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Studies

Electronic Publishing and the Law

An Agenda of Question Marks

Charles CLARK*

Introduction

To a publisher, the words "electronic publishing" mean two kinds of activity. Firstly, the loading of an author's work into an electronic or machine-readable data base so that a particular corpus of knowledge and information made up from many authors' works may be made available to users who subscribe or pay in whatever way for the data base service. And, secondly, the selling and/or licensing of software packages "across the counter" or through direct mail solicitation to be loaded into personal computers as, for example, computer games or educational or instructional packages.

The main thread that runs through this contribution is the urgent need to construct a framework, in copyright law and in contractual and licensing practice, which protects investment by both author and his/her business partner (let us use the word "publisher" in a wide sense) in the creation-production-marketing of computer-based works. The need is well put in the Canadian Government Commentary on its proposed "Amendment of the Copyright Act" (May 1987).

Companies are understandably reluctant to spend money and time to create a program when a competitor can copy their original work in the 30 seconds it takes to duplicate a disc. Despite impressive growth the industry loses millions of dollars annually to unauthorized copying.

At the same time the computer system, whether data base, software game or (to peer at tomorrow) "Compact Disc Interactive" has particular kinds of use or manipulation if we are to find for this new technology that balance of owner and user interests which it is part of the social role of copyright to preserve.

Part One considers some of the features of the program as a work protected by copyright, and it is argued that those features are sufficiently singular

to warrant giving to the computer program special treatment in modern copyright acts. Part Two looks fairly briefly at how we may cope with the need to protect investment in copyright via conditions of sale or licensing of software packages, and in Part Three the nature of the data base, it is argued, will lead us, having secured the relevant framework of copyright, to collective licensing solutions, with some analogies to photocopying regimes.

Part One

Let us start with an obvious paradox. Many legislators place the program inside the framework of copyright law, directly as a literary work. Yet what happens in the real world to literary works on the one hand and to data bases on the other is quite different: literary works are duplicated for use through reading. Computer works are placed, for short or for long periods of time, in store for use through access. There is, arguably, in data base publishing no act of publishing, as conventionally interpreted at all. Should the law specifically state that the act of loading of a work into a form of computer storage or the creation for access of a data base are acts of publication? A copyright committee in Norway is said to be proposing exactly that, i.e. a work is to be defined as published if it is included in a computerized system.

Does the point matter? Are there any practical issues at stake? At the international level, two come to mind—

(a) Any maker of data bases in, e.g., the United States of America, who seeks to use "the back door of simultaneous publishing," in order to gain Berne protection, faces the fact that such protection under Article 3(1)(b) only extends to works published, unlike protection under Article 3(1)(a) which extends to works "whether published or not." (One significant advantage of compact discs may be that as physical objects, they can be definably "published.")

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(b) A developing country which wishes to take advantage of the Paris Act of 1971 for compulsory licensing of a data base will have to grapple with Article III 7(a) which confines the application of Article III to "works published in printed or analogous forms of reproduction."

We deal here with the consequences, for the development of a relevant law of copyright, of the squeezing of a new product into an old container. Some years ago Professor Gerald Dworkin asked:

Should copyright law be used to squeeze within its scope as many new forms of unfair competition as possible, or should it deal only with new forms of unfair competition which are *iustem generis* with existing copyright interests? ... In the last resort it may be that, as Commissioner Hersey argued (in his famous dictum—"programs both tell how, and do") computer software can be regarded as so unique as to justify its own special legislation. A tailor-made law will at least address itself to all the major problems and will not risk distorting other laws.¹

Let us consider four issues which support that view, without going outside the framework of copyright itself or indeed the category of the literary work within copyright. As Professor Dworkin fully recognized, we have to live in an imperfect real world, and the obvious advantages of the copyright system are very powerful:

— that it is a mature system that has shown itself capable of absorbing previous technological advances in the form of sound and video recording, of sound and television broadcasting,

— that it is an internationally recognized system with two major international conventions, the Berne Convention and the Universal Copyright Convention, firmly in place,

— that it is a system whose overriding purpose is the control of reproduction, a very relevant purpose to a product which is highly vulnerable to both unauthorized storage and unauthorized downloading.

This contribution does not deal here with "originality," with "versioning" as adaptation, with the copyright relationship between the source and object codes, and similar issues, because if they cause "some little local difficulties" around the world's jurisdictions, they are on the whole being resolved satisfactorily. There are larger bulges of distortion inherent in the squeezing process—let us take four of them—

1. What does "fair dealing" mean in relation to the computer program? Section 6(1) of the United Kingdom Copyright Act of 1956 states that:

No fair dealing with a literary ... work for purposes of research or private study shall constitute an infringement of the copyright in the work.

The limitations on the copying of parts of a work for fair dealing purposes have been traditionally argued in numbers of words up to a percentage maximum as a top limit. Neither numbers of words nor, necessarily, copying itself are, obviously, relevant to fair dealing in programs. We may be talking about VDU (Visual Display Unit) display. Should visual display itself be "an act restricted by copyright" with fair dealing exceptions? The Australian Copyright Council once put the issue this way—

Computer storage and retrieval systems use an author's work periodically and ephemerally and fragment his work into "information" in the process. Present bases of infringement apply irrationally so that the type of use is crucial rather than the nature or effect of that use. It is, for example, illogical that hard copy computer printouts have the potential for infringing copyright whereas visual displays, which perform precisely the same function and convey the same information, do not.

What acts, what limitations on such acts are then relevant? In the United Kingdom, one familiar pro-user argument was deployed by the British Computer Society in its reactions to the British Government's White Paper of 1986:

We believe that there should be an express right to reproduce a copyright protected computer program [they mean all, not just a part of it] for the purposes of analysis and evaluation of the ideas and concepts embodied therein and that the results of this analysis and evaluation should be available for use in producing a second computer program product without permitting the copying into the second product of any of the original expressions used in the first program product. The second product must, therefore, be an independent creation based upon the results of the analysis and evaluation permitted... The new Copyright Act requires either a definition of fair dealing which is based on the above submission or a specific provision for reverse engineering.

2. The British Computer Society has also led the way on the need to recognize a new class of work, computer-generated output. They see no need for special treatment of the computer-aided program, where the computer is a "tool" in the creation of a work by a human being expending the necessary level of skill and/or labor. They have, however, argued vigorously that where the human creativity is either replaced by machine creativity, or (in a fallback argument) is too remote to be deemed responsible for the work created by machine, then we are dealing with a new state of the art of computer programming which needs attention now. The argument starts with a fascinating article in the June 1986 edition of the *Computer Journal*. The article described a computer system for generating crossword puzzles, the computer-generated work comprising the grid, answers to the puzzle, cryptic clues at various levels of difficulty and definitions of the answers. No human

¹ "The Nature of Computer Programs," in *Information Technology: The Challenge to Copyright*, p. 110, Sweet and Maxwell, 1984.

skill and effort is used in the production of the puzzle. The computer performs the author function. No copyright protection is currently available in respect of the puzzle as output, for there has been no expenditure of human skill and/or labor in producing it.

The argument proceeds by way of weather maps, produced by communication from satellite to computer, to the brave new world of expert systems or artificial intelligence machines, to a comparison, accompanied by heavy commercial arm-twisting, with how they allegedly order these things better in the United States of America.

The Government should note that the owners of copyright works in the USA are under no obligation to show a direct human involvement in order to establish their right to protection. It is only necessary to demonstrate ownership, which of course can be disputed. It follows that computer-generated works of the type discussed above qualify for protection in the USA.

If the United Kingdom does not extend protection to these works, then it is likely that UK owners of such works will be barred from protection in the USA. This will mean that US industry and commerce will be able to freely copy UK origin works but not their own, leaving UK industry and commerce at a competitive disadvantage.

It is a fascinating argument, and not entirely new. Christopher Meyer in a National Commission on New Technological Uses of Copyrighted Works (CONTU) paper prepared for WIPO in 1977 put it this way:

If a composer establishes strict criteria for the operation of a computer which contains a program designed to assist in the composition of music, and if that composer exercises his own authority over the content of the score which is produced, it does not seem unreasonable that this work should be copyrighted. If, on the other hand, the composer has simply instructed a programmed computer to produce 128 measures of waltz music in the key of D major, then it seems plausible that he should not be awarded copyright in the resultant music.

But, asks the British Computer Society 10 years later, should the maker of the music? Or, more exactly, the "maker" of the computer-generated work, defined on the lines of the "maker" of a cinematograph film for neighboring rights purposes, i.e. "the person by whom the arrangements necessary for the making of the computer-generated work are undertaken," but here exercising a creator's right? The answer given by the British Government in its draft Copyright Bill of November 1987 is a resounding "yes." Section 9(3) adopts for the protection of the "author" of a work which is computer-generated almost exactly the old "maker" wording of Part II of the United Kingdom Copyright Act, 1956.

3. The Publishers Association has argued to the British Government that a neighboring right should be available to electronic publishers of computer

programs on direct analogy with the 1956 Act's "Typographical Arrangement" right.

If Her Majesty's Government accepts the analogy of the literary work in order to protect originators of computer software, then it must surely follow that Her Majesty's Government accepts the force of the analogy of the published edition in order to protect publishers of original software.

There is perhaps some difficulty as to what the equivalent, in a program, of typographical arrangement may be, but the argument still seems in principle a sound one, and the difficulty merely emphasizes the need for special treatment.

4. A fourth issue which argues the case for special treatment is that of authorship and ownership rights. It is of great interest that the French, who invented not only *droit d'auteur* but also *droit moral* have in the case of computer software both brought into their law a presumption that rights created by employees in the course of employment belong to the employer and also provided that an author of software (presumably whether employed or self-employed since moral rights can run separately from economic rights even in employed status) may not invoke the moral right of integrity against acts of adaptation. The former point is a part of the UK law's general presumption in the present Copyright Act, 1956, preserved in the draft Copyright Bill at clause 11(2). Both the latter point and the limitations on the moral rights of authors as regards the making of their works into films under Article 93 of the Federal Republic of Germany's Copyright Act of 1965 might give those of us who work in the Anglo-American tradition pause as we begin for the first time to consider in detail the consequence of making *droit moral* explicit.

If these four features are at all persuasive of the special nature of computer programs or computer output as copyrightable works, it is to be hoped that the British Government might yet be persuaded to recognize fully in explicit provisions the copyright implications of the special nature of the program as a literary work, in the final version of the new Copyright Bill; and perhaps one may hope that countries that are preparing new copyright acts—e.g. China, Israel, Canada—may just pause before simply saying "a computer program is a literary work—full stop."

Part Two

We consider here a major issue of educational policy. Educationalists want to do two things: to encourage a "computerate" generation of students and children and to encourage the development of

IT (Information Technology) as a learning tool. To take each issue quite briefly:

(a) *Access to it.* The Domesday Project, a description of contemporary Britain in words, pictures and sound, all integrated onto video disk, showed the effect of access to IT in the acquisition of knowledge. The ITAP report "Learning to Live with IT" states:

Teachers reported that young children have tackled data collection and analysis at a level which would have been impractical until they were several years older, were it not for the support which microcomputers provide. This indicates that many students could be capable of more advanced learning than is conventionally available, were the opportunity there. IT can provide that opportunity, but the resources must be available for this to happen.

(b) *Simulation as a learning tool.* Again, the ITAP report puts it well.

There is obvious potential in the simulation capabilities of IT systems, allowing students to become involved in studies previously precluded through cost, complexity or risk of accident. A simulation of a fission reactor is practical while experimentation with the real thing is not. There is an added advantage that such simulations can include areas of operation (for example, the interior of a reactor core) which are totally inaccessible in the real world. A more down-to-earth example might be some of the computer simulations of physical phenomena such as wave refraction and reflection produced by the BBC to link in with school television broadcasts in physics. Although "real" demonstrations are possible here, much time-consuming and error-prone effort on the part of student and teacher can be avoided through elegant computer graphics.

In summary, the ITAP report states:

Above all else, IT makes learning more pleasurable. The ability to call up information, with virtually no effort, to establish relationships and to explore results at will, has a powerful attraction to students. When it is done well, IT-aided learning can strongly motivate students to feel that education is something they want to do, and not a necessary evil to be endured.

To these two ends Her Majesty's Government has invested a lot of money in putting computer hardware into British schools. That hardware is, however, valueless without good educational material in the form of software packages, and it has to be said that, although educational book publishers are well placed to provide the software, the extent of unauthorized copying is in real danger of destroying the market, so that even very large firms are simply pulling out of the software education market. There are two possible solutions—

1. The shrink-wrap license. The essence of this solution is well described by Jon Bing²:

This name is derived from the fact that published programs often are sold packaged in plastic which has been

shrink-wrapped around the set of diskettes. The outside of the package has a label listing certain conditions, and informing the user that by breaking the plastic, these conditions are considered as accepted. The shrink-wrap licensing is an attempt to make the breaking of the sealed package a conclusive act which triggers off a contractual relationship between the publisher and the purchaser, a relationship into which the stated conditions are incorporated.

This has been very much an American initiative. The problem is, of course, that a high level of visibility of the conditions must be achieved so that they are known to the purchaser before the moment of purchase. Even if this is achieved, the doctrine in England of privity of contract might limit severely, in a chain of publisher-educational wholesaler-education authority, the effectiveness of the conditions, to say nothing of the great difficulty of imposing conditions of some complexity on direct mail sales.

2. An alternative solution is a form of "on-site licensing." Here the publisher licenses, for a high price, the educational authority to provide to its schools, which become sub-licensees, copies of the program up to a maximum of X copies, after which level the authority is contractually bound to return to the publishers for a further license to make up to Y further copies on payment of a renewal fee. The publisher keeps a list of those registered as licensees and sub-licensees and provides debugging services and updates only to those on the register. Clearly, there is a parallel in on-site licensing of universities and of university departments, and if this solution to unauthorized copying depends much upon trust between copyright owner and copyright user, the alternative is the stagnation of the market. In the somewhat analogous area of the licensing of photocopying, the experience of the Copyright Licensing Agency in the licensing of photocopying in UK schools is that most users play fair, themselves, once they understand the fairness to copyright owners of the photocopying collective license system.

Part Three

Let us turn now to the final topic of data bases, and consider, since it brings in most of the key issues, the European Community's Common Information Market initiative, now adopted by the Council as a specific Community goal. A very useful article by Philippa Hughes³ sets out very clearly both the ambitions of this EC initiative and the ways in which the Commission is setting about the five main lines of action it considers necessary to achieve its goal, which is, broadly, to build a data base information industry in the European Com-

² In *Electronic Publishing*, p. 47, Norwegian University Press, 1987. Written for COMPLEX, the Norwegian Research Center for Computer and Law.

³ In *European Intellectual Property Review*, 1986, p. 275.

munity in order not to become dependent on the American information industry. One of the five main lines of action is "to overcome barriers to information flow" and among six particular areas (legal barriers, so to speak) the first is, as most recently defined by the Commission, "Copyright (including software)." As Philippa Hughes condenses the issue:

Willingness on the part of potential commercial information service suppliers to provide such services across the Community will inevitably depend on their being satisfied that adequate protection for their considerable investment will be guaranteed by the intellectual property laws of member States. Both the protection afforded to the software around which any proposed service will hinge and the protection afforded to the compilation of the underlying data base will need to satisfy these commercial demands.

The six legal barriers are the business of the Legal Advisory Board, set up by Directorate General (DG) XIII to advise it on the legal issues inherent in its Information Market initiative. Among the questions on which the Legal Advisory Board is required to offer its advice to the relevant DGs (III and XIII), two are of particular interest—

1. What is the legal status of a data base, not of its constituent elements, but of the base as a base? What sorts of data base, to put the question in a different way, will earn copyright protection? Only those where the arrangement of the facts earns copyright? Yet, it is the act of collecting, it is argued, which needs the incentive of some limited monopoly in the result of the collecting process, especially in cases where the sheer extent of the information is the main virtue of the data base. In the words of one American commentator, "protection must attach to the assemblage of the data and not to any purported arrangement of it." And if that is so, who is the owner of the copyright in the assemblage? Again, the "maker"?

2. How are we best to achieve the maximum use of the maximum repertoire with reward to the copyright owners, both of input copyright works and of the data base itself, appropriate to the "intensity of use" (to adopt an insightful phrase from Jon Bing)? There are clear signs now that minds are turning to collective licensing both because of the enormous convenience it offers to creators and users and also because of the analogy with the collective licensing of photocopying, the analogy being indeed rather more than that in the case of electro-copying, that is, on-demand printouts of information electronically sorted. What the publishers have in mind is, of course, voluntarily negotiated licenses between creators and users and not statutorily imposed licenses. Milagros del Corral Beltrán, the Secretary General of the Spanish Publishers

Association, wrote in the May 1987 issue of this review⁴:

This course of action is undoubtedly better than the introduction of legal licenses which leave no scope for negotiation, and consequently deprive the owner of any possibility of monitoring the exploitation of his work. In addition, owing to the similarity of this institution to that of controlling reproduction for private use, *it would not be difficult for established reproduction rights organizations to take on the role of collective license negotiators for the inclusion of material in data bases [emphasis added] and for the authorization of the photocopies that serve their photodocumentation services.* It would be most unfortunate if individual interests were to cause any deferment of such agreements. That could create a situation where governments, for the sake of the public interest and in the face of the urgent need to facilitate on-line access to information, might eventually yield to pressure and introduce legal licenses

Whether, indeed, the European Community might promote a form of residual "last resort" statutory licensing, e.g., on the lines of Article 22 of the Danish Copyright Act, depends, perhaps, on how quickly and how vigorously the copyright owner and copyright user interests pursue voluntary negotiation.

However, if collective licensing is indeed to be pursued by the photocopying societies, grouped now in membership of the International Federation of Reprographic Rights Organisations (IFRRO), then a further fascinating set of questions arises, sketched in recently at an IFRRO meeting by the distinguished American copyright lawyer, Jon Baumgarten. What range of rights, he asked, will the publisher/data host need to acquire from the author in order to represent the author's or his/her own interests? The reproduction right, certainly, in respect of photoelectronic copying, but also, moral rights in respect of secondary, post-downloading uses of the author's work? Cinematographic rights in respect of the screen monitor display of information? Public display rights in the United States—possibly even part of performance rights in the United Kingdom?

To that list one must add the reconciliation in European Community policy of 12 countries' legal cultures, some with no collective licensing schemes at all, some with revenues seen as social funds, some with revenues seen as the rights of individual authors and publishers. It will be a Herculean task of coordination.

Conclusion

The sheer pace of the technology is truly formidable—there is an old, new joke that runs—

If the motor industry had developed as dramatically over its 100 years as have computers in the last 10 years, then a

⁴ In *Copyright*, 1987, p. 167.

Rolls Royce would today cost about 1.50 pounds and do 3.5 million miles to the gallon.

There is little point in the law chasing the frontiers of a technology which moves at that pace. The law will be substantially involved as and when cultural and/or commercial interests developed on the back of the technology need its protection, placed now in the framework of copyright. And different technologies appear all the time. A new form of electronic publishing has appeared through the technology of the compact disc. The arrival of the CDI (Compact Disc Interactive) system is imminent. It is an interactive, multimedia information carrier, able to handle information in the form of audio, video, text and computer data—all of them stored on the same compact disc. All this information is stored in digital form, in other words as computer-readable "bits" of data, in the same way as musical information is stored digitally on a CD audio disc.

For many informational, professional and educational markets, the size of the CDI, limited, to be sure, in contrast to on-line data bases, but enormous compared with conventional paper publishing, together with the sheer convenience of a famil-

iar disc may lead to the CDI becoming the favored form of electronic publishing. *The Times* of July 18, 1987, carried this portent of the future:

Even more dramatic [than the growth of the CD in the music world, both audio and video] is the predicted surge in demand from business for compact disc technology in preference to traditional computer software for storage of information. CD for this purpose is forecast to rise from 1.6 million units this year to seven million in 1988 and 110 million in 1990.

This contribution ends where it began, in a plea that we recognize that computer-based works are a new form of work, and that owners and users stop picking out whatever features of traditional law happen to suit their particular interests. Instead, we must argue through the new and particular author, publisher and user features of computer-based works so that creativity, investment and use are all equally encouraged. Then, in turn, as tomorrow's technical wizardry becomes today's commercial product—the CDI perhaps—we can face new issues together in a positive spirit, able to draw on a gradual accumulation of relevant law, and of relevant contractual and trade practice. Let us start new, and let us start now!

Correspondence

Letter from India

S. RAMAIAH*

A. Introduction

Since the last "Letter from India,"¹ there have been a large number of significant developments in the field of copyright in India. During this period, the Indian Copyright Act of 1957 (1957 Act),² which had not been amended even once for a period of 25 years since its coming into force in 1958, has been amended twice within a space of two years, once in 1983² (1983 Act) and again in 1984³ (1984 Act). More important than the Indian Act being amended for the first time since its enactment was the fact that these amendments dealt with two important aspects of copyright law which had been the subject matter of discussion for a long time. They are the system of compulsory licensing, especially for developing countries and the scourge of piracy which has assumed alarming proportions after the large-scale commercial use of audio and video cassettes. As these two matters are of topical interest to India, these two amendments not only made a great impact all over the country, but at the same time, they helped in arousing the general awareness of the copyright provisions and the rights of the authors. More people are now conscious of the existence of the rights under the Indian copyright law and its provisions than at any time in the history of the copyright law in its 70 years of existence.⁴ There is an all-round awakening and realization of these valuable rights as a result of which there have been a large number of national debates in the form of conferences, seminars, workshops and in other fora on the various facets of the copyright law. The realization of the rights of authors has resulted in a number of attempts being made to

form societies or organizations for the collective administration of authors' rights in the different fields of copyright. As in the case of most of the developing countries wherein the initiative for any reform is made by government, the Government of India has also taken steps concerning a society of authors. The various other private interests are also trying to form their own societies for the protection of the interests of the authors who are its members. The development of the copyright law in India may, therefore, be dealt with in this "Letter" in the following broad categories. They are:

- (i) the Copyright (Amendment) Act, 1983 and its impact;
- (ii) the Copyright (Amendment) Act, 1984 and its impact;
- (iii) case law and other important matters;
- (iv) conclusion indicating the present position in copyright and neighboring rights.

B. The Copyright (Amendment) Act, 1983

The Act was passed by the Parliament of India and was assented to by the President on August 31, 1983. It was brought into force on August 9, 1984, after the necessary rules to give effect to the provisions of the Act were made. The primary object of bringing this Act, as mentioned above, was to confer compulsory translation rights of license on Indian citizens for giving effect to the provisions of the (1971) revised text of both the Berne Convention and the Universal Copyright Convention (UCC) which conferred certain compulsory translation rights to developing countries. Though India was one of the principal spokesmen in both the 1967 Stockholm and the 1971 Paris revision Conferences of the Berne Convention to obtain more rights for the developing countries, it could not implement the Paris revision for nearly a period of 12 years after it had entered into force. This was not due to any reluctance on the part of India to accede to that revision. It was mostly due to the desire to make more comprehensive amendments to the 1957 Act to include therein not only the

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¹ See *Copyright*, 1983, pp. 91 *et seq.*

² The Copyright Act, 1957 (No. 14 of 1957).

³ The Copyright (Amendment) Act, 1983 (No. 23 of 1983) see *Copyright*, 1984, pp. 112 to 118.

⁴ The Copyright (Amendment) Act, 1984 (No. 65 of 1984) *ibid.*, 1985, pp. 61 to 63.

⁵ The first modern copyright law in India was the Indian Copyright Act, 1914.

amendments necessary to give effect to the provisions of the Paris text, but also the amendments that would be necessary to accede to the Rome Convention for the Protection of Performers, Phonogram Producers and Broadcasting Organizations and to certain other amendments which were found necessary in the administration of the Act for a period of 25 years. In fact, a working group of officers had earlier gone into the desirability of joining the Rome Convention and had suggested certain amendments to the Act. But as there was no consensus on the amendments to be included, the amendments made to give effect to the provisions of the Paris revision were also being postponed.

It was, however, finally decided to delink the other amendments on which there was no unanimity and go ahead with the amendments to the 1957 Act only for the purpose of giving effect to the Paris revision. The 1983 Act brought in a few more amendments also in the 1957 Act apart from making amendments to give effect to the Paris revision. It would be useful to discuss these amendments in detail in these columns.

The 1983 Act substituted all the references to "radio-diffusion" occurring in the 1957 Act, to "broadcast" to bring out the modern concept and a definition of "broadcast" was included in the 1957 Act⁵ to include, among other things, radiodiffusion, visual images, communication by wire and re-broadcast. As this definition includes communication to the public by wire, a definition of the expression "communication to the public"⁶ was also included in the Act to mean any form of communication to the public, including communication through satellite which has become an important form of communication in recent years. The definition of "Indian work"⁷ has been amended to include the works first published in India and an unpublished work, the author of which at the time of the making of the work is a citizen of India. The existing definition of this expression included only the work whose author is a citizen of India. Section 3 of the 1957 Act, which deals with the meaning of "publication" has been amended to expand the scope of the concept of issuing copies of literary, dramatic, musical or artistic works to the public in sufficient quantities, to mean the issue of the work, either in whole or in part, to the public in a manner sufficient to satisfy the reasonable requirements of the public having regard to the nature of the work.

A new clause (*cc*) was added to section 17 of the 1957 Act which deals with the first owner of the

copyright. This clause deals with the first owner of the copyright in the case of any address or speech delivered in public. This clause is reproduced below:

(*cc*) in the case of any address or speech delivered in public, the person who has delivered such address or speech or if such person has delivered such address or speech on behalf of any other person, such other person shall be the first owner of the copyright therein notwithstanding that the person who delivers such address or speech, or, as the case may be, the person on whose behalf such address or speech is delivered, is employed by any other person who arranges such address or speech or on whose behalf or premises such address or speech is delivered...

Another clause (*dd*) was also added to this section to provide that in case of works made or first published under the direction or control of any public undertaking, the undertaking shall, in the absence of any agreement to the contrary, be the first owner of the copyright in such work. The term "public undertaking" has been defined in the *Explanation* below clause (*dd*) of section 17 of the 1957 Act to mean an undertaking owned or controlled by Government or a Government company as defined in the Companies Act, and a body corporate established by any statute. Correspondingly, a new section 28A was inserted in the 1957 Act to provide that the term of copyright in works of public undertakings will "subsist until 50 years from the beginning of the calendar year next following the year in which the work is first published."

The 1983 Act made a minor amendment⁸ in section 19 of the 1957 Act which deals with the mode of assignment of copyright to indicate specifically that an assignment of the copyright should, "among other things, indicate clearly the rights proposed to be assigned and the size of the work." Another amendment⁹ which was brought in by the 1983 Act is that any dispute with respect to the assignment of, or any of the terms of the assignment of, any copyright will be decided by the Copyright Board on receipt of a complaint from any of the parties to the dispute and the Board has been empowered to pass such orders as it may deem fit, including giving permission to the owner of the copyright to revoke the assignment if the terms of the assignment are harsh to him, or if the publisher unduly delays the publication of the work or the issue of a certificate for the recovery of any royalty due to the owner.

The 1983 Act provided for the issue of compulsory licenses in unpublished Indian works by the insertion of a new section 31A in the 1957 Act. The new section states that if the author of an Indian

⁵ Section 2(*dd*) of the 1957 Act.

⁶ Section 2(*ff*) of the 1957 Act.

⁷ Section 2(*l*) of the 1957 Act.

⁸ Section 9 of the 1983 Act.

⁹ Section 10 of the 1983 Act, inserting a new section 19A in the 1957 Act.

work, as defined in the Act, is dead or unknown or cannot be traced or the owner of the copyright cannot be found, the Copyright Board is given the power to issue a license to any person who makes an application to it for the publication of such work or a translation thereof in any language. The application shall be made in the form prescribed by the rules made under the Act and before such an application is made, the applicant has to publish his proposal in a daily newspaper in English or in a newspaper of the language in which the translation is to be brought out. The Copyright Board, after inquiry, will direct the Registrar to issue the license applied for on payment of royalty and subject to such terms and conditions as the Copyright Board may determine. Where such a license is granted, the Registrar may direct the applicant to deposit the royalty payable with the Government so as to enable the owner, his heirs, executors or the legal representatives to claim the royalty at any time. At the same time, the Government has also been given the power to require the heirs, executors, etc., of an unpublished Indian work to publish such work within a period specified by it, if it considers that the publication of the work is desirable in the national interest. If the heirs, etc., fail to publish the work within the period specified by the Government, the Copyright Board may permit any person to publish the work on payment of the necessary royalty.

The provisions of the Paris revision (1971) of the Berne Convention for the issue of compulsory translation licenses in relation to developing countries have been given effect to in the 1957 Act by means of necessary amendments in section 32 of that Act and by the insertion of new sections 32A and 32B in the 1957 Act. Section 32 already provided for licenses to produce and publish translations of literary or dramatic works in any language after a period of seven years from the first publication of the work on the terms and conditions specified in that section. This provision had been included in the 1957 Act to give effect to the provisions for the issue of compulsory licenses to publish a translation as contained in the Universal Copyright Convention to which India is a party. Such a provision is not contained in the Berne Convention. This provision is being implemented only in relation to UCC alone by virtue of the International Copyright Order issued under section 40 of the 1957 Act. Until India accedes to both the Conventions in respect of their revised 1971 texts, the section will be operated as before by the issue of the necessary orders under section 40 of the Act. The provision for compulsory license in the revised texts of the Conventions is sought to be achieved by the insertion of a new sub-section (1A) in section 32 of the 1957 Act and by the amendment of the

subsequent sub-sections of that section to include the terms and conditions under which the new translation license under the Paris revision may be issued. The new sub-section (1A) enables the Copyright Board, on an application by any person, to issue a license to produce and publish a translation, in printed or analogous forms of reproduction, of a literary or dramatic work, other than an Indian work, in any language in general use in India after a period of three years from the first publication of such work, if such translation is required for the purposes of teaching, scholarship or research. If the translation is in a language not in general use in any developed country, such application may be made after a period of one year from such publication. The other provisions contained in the Paris Revision for the grant of compulsory translation licenses have been reproduced in this section.¹⁰ The license to be issued to broadcasting authorities to produce and publish translations of any work in printed or analogous forms of reproduction or of any text incorporated in audiovisual fixations, prepared and published solely for the purpose of systematic instructional activities and for broadcasting such translation for the purposes of teaching or for the dissemination of the results of specialized, technical or scientific research to the experts in any particular field is provided for in the new sub-section (5) of this section. The terms and conditions subject to which the translation rights will be issued under the new sub-section (1A) have been made applicable to the issue of a license to a broadcasting authority.¹¹ License to reproduce and publish works in printed or analogous forms of reproduction for the purpose of systematic instructional activities at the prices at which such editions are sold or at reduced prices is provided in section 32A and this section reproduces the provisions contained in the Paris text. Section 32B provides for the determination of the three licenses issued, that is to say, the license issued under new sub-section (1A) and sub-section (5) of section 32 of the 1957 Act and the license issued under section 32A of the said Act, and it reproduces the same conditions for termination as contained in the Paris text.

The 1983 Act also makes some other amendments of which two may be cited as important. The first requires the Registrar of Copyrights to publish all the entries and amendments made by him in the Register of Copyrights in the Gazette of India and in such other manner as he may deem fit¹² and the other amendment inserts and *Explanation* in sec-

¹⁰ Sub-section (4) and the second proviso to that sub-section.

¹¹ Sub-section (6) of section 32 of the 1957 Act.

¹² New section 50A inserted in the 1957 Act.

tion 52 of the 1957 Act which deals with the infringement of copyright to provide that the publication of a compilation of addresses and speeches delivered in public will not be a fair dealing of such work within the meaning of section 52(1)(b).¹³

The Copyright Rules, 1958, made under the provisions of the 1957 Act were specifically amended to give effect to the amendments made by the 1983 Act with respect to the issue of compulsory licenses for the publication of unpublished works, translation and reproduction of works. By these amendments, a new Chapter IVA was included in the Copyright Rules which provided for the forms of application, the notice of application to be given to the concerned parties, the manner of determination of royalties, extension of the period of license, etc.¹⁴ Correspondingly, two new forms, Forms IIA and IIB have also been included in the rules to provide for the application for license and the form of the licenses to be issued under the 1957 Act. These rules were made before the 1983 Act was brought into force and the rules were also brought into force simultaneously with the bringing into force of the 1983 Act on August 9, 1984.

The provisions of the 1983 Act have been welcomed, among other things, for making the provisions relating to assignment of the copyright in any work more specific and for the determination of disputes with respect to assignment of copyright. The latter provisions had given a valuable right to the author to prevent him from being exploited by the publishers. Even here, there had been some criticism that the provisions could have been much more specific by providing for model agreements for assignment of copyright in any work in the Act itself. It is felt that such a provision will be outside the scope of an Act as most of the terms in an agreement of assignment depend on the intention of the parties to the agreement. The provisions regarding compulsory licenses to be issued for publication of translations and reproductions have also been welcomed generally. But it is too early to assess whether these provisions have achieved the desired object. There are, however, certain provisions which may be a disincentive to the resort to compulsory licenses. The provisions of the Paris Act of the Berne Convention themselves provide for a very large number of conditions to be complied with before the issue of compulsory licenses. These are not only cumbersome, but in some cases, very difficult to understand and comply with. Further, although India had acceded to the Paris revision of the Berne Convention, it has yet to accede to the Paris revision of the UCC. This would mean that

the provisions relating to compulsory licensing have not yet been made applicable to the countries of the UCC which are not members of the Berne Convention. These reasons also account for the small number of applications for compulsory licenses so far. These applications have also not reached the stage of consideration by the Copyright Board which is the authority empowered to issue these licenses under the Act. This means that no compulsory license has been issued so far under these provisions. Another reason for the lower number of applications for compulsory licenses may be that the publication of the works obtained under a compulsory translation license may not be economically viable, as the demand for such works in the Indian languages will be very low and consequently, the works cannot be produced at the same or at a lower cost than the original works in the countries where the first publication is made. However, the provision for the issue of compulsory licenses has a salutary effect in prompting foreign copyright owners to enter into agreements with Indian publishers at comparatively favorable terms, and bilateral agreements entered into under the auspices of Government for the administration of the translation rights in all the languages have also increased. Another criticism generally voiced against the 1983 Act is that it had not made any provisions to override the effect of the decision of the Supreme Court in the *I.P.R.S.* case¹⁵ to protect the rights of authors whose work had been incorporated in a cinematograph film, although the Supreme Court of India in that case has suggested legislative interference to give protection to these authors.

C. *The Copyright (Amendment) Act, 1984*

From the earlier part of this decade, piracy in the form of audio and video cassettes has become rampant throughout the world. This was particularly so in India in view of the increasing popularity of Indian films and the rigorous standards adopted by the Board of Film Censors for the certification of films produced in India. These two situations had led to the indiscriminate smuggling of videocassettes containing Indian films and audiocassettes containing Indian film songs. The Indian films recorded in these smuggled videocassettes were mostly uncensored versions and as such, were in great demand. A large number of video libraries or clubs also sprang up all over the country, both in the rural and urban areas, and these started giving videocassettes containing Indian films on hire for very small sums. These libraries and clubs were

¹³ *Vide* section 18 of the 1983 Act.

¹⁴ Chapter IVA of these rules contains seven rules, namely rules 11A to 11G, to provide for all these matters.

¹⁵ A.I.R. 1977 S.C. 1543.

mostly not regulated under any provision of law regarding licensing or otherwise. All the video films given on rent by these video libraries or clubs were pirated versions and the persons who produced these cassettes had no authority from the owners of the copyright in the film and these video libraries also had no right to give them on hire. Although sanctioning of cinematograph films for exhibition comes under the competence of Indian Parliament to legislate under the provisions of the Indian Constitution, it was thought fit to regulate the production and distribution of audio and video cassettes under the Copyright Act as the subject matter relates primarily to the infringement of the copyright and video film may include therein matter other than cinema films. The Copyright (Amendment) Act, 1984 (1984 Act), which was mainly enacted with this objective and that too so soon after the 1983 Act was passed, indicates the gravity of the situation.

The 1984 Act which was assented to on September 14, 1984, was brought into force on October 8, 1984. This Act inserted an *Explanation* below the definition of "cinematograph film," as contained in the 1957 Act¹⁶ to specify that video films shall also be deemed to be works produced by a process analogous to cinematography for the purposes of this definition. By this specific inclusion, all the provisions of the 1957 Act in respect of cinematograph films with regard to their protection, term, infringement and penalties apply to video films also. In addition, by the insertion of a new section 52A in the 1957 Act, it has been made incumbent that no person shall publish a video film in respect of any work unless the particulars¹⁷ mentioned therein are displayed in the video film, when exhibited and on the videocassette or other container thereof. The particulars relate to the copy of the certificate granted by the Central Board of Film Certification, if the work is a cinematograph film required to be certified for exhibition under the Cinematograph Act, the name and address of the person who has made the video film and a declaration by him that he has obtained the necessary license or consent from the owner of the copyright in such work for making such video film and the name and address of the owner of the copyright in such work. Sub-section (1) of this new section requires certain particulars to be indicated in respect of records. It states that no person shall publish a record in respect of any work unless the name and address of the person who has made the record, the name and address of the copyright in such work and the year of its first publication are displayed on the record

and on any container thereof. The expression "record" will have the same meaning as in the definition of record as contained in clause (w) of section 2 of the 1957 Act, which would mean any disc, tape, perforated roll or other device in which sounds are embodied so as to be capable of being reproduced, other than a sound track associated with a cinematograph film. Reading these two provisions, section 52A(1) will apply to the production and distribution of audiocassettes also.

The contravention of the above provisions is made punishable by new section 68A of the 1957 Act inserted by the 1984 Act, which provides for imprisonment which may extend to three years and fine. The provision for periods of limitation for prosecution in respect of offenses under the Act have also been made inapplicable by a specific provision.¹⁸ The 1984 Act, apart from the above specific provisions for the audio and video cassettes, further strengthened the provisions relating to penalties under the 1957 Act so that any infringement including video piracy could be tackled effectively. Section 63 of the Act, which provided for a penalty for an infringement of copyright in a work has been amended to provide for a minimum imprisonment of six months but which may extend to three years and for a minimum fine of 50,000 rupees but which may extend to two lakh rupees. A provision has also been included for enhanced penalties on second and subsequent offenses, which provided for increase in the minimum penalties from six months imprisonment to one year and the minimum fine from 50,000 to one lakh rupees.¹⁹

The most important amendment made by the 1984 Act is to give powers to a police officer, not below the rank of a sub-inspector, to seize, without warrant, all copies of any work and all plates used for the purpose of making infringing copies of any work, wherever found, if he is satisfied that an offense under section 63 of the 1957 Act, as amended by the 1984 Act, is likely to be committed. He is, however, required to produce the articles so seized before a magistrate.²⁰ The punishment for the possession of any plate for the purpose of making infringing copies of any work has also been increased to two years.²¹ The increase in the punishments have made the more important offenses under the Act cognizable and not bailable. The 1984 Act, therefore, achieved the long-standing demand to make the offenses under the Act cognizable.

¹⁸ Section 10 of the 1984 Act amends the Economic Offences (Inapplicability of Limitation) Act, 1974, by which the period of limitation provided for the filing of complaints under the Indian Code of Criminal Procedure was not made applicable to offenses under the Copyright Act.

¹⁹ Section 63A of the 1957 Act.

²⁰ Section 64(1) of the 1957 Act.

²¹ Section 65 of the 1957 Act.

¹⁶ Section 2(f) of the 1957 Act.

¹⁷ Section 52A(2) of the 1957 Act.

The 1984 Act also made some further amendments. They are, the insertion of a new definition of "duplicating equipment"²² to mean "any mechanical contrivance or device used or intended to be used for making copies of any work". The definition of "literary work"²³ has been amended to include computer software programs, that is to say, programs "recorded on any disc, tape, perforated media or other information storage device which, if fed into or located in a computer or computer based equipment, is capable of reproducing any information". This amendment is only for the purpose of making it clear that the 1957 Act applies to software programs also, as the existing definition of "literary work" follows the definition of literary work as contained in the Berne Convention and as it is an inclusive definition, it applies to software programs also, as interpreted in other countries.

The 1984 Act also prohibited the import of infringing copies of a cinematograph film or record totally,²⁴ while permitting the import of two copies of any other work for the private and domestic use of the importer. This is a very salient provision as allowing of any infringing copies of a cinematograph film or record would enable the importer to make pirated editions of such work and proliferate them on the market.

The provisions of the 1984 Act requiring certain particulars to be displayed in a video film and on the videocassette or other container thereof, as contained in section 52A of the 1957 Act were supplemented by certain amendments to the Cinematograph (Certification) Rules, 1983, made under the Cinematograph Act, 1952. These rules provide for the issue of a censor certificate by the Central Board of Film Certification for public exhibition of a cinematograph film recorded on a videocassette produced in India or imported into India on the same lines as the issue of a censor certificate in respect of a cinematograph film. The rules provided that in the case of a video film, a copy of the said certificate showing the serial number, the category and other details should be pasted on every videocassette as well as on its case.

Almost all the provisions of the 1984 Act were challenged immediately on the passing of the Act by the Houses of Parliament in all the High Courts in India, and most of the High Courts had given stay of the operation of the provisions of the Act till the disposal of the petitions. A petition was also filed in the Supreme Court challenging the constitutional validity of the 1984 Act. The stay given by some of the High Courts was later on vacated on the ground that the entire matter may be agitated in

the petition before the Supreme Court. The Bombay High Court, while granting the stay, had even gone to the extent of stating that the provisions of the Act would not be applicable to cassettes produced before the date of coming into force of the 1984 Act and it would apply only to those cassettes produced after such commencement. The amendments made to the Cinematograph (Certification) Rules, 1983 were also challenged in the Bombay High Court and that High Court has recently struck down the provisions of the rules providing for the issue of a certificate for public exhibition of a video film as *ultra vires* the provisions of the Cinematograph Act, 1952. In view of this unsettled condition, although there was some recession in the circulation of the videocassettes immediately after the commencement of the 1984 Act, the situation has reverted back to the position as it stood before the 1984 Act, and the video and audio cassettes are in circulation without complying with the requirements of section 52A of the 1957 Act. It is felt that this situation will continue until the Supreme Court finally decides on the constitutionality of the 1984 Act. The main grounds that have been urged in all these petitions are that Parliament has no power to include video films under the definition of "cinematograph film" as contained in the Act, the particulars that are required to be mentioned in the audio and video cassettes under section 52A of the 1957 Act affect the rights of the audio and video producers of their fundamental right to carry on any trade or profession, and the total prohibition of the import of a cinematograph film or record even for the private and domestic use of the importer offends article 14 of the Constitution as being discriminatory. The petitioners have also alleged that the penalties are very high and are not commensurate with the offenses specified and that the giving of the powers to the police officer to seize without warrant any copies of an infringing work and of plates used for the purpose of making such copies are likely to be misused. Though the provisions of the 1984 Act are under challenge, the police all over the country are conscious of these amendments and they had been instructed to exercise their powers under section 64 of the Act to seize infringing copies, etc. In fact, many raids are being conducted by the police at various places and substantial seizures of infringing copies are being made. It is understood that the Magistrate, while convicting the accused, passes orders to either destroy the infringing copies so seized or to hand over the copies to the rightful owner of the copyright.

The amendment made by the 1984 Act in the definition of "literary work," as contained in the 1957 Act, to include computer software programs has also been criticized in many fora on the ground that the provision is inadequate. This may be true

²² Section 2(hh) of the 1957 Act.

²³ Section 2(o) of the 1957 Act.

²⁴ Section 51(b) proviso of the 1957 Act.

as the provisions of the Copyright Act, as they are now, may not contain the necessary provisions to effectively protect the software programs. As mentioned earlier, the amendment made to the definition of literary work to include computer software programs was only for the purpose of making it clear that the provisions of the Copyright Act will apply to computer software programs also. The Act may require some further amendments to make the protection of computer software more effective and practical. In fact, after the 1984 Act, there had been some problems as to how the provisions may be implemented including the problem of registration of the computer software. It has now been decided that printouts of software programs may be accepted for registration as a copyrighted work in the Register of Copyrights. The problems of protection of computer software and high technology, including biotechnology, were discussed in a seminar organized by the World Intellectual Property Organization (WIPO) in cooperation with the Department of Electronics of the Government of India with the assistance of the United Nations Development Programme (UNDP), in March 1987. This seminar also had reiterated the insufficiency of the provisions of the 1957 Act regarding computer software and biotechnology. It is likely that a separate legislation for dealing with all aspects of the protection of computer software may be undertaken after further developments in that field.

The video boom or the appearance of a large number of pirated videocassettes in the market and the hiring of pirated editions of videocassettes by the video libraries and video clubs had prompted the State of Tamil Nadu, one of the constituent units of the Indian Union, to pass the Tamil Nadu Exhibition of Film on Television Screen through Video Cassette Records (Regulation) Act, 1984. This Act mainly provided for the regulation of the hiring of videocassettes by video libraries by means of video licenses to be issued by the State Government. But sections 9(2) and 10(2) of this Act, insofar as they provide for an obligation on the person keeping a video library licensed under the Act to produce in respect of each film in his possession a letter of consent from the first owner of the copyright of the cinematograph film under section 17 of the Copyright Act, and if such copyright has been assigned under section 18 of that Act, from the assignee of such copyright, and the prohibition of distributing, hiring, etc., or putting into circulation of any film other than a film which has been certified as suitable for public exhibition by the Central Board of Film Certification under the Cinematograph Act, have been declared²⁵ to be unconstitu-

tional by the Madras High Court on the ground that these provisions amount to addition to the provisions of the Copyright Act and, therefore, they fall outside the permitted limits of encroachment and as such, should be taken to be *ultra vires*. The High Court has, however, cleared the amendment made by the 1984 Act to the effect that a cinematograph film would include a video film and that a copyright must be taken to have been created in respect of its videotape. An appeal against this judgment is pending before the Supreme Court.

The 1984 Act which provided for regulation of videocassettes has prompted the film industry in India to arrange seminars on video piracy in cooperation with the National Film Development Corporation, which is an undertaking of the Government of India. Two such seminars had been held and the recommendations relate, among other things, to the need for a single-minded unity in pledging to exert all vigilance and effort to keep the Indian market pirate-free and the giving of wide publicity to the existence of video piracy. The seminars also, after conceding that the total eradication of the video piracy will always remain a distant dream, agreed that bringing it under control is practicable. They have, therefore, recommended the establishment of a strong antipiracy organization. The seminars also had suggested that the giving of discretion to the court to award lesser punishment than the minimum in the case of offenses for which minimum punishments are provided should be omitted, as courts in India have a tendency to let off offenders on nominal punishments. The seminars had also recommended that a provision for shifting of burden of proof to the accused shall also be provided. It may, however, be mentioned that not many of the film producers had assigned their rights to produce their films in videocassettes. It is estimated that there are one million cassette recorders in India and they depend not only on the rather limited quantity of authorized cassettes available. As such, most of the Indian films on videocassettes are available in India much before the film is commercially released in India or abroad and these cannot obviously satisfy the requirements of section 52A of the 1957 Act.

D. Case Law and Other Important Matters

Apart from the petitions challenging the 1984 Act and the Tamil Nadu Act mentioned above, there had not been any important case law with respect to copyright except one case decided by the Supreme Court in the *Gramophone Company of India v. Birendar Bahudur Pande*.²⁶ This case is

²⁵ *Entertaining Enterprises, Madras v. State of Tamil Nadu*, A.I.R. 1984 Mad. 278.

²⁶ A.I.R. 1984 S.C. 667.

important for two reasons. One is that the word "import," as contained in sections 51 and 53 of the Copyright Act, which means "bringing into India from outside India," is not limited to importation for commerce only, but includes importation for transit across the country. The court, therefore, held that an order under section 53 of the 1957 Act may be made even in respect of infringing copies of artistic works that have been brought into India for transit across India to Nepal. The relevant provisions of the Customs Act would also apply with the difference that confiscated copies of the infringing work shall not vest in the Government, as contained in the Customs Act, but shall be delivered to the owner of the copyright. The second important point decided by this case is that the order of the Registrar of Copyright under section 53 of the 1957 Act is quasi-judicial in nature, that is to say, he must make an inquiry into all the circumstances of the case and is required to act judicially.

A seminar on "Asian Authors and Copyright Law" held in January 1986 and the All India Convention of Creative Artists held in March 1987 both convened by the Indian Performing Rights Society Limited (IPRS) have recommended, among others, to take urgent action to amend the 1957 Act to overcome the serious prejudices caused to the authors of works used in Indian films by virtue of the decision of the Supreme Court in the *I.P.R.S.* case,²⁷ to ensure to authors and composers of literary and musical works incorporated in the sound track of any film the right to authorize the public performance of those works through the medium of the film or exploitation in any other medium. They have also recommended the changing of the definition of the expressions "literary," and "artistic work" and of the provisions regarding assignment of copyright on the lines laid down in the Tunis Model Law on Copyright.

E. Conclusion

As mentioned earlier, there have been significant developments in the field of copyright since the last "Letter." All round attempts in the various aspects of copyright have been made by the Government and the various interests. But in spite of all these efforts, the implementation of the copyright law has not been very effective in view of the various petitions challenging the 1984 Act and the complicated provisions of the Paris revision. Not much pro-

gress has been achieved to amend the Act to meet the challenges of new technologies, like reprography, computer software protection, biotechnology, etc. Even the existing conventions on some of these areas are yet to be acceded to by India.

Although the Act grants protection to producers of phonograms and to the broadcasting authorities, i.e. the broadcast production rights, there is, however, as yet no statutory protection for the rights of the performers or actors. The decision in *Fortune Film v. Dev Anand*²⁸ still holds the field. The rights provided in the Act are independent of the provisions of the international conventions on neighboring rights. India has acceded only to the Convention for the Protection of Producers of Phonograms Against Unauthorized Duplication of Their Phonograms (Phonograms Convention, 1971), but has not become a member of the two other international conventions on neighboring rights, i.e. the International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations (Rome Convention, 1961), and the Convention Relating to the Distribution of Programme-Carrying Signals Transmitted by Satellite (Satellites Convention, 1974). In the Sub-regional Workshop on Copyright and Neighboring Rights organized by WIPO in cooperation with the Government of India in New Delhi in November 1986, a declaration was made that India would soon accede to the Rome Convention. But no accession has yet been made. Though India is very rich in folklore, no attempt has yet been made to give any recognition or protection to it.

The creation of authors' organizations for collective administration of authors' rights, has not made much headway in India. Even the existing Indian Performing Rights Society had not furnished any statement required to be furnished by it under section 33 of the 1957 Act after the year 1958. In fact, the advantages flowing from such collective administration have yet to be harnessed. The development of the copyright system in the various types of copyrights has been phenomenal in the Western countries mainly due to their strong and well-established authors' organizations. The question of establishing an authors' society under the aegis of the Government is being examined. As mentioned earlier, the film industry has also taken a decision to form their own association for the protection of their rights.

The details in respect of reprography, the regulation of home taping and future development of electronic computers, which are fast developing in other countries, are yet to be taken up in India.

²⁷ A.I.R. 1977 S.C. 1543.

²⁸ A.I.R. 1979 Bom. 17.

Books and Articles

Book Review

Urheberrecht, by Robert Dittrich. One volume of XXVIII-996 pages. Manzsche Verlags- und Universitätsbuchhandlung, Vienna, 1988.

This volume, written in German, is the second edition of this work by the renowned Austrian expert, Robert Dittrich. It forms Volume No. 21 of the "Manzsche Ausgabe der Österreichischen Gesetze (Grosse Ausgabe)." The first edition covered the situation up to February 1, 1974, and the new edition is a revised and updated version which takes into account the developments up to December 30, 1987.

The volume contains four parts.

In Part I, the author deals with the Austrian Federal Copyright Act of 1936, as amended up to 1986, and with the regulations relating to substantive copyright law. The text of the provisions is reproduced, and, in connection with each of them, the author provides references to the explanatory notes (*Erläuternde Bemerkungen*) as well as to literature and commentaries. He also refers extensively to relevant court cases and gives short descriptions of their contents and indicates where commentaries to those cases can be found. This part also contains the text of the provisions on intellectual property rights contained in the Federal Act on International Private Law of 1978, as well as the explanatory notes to these provisions and references to some court cases.

Part II deals with international copyright law and is divided into two chapters, one on multilateral treaties and one on bilateral agreements.

The first chapter contains a table indicating the status of adherence of various countries to the different treaties, both the universal ones and the regional European ones. Then follow the texts of the WIPO Convention, the Berne Convention (the Brussels, Stockholm and Paris Acts), the Universal Copyright Convention (the texts of 1952 and 1971), the Rome Convention (with details about the reservations made

by various countries, particularly as regards the application of Article 12), the Phonograms Convention and the Satellites Convention. The texts of these Conventions are reproduced in English and French as well as in German, and they are in some cases accompanied by extracts from the explanatory notes, as regards their application to Austria. This chapter also includes the texts of those provisions of the Convention Relating to the Status of Refugees (1951), and the International Covenant on Economic, Social and Cultural Rights (1966), which have a bearing on intellectual property rights.

The second chapter of Part II deals with bilateral treaties and contains the text of the Agreement Between Austria and the Soviet Union on the Reciprocal Protection of Copyrights, with references to literature and extracts from the explanatory notes, as well as the texts of, for instance, various bilateral agreements on the extension of the period of protection.

Part III contains the legal texts which relate to collective administration organizations as well as extracts from the explanatory notes to those texts.

In Part IV, finally, are included the statutes of the existing 11 collective administration organizations in Austria and also certain other documents relating to the activities of those organizations, for instance, the application forms for membership.

In conclusion, this volume contains a comprehensive and detailed but at the same time well-structured—and thus easily read—compilation of legal texts in the copyright field, with extensive extracts from annotations and commentaries and with numerous references for further study. Thus the volume covers virtually all essential aspects of copyright law and its application in Austria, as regards both the national law of the country and Austria's international relations in this area.

H.O.

Calendar of Meetings

WIPO Meetings

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

1988

May 25 to June 1 (Geneva)

Executive Coordination Committee of the PCIPI (Permanent Committee on Industrial Property Information) (Second Session)

The Committee will review the progress made in carrying out the tasks of the Permanent Program on Industrial Property Information for the 1988-89 biennium. It will consider requests by PCIPI Working Groups for new tasks in the said Program. The Committee will also consider matters related to marks and designs documentation and information. One day will be devoted to the exchange of information in the field of automation of industrial property information.

Invitations: States and organizations members of the Executive Coordination Committee and, as observers, certain organizations.

May 30 to June 1 (Geneva)

Review Meeting on Intellectual Property in Respect of Integrated Circuits

The Meeting will review the progress of the preparatory work for the diplomatic conference on the conclusion of a Treaty on the Protection of Intellectual Property in Respect of Integrated Circuits.

Invitations: States members of WIPO or the Paris Union.

June 13 to 17 (Geneva)

Committee of Experts on the Harmonization of Certain Provisions in Laws for the Protection of Inventions (Fifth Session)

The Committee will continue to examine a draft treaty on the harmonization of certain provisions in laws for the protection of inventions dealing with the following subjects: grace period for public disclosure of an invention before filing an application; requirements in respect of the granting of a filing date to a patent application; requirements in respect of the naming of the inventor and in respect of evidence to be furnished concerning the entitlement of the applicant; requirements in respect of the manner of claiming in patent applications; requirements in respect of unity of invention in patent applications; prior art effect of previously filed but yet unpublished patent applications; rights conferred by a patent; extension of patent protection of a process to the products obtained by that process—proof of infringement of a process patent; requirements in respect of manner of description of invention in patent applications; the right to a patent where several inventors have made the same invention; extent of protection and interpretation of patent claims; the duration of patent protection; maintenance fees; provisional protection of applicants; prior users' rights; restoration of the right to claim priority; and the exclusion from patent protection of certain kinds of inventions.

Invitations: States members of the Paris Union and, as observers, States members of WIPO not members of the Paris Union and certain organizations.

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)

The Committee will re-examine the principles of protection worked out for eight categories of works during the 1986-87 biennium (printed word, audiovisual works, phonograms, works of fine art, works of architecture, works of applied art, dramatic and choreographic works, musical works) and for photographic works in 1988.

Invitations: States members of WIPO, Unesco or the United Nations and, as observers, certain organizations.

September 12 to 19 (Geneva)

IPC (International Patent Classification) Committee of Experts (Seventeenth Session)

The Committee will adopt the final amendments, as well as the revised Guide, to the fourth edition of the International Patent Classification (IPC) and decide on the policy for the revision work during the next (sixth) revision period (1989-93).

Invitations: States members of the IPC Union and, as observers, certain organizations.

- September 14 to 16 (Geneva)** **WIPO Worldwide Forum on the Impact of Emerging Technologies on the Law of Intellectual Property**
 The Forum will consider the impact of new technology on intellectual property law, with special emphasis on biotechnology, computer technology, the new technology for the recording of sounds and images, new broadcasting technology (for instance by direct broadcasting satellite) and new technology for transmission of programs by cable.
Invitations: States members of WIPO, the Paris Union or the Berne Union, certain organizations and the general public.
- September 22 and 23 (Geneva)** **Permanent Committee on Industrial Property Information (PCIPI) (Second Session)**
 The Committee will review the work done on the tasks of the program during the first nine months of 1988. It will start to work on the elaboration of a medium-term program for the PCIPI and of a global policy for, and the orientation of, the work of the PCIPI during the 1990-91 biennium.
Invitations: States and organizations members of the Committee and, as observers, certain other States and organizations.
- September 26 to October 3 (Geneva)** **Governing Bodies of WIPO and of Some of the Unions Administered by WIPO (Nineteenth Series of Meetings)**
 The WIPO General Assembly will consider the establishment of an International Register of Audiovisual Works. The WIPO Coordination Committee and the Executive Committees of the Paris and Berne Unions will, *inter alia*, review and evaluate activities undertaken since July 1987 and prepare the draft agendas of the 1989 ordinary sessions of the WIPO General Assembly and the Assemblies of the Paris and Berne Unions.
Invitations: As members or observers (depending on the body), States members of WIPO, the Paris Union or the Berne Union and, as observers, certain organizations.
- October 24 to 28 (Geneva)** **Committee of Experts on Biotechnological Inventions and Industrial Property (Fourth Session)**
 The Committee will examine possible solutions concerning industrial property protection of biotechnological inventions.
Invitations: States members of WIPO or the United Nations and, as observers, certain organizations.
- November 28 to December 2 (Geneva)** **Committee of Experts on Model Provisions for Legislations in the Field of Copyright**
 The Committee will work out standards in the field of literary and artistic works for the purposes of national legislation on the basis of the Berne Convention for the Protection of Literary and Artistic Works.
Invitations: States members of the Berne Union or WIPO and, as observers, certain organizations.
- December 5 to 9 (Geneva)** **Madrid Union: Preparatory Committee for the Diplomatic Conference for the Adoption of Protocols to the Madrid Agreement**
 This Committee will make preparations for the diplomatic conference scheduled for 1989 (establishment of the list of States and organizations to be invited, the draft agenda, the draft rules of procedure, etc.).
Invitations: States members of the Madrid Union and Denmark, Greece, Ireland and the United Kingdom.
- December 12 to 16 (Geneva)** **Executive Coordination Committee of the PCIPI (Permanent Committee on Industrial Property Information) (Third Session)**
 The Committee will review the progress made in carrying out tasks of the Permanent Program on Industrial Property Information for the 1988-89 biennium. It will consider the recommendations of the PCIPI Working Groups and review their mandates.
Invitations: States and organizations members of the Executive Coordination Committee and, as observers, certain organizations.
- December 19 (Geneva)** **Information Meeting for Non-Governmental Organizations on Intellectual Property**
 Participants in this informal meeting will be informed about the recent activities and future plans of WIPO in the fields of industrial property and copyright and their comments on the same will be invited and heard.
Invitations: International non-governmental organizations having observer status with WIPO.

UPOV Meetings

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

1988

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| October 17 (Geneva) | <p>Consultative Committee (Thirty-eighth Session)</p> <p>The Committee will prepare the twenty-second ordinary session of the Council.
 <i>Invitations:</i> Member States of UPOV.</p> |
| October 18 and 19 (Geneva) | <p>Council (Twenty-second Ordinary Session)</p> <p>The Council will examine the accounts of the 1986-87 biennium, the reports on the activities of UPOV in 1987 and the first part of 1988 and specify certain details of the work for 1988 and 1989.
 <i>Invitations:</i> Member States of UPOV and, as observers, certain non-member States and intergovernmental organizations.</p> |

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

Non-Governmental Organizations

1988

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| 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

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