first time. However, Article 61 shall apply where the identity of the author has been revealed or leaves no doubt prior to the expiry of such period.

*Article 64.* In the case of a cinematographic work, the rights referred to in Article 21 shall be protected until expiry of a period of 50 years as from the making of the work or, if the work is made available to the public with the consent of the author

during such period, 50 years from its communication to the public.

*Article 65.* In the case of a photographic work or a work of applied art, the rights referred to in Article 28 shall be protected for 25 years as from the making of the work.

*Article 66.* In the case of posthumous works, the rights referred to in Article 28 shall belong to the author's successors in title for the period laid down in Article 61 if the work is disclosed during the period provided for in that Article. If the work is disclosed after the expiry of that period, the rights shall belong to the owners of the manuscripts or originals relating to the work, who effect publication or have it effected.

Posthumous works must be published separately except where they constitute only a fragment of a work previously published. They may not be combined with works by the same author that have been previously published unless the author's successors in title still enjoy the economic rights therein.

*Article 67.* In all cases, such periods shall run until the end of the year during which they would otherwise expire.

## CHAPTER 10

### Body of Authors

*Article 68.* The administration of the rights referred to in Article 28 and the defense of the moral interests referred to in Article 31 shall be entrusted to a professional body of authors of which the tasks and operation shall be laid down by decree issued by the Council of Ministers.

*Article 69.* This body shall be empowered, to the exclusion of any other natural or legal person, to act as an intermediary between the author or his successors in title and the users of literary and artistic works as regards the grant of authorizations and the collection of the relevant royalties.

This body shall administer on the national territory the interests of the various foreign societies of authors under treaties or agreements it shall be required to conclude with them. This body shall be answerable to the Ministry responsible for culture.

## CHAPTER 11

### Procedure and Sanctions

*Article 70.* Any dispute arising from the application of this Law shall be subject to the following provisions of this Chapter.

The professional body of authors referred to in Article 68 shall be empowered to take legal action to defend the interests that are its statutory responsibility, particularly as regards any litigation directly or indirectly concerning the reproduction or communication to the public of works covered by this Law.

*Article 71.* At the request of any author of a work protected by this Law, of his successors in title or of the professional body of authors, the examining magistrate taking cognizance of the infringement or the presiding judge of the *Tribunal de Grande Instance* (First Instance Court) shall be empowered in all cases, including where the author's rights are in imminent danger of infringement, to order seizure, at any place and even at times other than those specified in the Code of Civil Procedure, of the copies that constitute an unlawful reproduction of the work, already manufactured or being manufactured, and of the revenue from any unlawful reproduction, performance or dissemination of the work. He may also order suspension of any manufacture, reproduction or public performance, in progress or announced, that constitutes infringement or preparation for an infringement.

*Article 72.* Article 71 shall apply in the case of improper exploitation of national folklore or of a work in the public domain.

*Article 73.* The presiding judge of the *Tribunal de Grande Instance* may order, as part of the above acts, the prior deposit by the distrainer of an appropriate guarantee.

*Article 74.* Within 30 days of the making of the report of the seizure under Article 71, or of the date of the order referred to in that same Article, the distrainee or the garnishee may request the presiding judge of the *Tribunal de Grande Instance* to end the seizure or to limit its effects, or to authorize resumption of manufacture or of exploitation.

The presiding judge of the *Tribunal de Grande Instance*, acting in summary procedure, may, if he allows the petition of the distrainee or garnishee, order the petitioner to deposit a sum to be used as a guarantee for damages to which the author might be entitled.

*Article 75.* If the distrainer fails to submit the matter to the competent court within 30 days of the seizure, the ending of the seizure may be ordered by the presiding judge of the *Tribunal de Grande Instance*, acting in summary procedure, upon the demand of the distrainee or the garnishee, except where criminal proceedings have been instituted.

*Article 76.* Where the proceeds of an exploitation which are due to the author of an intellectual work

have been the subject of a seizure, the presiding judge of the *Tribunal de Grande Instance* may order payment to the author, as an allowance for maintenance, of a certain sum or of a specified proportion of the amounts seized.

*Article 77.* Unlawful reproduction on Congolese territory of works published in the Congo or abroad shall be punishable by a fine of between 100,000 and 250,000 CFA francs. The exportation and importation of unlawful copies shall be subject to the same penalty.

*Article 78.* The natural or legal person who fails to obtain prior authorization from the professional body of authors shall be deemed responsible for the unlawful reproduction or communication to the public and shall be liable to a fine of twice the due fees.

*Article 79.* Any reproduction, performance or dissemination by any means whatsoever of an intellectual work that infringes the rights of the author, as defined and governed by the law, shall also be deemed an infringing offense.

*Article 80.* The penalty shall be of between three months and two years imprisonment and between 250,000 and 500,000 CFA francs if it is proved that the guilty party has undertaken the acts referred to in the preceding article in an habitual manner. In the event of a further offense following a sentence given under the preceding sentence, the temporary or permanent closure of the establishments operated by the habitual infringer or his accomplices may be ordered.

*Article 81.* The guilty parties shall be further sentenced to confiscation of amounts equal to that portion of the receipts deriving from the reproduction, performance or unlawful dissemination, and to the confiscation of any equipment specifically installed for the unlawful reproduction and of all infringing copies or objects.

*Article 82.* The equipment or the infringing copies, as well as the receipts or the portion of the receipts subject to confiscation, shall be handed over to the author or his successors in title in order to indemnify them proportionately for the damages they have suffered. The remaining indemnity shall be settled by the ordinary channels where there has been no confiscation of equipment, infringing objects or receipts.

*Article 83.* In addition to the reports of the judicial police officials or policemen, the proof of the existence of a performance, or dissemination of any kind, or of any offense against Article 60, may be furnished by the statement of an agent designated by the professional body of authors referred to in Article 68.

### CHAPTER 12

#### Public Domain

*Article 84.* On the expiry of the terms of protection laid down by this Law, the authors' works shall fall into the public domain. The right of exploitation of works in the public domain shall be administered by the professional body of authors referred to in Article 68.

*Article 85.* The public performance and reproduction of such works shall require authorization from that body. The authorization shall be granted, in the case of a profit-making event, against payment of a royalty calculated on the gross revenue from exploitation. The rate of such royalty shall be equal to one-half that normally applied for works in the same category in the private domain. The provisions of Article 54 shall apply. The product of such royalties shall be devoted to cultural and social ends for the benefit of Congolese authors.

## TITLE IV

## Neighboring Rights

### CHAPTER 1

#### Authorization of Performers

*Article 86.* Without the authorization of the performers, no person shall do any of the following acts:

— the broadcasting of their performance, except where the broadcast is made from a fixation under Article 99 or is a rebroadcast authorized by the organization initially broadcasting the performance;
— the communication to the public of their performance, except where the communication is made from a fixation of the performance;
— the fixation of their unfixed performance;
— the reproduction of a fixation of their performance, in any of the following cases:
  (i) where the performance was initially fixed without their authorization;
  (ii) where the reproduction is made for purposes different from those for which the performers have their authorization;
  (iii) where the performance was initially fixed in accordance with Articles 97 to 99, but the reproduction alone is made for purposes different from those referred to in the said Articles.

*Article 87.* In the absence of any contractual agreement to the contrary or of circumstances of

employment from which the contrary would normally be inferred, the authorization to broadcast does not imply the right to permit other broadcasting organizations to broadcast or fix the performance, or to reproduce the fixation thereof.

The authorization to fix the performance and to reproduce the fixation does not imply the right to broadcast the performance from the fixation or any reproduction thereof.

*Article 88.* Once the performers have authorized the incorporation of their performance in an audiovisual fixation, Articles 86 and 87 shall have no further application.

*Article 89.* The protection under this Law shall subsist for 20 years computed from the end of the year during which the performance took place.

*Article 90.* The authorizations required by Article 86 may be given by the performer or by a duly appointed representative to whom he has granted in writing the right to give such authorization.

*Article 91.* Any authorization given by a performer claiming that he has retained the relevant rights or by a person claiming to be the duly appointed representative of a performer shall be considered valid unless the recipient knew or had good reason to believe that the delegation of powers was not valid.

*Article 92.* Any person who gives authorizations on behalf of performers without being a duly appointed representative, or any person who knowingly proceeds under such unlawful authorization, shall be guilty of a criminal offense punishable by a fine of between 100,000 and 150,000 CFA francs.

## CHAPTER 2

### Authorization of Producers of Phonograms

*Article 93.* Without the authorization of the producer of the phonogram, no person shall do any of the following acts:

— the direct or indirect reproduction of copies of his phonogram;
— the importation of such copies for the purpose of distribution to the public or the distribution to the public of such copies.

The protection under this Law shall subsist for 20 years computed from the end of the year during which the phonogram was published for the first time or, failing that, was initially made.

*Article 94.* As a condition of protecting phonograms under Articles 86 and 93, all copies in commerce of the published phonogram or of its container shall bear a notice consisting of the symbol Ⓟ (the letter "P" within a circle), accompanied by the year date of the first publication, placed in such a manner as to give reasonable notice of claim of protection. If the copies or their containers do not identify the producer or the licensee of the producer by carrying his name, trademark or other appropriate designation, the notice shall also include the name of the owner of the rights of the producer. If the copies or their containers do not identify the principal performers, the notice shall also include the name of the person who, in the country in which the fixation was made, owns the rights of such performers.

## CHAPTER 3

### Authorization of the Broadcasting Organizations

*Article 95.* Without the authorization of the broadcasting organization, no person shall do any of the following acts:

— the rebroadcasting of its broadcasts;
— the fixation of its broadcasts;
— the reproduction of a fixation of its broadcasts where the fixation, from which the reproduction is made, was done without authorization, or where the broadcast was initially fixed in accordance with Articles 97 to 99, but the reproduction was made for purposes different from those referred to in that Article.

*Article 96.* The protection under this Law shall subsist for 20 years computed from the end of the year in which the broadcast took place.

## CHAPTER 4

### Limitation of Protection

*Article 97.* The articles relating to neighboring rights shall not apply in the following cases:

— private use;
— the reporting of current events, provided that no more than short excerpts of a performance, of a phonogram or of a broadcast are used;
— use solely for the purposes of teaching or scientific research, subject to Article 98;
— quotations in the form of short excerpts of a performance, of a phonogram or of a broadcast, provided that such quotations are compatible with fair practice and are justified by the informatory purpose of such quotations;
— such other purposes as constitute exceptions in respect of works protected by copyright under this Law.

*Article 98.* However, licenses shall be issued by the Ministry responsible for culture for the reproduction of copies of phonograms where such reproduction is for the sole purpose of teaching or of scientific research, is made and distributed on the territory of the Congo, excluding any exportation of copies, and implies for the producer of the phonograms an equitable remuneration laid down by the Ministry, taking into account, in particular, the number of copies to be made and distributed.

*Article 99.* The requirements for authorization under Articles 86, 93 and 95 for making fixations of performances and broadcasts, for reproducing such fixations and for reproducing phonograms published for commercial purposes shall not apply where the fixation or reproduction is made by a broadcasting organization by means of its own facilities and for its own broadcasts, provided that:

— in respect of each broadcast of a fixation of a performance or of a reproduction thereof made under this Article, the broadcasting organization has the right to broadcast the particular performance;
— in respect of each broadcast of a fixation of a broadcast, and each broadcast of a reproduction of such fixation, made under this Article, the broadcasting organization has the right to broadcast the particular broadcast;
— in respect of any fixation made under this Article or any reproduction thereof, the fixation and any reproductions thereof are destroyed within the same period as applies to fixations and reproductions of works protected by copyright under Article 34 of this Law, except for a single copy which may be preserved exclusively for archival purposes.

## CHAPTER 5

### Procedure and Sanctions

*Article 100.* In a civil action brought by any natural or legal person whose rights under this Law are threatened with infringement or have been infringed, the following remedies shall be available:

— an injunction, upon such terms as the court may deem reasonable, to restrain infringement;
— compensation for any damages suffered as a result of the infringement, including any profits obtained by the infringer that are attributable to the infringement. If the infringement is found to have been malicious, the court may, at its discretion, award exemplary damages.

*Article 101.* Without prejudice to the remedies available under Article 100, any person who knowingly infringes, or causes to be infringed, the rights protected under this Law shall be liable to a fine of not more than 60,000 CFA francs for the first offense, and shall be liable to a fine of not more than 100,000 CFA francs or to imprisonment for not more than three months, or both, for each subsequent offense.

## CHAPTER 6

### Miscellaneous Provisions

*Article 102.* Nothing in this Law shall prejudice the right of natural or legal persons to use, in accordance with the conditions stipulated above, fixations or reproductions made in good faith before the date of its coming into force.

The preceding provisions on the protection of performers, producers of phonograms and broadcasting organizations shall in no way be interpreted as limiting or prejudicing the protection afforded to authors or to any natural or legal person under this Law or under any international copyright agreement to which the Congo is a party.

*Article 103.* All earlier provisions contrary to this Law, in particular Law No. 57-298, of March 11, 1957, and Ordinance 30-70, of August 18, 1970, shall be repealed.

*Article 104.* Subsequent instruments will set out the conditions for implementing this Law, particularly as regards Articles 28 and 70.

*Article 105.* Until a date to be set by the instruments relating to Article 68, the professional bodies of authors that are properly constituted shall provisionally exercise, within the framework of this Law, the activities entrusted to the professional body of authors referred to in Article 68.

*Article 106.* Contracts concluded prior to the entry into force of this Law shall automatically continue to be valid until their expiry and shall be governed by this Law.

*Article 107.* This Law shall be implemented as a law of the State and shall be published in the Official Journal of the People's Republic of the Congo.

SOVIET UNION

## Decree of the Presidium of the Supreme Soviet of the USSR

### Amendments and Additions to the Fundamentals of Civil Legislation of the USSR and the Union Republics

(of October 30, 1981)*

. . . . . .

29. In the third paragraph of Article 97, delete the words "or international agreements to which the USSR is a party" [and replace them with the words "entered into by the USSR"].

30. In the second paragraph of Article 101, replace the words "publishing [contract]" by the words "publishing [contract, contract] for the deposit of a manuscript."

31. In the second paragraph of Article 102, delete the words "or international agreements to which the USSR is a party" [and replace them with the words "entered into by the USSR"].

32. In indent (4) of Article 104, add after the words "utilization of" the word "published."

. . . . . .

* This Decree was published in *Vedomosti Verhovnogo Soveta* of the USSR of November 4, 1981, No. 44 (2118), text 1184. — WIPO translation.

# General Studies

## Copyright and the Architect

Hildebrando PONTES NETO *

Although undertaken without the theoretical tools of the specialist, this study aims to approach various aspects of copyright law that concern the professional architect in order that he shall be better informed of the protection to which he is entitled as the creator of an architectural plan.

In view of the scope of his activities, it is necessary for an architect to have better knowledge of his rights in order to react with assurance against usurpers, all of whom are convinced that their acts will remain unpunished.

Copyright is anchored in the Constitution. It is contained in Article 150(25) of the Federal Constitution, although with a somewhat restrictive wording:

> The right to use literary, scientific or artistic works shall belong exclusively to the authors thereof.

Although guaranteed by the Constitution and by substantive civil law, copyright demanded more adequate treatment in view of its considerable impor-

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tance to contemporary Brazilian society. This need was such that the lawmaker, although with some delay, finally incorporated in the body of laws that of December 14, 1973 (No. 5988) governing authors' rights.

Despite the gaps and imperfections which do exist in this Law, its application as from January 1, 1974, has nevertheless been of great value in dealing with copyright problems in Brazil. It has indeed markedly extended the scope of copyright, until then confined within the narrow limits of the 1916 Civil Code, between the law of contracts and the law of things, frozen in time and preserved from the effervescent reality of rapid and significant transformations.

In the new rules, the lawmaker has therefore fitted out Brazilian copyright with the needful modernity by making it more systematic and enabling it to fulfill its role in a more effective way, that is to say to protect the author of works of the mind. As a result of this revigoration of the law, the architect's field of activity now enjoys legal protection, as we shall see.

In the specific case of the architect's work, that is to say the creation of works of the mind, Law No. 5194 of December 24, 1966 (therefore predating Law No. 5988) governing the exercise of the professions of engineer, architect and agronomist, already laid down in Article 17 of Chapter II entitled "Responsibility and Authorship":

> Subject to the expressly agreed contractual clauses, *the authors' rights in a plan or project* relating to engineering, *architecture* or agronomy, *shall vest in the qualified person who has drawn it up.*
>
> (My underlining).

And in the following Article:

> *An original project or plan may only be altered by the qualified person who has drawn it up.*

Thus, since the entry into force of Law No. 5194, authors' rights in an architectural plan belong to its creator and he alone is entitled to modify it.

However, although this Law, whose purpose was a different one, established authors' rights for a specific case, Law No. 5988 dealing explicitly with copyright should have been much more clear and much more stringent. It was to a certain extent, in that it proposed adequate concepts and afforded protection to architects. This derives from the fact that the text includes architectural plans among the works that are creations of the mind:

> *Creations of the mind shall be considered intellectual works, regardless of their form of expression, and in particular:*
>
> . . . . . .
>
> (x) *plans*, sketches and plastic works relating to geography, topography, engineering, *architecture*, scenography and science.
>
> (My underlining).

Our lawmaker could not have proceeded otherwise. The concept of an architectural work, as materialized by its plan, is a means for the architect to express, with great feeling, human infinity in the form of a material object. It is above all an unmistakable personal factor which is the source of the author's power of creation. If it were not so, we would have no unity of space in the Romanesque churches nor the explosion of space in the Gothic churches. We would not know the universality of the cathedral at Brasilia.

The acknowledgment of an architectural plan as a protected work of the mind implies that its author is the owner of the moral and economic rights. Thus, Article 21 lays down that:

> The author is the owner of the moral and economic rights in the intellectual work created by him.

In other words, copyright may be looked at from two totally distinct and different angles, but which are nevertheless closely linked and in permanent correlation: the first, of a personal nature (personal rights) and the second, of an economic or pecuniary nature (economic rights). It is therefore a dual legal institution: personal rights and property rights.

Although the purpose of this study is not specifically to determine the difference between personal rights and property rights, an analysis, even a superficial one, of these concepts will definitely help in understanding what is covered by the moral and economic rights of the author in works of the mind. Thus:

> Personal rights, for their part, constitute the legal relationship by means of which the active party has the faculty of requiring from the passive party a given act, whether positive or negative.

And,

> . . . property rights may therefore be understood as the legal relationship under which the person entitled to derive, exclusively, from an object any advantages that object may procure.

(Barros Monteiro, Washington — *Curso de Direito Civil — Direito das Coisas* (Volume 3, p. 12, published by Saraiva).

The first unmistakably emphasizes the relationship between persons, and the second, the power exercised by an individual in respect of an object.

It has been observed often enough that the frequency of infringements concerning architectural plans has been increasing considerably without the architect, however, taking action to preserve the integrity of his work, neglecting the legal machinery which the lawmaker has made available to him. He thus loses the opportunity of creating objective conditions for putting an end to this undesirable practice.

Antonio Chaves defines moral rights as "the author's rights to have his 'authorship' recognized,

the 'intangibility' of his work preserved, that is to say that it may not be modified, adulterated, mutilated or adapted without his express consent. It is, in a way, the reflection of the most noble facet of his personality, that is to say his creative activity" (*Direito de Autor do Arquiteto, do Engenheiro, do Urbanista, do Paisagista, do Decorador*, RT 433/12).

Article 25 (indents (i) to (vi)) of Law No. 5988 defines the bases of moral rights as follows:

> The moral rights of the author are:
> (i) the right to claim authorship of the work at any time;
> (ii) the right to have his name, pseudonym or conventional mark indicated or declared as being that of the author when his work is used;
> (iii) the right to withhold publication of his work;
> (iv) the right to ensure integrity of the work by opposing any modifications or acts which might, in any way, be prejudicial to it or have an adverse effect on his reputation or honor as an author;
> (v) the right to modify the work before or after its use;
> (vi) the right to withdraw the work from circulation or to suspend any previously authorized form of use.

According to the text of the Law, the constituent elements of moral rights are the rights in respect of authorship, non-publication, integrity, modification, repentance:

*Authorship.* This is the author's right to demand that his name be associated with the work created. Thus, his name must be attached to the work at the time of its use, its reproduction or its performance. In addition, the author may prevent his name from being attached to his own work. It may further be noted that this right gives its owner the possibility of publishing a given work as being his own.

*Non-publication.* This is the author's exclusive right to decide whether or not his artistic work is to be disseminated. This is a personal right.

*Integrity.* This right gives the author the possibility of keeping his work intact by preserving it from any derogatory acts. Under this right, any modification of the work is prejudicial to the reputation or honor of the author.

*Modification.* This is the author's right to modify his work. The changes he wishes to make may be incorporated prior to or after utilization of the work.

*Repentance.* This is the right under which the author has the faculty of modifying a work he has already published or preventing its circulation by withdrawing it from the market.

It is useful to remember that, as a general rule, any infringement of the author's moral rights is prejudicial to the authorship, the integrity and the dissemination of the work.

In addition to these provisions — admittedly somewhat prominent — of Article 25 concerning moral rights, the lawmaker has taken care to insert in the Law a specific Article on the right of the author of an architectural plan to repudiate or not authorship of a design of a work that has been modified by the person carrying it out:

> *Article 27* — If the party commissioning a work which is carried out according to the architectural plan approved by him makes changes to it in the course of its construction, or after its completion, without the consent of the author of the plan, the latter may repudiate his authorship of the design of the work thus changed, in which case the owner no longer has the right to state, as a means of deriving benefit from it, that it was designed by the author of the initial plan.

This is therefore a right of repudiation. Since the Law gives the author the right to have his name indissolubly linked with his work and to prevent its integrity from being violated, he is therefore all the more entitled to repudiate that work where it has been modified without his consent.

It should be emphasized that Law No. 5194 already laid down in Article 18 that:

> A project or original plan may only be altered by the qualified person who has drawn it up.

And in the sole paragraph of that Article:

> Where the author of an original project or plan is not able or not willing to give his professional assistance, it having been proved that he has been approached, such project or plan may be modified by another duly qualified person who shall assume responsibility for the modified project or plan.

Whatever the modification to be made to the architectural plan, the consent of the author of that plan is required. In addition, where the original plan is not maintained, the architect has the right to repudiate his authorship of the design by preventing his name being attached to a plan which differs from that which he has created.

Thus we see that Article 27 of Law No. 5988 has supplemented Article 18 of Law No. 5194 and its sole paragraph.

Following Article 27, which may be considered as an addition, an "extra," to the architect's moral rights, the lawmaker has laid down in Article 28 that:

> The moral rights of the author shall be untransferable and imprescriptible.

The fact that the author assigns his economic rights in the given work does not mean that his moral rights have been assigned. By their very nature, these are untransferable and imprescriptible.

I have already said that copyright is a dual legal institution: personal rights and property rights. Although these two rights are different, they are nevertheless intimately bound together. In accordance with Articles 29 and 30, any obvious infringement of moral rights irreversably extends to the economic rights:

The author shall have the right to use, to profit by and to dispose of the literary, artistic or scientific work, and to authorize third parties to use it or profit by it, wholly or in part.

The authorization of the author of the literary, artistic or scientific work shall be required for any form of use such as: . . .

Antonio Chaves tells us that: "the pecuniary right, on the other hand, is that which enables the author to derive all benefits of an economic nature which the work may offer in return for its communication to the public for the purposes of economic gain" (*Ibid.*, RT 433/19). He also tells us that "the architect has the right of exclusivity, that is to say that only he may derive pecuniary benefit which his work may offer and oppose it being used by others for remuneration of any kind without his consent or without his rights having been assigned" (*Ibid.*, RT 433/19). This is tantamount to saying that there is no difference between the economic rights and economic exploitation of the work by its author.

In Law No. 5988, the lawmaker has set out the manner in which the author may assign his rights in the work he has created:

*Article 52* — Copyright my be wholly or partly assigned to third parties by the author or his successors, either globally or individually, personally or through the intermediary of a representative invested with special powers.

*Sole paragraph.* If assignment is total, it shall include all the rights of the author with the exception of those which are of a personal nature, such as the right to make modifications in the work, and those which are expressly excluded by the Law.

The subject matter of the assignment will remain limited to the economic rights since the moral rights are untransferable and imprescriptible.

Furthermore, Article 53 sets out how the assignment of the author's rights is to be made:

Total or partial assignment of copyright, which shall always be made in writing, shall be deemed to be effected for a valuable consideration.

(1) In order to be binding on third parties, the assignment must be recorded alongside the registration referred to in Article 17.

(2) A separate mention shall be made, in the instrument evidencing the legal transaction, of the rights which are assigned and the conditions of their exercise with respect to duration, location and, if the assignment is made for a valuable consideration, the price or the remuneration involved.

Assignment is an act by which the assignor (owner of the right) transfers to the assignee the right to exploit the work. The conditions, price, duration and place must be stated in such a way that they create not the slightest doubt in the mind of the author of the work. Assignment is in all cases deemed to be made against payment.

What does Article 17 of Law No. 5988 say?

In order to protect his rights, the author of an intellectual work may register it, according to its nature, with the National Library, the Music Academy, the Academy of Fine Arts of the Federal University of Rio de Janeiro, the National Cinema Institute or the Federal Council of Engineering, Architecture and Agronomy.

The verb used by the lawmaker implies no constraint; on the contrary it suggests a faculty. According to the wording of the text, the architect is not required to register his work with the Federal Council of Engineering, Architecture and Agronomy. Had the lawmaker's intention been otherwise, he would certainly have specified that the author of a work of the mind could only ensure his rights by having it entered in the register.

Moreover, Article 53(1) lays down that, in order to assert his assignment in respect of third parties, it must be recorded alongside the registration referred to in Article 17. On reading this paragraph we see that its wording does not go in the same direction as that of Article 17. Indeed, the verb used does not suggest a faculty but an obligation, an order: "the assignment must be. . ."

It may be inferred from comparing the above provisions that the assignment contract which guarantees the rights of the architect will have no value in respect of third parties unless the assignment is entered alongside the registration.

Resolution No. 260 of April 21, 1979, lays down rules for registering works of the mind with the Federal Council, on the basis of the provisions of Article 17 of Law No. 5988 and, it may be said, adding those of Article 53(1). Thus, its Article 1 reads:

Authors of plans, sketches and plastic works relating to geography, topography, engineering, architecture, scenography and science *may* register them with the Federal Council of Engineering, Architecture and Agronomy.

Thus the word "may" has been used here. Consequently, this Resolution also means that architects are not obliged to effect the registration.

Finally there remains an explanation which definitively excludes any idea of the apparent contradiction between the provisions referred to. The contract concluded between the parties does indeed render it public: the parties of course know what the subject matter is. However, for the assignment to be valid in respect of third parties, it must always be recorded alongside the registration. These two elements (registration and recording alongside it) are, in my view, a means of strengthening copyright.

In addition, Article 36 of Law No. 5988 comprises a further important, truly striking element, that is to say:

If an intellectual work has been created in compliance with an official duty or under an employment contract or a contract for services, the copyright, unless otherwise agreed, shall belong to both parties as laid down by the National Copyright Council.

In order to obtain a better understanding of the practical consequences of the application of this article, it is necessary to look at the system which governs relations between the principal (the employer) and the agent (the employee).

The principle governing the contractual links is that of the free will of the parties. This constitutes a system.

The situation is different in the case of labor law and of administrative law; relations between parties are governed by the provisions and principles of copyright as a result of the works of creation that emerge.

"From this point of view, a work created on commission may be attached to the provision of services in general or to the accomplishment of works or of a function" (*Direito de Autor na Obra de Encomenda*, p. 117).

It is true that this provision has brought forth, justifiably I feel, many varied criticisms of the ambiguity of its wording and, above all, of its lack of precision.

When studying the part to be played by the National Copyright Council, Eduardo J. V. Manso held that "it is responsible for dividing up this right in order to determine the extent to which each of the co-owners of a particular right are the holders and in respect of which parts of the work each of them may exercise his right" (*A obra de autor assalariado*, p. 11).

According to Carlos Alberto Bittar: "The text is open to criticism also on account of its inaccuracy: indeed, it does not say to whom the economic rights in a commissioned work belong, contrary to innumerable specialized laws (*Direito de Autor na Obra Feita sob Encomenda*, p. 127).

For José de Oliveira Ascensão, Article 36 has set up a main rule and a further subsidiary rule: "The main rule is that of predomination of free will and is contained in the terms 'unless otherwise agreed'." It is for the parties to decide freely the way in which they are to deal with the matter of copyright. That is the main rule.

"Failing an agreement, the work belongs to both parties. In that way a situation is created which is similar to that of a work of collaboration. But, since neither one nor the other party can be situated in the same way in respect of the work, their prerogatives differ also. We are therefore faced with a kind of imperfect symbiosis, a scheme of co-ownership under which it will be extremely difficult to determine the rights belonging to each party."

Ascensão refers to the third rule, which supplements the preceding one, that is to say: "It is for the National Copyright Council to decide the conditions under which the right belongs to the parties."

I feel that the solution adopted by the lawmaker is extremely unfortunate. Indeed, the law should state who is the owner of the commissioned work. However, this responsibility has not been assumed and copyright has been divided up between the principal and the agent. As a result, application of the article in question has led to difficulties and the National Copyright Council has been entrusted with attempting to solve the problems arising therefrom.

In his work entitled *Nova Lei Brasileira de Direito de Autor*, Antonio Chaves comments on Article 36 in the following way (page 31): "Thus, the copyright law has departed from the criterion applied by the Code of Industrial Property (Law No. 5772 of December 21, 1971) of which Article 40 attributes inventions to the employer alone, together with any improvements made during the term of a contract expressly concerning research in Brazil, when this requires inventive activity on the part of the salaried person or of the person providing services or again where it derives from the very nature of the activity that is the subject matter of the contract."

Furthermore, for Newton Silveira ("A Nova Lei dos Direitos do Autor," in *RT Informa*, No. 99, of February 15, 1974, p. 22) "there is no reason to deal differently with the rights in an employee's work or the work of a person providing services where this concerns an invention or a creation of an artistic nature."

Literary, artistic and scientific works differ from inventions and industrial designs. The first mentioned have an aesthetic purpose, the latter, an industrial purpose.

José Carlos Tinoco Soares holds that "we cannot allow copyright to be integrated into industrial designs, or vice versa, in view of their quite separate purposes" ("Regime das Patentes e dos Royalties," *Revista dos Tribunais*, 1972, SP).

According to Carlos Alberto Bittar, "an individual work by a salaried author is the work he produces against remuneration paid specifically for the elaboration of a work of the mind which the principal (that is to say employer, whether natural or legal person, of private or public law) assumes the risks of reproduction and dissemination and furnishes the material means needed for carrying out the work. As a general rule, the principal sets up the plan and guides the execution.

The author works under the direction of the employer, complying with the rules specific to the enterprise and following its guidelines.

The parties are bound by a contract or by a working relationship, depending on whether it is a private or public enterprise, and the principles and rules of copyright which apply to the work produced are respected" (*Direito de Autor na Obra Feita sob Encomenda*, pp. 143 and 144).

The author is engaged under a contract to create, against a salary, a work on behalf of the employer. It is therefore natural that the economic rights be af-

forded to the latter since he pays his employee for the purpose of obtaining the fruit of his work.

Referring to various systems (United Kingdom, France, United States, Portugal, Bulgaria, Morocco, Italy) which give the employer the right to use a work created in the execution of an employment contract, within the limits necessary to the normal activities of the enterprise, Eduardo J. V. Manso points out that this approach finds its justification in the theory of enrichment without cause. He emphasizes that it is supported by the general principle that the enrichment of one person should not cause the undue impoverishment of another. Thus, in the case of a work commissioned under an employment contract, it is for the employer to bear all costs of production, which he organizes himself and for which he makes available the physical means belonging to his establishment and the assets belonging to his property. Eduardo Manso also notes that "the employer often contributes to the work: he formulates ideas and draws up the plans, he carries out work of the mind, he supplies the means and the resources needed for its execution. It would therefore be contrary to the above-mentioned principle if the economic rights of the employer were not to be acknowledged since without his participation the work would not exist" (*Direito de Autor na Obra Feita sob Encomenda*, pp. 149 and 150).

"Thus, the writer, the composer, the poet, the draftsman, the architect, the novelist, or any other professional salaried person maintains the rights that are not included in the specific activity of the enterprise or which do not concern the particular use to which the work is to be put. In the case of an architect, the building enterprise may not subsequently use the plan that has been drawn up, without being authorized by the author and without remunerating him, for purposes other than those laid down in the corresponding contract" (*Ibid.*, p. 150).

When he uses a work that has been commissioned, the principal cannot be unaware of its purpose. It is therefore not necessary that the work in question be kept by the employee-author.

Emphasis should be laid on the importance of Articles 80 and 81 of Law No. 5988 of 1973.

> Unless otherwise agreed, the creator of an artistic work, by transferring ownership of the object which constitutes that work, assigns to the party acquiring it the right to reproduce it or display it to the public.
>
> Authorization to reproduce an artistic work by any process must be given in writing, and shall be deemed to be granted for a valuable consideration.

Although considered an artistic work (the above-mentioned Articles are contained in Chapter III of Law No. 5988 entitled: Use of Artistic Works), a work of architecture cannot comply with this rule by reason of its very nature.

In view of its special features, an architectural work differs, in my view, from an artistic work. Although it appears in an embryonic state in the plans, drawings and sketches, a work of architecture takes shape in the building of a house or other construction.

According to Eduardo Vieira Manso, "when a work of architecture is assigned without the reservation formulated in Article 80 of Law No. 5988, the right to reproduce it is assigned to the acquirer. If a second work of architecture is built using a reproduction of the work originally acquired, its owner will be free to reproduce it, and of course to exploit it, without the architect being able to oppose such act" (*Direito Autoral*, p. 61).

As regards the question of reproducing works of art located in public places, Article 49(i) *(e)*, which lays down that the reproduction of works of art located in public places does not constitute an infringement of copyright, has aggravated the situation of the architect's right of reproduction: for example, anyone may use the facade of a building embodying the work of architecture as an expression of plastic art.

*(WIPO translation)*

# Correspondence

## Letter from Italy

Mario FABIANI *

**Summary:** Introduction. 1. *Legislation.* Laws ratifying the international copyright and neighboring rights conventions — Amendments to national copyright law — Ratification of radio-telecommunications conventions. 2. *Freedom of radio and television broadcasting.* Problems of copyright protection. 3. *Case law.* Application of civil and penal measures of protection in respect of copyright. Their compliance with the Constitution. — Moral rights: *(a)* insertion of commercials during the television showing of cinematographic works; *(b)* changes to a work of contemporary history and damage to the honor and reputation of the author — Authors' economic rights: right of reproduction and of access to works of art — Subject of copyright: relationships between works of the mind, industrial designs and trademarks — Neighboring rights: the broadcasting organization's right in its own broadcasts; the limits of that right. 4. *The centenary of the Italian Society of Authors and Publishers* and the safeguarding of authors' rights against piracy.

For some tens of years, as from 1943, the "Letters from Italy" published in *Copyright* have borne the signature of Valerio De Sanctis. For me it is a great honor to continue this chronicle of copyright events in Italy. I have assumed this task at the suggestion of Valerio De Sanctis himself, and the editor of this review has been kind enough to agree to entrust this work to me. In beginning such a task, I wish to pay homage and bear witness to my respect for Valerio De Sanctis, whose merits are well known to all those concerned with and working in the field of intellectual property. Thanks to his authority in the subject, stemming from his great erudition and his lively mind, he has greatly contributed to the development of copyright both nationally and internationally.

This "Letter" will attempt to relate the significant events in copyright and neighboring rights that have taken place in Italy since 1977.

### 1. Legislation

As for new developments in legislation, we should first mention the laws ratifying international conventions. The effect of these ratifications has been to modify some of the provisions of the domestic Law No. 633 of April 22, 1941, for the Protection of Copyright and Other Rights Connected with the Exercise Thereof.

*Copyright Conventions.* Under Law No. 306 of May 16, 1977, the President of the Italian Republic was authorized to ratify the Universal Copyright Convention as revised in Paris in 1971. The Act entered into force in respect of Italy on January 25, 1980.

Italy also ratified the 1971 Paris Act of the Berne Convention for the Protection of Literary and Artistic Works.

The application of the revised Berne Convention, which entered into force in respect of Italy on November 14, 1979, was accompanied by the amendment of a number of provisions of domestic law, aimed at harmonizing it with the Convention.

Decree No. 19 of the President of the Republic of January 8, 1979, made the following innovations to Italian copyright law in order to adapt it to various rules of the Convention:

*(a)* Photographic works are protected under copyright. Following the amendment made by the 1979 Decree, "simple photographs" continue to be protected under the provisions on "connected" rights (Part II of the 1941 Law) for a term of 20 years, whereas "photographic works" are protected under copyright and enjoy a term of protection of 50 years as from the year in which the work was created. Practical questions could arise when making the distinction between "photographic works" and "simple photographs." The law gives no definition of these terms and jurisprudence will have to pronounce on this matter (for a judicial decision on the application of this new provision on photographs, see Milan Court, February 4, 1982, in *Il Diritto di Autore*, 1982, p. 273).

*(b)* The content of the author's moral rights as regards changes to his work has been extended by adding to Article 20 of the Law the words "any derogatory act in respect of the work." This new

* Professor, Member of the Permanent Copyright Committee to the Office of the President of the Council of Ministers of Italy.

wording of Article 20(1) of the Law consequently gives the author the right to object "to any distortion, mutilation or any other modification of the work and other derogatory action in relation to the said work, which would be prejudicial to his honor or reputation."

*(c)* The duration of rights of economic use of a cinematographic work was extended from 30 to 50 years from first public showing on condition that such showing did not take place more than five years after the end of the year in which the work was produced. Where that limit has been exceeded, protection lasts for 50 years as from the year following that in which the work was produced.

*(d)* Authors of original manuscripts are entitled to a percentage of the price of the first public sale of the manuscript as an assumed added value in respect of the original selling price (extension to manuscripts of the *droit de suite*).

*Neighboring Rights Conventions.* In the field of neighboring rights, Italy ratified the 1961 Rome Convention by its Law No. 866 of November 22, 1973 (the instrument of accession was deposited on January 8, 1975), and the 1971 Geneva Convention for the Protection of Producers of Phonograms Against Unauthorized Duplication of Their Phonograms. Ratification of this latter Convention required amendments to the provisions of domestic law governing the rights of producers of phonograms. Consequently, Ratification Law No. 404 of May 5, 1976, amended the following Articles of Law No. 633 of April 22, 1941:

*(a)* Articles 75 and 77 subjected protection of the producer's rights to the formality of depositing a copy of the phonogram. This formality is now deemed to have been satisfied if all copies of the phonogram bear the symbol Ⓟ, accompanied by the year of first publication. In such case, the term of protection of the rights in the phonogram is 30 years as from the date of manufacture of the original record.

*(b)* Article 171*(e)* covers the means of penal defense of the rights of phonogram producers. However, this provision was deleted and replaced by a subsequent Law No. 406, approved by the Italian Parliament on July 29, 1981. The aim of the Law is to fight phonogram "piracy" and its Article 1 lays down that any person who unlawfully reproduces for profit-making purposes, by any copying or reproduction process, discs, magnetic tapes or similar carriers or who places them on the market, stocks them with a view to sale or introduces them into the territory of the State for profit-making purposes shall be liable to between three months and three years imprisonment and a fine of between 500 000 and 6 000 000 lire. The term of imprisonment may not be less than six months and the fine may not be less than 1 000 000 lire if the case is a particularly serious one. Any sentence passed in respect of one of these offenses must be published in at least one daily newspaper and one specialized journal.

This 1981 Law covers only the protection of phonograms as an industrial product, independently of the work recorded upon it. Article 1 of the Law refers to the phonogram but makes no reference to intellectual creation, incorporated in the actual phonogram, whether protected or in the public domain. In this respect, the Law could be criticized since it neglects the protection of the principal object incorporated in the phonogram: a creation of the mind. However, there is no doubt that application of this Law and of the penalties it provides will be of indirect benefit to copyright.

*Conventions on Radio-Telecommunications.* In the field of broadcasting, the Italian Law No. 762 of October 7, 1977, ratified the Convention Relating to the Distribution of Programme-Carrying Signals Transmitted by Satellite. The Convention entered into force as regards Italy on July 7, 1981.

A further Convention that was ratified was the 1965 European Agreement for the Prevention of Broadcasts Transmitted from Stations outside National Territories.

The Agreement commits the contracting parties to taking appropriate steps, in accordance with their domestic law, to make punishable as offenses the establishment and/or operation of broadcasting stations installed or maintained on board ships or aircraft or any other floating or airborne objects and which, outside national territories, transmit broadcasts intended for reception or capable of being received, wholly or in part, on the territory of one of the contracting parties or which cause harmful interference to a radio-telecommunication service. These measures are equally to be adopted for acts of collaboration knowingly carried out for this purpose.

In accordance with this commitment, Law No. 375 of June 4, 1982, ratifying the Agreement, lays down penalties of imprisonment (of between three and six months) and a fine for nationals installing or operating broadcasting stations outside the territory of the State on board ships or aircraft or carrying out acts of collaboration. The same penalties apply to foreigners who commit any such act of installation, operation or collaboration on Italian territory or on board ships or aircraft of Italian nationality or subject to the jurisdiction of the Italian State.

The application of this Agreement could be of indirect benefit to the protection of copyright, particularly from the point of view of monitoring the works used without an authorization from the societies of authors having territorial responsibility.

**2. Freedom of Radio and Television Broadcasting**

The most significant event in the world of entertainment, particularly at home, in recent years has been the setting up and operation of a number of private radio and television stations transmitting over the air. The activities of these stations were made legally possible by a decision of the Constitutional Court in 1976, No. 202, which held that certain provisions of the Law reforming broadcasting services, dated April 14, 1975, were constitutionally illegal (that is to say not in compliance with the Italian Constitution).

In his last "Letter from Italy," published in this review in 1976, page 215, Valerio De Sanctis gave exhaustive details of this Law reforming broadcasting.

As regards the matter concerning us here, it may suffice to remember that Law No. 103 of 1975 (New provisions on radio and television broadcasting) was based on the principle that broadcasting (radio and television) over the air or, on a nationwide scale, by cable, was an essential public service and served the general interest. The law thus gave the State an absolute monopoly of (wireless) broadcasting services. In the case of cable television, however, he gave the State a monopoly solely as regards services covering the whole of the national territory and left private initiative the possibility of operating cable distribution networks at local level. A special system of administrative authorizations, issued by the Ministry of Posts and Telecommunications, was laid down by the Law for exercising the right of local cable television, in order to set out the conditions of operation and the maximum territorial scope of distribution, and to avoid the occurrence of situations contrary to public interest to which priority was always to be given.

Law No. 103 of 1975 was contested before the Constitutional Court on the grounds that it did not acknowledge freedom to install wireless broadcasting stations at local level. The Court upheld the appeal and, in its Decision No. 202 of 1976, stated that various provisions of the 1975 Law giving the State a monopoly of wireless broadcasting at local level were not in conformity with some principles of the Constitution (freedom of expression, freedom of private economic initiative). This decision was confirmed by the Constitutional Court in its Decision No. 148 of 1981 in respect of a further case. This latter decision, however, confirmed that the State had been given a monopoly as regards the entire national territory (this decision has been published in *Il Diritto di Autore*, 1981, p. 363, together with a note by Fragola).

In its decision of 1976, the Constitutional Court had pointed to certain rules which the national legislator should draw up in order to provide a system of authorizations for the installation and operation by private individuals of local wireless broadcasting networks.

Before the lawmaker could carry out his task (drafts have been prepared but it would seem that for the moment a policy of laissez-faire is preferred) the number of private wireless broadcasting stations has expanded without control, based exclusively on the decision of the Constitutional Court, throughout all cities of Italy.

What are the consequences for copyright of this anarchical and uncontrolled proliferation of broadcasters? At the onset of their activities, practically all the broadcasting undertakings purely and simply ignored copyright. As a result of the untiring activities pursued with insistence and determination by the Italian Society of Authors and Publishers (SIAE), certain of the undertakings agreed to abide by the rules as regards payment of copyright royalties. Other undertakings, including various associations of such undertakings, contested the very principle of the exclusiveness of copyright.

This led to a series of cases brought before the penal courts for infringement of broadcasting copyright which is protected by civil provisions and sanctions and by a penal provision (Article 171*(b)* of the 1941 Copyright Law, No. 633, which reads as follows: "Any person shall be punishable by a fine ... who, without having the right, and for any purpose and in any form: ... *(b)* performs or recites in public or diffuses, with or without variations or additions, the work of another person suitable for public performance, or a musical composition").

The broadcasting undertakings considered that Italian law gave the author a simple right to compensation for the broadcasting of his works where the latter had already been made public (in particular, recorded on phonograms). Therefore, the author did not have an exclusive right of prohibition and, consequently, his authorization was not required for broadcasting. This interpretation was based on Article 51 of the Copyright Law which provides that:

> By reason of the nature and purpose of broadcasting as a service reserved to the State, which carries on such service either directly or by means of concession, the exclusive right of broadcasting, either directly or by any intermediate means, shall be regulated by the following special provisions.

The term used in Article 51 "the exclusive right of broadcasting" was to be understood as the State's right to broadcasting.

This interpretation, according to the viewpoint of the broadcasters, complied with the principle set out in Article 11$^{bis}$ of the Berne Convention which gave the legislators of the countries of the Union the faculty of determining the conditions under which the right of broadcasting may be exercised, without prejudice to the right of the author "to obtain equitable remuneration." It was claimed that the Italian law-

maker had taken his inspiration from this provision of the Convention which allowed statutory licenses.

The point of view of the authors, on the other hand, was that Article 51 of the Law did not afford a right of broadcasting to the State (or, in general, to the undertakings carrying out the broadcasting service). It was in fact a provision setting out a general principle justifying only a number of restrictions on the author's right to use his works, which were set out in the following Articles (Articles 52 to 58 concerning the faculty of the broadcasting organization to broadcast works from theaters and public concert halls and to make ephemeral recordings).

As regards broadcasts from the studios of the broadcasting station, the author's right of broadcasting reassumed its exclusive nature. This opinion is based on Article 16 of the Law, which regulates the exclusive right of diffusion over a distance, and, in particular, on Article 59, which confirms that rule:

> The broadcasting of intellectual works from the premises of the organization carrying on the broadcasting service shall be subject to the consent of the author, in accordance with the provisions contained in the third chapter of this Part; the provisions of the foregoing Articles, except those of Article 35 [ephemeral recordings], shall not be applicable to such broadcasting.

The Courts have almost unanimously adopted the point of view of the authors and have applied the penal sanctions under Article 171 of the Law. The opposite point of view has been accepted in a number of decisions by first instance judges (*Pretore*) or other courts. However, the Supreme Court of Appeal decided in favor of the author's exclusive right in a decision (order) of February 29, 1980, and, finally, by three decisions, giving detailed grounds, dated November 20 and December 2 and 15, 1982. The opinion set out by the Supreme Court of Appeal (Third Penal Section) was that the author had an exclusive right to authorize or prohibit the broadcasting of his works. Assignment by the author of his right to record, to reproduce and to distribute the work or copies of it did not include the right of public performance or that of broadcasting, which remained the property of the author. Infringement of the right of broadcasting by the radio stations involved penal responsibility under Article 171*(b)* of the Law and the obligation to pay damages.

To complete this debate on private radio and television broadcasting undertakings at local level, a word should be said as to the probable future development of their activities. Pending the arrival of an organic law to regulate this subject, the broadcasters, particularly those in television, would seem to be moving towards the formation of oligopolies of large networks. The local television broadcasting stations can therefore cover, through single or grouped undertakings or by means of program broadcasting agreements, almost the whole of the national territory and constitute direct competition for the organization holding the State concession (RAI). The sources of funding are fed by commercial (and sometimes political) advertising.

### 3. Case Law

Italian case law in respect of copyright over recent years has frequently reflected the contradictions with which the exercise of intellectual creators' rights is today confronted (or which impair it): on the one hand, the highly intensive use and ever-growing consumption of works of the mind and, on the other, the fact that it is ever more difficult, not only for authors but also for the bodies administering their rights, to keep track of the various forms of exploitation of works and to collect the corresponding copyright fees.

The picture of the lawyer involved in copyright protection, tellingly drawn by Savatier,[1] proves a reality of our day:

> ... from performances to records, from records to broadcasts, from broadcasts to shows, from shows to films, from films to performances, and so forth, the work is carried off through a maze of ever more mobile and complex technologies through which the lawyer, seconded by the Society of Authors, runs, out of breath, alóng the inconstant path of artistic creation.

Every year there are hundreds of penal court decisions in respect of the abusive broadcasting (radio and television) of protected works (already mentioned under 2 above) and of unlawful copying of records, cassettes and videograms incorporating creations of the mind. Phonographic and cinematographic piracy was, moreover, the subject of an international meeting to celebrate the 50th anniversary of the International Bureau of Societies Administering the Rights of Mechanical Recording and Reproduction (BIEM), held in Rome in October 1980, of which I shall speak in the closing part of this "Letter."

In addition to the penal cases, there are also the proceedings for application of the civil measures and sanctions provided to protect the moral and economic rights of authors.

In this respect, mention must first be made of a decision of the Constitutional Court concerning the legitimacy (that is to say, compliance with the Constitution) of the provisions of the Copyright Law permitting the prohibition and seizure of copies of works published in infringement of copyright.

Article 21 of the Italian Constitution, setting out the principle of freedom of expression, permits the seizure of printed matter only in those cases set out in the "law on the press." The matter submitted to the

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[1] R. Savatier, *Les métamorphoses économiques et sociales du droit privé d'aujourd'hui*, Paris, Dalloz, 1959, 2e série, p. 301.

Constitutional Court (whose task it is to consider the compliance of laws with the rules of the Constitution) was as follows: was it possible for the copyright law, which was not, strictly speaking, a law on the press, to provide for the seizure of printed matter?

In its Decision No. 60, of March 25, 1976, the Constitutional Court held that the question was ill-founded since it gave an erroneous and restrictive interpretation of Article 21 of the Constitution. According to the Court, the term "law on the press" was to be interpreted as applying to the statutory provisions directly or indirectly concerning the press. Consequently, there was no constitutional reason to exclude application of prohibition or seizure provided for by Articles 156 and 161 of the Copyright Law as regards the protection of the rights of intellectual creators.

The Court also held that it would be needless, for deciding the question of constitutional legitimacy of the provisions on the defense of copyright, to examine whether Article 21 of the Constitution, which protects the freedom to express "one's own thoughts," should be interpreted as also intended to protect the expression and therefore the exploitation of the thoughts of others, in the guise of information, without the consent or against the wishes of the author of a work. Similar considerations to those expressed by the Court in this decision may be found set out in an article by Valerio De Sanctis entitled "La Cour constitutionnelle et le droit d'auteur" published in "Hommage à Henri Desbois" *(Etudes de propriété intellectuelle*, Dalloz, Paris, 1974).

### *Moral Rights*

*(a) Insertion of commercials during the projection of films.* The insertion of commercials (advertising for commercial articles) during the television showing of cinematographic works on the part of private broadcasting stations has raised the question of protecting the author's moral rights against this type of use of a film. Two directors who are well-known in Italy took action, before judges in Milan and Rome, respectively, for damage to the integrity of their cinematographic works (the directors concerned were Franco Zeffirelli for the film "Giulietta e Romeo," broadcast by a television network in the north of Italy, and Salvatore Samperi for the showing of his films "Malizia" and "Scandalo" by a television network covering a large part of the national territory).

The judge in Rome (*Pretore* Varrone) gave a decision on December 30, 1982, which settled the problem by means of a compromise. According to the judge, interruptions for advertising during the transmission by television of a film constituted derogatory acts against the cinematographic work and could prejudice the honor and reputation of the author. However, whether or not the author's moral rights had been infringed could only be assessed in relation to the nature of the film, the frequency and duration of the insertions. It was therefore an assessment which could be made in relation to each work and to each utilization of that work.

The solution given by the judge as regards the question of principle was based on a criterion of interpretation which complied with the spirit of Article 20 of the Italian Copyright Law which guarantees protection of the author's moral rights against any modification or distortion of the work. This Article was amended by Decree No. 19 of the President of the Republic, dated January 8, 1979. As already mentioned above, the effect of this revision of Article 20 was to give the author the right to oppose not only any distortion, mutilation or other modification of the work but also any "derogatory action in relation to the said work."

This strengthening of the author's moral rights was taken into consideration in the decision, which is also in line with various remarks made at a meeting of lawyers held in Rome in October 1982 on the matter in question, at the initiative of the Legal Institute for Entertainment and Information.

In his introductory remarks to the meeting, the President of the Institute, Augusto Fragola, emphasized from the onset that, in the case of commercials inserted into the projection of cinematographic works, the parties concerned were not only the authors and the broadcasters but also the viewing public, which was entitled to proper operation of the broadcasting service. The speaker then added that, although indeed the financial contribution of advertising enabled private stations to continue their activities and thus to give the public further opportunities for entertainment and information, it was nevertheless true that every right had its limits, consisting in respect for the rights and interests of others. One of these rights, that was not to be overlooked, was the author's moral right to have his work used in a way which did not damage his honor or his reputation in respect of the work itself. The speaker recommended a system of self-restraint within the profession in order to provide a concerted safeguard for the interests involved.

In a contribution to that meeting, I referred to the debate which had taken place at the 1948 Brussels Diplomatic Conference for the Revision of the Berne Convention for the Protection of Literary and Artistic Works. When amending the wording of Article 6$^{bis}$ of the Convention (1928 Rome Act) as regards protection of the author's moral rights, it had been proposed to refer, in addition to distortion and mutilation of the work, to any other use of the work. The reason for the proposal was that simply to use a work could damage moral rights without there having been any real distortion or mutilation: this is the case

when a work is placed within a context which is not that which the author could wish for.

> A literary work, for example, is published jointly with numerous advertisements; an artistic work is affixed as a reproduction to the packaging of objects not enjoying good repute; a musical composition, of a profoundly serious nature and of religious inspiration, is incorporated as such in the score of a filmed operetta.[2]

The proposal was accepted and introduced in the Brussels Text. In 1979, the Italian Law was brought into line with the wording of the Convention, thus strengthening the content of the author's moral rights in relation to authorship of the work. The concept of abuse of that right by the user (referred to in the Diplomatic Conference) could play a part in interpreting the new provision in Article 20 of the Italian Law.

The arguments thus developed were adopted by the Roman judge in his decision in the case concerning protection of the rights of the director Samperi.

*(b) Modifications to a work of contemporary history.* A further case should be mentioned as regards the author's moral right to preservation of the integrity of his work, which concerned a number of modifications made to a school history textbook. The author of the work complained that his publisher had modified various passages without his consent. The modifications were such, in the view of the author, as to have profoundly changed the concepts and conclusions at which he had arrived in respect of various events of contemporary history. Indeed, the substance of the modifications made to the work could be attributed to a certain divergence between the political views of the author and the management of the publishing house.

The Florence Court (Decision of December 9, 1976, *Saitta* vs *La Nuova Italia Editrice*, in the review *Giurisprudenza di merito*, 1978, p. 35, with a note by Fabiani) and subsequently the Appeals Court of the same town (Decision of September 26, 1977, in *Il Diritto di Autore*, 1978, p. 372, with a note by Algardi) held the view that the modifications made to the work by the publisher, even if they did not result in a prejudice to the honor and reputation of the author (Article 20 of the Italian Law and Article $6^{bis}(1)$ of the Berne Convention) were unlawful in view of the publisher's obligation to reproduce the work and put it into commercial circulation in conformity with the original (Article 126 of the Copyright Law, in the section on publishing contracts).

Where modifications affect the substance of the ideological content of a work or a part of a work, the publishing contract terminates at the responsibility of the publisher.

The judges of the Florence Court and Appeals Court therefore gave predominance to the contractual situation that existed between the parties and subsequently held that the statutory provision obliging the publisher to publish the work in conformity with the original sent by the author constituted a derogation from the general rule giving the author the right to oppose modifications to his work where they may be injurious to his honor or reputation. It must be emphasized that the provision in Article 126 had been adopted by the lawmaker in order to give a guarantee to the author as the weaker party to the contract.

It should also be added that the judges at the Florence Court held that the nature of the work (a textbook intended for secondary schools) could not justify the modifications that had been made. If the publisher had been convinced that the opinions expressed by the author were not in accordance with the moral, political or scientific principles in which he believed and could not renounce, according to the court, he could refrain from publishing the work but he could not change its content.

### *Economic Rights of the Author*

*Right of reproduction and of access to works of art.* The owner of a picture does not have the right to oppose photographic reproduction of it unless he has acquired from the author of the work the right of reproduction and can prove that such right has been transmitted. This principle was laid down by the Milan *Pretore* (Decision of October 4, 1982, *Airand* vs *Rusconi Libri*) in proceedings opposing the owner of a picture and a publisher of books who had used a reproduction of the work for the frontispiece of a storybook he had published.

The solution to the dispute given by this decision is in line with the rules of copyright. It should be noted that for works which exist in a single copy, such as works of painting or of sculpture, a distinction must be made between ownership of the *corpus mechanicum* and the rights of utilization of the work as a subject matter of copyright (photographic or reprographic reproduction, dissemination by film or television).

These rights of economic utilization remain vested in the author after the sale of the work unless otherwise agreed (Article 109 of the Copyright Law No. 633 of 1941) and which must be established in writing (Article 110 of the Law).

Among the rights of utilization belonging to the author, after transfer of the original copy of the work, one may include that of access to the work although this right is not listed among the exclusive rights afforded by the Law to the author (Article 12 *et seq.* of the Copyright Law). The owner does not have the possibility of prohibiting the author from

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[2] Records of the Brussels Diplomatic Conference, 1948, p. 185.

having access to the work in order to take a photograph of it, and thus exercising his right of reproduction (see Rome *Pretore,* Decision of December 20, 1977, in *Il Diritto di Autore,* 1978, p. 601).

The question that arises is that of setting out the limits of this right of access as against the absolute right of the owner of the picture. To begin with, access must be justified by the sole purpose of making a photographic reproduction or a reproduction by some similar process. A copy which the artist may wish to make by his own hand should not be admissible since this would be tantamount to multiplying the original of the work whose economic value is primarily constituted by the fact that it exists in a single copy. Each purchaser appreciates the rarity of the works he collects.

A further dispute could arise between owner and author on account of the subject of the painting, for example, a family portrait. The rule that family portraits belong in the intimacy of the home could be invoked. In this context, the opinion has been expressed, however, and is quite justified in my opinion, that in absolute terms such a claim could be disputed:

> ... to make allowance for an honorable feeling, an aversion felt towards any kind of publicity, is it not sufficient to prohibit any indication enabling the person whose portrait is to be reproduced to be identified? It matters little whether the subject can be identified despite this precaution since such a possibility presupposes that he is sufficiently known for the resistance of the owner to be deemed abusive.

(H. Desbois, *Le Droit d'auteur en France,* 3rd edition, 1978, p. 409).

### *The Subject Matter of Copyright*

*Works of the mind, industrial designs and trademarks.* Can a graphical composition used as a trademark be protected under copyright? This question was put to the Milan Court in the case concerning the use of an internationally well-known trademark composed of the monogram JPS.

An Italian company had registered the monogram as a trademark for identifying articles of clothing which differed in relation to the products (tobacco) for which the original trademark had been internationally filed. The owners of the first trademark patent ** therefore claimed copyright protection, considering that the monogram had the elements of a work of the mind.

The Milan Court (Decision of April 24, 1980, *Imperial Group Ltd., Imperial Tobacco Switzerland S.A.* vs *Maglificio Tamigi,* in *Il Diritto di Autore,* 1982, p. 49) decided in the case in point that the graphical composition was typically for the purpose of distinguishing commercial products and did not have its own artistic value. Consequently, it could not enjoy copyright protection. The judges emphasized that, although it was true that the Italian lawmaker had not afforded a decisive value to the author's intention to create a work of art, it was nonetheless true that the work could not be protected under copyright unless it generated an artistic emotion although associated with an industrial product.

Going beyond the case in point, the protection of the same form (in two or three dimensions) as a trademark and, at the same time, as an industrial design or a work of art could give rise to problems of interference in the exercise of the relative rights whose content and duration differed.

The Italian system gives only a partial legislative solution to these problems.

The Industrial Designs Law No. 1411 of August 25, 1940, excludes cumulative protection of a created form as an industrial design and as a work of art subject to copyright. Article 5 of that Law provides that industrial designs protected by the Law cannot have the copyright provisions applied to them. The shape of an article which does not suffice for it to be a work of art in its own right cannot enjoy protection under copyright. Where the only function of the shape is to provide a particular aesthetic ornament to the product, it remains closely linked to the purpose of the product itself and may only be protected as an ornamental design under the patent system within the meaning of Law No. 1411 of 1940. As regards interpretation of the provisions of Italian Law governing works of applied art and industrial designs, see Valerio De Sanctis, "Letter from Italy," in *Le Droit d'auteur* 1956, p. 127, and 1957, p. 168.

As regards dual protection of form as an industrial design and as a trademark, the Industrial Designs Law remains silent, but Article 18(3) of the Trademark Law No. 929 of June 20, 1942, lays down that figures or signs "whose distinctive nature is indissolubly connected with that of utility or form" of an object may not obtain a trademark patent.

This predominance of industrial design protection over trademark protection, acknowledged by Law No. 929 of 1942, is dependent on the existence of the element of indissolubility between its distinctive nature and its utility (utility model) or the form of the object (ornamental design).

The problem arising in practice is that of determining in the various individual cases whether it is possible to dissociate those factors or, on the other hand, the connection between the distinctiveness of the product and its usefulness or ornamentation gives rise to a situation of indissolubility between the two functions, with the result that the creation cannot be patented as a trademark.

Obviously, only those forms that are arbitrary and capricious, that is to say those that are without relation to the product or which do not give the prod-

** In Italy, patents are issued not only for inventions, but also for the other forms of industrial property *(Editor's note).*

uct itself a new utility or decoration, may be covered by a trademark patent (see in this respect Rava, *Diritto industriale*, 2nd edition, 1981, Volume I, pp. 99 and 129; Vanzetti, "Il problema dei marchi di forma," in *Rivista del diritto commerciale*, 1964, I. p. 444).

As regards the relationship between trademark patent and copyright, dual protection may be accepted in the case of graphical or figurative compositions, on condition that the composition, having the capacity to distinguish between products (the basic condition for obtaining a trademark patent) be the expression of intellectual endeavor on the part of its author (see, in this respect, the Decision of the Appeals Court of Rome of December 22, 1980, *Sardine Pollastrini* vs *Amore*, in *Il Diritto di Autore*, 1981, p. 386).

The acceptability of dual protection is justified by the fact that, in this case, the relationship between use of the creation as a trademark and, at the same time, as a work of art is less close and does not present the same problems of connexity when exercising the two rights for parallel uses, which occurs in the case of a two or three-dimensional form used as a trademark and, at the same time, as an ornament or as the aesthetic form of products.

### *Neighboring Rights*

*The rights of a broadcasting organization in its own broadcasts.* As regards neighboring rights, Italian courts have dealt, in particular, with the rights of the undertakings carrying out a broadcasting activity.

The broadcasting organization's right in its own broadcasts has been the subject of two decisions: one taken by the penal section of the Supreme Court of Appeal on October 18, 1978, and the other by the Rome *Pretura* on May 19, 1980, *RAI* vs *TeleRoma 56* (published in *Il Diritto di Autore*, 1979, p. 73 and 1980, p. 170, respectively).

The decision of the Supreme Court of Appeal concerned the recording of a soccer match broadcast on television by a video appliance dealer. The videocassettes he had recorded were then given as a present to the purchasers of video equipment.

The Supreme Court of Appeal confirmed the decision by the preceding judge (Naples *Pretore* of May 27, 1971) thus reaffirming the right of the broadcasting organization in its programs. The recording on magnetic tape for profit-making purposes (although indirectly) of a broadcast of a sports event was held by the Supreme Court of Appeal to constitute an infringement of the rights in the broadcast afforded to the broadcasting organization under Article 79 of Law No. 633 of 1941.

This Article 79 gives the broadcasting undertaking an exclusive right *(a)* to retransmit its broadcast, *(b)* to record "with gainful intent" a transmitted or retransmitted broadcast on phonograph records or like contrivances for the reproduction of sounds or voices. This right in radio broadcasts was extended to television broadcasts by Decree No. 490 of May 14, 1974, promulgated as a result of ratification by Italy of the 1961 Rome Convention on the protection of neighboring rights.

It should be noted that in the case examined by the Supreme Court of Appeal the infringement of the right in the television broadcast had occurred prior to 1974, that is to say before the amendment of Article 79 extending the right to television. Thus application of the provision to a television broadcast was made by the courts by analogy on the basis of a general provision in the 1941 Copyright Law stipulating that "television shall be regulated by the general principles of this Law, in so far as they are applicable" (Article 203).

The Supreme Court of Appeal gave its reasons justifying the protection afforded to the broadcasting organization as regards its own broadcasts. According to the Court, this was an economic activity requiring a very high technical level, the results of which were to be the preserve of the person carrying out the activity itself.

Since the right to record broadcast transmissions enjoys protection of a penal nature (Article 171*(f)* of Law No. 63 of 1941), the dealer was sentenced to a penal fine in addition to paying damages to the broadcasting organization.

It must be emphasized that in the case in point the recording concerned the transmission of a sports event. Recording of a transmission containing protected works of the mind would have also constituted an infringement of copyright.

The other case concerned with television broadcasting arose from the use by a private local television undertaking of excerpts from a program of the national broadcasting organization (RAI) covering current sports events. The private broadcasting undertaking had recorded the transmission of soccer matches and had used excerpts from them.

In court, the broadcaster relied on the free use of such transmission, justified by the purpose of information. The judge, on the other hand, held that in the case of a broadcast, even in part, of a sports event the entertainment element was predominant. There was no justification in this case for limiting the originating organization's right on the grounds of the informatory purpose and the free circulation of ideas. Such purpose could only be relied on in those cases specifically laid down by the law, which permitted the free use of certain works of current information in order to achieve and promote the free circulation of ideas.

It would indeed appear necessary to make a distinction between the statutory limitations to the author's exclusive right in his work, where the work

was such as to inform and contribute to discussion on certain matters of current political or economic interest, and the limitations on the broadcasting organization's neighboring rights in its own broadcasts. These limitations must be kept within bounds since they constitute a right afforded in relation to the activities of an undertaking, which has to be safeguarded from all forms of unlawful competition.

This distinction between the legal situations is also to be found in certain of the provisions of the Conventions governing this field.

The Berne Convention for the Protection of Literary and Artistic Works contains restrictions on the author's economic rights in Articles 10 and 10$^{bis}$. The aim of such restrictions is to meet the public's thirst for information (Claude Masouyé, *Guide to the Berne Convention*, WIPO, 1978, p. 58).

As regards free use of works published in newspapers or periodicals or broadcast, paragraph (1) of Article 10$^{bis}$ gives the countries of the Union the possibility of permitting reproduction by the press, broadcasting or communication to the public by wire of articles on current economic, political or religious topics, and of broadcast works of the same character. It is therefore accepted that free use covers the work as a whole.

On the other hand, the exceptions to the broadcasting organization's exclusive rights (Article 13) permitted by the 1961 Rome Convention are much more limited: Article 15 of the Convention gives the Contracting States the possibility of providing for limitations as regards the use of "short excerpts" in connection with the reporting of current events.

This exception, concerning all three categories protected by the Convention, therefore applies to the organization's right in its own broadcasts when another broadcasting organization reports on current events (for example a sports event, where no use is made of works of the mind). The use of a broadcast recorded by the second organization must, however, be limited to short excerpts.

The requirement of treatment in line with that of copyright is reflected in paragraph 2 of Article 15 of the Rome Convention. To avoid the owners of neighboring rights "being treated better than authors in the matter of exceptions" this provision in a way aligns the two categories (Claude Masouyé, *Guide to the Rome Convention*, WIPO, 1981, p. 59). This requirement of alignment does not arise, however, in the case of broadcasts of current events (sports, politics, society) not making use of works of the mind.

### 4. The Centenary of the Italian Society of Authors and Publishers

The Italian Society of Authors and Publishers (SIAE) celebrated the 100$^{th}$ anniversary of its foundation in 1982. To mark its centenary, SIAE organized in Rome, from October 3 to 8, 1982, the XXXIII$^{rd}$ Congress of the International Confederation of Societies of Authors and Composers (CISAC) (for a report on the Congress, see *Copyright*, 1982, p. 376).

At the opening meeting, held in the presence of the President of the Italian Republic, His Excellency Sandro Pertini, the President of SIAE, Mr. Luigi Conte, referred in his address to the Society's history, to the activities it had undertaken for the benefit of the creators of works of the mind and pointed to the new difficulties faced by the societies of authors throughout the world in defending copyright against the many types of attacks to which it was subject as a result of the possibilities of using works offered by today's and tomorrow's development of technology.

Special problems arose from the growth of commercial piracy of sound and audiovisual recordings (to which theme WIPO devoted a Worldwide Forum in Geneva from March 25 to 27, 1981; see *Copyright*, 1981, p. 191). The activities undertaken by SIAE to combat and eliminate this type of piracy were directed, on the one hand, towards setting up the necessary judicial procedures to safeguard the rights of authors and, on the other, towards informing the authorities and public opinion of the danger and hazards which these infringements to copyright inflicted on the authors, performers, phonogram, videogram and film producers and the broadcasting organizations.

A debate on the unlawful recording of protected works was held in Rome on October 9 and 10, 1980, on the initiative of SIAE in agreement with the associations of producers of phonograms, of films and of entertainment theaters. At the close of the Congress, the wish was expressed that more severe legislative penal measures should be adopted to make the fight against commercial piracy more effective.

This appeal was heard by the Italian lawmaker who approved Law No. 406 on July 29, 1981, concerning urgent measures against the unlawful copying, reproduction, import, distribution and sale of unauthorized phonographic products, already referred to above in the section dealing with legislation.

*(WIPO translation)*

# International Activities

## International Confederation of Societies of Authors and Composers (CISAC)

### Legal and Legislation Committee

(Washington, May 2 to 4, 1983)

The Legal and Legislation Committee of CISAC met in Washington from May 2 to 4, 1983, at the invitation of the American Society of Composers and Publishers (ASCAP) and the society Broadcast Music Incorporated (BMI). The members participating in the meeting came from the following countries: Austria, Australia, Belgium, Czechoslovakia, Denmark, France, Germany (Federal Republic of), Greece, Hungary, Israel, Italy, Mexico, Netherlands, Poland, Spain, Sweden, Switzerland, United Kingdom, United States of America. WIPO was represented by Mr. György Boytha, Head of the Copyright Law Division. Unesco and two interested international non-governmental organizations (ALAI and INTERGU) were also represented. Mr. David Ladd, Register of Copyrights and Assistant Librarian of Congress, and several officials of the Copyright Office, Library of Congress (USA), likewise participated in the work of the Committee.

Professor Jan Corbet (Belgium) was unanimously elected Chairman for the 1983-1984 period.

After the adoption of the report on the meeting held in Vienna from May 10 to 12, 1982, national surveys of legislative, case law, doctrinal and also practical developments in copyright were presented by a number of participants. In particular, information was given regarding the impact on copyright of new technological forms of use of authors' works, such as "home taping," distribution by cable and transmission via satellite. Attention was called to the further spread of video piracy in several countries.

Mr. J.-A. Ziegler, Secretary General of CISAC, reported on developments in the international search for copyright protection against distribution by cable of broadcast works, with special regard to the efforts made in that direction by WIPO, ILO and Unesco; he also gave an account of the Report of the Working Group convened by WIPO and Unesco in Paris in October 1982 on copyright questions connected with the use of works by persons with defective hearing or sight, and of the Draft Model Statutes for authors' organizations administering authors' rights in developing countries, elaborated by a Committee of Experts convened by WIPO and Unesco in Paris in June 1980.

The Committee also heard addresses by its members on the following subjects:

— problems arising from the use of computers and, in particular, the protection of data bases (Mrs. M. del Corral, Spain);
— protection of computer software (Mr. D. de Freitas, United Kingdom);
— video games and copyright (Prof. J. M. Kernochan, United States of America);
— domaine public payant (Mr. W. Dillenz, Austria);
— copyright and the protection of the right to privacy and social identity (Prof. M. Fabiani, Italy).

Each of the above communications was followed by a lively discussion, in the course of which the Committee was also informed of recent developments in the related activities conducted by WIPO, in some cases jointly with Unesco, in the field of copyright and neighboring rights.

# Bibliography

## List of Books and Articles

From January 1 to June 30, 1983, the WIPO Library has entered in its catalogue a number of works or other publications on copyright and neighboring rights, among which the following are mentioned which are most important or most relevant to recent developments.

### Books

ASSOCIATION LITTÉRAIRE ET ARTISTIQUE INTERNATIONALE. *Compte rendu du congrès 29 mai - 3 juin 1978, Paris.* ALAI, 1982. - 195 p.

AUSTRALIA — ATTORNEY-GENERAL's DEPARTMENT. *Review of Audiovisual Copyright Law: Issues Paper.* Canberra, Australian Government Publishing Service, 1982. - 145 p.

BERNITZ (Ulf), KARNELL (Gunnar), PEHRSON (Lars), SANDGREN (Claes). *Immaterialrätt.* Stockholm, Liber, 1983. - 207 p.

CHRIST (Thomas Cornelius). *Das Urheberrecht der Filmschaffenden.* Basel, Frankfurt/Main, Helbing & Lichtenhahn, 1982. - XV-103 p. (Basler Studien zur Rechtswissenschaft: Reihe A, Privatrecht, 5).

CHRISTEN (Felix). *Die Werkintegrität im schweizerischen Urheberrecht.* Berne, Stämpfli, 1982. - 203 p. (Schriften zum Medienrecht, 8).

DANDURAND (Liette). *Bibliographie sur le droit d'auteur.* Répertoire de centres gouvernementaux de documentation et de la bibliothèque de Droit de l'université Laval. Gouvernement du Québec, Service gouvernemental de la propriété intellectuelle, 1983. - 501 p.

DE FREITAS (Denis). *The Copyright System: Practice and Problems in Developing Countries.* Commonwealth Secretariat, London, 1983. - V-87 p.

DIETZ (Adolf). *Le droit primaire des contrats d'auteur dans les Etats membres de la Communauté européenne:* situation législative et suggestions de réforme. Etudes secteur culturel, Commission des Communautés européennes, Munich, 1981. - XVI-278 p. (+ annexes).

DITTRICH (Robert). *Urheberrecht.* Wien, Manz, 1981. - VIII-54 p. (Manz-Universitätstexte).

— *Urheberrechtsgesetz* idF der Novellen 1980 und 1982 sowie das Brüsseler Satellitenabkommen samt den jeweiligen Materialen. Wien, Manz, 1982. - 132 p. (Manzsche Sonderausgabe, 33a).

FABIANI (Mario). *Il diritto d'autore.* Estratto dal *Trattato di Diritto Privato,* diretto da Pietro Rescigno. Turin, UTET, 1983. - 60 p.

FRAGOLA (Augusto). *La legislazione italiana sulla cinematografia. Aggiornamento al 1º Gennaio '82.* Milan, A. Carisch, 1982. - 372 p.

FRÉMOND (Pierre). *Le droit de la photographie, le droit sur l'image.* 2nd edition, Paris, Publicness, 1982. - 598 p.

GILBEY (Richard). *La protection par le droit d'auteur du produit industriel.* Strasbourg, Gilbey, 1982 (Mémoire D. E. S. S.: Accords et propriété industrielle). - 91 p.

IIDA — CENTRO ARGENTINO DEL INSTITUTO INTERAMERICANO DE DERECHO DE AUTOR. *Temas de derecho de autor, afines y conexos.* Buenos Aires, 1983. - 87 p.

*Intellectual Property Law and Taxation.* Richard J. Gallafent, Nigel A. Eastaway and Victor A. F. Dauppe, London, Oyez, cop. 1981. - XXVI-321 p.

JAPAN — AGENCY FOR CULTURAL AFFAIRS. *Copyright System in Japan.* Japanese Government, 1983. - 71 p.

JOHNSTON (Donald F.). *Copyright Handbook.* 2nd edition, New York, London, R. R. Bowker, 1982. - 381 p.

KELLER (Max), SCHLUEP (Walter R.), TROLLER (Alois). *Immaterialgüterrecht.* Zurich, Schulthess Polygraphischer, 1982. - XIII-418 p. (Die Rechtsprechung des Bundesgerichts im internationalen Privatrecht und in verwandten Rechtsgebieten).

LADD (David). *Private Use, Private Property and Public Policy: Home Recording and Reproduction of Protected Works.* Wien, Manz, 1983. - 102 p. (Internationale Gesellschaft für Urheberrecht).

LEONELLI (Leonello). *Le Convenzioni internazionali sul diritto d'autore e i diritti vicini. Aggiornamento al 1º Gennaio '82.* Milan, A. Carisch, 1982. - 360 p.

— *La Legge italiana sulla protezione del diritto d'autore e dei diritti connessi. Aggiornamento al 31 Dicembre '80.* Milan, A. Carisch, 1981. - 213 p.

MAGNUSSON (Dennis N.) and NABHAN (Victor). *Exemptions under the Canadian Copyright Act.* Copyright Revision Studies, Consumer and Corporate Affairs Canada, 1982. - 230 p.

*Nathan Burkan Memorial Competition.* Sponsored by the American Society of Composers, Authors and Publishers. New York, Columbia University Press, 1982. - XVI-327 p. (Copyright Law Symposium, 28).

PECHTL (Ernst). *Das neuere sowjetische Urheberrecht unter besonderer Berücksichtigung der internationalen Beziehungen. Munich,* V. Florentz, 1982. - XIV-166 p. (Rechtswissenschaftliche Forschung und Entwicklung, 20).

US LIBRARY OF CONGRESS. *Library Reproduction of Copyrighted Works (17 U. S. C. 108).* Report of the Register of Copyrights, Washington, D. C., 1983. - XVIII-363 p.

## Articles


ABADA (S.). *Copyright as a Factor in Cultural Development.* In "Copyright Bulletin" (Unesco) 1982, Vol. XVI, No. 4, pp. 6-13.

BITTAR (C. A.). *A tributação dos direitos de autor.* In "Revista da Faculdade de direito" 1981, pp. 375-396.

BUECKLING (A.). *Satellitenrecht: das Recht des Schnellerен im geostationären Orbit.* In "Film und Recht" 1982, Vol. 26, No. 7, pp. 347-356.

CHAKROUN (A.). *Questions of Rights in Space Communication.* In "Copyright Bulletin" (Unesco) 1982, Vol. XVI, No. 3, pp. 18-26.

CHAVES (A.). *Stadium Rights.* In RIDA 1983, No. 115, pp. 26-76 [in Spanish with parallel English and French translations].

COLLOVÀ (T.). *Cable Television — Evolution of the Situation in the Various European Countries.* In "Interauteurs" 1982, No. 193, pp. 91-94.

CONTE (L.). *Diritto d'autore e sviluppo delle legislazioni nazionali nella CEE.* In "Bollettino della Società Italiana degli Autori ed Editori" 1982, Vol. 54, No. 6. pp. 282-284.

CORBET (J.). *Summary of Recent Belgian Case Law.* In RIDA 1982, No. 114, pp. 2-28 [in French with parallel English and Spanish translations].

CORNISH (W. R.). *Copyright Reform in Great Britain.* In "NIR, Nordiskt Immateriellt Rättsskydd" 1983, No. 1, pp. 17-28.

CORRAL BELTRÁN (M. del). *Problemática de la propiedad intelectual de las bases de datos: bases de datos restringidas vs. bases de datos de acceso generalizado.* In « Revista española de documentación científica » 1982, Vol. 5, No. 3, pp. 245-266.

CROSBY (S.) and TEMPEST (A.). *Satellite Lore. Copyright, Advertising, Public Morality and Satellites in EEC Law.* In "EBU Review" 1983, Vol. XXXIV, No. 3, pp. 30-38.

DIETZ (A.). *Das neue jugoslawische Urheberrechtsgesetz von 1978 aus rechtsvergleichender Sicht.* In UFITA 1982; No. 94, pp. 1-34 [with a summary in English and French].

DITTRICH (R.). *Die österreichische Urheberrechtsgesetznovelle 1982.* In GRUR Int. 1983, No. 1, pp. 30-37.

— *Weitere Entwicklungen in Österreich unter Geltung der Urheberrechtsnovelle 1980.* In "Film und Recht" 1982, No. 10/11. pp. 529-531.

— *Zur Auslegung des Art. 11bis Abs. 1 und 2 RBÜ.* In "Rundfunkrecht" 1982, No. 3/4, pp. 25-37.

DOI (T.). *The Government Regulation and Copyright Aspects of Cable Television in Japan.* In "Journal of the Japanese Group, AIPPI, International Edition" 1982, Vol. 7, No. 3, pp. 105-112.

FABIANI (M.). *Importazione di dischi dagli USA, concorrenza illecita e diritti di autore.* In "Il Diritto di Autore" 1982, Vol. 53, No. 4, pp. 469-473.

FRAGOLA (A.). *Televisione e opere dell'arte figurativa.* In "Il Diritto di Autore" 1982, Vol. 53, No. 4, pp. 405-410.

GOLDSTEIN (P.). *Adaption Rights and Moral Rights in the United Kingdom, the United States and the Federal Republic of Germany.* In IIC 1983, Vol. 14, No. 1, pp. 43-59.

HANDL (J.). *Verfassungsmässigkeit der österreichischen Regelung des Kabelfernsehens bleibt weiterhin ungeklärt.* In "Film und Recht" 1982, No. 10-11, pp. 573.

HASAN (A.). *Copyright and Development.* In "Asia Pacific Book News" 1982, Vol. 24, No. 4, pp. 14-17.

HILLIG (H. P.). *Kabelfernsehen in den Niederlanden und in Belgien.* In "Film und Recht" 1982, No. 10/11, pp. 539-548.

HITCHCOCK (P. D.). *Home Copying and Authorization.* In "Canadian Patent Reporter" 1983, Vol. 67 (2d), No. 1/2, pp. 17-49.

HOLESCHOFSKY (P.). *Zur Reform des Urheberrechts in Österreich: Kabelfernsehen.* In UFITA 1982, No. 94, pp. 119-150 [with a summary in English and French].

HUGHES (C.). *The Legal Protection of Computer Software.* In "Copyright Reporter" 1982, No. 7, pp. 6-12.

JOUBERT (C.). *Community Economic Legislation and Copyright Legislation: Recent Case Law of the Court of Justice of the European Communities.* In "Interauteurs" 1982, No. 193, pp. 101-105.

KARNELL (G.). *Rental and Related Market Phenomena Concerning Videograms and the Right of Distribution under Copyright Law.* In RIDA 1983, No. 115, pp. 79-119 [in English with parallel French and Spanish translations].

KEREVER (A.). *Satellites and Copyright.* In "Interauteurs" 1982, No. 193, pp. 79-85.

KNAP (K.). *Pravidlo srovnánání dob ochrany v autorském právu* [The rule of protection term comparison in copyright]. In "Aktuální otazky" 1982, pp. 39-58 [with a summary in English p. 56].

KOUMANTOS (G.). *Copyright and the Financing of Educational Policy.* In "Copyright Bulletin" (Unesco) 1982, Vol. XVI, No. 4, pp. 14-19.

KUNZ-HALLSTEIN (H.-P.). *Recent Trends in Copyright Legislation of Developing Countries.* In IIC 1982, Vol. 13, No. 6, pp. 689-703.

LADD (D.). *Recent Developments in Copyright Law.* In "APLA Bulletin" 1983, Jan./Feb., pp. 17-20.

LECCA (J.). *The Legal Protection of Software in France.* In "Bulletin — Union des praticiens européens en propriété industrielle" 1982, No. 13, pp. 30-37.

LEONELLI (L.). *L'accesso dei Paesi in via di sviluppo alle opere protette dal diritto di autore. Nuovi problemi.* In "Il Diritto di Autore" 1983, No. 2, pp. 149-178.

LEVITSKY (S. L.). *Soviet Copyright Law at the Crossroads.* In "Review of Socialist Law" 1983, Vol. 9, No. 1 pp. 5-33.

LUCAS (A.). *Les programmes d'ordinateurs comme objets de droits intellectuels.* In "Semaine juridique" 1982, Vol. 56, No. 33/37, art. 3081 (doctrine).

MASOUYÉ (C.). *Copyright Problems Raised by the Use of Computer Systems.* In "EBU Review" 1983, Vol. XXXIV, No. 2, pp. 39-46.

— *The Protection of Expressions of Folklore.* In RIDA 1983, No. 115, pp. 2-24 [in French with parallel English and Spanish translations].

NIR — NORDISKT IMMATERIELLT RÄTTSSKYDD. *Numéro spécial sur les Journées d'Etude de l'ALAI, l'Association Littéraire et Artistique Internationale, à Hanasaari-Hanaholmen près de Helsinki en Finlande, le 26-28 mai 1980.* Specialutgåva, Häfte 3 1982. Articles by Y. Blomstedt, M. Koktvedgaard, D. Reimer, G. Karnell, A. Françon, J. Liedes, R. J. Abrahams, P. L. Aro, H. Cohen Jehoram.

OBÓN LEÓN (R.). *Author and Taxation — A Latin American Viewpoint of the Madrid Convention.* In RIDA 1982, No. 114, pp. 30-108 [in Spanish with parallel English and French translations].

— *Copyright as the Basis of Cultural Development.* In "Copyright Bulletin" (Unesco) 1982, Vo,. XVI, No. 4, pp. 20-31.

OLSSON (A.-H.). *Copyright and New Communications Technology.* In "Copyright Bulletin" (Unesco) 1982, Vol. XVI, No. 3, pp. 8-17.

OZAKI (H.). *Legal Protection of Computer Programs under Copyright Law in Japan.* In "Yuasa and Hara Journal" 1982, Vol. 9, No. 4 pp. 10-17.

PAKUSCHER (E. K.). *Zum Rechtsschutz vor Entstellungen gemeinfreier Werke.* In UFITA 1982, Vol. 93, pp. 43-61 [with a summary in English and French].

PANKINE (B.). *Copyright as Part and Parcel of Cultural Policy.* In "Copyright Bulletin" (Unesco) 1982, Vol. XVI, No. 4, pp. 32-38.

PINGON (P. de) and DEPREZ (J.). *L'impôt sur les grandes fortunes et les droits de la propriété intellectuelle.* In "La semaine juridique" 1983, No. 12, pp. 109-113.

PLOMAN (E. W.). *Transborder Data Flows: The International Legal Framework.* In "Computer Law Journal" 1982, Vol. III, No. 4, pp. 551-562.

SCHORN (F.). *Das Recht der Interpreten in der Europäischen Wirtschaftsgemeinschaft.* In GRUR Int. 1983, No. 3, pp. 167-172.

SCHULZE (E.). — *The Copyright Situation in Japan and in the Republic of China.* In GEMA 1982, No. 22, pp. 13-18.

— *Vervielfältigungsrecht der Urheber von Werken der Literatur und Kunst bei Vervielfältigungen zum persönlichen Gebrauch.* In UFITA 1982, Vol. 93, pp. 73-85 [with a summary in English and French].

SNOW (G.). *Who Owns Copyright in Law Reports?* In "Canadian Patent Reporter" 1982, Vol. 64 (2nd) No. 1, pp. 49-81.

SPOOR (J. H.). *Copyright Mediation, Reprographic Rights and Other Problems.* In RIDA 1982, No. 114, pp. 111-151 [in English with parallel French and Spanish translations].

STORA (C.). *Vidéogrammes et droit français: problèmes juridiques et contractuels en matière de vidéogrammes.* In "Gazette du Palais" 1982, Vol. 102, No. 244/5, pp. 2-6; No. 246/50, pp. 2-6.

STRAUS (J.). *Information and Documentation in the Copyright Law of the German Democratic Republic.* In "Review of Socialist Law" 1982, No. 1, pp. 5-40.

STRÖMHOLM (S.). *Droit Moral — The International and Comparative Scene from a Scandinavian Viewpoint.* In IIC 1983, Vol. 14, No. 1. pp. 1-42.

TOURNIER (J.-L.). *The Price of Copyright.* In "Interauteurs" 1982, No. 193, pp. 31-42.

TROLLER (A.). *Les programmes d'ordinateur (logiciels) sont-ils protégeables par le droit d'auteur?* In "NIR, Nordiskt Immateriellt Rättsskydd" 1983, No. 1, pp. 67-70.

ULMER (E.). *Zur Schutzdauer ausländischer Werke in der Bundesrepublik Deutschland und Österreich.* In GRUR Int. 1983, No. 2 pp. 109-112.

UNGERN-STERNBERG (J. v.). *Von der gemeinsamen Fernsehantenne zum Kabelfernsehen.* In UFITA 1982, No. 94, pp. 79-117 [with a summary in English and French].

# Calendar

## WIPO Meetings

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

### 1983

**September 12 to 20 (Geneva) — International Patent Classification (IPC) Union — Committee of Experts**

**September 14 to 16 (Paris) — Forum of International Non-Governmental Organizations on Double Taxation of Copyright Royalties** (convened jointly with Unesco)

**September 19 to 23 (Geneva) — Permanent Committee on Patent Information (PCPI) and PCT Committee for Technical Cooperation (PCT/CTC)**

**September 26 (Geneva) — Paris Union — Celebration of the Centenary of the Paris Convention for the Protection of Industrial Property**

**September 26 to October 4 (Geneva) — Governing Bodies (WIPO General Assembly, Conference and Coordination Committee; Assemblies of the Paris, Madrid, Hague, Nice, Lisbon, Locarno, IPC, PCT, Bndapest, TRT and Berne Unions; Conferences of Representatives of the Paris, Hague, Nice and Berne Unions; Executive Committees of the Paris and Berne Unions; Committee of Directors of the Madrid Union; Council of the Lisbon Union)**

**October 17 to 21 (Geneva) — Committee of Governmental Experts on Model Statutes for Institutions Administering Anthors' Rights in Developing Countries** (convened jointly with Unesco)

**November 28 to December 2 (Geneva) — Permanent Committee on Patent Information (PCPI) — Working Group on Special Questions and Working Gronp on Planning**

**December 5 to 7 (Geneva) — Berne Union, Universal Copyright Convention and Rome Convention — Subcommittees of the Executive Committee of the Berne Union, of the Intergovernmental Copyright Committee and of the Intergovernmental Committee of the Rome Convention, on Cable Television** (convened jointly with ILO and Unesco)

**December 8 and 9 (Geneva, ILO Headquarters) — Rome Convention — Intergovernmental Committee** (convened jointly with ILO and Unesco)

**December 12 to 16 (Geneva) — Berne Union — Execntive Committee — Extraordinary Session** (sitting together, for the discussion of certain items, with the Intergovernmental Committee of the Universal Copyright Convention)

### 1984

**February 27 to March 24 (Geneva) — Revision of the Paris Convention — Diplomatic Conference**

## UPOV Meetings

### 1983

**September 20 to 23 (Rome) — Technical Working Party for Fruit Crops**

**September 27 to 29 (Conthey) — Technical Working Party for Ornamental Plants and Forest Trees**

**October 3 and 4 (Geneva) — Technical Committee**

**October 11 (Geneva) — Consultative Committee**

**October 12 to 14 (Geneva) — Council**

**November 7 and 8 (Geneva) — Administrative and Legal Committee**

**November 9 and 10 (Geneva) — Hearing of International Non-Governmental Organizations**

### 1984

**March 15 to 17 (La Minière) — Technical Working Party on Automation and Computer Programs**

**June 11 to 15 (Bet Dagan) — Technical Working Party for Vegetables**

**June 26 to 29 (Lund) — Technical Working Party for Agricultural Crops**

**August 21 to 23 (Hanover) — Technical Working Party for Ornamental Plants and Forest Trees**

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

### Non-Governmental Organizations

### 1983

**International Copyright Society (INTERGU)**
Congress — October 31 to November 4 (Santiago de Chile)

**International Federation of Library Associations and Institutions (IFLA)**
Congress — August 21 to 28 (Munich)

**International Federation of Musicians (FIM)**
Congress — September 19 to 23 (Budapest)

**International Literary and Artistic Association (ALAI)**
Executive Committee — September 12 (Paris)

### 1984

**Council of the Professional Photographers of Europe (EUROPHOT)**
Congress — March 17 to 21 (Darmstadt)

**International Confederation of Societies of Authors and Composers (CISAC)**
Congress — November 12 to 17 (Tokyo)

**International Council on Archives (ICA)**
Congress — September 17 to 21 (Bonn)

**International Publishers Association (IPA)**
Congress — March 11 to 16 (Mexico)