Published monthly
Annual subscription:
145 Swiss francs
Each monthly issue:
15 Swiss francs

Copyright

24th year — No. 1
January 1988

Monthly Review of the
World Intellectual Property Organization (WIPO)

Contents

(Continued overleaf)

ISSN 0010-8626

COPYRIGHT AND NEIGHBORING RIGHTS LAWS AND TREATIES

(INSERT)

Treaties
(Status on January 1, 1988)

Convention Establishing the World Intellectual Property Organization

WIPO Convention (1967), amended in 1979

State	Date on which State became member of WIPO	Member also of Paris Union (P) and/or Berne Union (B)[1]	
Algeria	April 16, 1975	P	—
Angola(c)[2]	April 15, 1985	—	—
Argentina	October 8, 1980	P	B
Australia	August 10, 1972	P	B
Austria	August 11, 1973	P	B
Bahamas	January 4, 1977	P	B
Bangladesh(c)[2]	May 11, 1985	—	—
Barbados	October 5, 1979	P	B
Belgium	January 31, 1975	P	B
Benin	March 9, 1975	P	B
Brazil	March 20, 1975	P	B
Bulgaria	May 19, 1970	P	B
Burkina Faso	August 23, 1975	P	B
Burundi	March 30, 1977	P	—
Byelorussian SSR(c)[2]	April 26, 1970	—	—
Cameroon	November 3, 1973	P	B
Canada	June 26, 1970	P	B
Central African Republic	August 23, 1978	P	B
Chad	September 26, 1970	P	B
Chile	June 25, 1975	—	B
China	June 3, 1980	P	—
Colombia	May 4, 1980	—	B
Congo	December 2, 1975	P	B
Costa Rica	June 10, 1981	—	B
Côte d'Ivoire	May 1, 1974	P	B
Cuba	March 27, 1975	P	—
Cyprus	October 26, 1984	P	B
Czechoslovakia	December 22, 1970	P	B
Democratic People's Republic of Korea	August 17, 1974	P	—
Denmark	April 26, 1970	P	B
Egypt	April 21, 1975	P	B
El Salvador(c)[2]	September 18, 1979	—	—
Fiji	March 11, 1972	—	B
Finland	September 8, 1970	P	B
France	October 18, 1974	P	B

State	Date on which State became member of WIPO	Member also of Paris Union (P) and/or Berne Union (B)[1]	
Gabon	June 6, 1975	P	B
Gambia(c)[2]	December 10, 1980	—	—
German Democratic Republic	April 26, 1970	P	B
Germany, Federal Republic of	September 19, 1970	P	B
Ghana	June 12, 1976	P	—
Greece	March 4, 1976	P	B
Guatemala(c)[2]	April 30, 1983	—	—
Guinea	November 13, 1980	P	B
Haiti	November 2, 1983	P	—
Holy See	April 20, 1975	P	B
Honduras(c)[2]	November 15, 1983	—	—
Hungary	April 26, 1970	P	B
Iceland	September 13, 1986	P	B
India	May 1, 1975	—	B
Indonesia	December 18, 1979	P	—
Iraq	January 21, 1976	P	—
Ireland	April 26, 1970	P	B
Israel	April 26, 1970	P	B
Italy	April 20, 1977	P	B
Jamaica(c)[2]	December 25, 1978	—	—
Japan	April 20, 1975	P	B
Jordan	July 12, 1972	P	—
Kenya	October 5, 1971	P	—
Lebanon	December 30, 1986	P	—
Lesotho(c)[2]	November 18, 1986	—	—
Libya	September 28, 1976	P	B
Liechtenstein	May 21, 1972	P	B
Luxembourg	March 19, 1975	P	B
Malawi	June 11, 1970	P	—
Mali	August 14, 1982	P	B
Malta	December 7, 1977	P	B
Mauritania	September 17, 1976	P	B
Mauritius	September 21, 1976	P	—
Mexico	June 14, 1975	P	B
Monaco	March 3, 1975	P	B
Mongolia	February 28, 1979	P	—
Morocco	July 27, 1971	P	B
Netherlands	January 9, 1975	P	B
New Zealand	June 20, 1984	P	—
Nicaragua(c)[2]	May 5, 1985	—	—
Niger	May 18, 1975	P	B
Norway	June 8, 1974	P	B
Pakistan	January 6, 1977	—	B
Panama(c)[2]	September 17, 1983	—	—
Paraguay(c)[2]	June 20, 1987	—	—
Peru(c)[2]	September 4, 1980	—	—
Philippines	July 14, 1980	P	B
Poland	March 23, 1975	P	—
Portugal	April 27, 1975	P	B
Qatar(b)[2]	September 3, 1976	—	—

State	Date on which State became member of WIPO	Member also of Paris Union (P) and/or Berne Union (B)[1]	
Republic of Korea	March 1, 1979	P	—
Romania	April 26, 1970	P	B
Rwanda	February 3, 1984	P	B
Saudi Arabia(a)[2]	May 22, 1982	—	—
Senegal	April 26, 1970	P	B
Sierra Leone(c)[2]	May 18, 1986	—	—
Somalia(c)[2]	November 18, 1982	—	—
South Africa	March 23, 1975	P	B
Soviet Union	April 26, 1970	P	—
Spain	April 26, 1970	P	B
Sri Lanka	September 20, 1978	P	B
Sudan	February 15, 1974	P	—
Suriname	November 25, 1975	P	B
Sweden	April 26, 1970	P	B
Switzerland	April 26, 1970	P	B
Togo	April 28, 1975	P	B
Tunisia	November 28, 1975	P	B
Turkey	May 12, 1976	P	—
Uganda	October 18, 1973	P	—
Ukrainian SSR(c)[2]	April 26, 1970	—	—
United Arab Emirates(b)[2]	September 24, 1974	—	—
United Kingdom	April 26, 1970	P	B
United Republic of Tanzania	December 30, 1983	P	—
United States of America	August 25, 1970	P	—
Uruguay	December 21, 1979	P	B
Venezuela	November 23, 1984	—	B
Viet Nam	July 2, 1976	P	—
Yemen(c)[2]	March 29, 1979	—	—
Yugoslavia	October 11, 1973	P	B
Zaire	January 28, 1975	P	B
Zambia	May 14, 1977	P	—
Zimbabwe	December 29, 1981	P	B

(Total: 117 States)

---

1 "P" means that the State is also a member of the International Union for the Protection of Industrial Property (Paris Union), founded by the Paris Convention for the Protection of Industrial Property, and has ratified or acceded to at least the administrative and final provisions (Articles 13 to 30) of the Stockholm Act (1967) of that Convention.
"B" means that the State is also a member of the International Union for the Protection of Literary and Artistic Works (Berne Union), founded by the Berne Convention for the Protection of Literary and Artistic Works, and has ratified or acceded to at least the administrative and final provisions (Articles 22 to 38) of the Stockholm Act (1967) or the Paris Act (1971) of that Convention.

2 "(a)" means that the State is a member of the World Intellectual Property Organization without being a member of either the Paris Union or the Berne Union and that it chose Class A for the purpose of establishing its contribution (see WIPO Convention, Article 11(4)*(a)*).
"(b)" means that the State is a member of the World Intellectual Property Organization without being a member of either the Paris Union or the Berne Union and that it chose Class B for the purpose of establishing its contribution (see WIPO Convention, Article 11(4)*(a)*).
"(c)" means that the State is a member of the World Intellectual Property Organization without being a member of either the Paris Union or the Berne Union and that it chose Class C for the purpose of establishing its contribution (see WIPO Convention, Article 11(4)*(a)*).

Berne Convention for the Protection of Literary and Artistic Works

Berne Convention (1886),
completed at Paris (1896), revised at Berlin (1908),
completed at Berne (1914), revised at Rome (1928),
at Brussels (1948), at Stockholm (1967)
and at Paris (1971) and amended in 1979

(Berne Union)

State	Class chosen	Date on which State became party to the Convention	Latest Act[1] of the Convention to which State is party and date on which State became party to that Act
Argentina	VI	June 10, 1967	*Brussels: June 10, 1967* Paris, Articles 22 to 38: October 8, 1980
Australia	III	April 14, 1928	Paris: March 1, 1978
Austria	VI	October 1, 1920	Paris: August 21, 1982
Bahamas	VII	July 10, 1973	*Brussels: July 10, 1973* Paris, Articles 22 to 38: January 8, 1977[11]
Barbados	VII	July 30, 1983	Paris: July 30, 1983
Belgium	III	*December 5, 1887*	*Brussels: August 1, 1951* *Stockholm, Articles 22 to 38: February 12, 1975*
Benin	VII	January 3, 1961[12]	Paris: March 12, 1975
Brazil	VI	February 9, 1922	Paris: April 20, 1975
Bulgaria	VI	December 5, 1921	Paris: December 4, 1974[11]
Burkina Faso	VII	August 19, 1963[15]	Paris: January 24, 1976
Cameroon	VI	September 21, 1964[12]	Paris, Articles 1 to 21: October 10, 1974 Paris, Articles 22 to 38: November 10, 1973
Canada	III	*April 10, 1928*	*Rome: August 1, 1931* *Stockholm, Articles 22 to 38: July 7, 1970*
Central African Republic	VII	September 3, 1977	Paris: September 3, 1977
Chad	VII	*November 25, 1971*	*Brussels: November 25, 1971*[2,4] *Stockholm, Articles 22 to 38: November 25, 1971*
Chile	VI	June 5, 1970	Paris: July 10, 1975
Colombia	VII	March 7, 1988	Paris: March 7, 1988
Congo	VII	May 8, 1962[12]	Paris: December 5, 1975
Costa Rica	VII	June 10, 1978	Paris: June 10, 1978
Côte d'Ivoire	VI	January 1, 1962	Paris, Articles 1 to 21: October 10, 1974 Paris, Articles 22 to 38: May 4, 1974
Cyprus	VII	February 24, 1964[12]	Paris: July 27, 1983[7]
Czechoslovakia	IV	February 22, 1921	Paris: April 11, 1980[11]
Denmark	IV	July 1, 1903	Paris: June 30, 1979
Egypt	VII	June 7, 1977	Paris: June 7, 1977[11]
Fiji	VII	*December 1, 1971*[12]	*Brussels: December 1, 1971* *Stockholm, Articles 22 to 38: March 15, 1972*
Finland	IV	April 1, 1928	Paris: November 1, 1986
France	I	December 5, 1887	Paris, Articles 1 to 21: October 10, 1974 Paris, Articles 22 to 38: December 15, 1972
Gabon	VII	March 26, 1962	Paris: June 10, 1975

State	Class chosen	Date on which State became party to the Convention	Latest Act[1] of the Convention to which State is party and date on which State became party to that Act
German Democratic Republic	V	December 5, 1887[14]	Paris: February 18, 1978[11]
Germany, Federal Republic of	I	December 5, 1887[14]	Paris, Articles 1 to 21: October 10, 1974[5] Paris, Articles 22 to 38: January 22, 1974
Greece	VI	November 9, 1920	Paris: March 8, 1976
Guinea	VII	November 20, 1980	Paris: November 20, 1980
Holy See	VII	September 12, 1935	Paris: April 24, 1975
Hungary	VI	February 14, 1922	Paris, Articles 1 to 21: October 10, 1974 Paris, Articles 22 to 38: December 15, 1972[11]
Iceland	VII	September 7, 1947	*Rome: September 7, 1947*[7] Paris, Articles 22 to 38: December 28, 1984
India	IV	April 1, 1928	Paris, Articles 1 to 21: May 6, 1984[6,9,10] Paris, Articles 22 to 38: January 10, 1975[11]
Ireland	IV	*October 5, 1927*	*Brussels: July 5, 1959* *Stockholm, Articles 22 to 38: December 21, 1970*
Israel	VI	*March 24, 1950*	*Brussels: August 1, 1951* *Stockholm, Articles 22 to 38: January 29 or February 26, 1970*[3]
Italy	III	December 5, 1887	Paris: November 14, 1979
Japan	II	July 15, 1899	Paris: April 24, 1975[7]
Lebanon	VI	*September 30, 1947*	*Rome: September 30, 1947*
Libya	VI	September 28, 1976	Paris: September 28, 1976[11]
Liechtenstein	VII	*July 30, 1931*	*Brussels: August 1, 1951* *Stockholm, Articles 22 to 38: May 25, 1972*
Luxembourg	VII	June 20, 1888	Paris: April 20, 1975
Madagascar	VI	*January 1, 1966*	*Brussels: January 1, 1966*
Mali	VII	March 19, 1962[12]	Paris: December 5, 1977
Malta	VII	September 21, 1964	*Rome: September 21, 1964* Paris, Articles 22 to 38: December 12, 1977[11]
Mauritania	VII	February 6, 1973	Paris: September 21, 1976
Mexico	IV	June 11, 1967	Paris: December 17, 1974[6]
Monaco	VII	May 30, 1889	Paris: November 23, 1974
Morocco	VI	June 16, 1917	Paris: May 17, 1987
Netherlands	III	November 1, 1912	Paris, Articles 1 to 21: January 30, 1986[16] Paris, Articles 22 to 38: January 10, 1975[17]
New Zealand	V	*April 24, 1928*	*Rome: December 4, 1947*
Niger	VII	May 2, 1962[12]	Paris: May 21, 1975
Norway	IV	April 13, 1896	*Brussels: January 28, 1963*[5] Paris, Articles 22 to 38: June 13, 1974
Pakistan	VI	*July 5, 1948*	*Rome: July 5, 1948*[2] *Stockholm, Articles 22 to 38: January 29, or February 26, 1970*[3]
Philippines	VI	August 1, 1951	*Brussels: August 1, 1951* Paris, Articles 22 to 38: July 16, 1980
Poland	VI	*January 28, 1920*	*Rome: November 21, 1935*
Portugal	V	March 29, 1911	Paris: January 12, 1979[18]
Romania	VI	*January 1, 1927*	*Rome: August 6, 1936*[2] *Stockholm, Articles 22 to 38: January 29 or February 26, 1970*[3,11]
Rwanda	VII	March 1, 1984	Paris: March 1, 1984
Senegal	VI	August 25, 1962	Paris: August 12, 1975
South Africa	IV	October 3, 1928	*Brussels: August 1, 1951* Paris, Articles 22 to 38: March 24, 1975[11]

State	Class chosen	Date on which State became party to the Convention	Latest Act[1] of the Convention to which State is party and date on which State became party to that Act
Spain	II	December 5, 1887	Paris, Articles 1 to 21: October 10, 1974 Paris, Articles 22 to 38: February 19, 1974
Sri Lanka	VII	July 20, 1959[12]	*Rome: July 20, 1959* Paris, Articles 22 to 38: September 23, 1978
Suriname	VII	February 23, 1977	Paris: February 23, 1977
Sweden	III	August 1, 1904	Paris, Articles 1 to 21: October 10, 1974 Paris, Articles 22 to 38: September 20, 1973
Switzerland	III	*December 5, 1887*	*Brussels: January 2, 1956* *Stockholm, Articles 22 to 38: May 4, 1970*
Thailand	VII	July 17, 1931	*Berlin: July 17, 1931*[8] Paris, Articles 22 to 38: December 29, 1980[11]
Togo	VII	April 30, 1975	Paris: April 30, 1975
Tunisia	VII	December 5, 1887	Paris: August 16, 1975[11]
Turkey	VI	*January 1, 1952*	*Brussels: January 1, 1952*[7]
United Kingdom	I	*December 5, 1887*	*Brussels: December 15, 1957*[5,13] *Stockholm, Articles 22 to 38: January 29 or February 26, 1970*[3]
Uruguay	VII	July 10, 1967	Paris: December 28, 1979
Venezuela	VI	December 30, 1982	Paris: December 30, 1982[11]
Yugoslavia	VI	June 17, 1930	Paris: September 2, 1975[7]
Zaire	VI	October 8, 1963[12]	Paris: January 31, 1975
Zimbabwe	VII	April 18, 1980	*Rome: April 18, 1980* Paris, Articles 22 to 38: December 30, 1981

(Total: 77 States)

[1] "Paris" means the Berne Convention for the Protection of Literary and Artistic Works as revised at Paris on July 24, 1971 (Paris Act); "Stockholm" means the said Convention as revised at Stockholm on July 14, 1967 (Stockholm Act); "Brussels" means the said Convention as revised at Brussels on June 26, 1948 (Brussels Act); "Rome" means the said Convention as revised at Rome on June 2, 1928 (Rome Act); "Berlin" means the said Convention as revised at Berlin on November 13, 1908 (Berlin Act).

[2] This country deposited its instrument of ratification of (or of accession to) the Stockholm Act in its entirety; however, Articles 1 to 21 (substantive clauses) of the said Act have not entered into force.

[3] These are the alternative dates of entry into force which the Director General of WIPO communicated to the States concerned.

[4] In accordance with the provision of Article 29 of the Stockholm Act applicable to the countries outside the Union which accede to the said Act, this country is bound by Articles 1 to 20 of the Brussels Act.

[5] This country has declared that it admits the application of the Appendix of the Paris Act to works of which it is the country of origin by countries which have made a declaration under Article VI(1)(i) of the Appendix or a notification under Article I of the Appendix. The declarations took effect on October 18, 1973, for Germany (Federal Republic of), on March 8, 1974, for Norway, and on September 27, 1971, for the United Kingdom.

[6] Pursuant to Article I of the Appendix of the Paris Act, this country availed itself of the faculties provided for in Articles II and III of the said Appendix. The relevant declaration is effective until October 10, 1994.

[7] Accession or ratification subject to the reservation concerning the right of translation (for Japan, until December 31, 1980).

[8] Accession subject to reservations concerning works of applied art, conditions and formalities required for protection, the right of translation, the right of reproduction of articles published in newspapers or periodicals, the right of performance, and the application of the Convention to works not yet in the public domain at the date of its coming into force.

[9] This country declared that its ratification shall not apply to the provisions of Article 14bis(2)*(b)* of the Paris Act (presumption of legitimation for some authors who have brought contributions to the making of the cinematographic work).

[10] This country notified the designation of the competent authority provided by Article 15 (4) of the Paris Act.

[11] Accession or ratification with the declaration provided for in Article 33(2) relating to the International Court of Justice.

[12] Date on which the declaration of continued adherence was sent, after the accession of the country to independence.

[13] The United Kingdom extended the application of the Brussels Act to the territory of Hong Kong with effect from May 5, 1973.

[14] Date on which the accession by the German Empire became effective.

[15] Burkina Faso, which had acceded to the Berne Convention (Brussels Act) as from August 19, 1963, denounced the said Convention as from September 20, 1970. Later on, Burkina Faso acceded again to the Berne Convention (Paris Act); this accession took effect on January 24, 1976.

[16] Ratification for the Kingdom in Europe.

[17] Ratification for the Kingdom in Europe. Articles 22 to 38 of the Paris Act apply also to the Netherlands Antilles and Aruba.

[18] Pursuant to the provisions of paragraph (2)*(c)* of Article 14bis of the Paris Act, this country has made a declaration to the effect that the undertaking by authors to bring contributions to the making of a cinematographic work must be in a written agreement. This declaration was received on November 5, 1986.

Other Treaties in the Fields of Copyright and Neighboring Rights Administered by WIPO

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

Rome Convention (1961)

State	Date on which State became party to the Convention	State	Date on which State became party to the Convention
Austria *	June 9, 1973	Guatemala	January 14, 1977
Barbados	September 18, 1983	Ireland *	September 19, 1979
Brazil	September 29, 1965	Italy *	April 8, 1975
Burkina Faso	January 14, 1988	Luxembourg *	February 25, 1976
Chile	September 5, 1974	Mexico	May 18, 1964
Colombia	September 17, 1976	Monaco *	December 6, 1985
Congo *	May 18, 1964	Niger *	May 18, 1964
Costa Rica	September 9, 1971	Norway *	July 10, 1978
Czechoslovakia *	August 14, 1964	Panama	September 2, 1983
Denmark *	September 23, 1965	Paraguay	February 26, 1970
Dominican Republic	January 27, 1987	Peru	August 7, 1985
Ecuador	May 18, 1964	Philippines	September 25, 1984
El Salvador	June 29, 1979	Sweden *	May 18, 1964
Fiji *	April 11, 1972	United Kingdom *	May 18, 1964
Finland *	October 21, 1983	Uruguay	July 4, 1977
France *	July 3, 1987		
Germany, Federal Republic of *	October 21, 1966		(Total: 32 States)

Note: The secretarial tasks relating to this Convention are performed jointly with the International Labour Office and Unesco.

* The instruments of ratification or accession deposited with the Secretary-General of the United Nations by the following countries contain declarations made under the articles mentioned hereafter (with reference to publication in *Le Droit d'auteur (Copyright)* for the years 1962 to 1964 and in *Copyright* since 1965):
Austria, Article 16(1)*(a)*(iii) and (iv) and 1*(b)* [1973, p. 67];
Congo, Articles 5(3) (concerning Article 5(1)*(c)*) and 16(1)*(a)*(i) [1964, p. 127];
Czechoslovakia, Article 16(1)*(a)*(iii) and (iv) [1964, p. 110];
Denmark, Articles 6(2), 16(1)*(a)*(ii) and (iv) and 17 [1965, p. 214];
Fiji, Articles 5(3) (concerning Article 5(1)*(b)*), 6(2) and 16(1)*(a)*(i) [1972, pp. 88 and 178];
Finland, Articles 6(2), 16(1)*(a)*(i), (ii) and (iv), 16(1)*(b)* and 17 [1983, p. 287];
France, Articles 5(3) and 16(1)*(a)*(iii) [1987, p. 184];
Germany (Federal Republic of), Articles 5(3) (concerning Article 5(1)*(b)*) and 16(1)*(a)*(iv) [1966, p. 237];
Ireland, Articles 5(3) (concerning Article 5(1)*(b)*), 6(2) and 16(1)*(a)*(ii) [1979, p. 218];
Italy, Articles 6(2), 16(1)*(a)*(ii), (iii) and (iv), 16(1)*(b)* and 17 [1975, p. 44];
Luxembourg, Articles 5(3) (concerning Article 5(1)*(c)*), 16(1)*(a)*(i) and 16(1)*(b)* [1976, p. 24];
Monaco, Articles 5(3) (concerning Article 5(1)*(c)*), 16(1)*(a)*(i) and 16(1)*(b)* [1985, p. 422];
Niger, Articles 5(3) (concerning Article 5(1)*(c)*) and 16(1)*(a)*(i) [1963, p. 155];
Norway, Articles 6(2) and 16(1)*(a)*(ii), (iii) and (iv) [1978, p. 133];
Sweden, Article 16(1)*(b)* [1962, p. 138; 1986, p. 382];
United Kingdom, Articles 5(3) (concerning Article 5(1)*(b)*), 6(2) and 16(1)*(a)*(ii), (iii) and (iv) [1963, p. 244]; the same declarations were made for Gibraltar and Bermuda [1967, p. 36; 1970, p. 108].

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

Phonograms Convention (Geneva, 1971)

State	Date on which State became party to the Convention	State	Date on which State became party to the Convention
Argentina	June 30, 1973	India	February 12, 1975
Australia	June 22, 1974	Israel	May 1, 1978
Austria	August 21, 1982	Italy *	March 24, 1977
Barbados	July 29, 1983	Japan	October 14, 1978
Brazil	November 28, 1975	Kenya	April 21, 1976
Burkina Faso	January 30, 1988	Luxembourg	March 8, 1976
Chile	March 24, 1977	Mexico	December 21, 1973
Costa Rica	June 17, 1982	Monaco	December 2, 1974
Czechoslovakia	January 15, 1985	New Zealand	August 13, 1976
Denmark	March 24, 1977	Norway	August 1, 1978
Ecuador	September 14, 1974	Panama	June 29, 1974
Egypt	April 23, 1978	Paraguay	February 13, 1979
El Salvador	February 9, 1979	Peru	August 24, 1985
Fiji	April 18, 1973	Republic of Korea	October 10, 1987
Finland *	April 18, 1973	Spain	August 24, 1974
France	April 18, 1973	Sweden	April 18, 1973
Germany, Federal Republic of	May 18, 1974	United Kingdom	April 18, 1973
Guatemala	February 1, 1977	United States of America	March 10, 1974
Holy See	July 18, 1977	Uruguay	January 18, 1983
Hungary	May 28, 1975	Venezuela	November 18, 1982
		Zaire	November 29, 1977

(Total: 41 States)

* This country has declared, in accordance with Article 7(4) of the Convention, that it will apply the criterion according to which it affords protection to producers of phonograms solely on the basis of the place of first fixation instead of the criterion of the nationality of the producer.

Convention Relating to the Distribution of Programme-Carrying Signals Transmitted by Satellite

Satellites Convention (Brussels, 1974)

State	Date on which State became party to the Convention	State	Date on which State became party to the Convention
Austria	August 6, 1982	Morocco	June 30, 1983
Germany, Federal Republic of *	August 25, 1979	Nicaragua	August 25, 1979
Italy *	July 7, 1981	Panama	September 25, 1985
Kenya	August 25, 1979	Peru	August 7, 1985
Mexico	August 25, 1979	United States of America	March 7, 1985
		Yugoslavia	August 25, 1979

(Total: 11 States)

* With a declaration, pursuant to Article 2(2) of the Convention, that the protection accorded under Article 2(1) is restricted in its territory to a period of 25 years after the expiry of the calendar year in which the transmission by satellite has occurred.

Multilateral Convention for the Avoidance of Double Taxation of Copyright Royalties and Additional Protocol*

Madrid Convention (1979)

Signatory States

Cameroon,[1] Czechoslovakia, Holy See,[1] Israel[1] (4).

Ratifications and Accessions

Czechoslovakia(R)[2]	September 24, 1981
Egypt(A)	February 11, 1982
India(A)	January 31, 1983
Iraq(A)	July 15, 1981

* The Convention has not yet entered into force.
[1] These States have also signed the Additional Protocol.
[2] This State has also acceded to the Additional Protocol.

Vienna Agreement for the Protection of Type Faces and Their International Deposit and Protocol*

Vienna Agreement (1973)

Signatory States

France,[1] Germany (Federal Republic of), Hungary,[1] Italy, Liechtenstein,[1] Luxembourg,[1] Netherlands,[1] San Marino,[1] Switzerland,[1] United Kingdom, Yugoslavia (11).

Ratifications

France[2]	May 17, 1976
Germany, Federal Republic of[3]	November 9, 1981

* The Agreement has not yet entered into force.
[1] These States have also signed the Protocol.
[2] This State has also ratified the Protocol.
[3] This State has also acceded to the Protocol.

Nairobi Treaty on the Protection of the Olympic Symbol

Nairobi Treaty (1981)

State	Date on which State became party to the Treaty	State	Date on which State became party to the Treaty
Algeria	August 16, 1984	India	October 19, 1983
Argentina	January 10, 1986	Italy	October 25, 1985
Barbados	February 28, 1986	Jamaica	March 17, 1984
Bolivia	August 11, 1985	Kenya	September 25, 1982
Brazil	August 10, 1984	Mexico	May 16, 1985
Bulgaria	May 6, 1984	Oman	March 26, 1986
Chile	December 14, 1983	Qatar	July 23, 1983
Congo	March 8, 1983	San Marino	March 18, 1986
Cuba	October 21, 1984	Senegal	August 6, 1984
Cyprus	August 11, 1985	Soviet Union	April 17, 1986
Egypt	October 1, 1982	Sri Lanka	February 19, 1984
El Salvador	October 14, 1984	Syria	April 13, 1984
Equatorial Guinea	September 25, 1982	Togo	December 8, 1983
Ethiopia	September 25, 1982	Tunisia	May 21, 1983
Greece	August 29, 1983	Uganda	October 21, 1983
Guatemala	February 21, 1983	Uruguay	April 16, 1984

(Total: 32 States)

Other Treaties in the Fields of Copyright and Neighboring Rights Not Administered by WIPO[1]

Universal Copyright Convention

Adopted at Geneva (1952), revised at Paris (1971)

State	Date on which State became party to the Convention	
	Text of 1952	Text of 1971
Algeria[2]	August 28, 1973	July 10, 1974
Andorra	September 16, 1955	—
Argentina	February 13, 1958	—
Australia	May 1, 1969	February 28, 1978
Austria	July 2, 1957	August 14, 1982
Bahamas	December 27, 1976	December 27, 1976
Bangladesh[2]	August 5, 1975	August 5, 1975
Barbados	June 18, 1983	June 18, 1983
Belgium	August 31, 1960	—
Belize	December 1, 1982	—
Brazil	January 13, 1960	December 11, 1975
Bulgaria	June 7, 1975	June 7, 1975
Cameroon	May 1, 1973	July 10, 1974
Canada	August 10, 1962	—
Chile	September 16, 1955	—
Colombia	June 18, 1976	June 18, 1976
Costa Rica	September 16, 1955	March 7, 1980
Cuba	June 18, 1957	—
Czechoslovakia	January 6, 1960	April 17, 1980
Democratic Kampuchea	September 16, 1955	—
Denmark	February 9, 1962	July 11, 1979
Dominican Republic	May 8, 1983	May 8, 1983
Ecuador	June 5, 1957	—
El Salvador	March 29, 1979	March 29, 1979
Fiji	October 10, 1970	—
Finland	April 16, 1963	November 1, 1986
France	January 14, 1956	July 10, 1974
German Democratic Republic	Octoher 5, 1973	December 10, 1980
Germany, Federal Republic of	Septemher 16, 1955	July 10, 1974
Ghana	August 22, 1962	—
Greece	August 24, 1963	—
Guatemala	October 28, 1964	—
Guinea	November 13, 1981	Novemher 13, 1981
Haiti	September 16, 1955	—
Holy See	October 5, 1955	May 6, 1980
Hungary	January 23, 1971	July 10, 1974
Iceland	December 18, 1956	—
India	January 21, 1958	—
Ireland	January 20, 1959	—
Israel	September 16, 1955	—
Italy	January 24, 1957	January 25, 1980
Japan	April 28, 1956	October 21, 1977
Kenya	September 7, 1966	July 10, 1974
Laos	September 16, 1955	—
Lebanon	October 17, 1959	—
Liberia	July 27, 1956	—
Liechtenstein	January 22, 1959	—
Luxemhourg	October 15, 1955	—
Malawi	October 26, 1965	—
Malta	November 19, 1968	—
Mauritius	March 12, 1968	—
Mexico[2]	May 12, 1957	October 31, 1975
Monaco	September 16, 1955	December 13, 1974
Morocco	May 8, 1972	January 28, 1976
Netherlands	June 22, 1967	November 30, 1985
New Zealand	September 11, 1964	—
Nicaragua	August 16, 1961	—
Nigeria	February 14, 1962	—
Norway	January 23, 1963	August 7, 1974
Pakistan	September 16, 1955	—
Panama	October 17, 1962	September 3, 1980
Paraguay	March 11, 1962	—
Peru	October 16, 1963	July 22, 1985
Philippines	Novemher 19, 1955	—
Poland	March 9, 1977	March 9, 1977
Portugal	Decemher 25, 1956	July 30, 1981
Republic of Korea	October 1, 1987	October 1, 1987
Saint Vincent and the Grenadines	April 22, 1985	April 22, 1985
Senegal	July 9, 1974	July 10, 1974
Soviet Union	May 27, 1973	—
Spain	September 16, 1955	July 10, 1974
Sri Lanka	January 25, 1984	January 25, 1984
Sweden	July 1, 1961	July 10, 1974
Switzerland	March 30, 1956	—
Tunisia[2]	June 19, 1969	June 10, 1975
United Kingdom	September 27, 1957	July 10, 1974
United States of America	September 16, 1955	July 10, 1974
Venezuela	September 30, 1966	—
Yugoslavia	May 11, 1966	July 10, 1974
Zambia	June 1, 1965	—

[1] According to the information received by the International Bureau.

[2] Pursuant to Article V*bis* of the Convention as revised in 1971, this country has availed itself of the exceptions provided for in Articles V*ter* and V*quater* in favor of developing countries.

Editor's Note: The three Protocols annexed to the Convention were ratified, accepted or acceded to separately; they concern: (1) the application of the Convention to the works of stateless persons and refugees, (2) the application of the Convention to the works of certain international organizations, and (3) the effective date of instruments of ratification or acceptance of or accession to the Convention. For detailed information in this respect, and as to notifications made by governments of certain Contracting States concerning the territorial application of the Convention and the Protocols, see *Copyright Bulletin*, quarterly review published by Unesco.

European Agreement Concerning Programme Exchanges by Means of Television Films

(Paris, December 15, 1958)

State	Date on which State became party to the Agreement
Belgium	April 8, 1962
Cyprus	February 20, 1970
Denmark	November 25, 1961
France	July 1, 1961
Greece	February 9, 1962
Ireland	April 4, 1965
Israel	February 15, 1978
Luxembourg	October 31, 1963
Netherlands	March 5, 1967
Norway	March 15, 1963
Spain	January 4, 1974
Sweden	July 1, 1961
Tunisia	February 22, 1969
Turkey	March 28, 1964
United Kingdom	July 1, 1961

European Agreement for the Prevention of Broadcasts Transmitted from Stations Outside National Territories

(Strasbourg, January 22, 1965)

State	Date on which State became party to the Agreement
Belgium	October 19, 1967
Cyprus	October 2, 1971
Denmark	October 19, 1967
France	April 6, 1968
Germany, Federal Republic of	February 28, 1970
Greece	August 14, 1979
Ireland	February 23, 1969
Italy	March 19, 1983
Liechtenstein	February 14, 1977
Netherlands	September 27, 1974
Norway	October 17, 1971
Portugal	September 7, 1969
Sweden	October 19, 1967
Switzerland	September 19, 1976
Turkey	February 17, 1975
United Kingdom	December 3, 1967

European Agreement on the Protection of Television Broadcasts

Agreement

(Strasbourg, June 22, 1960)

State	Date on which State became party to the Agreement
Belgium *	March 8, 1968
Cyprus	February 22, 1970
Denmark *	November 27, 1961
France	July 1, 1961
Germany, Federal Republic of *	October 9, 1967
Norway *	August 10, 1968
Spain	October 23, 1971
Sweden **	July 1, 1961
Turkey	January 20, 1976
United Kingdom *	July 1, 1961

Protocol

(Strasbourg, January 22, 1965)

State	Date on which State became party to the Protocol
Belgium	March 8, 1968
Cyprus	February 22, 1970
Denmark	March 24, 1965
France	March 24, 1965
Germany, Federal Republic of	October 9, 1967
Norway	August 10, 1968
Spain	October 23, 1971
Sweden	March 24, 1965
Turkey	January 20, 1976
United Kingdom	March 24, 1965

* The instruments of ratification were accompanied by reservations in accordance with Article 3, paragraph 1, of the Agreement. As to Belgium, see *Copyright*, 1968, p. 147; as to Denmark, see *Le Droit d'auteur*, 1961, p. 360; as to Germany (Federal Republic of), see *Copyright*, 1967, p. 217; as to Norway, see *ibid.*, 1968, p. 191; as to the United Kingdom, see *Le Droit d'auteur*, 1961, p. 152.

** Sweden has availed itself of the reservations contained in subparagraphs *(b)*, *(c)* and *(f)* of paragraph 1 of Article 3 of the Agreement.

Additional Protocol

(Strasbourg, March 21, 1983)

The Additional Protocol entered into force on January 1, 1985, with respect to all States party to the European Agreement on the Protection of Television Broadcasts and the Protocol to the said Agreement.

Governing Bodies and Committees
(Status on January 1, 1988)

Under Treaties Administered by WIPO

Governing Bodies and Committees of WIPO

General Assembly: Algeria, Argentina, Australia, Austria, Bahamas, Barbados, Belgium, Benin, Brazil, Bulgaria, Burkina Faso, Burundi, Cameroon, Canada, Central African Republic, Chad, Chile, China, Colombia (as from March 7, 1988), Congo, Costa Rica, Côte d'Ivoire, Cuba, Cyprus, Czechoslovakia, Democratic People's Republic of Korea, Denmark, Egypt, Fiji, Finland, France, Gabon, German Democratic Republic, Germany (Federal Republic of), Ghana, Greece, Guinea, Haiti, Holy See, Hungary, Iceland, India, Indonesia, Iraq, Ireland, Israel, Italy, Japan, Jordan, Kenya, Lebanon, Libya, Liechtenstein, Luxembourg, Malawi, Mali, Malta, Mauritania, Mauritius, Mexico, Monaco, Mongolia, Morocco, Netherlands, New Zealand, Niger, Norway, Pakistan, Philippines, Poland, Portugal, Republic of Korea, Romania, Rwanda, Senegal, South Africa,[1] Soviet Union, Spain, Sri Lanka, Sudan, Suriname, Sweden, Switzerland, Togo, Tunisia, Turkey, Uganda, United Kingdom, United Republic of Tanzania, United States of America, Uruguay, Venezuela, Viet Nam, Yugoslavia, Zaire, Zambia, Zimbabwe (97).

Conference: The same States as above, with Angola, Bangladesh, Byelorussian SSR, El Salvador, Gambia, Guatemala, Honduras, Jamaica, Lesotho, Nicaragua, Panama, Paraguay, Peru, Qatar, Saudi Arabia, Sierra Leone, Somalia, Ukrainian SSR, United Arab Emirates, Yemen (117).

Coordination Committee: Algeria, Argentina, Australia, Austria, Bangladesh, Brazil, Bulgaria, Cameroon, Canada, Chile, China, Colombia, Côte d'Ivoire, Cuba, Czechoslovakia, Egypt, France, German Democratic Republic, Germany (Federal Republic of), Hungary, India, Indonesia, Italy, Jamaica, Japan, Kenya, Mexico, Morocco, Netherlands, Nicaragua, Pakistan, Philippines, Poland, Republic of Korea, Saudi Arabia, Senegal, Soviet Union, Spain, Sweden, Switzerland, Syria, Turkey, United Kingdom, United Republic of Tanzania, United States of America, Uruguay, Venezuela (47).

Budget Committee: Brazil, Cameroon, Canada, Cuba, Czechoslovakia, Egypt, France, Germany (Federal Republic of), India, Japan, Soviet Union, Sri Lanka, Switzerland, United States of America (14).

WIPO Permanent Committee for Development Cooperation Related to Industrial Property: Algeria, Angola, Argentina, Australia, Austria, Bangladesh, Barbados, Benin, Brazil, Bulgaria, Burkina Faso, Burundi, Cameroon, Canada, Central African Republic, Chile, China, Colombia, Congo, Costa Rica, Côte d'Ivoire, Cuba, Cyprus, Czechoslovakia, Democratic People's Republic of Korea, Denmark, Egypt, El Salvador, Finland, France, Gabon, Gambia, German Democratic Republic, Germany (Federal Republic of), Ghana, Greece, Guatemala, Guinea, Haiti, Honduras, Hungary, India, Indonesia, Iraq, Israel, Italy, Jamaica, Japan, Jordan, Kenya, Lesotho, Libya, Malawi, Mali, Mauritania, Mauritius, Mexico, Mongolia, Morocco, Netherlands, New Zealand, Nicaragua, Niger, Norway, Pakistan, Panama, Paraguay, Peru, Philippines, Poland, Portugal, Republic of Korea, Romania, Rwanda, Senegal, Somalia, Soviet Union, Spain, Sri Lanka, Sudan, Suriname, Sweden, Switzerland, Togo, Tunisia, Turkey, Uganda, United Arab Emirates, United Kingdom, United Republic of Tanzania, United States of America, Uruguay, Venezuela, Viet Nam, Yemen, Yugoslavia, Zaire, Zambia (98).

WIPO Permanent Committee for Development Cooperation Related to Copyright and Neighboring Rights: Algeria, Angola, Australia, Austria, Bangladesh, Barbados, Belgium, Benin, Brazil, Bulgaria, Burkina Faso, Cameroon, Canada, Central African Republic, Chad, Chile, Colombia, Congo, Costa Rica, Côte d'Ivoire, Cyprus, Czechoslovakia, Denmark, Egypt, El Salvador, Fiji, Finland, France, Gambia, German Democratic Republic, Germany (Federal Republic of), Ghana, Guatemala, Guinea, Haiti, Honduras, Hungary, India, Israel, Italy, Japan, Jordan, Kenya, Lesotho, Malawi, Mali, Mauritius, Mexico, Morocco, Netherlands, New Zealand, Nicaragua, Niger, Norway, Pakistan, Peru, Philippines, Poland, Portugal, Romania, Saudi Arabia, Senegal, Somalia, Soviet Union, Spain, Sri Lanka, Sudan, Suriname, Sweden, Switzerland, Togo, Tunisia, Turkey, United Kingdom, United Republic of Tanzania, United States of America, Uruguay, Yemen, Zaire, Zambia (80).

[1] According to a decision of the WIPO Coordination Committee, not to be invited "to any meeting of WIPO and its Bodies and Unions" (see *Copyright*, 1977, p. 296).

WIPO Permanent Committee on Industrial Property Information: Algeria, Australia, Austria, Barbados, Belgium, Benin, Brazil, Bulgaria, Burkina Faso, Cameroon, Canada, Central African Republic, Chad, China, Congo, Cuba, Cyprus, Czechoslovakia, Democratic People's Republic of Korea, Denmark, Dominican Republic, Egypt, Finland, France, Gabon, German Democratic Republic, Germany (Federal Republic of), Ghana, Hungary, Iran (Islamic Republic of), Ireland, Israel, Italy, Japan, Kenya, Liechtenstein, Luxembourg, Madagascar, Malawi, Mali, Mauritania, Monaco, Mongolia, Netherlands, Norway, Philippines, Poland, Portugal, Republic of Korea, Romania, Rwanda, Senegal, Soviet Union, Spain, Sri Lanka, Sudan, Suriname, Sweden, Switzerland, Togo, Trinidad and Tobago, Uganda, United Kingdom, United States of America, Viet Nam, Yugoslavia, Zambia, African Intellectual Property Organization, Benelux Trademark Office / Benelux Designs Office, European Patent Organisation, African Regional Industrial Property Organization (71).

Governing Bodies of the Berne Union

Assembly: Argentina, Australia, Austria, Bahamas, Barbados, Belgium, Benin, Brazil, Bulgaria, Burkina Faso, Cameroon, Canada, Central African Republic, Chad, Chile, Colombia (as from March 7, 1988), Congo, Costa Rica, Côte d'Ivoire, Cyprus, Czechoslovakia, Denmark, Egypt, Fiji, Finland, France, Gabon, German Democratic Republic, Germany (Federal Republic of), Greece, Guinea, Holy See, Hungary, Iceland, India, Ireland, Israel, Italy, Japan, Libya, Liechtenstein, Luxembourg, Mali, Malta, Mauritania, Mexico, Monaco, Morocco, Netherlands, Niger, Norway, Pakistan, Philippines, Portugal, Romania, Rwanda, Senegal, South Africa,[1] Spain, Sri Lanka, Suriname, Sweden, Switzerland, Thailand, Togo, Tunisia, United Kingdom, Uruguay, Venezuela, Yugoslavia, Zaire, Zimbabwe (72).

Conference of Representatives: Lebanon, Madagascar, New Zealand, Poland, Turkey (5).

Executive Committee: Austria, Bulgaria, Cameroon, Canada, Chile, Côte d'Ivoire, German Democratic Republic, India, Italy, Morocco, Netherlands, Pakistan, Poland, Senegal, Sweden, Switzerland, United Kingdom, Uruguay, Venezuela, (19).

Intergovernmental Committee of the Rome Convention

Austria, Brazil, Congo, Czechoslovakia, Finland, Germany (Federal Republic of), Italy, Mexico, Niger, Norway, Sweden, United Kingdom (12).

Under Other Treaties

Intergovernmental Committee of the Universal Copyright Convention

Algeria, Australia, Austria, Brazil, Colombia, Denmark, France, Germany (Federal Republic of), Guinea, India, Israel, Japan, Mexico, Netherlands, Senegal, Soviet Union, Tunisia, United States of America (18).

High Officials of WIPO

(Status on January 1, 1988)

Director General:	Dr. Arpad Bogsch
Deputy Directors General:	Lev Efremovich Kostikov
	Alfons A. Schäfers

Notifications Concerning Treaties

Berne Convention for the Protection of Literary and Artistic Works

Accession to the Paris Act (1971)

COLOMBIA

The Government of the Republic of Colombia deposited, on December 4, 1987, its instrument of accession to the Berne Convention for the Protection of Literary and Artistic Works of September 9, 1886, as revised at Paris on July 24, 1971.

The Paris Act (1971) of the Convention will enter into force, with respect to the Republic of Colombia, three months after the date of this notification, that is on March 7, 1988.

Berne Notification No. 118, of December 7, 1987.

Studies

Copyright and Direct Broadcasting by Satellite

Mario FABIANI*

Contents: 1–2. General considerations and some historical antecedents. The direct broadcasting satellite and the fixed service satellite. 3. Direct broadcasting by satellite is an act of broadcasting within the meaning of the international copyright and neighboring rights conventions. 4. Theory of the responsibility of the broadcaster as determined by the law of the country in which emission takes place. 5. The complementary criteria of service zone and true audience. 6. The need for effective protection of works used in programs transmitted by direct broadcasting satellite. 7. The discussions during WIPO/Unesco meetings and the solutions proposed. 8. The arguments for and against the "Bogsch theory." 9. Responsibility of the broadcaster and territorial legislation applicable. 10. Exercise of broadcasting copyright and contractual solutions.

1–2. General Considerations and Some Historical Antecedents. The Direct Broadcasting Satellite and the Fixed Service Satellite

1. The legal and economic implications arising from the new technology for the use of works transmitted by direct broadcasting satellite afford justification for the debate that began on this subject some years ago. The investigations conducted for the meetings of experts convened by WIPO and Unesco in 1985 and 1986 played a very special part in that debate.

Special emphasis will be placed in this article on the discussions held and opinions expressed at those meetings, and also on the deliberations that have taken place at seminars and meetings of non-governmental organizations (such as the International Literary and Artistic Association (ALAI), the International Confederation of Societies of Authors and Composers (CISAC) and the International Copyright Society (INTERGU)) that have concerned themselves with this problem.

First we shall look at some of the historical background.

2. Television by communications satellite transcends national boundaries, as its "footprint" can cover whole regions and continents. Those satellites that can be described as first-generation (point-to-point transmission satellites and distribution satellites) have been succeeded by a new generation known as the direct broadcasting satellites (DBS). These satellites are distinguished from those of the first generation by the fact that they send signals intended to be picked up directly by the public, without the intervention of earth stations.

The first broadcasting satellites should become operational in Europe during the next few years. Their operational introduction is eagerly awaited by interested groups (program producers, advertising agencies, etc.), but there is no ignoring the problems of a legal, political, social and economic nature that this new communication technology is going to cause, owing to the possibility of the signal being received in two or more States.[1]

In the classification of the various kinds of satellite, one complication comes from fixed service satellites (FSS), the signals from which are intended to be picked up by earth stations but which, on account of their power, can also be picked up directly by the public with the aid of receiving installations that are costing less and less as time goes.

Questions concerning the transmission of programs by fixed service satellite were subjected to examination in depth at the meeting of the WIPO/Unesco Committee of Governmental Experts that took place in Paris from June 2 to 6, 1986.[2] In this article we shall be dealing only with programs transmitted by direct broadcasting satellite, but there are certain conclusions concerning the use of those satellites that may be applicable to transmissions by fixed service satellite. A special problem arises for the FSS: its signals are intended solely for intermediaries (broadcasters or cable distributors) and are not supposed to reach the general public. So there is reason to wonder whether, in view of this restriction, emission can be regarded as

* Legal Counsellor to the Italian Society of Authors and Publishers (SIAE). Professor at the Law Faculty of Rome University.

[1] De Sanctis, "Satelliti spaziali di comunicazione e diritto di autore," *Il Diritto di Autore*, 1969, p. 3.

[2] See *Copyright*, 1986, p. 233.

direct broadcasting to the public,[3] whether the organization may be held responsible in the same way as the direct broadcasting organization, and then whether interception by the public (for which the signal is not intended) is an act of piracy.[4]

In order to highlight the difference, from the subjective angle of the transmitter's intention, between the two situations (direct broadcasting satellite and fixed service satellite), it has been proposed that only broadcasting *intended to be received* by the general public be defined as direct broadcasting, and not that *capable of being received*.[5]

3. Direct Broadcasting by Satellite Is an Act of Broadcasting Within the Meaning of the International Copyright and Neighboring Rights Conventions

Copyright doctrine began to show an interest in the problems of protecting works used in programs broadcast by point–to–point satellite or distribution satellite towards the end of the 1960s and the beginning of the 1970s. Since then a wealth of legal literature has accumulated on the subject.[6]

When the copyright specialists started dealing with the legal aspects of direct broadcasting by satellite, the problems seemed in some way simplified by the fact that there was no intermediary between the transmitter and the public, and therefore the only person responsible was the transmitter. Subsequently, questions of the transmitter's joint or subsidiary liability with the organizations operating earth stations were not at issue.

It can be said that legal writers have agreed on the principle that it is for the original distributing organization to secure the authorization of the authors and to remunerate them for the broadcast.[7]

The first questions to be raised had to do with the definition of the activity of the organization sending the signal to the satellite, and the type of responsibility of that organization towards the owners of copyright whose works were used in the programs so transmitted.

For a reply on the definition of the activity of the organization sending signals to the direct broadcasting satellite, reference was made to the provisions of the international copyright conventions, and above all to those of the Berne Convention, Article 11[bis] of which specified that:

> Authors of literary and artistic works shall enjoy the exclusive right of authorizing:
> (*i*) the broadcasting of their works or the communication thereof to the public by any other means of wireless diffusion of signs, sounds or images.

In the preparatory document that the International Bureau of WIPO and the Secretariat of Unesco drew up for the purposes of the Committee of Governmental Experts that met in Paris in June 1986, the provisions written into Article 11[bis] of the Berne Convention and into Article IV*bis* of the Universal Copyright Convention, not to mention Article 3*(f)* of the Rome Convention, were exhaustively commented upon, and the following principle was put forward[8]:

> Broadcasting through direct broadcasting satellites is broadcasting under the Berne Convention, the Universal Copyright Convention and the Rome Convention. Consequently, where audiovisual works are broadcast by such satellites, the owners of copyright in such works, as well as performers, phonogram producers and broadcasting organizations whose rights may be concerned by the direct broadcasting by satellite should enjoy the same rights as in the case of traditional broadcasting (by earth stations).

On this principle it may be said that there is virtual unanimity among legal writers and participants in the international meetings, as there is on the principle according to which it is the broadcaster with whom the direct broadcast by satellite originates who is responsible to the owners of the copyright in the work used (principle AW12 of the document of the Secretariat, quoted earlier).

As for the transmitting organization's obligation to pay the rights for the use of the works in the programs transmitted, suffice it to quote the very clear–cut opinion expressed by one author[9]:

---

[3] According to the Vienna Supreme Court of Appeal, the signal which may be received by the public with the aid of aerials with a very high purchase price cannot be regarded as broadcasting intended for the public (*Oberster Gerichtshof*, February 4, 1986, *IIC–International Review of Industrial Property and Copyright Law*, 1987, No. 3, p. 413, with note by Hodik).

[4] With regard to acts of piracy that may occur in transmissions by distribution satellites, see Ulmer, "Protection of Authors in Relation to the Transmission Via Satellite of Broadcast Programmes," *Revue internationale du droit d'auteur* (RIDA), 1977, No. LXXXXIII, p. 4 and, translated into Italian, in *Il Diritto di Autore*, 1977, p. 457; Kerever, "Copyright and Space Satellites," RIDA 1984, No. 121, p. 64; Ferrara Santamaria, "La protezione dei diritti sui film e telefilm," report on the University of California Symposium of March 5, 1987, *Cinema d'Oggi*, June 1987.

[5] Rumphorst, statement at the International Literary and Artistic Association (ALAI) Study Session, Sorrento, June 1987. According to Cohen Jehoram (see his statement), the original emitter is liable, and the expression "intended for the general public" should not be taken in a completely subjective sense. It is therefore a question of objective liability.

[6] See the articles quoted by Ulmer, *op. cit.*, p. 4, and by Cohen Jehoram, "Legal Issues of Satellite Television in Europe," RIDA 1984, No. 122, p. 153.

[7] Colombet, *Propriété littéraire et artistique et droits voisins*, 3rd edition, Paris, Dalloz, 1986, p. 210.

[8] Principle AW11, *Copyright*, 1986, p. 231. The Cable and Broadcasting Act 1984 of the United Kingdom assimilates direct broadcasting by satellite to broadcasting (see De Freitas, *European Intellectual Property Review*, 1984, p. 81).

[9] Szilágyi, "Questions of Broadcasting by Satellite with Special Reference to Authors' Rights," *Copyright*, 1981, p. 229.

In view of the fact that no third party becomes wedged in between the originating organization and the public ..., the originating organization is responsible for paying the authors' royalties.

Fundamentally, in that author's opinion, the question of direct broadcasting by satellite is already settled in copyright terms.

Yet by virtue of what circumstance and on the basis of what law is the original broadcasting organization responsible? Should one apply only the copyright law of the country in which the headquarters of the broadcasting organization is located and from which the emission is made towards the satellite, or should one also apply the copyright law or laws of those countries, which may be many, in which the programs transmitted by satellite can be received (as perhaps they were intended to be)?[10]

On this point there was some difference of opinion.

4. Theory of the Responsibility of the Broadcaster as Determined by the Law of the Country in Which Emission Takes Place

Some authors expressed the opinion that only the law of the country from which the signal was emitted should be taken into consideration, even where the direct broadcasting satellite covered two or more countries. The territorial connection was to be determined by the location of the programming body that took the decision to broadcast the program.[11]

However, it was seen that difficulties were emerging. First on account of the possibility of there being, in the country of emission of the signal, a system of non-voluntary licenses for broadcasting, whereas on the other hand the receiving country or countries might have an exclusive rights system.[12] In practice the non-voluntary license would then be exported to the receiving countries, and that would be at variance with the provision in Article 11[bis] of the Berne Convention that required the effect of non-voluntary license systems to be strictly limited to the country introducing them. In the present case, therefore, the law of the country of emission should concede priority to the law or laws of the country or countries of reception, which should apply "in so far as the author has not been legally in a position, during the process, to give his consent to the operation."[13]

On the subject of this proposed solution to the problem, a mention should however be made of the difficulty, for the author, of appealing to the law of another country if one adopts the rule according to which only the law of the country of emission is applicable. On the basis of the national treatment principle, once the law has been decided upon, the rights cannot be governed otherwise than by that law.[14]

At the meeting of the Committee of Governmental Experts on Audiovisual Works and Phonograms, held in Paris in June 1986, it was said that the exclusive application of the law of the country of emission could, and in many cases would, lead to the complete denial of the exclusive rights—or the rights in general—of copyright and neighboring rights owners: if, in the country of emission, there was no appropriate protection of those rights or there was no protection at all, the owners of rights would be left without any protection.

Other objections have been made to the argument of the exclusive application of the law of the country of emission. It has been pointed out for instance that, if the broadcasting organization of a small country that used the DBS satellite was bound solely by the law of that country, which moreover allowed it to pay a very low rate of copyright remuneration, it would have the effect not only of damaging the interests of the authors, but also of being unacceptable competition for the broadcasting organizations of other countries.[15] The theory of the application of the law of the country of emission would give the broadcasting organization a distinct competitive advantage over organizations in the target countries.[16] What is more, it would be liable to inhibit the economic circulation of a work (for instance a cinematographic or stage work) for other forms of exploitation (in public cinemas, theaters or local television networks).[17]

5. The Complementary Criteria of Service Zone and True Audience

In order to escape from this blind alley created by the working out of appropriate remuneration for

---

[10] Herrmann, "Border-Crossing Radio and Television Programmes in the Common Market," *EBU Review*, 1985, Vol. 36, No. 1, p. 34.

[11] Kerever, *op. cit.*, p. 56.

[12] Communication by Joubert to the Legal and Legislation Committee (CJL) of CISAC, Perugia, May 1985, p. 20 of the minutes.

[13] Kerever, statement at the CJL, CISAC, *op. cit.*, p. 22.

[14] Karnell, statement at the ALAI Study Session (see note 5).

[15] Dietz, "The Shortcomings and Possible Evolution of National Copyright Legislation in View of International Satellite Programme Transmission," *Stato da Diritto Comunitario e degli Scambi Internazionali*, 1985, pp. 378–379.

[16] Herrmann, *op. cit.*, p. 34.

[17] Liedes, in his statement at the ALAI Study Session in June 1987, points to the difficulties that may arise in the relations between authors and producers if direct broadcasting by satellite were to use preexisting material where no provision was made for that form of use in the contracts concerned.

the author in relation to the territorial scope of use, recourse was had to complementary criteria to integrate and improve the theory of the application of the law of the country of emission, and take due account of the entirety of the public capable of receiving the emission. It was proposed that the service zone of the broadcasting organization be one such criterion. The territory for which the broadcast is intended is considered the service zone. It can happen that service zone and direct reception zone are actually identical, apart from the normal overspill. However, the service zone concept can be different depending on whether the broadcasting organization is public or private. In the opinion of Herrmann.[18] the service zone or area for public service organizations is the area that they have to service, according to their public function laid down by law, and in which they collect the license fees out of which the copyright remuneration is paid. As for the service zone of private organizations, it is determined from the purposes of the organizations concerned. The target area of a broadcasting organization can vary considerably depending on the particular program service. Indications can be provided by program content, the language of the program, advertising receipts from the target countries, etc.

The difficulty of defining the service zone, above all for commercial broadcasting organizations, and also the enlargement of the area serviced due to overspill beyond national frontiers which is very often considerable and as it were structural, should lead to the abandonment of the classical conception of the service zone.

> From the standpoint of copyright law, it must not be forgotten that the right of performance—of which the right of broadcasting is but one particular aspect—depends on the scope of the recipient audience. This criterion should remain the basis for determining authors' rights.[19]

Yet how is the "true audience" to be defined?

Dillenz[20] proposes starting with the definition of the "footprint" as being the area in which a substantial proportion of the population receives the program directly from the satellite. In his opinion this definition also has the advantage of excluding countries that for political reasons choose not to allow direct satellite reception. On the basis of that empirical technical definition other elements could then be taken into consideration. Dillenz lists them:

> We would have to consider statements by the originating organization vis-à-vis advertising agencies as far as numbers and nationalities of viewers are concerned, the contents of the program, the language in which it is broadcast and the number of advertising customers in different countries. All these elements taken together will then give a clear picture of the "true audience" for which the program is intended.

So the amount of remuneration paid to authors should be determined by the distributor's audience, not only in the country of emission but also in all the countries within the satellite's "footprint."[21] In terms of the true audience it is certain that the advertising revenue will be a factor of considerable importance.[22]

The true audience criterion does not claim to resolve the legal problem of the law or laws applicable, but rather to help with the calculation of the amount of remuneration. It could be used above all in the field of musical "small rights," for which authors' societies grant blanket licenses. However, an agreement between the societies will probably be necessary in the case of the performance of works from each other's catalog.[23] The existence in certain countries of tribunals like the Performing Right Tribunal in the United Kingdom would moreover be liable to raise problems as to the setting of the tariff.[24]

In order to ensure the payment of remuneration to authors in the countries within the "footprint" of the satellite, it has also been proposed that one introduce a sort of antenna royalty payable by those members of the public who have antennae for the reception of programs transmitted by the direct broadcasting satellite.

One of the shortcomings of this method lies in the fact that the active life of the antenna may greatly outlast the currency of the fee element. It may therefore be necessary not to sell the antennae to individuals but to rent them. Thus part of the rental fee could be passed on to the copyright holders.[25]

Yet this proposal does not seem to be in keeping with the rules of the international conventions or with those of national copyright legislation[26]: the reception of the program by the public escapes

---

[18] Herrmann, *op. cit.*, p. 36, and "Grenzüberschreitende Fernseh- und Hörfunksendungen im gemeinsamen Markt," *Gewerblicher Rechtsschutz und Urheberrecht, Internationaler Teil* (GRUR Int.), 1984, p. 579.

[19] Kerever, *op. cit.*, p. 56.

[20] Dillenz, "Legal System Governing the Protection of Works Transmitted by Direct Broadcasting Satellites," *Copyright*, 1986, p. 392.

[21] Desurmont, statement at the ALAI Study Session (see note 5).

[22] Dillenz, *ibid.* and Rehbinder, "Die elektronischen Medien und das internationale Urheberrecht," *Archiv für Urheber-, Film-, Funk- und Theaterrecht* (UFITA), 1983, No. 95, p. 91, quoted by Dillenz.

[23] Liechti, statement to the CJL, CISAC, Brussels, May 1986, p. 16 of the minutes.

[24] Abrahams, statement at the meeting quoted above, p. 16 of the minutes.

[25] Crosby and Tempest, "Satellite Lore: Copyright, Advertising, Public Morality and Satellites in EEC Law," *EBU Review*, 1983, No. 3, p. 33.

[26] Dietz, *op. cit.*, p. 376.

copyright. Comparison with the licensing of blank magnetic tapes overlooks the fact that, even in the case of blank tape licensing, the person responsible vis-à-vis the author is the one who actually imports or distributes the blank tapes. It has been rightly pointed out that an antenna fee would be not only impractical but also not covered by the international conventions even if one reverted to a progressive interpretation of the term "broadcasting."[27]

The approaches that we have just considered have the effect of affording the author adequate remuneration. Apart from the legal objections that may be made to these approaches (see under 8 below), it seems appropriate to point out that the copyright owner has more than just a right to remuneration. He is invested with the right to authorize and prohibit the broadcasting of his works, except where there is a non-voluntary license in the country in which the work is being used. In the latter hypothesis, however, the effectiveness of the license would be strictly confined to the country that had drawn it up (Article 11[bis](2) of the Berne Convention).

6. The Need for Effective Protection of Works Used in Programs Transmitted by Direct Broadcasting Satellite

The need to ensure effective protection for copyright in the areas within the "footprint" of the direct broadcasting satellite may be summarized in the words of Claude Masouyé[28]:

> We cannot accept a situation in which a broadcasting organization can send broadcasts towards a satellite and then show no further interest in their legal status.

Professor Ulmer already observed in connection with distribution satellites that one could not start with the idea that the emission of programme-carrying signals towards the satellite was in itself an act of broadcasting, but rather with the idea that such emission constitutes a commencement of broadcasting.[29]

The problem of the national copyright law or laws to be applied in the field of direct broadcasting by satellite has been given very special emphasis in the research carried out by copyright specialists at the Munich Max Planck Institute, namely Katzenberger, Schricker[30] and Dietz. The last-mentioned points out that, as a general rule, if a work is used in two or more States, it has to be protected on the basis of the legislation in force in each State. The publisher who wishes to publish, that is, reproduce and sell, a work in two or more countries is obliged to acquire a bundle of copyright prerogatives for each country in which the work is to be used, or for the whole world. Dietz points out:

> Even in the latter case, world copyright, in spite of that term, is nothing other than a bundle of rights covering all countries which grant the relevant copyright protection. In the same way, broadcasting organizations often acquire bundles of broadcasting rights enabling them to sub-license programs to broadcasting organizations in foreign countries. In the latter case, therefore, there are several acts of broadcasting taking place in several countries, even if it is done simultaneously by simply "taking over" programs from other (foreign) stations. Why then, in cases where the coverage area of a DBS extends to more than one country, shall we stick to the traditional view that in that case there is still only one use of a broadcasting right, with the consequence that only the copyright law of the country where the originating organization is located is applicable?[31]

7. The Discussions During WIPO/Unesco Meetings and the Solutions Proposed

The copyright aspects of direct broadcasting by communications satellite were considered during two WIPO/Unesco meetings that were held in 1985 and 1986, namely the Group of Experts on the Copyright Aspects of Direct Broadcasting by Satellite (hereinafter referred to as "the Group of Experts on Satellites") (Paris, March 18 to 22, 1985)[32] and the Committee of Governmental Experts on Audiovisual Works and Phonograms (Paris, June 2 to 6, 1986).

In the course of the debates of the Group of Experts on Satellites, Dr. Arpad Bogsch, the Director General of WIPO, advanced tentative views on certain matters under consideration that were based on interpretation of the Berne Convention in its present state.

Those opinions were on the following points: application to direct broadcasting by satellite of the broadcasting concept as contained in the international copyright conventions[33]; responsibility of the

---

[27] Dillenz, *op. cit.*, p. 350.

[28] Masouyé, statement at the CJL of CISAC, Perugia, May 1985, p. 21 of the minutes.

[29] Ulmer, *op. cit.*, p. 35.

[30] Katzenberger, "Urheberrechtsfragen des elektronischen Textkommunikation"; Schricker, "Grenzüberschreitende Fernseh- und Hörfunksendungen im gemeinsamen Markt," GRUR Int., 1983, p. 895 and 1984, p. 592. Dillenz, *op. cit.*, pp. 388-389, summarizes these authors' opinions.

[31] Dietz, *op. cit.*, p. 375.

[32] The report of the Group of Experts, published in *Copyright*, 1985, p. 180, was considered by the Intergovernmental Committees of the Berne and Universal Conventions at their joint meeting in Paris from June 17 to 25, 1985.

[33] The representative of the Director General of Unesco at the meeting of the Group of Experts in March 1985 observed in turn that the Universal Copyright Convention as revised in 1971 provided in its Article IV*bis*, among other things, the exclusive right to authorize the broadcasting of protected works. That provision was capable of being applied to the new distribution technology insofar as broadcasting within the meaning of the Convention covered direct broadcasting by communications satellite.

broadcaster with whom the satellite broadcast originated towards the owners of the copyright in the works so broadcast: consideration of the territory of the satellite "footprint" in the sense that, when the communication to the public takes place by means of a direct broadcasting satellite, the communication occurs in all the countries that are covered by the "footprint"; application of the national copyright law of each of the countries covered by the satellite "footprint," by virtue of the national treatment principle.

The latter two points made the greatest impression on the discussions that followed. They were summarized and explained as follows in the document drawn up for the purposes of the Committee of Governmental Experts on Audiovisual Works and Phonograms mentioned above[34]:

> Where communication to the public (transmission for public reception) is effected through a direct broadcasting satellite, the communication (transmission) process takes place both in the country where the programme-carrying signals are originated and in all the countries which are covered by the "footprint" of the satellite (and to whose public the audiovisual works involved are communicated (transmitted for public reception)).
>
> Under the Berne Convention, the Universal Copyright Convention and the Rome Convention, all of which provide for national treatment, the national laws of both the country where the programme-carrying signals originated and that of each country covered by the "footprint" of the satellite are applicable. If the national laws involved do not grant the same kind or degree of protection, the highest level of protection should be applied.

The above views and proposed solutions, known as "the Bogsch theory," which were submitted to the Group of Experts for consideration, provided the material for the discussions. They have also caught the attention of non-governmental organizations, and have been studied by those organizations in the course of meetings that have been taking place in recent years.[35]

8. The Arguments For and Against the "Bogsch Theory"

A number of arguments for and against the "Bogsch theory" have been submitted and discussed.[36] We shall confine ourselves to mentioning those of the arguments that we consider worthy of closer attention.

Among the arguments in support of the thesis propounded by the Director General of WIPO, one should consider the fact that copyright owners are not necessarily the same in the countries covered by satellites and in the country of emission. And yet it would be unacceptable for the owner of the rights in the country of emission to be the only one to authorize direct broadcasting by satellite, whereas the owner or owners in the countries of the "footprint," who are entitled to authorize the communication of their works to the public, would be denied the possibility of exercising that entitlement.[37] The proposed service zone or true audience criteria afford no assistance in settling questions associated with multiple ownership. What is more, they are based on the principle that it is only the law of the territory of emission that is applicable, which for one thing is contradictory[38] and for another thing is not sufficient to safeguard the interests of the owners of rights in the countries of the "footprint," which rights are governed and protected according to the provisions of the laws of each country.

As for the objections to the Bogsch theory, it has been pointed out first that it would be difficult for the author from the receiving country to have the law of his own country applied if the case were brought before the courts of the country of emission. It has also been pointed out that, if the case were heard by the court of a country within the satellite "footprint," the decision rendered would be difficult to enforce on a broadcaster headquartered in another country.

It has been argued against the above objections that the *lex fori* principle was not the only one available, and that the courts could therefore apply the laws of other countries.[39] In the case of an author who applies to the court of the country of emission for the protection of his right in the "footprint" country, the court should not consider the legislation of the country in which the protection is sought, but rather that of the country for which it is sought (*lex loci commissi delicti*).[40]

---

[34] Principles AW13 and AW14 of the document, *Copyright*, 1986, p. 231.

[35] Legal and Legislation Commission (CJL) of CISAC, meetings in Perugia, May 1985, and in Brussels, May 1986; INTERGU, XIth Congress in Munich, June 1985; ALAI Study Session (see note 5).

[36] A list of these arguments is contained in the report by M. Freegard, "Direct Broadcasting by Satellite (DBS): the Implications for Copyright," submitted to the ALAI Study Session (see note 5), p. 9.

[37] Ficsor, statement at the ALAI Study Session (see note 5), p. 4.

[38] Ficsor, *ibid.*, pp. 3–4, points out that it is illogical to say that broadcasting occurs only at the point of emission, and then to work out the territory and the audience to which the program is communicated when the question of the amount of remuneration arises.

[39] Ficsor, *ibid.*, p. 6.

[40] E. Vitta, *Diritto internazionale privato e processuale*, 2nd edition, Turin, 1983, p. 329; Walter, "Contractual Freedom in the Field of Copyright and Conflicts of Laws," RIDA 1976, No. LXXXVII, p. 46. See however the considerations of Koumantos, "On Private International Law on Copyright," *Studi in omaggio di Valerio De Sanctis*, Rome, 1979, p. 476, and Desbois, Françon & Kerever, *Les conventions internationales du droit d'auteur et des droits voisins*, Paris, 1976, p. 151.

When faced with the difficulty of enforcing a decision handed down by the court of the "footprint" country on a broadcaster with headquarters in another country, one has to bear in mind that authors' rights may be brought to bear against persons resident in a country other than that of protection for acts committed in the country of protection.[41] Difficulties of a practical nature cannot be invoked to question the interpretation and application of certain legal rules. It should be added that, in practice, the broadcasting organization that covers a given territory by means of direct satellite broadcasting may very well have interests and assets in the country concerned, in which case the authors or other copyright owners of that country may apply for seizure.[42]

Another objection to the principles set forth by the Director General of WIPO is that the act of broadcasting is carried out in the country of emission and that no activity involving use of the work takes place in the country or countries of the "footprint."[43]

To this has been added the dubious validity of the assertion that

> ... because broadcasting is communication to the public and because that communication takes place not only in the country from which the broadcast originates, but also in the other countries where it is received, this means that the broadcaster is committing an act falling within the scope of the laws of those other countries.[44]

In response to these objections one could mention that, as certain participants in the March 1985 meeting of the Group of Experts on Satellites pointed out, the international copyright conventions contain no provision that might support the theory according to which the concept of broadcasting, in other words the communication of programs to the public by wireless means, should be confined to the initial phase of the communication, namely the emission of the program, and should not cover the entire communication process. The word emission does not appear in the conventions. There is nothing to indicate that communication to the public by broadcasting takes place solely in the country in which the communication process begins, and does not reach the audience in the country in which the program is communicated.

The broadcasting operation is qualified by its "public" character. In other words, the broadcast has to be directed to the public.[45]

The logical consequence of this qualification of the act of broadcasting, which encompasses the upward and downward phases of the signal, is that, to determine the existence and scope of the right of broadcasting, there are two laws to be taken into consideration: the law of the country of emission and that of the country in which the program is communicated to the public.

9. Responsibility of the Broadcaster and Territorial Legislation Applicable

The problems of the liability of the broadcaster and of the law applicable gave rise to certain comments at the March 1985 meeting of the Group of Experts on Satellites and at the meeting of the Legal and Legislative Committee of CISAC in May 1985. The opinion was expressed that, as direct broadcasting by satellite was actually broadcasting, the applicable law governing the responsibility of the broadcaster should be determined as was done traditionally, which meant that the law of the broadcaster's country, and that law alone, should apply to the copyright responsibility of the broadcaster, even where the satellite broadcasting covered several countries.[46]

These observations call for some explanation. With regard to the comparison with classical broadcasting, it should be pointed out that, when traditional broadcasting was involved, certain questions did not arise: the country of the broadcaster, the country of emission and the country in which the communication to the public took place were all the same in the majority of cases, subject to natural, unavoidable overspill.[47] On the other hand, direct broadcasting by satellite covers far greater areas than traditional broadcasting, precisely on account of the technology used.[48] Consequently it has to be considered with very special care from the copyright point of view. With regard to overspill, the WIPO documents[49] make it clear that, when the

---

[41] Troller, *Immaterialgüterrecht, Patentrecht, Markenrecht, Muster- und Modellrecht, Urheberrecht, Wettbewerbsrecht*, 3rd edition, Basel, 1983, Vol. I, p. 138.

[42] Article 5(2) of the Berne Convention. At the meeting of the Committee of Governmental Experts in June 1986 it was also said that the advertisers sponsoring the broadcast might be located in one of the countries within the "footprint" (and not in the country of emission), and that it should be ensured that their liability was also involved.

[43] Stern, "Sende- und Weitersenderechte," in *Festschrift 100 Jahre URG*, 1979, p. 187.

[44] Freegard, ALAI report quoted earlier, p. 15.

[45] Masouyé, *Guide to the Berne Convention*, WIPO, Geneva, 1978, p. 78, who adds that the concept of intention for the public is a major factor: for instance, it excludes amateur radio broadcasts and also telephone conversations.

[46] See the preparatory document for the Committee of Governmental Experts of June 1986, *Copyright*, 1986, p. 218. See also the statement by Jennings at the ALAI Study Session (see note 5).

[47] The situation is the same if the area of the "footprint" of the programs transmitted by the satellite is almost entirely confined to the territory of the country of emission. See Nurakami, "The DBS Broadcasting Link of NHK," *EBU Review*, 1986, No. 2, p. 21.

[48] Dietz, *op. cit.*, p. 379.

[49] See *Copyright*, 1985, p. 181, and 1986, p. 233.

"footprint" covers only a part of a country and when the proportion of that part is relatively small when compared with the total size of the public reachable by the transmission, one might consider, according to the "*de minimis*" principle, that the national copyright law of that country need not be taken into account.

As for the broadcaster's responsibility – applicable national law equation, it was objected that, while copyright liability certainly did lie with the emitting body, that did not necessarily mean that only the law of the country of emission was to be applied.[50]

Indeed this criterion that attaches the law to the country in which the person responsible for the act is located does not seem justified in the light of the copyright principles or the principles of private international law concerning liability.

Here one must first be aware of the difference, in this particular field, between criminal liability and civil liability.

In the case of criminal liability, the unlawful act carries its own sanction, because it is socially reprehensible. It therefore has to be punished (the repressive function) without reference to any adverse effects which indeed may not even occur. In the case of civil liability on the other hand, reference is made solely to the harm done by the unlawful act (whether criminal or civil). It follows from this that, in order to localize the law applicable to the matter of extracontractual liability, account has to be taken of the place in which the prejudicial event occurred (event theory) rather than of the place in which the unlawful act occurred (act theory). In support of this argument it will be noted that civil liability arises with the prejudice, as it is insofar as the prejudice exists that the unlawful act is perpetrated.[51]

The approach outlined above calls for one further explanation, owing to the fact that the prevailing argument used to be the opposite, according to which lawful or unlawful acts that incurred obligations had to be made subject to the law of the place in which they occurred. The development of international relations in the world of business has given cause for more careful reading of the relevant provision, and for further reflection on this theory, which has also been accused of excessively abstract inspiration and formality.

Legal doctrine has therefore adopted a more flexible approach by recognizing a set of different jurisdictional criteria for categories of unlawful acts. The settlement of the conflict of laws within the framework of extracontractual civil liability could find its own rules in the provisions of private international law that refer to the different legal circumstances to which the liability relates in each case.[52]

As a general rule, it is proposed that one should consider the unlawful act to have occurred in the place to which the circumstances are the most closely related, due account being taken of all the circumstances associating the offense with a particular place, from the commencement of the offending action to the materialization of the prejudice.[53]

In this connection particular attention should be paid to the argument that has to do with unlawful acts intended to have effect on foreign territory, or "remote acts theory." This theory would be applicable to those acts which, according to their author's intention, were designed to have consequences in a place different from that in which they were perpetrated, with the possibility of rights existing there being prejudiced.[54]

The merit of this theory, devised to avoid a situation in which the offender, in order to perpetrate his unlawful act, chooses a place with legislative provisions that seem more favorable, is that it replaces the classical pattern of conduct versus event with the idea of a teleological connection uniting the elements of the offending action with the application of the law or laws of the countries in which the act has produced its effects on the rights protected there.[55]

The rules stated may be applied in the copyright field if one takes due account of the principle of territoriality, according to which the remedies and the extent of copyright protection are governed solely by the law of the country in which the work is used and for which protection is sought. This protection is confined to the territory of the State concerned, and is not affected by acts carried out in

---

[50] Corbet, statement at the CJL of CISAC, Perugia, May 1985, p. 22 of the minutes.

[51] E. Vitta, *op. cit.*, p. 329, who points to Article 25 of the General Provisions of Italian legislation: "Non-contractual obligations are governed by the law of the place in which the event from which they derive has occurred." Comparable problems of interpretation arise for the rules of private international law of other legislative systems. See for instance Article 26 of the Hellenic Civil Code, quoted by Koumantos, *op. cit.*, pp. 467–468.

[52] Ferrari Bravo, "Il luogo di compimento dell'illecito nel diritto internazionale privato," *Rivista di diritto civile*, 1961, I, p. 80.

[53] Resolution adopted by the Institute of International Law at its 1969 Edinburgh session.

[54] Davi, "Problemi di localizzazione dell'illecito e legge applicabile alla concorrenza sleale," *Rivista di diritto internazionale*, 1975, p. 246, gives the example of an act of unfair competition by means of commercial advertising broadcast in other countries. This author also mentions the doctrine of Bourel, *Les conflits de lois*, Paris, 1961, p. 224.

[55] Cassoni, "Osservazioni sulla concorrenza sleale e la sua legge regolatrice," *Foro padano*, 1987, II, p. 51; Davi, *op. cit.*, p. 247; Fabiani, "Televisione diretta via satellite," *Il Diritto di Autore*, 1986, p. 147.

another State, provided that those acts have no repercussions in the territory of the first State.

To evaluate those repercussions, one has to consider the implications that the use of the work has from an economic standpoint in the country concerned, irrespective of whether or not that use is profitable to the user (of course the element of profit to the user, combined with other elements, can be taken into consideration for the estimation of the remuneration payable to the author).

In the case of direct broadcasting by satellite, the work is used economically by the emitting organization, and the right exercised is the right of broadcasting. In view of the fact that the process of broadcasting comprises two phases of signal transmission (the up–leg and the down–leg), broadcasting as a case for the exercise of copyright occurs simultaneously in the country from which the signals are sent and in the country in which the program is communicated to the public.[56] Consequently, the copyright laws of the countries concerned have to be taken into consideration to determine the existence and extent of the right of broadcasting.[57] If the laws concerned afford protection to the right of broadcasting and if the same extent of protection is provided, there is of course no conflict to be settled.[58] As for the term of protection, there may be differences between laws because use of the work takes place in all the countries of the "footprint." The term provided for in the legislation of each of the countries has to be respected, except in the case of application of the comparison of terms rule provided for in Article 7(8) of the Berne Convention and Article IV.4 of the Universal Copyright Convention.

[56] Communication to the public (dissemination for the purposes of reception by the public, according to the definition given by Article 3*(f)* of the Rome Convention) has nothing to do with actual reception, and is not confused with the reception itself. The responsibility of the emitting organization is not eliminated if the transmission intended for the public is coded (Nabhan, "Satellites and Copyright in Canada," RIDA 1984, No. 120, p. 34). The actual fact of reception may in turn become a source of obligation if the person who receives the program communicates it to the public by loudspeaker or any other comparable instrument (Article 11bis(1)(iii) of the Berne Convention).

[57] INTERGU adopted the following resolution at its Xth Congress (Munich, June 1985): "For direct broadcasting satellites, the legislative systems of all the countries in which the satellite signal is emitted and may be received have to be respected."

[58] We are leaving aside the question whether, once the country for which protection may be sought has been established, the provisions applied in that country will be those of its national law or, on the basis of a rule of private international law operating in that country, that of the country of origin or of first publication of the work, or the law of the country of which the author is a national. For a thorough analysis of these problems, see Koumantos, *op. cit.*, pp. 464–477.

10. Exercise of Broadcasting Copyright and Contractual Solutions

Having thus defined the rule of law based on a principle of justice and conformable to a correct interpretation of the provisions of the relevant international conventions,[59] we can in practice direct our attention towards negotiated solutions[60] or towards agreements of general character between the parties concerned. The action of authors' societies and of other organizations representing the categories concerned may prove very useful for the working out of global conditions of authorization to cover the territories concerned.[61]

It has also been pointed out that, when the legislation of the country of emission gave an exclusive right of authorization,

> ... there was generally no practical need for looking at the legislation of the countries of the "footprint" since any exclusive right implied the necessity of agreement and the agreement would take into account the size of the "footprint." On the other hand, where the country of emission provided for compulsory licensing or did not provide for any right, there was no possibility of negotiation between the right holders and the organization emitting the signals. It was in those cases that the laws of the countries of the "footprint" became relevant.[62]

If the direct broadcast program is retransmitted by an earth station, whether by electromagnetic waves or by cable distribution, we have an instance of a new use of the work in terms of Article 11bis(1)(ii) of the Berne Convention, which makes "any communication to the public by wire or by rebroadcasting of the broadcast of the work, when this communication is made by an organization other than the original one," subject to the author's exclusive rights.

In the case of a cable diffusion company, it will be liable in copyright terms in the same way as it is

[59] Interpreting the provision of a convention involves reducing it to the rationale underlying the principles that constitute the convention itself as a unit and in its conception of the reality that it aims to regulate. In this connection, and in general, see G. Capograssi, "Il problema della scienza del diritto, l'interpretazione," *Opere*, Vol. II, Milan, 1959, p. 490.

[60] Dietz, *op. cit.*, p. 379, points out that contractual solutions should follow after it has been clearly established what rights are protected and on what conditions. See also Ulmer, *op. cit.*, p. 31.

[61] On the difficulty of dividing up the authorization according to the countries serviced, see Kerever, "Satellites et droit d'auteur," report to the CJL of CISAC, Vienna, May 1982, published in Italian translation in *Il Diritto di Autore*, 1982, p. 400.

With regard to authorization in the case of works that are not under collective management, see Du Bois, statement at the ALAI Study Session (see note 5).

[62] Statement by the Director General of WIPO at the meeting of the Committee of Governmental Experts, June 1986, *Copyright*, 1986, p. 233.

liable in the case of the retransmission of traditional broadcasts.[63]

In those cases the copyright will be governed solely by the law of the country in which and for which the retransmission is made.

(WIPO translation)

[63] On the same lines, see Cohen Jehoram, *op. cit.*, p. 169. A comparable situation arises in relation to the rights of performers on the basis of Article 7(2) of the Rome Convention. See Burckhardt, "Satellite Television and Performers' Rights." *Copyright*, 1985, p. 252.

Correspondence

Letter from the Netherlands

Herman COHEN JEHORAM*

Growing Awareness of the Importance of Copyright

Although I possess no means of really measuring awareness of copyright and its importance, I have the impression that it has indeed grown in the Netherlands the last few years. This seems certainly true for Government and Parliament.

During the parliamentary debate on the Bill to amend the Copyright Act and bring it into line with the Paris text of the Berne Convention, one Member[1] made the remark that the Bill would only contain highly technical changes to the Copyright Act, which were necessary to comply with the latest text of the Berne Convention but materially were not very important. She was however worried about the pace of the legislative process as far as really pressing copyright problems were concerned. She gave a whole list of copyright questions besetting our emerging information society, as had already been done by her party two years before in the context of the parliamentary process in relation to this same Bill.[2] The answer of the Minister at the time had remained vague. Therefore this Member of Parliament now asked the Minister for a precise time schedule for legislative action in the field of copyright. The Minister then indeed proceeded to give such a schedule by letter to Parliament.[3] Later on, not one of the given time limits could in practice be observed, but nevertheless this published schedule did keep up the pressure. As we will see in the chapter on legislation, the Government by now has launched an impressive array of different Bills in our field.

The economic importance of copyright

As in other countries, like Sweden, the United Kingdom and the United States of America, an investigation of the economic importance of copyright in the Netherlands was conducted in 1986.[4] The outcome was that copyright-related activities amounted to 2.4% of the Dutch economy, a figure very much in the same order of magnitude as the estimates for the United States (2.8% in 1977) and the United Kingdom (2.6% in 1982). The report, which was presented to the Minister of Justice, stressed the importance of this outcome of 2.4% of the national economy by comparing it with the estimates for other, better-known and established areas of economic activity. So it turned out that the copyright-related activities (2.4%) were easily as important as traditional industries like chemicals (1.9%) or hotels, restaurants and bars (1.8%) and much greater than shipping and air transport together (1.1%) or insurance (1.8%).

Copyright policy in the information society

Maybe these developments also accounted to a certain degree for the wide participation in the Symposium organized in honor of the centenary of the Berne Convention, "Copyright Policy in the Information Society." It was held on November 20 and 21, 1986, in the "Salle of Knights," that hall in the parliamentary complex where the First and Second Chambers yearly meet for the opening of the Parliament by the Queen. This was *not* a learned symposium. It was an occasion for strengthening and improving the image of copyright, especially in the eyes of certain governmental circles, which do not always profess the greatest love and sympathy for copyright. Here they were invited to speak and listen to others. Two ministers were thus speaking, the Ministers of Justice and Culture, and so were two high officials of two other Ministries, Education and Scientific Policy and Economic Affairs.

---

* Professor of Intellectual Property, Media and Information Law at the University of Amsterdam.

[1] Ms. Groenman of D66 during the full oral debate on this Bill on September 20, 1984, *Auteursrecht/AMR*, 1984, No. 5, p. 112.

[2] *Op. cit.*, 1982, No. 4, p. 107.

[3] *Op. cit.*, 1985, No. 1, p. 19.

[4] The study was commissioned by the Foundation for Copyright Interests. It was undertaken by the Foundation for Economic Research of the University of Amsterdam. The results were published in *SEO, The economic importance of copyright in the Netherlands in 1982*, Amsterdam, 1986.

There were as other speakers politicians, judges, international authorities and representatives of interested circles. Exposure to copyright thinking affects—in the long run—any intelligent opponent, that was the philosophy behind this event.[5]

Legislation

The Netherlands' accession to the Paris Acts of the copyright conventions

The Copyright Act was amended by an Act dated May 30, 1985, to bring the text into line with the Paris Acts of the Berne Convention and the Universal Copyright Convention.[6] By an Act of the same date approval was given to the Paris Acts.[7] As a result the Netherlands is now party to the Paris Act of the Berne Convention as of January 30, 1986, and to the Paris Act of the Universal Copyright Convention as of November 30, 1985.

Legal powers of attorney for royalty collecting society

The Decree of June 20, 1974,[8] on the copying of protected works has been amended by the Decree of August 23, 1985.[9] As a result the copyright royalty collecting society Reprorecht is now the sole body that can collect reprography fees, to the exclusion even of the copyright owner himself. The Foundation Reprorecht had in practice never been able to collect the fees from universities, libraries and other agencies, which are free to make multiple copies of printed works, subject to payment of a fixed fee. The feeling was that the Foundation Reprorecht needed the legal power of attorney, as given by the Decree of 1985, to act with more success. The Foundation could then no longer be barred by those agencies from even entering into negotiations, with the argument that it did not represent (all) right owners. Now Reprorecht does indeed negotiate with libraries, schools, universities, etc., but no shining success can be reported as yet.

Public lending right

Since January 1, 1986, a legal public lending right system has been in force in the Netherlands.[10] The Government supplies 5 million guilders for the scheme, but this is only one-third of what will after some years be the total sum to be distributed. The libraries are to contribute two-thirds or 10 million guilders. The idea was that the libraries would pass on this burden to their subscribers. It has turned out however that the libraries do not want to tax their subscribers, so they will provide the money themselves, out of their yearly budget.

Not only authors but also publishers profit from the public lending right. Only authors who are nationals or residents of the Netherlands and publishers who conduct their business in the Netherlands are entitled to take part in the scheme, and then only for their books that are in Dutch or Frisian. This was the reason why the Government has more or less hidden the scheme in the Law on Well-Being, instead of incorporating it in the Copyright Act where it belongs. The Government was afraid that it would otherwise have to treat foreign authors and publishers as nationals because of the national treatment rule of both the worldwide copyright conventions. However, if one looks at the German and English situation of public lending right, it becomes clear that for all practical purposes the national treatment rule has been replaced in those countries by a reciprocity system.

Levies on audio and video tapes

The Government has decided that a bill should be put before Parliament to set up a system of levies on the prices of blank audio and video tapes. The resulting money should compensate the right owners in musical or film works for the heavy copying practice of the general public: the internationally well-known problem of home taping of audio and video cassettes and broadcast programs. Organizations grouping right owners have been pressing the Government for many years to introduce such a levy on blank tapes. They have, over the years, commissioned one economic report after another to show the huge and still rapidly growing volume of home taping done in the Netherlands. The Government has for many years opposed the home taping levy system. Finally, the opposition was given up but for one consideration: 15% of the total net

---

[5] The collection of speeches and materials are published by the States' Printing Press and Publishing House: *Auteursrechtbeleid in de informatiemaatschappij*, ed. H. Cohen Jehoram, P. Solleveld and G. Plaiteeuw, Staatsdrukkerij en Uitgeverij, 1987.

[6] *Staatsblad* [Official Gazette], 1985, p. 307. For the contents of this Act, see the previous "Letter from the Netherlands," by D.W. Feer Verkade, *Copyright*, 1985, p. 165.

[7] *Staatsblad*, 1985, p. 306.

[8] *Op. cit.*, 1974, p. 351.

[9] *Op. cit.*, 1985, p. 471.

[10] Tijdelijke regeling leenvergoeding voor auteurs en uitgevers, *Staatscourant*, 1985, p. 246, followed by Welzijnswet [Law on Well-Being] of February 14, 1987, *Staatsblad*, 1987, p. 73. This Law went into force retroactively from January 1, 1987.

result of the levy system should be reserved for collective use, notably a cultural destination. The end result is that the fees of foreign right owners should as much as possible stay in the Netherlands. This should be achieved by way of concluding bilateral agreements with foreign (organizations of) right owners. These were hard conditions of the Ministry of Culture and the Dutch organizations of right owners saw no way out and submitted to these demands. This finally tipped the scales. By letter of February 10, 1987, the Government sent a Note to Parliament (comparable to a Green Paper) describing its intentions.[11] This was accepted, and the next step will now be the presentation in Parliament of a bill, realizing these intentions.

Chip protection

The United States of America's Semiconductor Chip Protection Act of 1984 has had a profound influence in other industrialized nations. Section 914 of the Act provides for temporary U.S. protection of foreigners (with a maximum period of three years, i.e. until November 8, 1987). The condition for this temporary protection is that the foreign nation concerned should be making good faith efforts and reasonable progress towards either entering into a treaty with the United States on the subject or enacting legislation along the lines of the U.S. Act. After three years a permanent protection would be available insofar as American citizens also would then enjoy a similar protection in the foreign country concerned.

The Dutch Government applied for temporary U.S. protection in a lengthy letter of May 16, 1985, with several annexes, amongst which two letters from the chip–producing Philips.[12] The Government expressed its opinion that, under the Dutch Copyright Act as well as under tort law, mask works of chips were eligible for protection in the Netherlands. The Netherlands then indeed obtained temporary U.S. protection. Because of two renewals this protection expires on November 8, 1987, the latest possible date.

On December 16, 1986, the Commission of the European Communities issued a Council Directive on the legal protection of topographies of semiconductor products.[13] The purpose was to harmonize the laws of the member States on this subject in view of the American demands for reciprocal protection. Indeed the wording of the Directive is in many places directly borrowed from the U.S. Semiconductor Chip Protection Act of 1984. Nevertheless, the harmonizing effect of this particular Directive is seriously jeopardized by the fact that it still leaves the member States the option to choose between copyright protection or special chip protection.[14] Only a special chip protection act can be in conformity with the U.S. Act. The Government of the Netherlands has opted for the latter alternative and on March 24, 1987, it presented a Bill to Parliament[15]; this is being treated with such speed that in all probability it will be enacted before November 8, 1987, the final date of the temporary U.S. protection. An interesting feature of the Dutch Act will be its Article 25, which *excludes* topographies of chips from copyright protection.

Bill to amend the Copyright Act: computer programs, a new moral right, claim against infringers to hand over profits, licensees, seizure and criminal procedures

On March 26, 1987, the Government again brought a Bill before Parliament to amend the Copyright Act.[16] It seems, if one looks at the various projects to renew our copyright law, that the Copyright Act will continuously be under construction.

Article 10(1) of the Dutch Copyright Act contains the sample list of copyright subject matter which is laid down in Article 2 of the Berne Convention. Now the Dutch Government proposes to add a 12th category: computer programs. This in itself is not a revolutionary step: the (lower) courts have already recognized computer programs as copyright subject matter.[17] More of a novelty for the Netherlands is the proposal that the general exemption of copyright for the making of a few copies for one's own private use or study does not apply anymore to computer programs. Here only a single copy may be made as protection against loss or deterioration of the program. Also permitted is

---

[11] *Bijl. Hand.* II, 1986–1987, 19.870.

[12] This letter with annexes is published in *BNA Pat., Trademark and Copyright Journal*, 1985, pp. 178–189 and in *Informatierecht/AMI*, 1986, No. 1, pp. 26–31.

[13] *Official Journal of the European Communities*. Vol. 30, No. L 24, of January 27, 1987, p. 36.

[14] Compare Cohen Jehoram, "The European Commission Pressured Into a 'Dis–Harmonizing' Directive on Chip Protection." *European Intellectual Property Review*, 1987, Vol. 9, pp. 35–38.

[15] *Bijl. Hand.* II, 1986–1987, 19.919.

[16] Bill of March 26, 1987, to amend the Copyright Act 1912 to combat piracy of copyright works. *op. cit.*, 1986–1987, 19.921.

[17] The most fundamental decisions were those of the District Court of 's–Hertogenbosch of January 30, 1981, and May 14, 1982. *Auteursrecht/AMR*, 1983, No. 5, p. 107. *Bijblad bij de Industriële Eigendom* (BIE), 1983, p. 323, and *Gewerblicher Rechtsschutz und Urheberrecht, Internationaler Teil* (GRUR Int.), 1983, p. 669, and of the President of the District Court of Haarlem of October 17, 1986, *Informatierecht/AMI*, 1987, No. 1, p. 9.

the reproduction of a program which is inevitable for the use of the program in *one* computer.

Article 25 of the Copyright Act contains the moral rights of the author. With regard to the mentioning of the author's name on copies of the work, the present text only provides a right to object to the mentioning of a name *other* than the author's. In the present Bill this right will be expanded to a right to be positively mentioned as the author.

According to a new Article 27a, the copyright owner can in an infringement case claim that the infringer be sentenced to hand over the profit instead of paying damages. The claim to damages or surrender of profit can also be brought on behalf of a licensee. Under certain conditions the licensee can also act by himself.

In Article 28, on the seizure of infringing copies and of box–office receipts for infringing performances, it is proposed that such seizure can also take place with regard to money which has probably been obtained by copyright infringement. The seizure can also apply to machinery with the help of which the infringement has been committed.

Finally, the articles on copyright infringements as criminal acts will become more severe. Ambiguities in the present text, which have proved to be obstacles to the prosecution of systematic infringers (piracy), will be removed.

Rome Convention (1961) for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations and Geneva Convention (1971) for the Protection of Producers of Phonograms Against Unauthorized Duplication of Their Phonograms

Since the Rome Convention was signed in 1961, there has been adamant opposition in certain government circles to the recognition of neighboring rights, which were the subject of the Convention. A fierce and protracted battle between interested circles and copyright lawyers finally led to a breakthrough in 1986, i.e. after a quarter of a century. The Ministers of Justice and Culture wrote a letter to Parliament[18] about their stand with regard to the Rome Convention. They acknowledged that they could not subscribe anymore to the financial arguments which they had used in the past for not acceding to the Rome Convention. The Government has since introduced a Bill, dated June 22, 1987, to approve the Rome Convention.[19] On July 15, 1987, a Bill was introduced into Parliament to approve the 1971 Geneva Convention (Phonograms Convention).[19a] In the meantime the Government is still busy elaborating a draft for a national law on the protection of neighboring rights.

Draft Decree on the rights of the personnel of universities

The Government drafted a Decree on the rights of the personnel of universities, that in the Netherlands are all government–financed.

An uproar was caused in the legal press when Verkade, a colleague of mine, published a fiery diatribe against Article 20 of this draft Decree.[20] According to the text of this Article, which was also published at the time, the Government was of the opinion that the copyright in the works of the personnel of universities belonged not to that personnel but to the universities. Those universities could, according to the draft Decree, make use of the copyright to avoid payment of reprography royalties and royalties for "readers." The prevailing opinion in literature is contrary to the wording of Article 20. The Government was impressed by the criticism and the paragraph in question has, at least for the time being, been left out of the Decree, which has since been published and brought into force.[20a] The renumbered Articles 22 and 23 on the subject matter discussed here have been "reserved."

Court Decisions

Cable retransmission of broadcasts

In 1981[21] and 1984[22] the Dutch Supreme Court handed down its decisions in what has been the most publicized copyright litigation in the Netherlands. The outcome was that the cable retransmission of a national or foreign radio or television broadcast by a cable operator who is not the same person as the original broadcaster must be regarded for copyright purposes as equivalent to an original broadcast, hence be treated as a performance.

The copyright owners had started this whole litigation, which took seven and a half years, to force

---

[18] Letter of March 3, 1986, *Bijl. Hand.* II, 1985–1986, 19.435.

[19] *Op. cit.*, 1986–1987, 20.012 (R 1330).

[19a] *Op. cit.*, 1986–1987, 20.029 (R 1331).

[20] Verkade, "Een nog net niet verboden artikel" *Nederlands Juristenblad* (NJB), 1986, pp. 1235–1242. See also *Informatierecht/AMI*, 1986, No. 6, p. 144.

[20a] Royal Decree of July 7, 1987, *Staatsblad*, 1987, p. 393, in force since September 28, 1987.

[21] Dutch Supreme Court, October 30, 1981, *Nederlandse Jurisprudentie* (NJ), 1982, p. 435, *Ars Aequi* (AA), 1982, p. 79.

[22] Dutch Supreme Court, May 25, 1984, NJ 1984, p. 697, AA 1986, p. 628 and GRUR Int., 1985, p. 124.

cable operators to open negotiations on blanket licenses for cable retransmission. Indeed, after the 1981 decision the cable operators had at least begun talks with copyright owners. Those talks dragged on until the 1984 decision. Then they became serious.

On May 29, 1985, a three-year agreement was reached between the association of cable operators and the association of the financially responsible municipalities on one side and organizations of right owners on the other. Two model contracts were drawn up on the blanket copyright license and the royalty consideration for the cable retransmission of radio and television broadcasts respectively.

The Government had always defended the thesis that no "double payment of royalties" by the public should take place, i.e. first in the form of license fees for having a radio or television set, which include copyright royalties for national broadcasting, and secondly in the form of payment for their cable subscription if a retransmission royalty is included. This concern had resulted in the Government's theory that no copyright license and therefore no copyright royalty was needed for the cable retransmission of broadcast works if the retransmission took place in the direct reception zone of the original broadcasts. The Supreme Court decided in 1981 that this theory was in conflict with the Berne Convention and therefore also with national copyright law. After the 1981 decision another theory was launched: the copyright license would not be necessary for cable retransmission in the "service area" of the transmitted broadcast. This again was struck down by the Supreme Court in 1984. Despite all these decisions the Government persevered in its opposition to "double payment." A new slogan was now the "zero option": agreements reached on the payment of copyright royalties for the cable retransmission of broadcasting programs should result in no extra payment, i.e. zero payment for Dutch national broadcast programs.

The Government had chaired the negotiations which finally led to the concluding of the model contracts of May 29, 1985. No agreement was reached on the zero option issue. The copyright owners conceded however that, for the purpose of assessing the royalty rate for each cable operator, one should count only the number of foreign broadcasting stations retransmitted. In this way it was agreed that Dutch cable operators should pay the collecting society BUMA 98 cents per subscription per month if one to five foreign stations were transmitted, one guilder and 30 cents for six to 10 foreign stations, and one guilder and 65 cents for more than 10 stations. One did not count the two domestic television stations. However, as far as the final distribution of the collected royalties was concerned, the collecting society could never try to pass over the authors whose works had been broadcast over the domestic stations. Any such author would immeditely obtain an order in court against the collecting society. It was clear that the Supreme Court decisions of 1981 and 1984 did not allow such a domestic exception. The final result is that the zero option has only become a sort of cosmetic discount-assessing measure between cable operators and the royalty collecting society, which serves to save face for the Government: cable operators pay for five programs and receive seven. In reality, however, the contributors to all seven programs share in the royalties.

Practically all cable operators, those of big municipal networks and also small neighborhood systems, have concluded their individual contracts along the lines of the model contract which was concluded in 1985 and renewed in 1987. In the spring of 1986 three categories of right owners reached an agreement on the division of the total sum collected. Broadcasting organizations now get 44.5%, film right owners 33.5%, and musical and other rights represented by BUMA 22%. The total amount over the first year was 48 million guilders.

Obligation to broadcast a commissioned film?

A Dutch broadcasting organization had commissioned a filmmaker to make a film *Dromen leven* [Dreams are alive]. The broadcaster had reserved his right eventually not to broadcast the film. The film was made, delivered and paid for. An official of the organization told the filmmaker that the film would be broadcast. This official was succeeded by somebody else, however, and the new official decided that the film lacked quality and should not be broadcast. The filmmaker started a lawsuit against the broadcasting organization: he had a moral interest in the showing of his film. In the first two instances he lost. The Supreme Court however gave a different decision.[23] It ruled that even in the absence of an obligation to broadcast, the nature of a contract such as the one at issue here required that the commissioned film, after acceptance, be actually broadcast and that such a contract did not come to an end when the film had been delivered and the fee paid. Also, thereafter contractual rights and obligations remained in effect between the parties and not only the interests of the broadcasting organization but also the interests and moral claims of the author of the film were at stake. The broadcaster's freedom to decide whether or not to broad-

[23] Supreme Court, July 1, 1985, *Auteursrecht/AMR*, 1985, No. 6, p. 112 and AA 1986, p. 125.

cast, which he had expressly reserved, did not go so far as to let him ignore the author's justified interests and moral claims. The case was referred back to the Court of Appeals, which then ordered the broadcasting organization to indeed broadcast the film.[24]

The Supreme Court had certainly not decided that the contractually stipulated freedom to eventually decide not to broadcast simply did not exist. The only new element in the Supreme Court's decision was that this contractual freedom did not go so far that in the final decision on broadcasting the legitimate interests and moral rights of the authors could be ignored. The Hague Court of Appeal contained this line of thought: one should keep in mind the background to the special character of this kind of contract, and the real interest of the filmmaker in the actual broadcasting. Because of the supplementary fact that a broadcast had been promised by a former executive of the organization, the filmmaker won the case. On September 28, 1986, the film appeared on television.

Can achievements outside the scope of copyright or industrial property rights be protected by a general tort action?

This old problem was all of a sudden revived by a decision of the Supreme Court of June 27, 1986, on the Decca Navigation System.[25] This system was not protected by any intellectual property right. Tort action was also denied by the Supreme Court. There was however one intriguing sentence in the decision, which has raised some hopes here and there. This sentence reads: If an absolute (intellectual property) right is lacking, then it is necessary for there to be comparable protection via tort law, at least in principle, that somebody take advantage of an achievement of such a nature that this achievement can be assimilated to those which justify the award of such a right.

Very soon the Supreme Court will be in a position to clarify its stand with regard to the typeset pages of a book, containing the text of a law, which were just photographically reproduced by a second publisher.[26] Another case before the Supreme Court pertains to the question whether the organizer of sporting events can claim some exclusivity in them.[27]

[24] Court of Appeals The Hague, June 4, 1986, *Informatierecht/AMI*, 1986, No. 6, p. 139.

[25] Supreme Court, June 27, 1986, BIE 1986, p. 280.

[26] Compare Court of Appeals The Hague, December 31, 1985, *Informatierecht/AMI*, 1986, No. 4, p. 97 (no tort action).

[27] Court of Appeals Amsterdam, April 11, 1985, *Auteursrecht/AMR*, 1985, Nos. 3–4, p. 69 (the tort action succeeded).

Complete cumulation of copyright and design rights

There is hardly any other question within the field of intellectual property on which national systems differ so widely as that of the degree of overlap between copyright and specific design protection. France and the United Kingdom are known for their systems of complete cumulation. Italy and the United States of America are known for their exclusion of copyright protection for designs. The Federal Republic of Germany and the Nordic countries claim some position in the middle. In these countries higher standards are set for the artistic qualities of designs if one wants to protect them via copyright.

In the Benelux countries a Uniform Benelux Designs Law has been in force since 1975. Article 21 of that Law prescribes that a design should have a "marked artistic character" if one wants copyright protection as well as specific design protection. Since 1969, quite some years before the Law even entered into force, a debate has been raging in the Benelux whether this "marked artistic character" meant a deviation from the former position of the Netherlands, where copyright had always been available for any designs with a personal character, that being the common criterion for copyright protection of any work. The wording of the new Law seemed to point more in the direction of Germany and the Scandinavian countries, where higher artistic standards are set.

After the entry into force of the Benelux Law, however, the Dutch courts were not at all willing to set higher standards for copyright protection. At congresses of the International Literary and Artistic Association (ALAI), I used to defend the thesis that the Benelux countries, notwithstanding the wording of their Law in this respect, in reality belonged to the group of countries that have a totally cumulative system, like France and the United Kingdom.[28] Nevertheless, I had to make one reservation: the Benelux Court of Justice, the highest authority in the matter, had not yet spoken. But this Court has now spoken: on May 22, 1987, it ruled[29] that the only requirement for copyright protection of a design is that it show some "personal character" or "originality." The reservation can be deleted: Benelux now officially belongs to the group of countries with a totally cumulative system.

[28] See *Copyright*, 1983, p. 317 and *Annuaire ALAI*, 1985, p. 94.

[29] *Informatierecht/AMI*, 1987, No. 4 and AA, 1987, p. 717.

Agreement between universities and the publishers' association on compilations ("readers")

Article 16 of the Copyright Act permits, under certain conditions, the making of compilations of the works of others. One of the conditions is that a reasonable payment be made to the copyright owners.

Since the 1960s the universities have made compilations or "readers" for their students in ever–increasing amounts. Universities being what they are, they have never paid and they have not observed any of the other conditions of Article 16. For many years the publishers' association has been having talks with university authorities. At last some compromise was elaborated, and then...no university wanted to sign. Finally one publisher sued a university. The President of the Court of Rotterdam made some very scathing remarks in his decision about the hypocritical arguments of the university, and the publisher won with flying colors.[30] Soon afterwards all the universities had signed the agreement with the publishers.

[30] President of the District Court of Rotterdam. August 15, 1986. *Informatierecht/AMI*. 1986. No. 5. p. 119.

Books and Articles

Bibliographical List

This is a selection of books and articles that reached the International Bureau between July 1 and December 31, 1987.

Books

ALTENPOHL (Martina). *Der urheberrechtliche Schutz von Forschungsresultaten.* Schriften zum Medien- und Immaterialgüterrecht. Berne, Verlag Stämpfli, 1987. – XXIV–278 p.

BATTISTOLO (Blaise). *La protection des idées publicitaires.* Thèse de licence et de doctorat présentée à la faculté de droit de l'Université de Lausanne. Lausanne, 1986. – 200 p.

BAUDEL (Jules-Marc). *La loi américaine du 19 octobre 1976 portant révision du droit d'auteur.* Thèse, Droit, Université de Paris II. Paris, 1987. – 529 p.

BLOMQVIST (Jørgen). *Overdragelse af ophavsrettigheder. Rettighedsoverdragelsen og dens fortolkning.*[1] Copenhagen, Jurist-og Økonomforbundets Forlag, 1987. – 259 p.

CANADA. Ministry of Consumer and Corporate Affairs. Department of Communications. *Semiconductor Chip Protection in Canada: Proposals for Legislation.* Ottawa, Bureau of Policy Coordination, 1987. – 100 p.

Copyright in Free and Competitive Markets.[2] Edited by W.R. Cornish. Oxford, ESC Publishing Limited, 1986. – 138 p.

Das Architektenrecht (The Right of Architects). Edited by Peter Gauch and Pierre Tercier. Fribourg, Editions universitaires, 1986. – XXXIII–501 p.

DEAN (O.H.). *Handbook of South African Copyright Law.* Cape Town, Juta, 1987. – mult. pages.

DEGGINGER (Andrea). *Beiträge zum urheberrechtlichen Schutz der Gegenwartskunst.* Abhandlungen zum Schweizerischen Recht. Berne, Verlag Stämpfli, 1987. – 107 p.

EDELMAN (Bernard). *Droits d'auteur et droits voisins : loi n° 85–660 du 3 juillet 1985 relative aux droits d'auteur et aux droits des artistes-interprètes, des producteurs de phonogrammes et de vidéogrammes et des entreprises de communication audiovisuelle : commentaire.* Paris, Dalloz (Actualité législative), 1987. – X–154 p.

EMINESCU (Yolanda). *Opera de Creatie şi Dreptul* (Creative Work and the Law).[3] Bucarest, Editura Academiei Republicii Socialiste România, 1987. – 216 p.

HÖSLY (Balz). *Das urheberrechtlich schützbare Rechtssubjekt.* Schriften zum Medien- und Immaterialgüterrecht. Berne, Verlag Stämpfli, 1987. – XXVII–174 p.

INSTITUT DE RECHERCHE EN PROPRIETE INTELLECTUELLE HENRI DESBOIS (IRPI). *Banques de données et droit d'auteur.*[4] Le droit des affaires, propriété intellectuelle, No. 6. Cahors, Librairies techniques, Tardy Quercy S.A., 1987. – 180 p.

LADD (David), LEIBOWITZ (David E.) and JOSEPH (Bruce G). *Protection for Semiconductor Chip Masks in the United States: Analysis of the Semiconductor Chip Protection Act of 1984.* Studies in industrial property and copyright law. Weinheim, VCH, 1986. – 99 p.

MANSO (Eduardo J. Vieira). *O que é direito autoral.* Coleção Primeiros Passos. São Paulo, Ed. Brasiliense, 1987. – 92 p.

MORITZ (Hans-Werner) and TYBUSSECK (Barbara). *Computersoftware: Rechtsschutz und Vertragsgestaltung: eine systematische Darstellung nach deutschem und EG-Recht.* Aktuelles Recht: Recht, Wirtschaft, Steuern. Munich, C.H. Beck, 1986. – XXI–138 p.

POUGET (François). *La protection des logiciels par la loi du 3 juillet 1985.* Thèse, Droit, Université de Paris II. Paris, 1987. – III–500 p.

PRACTISING LAW INSTITUTE. *Counseling Clients in the Entertainment Industry 1987.* New York, Patents, Copyrights, Trademarks and Literary Property: Course Handbook Series (No. 237), 1987. – 888 p.

SCHRICKER (Gerhard). *Urheberrechtliche Probleme des Kabelrundfunks: Studie im Auftrag der Medienkommission der Länder zur wissenschaftlichen Begleitung der vier Kabelpilotprojekte.* Baden-Baden, Nomos, 1986. – 114 p.

Segundo Congreso Internacional sobre la Protección de los Derechos Intelectuales (del Autor, el Artista y el Productor).[5] Bogotá, Pontificia Universidad Javeriana, 1987. – 196 p.

Television by Satellite—Legal Aspects.[6] Edited by Stephen de B. Bate. Oxford, ESC Publishing Limited, 1987. – 146 p.

Articles

BLOOMBECKER (J.J.). *New U.S. Federal Law Bolsters Computer Security Efforts.* In "International Computer Law Adviser," 1987, Vol. 1, No. 7, pp. 13–20.

BOYTHA (G.). *The Development of Legislative Provisions on Authors' Contracts.* In "Revue internationale du droit d'auteur" (RIDA), 1987, No. 133, pp. 49–109 [in English with parallel French and Spanish translations].

---

[1] See *Copyright*, 1987, p. 346.
[2] *Ibid.*, 1987, p. 304.
[3] *Ibid.*, 1987, p. 393.
[4] *Ibid.*, 1987, p. 330.
[5] *Ibid.*, 1987, p. 304.
[6] *Ibid.*, 1987, p. 304.

BRIDGE (S.). *Journalists and Copyright.* In "Australian Copyright Council Bulletin," 1987, No. 59, pp. 1–28.

COUSIN (P.). *Les moyens du droit français dans la lutte contre la piraterie.* In "Echanges ASPI," 1986, No. 27, pp. 1–7.

DAMICH (E.J.). *Moral Rights in the United States and Article 6bis of the Berne Convention: a Comment on the Preliminary Report of the Ad Hoc Working Group on U.S. Adherence to the Berne Convention.* In "Columbia—VLA Journal of Law and the Arts," 1986, Vol. 10, No. 4, pp. 655–663.

DAVIES (G.). *Satellite and Cable Television in Europe—Developments and Prospects.* In "European Intellectual Property Review," 1986, Vol. 8, No. 5, pp. 139–148.

DITTRICH (R.). *Die Weiterentwicklung des österreichischen Urheberrechts.* In "Zeitschrift für Urheber- und Medienrecht" (ZUM), 1987, No. 7, pp. 359–367.

DUBOIS (R.L.). *Het Auteursrecht als Paradigmatisch Maatkostuum.* In "Informatierecht/AMI," 1987, No. 3, pp. 47–48.

EMINESCU (Y.). *Rechtsstellung und Rolle der Urhebervereinigungen und Urheberverbände in Rumänien und anderen sozialistischen Ländern Osteuropas.* In "Gewerblicher Rechtsschutz und Urheberrecht. Internationaler Teil" (GRUR Int.), 1987, No. 3, pp. 152–156.

FABIANI (M.). *Comment on Model Provisions for National Laws on Employed Authors.* In "Columbia—VLA Journal of Law and the Arts," 1987, Vol. 11, No. 2, pp. 325–331.

—*Computer d'autore.* In "Bollettino della Società Italiana degli Autori ed Editori," 1986, Vol. 58, No. 3, pp. 161–163.

—*La protezione dell'arte applicata e dell'industrial design in Italia e negli USA.* In "Il Diritto di Autore," 1986, Vol. 57, No. 4, pp. 414–424.

—*Per una revisione della legge sul diritto di autore.* In "Il Diritto di Autore," 1987, Vol. 58, No. 1, pp. 1–7.

FEJO (J.). *EF og ophavsretten* (Copyright in the EEC). In "NIR, Nordiskt Immateriellt Rättsskydd," 1987, No. 2, pp. 109–119.

FITZSIMONS (J.). *Semiconductor Chip Protection.* In "International Computer Law Adviser," 1987, Vol. 1, No. 11, pp. 14–21.

FRAGOLA (A.). *Comparazione franco–italiana tra videogrammi e videocassette.* In "Il Diritto di Autore," 1987, Vol. 58, No. 1, pp. 23–41.

FRANÇON (A.). *L'avenir du droit d'auteur.* In "Revue internationale du droit d'auteur" (RIDA), 1987, No. 132, pp. 2–27 [in French with parallel English and Spanish translations].

GABOR (F.). *Die Ausschliesslichkeit des Urheberrechts in der Revidierten Berner Uebereinkunft am Beispiel einer Streitfrage.* In "Archiv für Urheber–, Film–, Funk– und Theaterrecht" (UFITA), 1987, Vol. 105, pp. 29–43 [in German with a summary in English].

GALTIERI (G.). *Protezione giuridica del videogramma in Francia e in Italia.* In "Il Diritto di Autore," 1986, Vol. 57, No. 4, pp. 401–413.

GELLER (P.). *Comments on Possible U.S. Compliance with Article 6bis of the Berne Convention.* In "Columbia—VLA Journal of Law and the Arts," 1986, Vol. 10, No. 4, pp. 665–681.

GERSTENBERG (E.). *Fototechnik und Urheberrecht: Grenzfragen des Lichtbildschutzes.* In "Schriften zum gewerblichen Rechtsschutz, Urheber– und Medienrecht" (SGRUM), 1987, Vol. 16, pp. 120–126.

GIACOBBE (G.). *Spunti e riflessioni sul rapporto tra diritto e informatica.* In "Il Diritto di Autore," 1987, Vol. 58, No. 1, pp. 8–22.

GINSBURG (J.C.). *L'évolution récente du droit d'auteur aux Etats–Unis.* In "Revue internationale du droit d'auteur" (RIDA), 1987, No. 133, pp. 111–167 [in French with parallel English and Spanish translations].

GREGURAS (F.M.) and PORTER (P.D.). *Ownership of Software Adaptations Prepared in Japan.* In "International Computer Law Adviser," 1987, Vol. 1, No. 7, pp. 25–27.

HALLIDAY (A.C.). *Judicial Approach to Copyright Infringement.* In "IDEA, the Journal of Law and Technology," 1987, Vol. 27, No. 3, pp. 183–201.

HASS (G.). *Zur Bedeutung der §§45 ff. UrhG für das Urheberstrafrecht.* In "Schriften zum gewerblichen Rechtsschutz, Urheber– und Medienrecht" (SGRUM), 1987, Vol. 16, pp. 127–138.

HAY (P.A.). *The Statutory Damages Provision Under the 1976 Copyright Act.* In "IDEA, the Journal of Law and Technology," 1986, Vol. 26, No. 4, pp. 241–262.

KEREVER (A.). *La loi du 3 juillet 1985 et la protection des étrangers.* In "Revue internationale du droit d'auteur" (RIDA), 1987, No. 133, pp. 3–39 [in French with parallel English and Spanish translations].

LADD (D.). *Securing the Future of Copyright: a Humanist Endeavor.* In "Informatierecht/AMI," 1986, Vol. 10, No. 4, pp. 91–93.

LARESE (W.). *Immaterialgüterrecht 1987.* In "Archiv für Urheber–, Film–, Funk– und Theaterrecht" (UFITA), 1987, Vol. 105, pp. 7–15 [in German with a summary in English].

LAX (P.). *Televideo e diritto d'autore giornalistico.* In "Il Diritto di Autore," 1986, Vol. 57, No. 4, pp. 454–474.

LINNEMAN (M.). *Software in het onderwijs en de beperkingen van het auteursrecht.* In "Informatierecht/AMI," 1986, Vol. 10, No. 6, pp. 131–133.

LOEWENHEIM (U.). *Die Benutzung urheberrechtlich geschützter Werke auf Messen und Ausstellungen.* In "Gewerblicher Rechtsschutz und Urheberrecht" (GRUR), 1987, Vol. 89, No. 10, pp. 659–663.

LOUTFI (M.–H.). *Teaching of Copyright in Egypt.* In "Copyright Bulletin" (Unesco), 1987, Vol. 21, No. 2, pp. 25–28.

MAIER (G.J.). *Software Protection—Integrating Patent, Copyright and Trade Secret Law.* In "IDEA, the Journal of Law and Technology," 1987, Vol. 28, No. 1, pp. 13–28.

MARKIEWICZ (R.). *Freie Verwertung literarischer Werke in fremdem Schaffen im Lichte des polnischen Urheberrechts.* In "Archiv für Urheber–, Film–, Funk– und Theaterrecht" (UFITA), 1987, Vol. 105, pp. 45–74.

MARKS (C.B.). *The Copyright Tribunal in Australia.* In "Journal of the Copyright Society of the USA," 1987, Vol. 34, No. 2, pp. 221–239.

MEZGHANI (N.). *The Legal Status of the Architect in Tunisia.* In "Copyright Bulletin" (Unesco), 1987, Vol. 21, No. 2, pp. 8–19.

MIELKE (T.). *Urheberrechtsfragen des Hotelvideos.* In "Zeitschrift für Urheber– und Medienrecht" (ZUM), 1987, No. 10, pp. 501–507.

MILLARD (C.J.). *Recent Developments in Computer Law in the United Kingdom.* In "International Computer Law Adviser." 1987. Vol. 1. No. 6. pp. 5–12.

MILLE (A.). *Protección del software.* In "Revista del Colegio de abogados de Buenos Aires." 1986. Vol. 46. No. 1. pp. 44–77.

OESCH (R.). *Citaträtten: Nordisk upphovsrätt—några drag ur lagstiftning och praxis* (The Right to Quote under Nordic Copyright Law—Legislation and Cases). In "NIR. Nordiskt Immateriellt Rättsskydd." 1987. No. 2. pp. 131–141.

OMAN (R.). *Source Licensing: the Latest Skirmish in an Old Battle.* In "Columbia—VLA Journal of Law and the Arts." 1987. Vol. 11. No. 2. pp. 251–281.

OTTAVIANO (C.). *Computer Crime.* In "IDEA. the Journal of Law and Technology." 1986. Vol. 26. No. 4. pp. 163–172.

PASTORE (S.). *Tutela dei diritti d'autore di diffusione e di riproduzione fonomeccanica nell'emittenza radiotelevisiva nelle ultime decisioni di legittimità e di costituzionalità.* In "Il Diritto di Autore." 1986. Vol. 57. No. 4. pp. 425–453.

PLANTE (S.). *The Compulsory Mechanical Reproduction Licence in Canada.* In "Intellectual Property Journal." 1987. Vol. 3. No. 2. pp. 161–182.

PLATHO (R.). *"Colorization"—und die Möglichkeiten ihrer Verhinderung durch die Mitwirkenden am Filmwerk.* In "Gewerblicher Rechtsschutz und Urheberrecht" (GRUR). 1987. Vol. 89. No. 7. pp. 424–431.

PRASINOS (N.). *International Legal Protection of Computer Programs.* In "IDEA. the Journal of Law and Technology." 1986. Vol. 26. No. 4. pp. 173–199.

PRINS (C.). *Software Protection in Eastern Europe.* In "Software Protection." 1987. Vol. 6. Nos. 2/3. pp. 14–23.

RATHEE (K.V.). *India's New Liberal Computer Software Policy.* In "International Computer Law Adviser." 1987. Vol. 1. No. 8. pp. 12–15.

ROSEN (J.). *Free Trade Competition and Copyright; Viewpoints from the Nordic EFTA-Countries.* In "NIR. Nordiskt Immateriellt Rättsskydd." 1987. No. 2. pp. 120–130.

SCHLEMM (W.). *Zum Leistungsschutzrecht der Musiktonmeister.* In "Archiv für Urheber-, Film-, Funk- und Theaterrecht" (UFITA). 1987. Vol. 105. pp. 17–27 [in German with a summary in English].

SHAFFER (R.I.). *The Artist's Case for Droit Moral and Droit de Suite Continues.* In "International Journal of Legal Information." 1987. Vol. 15. Nos. 1/2. pp. 1–9.

SHIH (T.). *The Semiconductor Chip Protection Act of 1984: Is Copyright Protection for Utilitarian Articles Desirable?* In "Computer/Law Journal." 1986. Vol. 7. No. 2. pp. 129–201.

STRÖMHOLM (S.). *Droits intellectuels et droit international privé.* In "Revue de droit intellectuel — L'Ingénieur-Conseil." 1987. Nos. 5/6. pp. 123–133.

TATT (J.). *Music Publishing and Recording Contracts in Perspective.* In "European Intellectual Property Review." 1987. Vol. 9. No. 5. pp. 132–138.

TUREK (G.) and DURQUET (F.). *La protection du logiciel en Allemagne fédérale.* In "Gazette du Palais." 1986. Vol. 106. Nos. 222/224. pp. 10–12.

VAVER (D.). *The National Treatment Requirements of the Berne and Universal Copyright Conventions. Part Two.* In "IIC-International Review of Industrial Property and Copyright Law." 1986. Vol. 17. No. 6. pp. 715–733.

VIEGAS (J.L.B.). *The Protection of Software in Brazil.* In "International Computer Law Adviser." 1987. Vol. 1. No. 11. pp. 8–14.

WRIGHT (S.). *The Problem of Foreign Copyright Holders in Singapore.* In "Copyright Reporter." 1986. Vol. 4. No. 1. pp. 16–21.

Book Reviews

Association littéraire et artistique internationale (ALAI). Congress for the Centennial of the Berne Convention—Berne, September 8 to 12, 1986. One volume of V–352 pages, published by the Association suisse pour la protection du droit d'auteur et des auteurs, Berne, 1987.

The Swiss group of the International Literary and Artistic Association (ALAI) has published the records of the 56th ALAI Congress, held under the patronage of the Swiss Government, in Berne, from September 8 to 12, 1986, to commemorate the centenary of the Berne Convention.

The publication comprises four parts. The first part contains the speeches given on September 8, 1986, at the opening of the Congress in the Berne municipal theater. The second and third parts cover the reports and debates held over the two following days, during which topics of international protection of copyright and the future of copyright were discussed on the basis of general reports submitted by Professor K. Spoendlin and Professor A. Françon, respectively. A number of eminent lawyers, specialized in copyright, gave lectures on the following subjects: the problems of copyright in the age of high technology (Prof. Teruo Doi), the question of national treatment and recent developments in copyright (Dr. M. Walter), the protection of the design of semiconductor chips (Prof. J.M. Kernochan), simultaneous cable distribution of broadcast programs in the Netherlands (Prof. H. Cohen Jehoram), the situation of copyright in Britain with regard to satellite broadcasting (Mr. R. Abrahams), the situation of reprography in Canada (Prof. V. Nabhan), private recording and reprography in the Federal Republic of Germany (Dr. A. Dietz).

The fourth part of the publication is devoted to the ceremony to mark the centenary of the Berne Convention held in the Federal Parliament House in Berne.

P.C.M.

Urheberrechtsfragen der Videogramme, by *Thomas Mielke.* One volume of 140 pages. UFITA-Schriftenreihe. Nomos Verlagsgesellschaft, Baden-Baden, 1987.

In his study, written in German under the title "Copyright Questions of Videograms," the author looks at the notion of videogram in the light of the law of the Federal Republic of Germany and from the international point of view, with particular attention focused on an analysis of the rights of exploitation of videograms.

The definition of videograms, drawn up by analogy with that of phonograms, is explained by the author, who begins by stressing the lack of a unified terminology. According to the Working Group on the Legal Problems Arising from the Use of Videocassettes and Audiovisual Disks (Geneva,

February 21 to 25, 1977) to which the author refers, a videogram constitutes "both the material support for any sequence of images and sounds and the actual fixation of the sequence, irrespective of the legal status afforded under copyright or neighboring rights to the sequence incorporated in the support."

Generally, the work is devoted essentially to the solutions adopted under German legislation. The references made to contracts for the various uses of videograms concern the tariffs for the right of reproduction and the right of dissemination proposed by GEMA, the Musical Performing and Mechanical Reproduction Rights Society, with a few special remarks on rights specific to American films, which constitute a large sector of the world market.

The author then deals with the right of performance of videogram producers and videogram licensing contracts. Indeed, the rental of videograms takes up a large part of the work. Succint reference is made, in that context, to legislation or solutions adopted by the following foreign countries: Austria, Belgium, Denmark, France, Italy, Japan, Netherlands, Spain, Switzerland and the United States of America.

The author subsequently devotes a number of pages to the problem of the showing of videograms in hotels; the final section of the book deals with the tariffs and with collective administration as applicable to the rental of videograms in the Federal Republic of Germany.

P.C.M.

Calendar of Meetings

WIPO Meetings

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

1988

February 1 to 5 (Geneva) — Locarno Union: Committee of Experts on the International Classification for Industrial Designs (Fifth Session)

February 4 (Geneva) — Hague Union: Users' Meeting

March 7 to 11 (Geneva) — Committee of Experts on the Establishment of an International Register of Audiovisual Works

March 14 to 18 (Geneva) — Permanent Committee on Industrial Property Information (PCIPI): Working Group on General Information

March 21 to 28 (Geneva) — International Patent Classification (IPC) Union: Committee of Experts (Sixteenth Session)

April 18 to 22 (Paris) — Committee of Governmental Experts on Photographic Works (convened jointly with Unesco)

April 18 to 22 (Geneva) — Madrid Union: Assembly (Extraordinary Session)

April 25 to 28 (Geneva) — Committee of Experts on Measures Against Counterfeiting and Piracy (Third Session)

May 2 to 6 (?) — Permanent Committee on Industrial Property Information (PCIPI): Ad hoc Working Group on the Revision of the Guide to the IPC

May 16 to 20 (Geneva) — Permanent Committee for Development Cooperation Related to Industrial Property (Twelfth Session)

May 24 to 27 (Geneva) — Consultative Meeting of Experts from Developing Countries on Legal Matters Relating to Intellectual Property in Respect of Integrated Circuits

May 24 to June 1 (Geneva) — Permanent Committee on Industrial Property Information (PCIPI): Executive Coordination Committee (Second Session); Patent Cooperation Treaty (PCT) Committee for Technical Cooperation (PCT/CTC) (Eleventh Session); PCIPI Ad hoc Working Group on Management Information

May 30 to June 1 (Geneva) — Review Meeting on Intellectual Property in Respect of Integrated Circuits

June 2 and 3 (Geneva) — Permanent Committee on Industrial Property Information (PCIPI): Ad hoc Working Group on IPC Revision Policy

June 6 to 17 (Geneva) — Permanent Committee on Industrial Property Information (PCIPI): Working Group on Search Information

June 13 to 17 (Geneva) — Committee of Experts on the Harmonization of Certain Provisions in Laws for the Protection of Inventions (Fifth Session)

June 20 to 24 (Geneva) — Nice Union: Preparatory Working Group (Ninth Session)

June 27 to July 1 (Geneva) — Committee of Governmental Experts for the Synthesis of Principles Concerning the Copyright Protection of Various Categories of Works (convened jointly with Unesco)

September 12 to 16 (Geneva) — International Patent Classification (IPC) Union: Committee of Experts (Seventeenth Session)

September 14 to 16 (Geneva) — WIPO Worldwide Forum on the Impact of Emerging Technologies on the Law of Intellectual Property

September 22 and 23 (Geneva) — Permanent Committee on Industrial Property Information (PCIPI) (Second Session)

September 26 to October 3 (Geneva) — Governing Bodies (WIPO Coordination Committee; Executive Committees of the Paris and Berne Unions) (Nineteenth Series of Meetings)

October 3 to 7 (Geneva) — Permanent Committee on Industrial Property Information (PCIPI): Ad hoc Working Group on Automation

October 10 to 14 (Geneva) — Permanent Committee on Industrial Property Information (PCIPI): Working Group on General Information (Second Session)

October 24 to 28 (Geneva) — Committee of Experts on Biotechnological Inventions and Industrial Property (Fourth Session)

November 21 to December 2 (Geneva) — Permanent Committee on Industrial Property Information (PCIPI): Working Group on the Search Information (Second Session)

November 28 to December 2 (Geneva) — Committee of Experts on Model Provisions for Legislations in the Field of Copyright

December 5 to 9 (Geneva) — Madrid Union: Preparatory Committee for Diplomatic Conference for the Adoption of Protocols to the Madrid Agreement

December 5 to 9 (Geneva) — Permanent Committee on Industrial Property Information (PCIPI): Ad hoc Working Group on Automation (Second Session)

December 12 to 16 (Geneva) — Permanent Committee on Industrial Property Information (PCIPI): Executive Cuordination Committee (Third Session); Ad hoc Working Group on Management Information (Second Session)

December 19 (Geneva) — Information Meeting for Non-Governmental Organizations on Intellectual Property

UPOV Meetings

1988

February 19 (Geneva) — Council

April 18 to 21 (Geneva) — Administrative and Legal Committee

April 22 (Geneva) — Consultative Committee

June 7 to 9 (Edinburgh) — Technical Working Party on Automation and Computer Programs

June 13 to 15 (Wageningen) — Technical Working Party for Vegetables

June 16 and 17 (Wageningen) — Workshop on Variety Examination (for Lettuce)

June 20 to 24 (Melle) — Technical Working Party for Ornamental Plants and Forest Trees

June 28 to July 1 (Hanover) — Technical Working Party for Fruit Crops, and Subgroups

July 5 to 8 (Surgères) — Technical Working Party for Agricultural Crops

September 27 and 28 (Cambridge) — Workshop on Variety Examination (on Examination Techniques)

October 11 to 14 (Geneva) — Administrative and Legal Committee

October 17 (Geneva) — Consultative Committee

October 18 and 19 (Geneva) — Council

October 20 and 21 (Geneva) — Technical Committee

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

Non-Governmental Organizations

1988

February 11 and 12 (Vienna) — International Union of Lawyers (UIA): Seminar on "Music and the Law"

March 21 to 25 (Locarno) — International Copyright Society (INTERGU): Congress

May 9 to 11 (Tel Aviv) — International Confederation of Societies of Authors and Composers (CISAC): Legal and Legislative Committee

June 12 to 17 (London) — International Publishers Association (IPA): Congress

July 24 to 27 (Washington) — International Association for the Advancement of Teaching and Research in Intellectual Property (ATRIP): Annual Meeting

October 6 and 7 (Munich) — International Literary and Artistic Association (ALAI): Study Days

November 14 to 20 (Buenos Aires) — International Confederation of Societies of Authors and Composers (CISAC): Congress

1989

September 26 to 30 (Quebec) — International Literary and Artistic Association (ALAI): Congress