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# Copyright

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## Activities of the International Bureau

### The World Intellectual Property Organization in 1988\*

#### WIPO and Development Cooperation Activities in the Fields of Copyright and Neighboring Rights

##### I. Intellectual Property Activities: Promotion of the Worldwide Recognition of and Respect for Intellectual Property

###### Objectives

The general objective is to promote the realization of the benefits of intellectual property—both industrial property and copyright—for the social, economic and cultural progress of any country and for the continuous promotion of the cause of peace.

As a natural avenue leading to such benefits, the objective is also to promote accession to the treaties on the recognition and protection of intellectual property rights administered by WIPO by countries not yet party to them.

###### Activities

During the period covered by this report, WIPO continued to promote acceptance by States of the WIPO Convention and of the other treaties administered by WIPO. In addition to the activities referred to below in relation to specific treaties, discussions on such acceptance took place during WIPO missions to States, particularly developing coun-

tries, in meetings with Permanent Missions of States in Geneva and in contacts with delegations of States at intergovernmental meetings. Notes concerning the advantages of acceptance of particular treaties for particular countries were prepared and sent to the competent authorities of the countries concerned.

**Convention Establishing the World Intellectual Property Organization (WIPO).** On February 22, 1988, Ecuador deposited its instrument of ratification of the WIPO Convention. The WIPO Convention entered into force in respect of Ecuador on May 22, 1988.

On March 28, 1988, Guinea-Bissau deposited its instrument of accession to the WIPO Convention. The WIPO Convention entered into force in respect of Guinea-Bissau on June 28, 1988.

On May 16, 1988, Trinidad and Tobago deposited its instrument of accession to the WIPO Convention. The WIPO Convention entered into force in respect of Trinidad and Tobago on August 16, 1988.

On May 18, 1988, Swaziland deposited its instrument of accession to the WIPO Convention. The WIPO Convention entered into force in respect of Swaziland on August 18, 1988.

On October 1, 1988, Malaysia deposited its instrument of accession to the WIPO Convention. The WIPO Convention entered into force in respect of Malaysia on January 1, 1989.

On December 8, 1988, Liberia deposited its instrument of accession to the WIPO Convention. The WIPO Convention entered into force in respect of Liberia on March 8, 1989.

Those accessions brought the number of States party to the WIPO Convention to 123. They are the following: Algeria, Angola, Argentina, Australia, Austria, Bahamas, Bangladesh, Barbados, Belgium, Benin, Brazil, Bulgaria, Burkina Faso, Burundi, Byelorussian SSR, Cameroon, Canada, Central African Republic, Chad, Chile, China, Colombia,

\* This article is the first part of a report on the main activities of WIPO in general and in the fields of copyright and neighboring rights in particular. Activities in the field of industrial property are covered in a corresponding article in the review *Industrial Property*.

The first part deals with the activities of WIPO as such and with development cooperation activities in respect of copyright and neighboring rights. The second part (to be published in the May issue of this review) will deal with other activities in those fields.

In general, the report follows the order in which activities are set out in the program for the 1988-89 biennium, approved by the Governing Bodies of WIPO and the Unions administered by WIPO in 1987. It recalls, from the said program, the objectives of the activities described.

Congo, Costa Rica, Côte d'Ivoire, Cuba, Cyprus, Czechoslovakia, Democratic People's Republic of Korea, Denmark, Ecuador, Egypt, El Salvador, Fiji, Finland, France, Gabon, Gambia, German Democratic Republic, Germany (Federal Republic of), Ghana, Greece, Guatemala, Guinea, Guinea-Bissau, Haiti, Holy See, Honduras, Hungary, Iceland, India, Indonesia, Iraq, Ireland, Israel, Italy, Jamaica, Japan, Jordan, Kenya, Lebanon, Lesotho, Liberia, Libya, Liechtenstein, Luxembourg, Malawi, Malaysia, Mali, Malta, Mauritania, Mauritius, Mexico, Monaco, Mongolia, Morocco, Netherlands, New Zealand, Nicaragua, Niger, Norway, Pakistan, Panama, Paraguay, Peru, Philippines, Poland, Portugal, Qatar, Republic of Korea, Romania, Rwanda, Saudi Arabia, Senegal, Sierra Leone, Somalia, South Africa, Soviet Union, Spain, Sri Lanka, Sudan, Suriname, Swaziland, Sweden, Switzerland, Togo, Trinidad and Tobago, Tunisia, Turkey, Uganda, Ukrainian SSR, United Arab Emirates, United Kingdom, United Republic of Tanzania, United States of America, Uruguay, Venezuela, Viet Nam, Yemen, Yugoslavia, Zaire, Zambia, Zimbabwe.

*Treaties Providing for the Substantive Protection of Intellectual Property*

**Paris Convention for the Protection of Industrial Property.** On March 28, 1988, Guinea-Bissau deposited its instrument of accession to the Paris Convention. The Paris Convention entered into force in respect of Guinea-Bissau on June 28, 1988.

On May 16, 1988, Trinidad and Tobago (already a party to the Paris Convention) deposited its instrument of accession to the Paris Convention (Stockholm Act (1967)). The Stockholm Act (1967) entered into force in respect of Trinidad and Tobago on August 16, 1988.

On June 23, 1988, Malaysia deposited its instrument of accession to the Paris Convention. The Paris Convention entered into force in respect of Malaysia on January 1, 1989.

The accessions of Guinea-Bissau and Malaysia brought the number of States party to the Paris Convention to 99.

**Berne Convention for the Protection of Literary and Artistic Works.** On May 16, 1988, Trinidad and Tobago deposited its instrument of accession to the Berne Convention. The Berne Convention entered into force in respect of Trinidad and Tobago on August 16, 1988.

On May 20, 1988, Peru deposited its instrument of accession to the Berne Convention. The Berne Convention entered into force in respect of Peru on August 20, 1988.

On November 16, 1988, the United States of America deposited its instrument of accession to the Berne Convention. The Berne Convention entered into force in respect of the United States of America on March 1, 1989.

On December 8, 1988, Liberia deposited its instrument of accession to the Berne Convention. The Berne Convention entered into force in respect of Liberia on March 8, 1989.

Those four accessions brought the number of States party to the Berne Convention to 81.

**Geneva Convention for the Protection of Producers of Phonograms Against Unauthorized Duplication of Their Phonograms.** On June 27, 1988, Trinidad and Tobago deposited its instrument of accession to the Phonograms Convention. The said Convention entered into force in respect of Trinidad and Tobago on October 1, 1988. On that date, the number of States party to the Phonograms Convention reached 42.

**Brussels Convention Relating to the Distribution of Programme-Carrying Signals Transmitted by Satellite.** On October 20, 1988, the Soviet Union deposited its instrument of accession to the Satellites Convention. The said Convention entered into force in respect of the Soviet Union on January 20, 1989. On that date, the number of States party to the Satellites Convention reached 12.

*Treaty in the Field of Double Taxation*

**Madrid Multilateral Convention for the Avoidance of Double Taxation of Copyright Royalties.** On April 15, 1988, Peru deposited its instrument of accession to the Madrid Convention. The Convention is not yet in force.

**II. Promotion of Accession to the Treaties Providing for the International Registration of Industrial Property Rights and Promotion of the Use of Such Treaties**

**Objectives**

The general objective is to promote the realization of the benefits of treaties administered by WIPO and providing for the international registration of industrial property rights, registration that makes the protection of such rights on the international level more secure and less expensive than separate applications for registrations in national registers.

The objective is also to promote accession to those treaties by countries not yet party to them.

The treaties in question are the following:

- (i) the Patent Cooperation Treaty;
- (ii) the Madrid Agreement Concerning the International Registration of Marks;
- (iii) the Hague Agreement Concerning the International Deposit of Industrial Designs;
- (iv) the Lishon Agreement for the Protection of Appellations of Origin and their International Registration;
- (v) the Trademark Registration Treaty (*currently not used*);
- (vi) the Vienna Agreement for the Protection of Type Faces and their International Deposit (*not yet in force*);
- (vii) the Geneva Treaty on the International Recording of Scientific Discoveries (*not yet in force*).

Finally, the objective is also to ensure that, through regular contacts between WIPO on the one hand and the governments of States and international organizations on the other hand, there should be full awareness of what is being done and planned on either side in order to inspire mutually more and more useful activities, to combine forces whenever possible and to avoid unnecessary duplication.

**Patent Cooperation Treaty (PCT).** On December 21, 1988, Burkina Faso deposited its instrument of accession to the PCT. The PCT entered into force in respect of Burkina Faso on March 21, 1989. The accession of Burkina Faso brought the number of States party to the PCT to 41.

**Madrid Agreement Concerning the International Registration of Marks.** Tunisia ceased to be a member of the Madrid Union with effect from April 9, 1988.

On August 22, 1988, Portugal deposited its instrument of ratification of the Stockholm Act of July 14, 1967, as amended on October 2, 1979, of the Madrid Agreement. The Stockholm Act (1967) entered into force in respect of Portugal on November 22, 1988.

### III. Development Cooperation with Developing Countries in the Fields of Copyright and Neighboring Rights

#### Objective

The objective is to assist developing countries in the establishment or modernization of intellectual property systems suited to their development goals in the following ways:

- (i) developing human resources;
- (ii) facilitating the creation or improvement of national or regional legislation;
- (iii) facilitating the creation or improvement of governmental and other institutions for the administration of national or regional legislation and the exercise of the rights granted by such legislation;
- (iv) encouraging domestic inventive and creative artistic activity and the protection of the expressions of folklore;
- (v) facilitating the acquisition of foreign patented technology, and the access to foreign works protected by copyright;
- (vi) facilitating the creation of a corps of practitioners.

#### Activities

##### *Development of Human Resources in Regular and Global, Regional and National Training Courses and Seminars*

#### REGULAR AND GLOBAL TRAINING PROGRAM

In 1988, WIPO received 128 applications for training *in the fields of copyright and neighboring rights* from 57 developing countries and two organizations. Fifty of these applications, from the following 36 developing countries and one organization, were accepted and led to the completion of the courses listed below: Benin, Bolivia, Brazil, Burkina Faso, Cameroon, Chile, China, Colombia, Congo, Cuba, Ecuador, El Salvador, Ethiopia, Ghana, Guatemala, Guinea, Haiti, Honduras, India, Jamaica, Kuwait, Liberia, Malawi, Malaysia, Mali, Mauritius, Mexico, Morocco, Niger, Nigeria, Peru, Republic of Korea, Rwanda, Thailand, Trinidad and Tobago, Uruguay, United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA).

The following 16 countries and one institution agreed to contribute in full or in part to the payment of travel expenses and subsistence allowances, or otherwise, for training in the fields of copyright and neighboring rights: Algeria, Argentina, Austria, Cameroon, Côte d'Ivoire, France, German Democratic Republic, Hungary, India, Mali, Mexico, Peru, Sweden, Switzerland, United Kingdom, United States of America, Swiss Society for Authors' Rights in Musical Works (SUISA).

The remainder of the cost was borne by the budget of WIPO.

The following training courses took place in 1988 (listed in chronological order):

- (a) in April, 12 trainees attended a Specialized Training Course (in Spanish) on Copyright and

Neighboring Rights, organized by WIPO in cooperation with the Government of Peru and SUIISA, in *Lima*; the participants came from Bolivia, Brazil, Chile, Colombia, Cuba, Ecuador, El Salvador, Guatemala, Haiti, Honduras, Mexico and Uruguay, in addition to participants from Peru; WIPO was represented by two officials; lectures were given by WIPO consultants from Argentina, Brazil, Colombia, Costa Rica, Mexico, Uruguay, Venezuela, an official of SUIISA and WIPO officials; the participation of the lecturers from Latin America and SUIISA was financed by SUIISA;

(b) in April and May, two trainees attended a Training Course (in French) on Copyright in *Berlin*; the participants came from Niger and Rwanda; part of their subsistence costs were funded by the German Democratic Republic;

(c) in June, eight trainees attended a Specialized Training Course (in English) on the Administration of Copyright and Neighboring Rights, organized by WIPO in cooperation with SUIISA in *Zurich*; the participants came from Ghana, India, Liberia, Malawi, Malaysia, Mauritius, Mexico and Nigeria; the course was followed by a visit to WIPO headquarters;

(d) in July and August, 30 trainees attended a Training Course (in English) on Intellectual Property for Developing Countries of Asia and the Pacific, organized by WIPO, with the cooperation of the Government of Sri Lanka and the Sri Lanka Foundation, in *Colombo*, and with the financial support of the United Nations Development Programme (UNDP); the participants came from Bhutan, China, Cook Islands, Fiji, India, Indonesia, Iran (Islamic Republic of), Kiribati, Malaysia, Maldives, Mongolia, Papua New Guinea, Philippines, the Republic of Korea, Samoa, Solomon Islands, Sri Lanka, Thailand, Tuvalu and Viet Nam;

(e) in August and in November, four trainees attended a Training Course (in Spanish) on Copyright in *Mexico*; the participants came from Colombia, Guatemala and Peru; their subsistence costs were funded by Mexico;

(f) in August and September, 21 trainees attended a General Introductory Course (in English and French) on Copyright and Neighboring Rights, organized by WIPO in cooperation with the Government of Hungary and the Hungarian Bureau for the Protection of Authors' Rights (ARTISJUS) in *Budapest*; the participants came from Benin, Burkina Faso, Cameroon, China, Congo, Ethiopia, Ghana, Guinea, Haiti, India, Kuwait, Malawi, Mali, Mauritius, Morocco, Niger, Nigeria, the Republic of Korea, Thailand and UNRWA; the Director General attended the opening of the course; two WIPO officials participated in part of the course; the participants also attended the WIPO World-

wide Forum on the Impact of Emerging Technologies on the Law of Intellectual Property;

(g) in November, three trainees attended a Training Course (in English) on Copyright in *London*; the participants came from Jamaica, the Republic of Korea and Trinidad and Tobago; the travel and subsistence costs of two participants were funded by the United Kingdom.

In addition to the above courses, special training programs and study visits were organized for 11 officials from Benin, Chile, Colombia, Ghana, Liberia, Mauritius, the Republic of Korea and Sri Lanka; the above programs and study visits included visits to one or several of the following countries and institutions: Argentina, Cameroon, Côte d'Ivoire, India, Niger, Sweden, Switzerland, SUIISA.

In most cases, the arrangements for training in 1988 included visits to WIPO headquarters.

## REGIONAL AND NATIONAL

### *Africa*

*Ghana.* In July, a government official undertook an Individual Training Course, organized by WIPO in cooperation with the Cameroon Copyright Society, in Douala.

*Malawi.* In October, a National Seminar on Copyright and Neighboring Rights was organized by WIPO and the Government of Malawi, in Blantyre. It was attended by some 30 participants including authors, composers, performers of music, broadcasters, publishers and representatives of users of protected works. Lectures were delivered by government officials, artists and authors of Malawi and by a WIPO official.

*Nigeria.* In March, a WIPO official participated as a speaker in a National Seminar on Nigerian Copyright-Law jointly organized in Lagos by WIPO and the Federal Ministries of Trade, Information and Culture, Education and Justice. It was attended by some 150 participants including lawyers, publishers, teachers, government officials, authors, artists, record producers, press representatives as well as other interested circles.

### *Asia and the Pacific*

*Bangladesh.* In July and August, two government officials attended a Training Course on Intellectual Property for Developing Countries of Asia and the Pacific, organized by WIPO, with the coop-

eration of the Government of Sri Lanka and the Sri Lanka Foundation, in Colombo, and with the financial support of UNDP.

*Bhutan.* In July and August, a government official attended a Training Course on Intellectual Property for Developing Countries of Asia and the Pacific, organized by WIPO, with the cooperation of the Government of Sri Lanka and the Sri Lanka Foundation, in Colombo, and with the financial support of UNDP.

*China.* In July and August, two government officials attended a Training Course on Intellectual Property for Developing Countries of Asia and the Pacific, organized by WIPO, with the cooperation of the Government of Sri Lanka and the Sri Lanka Foundation, in Colombo, and with the financial support of UNDP.

*Cook Islands.* In July and August, a government official attended a Training Course on Intellectual Property for Developing Countries of Asia and the Pacific, organized by WIPO, with the cooperation of the Government of Sri Lanka and the Sri Lanka Foundation, in Colombo, and with the financial support of UNDP.

*Fiji.* In July and August, a government official attended a Training Course on Intellectual Property for Developing Countries of Asia and the Pacific, organized by WIPO, with the cooperation of the Government of Sri Lanka and the Sri Lanka Foundation, in Colombo, and with the financial support of UNDP.

*India.* In February, a WIPO official participated as a speaker in an International Seminar on Publishing in the Electronic Age, with Special Reference to Developing Countries, organized by the National Book Trust of India in cooperation with the Federation of Indian Publishers, in New Delhi. It was attended by over 75 participants. In addition to India, the participants came from Bangladesh, Ghana, Indonesia, Malaysia, Nepal, Pakistan, Singapore, Sri Lanka and the United States of America.

In July and August, two government officials attended a Training Course on Intellectual Property for Developing Countries of Asia and the Pacific, organized by WIPO, with the cooperation of the Government of Sri Lanka and the Sri Lanka Foundation, in Colombo, and with the financial support of UNDP.

*Indonesia.* In July and August, two government officials attended a Training Course on Intellectual Property for Developing Countries of Asia and the Pacific, organized by WIPO, with the cooperation

of the Government of Sri Lanka and the Sri Lanka Foundation, in Colombo, and with the financial support of UNDP.

In September, a WIPO official spoke at a National Workshop on the Enforcement of Copyright Law, organized by the Government of Indonesia, in Jakarta. About 60 persons participated in the Workshop, including judges, public prosecutors, police officials, attorneys and local copyright specialists.

*Iran (Islamic Republic of).* In July and August, a government official attended a Training Course on Intellectual Property for Developing Countries of Asia and the Pacific, organized by WIPO, with the cooperation of the Government of Sri Lanka and the Sri Lanka Foundation, in Colombo, and with the financial support of UNDP.

*Kiribati.* In July and August, a government official attended a Training Course on Intellectual Property for Developing Countries of Asia and the Pacific, organized by WIPO, with the cooperation of the Government of Sri Lanka and the Sri Lanka Foundation, in Colombo, and with the financial support of UNDP.

*Malaysia.* In February, a National Copyright Workshop was organized by WIPO in cooperation with the Government of Malaysia, in Kuala Lumpur. It was attended by over 100 participants who were publishers, authors, record producers, university faculty members, music publishers, press representatives and government officials from the Ministry of Trade and Industry and other government departments. During the Workshop, papers were presented by three Malaysian speakers, five WIPO consultants from Australia, India, Japan, the United Kingdom, the International Federation of Phonogram and Videogram Producers (IFPI), and two WIPO officials.

In July and August, three government officials attended a Training Course on Intellectual Property for Developing Countries of Asia and the Pacific, organized by WIPO, with the cooperation of the Government of Sri Lanka and the Sri Lanka Foundation, in Colombo, and with the financial support of UNDP.

*Maldives.* In July and August, a government official attended a Training Course on Intellectual Property for Developing Countries of Asia and the Pacific, organized by WIPO, with the cooperation of the Government of Sri Lanka and the Sri Lanka Foundation, in Colombo, and with the financial support of UNDP.

*Mongolia.* In July and August, a government official attended a Training Course on Intellectual

Property for Developing Countries of Asia and the Pacific, organized by WIPO, with the cooperation of the Government of Sri Lanka and the Sri Lanka Foundation, in Colombo, and with the financial support of UNDP.

*Papua New Guinea.* In July and August, a government official attended a Training Course on Intellectual Property for Developing Countries of Asia and the Pacific, organized by WIPO, with the cooperation of the Government of Sri Lanka and the Sri Lanka Foundation, in Colombo, and with the financial support of UNDP.

*Philippines.* In July and August, two government officials attended a Training Course on Intellectual Property for Developing Countries of Asia and the Pacific, organized by WIPO, with the cooperation of the Government of Sri Lanka and the Sri Lanka Foundation, in Colombo, and with the financial support of UNDP.

*Republic of Korea.* In July and August, two government officials attended a Training Course on Intellectual Property for Developing Countries of Asia and the Pacific, organized by WIPO, with the cooperation of the Government of Sri Lanka and the Sri Lanka Foundation, in Colombo, and with the financial support of UNDP.

In October and November, a government official undertook a study visit to various copyright institutions in the Federal Republic of Germany, Hungary, Sweden, Switzerland and the United Kingdom, organized by WIPO and financed by the Government of the Republic of Korea. He had discussions with WIPO officials in Geneva on various aspects of copyright questions.

*Samoa.* In July and August, a government official attended a Training Course on Intellectual Property for Developing Countries of Asia and the Pacific, organized by WIPO, with the cooperation of the Government of Sri Lanka and the Sri Lanka Foundation, in Colombo, and with the financial support of UNDP.

*Solomon Islands.* In July and August, a government official attended a Training Course on Intellectual Property for Developing Countries of Asia and the Pacific, organized by WIPO, with the cooperation of the Government of Sri Lanka and the Sri Lanka Foundation, in Colombo, and with the financial support of UNDP.

*Sri Lanka.* In July and August, a Training Course on Intellectual Property for Developing Countries of Asia and the Pacific was organized by WIPO, with the cooperation of the Government of

Sri Lanka and the Sri Lanka Foundation, in Colombo, and with the financial support of UNDP.

In November, a government official undertook an individual study attachment, organized by WIPO in cooperation with the Government of India, in New Delhi.

*Thailand.* In July and August, two government officials attended a Training Course on Intellectual Property for Developing Countries of Asia and the Pacific, organized by WIPO, with the cooperation of the Government of Sri Lanka and the Sri Lanka Foundation, in Colombo, and with the financial support of UNDP.

*Tuvalu.* In July and August, a government official attended a Training Course on Intellectual Property for Developing Countries of Asia and the Pacific, organized by WIPO, with the cooperation of the Government of Sri Lanka and the Sri Lanka Foundation, in Colombo, and with the financial support of UNDP.

*Viet Nam.* In July and August, two government officials attended a Training Course on Intellectual Property for Developing Countries of Asia and the Pacific, organized by WIPO, with the cooperation of the Government of Sri Lanka and the Sri Lanka Foundation, in Colombo, and with the financial support of UNDP.

#### *Latin America and the Caribbean*

*Bolivia.* In April, a government official attended a Specialized Training Course on Copyright and Neighboring Rights, as well as the Third International Congress on the Protection of Intellectual Property, organized by WIPO in cooperation with the Government of Peru and SUIISA, in Lima.

*Brazil.* In April, a government official attended a Specialized Training Course on Copyright and Neighboring Rights, as well as the Third International Congress on the Protection of Intellectual Property, organized by WIPO in cooperation with the Government of Peru and SUIISA, in Lima.

*Chile.* In April, a government official attended a Specialized Training Course on Copyright and Neighboring Rights, as well as the Third International Congress on the Protection of Intellectual Property, organized by WIPO in cooperation with the Government of Peru and SUIISA, in Lima.

In November, a government official undertook an Individual Training Course, organized by WIPO in cooperation with the Government of Argentina, in Buenos Aires.

*Colombia.* In February, a National Seminar on the Berne Convention for the Protection of Literary and Artistic Works was organized in Bogota by WIPO in cooperation with the Government of Colombia and SUIISA. The objective of the Seminar was to familiarize officials of the Colombian Government with the Berne Convention. It was attended by 23 participants from various ministries as well as other interested circles. The discussions on various elements of the Convention were conducted by the Director General of SUIISA and by a WIPO official.

In April, a government official attended a Specialized Training Course on Copyright and Neighboring Rights, as well as the Third International Congress on the Protection of Intellectual Property, organized by WIPO in cooperation with the Government of Peru and SUIISA, in Lima.

In May, a Special Course on the Administration of Copyright and Neighboring Rights was organized in Zurich by WIPO, in cooperation with SUIISA, for three officials from Colombia.

In August, two government officials attended a Practical Training Course organized by WIPO in cooperation with the Government of Mexico, in Mexico City.

*Cuba.* In April, a government official attended a Specialized Training Course on Copyright and Neighboring Rights, as well as the Third International Congress on the Protection of Intellectual Property, organized by WIPO in cooperation with the Government of Peru and SUIISA, in Lima.

*Ecuador.* In April, a government official attended a Specialized Training Course on Copyright and Neighboring Rights, as well as the Third International Congress on the Protection of Intellectual Property, organized by WIPO in cooperation with the Government of Peru and SUIISA, in Lima.

*El Salvador.* In April, a government official attended a Specialized Training Course on Copyright and Neighboring Rights, as well as the Third International Congress on the Protection of Intellectual Property, organized by WIPO in cooperation with the Government of Peru and SUIISA, in Lima.

*Guatemala.* In April, a government official attended a Specialized Training Course on Copyright and Neighboring Rights, as well as the Third International Congress on the Protection of Intellectual Property, organized by WIPO in cooperation with the Government of Peru and SUIISA, in Lima.

In November, a government official attended a Practical Training Course on Copyright organized by WIPO in cooperation with the Government of Mexico, in Mexico City.

*Haiti.* In April, a government official attended a Specialized Training Course on Copyright and Neighboring Rights, as well as the Third International Congress on the Protection of Intellectual Property, organized by WIPO in cooperation with the Government of Peru and SUIISA, in Lima.

*Honduras.* In April, a government official attended a Specialized Training Course on Copyright and Neighboring Rights, as well as the Third International Congress on the Protection of Intellectual Property, organized by WIPO in cooperation with the Government of Peru and SUIISA, in Lima.

*Mexico.* In April, a government official attended a Specialized Training Course on Copyright and Neighboring Rights, as well as the Third International Congress on the Protection of Intellectual Property, organized by WIPO in cooperation with the Government of Peru and SUIISA, in Lima.

*Peru.* In April, a Specialized Training Course on Copyright and Neighboring Rights was organized by WIPO in cooperation with the Government of Peru and SUIISA, in Lima.

Also in April, the *Third International Congress on the Protection of Intellectual Property (of Authors, Artists and Producers)* was organized in Lima by the Government of Peru, through the National Library of Peru, in cooperation with WIPO and the Pontificia Universidad Católica del Perú and with the financial support also of SUIISA. About 560 participants from a number of Latin American countries attended the Congress, among them a number of magistrates from Peru. WIPO was represented by two officials. Twelve lectures were given by invited speakers, mostly from Latin America.

In November, a government official attended a Practical Training Course on Copyright organized by WIPO in cooperation with the Government of Mexico, in Mexico City.

*Uruguay.* In April, a government official attended a Specialized Training Course on Copyright and Neighboring Rights, as well as the Third International Congress on the Protection of Intellectual Property, organized by WIPO in cooperation with the Government of Peru and SUIISA, in Lima.

#### *Development of National and Regional Legislation and Institution Building in Developing Countries*

##### *Individual Countries in Africa*

*Benin.* In July, a government official undertook study visits to Côte d'Ivoire and Mali and had discussions with government officials there on the fight against piracy in those countries.

*Congo.* In April, a government official had discussions in Geneva with WIPO officials on the promulgation of the regulations provided for in the Copyright Law of 1982 and on suitable training facilities for copyright officials of the Congo.

*Ghana.* In September, a government official had discussions in Geneva with WIPO officials on certain aspects of the implementation of the copyright law in Ghana.

*Liberia.* In January, a WIPO official visited Monrovia and had discussions with government officials on the revision of the Liberian copyright law.

Also in January, at the request of the Government of Liberia, WIPO sent a draft copyright law for its consideration.

In April, two government officials visited WIPO to discuss with WIPO officials, *inter alia*, the draft new copyright law for Liberia.

*Malawi.* In June, a government official discussed with WIPO officials in Geneva the assistance of WIPO in the drafting of a new copyright law and the details of a National Seminar on Copyright and Neighboring Rights to be organized in October in Blantyre.

*Mauritius.* In January, a WIPO official undertook a mission to Mauritius and had discussions with government officials on the revision of the Mauritius copyright law and the establishment of a Mauritian Society of Authors.

In March, a government official undertook a study visit to WIPO headquarters and SUIA in Zurich and had discussions with the Director General of WIPO and WIPO officials on assistance for setting up an appropriate copyright administration in Mauritius.

In May, the Minister for Education, Art and Culture visited WIPO and had discussions with the Director General and WIPO officials on a suitable plan of assistance for 1989, on the implementation of the new copyright law as well as accession to international treaties.

In June, a government official undertook a study visit to WIPO headquarters and had discussions with the Director General and WIPO officials on assistance for setting up an appropriate copyright administration. The government official also visited SUIA in Zurich.

*Nigeria.* In March, at the request of the Government of Nigeria, WIPO sent a draft copyright law for its consideration.

In June, a government official discussed with WIPO officials in Geneva the assistance of WIPO in the drafting of a national copyright law.

In August, two government officials visited WIPO headquarters to discuss with WIPO officials, *inter alia*, the new draft copyright law of Nigeria.

In December, a new Copyright Decree, prepared with the advice and assistance of WIPO, was promulgated.

*Togo.* In April, a government official had discussions in Geneva with WIPO officials on the possible holding of a national seminar in Lomé and on the proposed draft copyright law.

*Zimbabwe.* In December, a government official visited WIPO headquarters and had discussions with WIPO officials on copyright questions of mutual interest.

#### *Individual Arab Countries*

*Kuwait.* In June, two government officials discussed with a Deputy Director General and other WIPO officials, in Geneva, a draft copyright law. The International Bureau sent comments on that law to the government in July.

#### *Individual Countries in Asia and the Pacific*

*China.* In June, the Director General of the National Copyright Administration of China (NCAC), accompanied by another NCAC official, visited WIPO and had discussions on the proposed copyright law in China with the Director General and WIPO officials. They also visited SUIA in Zurich.

In October, the Director General had discussions in Beijing with government officials on the proposed Chinese copyright law.

*Malaysia.* In February, two WIPO officials visited Kuala Lumpur and had discussions with government officials on certain aspects of the implementation of the new Copyright Act.

In June, a government official discussed with WIPO officials in Geneva certain questions relating to copyright protection in Malaysia.

*Papua New Guinea.* In January, at the request of the Government of Papua New Guinea, WIPO sent a draft copyright law for its consideration.

*Republic of Korea.* In October, a government official visited WIPO headquarters and had discussions with WIPO officials on various aspects of copyright questions.

*Viet Nam.* In November, at the request of the Government of Viet Nam, comments on their de-

cree on authors' rights were submitted to them by WIPO.

### *Individual Countries in Latin America and the Caribbean*

*Colombia.* In May, three government officials visited WIPO headquarters and had discussions with WIPO officials on copyright matters, particularly on the administration of copyright in Colombia.

*El Salvador.* In December, the Vice-Minister of Justice visited WIPO headquarters and had discussions with WIPO officials on the assistance of WIPO in the drafting of a national copyright law and in the setting up of an appropriate copyright administration in El Salvador.

*Guatemala.* In April, a WIPO official visited Guatemala City and had discussions with government officials on copyright matters.

*Haiti.* In May, a government official had discussions in Geneva with WIPO officials on the revision of the copyright law and the possibility of organizing a national seminar in Haiti and the building-up of a copyright administration.

*Honduras.* In May, a WIPO official visited Tegucigalpa to discuss with government officials copyright questions.

*Jamaica.* In May, a government official had discussions in Geneva with WIPO officials on the proposed copyright law for Jamaica.

*Peru.* In April, two WIPO officials visited Lima and had discussions with government officials on copyright matters and the question of the accession of Peru to the Berne Convention.

*Uruguay.* In May, a WIPO official visited Montevideo to advise government officials on the drafting of a new copyright law.

In November, two WIPO officials visited Montevideo and discussed the draft copyright law with government officials.

### *Development of the Effective Use of the Intellectual Property System for the Benefit of Inventors, Authors, the Industry and the Commerce of Developing Countries*

WIPO medals for inventors have been awarded since 1979. The purpose of the awards is to pro-

mote inventive and innovative activities, particularly in developing countries or for their benefit. The medals are awarded at exhibitions or contests organized by national or international institutions. The criteria for selecting the recipients are established by the requesting institutions, and WIPO does not intervene in the selection. From the start of the program to December 31, 1988, a total of 162 medals were awarded to inventors and promoters of inventive activity from 42 countries. In 1988 alone, a total of 29 WIPO medals were awarded to inventors from 18 countries.

In February, a Deputy Director General presented a WIPO medal to a young inventor in Moscow.

In March, two WIPO medals were awarded to the two young winners of the third *Weekly Reader* national invention contest in Washington, and one WIPO medal was awarded at the 46th All-Japan Exhibition of School Children's Inventions in Tokyo.

In April, a WIPO medal was awarded at the exhibition "Invented in Sofia"; two WIPO medals were awarded to the best inventor and the best invention presented at the "National Exhibition of Inventions" in Pyongyang, and two WIPO medals were awarded at the "Geneva International Exhibition of Inventions and New Technologies" to a woman inventor and to an inventor from a developing country.

In May, a WIPO official presented two WIPO medals to the inventor of the best invention in 1987 and to the best woman inventor of Yugoslavia at a special ceremony near Dubrovnik.

Also in May, two WIPO medals were awarded to young inventors at the "Canada-Wide Science Fair," in Ottawa.

Also in May, a WIPO official presented a special WIPO medal to an African inventor from Niger for his pioneering work in the field of solar energy, at a ceremony organized in the framework of the Organization of African Unity (OAU) Conference of Heads of State and Government of Africa on the occasion of the celebration of the 25th anniversary of the OAU in Addis Ababa.

In June, a Deputy Director General presented a WIPO medal to a team of Soviet inventors at a ceremony in Moscow for the best invention of particular use in developing countries.

Also in June, a WIPO official presented a WIPO medal to a young inventor of Côte d'Ivoire at a special award ceremony of the fourth competition for young inventors in Abidjan.

In September, two WIPO medals were awarded to two teams of Syrian inventors for the best inventions at the Damascus International Fair.

In October, the Director General awarded three WIPO medals, on the occasion of the Beijing Inter-

national Exhibition of Inventions, to three Chinese inventors, namely, for the best invention and to the best woman inventor and the best young inventor.

Also in October, two WIPO medals were awarded to the best invention and the best young inventor at the "First Meeting of National Inventors" held in Bogota; two other WIPO medals were awarded at the "International Exhibition of Inventions, Technical Novelties, Know-How and Software" ("INVEX '88") held in Brno (Czechoslovakia) to a Czechoslovak inventor and to a team of inventors from the Soviet Union; and one WIPO medal was awarded to the best invention exhibited at the "Technology Fair '88" held in Rowa (Zimbabwe).

In December, a WIPO medal was awarded for the best invention with practical application in developing countries at the Thirty-Seventh World Exhibition of Inventions "BRUSSELS EUREKA," held in Brussels; and one WIPO medal was awarded to an Iraqi inventor, at the Central Organization for Standardization and Quality Control (COSQC) Week ceremony, held in Baghdad; two WIPO medals were awarded to Mongolian Inventors at a special ceremony in Ulan Bator.

Also in December, a WIPO official discussed with government officials in Cotonou the holding of an exhibition and a workshop on the promotion of technological innovation.

*Others.* In January, a WIPO official visited the United Nations Environment Programme (UNEP) headquarters in Nairobi to discuss, together with the President of the Union of African Journalists (UAJ), the modalities for a joint UNEP-WIPO-UAJ award scheme for the best African inventions useful for the protection of the environment.

In February, a WIPO official discussed with government officials in Niamey the holding of a national seminar and exhibition for inventions as well as other measures aimed at the promotion of inventive and innovative activities in Niger.

Also in February, a WIPO official discussed with government officials in Abidjan the preparations for the African Conference on the Promotion of Innovation, held in Abidjan in June. Discussions also took place on the same subject with the President of the Côte d'Ivoire Association for the Promotion of Invention and Innovation.

In March, a WIPO official discussed with officials of the African Regional Centre of Technology (ARCT), in Dakar, a proposed WIPO-ARCT Award for African inventors.

In April, a Deputy Director General and another WIPO official attended the seventh Congress of the All-Union Society of Inventors and Rationalizers (VOIR), in Moscow.

Also in April, the Director General and WIPO officials had discussions at WIPO headquarters with representatives of the China Association of Inventions on the preparations for the Symposium on Creativity and the Promotion of Inventive Activities to be held in Beijing, in October.

In June, an *African Conference on the Promotion of Innovation* was organized by WIPO with the financial support of the Swedish International Development Authority (SIDA) and UNDP, in Abidjan.

Sixty-six participants, representing government authorities, research and development institutions and associations of inventors from 23 countries, attended this conference, namely: Algeria, Botswana, Burkina Faso, Cameroon, Congo, Côte d'Ivoire, Egypt, Ethiopia, Ghana, Kenya, Lesotho, Liberia, Morocco, Niger, Nigeria, Senegal, Sudan, Swaziland, Tunisia, United Republic of Tanzania, Zaire, Zambia, Zimbabwe, as well as officials from ARCT, the African Regional Industrial Property Organization (ARIPO), the African Intellectual Property Organization (OAPI) and UNEP.

The various topics were presented by WIPO consultants from France, Germany (Federal Republic of), Senegal, Sudan, Sweden and Zaire, as well as by representatives of ARIPO and OAPI and two WIPO officials. The participation of the WIPO consultants from France, Germany (Federal Republic of) and Sweden was financed through funds made available to WIPO by the Governments of France, Germany (Federal Republic of) and Sweden, respectively.

In October, the Director General and three WIPO officials attended a Symposium on Creativity and the Promotion of Inventive Activities, in Beijing which was organized jointly by WIPO and the International Federation of Inventors' Associations (IFIA), in cooperation with the State and Technology Commission of China and the China Association of Inventions, and with the financial support of UNDP. The Symposium was attended by 125 participants.

Also in October, a WIPO official attended the General Assembly of IFIA held in Beijing.

Also in October, a Training Course on the Promotion of Inventive and Innovative Activities was organized in Varna (Bulgaria) by WIPO and the Government of Bulgaria.

In December, a National Seminar on the Promotion of Innovation was organized in Ouagadougou by WIPO and the Government of Burkina Faso. There were about 25 participants. Three WIPO consultants from Côte d'Ivoire, Niger and Senegal and two WIPO officials participated. The Seminar was funded by the UNDP-financed regional project.

*Development, in Developing Countries,  
of the Profession of Intellectual  
Property Lawyer and Agent*

In April, a WIPO official discussed with government officials of Pakistan, in Lahore, the possible introduction of intellectual property law teaching in universities.

From May to December, two officials of the NTD (Novel Technology Development) Patent Agency Ltd., a Chinese patent agency, went on study attachments to the Federal Republic of Germany and the United States of America. The participation of one of the officials was partly financed through funds made available to WIPO by the Government of the United States of America.

In July, WIPO issued a publication entitled *Background Reading Material on Intellectual Property*. The publication, funded by the UNDP-financed regional project for Asia and the Pacific, was intended primarily for university teachers and students of intellectual property.

Also in July, the seventh annual meeting of the International Association for the Advancement of Teaching and Research in Intellectual Property (ATRIP) took place in Washington. Ninety-three participants from 27 countries attended the meeting. In addition, the WIPO/ATRIP Working Group on Teaching Materials met during the same period. The travel and subsistence expenses of nine professors from China, India, Jordan, Lesotho, Nigeria, Peru, Sri Lanka and Sudan were borne by WIPO.

In August, a university professor from Sri Lanka undertook a study visit to WIPO to collect and prepare teaching materials for the introduction of intellectual property courses at the University of Colombo. The study visit was funded by the UNDP-financed regional project for Asia and the Pacific.

In October and November, a university professor from Pakistan undertook study visits to universities in London and Lausanne (Switzerland) and to WIPO to collect and prepare teaching materials for the possible introduction of intellectual property law courses at the University of Punjab. The study visits were funded by the UNDP-financed regional project for Asia and the Pacific.

*WIPO Permanent Committee for  
Development Cooperation Related to  
Copyright and Neighboring Rights*

The Permanent Committee consists of all States members of WIPO which have informed the Director General of their desire to be members. In 1988, Argentina, Swaziland, Viet Nam and Zimbabwe became members of that Committee. Those recent accessions brought the number of

States party to the Permanent Committee to 84. They are the following: Algeria, Angola, Argentina, 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, Swaziland, Sweden, Switzerland, Togo, Tunisia, Turkey, United Kingdom, United Republic of Tanzania, United States of America, Uruguay, Viet Nam, Yemen, Zaire, Zambia, Zimbabwe.

#### IV. Governing Bodies

*Madrid Union Assembly and  
Committee of Directors*

In April, the Assembly and the Committee of Directors of the Madrid Union for the International Registration of Marks met in extraordinary session. The following 23 States were represented: Algeria, Austria, Belgium, Bulgaria, Czechoslovakia, Democratic People's Republic of Korea, Egypt, France, German Democratic Republic, Germany (Federal Republic of), Hungary, Italy, Mongolia, Morocco, Netherlands, Portugal, Romania, Soviet Union, Spain, Sudan, Switzerland, Viet Nam, Yugoslavia. Denmark participated in an observer capacity. In addition, representatives of one intergovernmental organization (Benelux Trademark Office (BBM)) and eight non-governmental organizations (Benelux Association of Trademark and Design Agents (BMM), European Communities Trade Mark Practitioners' Association (ECTA), French Association of Practitioners in Trademark and Design Law (APRAM), Institute of Trade Mark Agents (ITMA), International Association for the Protection of Industrial Property (AIPPI), International Chamber of Commerce (ICC), International Organization for Standardization (ISO), Union of European Practitioners in Industrial Property (UE-PIP)) participated in an observer capacity.

Discussions were based on draft Regulations under the Madrid Agreement Concerning the International Registration of Marks, prepared by the International Bureau, which were the result of a complete recasting of the Regulations in force (text of

June 21, 1974, as last revised on December 15, 1983) in order to improve their form and content.

After a general debate and a rule-by-rule examination, the Assembly and the Committee of Directors approved the draft Regulations, subject to a number of amendments. The date of entry into force of the revised Regulations was set at January 1, 1989.

*WIPO Coordination Committee  
(Extraordinary Session)*

In May, the Coordination Committee decided to give its approval to the appointment of Mr. Shahid Alikhan to the vacant post of Deputy Director General. The Committee also gave favorable advice to the Director General in respect of his intention to appoint Mr. Carlos A. Fernández-Ballesteros to the post of Director, Developing Countries (Copyright) Division, with the grade of D.1.

*Working Group on Staff Regulation 3.1bis*

In June, a Working Group, which had been convened by the Director General pursuant to the decision of the WIPO Coordination Committee, at its eighteenth ordinary session in September 1987, to set up such a working group composed of representatives of the same States as are members of the Budget Committee, met in Geneva to examine Staff Regulation 3.1bis ("take-home pay differential") in all its aspects. The following 11 States, members of the WIPO Budget Committee, were represented: Brazil, Cameroon, Czechoslovakia, Egypt, France, Germany (Federal Republic of), India, Japan, Soviet Union, Switzerland, United States of America. The Working Group conducted a full discussion and examination of Staff Regulation 3.1bis and adopted a report for submission to the WIPO Coordination Committee at its ordinary session in September 1988.

*Governing Bodies of WIPO and the  
Unions Administered by WIPO*

From September 26 to October 3, 1988, the Governing Bodies of WIPO and the Unions administered by WIPO held their nineteenth series of meetings in Geneva. Delegations from 88 States, 13 intergovernmental organizations and 10 non-governmental international organizations participated in the meetings.

This year the following six Governing Bodies met in ordinary or extraordinary sessions:

WIPO General Assembly, tenth session (2nd extraordinary session);

WIPO Coordination Committee, twenty-fifth session (19th ordinary session);

Paris Union Assembly, thirteenth session (5th extraordinary session);

Paris Union Conference of Representatives, fifteenth session (7th extraordinary session);

Paris Union Executive Committee, twenty-fourth session (24th ordinary session);

Berne Union Executive Committee, twenty-ninth session (19th ordinary session).

The main agenda items and the main decisions covered the following points:

*Activities from July 1, 1987, to June 30, 1988.*

The reports on those activities were considered and noted. In their statements the delegations, without exception, made special reference to the activities of the International Bureau in the field of development cooperation for the benefit of developing countries in the period under review.

The delegations of developing countries which spoke expressed satisfaction with the assistance, which many delegations described, that their countries had received from WIPO under its development cooperation program and which had permitted them to develop their intellectual property systems appropriately. In particular, they highlighted the benefits obtained from the development of human resources, advice on legislation, institution-building, computerization of administrative procedures, the provision of patent documentation and searches, and the encouragement of regional and subregional cooperation. They expressed the wish that the International Bureau would continue and increase its development cooperation activities. They also expressed appreciation of the support received from the donor countries, both industrialized and developing, and organizations, especially from UNDP, and called for the continuation and expansion of such support.

The delegations of industrialized countries which spoke referred to the assistance which they extended to developing countries through WIPO and pledged its continuation and, where feasible, its expansion. Such assistance took the form, among others, of training either through study visits, special courses in the donor countries or on the job, the dispatch of experts or speakers as WIPO consultants and the provision of equipment and documentation.

Several delegations commended the International Bureau on the initiatives and activities carried out in relation to intellectual property issues of topical interest and in the field of industrial property information. They referred in particular to the activities concerning the protection of intellectual property rights in emerging technologies such as

integrated circuits, biotechnological inventions and direct broadcasts by satellite, the harmonization of certain legal provisions for the protection of inventions, as well as the work undertaken in the framework of the Permanent Committee on Industrial Property Information (PCIPI).

The Director General drew the attention of the delegations to the special exhibition on the theme of intellectual property and peace, which was on display in the lobby of the WIPO building and was organized in accordance with the program of the current biennium.

*Questions Concerning the Revision of the Paris Convention for the Protection of Industrial Property.* The Assembly of the Paris Union was informed that the Fifth Consultative Meeting on the Revision of the Paris Convention was held in September 1988. In that meeting, 10 representatives from each of the following Groups participated: Group of Developing Countries, Group B (industrialized market economy countries), Group D (industrialized socialist countries), and a representative of China.

During that meeting, the Group of Developing Countries and Group D made proposals for amendments to Articles 1 (on the definition of industrial property), 5A (on compulsory licenses in respect of patents for inventions) and *Squater* (on importation of products manufactured by a process patented in the importing country) of the Paris Convention; Group B neither accepted those proposals nor made any counterproposals.

During the meeting of the Assembly of the Paris Union, Group B undertook to make such counterproposals. Following a discussion on the developments during the Fifth Consultative Meeting, the Assembly of the Paris Union agreed on the following statement:

“The Assembly, in the light of the commitment undertaken by Group B that it would communicate, through its Spokesman, by June 15, 1989, written counterproposals to the written and oral proposals in respect of Articles 1, 5A and *Squater* made for or during the Fifth Consultative Meeting on the Revision of the Paris Convention (September 19 to 23, 1988), decided that the Sixth Consultative Meeting will take place from September 18 to 22, 1989, and that the continuation of the work of the revision of the Paris Convention, including the question of the continuation of the Diplomatic Conference, will be on the agenda of the next ordinary session of the Assembly of the Paris Union (September 25 to October 4, 1989).

It was understood that the said counterproposals need not be subscribed to by the totality of

Group B and that their contents are not predetermined.

It was also understood that WIPO would bear the travel costs of up to 10 participants from the Group of Developing Countries and one participant from China in the Sixth Consultative Meeting.”

*Establishment of an International Register of Audiovisual Works.* In its sessions held in September 1987, the competent Governing Bodies decided that WIPO would attempt the creation of an international register of audiovisual works and that a diplomatic conference for the adoption of a treaty be convened during the 1988–89 biennium—a treaty that would secure the evidentiary value of the international register—and also that the register be self-supporting; at no time would States be required to pay contributions to the Union created by the treaty.

In his memorandum to the 1988 session of the General Assembly of WIPO, the Director General indicated that the Diplomatic Conference—which had already been decided upon in principle at the 1987 session of the Governing Bodies—was scheduled to take place during the first half of 1989 and would be preceded by a meeting of a Committee of Experts for the preparation of that Diplomatic Conference to be convened in November 1988. The Director General also reported to the Assembly on the various possibilities existing for the initial financing of the International Register either at the headquarters of WIPO in Geneva or, with the assistance of the Government of Austria, in Vienna.

The General Assembly approved the proposals by the Director General concerning the convocation of the Diplomatic Conference and of the Committee of Experts and, as far as the financing of the International Register is concerned, decided to await the outcome of the discussions between the Director General and the Government of Austria.

*Staff Matters.* The Coordination Committee gave favorable advice on the intent of the Director General to promote Mr. Rubén Beltrán (a national of Mexico) and Mr. Daniel Bouchez (a national of France) to grade D.1 and to appoint Mr. S. Ramaiah (a national of India) to the post of Director, Development Cooperation and External Relations Bureau for Asia and the Pacific. Mr. Ramaiah took up his duties on January 1, 1989.

## V. Staff and Support Activities

*Missions.* During the period under review, the Director General undertook missions to or attended meetings held in Austria, China, France,

Jordan, Hungary, the Soviet Union, Sri Lanka, Switzerland and the United States of America.

Missions were undertaken by Deputy Directors General to Australia, France, Germany (Federal Republic of), India, Japan, Jordan, the Soviet Union, the United Kingdom and the United States of America.

In addition to the missions referred to above, the following countries were visited by other officials or by consultants of WIPO: Angola, Argentina, Australia, Austria, Belgium, Benin, Bolivia, Botswana, Brazil, Bulgaria, Burkina Faso, Cameroon, Canada, Cape Verde, Central African Republic, Chile, China, Colombia, Costa Rica, Côte d'Ivoire, Democratic Yemen, Denmark, Ecuador, Egypt, El Salvador, Ethiopia, Finland, France, Gambia, Germany (Federal Republic of), Ghana, Guatemala, Guinea, Haiti, Honduras, Hungary, India, Indonesia, Iran (Islamic Republic of), Iraq, Israel, Italy, Japan, Jordan, Kenya, Laos, Lesotho, Liberia, Libya, Luxembourg, Malawi, Malaysia, Mauritius, Mexico, Morocco, Netherlands, New Zealand, Nicaragua, Niger, Nigeria, Norway, Pakistan, Panama, Paraguay, Peru, Philippines, Portugal, Republic of Korea, Rwanda, Saudi Arabia, Senegal, Seychelles, Singapore, Soviet Union, Spain, Sri Lanka, Sudan, Swaziland, Sweden, Switzerland, Syria, Thailand, Togo, Trinidad and Tobago, Turkey, United Arab Emirates, United Kingdom, United States of America, Uruguay, Venezuela, Viet Nam, Yugoslavia, Zaire, Zimbabwe, Hong Kong.

*Headquarters Buildings.* In June, the construction of an additional floor (which will be the fifth floor) and other changes in the so-called "BIRPI Building" were started.

*United Nations.* The Director General and other officials of WIPO participated in the work of a number of intersecretariat bodies of the United Nations system established for the purpose of facilitating coordination of the policies and activities of the organizations of the system. Those bodies included the Administrative Committee on Co-ordination (ACC), composed of the executive heads of all the organizations and programs of the system under the chairmanship of the Secretary-General of the United Nations, which met in Geneva in April and in New York in October, the Organizational Committee and the Consultative Committee on Substantive Questions (Operations) (CCSQ (OPS)) and on Administrative Questions (Finance and Budget) and (Personnel) (CCAQ (FB) and CCAQ (PER)) of the ACC which met in New York in September and July, respectively, as well as the ACC Task Force on Science and Technology for Development. WIPO officials participated in Rome, in March, and in Montreal, in May, in meet-

ings of the International Civil Service Commission (ICSC) and its subsidiary organ (Advisory Committee on Post Adjustment Questions (ACPAQ)). In May, a WIPO official participated in the eighth interagency consultation on the least developed countries, which was held in Geneva.

In July, WIPO was represented at the Second Regular Session of 1988 of the United Nations Economic and Social Council (ECOSOC) in Geneva.

Also in July, a WIPO official participated in the Interagency Consultation on Ocean Affairs, and in the ACC-CPC (Coordination and Programme Committee) meeting in Geneva.

In August, WIPO was represented at a solemn meeting organized by the United Nations for Namibia in commemoration of Namibia Day, in New York.

In September, a Deputy Director General had discussions with UN officials in New York on the possible declaration of an International Inventors Day and the possible issuance of special postage stamps on the theme of intellectual property and peace. As far as the issuance of stamps was concerned, it was agreed that discussions would continue early in 1989. In regard to the International Inventors Day, it was decided that further action on the proposal be deferred in view of the already long list of proposed Days that await action by the General Assembly of the United Nations.

In October, WIPO was represented at the meeting organized by the United Nations Council for Namibia to commemorate the Week of Solidarity with the People of Namibia and their Liberation Movement, the South West African People's Organization (SWAPO), in New York.

In November, WIPO was represented at a special meeting to commemorate the International Day of Solidarity with the Palestinian People, in Geneva.

Also in November, a WIPO official participated, in Tokyo, in an International Training Course organized jointly by the United Nations Asia Far East Institute for the Prevention of Crime and the Treatment of Offenders (UNAFEI) and the Japan International Cooperation Agency (JICA).

In response to requests from the Secretariat of the United Nations, WIPO provided information on its activities for inclusion in reports concerning, among others, implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples, assistance to the front-line States, the implementation of various resolutions of the United Nations General Assembly concerning the policy of apartheid in South Africa, the implementation of the Nairobi Forward-looking Strategies for the Advancement of Women, the Role of Women in Technical Cooperation Among Developing Countries (TCDC), the measures taken in favor

of Least Developed Countries (LDC), WIPO's information services, the implementation of the Vienna Program of Action (end-of-decade-review) and with respect to activities in new and emerging fields of science and technology.

*International Computing Centre (ICC)*. In March, a WIPO official participated in a meeting of the ICC, in Paris.

In September, two WIPO officials participated in the annual meeting of the ICC, in New York.

*United Nations Conference on Trade and Development (UNCTAD)*. In April and May and in September, WIPO was represented at the 34th and 35th sessions of UNCTAD's Trade and Development Board, in Geneva.

In October, WIPO officials participated in UNCTAD's 1988 Enterprise Symposium on "Transfer of Technology for Efficiency and Growth—the Entrepreneur's Perspective," in Geneva.

*United Nations Development Programme (UNDP)*. In February, a WIPO official participated in a UNDP Interagency Working Group on Evaluation, in Geneva.

In March, a WIPO official attended a UNDP Intergovernmental Meeting on the Fourth UNDP Regional Programme for Arab States, in Casablanca.

In June and July, a Deputy Director General and other WIPO officials attended the 35th session of the UNDP Governing Council, in Geneva.

In September, a Deputy Director General had discussions with the Administrator of UNDP and other UNDP officials in New York.

In December, a WIPO official attended an Inter-Agency Consultative Meeting (IACM) convened by UNDP in New York.

*General Agreement on Tariffs and Trade (GATT)*. In March, May, July, September, October and November, WIPO officials attended meetings of the GATT Negotiating Group on Trade-Related Aspects of Intellectual Property Rights, Including Trade in Counterfeit Goods, in Geneva. At the invitation of the Negotiating Group, the International Bureau prepared a *document* referring to provisions of existing international conventions providing protection in the following fields of intel-

lectual property: patents, copyright and neighboring rights, trademarks, appellations of origin and geographical indications, and industrial designs. Subsequently, again at the invitation of the Negotiating Group, the International Bureau prepared a *study*, in three documents totalling about 120 pages, on the existence, scope and form of generally internationally accepted and applied standards and norms for the protection of intellectual property for each of the following seven subjects: patents, copyright, trademarks, layout-designs of integrated circuits, industrial designs, geographical indications, and neighboring rights. That study covers the existing standards and norms provided in international treaties and guidelines, the current WIPO activities and the commonly applied national provisions and practices as regards the following topics: (i) subject matter to which the right applies/does not apply, (ii) criteria for obtaining protection, (iii) duration/cost of procedures for obtaining the right, (iv) scope of the right conferred, (v) duration of the right, (vi) cost of procedures for maintaining the right, (vii) compulsory licensing, (viii) procedures available for enforcement of rights and remedies/sanctions in cases of infringement, (ix) international dispute settlement mechanisms. In addition, *written information* on WIPO activities was furnished to the Negotiating Group through documents prepared by the GATT Secretariat in consultation with the International Bureau. Other *information* was provided *orally* and replies given to questions raised by various delegations during the meetings of that Group. In December, two WIPO officials attended the GATT Trade Negotiations Committee Meeting at ministerial level which was held in Montreal.

*United Nations Environment Programme (UNEP)*. In January, a WIPO official had discussions with UNEP officials in Nairobi on matters of common interest.

*United Nations Educational, Scientific and Cultural Organization (UNESCO)*. In September, a WIPO official participated in the first ordinary session of the Intergovernmental Committee of the World Decade for Cultural Development, in Paris.

In November, a Deputy Director General participated in the seventh session of the Intergovernmental Council for the General Information Programme, in Paris.

## Studies

### The Possibilities for Copyright Protection of Software in the European Socialist Countries

Péter GYERTYÁNFY\*

#### I. General Remarks. The Hungarian Solution

1. All the European socialist countries—except Albania—are members of one or both of the major international copyright conventions, the Berne Convention for the Protection of Literary and Artistic Works and the Universal Copyright Convention.<sup>1</sup> Due to the interrelationship of the domestic and international copyright laws, the main features of their national laws are in harmony with the Conventions. However, there are some specific traits which are especially characteristic of the systems of these countries which have been identified by the legal literature.<sup>2</sup> These include:

(i) The recognition that copyright is composed of moral rights and economic rights.

(ii) Under the socialist concept, copyright is based on and rooted in personal rights. The individual's copyrighted work is the expression of its author's personality.

(iii) The author's right generally vests in the individual who created the work. The author's right as a whole is inalienable. Generally speaking, the right is an exclusive right to authorize others to use the work.

(iv) In the copyright acts,<sup>3</sup> great emphasis is laid on the protection of the rights of employee-authors.

(v) The legislation concerning contracts for use of copyright is well developed; many of these countries have established a system of "model contracts."

2. It should be understood, however, that the rulings adopted for various copyright topics show a number of differing solutions. Considering the fact that the main elements are identical, and the fact that these countries are in the same or similar phases of economic development, and pursuing the

\* Director of Administration, Hungarian Bureau for the Protection of Authors' Rights (ARTISJUS), Budapest. Lecturer, Faculty of Law, Eötvös Loránd University, Budapest.

The views expressed in this article reflect the personal opinion of the author and not necessarily the official positions of the organization to which he belongs.

<sup>1</sup> Bulgaria, Czechoslovakia, Yugoslavia, German Democratic Republic and Hungary: Berne Convention (Paris, 1971) and Universal Copyright Convention (UCC) (Paris, 1971); Poland: Berne Convention (Rome, 1928) and UCC (Paris, 1971); Romania: Berne Convention (Rome, 1928); Soviet Union: UCC (Geneva, 1952).

<sup>2</sup> Boytha, György, "The Berne Convention and the Socialist Countries With Particular Reference to Hungary," in *Columbia-VLA Journal of Law and the Arts*, 1986, Vol. 11, No. 1, pp. 57-72. Dietz, Adolf, "Das neue jugoslawische Urheberrechtsgesetz von 1978, aus rechtsvergleichender Sicht," in *Archiv für Urheber-, Film-, Funk- und Theaterrecht* (UFITA), 1982, Vol. 94, pp. 1-34. Eminescu, Yolanda, "Aktuelle Probleme des Urheberrechts der europäischen sozialistischen Länder," in *Gewerblicher Rechtsschutz und Urheberrecht, Internationaler Teil* (GRUR Int.), 1980, Vol. 82, No. 7, p. 387. Ficsor, Mihály, "The Past, Present and Future of Copyright in the European Socialist Countries," in *Revue internationale du droit d'auteur* (RIDA), 1983, No. 118, pp. 33-107. Gavrilov, E.P., "Zur Entwicklung des sowjetischen Urheberrechts. Tendenzen und

Meinungen in der sowjetischen Urheberrechtslehre," in *GRUR Int.* 1983, Vol. 85, No. 10, pp. 782-792. Goranov, Nikola, "Bulgarisches Urheberrecht," in *Jahrbuch für Ostrecht*, 1983, 2/XXIV, p. 299. Grzybowski, Stefan, "Les principes du droit d'auteur polonais," in *Droit polonais contemporain*, 1968, No. 10. Knap, Karel, "Quo Vadis of the Contemporary Copyright Law (Summary)," in *Aktualny otázky práva autorského a práv průmyslových* [Present problems of copyright and industrial property], Universita Karlova, Prague, 1983, p. 35. Püschel, Heinz, "Zehn Jahre Urheberrechts Gesetz," in *Neue Justiz*, 1/1976, p. 8.

<sup>3</sup> *Bulgaria*: Law on Copyright of November 16, 1951, as amended up to May 5, 1972 (hereinafter: Bulgarian CL); *Czechoslovakia*: Copyright Law No. 35 of March 25, 1965 (hereinafter: Czechoslovak CL); *German Democratic Republic*: Copyright Act of September 13, 1965 (hereinafter: GDR CA); *Hungary*: Copyright Act No. III of 1969, as modified by Decree-Law No. 27 of 1978; *Poland*: Law No. 234 on Copyright, of July 10, 1952, as modified up to October 23, 1975 (hereinafter: Polish CL); *Romania*: Decree Relating to Copyright, No. 321 of June 18, 1956, as modified by the Acts Nos. 358 of 1957 and 1172 of 1968, respectively (hereinafter: Romanian CA); *Soviet Union*: Fundamentals of Civil Legislation of the USSR and the Union Republics, of December 8, 1961 (hereinafter: Fundamentals) as well as the Civil Code of the Russian Federal Socialist Republic of June 11, 1964 (hereinafter: Russian Civil Code); *Yugoslavia*: Copyright Law of March 30, 1978 (hereinafter: Yugoslav CL).

same goals in the scientific-electronic industrial revolution, the differences between the various possible forms of copyright protection available for software are surprising. Although the legal literature discusses and favors the copyright solution in most of these countries, namely Czechoslovakia, Hungary, Poland, the Soviet Union and Yugoslavia,<sup>4</sup> the situation remains unclear in two other countries, the German Democratic Republic and Romania,<sup>5</sup> and in one other country, Bulgaria, the majority opinion favors a *sui generis* form of protection<sup>6</sup>; copyright protection is offered to software only by the legislation and courts in Hungary. This discrepancy requires an explanation, using concrete rules and practice from these countries.

3. As a basis for reference and comparison, the Hungarian system will be briefly described.

The legal literature in Hungary recognized the suitability of copyright protection for software pro-

duction quite early.<sup>7</sup> Its arguments were largely used in the preparation of the new legislation which came into effect on July 12, 1983, and was further developed in 1988.<sup>8</sup> Nevertheless, besides the copyright arguments of substance, an additional special consideration played a decisive role in the deliberations, namely the rights and remuneration offered by this type of legal protection, which was a badly needed incentive for salaried authors of software.

Present Hungarian law identifies "software" in three contexts. In the first, the 1983 Implementing Decree to the Copyright Act defines "software" as a "work" in a manner largely in compliance with the WIPO recommendation<sup>9</sup>: "computer programs and the related documentation (hereinafter referred to as 'software')." <sup>10</sup>In the second context, "the transcription of the software into a program language differing from the original language of the software" is regarded as translation. <sup>10bis</sup>

Thereafter, it follows from the 1969 Copyright Act that consequent to the author's duty to create software in accordance with his employment, the right to use the software devolves upon the employer by the author's handing over of the work.<sup>11</sup> The handing over qualifies as consent to make the work available to the public. The employer's right to use the work is "within the sphere defined by the terms of employment" and the employer's activities for an unlimited time. The limitations on the "sphere of the activities" have largely become theoretical since 1977, when the legal capacity of the economic entities and other legal entities, became unlimited.<sup>12</sup> The employer's "right to use," and this is the third context already, includes also "internal" use, for his own purposes, of the software (running) and filing in a program library, as the 1988 modification specifies. <sup>12bis</sup>

<sup>4</sup> For all European socialist countries: Czahórska, Barbara, "Legal Protection of Software in Poland and Other Socialist Countries," in *International Protection of Industrial Property*, 1980, Vol. II, Uniwersytet im. Adama Mickiewicza w Poznaniu, p. 7; Roguski, André, "La protection du logiciel dans les législations des pays d'Europe de l'Est," in *Annuaire d'informations juridiques*, Université des sciences sociales de Grenoble, Faculté de droit, December 1987, No. 5.

For Czechoslovakia: Knap, and Oplatova, M., "The Protection of the Computer Program in the Copyright, Industrial Property Right and the Special Legal Systems," in Czech, in *Pravnik*, 5/1969, p. 311. Cited by Czahórska, *op. cit.*, p. 18 and Roguski, *op. cit.*, p. 250. For Hungary: Boytha, "Protection of Interests Relating to the Creation and Use of Computer Programs," in *Acta Juridica Academiae Scientiarum Hungaricae*, 1979, Vol. 21 (3-4), p. 341; Gyertyánfy, Péter, "The Software as a New Subject Matter of Copyright Law?" in *RIDA* 1982, No. 113, pp. 71-133. For Poland: Czahórska, *op. cit.* For the Soviet Union: Gringolz, I.A., "Der Begriff des geschützten Werkes im sowjetischen Urheberrecht," in *Wissenschaftliche Zeitschrift der Humboldt Universität Berlin*, Ges.-Spr.-wiss. R. XX/1971/2, p. 143; Vitaliev, G., Report in the name of the Soviet National Group of AIPPI, in *Annuaire de l'AIPPI* 1987/II, p. 197 (Executive Committee of the International Association for the Protection of Industrial Property (AIPPI), Sydney, 1988); Plotnyikov, J.I., "On Possible Forms of Legal Protection of Algorithms and Programs for Electronic Computers in COMECON Member Countries," pp. 325-342, AIPPI Conference on Some Topical Questions Concerning Protection of Industrial Property (Budapest, 1973). For Yugoslavia: Besarović, Vesna, "The Legal Protection of Computer Programs," in *Copyright*, 1987, pp. 144-150.

<sup>5</sup> For the German Democratic Republic: Osterland, Richard, "Rechtsfragen der Kooperation, des Schutzes und der Stimulierung von Software-leistungen und -ergebnissen," (in collaboration with Zeimer, Rolf and Kensy, Uta), Technisches Universität Dresden, 1986; Adrian, J., Kollé, N. and Wicht, D., "Schutz der Computerprogramme," Report Q 57 in the name of the National Group of the German Democratic Republic, in *der Neuerer*, 2/86, B. p. 27.

<sup>6</sup> Eskenazi, I., "Bulgarian Legislation for the Legal Protection of Computer Software," in *Industrial Property*, 1981, pp. 288-294.

<sup>7</sup> Boytha, "Some Borderline Problems of Copyright with Special Regard to the Protection of Industrial Property and the Law of Competition," *op. cit.* in note 4, 1969, Vol. 11 (3-4), pp. 267-293.

<sup>8</sup> - Copyright Act No. III of 1969; English translation in *Copyright*, 1969, pp. 236-242;

— Decree (No. 15, of July 12, 1983) of the Minister for Culture Supplementing Decree No. 9 of December 29, 1969, Implementing the Copyright Act No. III of 1969 (itself amended by Decree-Law No. 27 of 1978), *ibid.*, 1983, p. 316;

— Decree (No. 18 of August 24, 1988) of the Minister for Culture on the Amendment of Decree No. 9 of December 29, 1969, Implementing the Copyright Act No. III of 1969, *ibid.*, March 1989, insert *Laws and Treaties*, Text 1-01.

<sup>9</sup> "WIPO Model Provisions on the Protection of Computer Software," in *Copyright*, 1978, p. 6.

<sup>10</sup> Article 2 of the 1983 Decree, see note 8.

<sup>10bis</sup> Article 1 of the 1988 Decree, *ibid.*

<sup>11</sup> Article 14 of the 1969 Act, *ibid.*

<sup>12</sup> Article 28(2) of the Hungarian Civil Code No. IV of 1959 as amended by the Act No. IV of 1977.

<sup>12bis</sup> Article 3 of the 1988 Decree, see note 8.

In this third context, the 1983 Implementing Decree specifies also the limits on the share of financial returns received from third parties for the use of the software which is due to the salaried author of the software. In consideration of the generally high cost involved in the production of software, the share of financial returns due to the salaried author is percentually lower in comparison to those for other forms of copyrighted works.

This share due to salaried authors of software programs varies between 10 and 30 percent, in contrast to the share of 60 to 80 percent due to salaried authors of other forms of copyrightable works. However, it is to be noted that for all forms of copyrighted works, it is the right of the employer to grant a share having a lower percentage than the above-mentioned figures where the contract for the use of the copyright concluded between the employer and the third party lies within the usual "sphere of the activities" of the employer.<sup>13</sup>

4. The Hungarian copyright legislation is quite well developed concerning the rules applying to contracts for use; besides the general rules prescribed by the 1969 Copyright Act,<sup>14</sup> there are special decrees applicable to different contract subjects, i.e. literary publications, broadcasting, published music, etc. Except for the schedule of shares due to the author, outlining the minimum and sometimes the maximum remunerations allowed, the rest of these decrees are non-obligatory, and allow the free lance author to contract freely with other legal entities. Most importantly, for "software," there exists no specific decree, thus giving free lance software authors great flexibility in negotiating terms, including price terms, and in entering into contracts.

The applicable general rules of the Copyright Act seem to be sufficiently elastic for dealing with "software" also. Article 13 prescribes that

Unless otherwise provided in this Act, the consent of the author shall be required for any use of his work...The author or his successor in title shall be entitled to remuneration for the use of his work [emphasis added].

Also, according to Article 30, the user is entitled

...to effect changes which are indispensable or obviously necessary for making use of the work.

5. The Hungarian courts have also contributed to the continuing clarification of the law concerning software copyright protection within Hungary. Their most important decisions have concerned:

(i) Independent software copyright protection of the first development phases of a work of software, such as problem analysis schemes and methods.

(ii) The legal foundation and calculation of the share due to the employee-author.

(iii) The order of priority of the rules concerning copyright as against those of general civil law.

(iv) Interpretation of the term "usual field of activities" of the employer.<sup>15</sup>

6. In our view, the Hungarian Copyright Act and its implementing rules are generally applicable to software. Some legislative changes may be needed, not modifications, but rather additions which would clarify the questions referred to, against the background of general civil law, by Article 3. Most importantly, we think, the question of contract liability should be addressed first.

## II. Comparative Study

7. Given the fact that the European socialist countries are in compliance with at least one of the major international conventions, it is not surprising that the debate on copyright protectability produced arguments very similar to those which first arose in Western Europe, the United States of America and Japan. There, the legal literature has concentrated on the "first generation" question of adequacy of the notion of "software" relative to the general notion of "work," although the problems of adaptation of the specific rules of Copyright Acts have not been left unmentioned in some of the socialist countries.<sup>16</sup>

8. The discussions of the specific content of "software" as a "work" raised queries on the issue of the "utilitarian nature" of the software. This "utilitarian nature" would place software in the field of industrial property rights which, it was claimed, was the more appropriate solution.<sup>17</sup> Others argued against the copyright solution for software since software was devoid of any communicative function, as its elements were dictated by the software's function and by the practical aims of the technology. They expressed the fear that the basic

<sup>15</sup> Legf. Bír. Pf. III. 20197/1985/14 (not published) Court; Legf. Bír. Pf. 21053/1984. Birósági Határozatok 1985. 260; Legf. Bír. Pf. IV. 20417/1982. Birósági Határozatok 1985, 269. Case comments by Vida, Alexander, "Zum Urheberrechtsschutz von Rechenprogrammen in Ungarn," in GRUR Int. 1987, Vol. 88, No. 11, pp. 769-774.

<sup>16</sup> Bulgaria: Eskenazi, *op. cit.* in note 6, p. 289. Czechoslovakia: Rybárik, Karol, Report in the name of the Czechoslovak Group of AIPPI, in *Annuaire de l'AIPPI* 1987/II, p. 190. Yugoslavia: Besarović, *op. cit.* in note 4, p. 148. German Democratic Republic: Osterland, *op. cit.* in note 5, p. 103. Soviet Union: Vitaliev, *op. cit.* in note 4.

<sup>17</sup> Rybárik, *op. cit.* in note 16, p. 188 and in *Annuaire de l'AIPPI* 1984/IV, pp. 148-150 (AIPPI Executive Committee, Rio de Janeiro, 1985); Roguski, *op. cit.* in note 4, p. 236.

<sup>13</sup> Article 12 of the 1983 Decree, *ibid.*

<sup>14</sup> Articles 25 to 30 of the 1969 Act, *ibid.*

principles of copyright law would be distorted by the admission of software to the domain of copyright protection.<sup>18</sup>

Possible answers to these doubts and questions are given partly by the recent wave of copyright legislation focusing on software protection,<sup>19</sup> and partly by the legal literature. The Berne Convention and the copyright laws of many nations expressly exclude requirements of merit, purpose and content.<sup>20</sup> However, other types of works, such as technical manuals, architectural plans and works of applied art, are of a technical and utilitarian nature also. Furthermore, copyright laws have been undergoing dynamic changes due to the growing weight of new circumstances surrounding authorship such as the creation of "works" in teams, in the circumstances of employment and new circumstances surrounding "publication," such as the growing use of electronics to disseminate information and the ever increasing importance and use of electronic information systems.<sup>21</sup>

9. Some arguments concerning the form of software expression, especially the differences between source code and object code, have also been raised. Certain authors have referred to the lack of direct human perceptibility of object code,<sup>22</sup> others have referred to the assumption that the object code had become a working portion of the machine and thus was not a "work" any longer.<sup>23</sup> Counterarguments in favor of copyright protection were also voiced early, including the idea that a "work" had only to be reproducible without the cooperation of the author, i.e. identifiable, and need not be "directly perceivable."<sup>24</sup> As the Supreme Court of Paris<sup>25</sup> stated in 1983

...the object codes are always available for human perception because of the possibility to transfer them to different mate-

rial mediums of information and as print-out lists, displays, etc.

We could add that the object code contains the original "trail" or "expression" of thought, which can be reproduced even from this machine code.

10. As to thoughts on the requirement of "originality" of software works within the socialist countries, a decision of the Leipzig Bezirksgericht, a lower court in the German Democratic Republic, warrants attention.<sup>26</sup> The reasoning of the court is parallel with the reasoning of the court in *Synercom Technology Inc. v. University Computing Co.* of 1979<sup>27</sup> and is based on the belief that there is no distinction between the "idea" and the "expression of the idea" in the case of software. The court further stated that the program analysis, the program description and the programs themselves, closely depend on the analysis of the task and the analysis of the algorithm:

...their formulation follows without any *substantial* creative addition, after all [emphasis added].

In order to counter this argument for the socialist copyright laws, we need not rely on the reasoning of such cases as *Whelan v. Jaslow*<sup>28</sup> or on Western European legal literature, as these issues were soundly discussed in the Czech, Polish and Yugoslavian literature. Stress was placed on the existence of a "free space" to extend the limits of individuality in the mode of expression which the author chose<sup>29</sup> and also the requirement to judge "originality" according to the type of work, to the context of the work and the date of the evaluation.<sup>30</sup> We think, in the light of the *Whelan v. Jaslow* case, that copyright must protect the underlying form or system of the software and, moreover, protect some elements of the program content in their concrete, expressed form. Every individual and non-commonplace program is one of the possible creative ways to realize the algorithm.

11. We believe, however, that the debate on the applicability of copyright law and principles has only touched the surface of the matter in regard to the application of the copyright rules in the socialist countries. The reason for the present reluctance, or rather, the waiting position, lies in deeper concerns. This is all the more so because the general scope of the notion "work" seems to cover "software" in all

<sup>18</sup> Eskenazi, *op. cit.* in note 6, p. 289 and also in Reports in the name of the Bulgarian National Group of AIPPI, in *Annuaire de l'AIPPI* 1987/II, p. 60.

<sup>19</sup> In the years 1984-1986 only: Australia, Federal Republic of Germany, France, Japan, Taiwan, Republic of Korea, United Kingdom, Spain, India, Malaysia, Singapore, Chile, Dominican Republic, Mexico.

<sup>20</sup> E.g., Berne Convention (Paris text, 1971), Article 2; French Copyright Law of March 11, 1957, Article 2; Yugoslav CL, Article 3; Polish CL, Article 1(1); Fundamentals, Article 96 (see note 3).

<sup>21</sup> Gyertyánfy, "Conflicts and Changes in the Copyright of Our Age," in *Acta Juridica Academiae Scientiarum Hungaricae*, 1986, Vol. 28 (1-2), p. 137.

<sup>22</sup> Mamiofa, "The Role of the Law in the Protection of the Material Interests of the Owners of Personal Computers," in Russian, in *Rol prava v dele povyshenia blagosostoyania sovetskikh grazhdan v svete reshny XXVII s'ezda KPSS*, Tartu, 1987, p. 169.

<sup>23</sup> See note 18.

<sup>24</sup> Gringolz, *op. cit.* in note 4, p. 149.

<sup>25</sup> *Apple Computer c. Segimex*, Tribunal de grande instance de Paris, September 21, 1983.

<sup>26</sup> Bezirksgericht Leipzig, September 14, 1979, 4 BCP 13/79, in *Neue Justiz*, 5/1981.

<sup>27</sup> *Synercom Technology Inc. v. University Computing Co.*, 204 USPQ 29 (D.C.N.D. Tex. Dallas Dir. 1979).

<sup>28</sup> *Whelan Associates Inc. v. Jaslow Dental Laboratory Inc., et al.*, U.S. Court of Appeal for the Third Cir., No. 85-1358, August 4, 1986.

<sup>29</sup> Czahórska, *op. cit.* in note 4, pp. 13-14.

<sup>30</sup> Besarović, *op. cit.* in note 4, p. 148.

socialist countries. This view is shared by the majority of scholars in these countries, as we mentioned earlier. Thus, the notion of "work" presents no serious obstacle.

In order to prove this, we need only to summarize the statutory notion of "work" in those socialist countries.

The "works" protected by copyright include all works of literature, science and art in all of the seven countries noted above.<sup>31</sup> Some systems of laws are extended to protect works in "any other field of creation."<sup>32</sup> In most countries, this is accompanied by an enumeration of examples of the applicable types of "works" which may be protected.<sup>33</sup> One system of laws requires that the work be expressed in tangible form.<sup>34</sup> Further conditions for protectability include requirements of "creative activity"<sup>35</sup> and "originality"<sup>36</sup> mentioned within certain statutes. Certain systems of law expressly exclude the evaluation of the form or method of expression,<sup>37</sup> or the aim of the work.<sup>38</sup> The notion of software fits within these conditions.

12. The reasons for the rather negative viewpoint found within those systems of laws as to the protectability of software must be looked for elsewhere.

Before doing this, we should qualify the Bulgarian software rules, called *sui generis* protection,<sup>39</sup> from the point of view of copyright.

In Bulgaria, the regulations of 1982 differ from the prior 1979 rules, in placing emphasis on the dissemination of the software. Under the 1982 rules,

<sup>31</sup> Bulgarian CL, Article 2; Czechoslovak CL, Article 2(1); Yugoslav CL, Article 3; Polish CL, Article 1(1); GDR CA, Article 2(1); Romanian CA, Article 1; Fundamentals, Article 96.

<sup>32</sup> Yugoslav CL, Article 3; Romanian CA, Article 1.

<sup>33</sup> Czechoslovak CL, Article 2(1); Yugoslav CL, Article 3; Polish CL Article 1(1); GDR CA, Article 2(2); Russian Civil Code, Article 475.

<sup>34</sup> Bulgarian CL, Article 2.

<sup>35</sup> Czechoslovak CL, Article 2(1); Yugoslav CL, Article 3.

<sup>36</sup> Polish CL, Articles 3(4) and 9.

<sup>37</sup> Bulgaria: Popov, L., *Die Rechtsstellung des Ausländers in Bulgarien*, Baden-Baden, 1981, p. 124. German Democratic Republic: Püschel, *Urheberrecht der Deutschen Demokratischen Republik*, Autorenkollektiv unter der Leitung von Püschel H., Berlin, 1969, pp. 64, 84, 88 and 91. Romania: Ionasco, Aurelian, "Letter from Romania," in *Copyright*, 1970, p. 130. Soviet Union: Möhring, Schulze, Ulmer, Zweigert, *Quellen des Urheberrechts, Sowjetunion/I.*, (Loeber, D.), p. 20.

<sup>38</sup> See note 20.

<sup>39</sup> Decree No. 8/1982 of the State Committee on Planning and on the Unified System for Social Information, in *Official Gazette*, 1982, No. 75. Detailed reports: Nikolov, A., "Régime juridique sur le transfert du logiciel en Bulgarie," and Eskenazi, "Protection of Software According to Bulgarian Legislation and Practice," in *Annuaire de l'AIPPI 1987/II*, pp. 60-70.

the prior rule of obligatory registration of the software remains in force, but registration does not include any inquiry into the nature or contents of the program. Any charges of copying of a program are within the competency of the ordinary courts. It is the legal entity that orders the software from a "producer" as a "research and technological product" that has the right of disposition of the software. The price of the software is defined by the Central Price Authority. This legal entity, the "owner," may grant a non-exclusive, non-transferable license for use to third parties, and this non-transferability is sanctioned by civil law penalties and public law fines for any infringement. The third party is free to modify the software for his own purposes.

Within this "owner"-user relationship, the price is 10 percent of the original price of the software. The balance of the value is shared between the producer of the software and the "owner." The 1982 Decree excludes the possibility of assigning the rights to the software as a whole. In particular, the rules do not contain any elements of protection or incitement for the benefit of employed software authors.

A new element in the software provisions in Bulgaria is the Decree of 1987 which provides an incentive to free lance authors of software.<sup>40</sup> They are now able to sell their software to other legal entities and, further, the central price regulatory scheme does not apply to such sales.

In our view, these rules cannot be qualified as a complete *sui generis* system of legal protection for software, as they do not practically vest exclusive rights in the authors of the software. Those elements of the system which concern the subjective rights do not expressly exclude the author's rights originating under the Copyright Act. Moreover, in certain fields, such as free uses, they restrict the limitation on those rights. The limitation on the right of dissemination belonging to the legal entities, through administrative rules at a legislative level, notably the prohibition on exclusive licenses, assignments, and the disregard for the rights of the original authors, indirectly influence the exercise of the rights which would otherwise derive from the exclusive author's rights. Therefore, the way is not blocked by these administrative rules for the development of a copyright solution.

13. In Bulgaria, as in the other European socialist countries, there remain certain elements within the copyright laws and practices which, for the time being, make the copyright solution ineffective and, consequently, unattractive.

<sup>40</sup> Decree No. 1 of the State Committee mentioned in note 39, of September 28, 1987, in *Official Gazette*, 1987, No. 30.

In these countries, copyright as a whole vests originally in the author who created the work, and, in most of these countries, remains an inalienable whole.<sup>41</sup> In some of these countries, certain organizations, such as film producers, publishers of works having an encyclopedical nature, producers of industrial plans and publicity works, and specially defined scientific research centers, can be the original owners of copyright.<sup>42</sup> In many cases, the content of the contracts for remuneration for copyright, and the right of use, is delimited by obligatory model contracts regarding the author-first user relationship.<sup>43</sup> Elsewhere, it is stipulated that the right to use the work publicly can be transferred to special state organizations only.<sup>44</sup> In some cases, transferable licenses are excluded,<sup>45</sup> while in others the license can be granted only for a limited period of time.<sup>46</sup>

In the Soviet Union, the starting point in the process of transfer of rights is a subject of debate as to whether the author has any exclusive right at all or merely a claim to remuneration.<sup>47</sup> In the case of the existence of original exclusive rights, these cannot be assigned or transferred by license. Therefore, the authorized users are not entitled to institute an action against third parties having made unauthorized use of the same rights.<sup>48</sup> In one form of contract for use, under Article 509 of the Russian Civil Code, no transfer of rights is mentioned at all, merely the handing over of the work for a specific purpose. In another form of contract, a "licensing contract" under Article 503 of the Russian Civil Code, the transfer of rights for a limited period of time is allowed. These considerations and rules lead to the conclusion that, until recently, the user or legal person has not been entitled to transfer the right of use to other persons or legal entities in a

contract containing a stipulation on counter-value.<sup>49</sup>

Based on a dogmatic approach, the inalienable moral rights, including the right to modify work, are strictly and extensively interpreted in these countries. Any modification of the work by the user, even the exclusively authorized user, would be illegal except with the special authorization of the author of the work.<sup>50</sup> This also applies to works made within an employment relationship. Further, except in Poland, the Soviet Union and Yugoslavia, this approval cannot be given beforehand.<sup>51</sup>

14. The interpretation of the author's rights as clear personal rights in these legislations has also led to a dogmatic approach concerning the function and aim of author's rights. All of the regulations examined here concentrate on the *direct* influence and incentive to the creative activity of the *author*. The copyright legislation seems to concern itself exclusively with the relationship of the author and the person for whom the work was prepared, or between the author and the person for whom the work was first used, but it does not concern itself with the relationship among *users*. During the utilization of the works in these nations and their economies, the rights to these works are not regarded or treated as rights having an economic value. This stems partly from the copyright legislation itself, and partly from the overall centralized economic systems of these countries.

Software, like an article, or a chattel, must be traded, and not merely freely disseminated. However, in a system where the consent of the producer of the software, itself a technical-intellectual creation, is practically not required for the use of the software by others, this lack of consent acts as a dis-

<sup>41</sup> Bulgarian CL, Article 3; Czechoslovak CL, Article 12(2) and Möhring, Schulze, Ulmer, Zweigert, *Quellen des Urheberrechts, Tschechoslowakei/I.*, (Knap), p. 1; Yugoslav CL, Article 8; Polish CL, Article 7; GDR CA, Articles 6(1) and 19(1); Romanian CA, Article 2; Fundamentals, Article 96.

<sup>42</sup> Bulgarian CL, Articles 16 and 19; Yugoslav CL, Article 25; Polish CL, Article 12(1); Fundamentals, Article 101; Russian Civil Code, Articles 485-487. However, in the Soviet Union this original right is not regarded as a "material ownership right." See Gavrilov, *op. cit.* in note 2, p. 786.

<sup>43</sup> Bulgaria: Sarakinov, Georgi, "The Legal Status of Salaried Authors Under Bulgarian Law," in *Copyright*, 1985, pp. 436-438. Romania: Decision No. 632/1957 of the Council of Ministers, and Ionasco, *op. cit.* in note 37, p. 133. Soviet Union: Russian Civil Code, Article 479; Loeber, *op. cit.* in note 37, p. 5. Poland: Polish CL, Article 33.

<sup>44</sup> Czechoslovak CL, Article 19(3).

<sup>45</sup> *Ibid.*, Article 19(2).

<sup>46</sup> Romanian CA, Article 3(6).

<sup>47</sup> Russian Civil Code, Article 509.

<sup>48</sup> Gavrilov, *op. cit.* in note 2, p. 490; Gringolz, *op. cit.* in note 4, p. 148.

<sup>49</sup> Gavrilov, *op. cit.*, p. 787; Gringolz, *op. cit.*, p. 148. Vitaliev reports that the Act on State Enterprises, in force since January 1, 1988, would allow direct contractual relations to be established among the economic units. *Op. cit.* in note 4.

<sup>50</sup> Bulgarian CL, Articles 3, 4 and 15(1); Goranov, "Die Änderung des Werkes und der Grundsatz der Unverletzlichkeit im Urheberrecht der DDR, der UdSSR und Bulgariens," in *Osteuroparecht*, 1984, pp. 3 and 10. Czechoslovak CL, Articles 12(1)(a) and 14(3). Yugoslav CL, Article 12, first, second and third paragraphs, and Article 28. Polish CL, Article 12(1); Grzybowski, *op. cit.* in note 2, p. 26. GDR CA, Articles 16 and 19(1); Püschel (see note 37, pp. 192, 295 and 325) interprets Article 40 of GDR CA in a way that the final approval of the author is nonetheless necessary. Romanian CA, Article 3(4), Supreme Court of Romania, No. 815/1967; see Ionascu, Ovidiu, "Letter from Romania—Analysis of Copyright Case Law," in *Copyright*, 1972, p. 99. Russian Civil Code, Article 480.

<sup>51</sup> Polish Supreme Court No. II. CR 531/73 of September 14, 1973; see Szelchawz, Ewa, "Letter from Poland," in *Copyright*, 1982, p. 141. Russian Civil Code, Article 480(3). Yugoslav CL, Article 53.

incentive to the further production of software. Consequently, this disincentive effect runs contrary to the social aims mentioned at the beginning of this paper.

With other forms of works under the copyright laws, the system works effectively, but in the case of software copyright may not be altogether effective since it denies to the owner of the work the right to further resell or distribute his work. And this in turn impairs the social benefit of widespread use of the software, and also denies to the author of the software and his employer the benefit of a good economic return for time and resources invested.

All these collective circumstances may have been reasons which were substantial enough to explain why the application of copyright law as the means of legal protection for software is an inefficient and unattractive alternative.

15. The continuing democratization and economic reforms in the socialist countries may change the above-noted circumstances and make the application of copyright rules for software necessary. For example, the economic reform in Bulgaria started with the introduction of certain market economy elements in 1982.<sup>52</sup> In Yugoslavia, in 1978, the law governing copyright was changed to allow for multiple sales of software to multiple parties in accordance with the decentralized system of that country. One expert in intellectual property rights in the German Democratic Republic<sup>53</sup> stated in 1986 that

...our aim is to promote the achievement and widespread use of the technical-scientific results. We have to abandon the basic principle of our legal system that these results are "free" and not subordinate to anyone's possession. This should be replaced by the principle that the technical-scientific result, and therefore the software, too, should be regarded as part of the property of its producer or as the property of the person who ordered it.

This process of change has brought forth its first fruits in the Soviet Union, e.g., in the new Act on State Enterprises.<sup>54</sup>

In our view, the socialist copyright law systems are basically suitable to support the above-noted economic developments in the field of software. These kinds of exclusive rights are to be preferred to simple contractual liability protection.<sup>55</sup> The inalienability of the author's rights is not an obstacle, but the system of exercising the subjective rights should be better developed, as in the Soviet Union, or applied more thoroughly, as in the Ger-

man Democratic Republic, in the relationship between users. Such a copyright law interpretation or modification process would also clarify the legal relationship of free lance software authors under copyright law. The legal possibility of such creation and subsequent sale has recently been opened up, not only in Hungary, but also in the Soviet Union and Bulgaria.

16. We think that the second, and perhaps most influential, reason for the reluctance of the socialist countries to adopt copyright legislation concerning software is the unbalanced regulations governing works created by employee-authors. A system which effectively harmonizes the copyright interests of works created as part of the terms of employment does not exist or does not provide a workable solution. Such a system, when enacted, should include and specify that both parties, the employee-author and the employer, should have an interest in the utilization of the work.

Socialist legal theory stresses the priority of the principles of copyright, by its nature a right of personality, over competing principles of labor law. It is characteristic of the situation that the same source that refers to the above priority adds that

...the special fee due to the employee-author for the use of the works is of a labor law nature and not of a copyright law nature.<sup>56</sup>

It may be a more pragmatic approach to consider this relationship as one with mixed labor law and copyright law elements. Further, it is not advisable to leave the regulation of all of the questions of this relationship for the contractual stipulations between the parties as the parties are in unequal positions when concluding the employment contract.<sup>57</sup>

It should be noted that the copyright laws of the socialist countries seem to be formulated with regard to independent authors while the majority of the authors creating works do so in the course of employment.<sup>58</sup> This leads to practical inconsistencies and inadequacies, especially for works having material value such as that of software.

In several of the socialist countries, the employer does not have the right at all to use the work publicly or to transfer the right to use to other persons.<sup>59</sup> On the other hand, in other socialist coun-

<sup>56</sup> Püschel, *op. cit.* in note 2, p. 9.

<sup>57</sup> Knap, "Werkschaffung in Arbeitsverpflichtung nach dem Urheberrecht der sozialistischen Länder," in *UFITA* 1967, Vol. 50, p. 932.

<sup>58</sup> Barta, Janusz, "Le droit d'auteur et la créativité d'employé," in *RIDA* 1984, No. 121, p. 77.

<sup>59</sup> Poland: in the absence of special rules on works created by employees (except for a very limited field), the general rules of the Act apply. Romania: the same situation, special rules are given for artistic works only. Soviet Union: Fundamentals, Article 100, second paragraph, first sentence; Russian Civil Code, Article 483(1). The second part of both

<sup>52</sup> Spetter, Th., "New Economic Reform in Bulgaria," in *Berichte des Bundesinstituts für ostwissenschaftliche und internationale Studien*, 42-1984, pp. 20-44.

<sup>53</sup> Osterland, *op. cit.* in note 5, p. 167.

<sup>54</sup> See note 49.

<sup>55</sup> Suggestion by Osterland, *op. cit.* in note 5, p. 415.

tries, the right to use exists within the "regular activity"<sup>60</sup> of the employer, or where it is directly serving the discharge of the employer's own proper tasks.<sup>61</sup>

Certain regulations applying independently or concurrently with the above-noted restrictions may put limitations, such as time limitations,<sup>62</sup> on use by the employer. Examples of such limitations include the need for previous authorization by the employee-author,<sup>63</sup> parallel use by the employee-author<sup>64</sup> or the right of parallel publication of the employee-author.<sup>65</sup>

According to the copyright acts of several socialist countries, the employee-author has a right to additional remuneration in excess of his normal salary, even in the case where the software is used exclusively by the employer.<sup>66</sup> For example, in Bulgaria, this remuneration is due for public use or transfer of the right to use to third parties.<sup>67</sup> However, as the amount would be a certain percentage of the fees foreseen for the independent, free lance author,<sup>68</sup> the rule will not be applicable without further action by the Bulgarian legislature.

In the German Democratic Republic, the right or claim of the employee-author to special remuneration depends on the employment contract and its detailed interpretation.<sup>69</sup>

In general practice, no claim to special remuneration exists, other than as an exception, in Romania and the Soviet Union.<sup>70</sup> Generally, the work

is used by the employer within his usual field of activity.

17. We see that the main features of the described regulations on employee-authors may be summarized as follows. The rules at the *level of the copyright acts* unilaterally favor the author. In practice, the situation is often the contrary. For an employer, the legal uncertainty of his right to use the work may be too great, perhaps unjustifiable in the case of software which requires a great deal of the employer's investment. Further, the practice, and the rules governing the special remuneration of the employee-author are also of little or no consequence. In our view, the incentive effect of special, copyright remuneration independent of salary, for the works of employee-authors is very important for the socialist countries. The wage and salary regulations, especially in countries having centralized systems, use principles very different from those of copyright. To apply wage and salary regulations does not reflect the current, actual value of the work in an adequate manner.

It is advisable to only apply such principles of remuneration to those uses which are effected by third parties authorized by the employer. The fact that such third-party uses take place is an oversimplified, but effective indicator that the works are worthy of copyright protection. This is an important distinction to realize and appreciate.

### III. Summary

18. The idea that the copyright laws of the European socialist countries could basically protect software, and that no other rules are contrary to the acceptance of software as a copyrightable work, is a correct one. In this context it is also relevant that the countries concerned are party to the major international copyright conventions. Except for Hungary, no other European socialist country provides for copyright protection of software. Furthermore, Hungary provides a non-exhaustive enumeration of the types of works containing software, and further provides detailed rules for software works created within an employment relationship.

19. We see two major sets of reasons for the present refusal of the countries concerned to offer copyright protection for software. These include:

(i) the focus of the copyright rules on the relationship between the author and first user, and the limited rights and possibilities of the users in the social utilization process of works having a material value, and

(ii) inadequacies in the copyright regulations and practice concerning works made within an employment relationship.

these rules prescribes that "The conditions under which such a work may be used by the organization in which compensation is due to the author are determined by the laws of the Soviet Union and by the decrees of the Council of Ministers of the Soviet Socialist Republics [of Russia]." However, no such laws or decrees have been enacted yet, except in the Soviet Socialist Republic of Kazakhstan.

<sup>60</sup> Yugoslav CL, Article 21, first paragraph.

<sup>61</sup> GDR CA, Article 20(2).

<sup>62</sup> Bulgarian CL, Article 15(2)(a) and (b); Yugoslav CL, Article 21, first paragraph.

<sup>63</sup> Czechoslovak CL, Article 17(2).

<sup>64</sup> Bulgarian CL, Article 15(2)(b); Czechoslovak CL, Article 17(3); Romanian CA, Article 16 (even for artistic works, after two years).

<sup>65</sup> Yugoslav CL, Article 21, fifth paragraph.

<sup>66</sup> Czechoslovak CL, Article 17(4); Yugoslav CL, Article 21, first paragraph; Poland: see argument in note 59.

<sup>67</sup> Bulgarian CL, Article 15(2)(b).

<sup>68</sup> Sarakinov, *op. cit.* in note 43, p. 347.

<sup>69</sup> GDR CA, Article 20.

<sup>70</sup> Romania: this is the interpretation of the practice and of the literature, based on a Decision of the Council of Ministers (No. 632/1957). See Ionascu, "Le régime de droit d'auteur sur les oeuvres de l'esprit créées dans le cadre du contrat de travail en Roumanie," in RIDA 1971, No. LXIX, p. 7, and Möhring, Schulze, Ulmer, Zweigert, *Quellen des Urheberrechts, Rumänien/I.*, (Eminescu), p. 14. Soviet Union: Loeber, *op. cit.* in note 37, p. 23, and Dietz, "United States and Soviet Copyright Systems: An Essay in Comparison," in *International Review of Industrial Property and Copyright Law (IIC)*, 1981, Vol. 12, No. 2, p. 163.

As a direct or indirect consequence of the development of reforms within the system of economic guidance of some of these countries, notably Poland and the Soviet Union, the rules of copyright—including the protection of software—now find

themselves on the agenda. This may result in modifications within the copyright laws and also within other legal fields. As a result, it may be seen that software will be identified as a work protectable under the copyright laws.

## Correspondence

### Letter from Canada

#### Update on Canada's Copyright Law

Wanda NOEL and Lesley E. HARRIS\*

On June 8, 1988, a law amending the Canadian Copyright Act and certain other Acts in consequence thereof entered into force.<sup>1</sup> The purpose of the amendment to the copyright law was to immediately address nine areas of concern to copyright owners and users, while continuing to draft a bill to amend the remainder of the law.

#### Background

The Canadian *Copyright Act*<sup>2</sup> was written in 1921, based on the Copyright Act 1911 (United Kingdom). The Act came into force on January 1, 1924 and has since that date only experienced minor amendments. On May 27, 1987, Bill C-60, an Act amending the Canadian *Copyright Act* and amending other Acts in consequence thereof was introduced in Parliament. This was the first time major revisions to the Act have been tabled in Parliament since 1924.

Not surprisingly, many say that the Bill is long overdue. The 1924 Act is, and has been for some time, out of touch with the present-day economy and technology. The law speaks of "mechanical contrivance" and "perforated rolls" as used in piano players. It permits record producers to make their own recording of a musical work upon payment of a mere two cents per playing surface to the composer once the song has been initially recorded.

The Act does not mention or deal with copyright problems created by computers, photocopying machines, satellites, cable television and videocassette recorders.

#### History of Revision

The Canadian Government is well aware that it has antiquated copyright laws. Several studies with a view to revision have been produced by and for the Canadian Government over the past 20 years. Since the last "Letter from Canada,"<sup>3</sup> two government reports have been released. In May of 1984, the government released *From Gutenberg to Telidon: A White Paper on Copyright*.<sup>4</sup> Shortly after its release, there was a change in the government and the status given to the White Paper was that of a document not necessarily embodying government policy.

On January 24, 1985, the then current government referred all issues of copyright revision to the Parliamentary Standing Committee on Communications and Culture. The Committee then established and delegated the appropriate powers to a Sub-Committee with representatives of all three Canadian political parties. This Sub-Committee received 300 written submissions and heard 111 representations from interested parties. Conclusions of their findings were compiled in the *Charter of Rights for Creators*<sup>5</sup> which was published in October 1985. In February 1986, the government briefly responded to each recommendation in the Charter.<sup>6</sup> The Charter and the government response to it were the basis for the provisions in the Bill.

\* Wanda Noel is a copyright lawyer in private practice and is a Consultant on copyright revision matters to the Department of Communications, Ottawa.

Lesley E. Harris is a copyright lawyer presently working as a Senior Copyright Officer with the Department of Communications, Ottawa.

The views expressed herein are those of the authors and do not necessarily reflect those of the Canadian Government or any of its Departments.

<sup>1</sup> *An Act to amend the Copyright Act and to amend other Acts in consequence thereof*, Second Session, Thirty-third Parliament, Can., Chapter 15, 35-36-37 Elizabeth II, 1986-87 (hereinafter referred to as "the Bill").

<sup>2</sup> R.S.C. 1970, c. C-30.

<sup>3</sup> *Copyright*, 1983, pp. 378-382.

<sup>4</sup> Can., *From Gutenberg to Telidon: A White Paper on Copyright* (1984).

<sup>5</sup> Standing Committee on Communications and Culture, *A Charter of Rights for Creators*, Report of the Sub-Committee on the Revision of Copyright (1985).

<sup>6</sup> Can., *Government Response to the Report of the Sub-Committee on the Revision of Copyright* (1986).

### *The Phase Approach*

The Canadian Government is taking what may be called "the phase approach." Instead of one omnibus bill amending the entire Act, it will introduce two less comprehensive bills which together will make all the intended changes to the Act. Phase I of the revision process resulted in Bill C-60.

The decision to proceed in phases was made to speed up the process of introducing some legislation immediately without being overeager and to avoid quick, and possibly inadequate, drafting of the entire complex legislation.

### *History of Bill C-60*

The durability of Bill C-60 was tested between the time it was introduced until it was passed. Since Canada has a Parliamentary system of government, each bill must go through three readings in, and be approved by, the House of Commons and the Senate before it may become law. This can be a speedy or lengthy process. In the case of Bill C-60, the process took over 12 months. Subject to proclamation of certain sections,<sup>7</sup> the Bill received Royal Assent and became law on June 8, 1988.

The major issues addressed in the Bill are discussed below.

### *Choreographic Works*

Under the 1924 Act, choreographic works are not defined. Such works come within the ambit of dramatic works; dramatic works are defined to include choreographic works. However, it is arguable that only those dramatic works which contain some dramatic action are protected by copyright. Thus, the only choreography that is protected under the Act is that which has a plot, or at least, a story line. This results in a lacuna in the law since some modern choreographic works are simple visual patterns without a plot or story line. In light of this situation, the dance community requested an amendment to ensure that all choreographic works be protected. The new law defines "choreographic work" to include any work of choreography, whether or not it has any story line.

### *Compulsory License for Making Records*

The 1924 Act permits the making in Canada of any records, perforated rolls, or other contrivances,

<sup>7</sup> The Bill specifically requires that the provisions in it regarding collectives and the Copyright Board not come into effect immediately upon the passing of the Bill. This is intended to allow the prior Copyright Appeal Board time to finish its business and give the new Copyright Board time to be properly set up.

by means of which sounds may be reproduced and by means of which the work may be mechanically performed. That is provided that such contrivances have previously been made and that the prescribed notice of intention to make the contrivance is made and the prescribed remuneration is paid. This means that once a musical work has been recorded, any record company is entitled to record the work and pay a royalty of "two cents for each playing surface on each record and two cents for each perforated roll or other contrivance" to the copyright owner.

The compulsory license originated in the 1920s when the recording industry was in its infancy. When recording technology was new, composers were seeking full rights to control the recording of their music. Record producers were worried that the grant of exclusive recording rights would result in powerful monopolies. The compulsory license described above was a compromise solution which gave composers a right to be paid for a recording, but not a right to authorize who else could make their own recording.

There no longer seems to be a rationale for the compulsory license. There are now competition laws to deal adequately with monopolies. In addition, other creators have the right to decide how their works are used and to share fairly in the economic benefits derived from their use. Thus, the license is discriminatory.

The new law abolishes this compulsory license. Composers will now have full control over who records their music and under what circumstances. They will no longer be forced to sell at a price arbitrarily set by legislation.

A six-month transition period after the enactment of the new law will allow for the completion of recordings already in production under the old Act.

### *Exhibition Right*

The new law grants copyright owners the right to present an artistic work at a public exhibition for a purpose other than sale or hire. Thus, artists will have the legal right to be paid a royalty when an artistic work is exhibited to the public. Although this right is new to Canadian copyright law, it is not new to Canadian artists. Exhibition fees have been voluntarily paid for the exhibition of borrowed works which are not owned by the exhibitor. The new law will extend the exhibition fees to works whether or not they are owned by the exhibitor.

This right was introduced to meet the claim of artists that it is impossible for them to benefit from many of the rights under the Act from which other creators may benefit. This is due to the nature of their works. Artistic works cannot be put to the tra-

ditional uses of copyright. For instance, they cannot be translated, performed in public or converted into other forms. Thus, artistic works are subject to unique uses and copyright law. By providing a right of exhibition, the law acknowledges this claim.

Certain works are explicitly excluded from the exhibition right. It will not apply to maps, charts or plans or certain non-dramatic films which are presently protected as photographs.

If an artist does not authorize an exhibition, then no royalty will be paid. This should act as a natural safeguard against arbitrary refusals to exhibit a work. Such abuses might be an artist prohibiting the exhibiting of his work with those of certain other artists. Further protection is given to exhibitors by the fact that the right can be purchased, cleared or waived at the time any work having the new right is acquired. Also, the right will only apply to artistic works created after June 8, 1988. Therefore, exhibitors will not be required to clear exhibition rights on works they have acquired before this new right became law.

### *Moral Rights*

The phrase "moral rights" is not used in the 1924 Act although the concept of these rights is in the Act. This law grants authors the right of paternity, the right to claim authorship. It also grants the right of integrity, the right to restrain distortion, mutilation or modification of a work that would be prejudicial to the author's honor or reputation. However, the only remedy against the violation of these rights is an injunction.

Stronger and more explicit moral rights protection is provided in the new law. The new right of integrity allows an author, where reasonable in the circumstances, to be associated with his work as its author by name or under a pseudonym and the right to remain anonymous. The new law explicitly states that moral rights may not be assigned, but that the author may waive them in whole or in part. A waiver will not be deemed by the mere assignment of copyright in a work. Where a waiver of any moral right is made in favor of an owner or a licensee of copyright, it may be invoked by any person authorized by the owner or licensee to use the work, unless there is an indication to the contrary in the waiver.

Unlike the 1924 Copyright Act, the new law provides a specific term for moral rights. The moral rights will subsist for the same term of copyright—generally 50 years following the death of the author.

In addition, the new law makes special provisions for the bequeathing of moral rights on the death of an author. The moral rights will pass to the

person to whom they are specifically bequeathed. If the author makes no specific request of the moral rights, but dies testate in respect of the copyright in the work, the moral rights pass to the person to whom the copyright is bequeathed. If there is no bequeath of the moral rights or the copyright, then the moral rights pass to the person entitled to any other property in respect of which the author dies intestate.

Another section in the new law dealing with moral rights sets out how the moral rights can be infringed. Any action contrary to the moral rights is, in the absence of consent by the author, an infringement of the moral rights. Any distortion or mutilation of a work or any use of a work in association with a product, service, cause or institution, which is prejudicial to the honor or reputation of its creator violates the author's right of integrity. Note that the new protection against endorsements of products gives creators the right to decide whether they wish, even indirectly through the use of their works, to endorse a particular product, service, cause or institution.

Special treatment is given to certain works. With respect to paintings, sculptures and engravings, any distortion, mutilation or other modification will be deemed a violation. The intent of the "deemed prejudice" rule is to protect works of fine art which are one-of-a-kind, and if changed, could be permanently altered.

Two types of modifications to a work are not considered a violation of moral rights. First, where a work is being restored or preserved in good faith. Second, where there is a change in location of a work, or by the physical means by which a work is exposed or by the physical structure containing a work.

An important change in the law is that it now entitles an author to the same remedies for the enforcement of moral rights as are available for economic rights. In any moral rights infringement suit, the court may grant to the author an injunction, damages, accounts or delivery up or other such remedies which may be granted for the infringement of a right. This new provision replaces one which only entitled authors to a right to an injunction for the infringement of their moral rights.

### *The Copyright Board*

The 1924 Act provides for a Copyright Appeal Board. The sole function of this Board is to regulate the royalty rates submitted annually by copyright societies that manage performing rights for musical works. The new law amends the name of the tribunal to the Copyright Board since the Board does not

deal with "appeals" at all. The new Copyright Board will continue to set rates for performing rights societies, but it will be reconstituted and its jurisdiction will be enlarged under the new law.

One of the new functions of the Copyright Board will be to set royalty rates for collective societies other than musical performance rights ones. However, the Board will set these rates only when private negotiation fails between a collective and a copyright user and when one of these parties applies to the Board for arbitration. When an agreement containing a tariff is voluntarily filed with the Board, the Director of Investigation and Research appointed under the *Competition Act*<sup>8</sup> may ask the Board to examine it if the Director considers the agreement to be contrary to the public interest.

The Copyright Board will also have the power to license the use of works when the copyright owner cannot be located. Persons wishing to use such works must apply to the Board, demonstrate that reasonable efforts have been made to find the copyright owner, and undertake to pay the royalty prescribed by the Board if the copyright owner is located within a specified period after the termination of the license.

### Collectives

The 1924 law mentions musical performing rights societies, but does not mention societies with respect to other types of rights. There is nothing in the Act which prohibits collectives from licensing other uses of works. There is a problem, however, that these other collectives are not subject to rate regulation as are the musical performing rights societies. Thus, these other collectives could charge the public any fee they desire. These collectives are, nonetheless, subject to anti-competition laws and possible prosecution under these laws has tended to discourage the formation of new collectives.

The Bill solves this dilemma by setting up a system of voluntary submission to regulatory review. If collectives privately negotiate their rates with users and either party files the agreement with the Copyright Board, it will benefit from a specific exemption from the *Competition Act*. Section 32 of that Act (which sets out the conspiracy provisions) will not apply in respect of any royalties or related terms and conditions arising under an agreement filed with the Board. However, once the agreement has been filed, the Director of Investigation and Research appointed under the *Competition Act* can request the Board to examine the tariff and its related terms and conditions to determine if they are in the public interest. The Board will then

approve or alter the tariff, or related terms and conditions. A similar exemption will apply where the Copyright Board establishes rates when asked to do so by a collective or user.

If a licensing agreement is not filed with the Copyright Board, it will remain subject to the terms of the *Competition Act*. That Act will also continue to apply to matters that are not within the regulatory jurisdiction of the Copyright Board—matters not dealing with royalties, or terms and conditions related to royalties.

### Computer Programs

Due to the antiquity of the 1924 law, it is difficult to interpret it to apply to new technologies such as computer programs. In recent years, the Canadian courts have strained to apply the law to such technologies that were not even envisaged at the time the law was enacted in 1924. It is a tribute to the drafters of a law written more than 60 years ago that it has served its purpose so well.

Even though computers were not even invented at the time the Act was drafted, the Canadian courts were able to apply its provisions to extend copyright protection to computer programs. In *Apple Computer Inc. v. MacKintosh Computers Ltd.*<sup>9</sup> the Federal Court of Canada, Appeal Division, cited sections of the 1924 Copyright Act to decide that computer programs are protected by copyright law. The Court declared that computer software is a creative work in either written form or machine language and on that basis is entitled to copyright protection. The software industry applauded this first court decision above the interlocutory stage to protect computer software. They urged Parliament, however, to pass legislation such as Bill C-60 which expressly protects computer software because the decision could be reversed on further appeal. Ironically, leave to appeal was granted the same week the Bill was passed.

In the Bill, computer programs are defined as literary works, regardless of the medium of expression. The term of protection is the life of the creator plus 50 years. There will be two exceptions. The first will allow those who own a computer program to alter it to suit their personal needs or to adapt it without infringing copyright. The second exception will allow the making of one back-up copy. This second exception is necessary because the existing storage media for computer programs is very fragile and original programs are often damaged.

Computer programs will be protected by copyright even if they were created before Bill C-60 became law. However, any alleged civil infringe-

<sup>8</sup> *Competition Act*, R.S.C., C-23.

<sup>9</sup> (1987) 16 C.I.P.R. 15 (F.C.A.).

ment or criminal offense that occurred prior to the tabling of the amendment will be adjudicated on the basis of the law in force at the time of the alleged infringement.

### *Piracy*

The copyright law contains provisions of a criminal nature, among other remedies, for unauthorized dealings in works protected by copyright—commercial piracy. The dealings include knowingly selling, distributing, exhibiting and importing infringing copies of works. The fines are set at CA\$10 for every copy, but cannot exceed CA\$200 in respect of the same transaction. In the case of a second or subsequent offense, a term of imprisonment of two months is also possible.

Piracy is increasing in Canada as it is all over the world. In Canada, the penalties have not been considered severe enough to act as a deterrent. A CA\$10 fine in 1924 may have had some meaning. In 1988, it represented no more than a small cost of doing business.

The new law increases the criminal remedies available to a significant extent. It provides that any person who sells, distributes, exhibits or imports for sale any infringing copy of a work is guilty of an offense. A convicted offender is liable on summary conviction to a maximum fine of CA\$25,000 or to a prison term of up to six months, or both, or, on conviction on indictment to a maximum fine of CA\$1 million or to imprisonment for up to five years, or both.

### *Industrial Design*

The new law redefines the dividing line between where copyright protection is available and where industrial design protection will apply.

The 1924 law provides for a subjective test of the "intention" of the creator at the time the work was created. If the creator of an artistic work did not "intend" a work to be used as a model or pattern to be multiplied by an industrial process, then the work is protected by copyright.

The "intention" test has been replaced in the new law by an objective one. Where the intention is to apply a design to a useful article and more than 50 copies of the article are made only industrial design protection is available. This "intention" test is replaced with an objective one—copyright does not subsist in designs applied to "useful" articles which are reproduced in quantities greater than 50. This provides a clearer definition of which kind of protection is available—copyright or industrial design.

There are exceptions to this rule. A graphic or photographic representation applied to the face of an article (like a card or poster) remains the subject matter of copyright protection. So does material suitable for piece goods or surface coverings and representations of beings, events or places applied to an article. Articles, sold as a set (unless more than 50 sets are sold) will also continue to be protected by copyright. Similarly, artistic works used as trademarks or labels, on packaging, or in architecture will also be protected by copyright. Other works or articles can also be added to this list of exceptions by regulations to the law.

In addition, the new law makes it clear that there is no intellectual property protection for purely functional articles. Court decisions in Canada have potentially extended copyright to purely functional articles, a purpose for which copyright protection was never intended. A trial court decision<sup>10</sup> created the possibility that functional articles could be eligible for full copyright protection. Although the decision was overturned on appeal<sup>11</sup> it has nevertheless created a legal uncertainty requiring legislative clarification. Before this decision, it was thought that making a three-dimensional functional article would not infringe the copyright in the two-dimensional drawing on which it was based. Functional articles were not considered eligible for design protection because they were not normally decorative, nor were they normally sufficiently inventive to be eligible for patent protection. The new law reflects this principle by explicitly denying copyright protection to purely functional articles.

### *Conclusion*

Bill C-60 is one of two bills to revise the 1924 Canadian Copyright Act. The second bill will address those copyright issues not dealt with in Bill C-60. The Copyright Act was further amended on December 31, 1988 in legislation implementing a free trade agreement between Canada and the United States of America. This amendment gives copyright owners a new right of retransmission subject to a compulsory license under the jurisdiction of the Copyright Board. When the second bill becomes law, it will, along with Bill C-60 and the retransmission right, constitute the Canadian Copyright Act.

The second bill is being drafted.

<sup>10</sup> *Bayliner Marine Corporation v. Doral Boats Ltd.* (1985), 5 C.P.R. (3d) 289 (F.C.T.D.).

<sup>11</sup> *Doral Boats Ltd. v. Bayliner Marine Corp.* (1986), 10 C.P.R. (3d) 289 (F.C.A.).

## Calendar of Meetings

### WIPO Meetings

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

1989

- May 8 to 26 (Washington)**      **Diplomatic Conference for the Conclusion of a Treaty on the Protection of Intellectual Property in Respect of Integrated Circuits**  
 The Diplomatic Conference will negotiate and should adopt a Treaty on the protection of layout-designs of integrated circuits.  
*Invitations:* States members of WIPO or the Paris or Berne Unions and, as observers, States members of the United Nations not members of WIPO or the Paris or Berne Unions and certain organizations.
- May 29 to June 2 (Geneva)**      **WIPO Permanent Committee for Development Cooperation Related to Industrial Property (Thirteenth Session)**  
 The Committee will review and evaluate the activities undertaken under the WIPO Permanent Program for Development Cooperation Related to Industrial Property since the Committee's last session (May 1988) and make recommendations on the future orientation of the said Program.  
*Invitations:* States members of the Committee and, as observers, States members of the United Nations not members of the Committee and certain organizations.
- June 12 to 28 (Madrid)**      **Diplomatic Conference for the Conclusion of a Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks**  
 The Diplomatic Conference will negotiate and should adopt a Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks.  
*Invitations:* States members of the Madrid Union, Denmark, Greece, Ireland, the United Kingdom and, as observers, the other States members of the Paris Union as well as certain organizations.
- June 26 to July 3 (Paris)**      **Berne Union for the Protection of Literary and Artistic Works: Executive Committee (Extraordinary Session) (sitting together, for the discussion of certain items, with the Intergovernmental Committee of the Universal Copyright Convention)**  
 The Committee will mainly review the activities undertaken and the meetings held since the Committee's last session (June 1987) as far as substantive issues of copyright protection are concerned.  
*Invitations:* States members of the Executive Committee of the Berne Union and, as observers, other States party to the Berne Convention and certain organizations.
- July 5 to 7 (Geneva)**      **Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations: Intergovernmental Committee (Ordinary Session) (convened jointly with ILO and Unesco)**  
 The Committee will review the status of the international protection of neighboring rights under the Rome Convention.  
*Invitations:* States members of the Intergovernmental Committee and, as observers, other States members of the United Nations and certain organizations.
- September 25 to October 4 (Geneva)**      **Governing Bodies of WIPO and the Unions Administered by WIPO (Twentieth Series of Meetings)**  
 All the Governing Bodies of WIPO and the Unions administered by WIPO meet in ordinary sessions every two years in odd-numbered years.  
 In the sessions in 1989, the Governing Bodies will, *inter alia*, review and evaluate activities undertaken since July 1988, and consider and adopt the draft program and budget for the 1990-91 biennium.  
*Invitations:* States members of WIPO and the Unions and, as observers, other States members of the United Nations and certain organizations.

- September 26 (Geneva)**      **Permanent Committee on Industrial Property Information (PCIPI) (Second Session)**  
 The Committee will discuss its main activities and plans for the future.  
*Invitations:* States and organizations members of the Committee and, as observers, certain other States and organizations.
- October 9 to 13 (Moscow)**      **International Forum on the Role of Industrial Property in Economic Cooperation Arrangements** (organized jointly with the State Committee for Inventions and Discoveries of the Soviet Union)  
 The Forum will deal with questions of industrial property in joint ventures among enterprises in industrialized and developing countries having different economic and social systems, and other cooperative economic arrangements, particularly in the field of the transfer of high technology, trade in goods bearing trademarks and franchizing of services.  
*Invitations:* The Forum will be open to the public. Participants other than representatives of governments will be requested to pay a registration fee.
- November 1 and 2 (Beijing)**      **Worldwide Symposium on the International Patent System in the 21st Century** (organized jointly with the Chinese Patent Office)  
 The Symposium will be conducted in three half-day sessions, each dealing with one of the following three topics: internationalization of the patent system; computerization of the patent system; patent documentation, search and examination.  
*Invitations:* States members of WIPO, certain intergovernmental organizations and non-governmental organizations having observer status in WIPO.
- November 6 to 10 (Geneva)**      **Committee of Experts on Model Provisions for Legislation in the Field of Copyright (Second Session)**  
 The Committee will continue to consider proposed 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.
- November 13 to 24 (Geneva)**      **Committee of Experts on the Harmonization of Certain Provisions in Laws for the Protection of Inventions (Seventh Session)**  
 The Committee will continue to examine a draft treaty on the harmonization of certain provisions in laws for the protection 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.

## UPOV Meetings

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

**1989**

- October 16 (Geneva)**      **Consultative Committee (Fortieth Session)**  
 The Committee will prepare the twenty-third ordinary session of the Council.  
*Invitations:* Member States of UPOV.
- October 17 and 18 (Geneva)**      **Council (Twenty-third Ordinary Session)**  
 The Council will examine the program and budget for the 1990-91 biennium, the reports on the activities of UPOV in 1988 and the first part of 1989.  
*Invitations:* Member States of UPOV and, as observers, certain non-member States and intergovernmental organizations.

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

### Non-Governmental Organizations

#### 1989

May 24 to 26 (Ixtapa Zihuatanejo)	International Confederation of Societies of Authors and Composers (CISAC): Legal and Legislation Committee
July 10 to 12 (Geneva)	International Association for the Advancement of Teaching and Research in Intellectual Property (ATRIP): Annual Meeting
September 21 to 23 (Corfu)	International Federation of Musicians (FIM): Congress
September 26 to 30 (Quebec)	International Literary and Artistic Association (ALAI): Congress
October 17 to 20 (Rome)	International Federation of Reproduction Rights Organisations (IFRRO): Annual General Meeting



