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Editor's Note

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WIPO Meetings

International Union for the Protection of Literary and Artistic Works (Berne Union)

Executive Committee

Thirtieth Session (11th Extraordinary)

(Paris, June 26 to July 3, 1989)

REPORT adopted by the Committee

INTRODUCTION

Opening of the Session

1. The Executive Committee of the Berne Union (hereinafter referred to as "the Committee"), convened by the Director General of the World Intellectual Property Organization (WIPO), met in extraordinary session at the Unesco headquarters in Paris from June 26 to July 3, 1989.

2. Fifteen of the Committee's 19 member States were represented: Austria, Bulgaria, Cameroon, Chile, German Democratic Republic, India, Italy, Netherlands, Pakistan, Poland, Senegal, Sweden, United Kingdom, Uruguay, Venezuela (15).

3. The following member States of the Berne Union were represented by observers: Argentina, Australia, Belgium, Benin, Brazil, Central African Republic, Colombia, Costa Rica, Czechoslovakia, Denmark, Egypt, Finland, France, Germany (Federal Republic of), Greece, Guinea, Holy See, Hungary, Israel, Japan, Luxembourg, Mexico, Niger, Norway, Portugal, Spain, Sri Lanka, Thailand, Tunisia, United States of America (30).

4. As the Committee held joint sessions with the Intergovernmental Copyright Committee set up under the Universal Copyright Convention, the delegations of the following countries, which were taking part in the session held concurrently with the Intergovernmental Copyright Committee, also attended the Committee's session: Algeria, Soviet

Union (2). In addition, the following States were also represented as observers: Ecuador, Guatemala, Kenya, Nigeria, Panama, Zambia (6).

5. The representatives of two specialized agencies of the United Nations system of organizations (United Nations Educational, Scientific and Cultural Organization (UNESCO) and the General Agreement on Tariffs and Trade (GATT)) attended the Committee's session. One intergovernmental organization (Council of Europe (CE)) and 15 international non-governmental organizations (International Alliance for Distribution by Cable (AID), International Association for the Advancement of Teaching and Research in Intellectual Property (ATRIP), International Association of Broadcasting (IAB), International Bureau of Societies Administering the Rights of Mechanical Recording and Reproduction (BIEM), International Confederation of Societies of Authors and Composers (CISAC), International Copyright Society (INTERGU), International Federation of Film Producers Associations (FIAPF), International Federation of Phonogram and Videogram Producers (IFPI), International Federation of Translators (FIT), International Group of Scientific, Technical and Medical Publishers (STM), International League on Competition Law (LIDC), International Literary and Artistic Association (ALAI), International Publishers Association (IPA), International Union of Architects (IUA), International Writers Guild (IWG)) were represented by observers.

6. The list of participants follows this report.

7. The session of the Committee was chaired by Mr. G. Aversa (Italy), Chairman of the Committee.

8. The session of the Committee being held together with the session of the Intergovernmental Copyright Committee set up under the Universal Copyright Convention, the representative of the Director-General of Unesco opened the sessions of the Committees and welcomed all the participants. The representative of the Director General of WIPO also greeted all the participants and thanked Unesco for acting as host to the current sessions of the Committees.

PART I: ITEMS CONCERNING
THE COMMITTEE ALONE

Adoption of the Agenda

9. The Agenda proposed in document B/EC/XXX/1 Prov. was adopted.

Membership of the Paris Act (1971) of the Berne Convention

10. Discussions were based on document B/EC/XXX/2.

11. The Committee was informed that 82 States were party to the Berne Convention, of which more than half were developing countries. Of these 82 States, 66 had adhered to the Paris (1971) Act of the Convention. Fifty-six of these States had adhered to that Act in its entirety and the remaining 10 only to the administrative provisions and final clauses. Twenty-six States remained bound by earlier acts. Two countries, India and Mexico, had renewed their declaration to the effect that they would avail themselves of the special provisions contained in Articles II and III of the Appendix to the Berne Convention. Furthermore, Liberia and Mauritius had, in connection with their accession to the Convention, declared that they would avail themselves of those special provisions. Such declarations were, unless renewed, valid until October 10, 1994.

12. The delegation of the United States of America referred to the fact that its country had acceded to the Berne Union which had entered into force in respect of its country on March 1, 1989, and that the legislation intended to give effect to the provisions of the Convention had come into effect on the same day. Such accession meant that the United States of America had accepted the need to conform its present and future copyright legislation to the long-standing traditions reflected in the

Berne Convention and shared by the other member States of the Berne Union. Although the rules of the Berne Convention were, in general, flexible enough to accommodate a great variety of national requirements, the great strength of that Convention was the extent to which it functioned virtually as international legislation in the field of authors' rights. The delegation of the United States of America referred also to legislative matters which were affected by the accession, such as moral rights for directors and screenwriters of motion pictures, for visual artists, as well as rules governing works made for hire and the protection of architectural works. The delegation added that adherence to, and participation in the work of, the Intergovernmental Committee set up under the Universal Copyright Convention had remained of undiminished importance.

13. The delegation of Poland informed the Committee that necessary legislative steps were being taken in its country to envisage the possible ratification of the Paris Act of the Berne Convention.

14. The delegation of the United Kingdom informed the Committee that the new law of its country would come into force on August 1, 1989. That would enable the United Kingdom to take steps to ratify the Paris Act of the Berne Convention in the near future.

PART II: ITEMS CONCERNING BOTH
THE EXECUTIVE COMMITTEE OF THE BERNE UNION
AND THE INTERGOVERNMENTAL
COPYRIGHT COMMITTEE

Membership of the International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations (Rome Convention)

15. The discussions were based on document B/EC/XXX/3-IGC(1971)/VIII/7.

16. The Committees were informed that, since the 1987 sessions, two States, Burkina Faso and France, had adhered to the Rome Convention, bringing to 32 the number of States party to the Rome Convention.

17. The delegation of Japan said that the Diet—the Parliament of its country—had approved, on June 21, 1989, the accession of its country to the Rome Convention. The delegation expressed its ap-

preciation for the assistance received from the International Bureau of WIPO in that matter.

18. The delegation of Australia informed the Committees that the Parliament of its country had recently passed a legislation necessary for the accession to the Rome Convention. Its government had announced its intention to adhere to that Convention. Steps would be taken to adhere as soon as the necessary regulations were made under the newly enacted legislation.

19. The delegation of the Netherlands announced that the legislation necessary for the accession of its country to the Rome Convention was under preparation and it was hoped that next year its country would be in the position to accede to the Convention.

20. The delegation of Portugal stated that the productions of neighboring rights owners were protected in its country under conditions which corresponded to the provisions of the Rome Convention. It added, however, that the accession of Portugal to that Convention was not considered opportune for the time being. Such a step might be considered in connection with the adherence to that Convention by the States members of the European Community. Furthermore, on the basis of the Convention, the problems raised by the new technologies could not be answered appropriately. The fact that two further conventions—the Phonograms Convention and the Satellites Convention—were needed, practically in the same field, also reflected the weak points of the Rome Convention. The delegation expressed the view that a revision of the Rome Convention would be needed in order to make it applicable for the purposes for which it had been created.

21. The delegation of Italy agreed with the delegation of Portugal that there were some weak points in the Rome Convention. Nevertheless, the delegation expressed the view that, for the time being, what was needed was that more States accede to the Convention. So long as the number of States party to the Convention remained as small as it was now, a revision of the Convention would seem premature.

22. The observer from IFPI expressed the great pleasure of his organization at the good news announced by the delegations of Japan, Australia and the Netherlands. He added that his organization was aware of the shortcomings of the Rome Convention but considered, at the same time, that, for the time being, what was most important was to promote further accessions to the Convention.

Membership of the Convention for the Protection of Producers of Phonograms Against Unauthorized Duplication of Their Phonograms (Phonograms Convention)

23. Discussions were based on document B/EC/XXX/4-IGC(1971)/VIII/8.

24. The Committees were informed that, since their last joint sessions in 1987, three States, Burkina Faso, the Republic of Korea and Trinidad and Tobago, had acceded to the Phonograms Convention.

25. The delegation of the Netherlands informed the Committees that its country intended to accede to the Phonograms Convention at the same time as to the Rome Convention.

26. The delegation of the United States of America welcomed the growth of the number of countries party to the Phonograms Convention which was considered, by its government, an important instrument in the fight against piracy. The delegation added that, in addition to further accessions to the Convention, it was also needed that strict penal sanctions be introduced at the national level to make the fight against piracy more efficient.

27. The delegation of Hungary supported the statement by the delegation of the United States of America and said that, in its country, it had been recently proposed that more severe penal sanctions be introduced against pirates.

28. The representative of the Director General of WIPO said that, according to the draft program of WIPO for 1990-1991, the International Bureau would prepare, reconvene and service the committee of governmental experts (which had met three times between 1986 and 1988) to finalize its advice on a model law on counterfeiting and piracy. The model law would contain provisions clearly defining the notions of "counterfeiting" and "piracy" and would provide for truly effective measures for the prevention and repression of counterfeiting and piracy, particularly by rendering the intervention of police and customs authorities more prompt for effecting seizure and securing information and by providing for very strict penal and civil sanctions.

29. The representative of the Director-General of Unesco informed the Committees about the organization by Unesco of a symposium to be held in Paris in September 1989 on the problems of piracy in the framework of the multidisciplinary approach adopted by her organization. The symposium, in

addition to experts being invited in their personal capacity, would also be attended by delegations from member States.

30. The observer from IFPI expressed the satisfaction of his organization concerning the growth of the number of countries party to the Phonograms Convention.

31. The delegation of the Netherlands referred to the fact that the fight against piracy was also on the agenda of the present GATT negotiations and expressed the view that there was a need for an appropriate cooperation between WIPO and GATT in that field. The delegation asked for information from the representatives of WIPO and GATT as to whether such cooperation existed.

32. The representative of the Director General of WIPO said that WIPO was and continued to be ready to cooperate with GATT in that field. Such cooperation included the preparation by the International Bureau of WIPO of various documents on the protection of intellectual property and the participation of the representatives of WIPO in the meetings of the competent negotiating bodies of GATT.

33. The observer from GATT also stated that there was appropriate cooperation between WIPO and GATT. The representatives of WIPO participated in the meeting of the competent negotiating group and the International Bureau of WIPO prepared various documents at the request of that negotiating group which were very useful and were very much appreciated by the members of that group.

34. The representative of the Director-General of Unesco informed the Committees that negotiations were under way between her organization and GATT in order for Unesco to be also associated with this work.

Membership of the Convention Relating to the Distribution of Programme-Carrying Signals Transmitted by Satellite (Satellites Convention)

35. The discussions were based on document B/EC/XXX/5-IGC(1971)/VIII/9.

36. The Committees were informed that, since their 1987 sessions, one State, the Soviet Union, had deposited its instrument of accession to the Satellites Convention, bringing the number of States party to that Convention to 12.

37. The delegation of Australia informed the Committees that its government was currently taking the necessary steps to accede to that Convention.

38. The delegation of the United States of America was aware of the shortcomings of the Convention with regard to the new communication technologies but considered that it was nevertheless a means of reducing the effects of piracy in that area.

39. The delegation of Portugal informed the Committees of its country's intention of acceding to the Convention in the near future.

40. The observer from IFPI stressed that the aim of the Satellites Convention was not to create new rights but only to ask States to adopt administrative or other measures to guard against the illegal transmission of programme-carrying satellite signals not intended for them. In order to avoid any confusion on the subject, the observer suggested that the Secretariats draw up an explanatory document.

41. The delegation of France, while understanding the reasoning of the observer from IFPI, considered that although the Convention did not demand that a specific right be instituted, there was, however, nothing to prevent such a right from being acknowledged. The delegation stated that the Satellites Convention related exclusively to transmissions by fixed satellite service (point-to-point) but that technological developments had made it very difficult to distinguish between transmissions by fixed satellite service and direct satellite broadcasting. The delegation also noted the difficulty of distinguishing between the reception and distribution of signals on the basis of the size of the cable distribution network. It mentioned that, in Austrian legislation, for example, there were legal provisions taking into account the size of networks, which had an effect on the applicability of the Satellites Convention.

Membership of the Multilateral Convention for the Avoidance of Double Taxation of Copyright Royalties

42. The discussions were based on document B/EC/XXX/6-IGC(1971)/VIII/10.

43. The Committees were informed by the Secretariats that, since their 1987 sessions, one State, Peru, had acceded to the Multilateral Convention for the Avoidance of Double Taxation of Copyright Royalties, thereby bringing to five the number of

instruments of accession or ratification deposited to date. They noted that the instrument would enter into force three months after the deposit of 10 instruments of accession, acceptance or ratification.

44. The Committees were also informed that an explanatory brochure on the Madrid Convention had just been published by Unesco in English, French and Spanish, in order to publicize it. It would be sent to all member States in order to help them reach a decision as to whether they should accede to the Convention.

45. The delegation of Italy regretted that the Convention had not yet entered into force, and stated that, at the time of its adoption, several States had made known their intention of maintaining bilateral relations in that field. They had not, however, expressed any opposition to the adoption of the multilateral instrument, and each State should, therefore, take the decision to accede to it.

46. The delegation of Algeria reminded the participants of the aim of the Convention, which was to seek to ensure better protection for the financial interests of authors by enabling them to avoid double taxation. It further stated that its country had already concluded a bilateral agreement with France providing for the taxation of copyright royalties in the country where the works were used.

Report on the Meeting of the Committee of Governmental Experts on the Evaluation and Synthesis of Principles on Various Categories of Works

47. The discussions were based on document B/EC/XXX/7-IGC(1971)/VIII/11.

48. The Committees were informed about the results of the meetings of seven Unesco/WIPO committees of governmental experts on nine categories of works that had taken place in 1986, 1987 and 1988, as well as of the meeting of the Committee of Governmental Experts on the Evaluation and Synthesis of Principles on Various Categories of Works that had been held in Geneva in June-July 1988. It was stated that the results of those meetings had been taken into account in the preparation of the memorandum for the WIPO Committee of Experts on Model Provisions for Legislation in the Field of Copyright whose first session had been held in February-March 1989.

49. The delegation of Bulgaria expressed the great satisfaction of its government concerning the

results of the series of meetings on various categories of works. The set of principles discussed at those meetings were considered one of the most important initiatives undertaken by the two organizations in the field of copyright. The delegation added that, although the principles had no binding force, they were very helpful in the preparation and adoption of new national legislation.

50. The delegation of Japan expressed the appreciation of its government in respect of the results of the meetings on principles concerning the protection of various categories of works and said that those principles were useful for the adoption of new legislation.

51. The delegation of the Soviet Union congratulated the Secretariats on the results of the series of meetings on various categories of works. The principles discussed at those meetings were considered of inestimable assistance to national legislators. The delegation mentioned that, in its country, copyright legislation was under revision and, in the framework of that revision, the said principles had been duly taken into account.

52. The delegation of Algeria said that the principles emerging as a result of the series of meetings on various categories of works were of colossal importance. The principles offered solutions to practically all topical problems of copyright and might have a decisive harmonization effect at the level of national laws. The delegation added that the revision of copyright legislation was on the agenda in its country and the principles were of great assistance in that work.

53. The delegation of Mexico underlined the importance of the principles worked out at the series of meetings on various categories of works for the harmonization of national copyright laws. The delegation commended the further activities undertaken by WIPO for the promotion of the efficient protection of copyright and referred to the recent adoption of the Treaty on the International Registration of Audiovisual Works which was considered to be of outstanding importance in its country, which was one of the world leaders in the field of television productions. The delegation said that its government followed with great attention the work of the WIPO Committee of Experts on Model Provisions for Legislation in the Field of Copyright and would organize, jointly with WIPO, a consultation meeting on the Model Provisions, with the participation of copyright experts of various Latin American countries in Mexico City in October 1989.

54. The delegation of Portugal congratulated the Secretariats on the preparation of the principles concerning the protection of various categories of works and stated that the legislation of its country, in general, was in conformity with those principles. The delegation referred particularly to the provisions in the law of its country on home taping, rental and antipiracy measures.

55. The delegation of Italy associated itself with those delegations which had expressed their appreciation for the excellent work of the Secretariats in preparing the memoranda and the principles on various categories of works and stressed the importance of the principles in the harmonization efforts in the field of copyright, particularly in the face of new technologies.

56. The observer from FIAPF expressed the agreement of his organization with the delegation of Algeria that the adjective "colossal" was the most appropriate one to characterize the importance of the task fulfilled by the Secretariats by working out the memoranda and the principles concerning the protection of various categories of works. He added, however, that technological developments would continue raising new copyright problems to which new solutions should be found. He mentioned the widespread use, in certain countries, of illicit decoders as an example which seriously endangered pay-television programs and undermined the possibility of exercising the right of broadcasting in the case of such programs. He asked the Secretariats to study what measures could be taken at the international level in order to make recommendations to governments to fight the illicit production, exportation, importation and distribution of such decoders.

57. The observer from IPA associated himself with those participants who expressed their appreciation for the excellent work done by the Secretariats. He referred to the fact that his organization was mainly interested in the principles concerning the category of "the printed word." The memorandum prepared on that category and the principles themselves offered rich information and very useful guidance in respect of a number of important questions. On the basis of the principles and the comments included in the memorandum prepared by the Secretariats, as well as the ones made at the meetings, it had become clear to everybody that it was possible to monitor uses of printed works, remunerate the authors and publishers of such works and distribute the remuneration to them appropriately also in the case of certain new massive uses such as photocopying or electrocopying. In respect of such uses, the collective administration

of rights had been recognized as the correct answer to the questions raised by the new reproduction techniques. The principles seemed to be an excellent basis for a new offensive for a more efficient copyright protection.

Development of Law and Practice Connected with Transmission by Cable of Television Programs

58. The discussions were based on documents B/EC/XXX/8, 8 Add and 8 Add.2-IGC (1971)/VIII/12, 12 Add. and 12 Add.2.

59. The Committees were informed that, in pursuance of the decision taken at their last session, the Secretariats had sent a note verbale to member States of Unesco and of WIPO, and to intergovernmental and international non-governmental organizations in January 1989, requesting them to furnish information and material on the development, in their countries, of law and practice connected with the transmission by cable of television programs.

60. Twenty-three States and seven organizations had replied to the survey. It emerged from the replies that cable distribution took place on a contractual basis in four countries, whereas in another State it was subject to a legal license.

61. The delegation of Denmark informed the Committees that, in 1985, a strict compulsory license system had been introduced in the Danish Copyright Act. The system also covered compulsory collective management of the various rights through one single organization. Since 1985, an amount corresponding to about 75 million French francs had been collected. The revenue would, according to a voluntary arbitration made by three High Court judges in February 1989, be distributed in the following way: Union of Broadcasting Organizations in Denmark—36 percent, AGICOA, Denmark—26 percent, composers (KODA)—18 percent, Federation of Actors—8 percent. The remaining 12 percent would be shared by various other groups of right owners.

62. The delegation of Australia recalled that, in reply to the previous Unesco/WIPO circular letter of 1987, the Secretariats had been informed on the law of its country concerning copyright aspects of cable television, and it had been indicated that Australia had no cable television networks. This was still the case although, early in 1989, the Australian Government had instituted a review of the question of introducing various forms of subscription television including cable television. While the

Australian Copyright Act included provisions on the consequences of diffusion of copyright materials by cable, those provisions would be reviewed if a decision was taken to approve cable television in Australia.

63. The delegation of Sweden stated that an agreement had been reached between owners of copyright and cable-distribution operators since the last communication its country had transmitted to the Committees on the subject.

64. The delegation of Austria, referring to the Bill extending the statutory license to cover cable distribution, of which mention was made in the document under consideration, informed the Committee that, according to the personal view of the delegate of that country, the Austrian Parliament was unlikely to pass the law.

65. The delegation of Poland informed the Committees that the copyright bill stipulated that it was necessary to obtain the author's agreement prior to the transmission of his work by cable.

66. The delegation of the United Kingdom announced that the relevant section of the new Copyright Law granted owners of copyright exclusive rights that applied, *inter alia*, to cable distribution of their works.

67. The delegation of Finland informed the Committees that an amendment to the 1986 Copyright Law, adopted in 1987, stipulated that cable distribution of a work was subject to the author's prior agreement. It furthermore stated that a provisional agreement had been reached between owners of copyright and cable-distribution operators.

68. The delegation of Italy indicated that, in its country, there was no direct experience of cable distribution to date.

69. The delegation of Israel stated that a new section had been added to the telecommunication law. It added that a number of measures remained to be taken before it became practical.

70. The delegation of Portugal said that, in its country, a legislation had been adopted on cable distribution under the terms of which the authors' prior authorization was required and owners of copyright were entitled to remuneration. The delegation added that cable television had not so far posed any problems.

71. The delegation of Hungary stated that, in 1987, it had informed the Committees of the appli-

cation of the provision on simultaneous and unchanged retransmission of terrestrial broadcast programs, which had entered into force on January 1, 1983. Cable operators had to pay 10 percent of all the fees collected from the connected householders. Of that income, authors received 50 percent, performers 30 percent and broadcasting organizations 20 percent. Since then, there had not been any developments in that field, except for the distribution of the royalties collected. The Hungarian Bureau for the Protection of Authors' Rights (ARTISJUS) had concluded a reciprocal agreement on distribution with the Austrian authors' society representing musical rights, and agreements with other societies would be concluded this year. The same statutory license would apply to the simultaneous retransmission by cable of programs transmitted by direct broadcasting satellites. As far as the cable retransmission of fixed satellite service programs was concerned, the Hungarian authorities and copyright lawyers regarded that as one comprehensive process for which the originating organization had to bear the primary copyright liability. Accordingly, the Hungarian law also had to be taken into consideration concerning authorizations for the distribution of such programs. In practice, programs were licensed at source, except for "small" musical rights. ARTISJUS had already concluded some contracts on musical rights collectively administered by it with the originating satellite program organizations. In the future, however, central authorization covering all the footprint countries to be given by the authors' society of the country of emission seemed to be preferable. Finally, cable-originated programs were considered primary use of protected works and other contributions in Hungary. The statutory license instituted under Article 11^{bis}(2) of the Berne Convention for broadcasting did not apply. The Hungarian cable studios acquired the right to use the works by voluntary licenses. Concerning "small" musical rights, licenses had been granted in contracts concluded with ARTISJUS. To sum up, the delegation considered that the Hungarian legislation and practice in that field were in line with the principles drafted by Unesco and WIPO.

72. The delegation of Algeria stated that its country had no experience of cable television.

73. The observer from FIAPF informed the Committees about an agreement negotiated between FIAPF and the Italian Broadcasting Company (RAI) on the transmission of cinematographic works by fixed satellite service carrying the RAI Uno and RAI Due signals. The agreement stipulated that the contracts for Italy and abroad would be negotiated individually between the right

owners and RAI Uno and would give rise to payments at source by RAI for Italian-speaking people, in all the footprint countries, and authorized to use one of the following three means of reception outside Italy: cable company, collective antennae and individual antennae. It was further decided that a working group would establish the criteria for calculating the compensation to be paid by RAI to each owner of copyright for the unauthorized transmission of cinematographic works since 1981. The observer stated that the agreement showed the direction to be taken in the matter of satellite transmission.

74. The observer from INTERGU informed the Committees that the Federal Court of Justice of the Federal Republic of Germany had ruled, on June 4, 1987, that, the simultaneous, complete and unchanged retransmission by cable of a program by the original broadcaster represented a new breach of broadcasting rights. In view of that ruling, owners of copyright and the *Deutsche Bundespost* (German federal post office) had signed an initial contract, on November 30, 1987, on the retransmission of television programs and a further one on the distribution of radio programs in the broadband distribution networks of the *Deutsche Bundespost*. The contract did not draw a distinction between retransmissions by cable inside and outside the area served by the original broadcaster.

Practical Implementation of the Droit de Suite

75. The discussions were based on document B/EC/XXX/9-IGC(1971)/VIII/13.

76. The Committees were informed about the replies that had reached the Secretariats to the circular letter sent on January 25, 1989, to member States and intergovernmental and international non-governmental organizations, requesting them to forward information on the practical implementation of the *droit de suite* in their respective countries. Eleven of the 23 States that had replied to the letter confirmed that they had passed national laws on the subject.

77. The delegation of Australia informed the Committees that a body representing copyright owners in Australia had very recently presented a report on its investigation of the question of introducing the *droit de suite* in Australia. The report, which contained a qualified recommendation in favor of the *droit de suite*, was being considered by the Australian Government.

78. The delegation of Chile confirmed that legislation on the *droit de suite* existed there but was not applied in practice.

79. The delegation of Denmark informed the Committees that, in 1989, the Danish Parliament had passed a law on the *droit de suite* that would come into force on July 1, 1990.

80. The observer from CISAC pointed out that, although the application of the *droit de suite* had proved difficult in a number of States, it should not be assumed that such difficulties were general, since no reference had been made to difficulties in replies from several other States. He stressed the importance of the *droit de suite* for visual and graphic artists and called on the international organizations to urge States more strongly not only to pass laws including the *droit de suite* but also to implement those prerogatives. He suggested that a recommendation to that effect be made to States.

81. The delegation of Italy reported that certain difficulties had been experienced in applying the *droit de suite* but nonetheless stressed how important it was for the States to adopt a binding international instrument on the subject, in order to prevent the art market from leaving a country and settling in one that did not recognize the *droit de suite*. It also requested that this question be placed on the agenda of the Committees.

82. The representative of the Director General of WIPO said that, as far as WIPO was concerned, it was in the framework of the draft model provisions in the field of copyright, which were being discussed this year and in 1990 by a committee of governmental experts, that the question of the *droit de suite* was being dealt with. If the member countries of the Berne Union, or at least the majority of them, considered that the present facultative provisions of the Berne Convention on the *droit de suite* should be made more binding, the question could be discussed in the framework of the preparation of the Protocol to the Berne Convention proposed in the draft Program and Budget of WIPO for 1990-91. He added, however, that there did not seem to be such a wish on the part of the member countries of the Union, and the draft Program and Budget did not mention the question of the *droit de suite* as a possible subject of the proposed Protocol.

83. The representative of the Director-General of Unesco stated that internationally binding measures could be taken only through the adoption of a Convention, whose preparation would have to follow a set procedure and which would take quite a long time. There were two alternative solutions, but they would not be binding: (i) an international recommendation to member States, which as far as Unesco was concerned would have to be adopted by the General Conference and whose preparation,

discussion by member States and final adoption would also take a fairly long time; (ii) a recommendation by the Committees here present.

84. The delegation of the United Kingdom pointed out that its country did not intend to take measures in this sphere. It stressed that its government was opposed to any discussion of binding measures concerning the *droit de suite* in the context of the Protocol to the Berne Convention.

85. The delegation of the Federal Republic of Germany supported CISAC's proposal and was in favor of drawing up and adopting a recommendation as soon as possible. It furthermore informed the Committees that the *droit de suite* had been introduced in its country in 1965. The scope of that right was illustrated by the fact that, in 1987, artists had been paid 200 million Deutschemarks under the *droit de suite* legislation. The sum had enabled the organization responsible for managing the scheme to set up a special fund to help artists.

86. The delegation of Poland informed the Committees that there were plans to introduce the *droit de suite* in the course of revising its country's domestic legislation.

87. The delegation of Algeria confirmed the existence of the *droit de suite* in its domestic legislation: the authors of works of visual and graphic art received five percent of the resale price of their works. As far as the practical application of such legislation was concerned, the delegation of Algeria thought it would be useful to publicize the resale of works and provisionally deposit the sum due to the author in an official fund until he made himself known.

88. The observer from ALAI expressed his support for the formulation of a recommendation that would give much greater recognition to the *droit de suite*. While acknowledging fears that the art market might shift toward countries that did not recognize the *droit de suite*, he suggested that appropriate measures be taken when works of art crossed frontiers.

89. The delegations of Austria, Italy, the Netherlands, Nigeria and Sweden declared themselves in favor of keeping this question on the Committees' agenda.

90. The representative of the Director General of WIPO stated that because the question of the *droit de suite* was dealt with in detail in the Model Provisions for Legislation in the Field of Copyright based on the provisions of the Berne Convention, and had

been discussed by a WIPO committee of experts, it seemed necessary that it be covered by a report, to be submitted to an ordinary session of the Executive Committee of the Berne Union that would be held along with the other governing bodies of WIPO and of the Unions administered by WIPO.

91. The delegations of the United States of America and Austria questioned the usefulness of granting additional protection to the authors of works in the fine arts by means of the *droit de suite*. The delegation of the United States of America informed the Committees that legislation on the *droit de suite* existed only in the State of California and stated that a proposal for the adoption of a federal law on the subject had been withdrawn.

92. The observer from INTERGU stated that, in all those countries in which the *droit de suite* had not yet been introduced, the authors of graphic and visual art works were at a disadvantage, since they were therefore unable to benefit from increases in the value of their works. The whole question of the *droit de suite* should also be standardized within the European Community.

93. The Chairman, summarizing the discussions, stated that the reservations expressed by some delegations had probably been dictated by the practical difficulties encountered in the countries that had adopted the system. He added that, without international protection of artists by the *droit de suite*, the practical effects of recognizing the right at the national level were likely to be limited. Measures should be taken to prevent countries that recognized the *droit de suite* from losing the art market to countries that did not recognize it.

94. The Chairman also proposed to the Committees that this question remain on their agendas and that the two Secretariats study it in the light of the deliberations of the present sessions.

Development of Law and Practice Connected with the Protection of Computer Programs

95. Discussions were based on documents B/EC/XXX/10 and 10 Add.– IGC(1971)/VIII/14 and 14 Add.

96. The attention of the Committees was drawn to the most important elements of the information contained in the two documents which had been based on replies received from governments to a circular letter issued by the Secretariats and particularly to the fact that, in national laws, the copyright protection of computer programs seemed to continue being the dominating trend.

97. The delegation of Hungary stressed the importance of further monitoring the development in the field of the protection of computer programs at the national level. The delegation referred to the fact that the Hungarian copyright law recognized computer software as a category of literary and artistic works protected by copyright, although the law contained certain specific provisions in respect of such works which mainly concerned the ownership and exercise of rights in software created by employed authors and the status of derivative works. The Supreme Court had also dealt with those aspects of the protection of computer programs as well as with certain aspects of contracts concerning the creation and use of computer programs. It seemed to be in the latter field that further legislative steps might be necessary.

98. The delegation of the Netherlands referred to the reply by its government included in paragraph 21 of document B/EC/XXX/10-IGC(1971)/VIII/14 and added that it was possible that the preparation of a draft legislation on the copyright protection of computer programs might be put on the agenda again in its country in the near future, the more so because a draft directive was under discussion in the framework of the Commission of the European Communities on the same matter.

99. The delegation of Portugal stated that, although the copyright law of its country did not provide explicitly for the protection of computer programs, it was generally considered that such programs were protected as a category of literary and artistic works whose list included in the law was not of an exhaustive nature. Nevertheless, a new draft law was being prepared which would explicitly recognize the copyright protection of computer programs. Appropriate provisions would also be introduced concerning stricter measures to fight against software piracy.

100. The delegation of Denmark referred to the information contained in paragraph 13 of document B/EC/XXX/10-IGC(1971)/VIII/14 and informed the Committees that the Bill indicated in that paragraph had been adopted on May 23, 1989.

101. The delegation of Sweden referred to the information contained in paragraph 2 of document B/EC/XXX/10 Add.-IGC(1971)/VIII/14 Add. and announced that the Bill mentioned there had been adopted in the meantime and would enter into force, as indicated, on July 1, 1989.

102. The delegation of Japan referred to the information included in paragraph 18 of document

B/EC/XXX/10-IGC(1971)/VIII/14 and added that that information only covered certain new developments because it had been as early as 1985 that the copyright protection of computer programs had been expressly recognized in its country.

103. The delegation of Italy said that, in its country, the copyright protection of computer programs had been already recognized in case law, and a draft law was currently under preparation expressly providing for such a protection. The draft law contained certain specific provisions in respect of the copyright protection of computer programs, e.g., concerning the status of programs created by employed authors. New provisions were proposed to be adopted also for the introduction of severe penal sanctions against software piracy.

104. The delegation of Israel referred to the fact that, by means of a recent amendment to the Copyright Law, the protection of computer programs had received express statutory recognition. The delegation added that, in the area of computer software, specific statutory provisions were currently under consideration. Those included such matters as moral rights, computer-generated works, the legal status of employer-employee created works, adaptation and the making of "back-up" copies. Furthermore, the delegation stated that sometimes it was hard to define where ideas—which were not protected—stopped and where expressions of ideas—which were protected—started. Therefore, it would seem to be necessary to study whether it would not be justified to introduce a *sui generis* system for the protection of the ideas and principles inherent in and underlying computer programs and to work out a convention which would provide the international basis for the domestic protection of those aspects of programs not covered by the principles of copyright.

105. The delegation of Poland informed the Committees that the Draft Copyright Law of its country which hopefully would be adopted soon and enter into force on January 1, 1990, recognized the copyright protection of computer programs. The Draft Law, however, contained specific provisions concerning such works, e.g., about the original ownership of economic rights in favor of employers, the right to make adaptations and back-up copies by the lawful owner of a program for the purposes for which he had obtained the program and the term of protection of computer programs which would be 25 years from their creation.

106. The delegation of the United Kingdom referred to the information included in paragraph 27 of document B/EC/XXX/10-IGC(1971)/VIII/14

and added that the provisions mentioned there would enter into force on August 1, 1989. The delegation also expressed the hope that the copyright protection of computer programs would remain the dominating trend at the national level and that such a protection would also be recognized at the level of the two international copyright conventions.

107. The delegation of the United States of America expressed its agreement with the latter statement of the delegation of the United Kingdom and added that, in its country, where the copyright protection of computer programs was fully recognized by the Copyright Act, a new legislation was currently under consideration concerning the introduction of a rental right in respect of such programs which, hopefully, would be adopted within a year.

108. The delegation of France said that, while the international copyright conventions seemed to offer an appropriate framework for the protection of computer programs as expressions of certain ideas, it might be necessary to study the possibility to also grant some kind of protection for the ideas themselves which could be reconstructed from their concrete expressions and be pirated.

109. The delegation of Algeria drew attention to the fact that the protection of certain ideas might create unreasonable obstacles to the development of computer-related activities and said that great caution was needed in dealing with any proposals concerning the protection of such ideas. The delegation informed the Committees that the question of a draft legislation concerning the protection of computer programs was currently on the agenda in its country. The first results of the discussions reflected the dominating view that computer programs could not be simply and completely assimilated to traditional literary works. If provisions on the protection of computer programs were included in the draft of the Copyright Law, such programs would be handled as a separate category of works to which various specific provisions would be related.

110. The delegation of Chile said that, in its country, a draft law was also under consideration which would recognize the copyright protection of computer programs and would assimilate such programs to literary works. The draft law also contained certain specific provisions concerning computer programs. The delegation added that, so far, there was no case law in its country on that matter.

PART III: OTHER ITEMS CONCERNING THE COMMITTEE ALONE

Adoption of the Report

111. The Committee unanimously adopted this report.

Closing of the Session

112. After the usual thanks, the Chairman declared the session closed.

LIST OF PARTICIPANTS

I. States Members of the Committee

Austria: R. Dittlich. Bulgaria: Y. Markova; A. Anguelov; V. Dimitrova. Cameroon: E. Boum; J. Ayafor. Chile: F. Urrutia. German Democratic Republic: E. Kubillus. India: S. Kunadi; M. Kapil. Italy: G. Aversa. Netherlands: E. Lukács. Pakistan: I. Hussain. Poland: T. Drozdowska. Senegal: B.M. Seck. Sweden: K. Hökborg. United Kingdom: D. Irving. Uruguay: D. Espino de Ortega; E. Flores. Venezuela: M. von Braun de Karttunen.

II. Observer States Members of the Berne Union

Argentina: S.M. Peláez Ayerra. Australia: C. Creswell. Belgium: F. Jaquet; P. Dewonek; H. Feys. Benin: A. Hazoume. Brazil: M. Meirelles Nasser; J. de Souza Rodrigues. Central African Republic: M. Agba Otikpo. Colombia: N. Martín-Leyes Barvo. Costa Rica: I. Leiva de Billault; L. Thompson. Czechoslovakia: J. Svoboda. Denmark: J. Nørup-Nielsen. Egypt: S.A. Abou Steit. Finland: M. Könkkölä. France: A. Kerever; P. Florenson; N. Renaudin; R. Collard; L. Fournier. Germany (Federal Republic of): M. Möller. Greece: E. Denaxas. Guinea: K. Kondé. Holy See: P. Brun. Hungary: P. Gyertyánfy. Israel: M. Ophir. Japan: Y. Oyama. Luxembourg: M. Klein. Mexico: J.M. Morfin Patraca; V. Blanco Labra; A. Gómez-Robledo; M.N. Suarez-Paniagua. Niger: A. Souley. Norway: H. Soennefand. Portugal: J.A. Lourenço; M. Almeida-Rocha. Spain: J.L. Muñoz de la Borde. Sri Lanka: C.O. Liyanage. Thailand: P. Siripanuwal. Tunisia: B. Mahjoub; S. Zauouche. United States of America: R. Oman; R. Owens.

III. Other States

Algeria: S. Abada; T. Beddiar. Ecuador: R. Riofrio-Machuca. Guatemala: V.A. León Gemmell. Kenya: J. Muchae. Nigeria: K.W. Aniche; R. Mkanga. Panama: J. Patiño. Soviet Union: A.G. Kouznetsov; V.S. Dounine; R. Gorelik. Zambia: D.T. Nkhata; D.P. Kapaya; M. Sipangule.

IV. Specialized Agencies of the United Nations System of Organizations (Representatives)

United Nations Educational, Scientific and Cultural Organization (UNESCO): M.-C. Dock; A. Amri; E. Guerassimov. General Agreement on Tariffs and Trade (GATT): A. Otten.

V. Intergovernmental Organizations (Observers)

Council of Europe (CE): G. Brianzoni.

VI. International Non-Governmental Organizations (Observers)

International Alliance for Distribution by Cable (AID): P. Kokken. International Association for the Advancement of Teaching and Research in Intellectual Property (ATRIP): A. Françon. In-

ternational Association of Broadcasting (AIR): A. Ruiz de Assin. International Bureau of Societies Administering the Rights of Mechanical Recording and Reproduction (BIEM): A. Vacher-Desvernais. International Confederation of Societies of Authors and Composers (CISAC): N. Ndiaye. International Copyright Society (INTERGU): R. Talon. International Federation of Film Producers Associations (FIAPF): A. Brisson. International Federation of Phonogram and Videogram Producers (IFPI): I.D. Thomas; D. de Freitas. International Federation of Translators (FIT): M. Voituriez. International Group of Scientific, Technical and Medical Publishers (STM): J.A. Koutchoumow. International League on Competition Law (LIDC): A. Françon; Y. Saint-Gal. International Literary and Artistic Association (ALAI): A. Françon; R. Castelain; W. Duchemin. International Publishers Association (IPA): J.A. Koutchoumow; C. Clark; K. Müller von der Heide; S. Wagner. International Union of Architects (IUA): M. Huet. International Writers Guild (IWG): J.-C. Chesnais; E. de Rengervé; P. Anelli.

VII. Secretariat

World Intellectual Property Organization (WIPO)

M. Ficsor (*Director, Copyright Law Division*); P. Masouyé (*Legal Officer, Copyright Law Division*).

**International Convention for the Protection of Performers,
Producers of Phonograms and Broadcasting Organizations
(Rome Convention, 1961)**

Intergovernmental Committee

Twelfth Ordinary Session

(Geneva, July 5 to 7, 1989)

REPORT

adopted by the Committee

Media and Entertainment Trade Union (ISETU/FIET) and the International Writers Guild (IWG) attended the session as observers.

Introduction

1. The Intergovernmental Committee of the International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations (Rome Convention, 1961) (hereinafter referred to as "the Committee"), convened in accordance with paragraph 6 of Article 32 of that Convention and Rule 10 of the Rules of Procedure of the Committee, held its Twelfth Ordinary Session at the International Labour Office, in Geneva, from July 5 to 7, 1989.

2. Ten member States of the Committee (Austria, Brazil, Czechoslovakia, Finland, Germany (Federal Republic of), Italy, Mexico, Norway, Sweden and the United Kingdom) were represented. The governments of nine States party to the Rome Convention but not members of the Committee (Chile, Colombia, Denmark, Ecuador, France, Panama, Peru, Philippines and Uruguay) and 21 States not party to the Rome Convention (Argentina, Australia, Belgium, Cameroon, Côte d'Ivoire, Cuba, Egypt, Gabon, India, Iran (Islamic Republic of), Japan, Nigeria, Poland, Portugal, Senegal, Soviet Union, Spain, Syria, Turkey, Zambia and Zimbabwe) were represented by observers.

3. Eleven international non-governmental organizations (European Broadcasting Union (EBU), International Association of Broadcasting (IAB), International Bureau of Societies Administering the Rights of Mechanical Recording and Reproduction (BIEM), International Confederation of Societies of Authors and Composers (CISAC), International Copyright Society (INTERGU), International Federation of Actors (FIA), International Federation of Film Producers Associations (FIAPF), International Federation of Musicians (FIM), International Federation of the Phonographic Industry (IFPI), International Secretariat for Arts, Mass

4. The list of participants follows this report.

Opening of the Session

5. The outgoing Chairman, Mr. Jelinek, opened the meeting and, after warmly welcoming participants, gave the floor to the Deputy Director-General of the International Labour Office (ILO).

6. In welcoming the participants, Mr. Heribert Maier, the Deputy Director-General of the ILO, stressed that the problems faced by performers—whether in respect of their general employment and working conditions or the protection of their moral and material rights over their performances—were of direct and long-standing concern to the International Labour Organisation. In this context, he pointed out the relevance of a tripartite meeting on the protection of salaried authors, inventors and performers, convened by the ILO in 1987. The meeting had unanimously called for future ILO action, namely research and publications on national law and practice, including collective bargaining, with regard to salaried authors, inventors and performers, with particular reference to the needs of developing countries, where advisory and technical cooperation activities should be developed. It had also recommended the convening of another tripartite meeting specifically devoted to the problems of performers. He hoped that the ILO study before the Committee on the implications of satellite and cable technologies for performers and producers would help performers and their representative organizations, phonogram producers, broadcasters, governments as well as international organizations, in responding to rapid technological and structural changes.

7. The representatives of the Directors General of WIPO and Unesco greeted the participants and

thanked the ILO for acting as host to the current session of the Committee.

Election of Officers

8. Following a proposal made by the delegate of Sweden and seconded by the delegates of Austria, Germany (Federal Republic of) and Italy, Mr. Steinitz (United Kingdom) was unanimously elected Chairman. Mr. Jelinek (Czechoslovakia) and Mr. Morfin Patraca (Mexico) were elected Vice-Chairmen.

Adoption of the Agenda

9. The provisional agenda (document ILO/UNESCO/WIPO/ICR.12/1 Prov.) was adopted unanimously by the members of the Committee. At the request of the representative of the Director General of WIPO, it was agreed to discuss item 7 first.

Report on the Activities of the Three Organizations to Provide Assistance and Training for Developing Countries with a View to Promoting the Protection of Performers, Producers of Phonograms and Broadcasting Organizations

10. The discussion was based on document ILO/UNESCO/WIPO/ICR.12/5.

11. The representative of the Director-General of Unesco referred to a number of activities of his Organization in the fields of copyright and so-called neighboring rights. He drew the Committee's attention to a syllabus elaborated by Unesco with the help of consultants, for teaching copyright and neighboring rights at university level. He expressed the hope that the syllabus, which will be further discussed by experts from different regions of the world and accompanied by a manual on the same lines, will be helpful in promoting professional expertise.

12. The representative of the Director General of WIPO outlined the activities of his Organization, including training courses, information meetings and seminars, and assistance on legislative and administrative matters. He noted the rapidly growing demand from developing countries for training in the fields of copyright and neighboring rights.

13. The Chairman expressed the Committee's gratitude to both Unesco and WIPO for their very valuable activities in these areas.

14. The delegate of the Federal Republic of Germany made reference to discussions within Unesco concerning a new international instrument for the protection of folklore. She stressed that such an instrument already existed in the form of the Rome Convention which offered indirect protection of folklore by means of protecting performances and she urged all countries concerned about the problem to adhere to this Convention.

15. The delegate of Italy supported the observations of the preceding speaker, emphasizing the importance of the Rome Convention for the safeguarding and preservation of folklore. In fact, works for which authorship was identifiable with a community, that is works without an author, could not be protected. The speaker also emphasized the need, in all universities throughout the world, to introduce the systematic and scientific teaching of copyright and neighboring rights. In many countries, these formed a very limited part of the curricula in comparison with those devoted to patent law and, more generally, to industrial property law. This was insufficient. In view of the new technological means for the utilization of protected works and artistic performances, it was necessary to give to the professionals concerned (magistrates, lawyers, legal advisers, officials, etc.) technical and practical training in all fields. Finally, copyright and neighboring rights should be taught in terms of both national and international law. He invited the Secretariat to examine how best to encourage the governments of States party to the Rome and Berne Conventions as well as to the Universal Copyright Convention to give effect to this suggestion.

16. The observer from France supported the two previous speakers, drawing attention to the special needs of developing countries. He referred to the creation of an African association to fight piracy and stated that this initiative deserved support.

17. The observer from FIM noted that it was true that the Rome Convention provided some protection for performers of folklore. The main question, however, was whether the protection provided through the Convention was adequate and whether it was implemented in a suitable way. He noted that on the basis of Article 3(a) and Article 9, certain performances of folklore could be excluded. In certain cases, national legislation needed to be changed in order to embrace a wider range of performances, and attention needed to be given to the practical implementation of the Rome Convention. He agreed with previous speakers that training was needed in the fields of copyright and performers' rights not only in developing countries, but also in industrialized countries. Referring to the kinds of

training that had been organized, he emphasized the need for courses to cover the subject in all its complexity and to highlight the interaction between the provisions of Article 7, particularly those related to the performers' rights over reproductions of fixed performances, and practical implementation in terms of technology, contract law and labor law. In general, he doubted whether the courses did sufficiently emphasize performers' rights and called for an exhaustive examination to be made of the way in which the Rome Convention was applied. It was also time to revise the excellent *Guide to the Rome Convention*, to keep pace with recent technological developments.

18. The observer from IFPI, congratulating the authors of the report, recognized the value of educational training in the areas of copyright and so-called neighboring rights which had very practical benefits in terms of the formulation of proposed legislation in various countries and of activities which would not have taken place without the stimulus of such training. He offered IFPI's assistance, where appropriate, in such programs.

19. The representative of the Director-General of Unesco, in reply to previous speakers, noted that his Organization had been studying the question of safeguarding folklore for a decade. One of the results of this work had been the formulation of a final draft of an international recommendation to Unesco's member States on the safeguarding of folklore. He underlined that a recommendation was not a binding instrument. There were plans to discuss the possibility of a convention on the protection of the expressions of folklore as regards the intellectual property aspects. However Unesco and WIPO would have to consider the matter further. He welcomed the comments on the syllabus made by the observer from FIM and requested him to provide written comments. He also assured the observer from IFPI that his organization, together with other non-governmental organizations, would continue to be invited to participate in courses on these subjects wherever possible.

20. The representative of the Director General of WIPO, replying to the comments made during the discussion, noted with pleasure that many of the speakers had been involved in the training courses held by his Organization. He recognized the value of the contribution that could be made at the national level by non-governmental organizations. Referring to the possibility of an international convention on the protection of expressions of folklore, he noted that a set of model provisions for national laws had been adopted. WIPO and Unesco had organized a meeting of experts in Paris, in Decem-

ber 1984, to discuss the possibility of formulating an international treaty on this subject based on these provisions; however, the experts had not reached agreement and many had felt that such a treaty would be premature. The two main problems concerned the identification of folklore. The first difficulty was that, in many countries, there was no register of the expressions of folklore and it would not therefore be clear which expressions were to be protected; the second problem was that national frontiers frequently did not correspond to cultural areas with regard to folklore and it was therefore felt that some kind of regional solution was needed. Referring to the *Guide to the Rome Convention*, which had been published in 1981, and which had fulfilled an important role, he informed the Committee that the Guide would not be revised but, according to the Draft Program and Budget of WIPO for 1990-91, a handbook would be published on the Rome Convention and the Phonograms Convention containing updated comments on those Conventions.

Membership of the Rome Convention: State of Accessions, Ratifications and Acceptances, and List of States Not Party to the Rome Convention but Party to the International Copyright Instruments Mentioned in Article 24 of That Convention

21. Discussions were based on documents ILO/UNESCO/WIPO/ICR.12/2 and 3.

22. The Secretariat drew attention to the accession of Burkina Faso to the Rome Convention, which brought the total number of States party to it to 32. In accordance with the decision of the previous session of the Committee, a memorandum had been distributed to governments to promote further accessions to the Rome Convention. In the case of the ILO, this memorandum had also been distributed, following a decision of its Governing Body, through the governments of member States, to the employers' and workers' organizations concerned.

23. The observer from Japan informed the Committee that the Diet of Japan had recently approved the accession of his country to the Rome Convention. He expressed his sincere appreciation to WIPO for the assistance provided in this context.

24. The observer from Australia informed the Committee that his government had recently announced its intention to adhere to the Rome Convention. A Bill to amend the Australian copyright legislation had been passed by Parliament earlier this year and included provisions, for the first time

in his country, to protect performers' rights. Australia was already a party to the Phonograms Convention and, once implementing regulations concerning performers' rights had been adopted, Australian law would comply with the Rome Convention.

25. The observer from Spain noted that in 1987, for the first time in his country, legislation had been adopted protecting the rights of performing artists, producers of phonograms and broadcasting organizations. The so-called neighboring rights formed an important part of this legislation which, in some respects, was more generous than the Rome Convention. He hoped that Spain would have completed the procedure to ratify the Rome Convention by the end of the current year.

26. The observer from Poland noted that in her country consideration was being given to the introduction of legislation concerning performers' rights, although it was not yet clear whether the relevant provisions would be incorporated into the present Copyright Act or whether they would be adopted as separate legislation. The scope of these draft provisions would permit adherence to the Rome Convention, but it was too early to make a firm commitment.

27. The delegate of Norway informed the Committee of a number of recent changes in the legislation in his country concerning the rights of performers and producers of phonograms. Up to the present time, performers and producers of phonograms had been remunerated for broadcasts through a special levy shared between them. Under the new procedure a new organization consisting both of performers and producers of phonograms would be responsible for negotiations with broadcasters and for the collection of dues, which would, as far as possible, be paid on an individual basis. All other uses of phonograms would continue to be covered by the levy. In addition, the protection of the rights of performers and producers of phonograms and broadcasters had been increased from 25 to 50 years.

28. The delegate of the Federal Republic of Germany informed the Committee that, in her country, it was proposed to increase the term for the protection of performers' rights to 50 years. In addition, in order to deal with the new digital audio-numeric tape-recording (DAT) technology, legislation was being proposed to increase the levy on DAT recording equipment.

29. The delegate of Czechoslovakia reported that, to the best of his knowledge, new legislation on per-

formers' rights was being formulated in some socialist countries. As the only socialist country that was a party to the Rome Convention, Czechoslovakia was doing its best to encourage these developments and was convening an international conference on the protection of performers' rights in Prague in October of the current year. Delegations of the ministries of culture of the socialist countries, of the trade unions and of authors' representative societies, together with representatives of the three intergovernmental organizations, non-governmental organizations and international experts from non-socialist countries, would all be invited to the conference.

30. These positive developments concerning adherence to the Rome Convention and progress in national legislation were widely welcomed by the Committee.

31. The observer from IFPI noted that the Government of the Netherlands had also recently announced its intention of adhering to the Rome Convention and that he understood that preparations were under way in Belgium for the same purpose. He considered that the situation in Western Europe as regards ratification of the Rome Convention was relatively satisfactory, with only Greece, Portugal and Switzerland remaining as non-parties to the Convention. Both Greece and Portugal had indicated their interest in the Convention, but he regretted that in Switzerland, which depended heavily in other areas on the protection of intellectual property rights, the situation was less satisfactory. Indeed, draft legislation had been prepared by the Swiss authorities omitting many provisions for the protection of performers' and producers' rights proposed by a national committee of experts. In view of the notable increase in the methods of disseminating recordings and the suggested introduction of new legislation in a number of countries, he suggested that the Committee should call for a new inquiry into the practical application of the Rome Convention. The previous study had been carried out in 1979, and updated in 1985, and a new version of the study would assist in encouraging ratifications. He offered the assistance of his own organization in this connection.

32. The observer from FIM, welcoming in particular the developments in the area of performers' rights in Norway, noted that the essence of the performers' position as regards the collective or individual distribution of remuneration was that the choice should lie with the performers. The developments in Norway constituted progress toward that position and were therefore highly welcome. He went on to support the proposal of IFPI that the

1979 study should be updated, taking account of the substantial technological changes that had occurred over the past few years, all of which had great impact on the protections afforded by the Rome Convention.

33. In reply to a point raised by the delegate of Brazil concerning the scope and methods of the proposed study, a number of delegates and observers said that it should be an inventory of the measures taken by member States to implement the Rome Convention. This could be seen as arising out of agenda item 4 concerning the membership of the Rome Convention, since it would clarify for potential members the conditions of accession to the Convention and the problems that had been experienced by States that had already acceded to the Convention. Non-governmental organizations could make a valuable contribution in terms of providing useful information to be included in the inventory.

34. The representative of the Director-General of the ILO noted that, in the updating of previous studies, the law and practice in member States had been examined on the basis of replies to a questionnaire. According to the ILO's practice and procedures, governments were asked to consult the national employers' and workers' organizations concerned and to transmit any observations made by them. In addition, the international non-governmental organizations concerned were consulted.

35. The observer from IFPI said that the original proposal had been that the current study needed updating in order to facilitate ratification. The assistance of IFPI had been offered, but clearly if this were considered inappropriate then the secretariats of the three intergovernmental organizations should undertake the work without its assistance.

36. The delegates of Austria, Czechoslovakia, Germany (Federal Republic of), Italy and Sweden emphasized that the collaboration of non-governmental organizations was valuable and necessary in updating the study since many practical aspects were dealt with by these organizations, which were the representatives of the beneficiaries of the Rome Convention. It was also possible that, although members of the Rome Convention had made reservations on certain points, the actual conditions in a number of member States were more favorable than the minimum conditions provided by the Convention. In this connection the delegate of the Federal Republic of Germany proposed that the study should be prepared by the Secretariat on the basis of the information supplied to them both by governments and non-governmental organizations.

37. The representative of the Director General of WIPO suggested that it might be preferable to send out circular letters to governments rather than questionnaires in order to give them more latitude in their responses. One circular letter could be sent to governments, requesting information, both on national laws (legislation and case law) and on the practical aspects of the implementation of the Convention (such as contractual practice and collective administration of rights), while another type of letter could be sent to non-governmental organizations which could supply information on the practical aspects of the implementation of the Convention.

38. The delegate of Brazil, although recognizing the interest and utility of seeking information from non-governmental organizations, noted that in some cases governments might wish to know which organizations had been consulted in order to suggest other organizations or make comments concerning some of those consulted. He also raised the question of the difference in the juridical nature of the rights protected by the Convention, particularly as regards the difference between performers as creators and other beneficiaries who disseminated material reproducing the performances of others. He felt there was a need to discuss this issue and called for comments from the other members of the Committee.

39. The delegates of Czechoslovakia and Italy felt that this was a very important and highly complex problem which would require a special symposium to do full justice to all its juridical and theoretical implications. The Government of Brazil could, if it wished, include information on this question in its reply to the circular letter.

40. The delegate of Brazil requested that an opportunity be given in the circular letter for those replying to make comments on this question.

41. The Chairman, summarizing the consensus within the Committee, noted that the joint Secretariat would send a circular letter to all governments members of the Rome Convention and to the other members of the Berne Convention and/or the Universal Copyright Convention, and a separate letter to the non-governmental organizations with observer status, inviting information and comments on the practical implementation of the Rome Convention, and produce a report for the thirteenth session of the Committee in 1991. The letter to governments should have attached as an annex the letter to the non-governmental organizations, and vice versa.

Membership of the Convention for the Protection of Producers of Phonograms Against Unauthorized Duplication of Their Phonograms (Phonograms Convention) and of the Convention Relating to the Distribution of Programme-Carrying Signals Transmitted by Satellite (Satellites Convention): State of Accessions, Ratifications and Acceptances

42. Discussions were based on document ILO/UNESCO/WIPO/ICR.12/4.

43. The Secretariat reported that since the previous session of the Intergovernmental Committee the Phonograms Convention had entered into force for the Republic of Korea, Burkina Faso and Trinidad and Tobago, bringing the number of States party to it to 42. Moreover, since the previous session of the Committee, the Satellites Convention had entered into force for the Soviet Union, bringing the number of States party to it to 12.

44. The observer from Australia announced that his country was taking the appropriate steps to adhere to the Satellites Convention. He informed the Committee that the necessary legislative controls already existed and that no further legislative measures were therefore needed.

45. The observer from EBU welcomed the accession of the Soviet Union and the forthcoming adherence of Australia to the Satellites Convention and hoped that further countries would follow suit.

Report of the ILO on Problems Arising with Regard to the Rome Convention Through Developments in Law and Practice Concerning Transmission by Cable and by Satellite, and Report of Unesco and WIPO on the Principles on the Protection of Performers, Producers of Phonograms and Broadcasting Organizations—Particularly Concerning Transmission by Satellite and Cable—Discussed by Various Committees of Governmental Experts from May 1986 to July 1988

46. Discussions were based on documents ILO/UNESCO/WIPO/ICR.12/6 and 7.

47. The representative of the Director-General of the ILO, introducing document ILO/UNESCO/WIPO/ICR.12/6, emphasized that with the rapid expansion of satellite transmission and cable distribution, and the considerable growth in the number of cable-connected households, there was an urgent need to strike a balance between the three categories of beneficiaries of the Rome Convention and, in particular, to protect the

rights of performers and producers. The report highlighted the problem that performers and producers could be in direct conflict with broadcasters over how their product was disseminated to this huge audience.

48. Introducing document ILO/UNESCO/WIPO/ICR.12/7, the representative of the Director General of WIPO pointed out that the document had been produced jointly with Unesco and concerned a series of meetings of governmental experts from May 1986 to July 1988. A number of principles had been discussed concerning the cable distribution and satellite broadcasting of protected works, which had also been discussed in part by the Committee in 1983. The meetings had focused on all copyright and neighboring rights issues, and, in addition to cable distribution and satellite broadcasting, had concentrated particularly on piracy, the secondary use of phonograms for distribution to the public, home taping, the right of rental and the rights of performers of dramatic, choreographed and musical works. The principles were intended to be used as guidance for governments. These principles were in fact more generous than both the Rome Convention and the ILO/UNESCO/WIPO model law concerning the protection of performers, producers of phonograms and broadcasting organizations, first published in 1974.

49. A number of delegates and observers welcomed the two documents and congratulated the ILO, Unesco and WIPO Secretariats on producing two substantial reports containing much valuable information.

50. The delegates of Austria, Germany (Federal Republic of) and Italy and the observer from France, however, felt that it would not be possible to enter into a discussion of substance on these documents. The documents covered a number of controversial subjects and one of them dealt with only two of the three beneficiaries under the Rome Convention, leaving aside the broadcasters, who were also profoundly affected by the advent of trans-border broadcasting. The document produced by the ILO was in some respects not completely up to date. The delegates of Austria and Germany (Federal Republic of) questioned the use of the term "so-called" to qualify neighboring rights. The delegates agreed fully, however, with the final statement in the ILO report to the effect that the international protection of performers and phonogram producers could best be secured by wider membership of the Rome Convention. A number of delegates and observers welcomed the stimulation of the new, and even controversial, ideas contained in the report.

51. In reply to a question raised by the delegates of Austria and Germany (Federal Republic of) with regard to the use of the term "so-called neighboring rights" in the document under consideration, the Secretariat explained that, although certain national laws defined the rights of performers, producers of phonograms and broadcasting organizations as neighboring rights, many countries referred to these rights as "related rights" or used other similar terms. Moreover, the term "neighboring rights" was not used in the text of the Rome Convention. Therefore, the Secretariat usually referred to these rights as "so-called neighboring rights." The representative of the Director-General of the ILO added that this expression also reflected the view always held by her Organization that, while the rights of performers and producers of phonograms were close to those of authors they were distinct from them and should therefore not be subordinated to them.

52. An observer from IFPI added that the use of the term "neighboring" reflected the fact that during the formulation of the Rome Convention a number of parties had attempted to make the rights of beneficiaries dependent on copyright and subsidiary to those of authors, the result of which could be found in the Convention, e.g. the requirement that members of the Rome Convention also be members of one of the copyright conventions. "Neighboring rights" had not been referred to by that name in the Rome Convention and it had therefore been considered that the term "so-called neighboring rights" was the most effective method of referring to them.

53. The observer from FIM welcomed both documents as valuable contributions to the development of the issues covered by the Rome Convention. They sharply illustrated the gap between the existing Convention and the need for further measures, and usefully showed the interrelationship between collective bargaining and statutory rights. He found nothing to criticize in the fact that one of the reports did not cover all the beneficiaries under the Rome Convention. It could be valuable at times to examine the problems of the individual beneficiaries separately or in different combinations.

54. The observer from EBU noted that other delegates had refrained from commenting upon the substance of the reports and that although her organization disagreed with a number of points set out in the ILO report, she would not enter into details. However, she pointed out that in its reference to FSS transmissions, the report should have differentiated the various types of FSS satellites and transmissions. She also noted that the absence of specific

statutory rights for certain categories of beneficiaries under the Rome Convention did not mean that negotiations did not take place on their behalf.

55. The observer from FIA emphasized that it was important that the points now before the Committee did not disappear from view merely because the Committee did not wish to enter into a substantive discussion of them. He commended the two documents, which showed that the Rome Convention was no longer fully adequate in view of the enormous technological developments since it had been formulated. He hoped that the Committee would give serious consideration to the problems outlined in the two documents.

56. The observer from ISETU-FIET agreed that wider ratification of the Rome Convention would be valuable, but felt that the ILO report contained other important elements and referred in particular to pages 62 and 63 of the report. It should be recalled that the Rome Convention contained minimum standards, many of which could be superseded at the national level. The Rome Convention needed to be considered in the light of ILO Conventions concerning freedom of association.

57. The observer from Australia noted that there was as yet no cable television in his country, although its possible introduction was under consideration. The two documents set out a number of valuable and important issues and he hoped that they would continue to be considered by the Committee.

58. The delegate of Austria agreed that the protection currently provided by the Rome Convention was not in all aspects satisfactory for the beneficiaries. He calculated that by the next session of the Committee the Rome Convention would have been adhered to by 36 member States and the time could then be ripe to take the first steps toward considering a possible revision of the Convention.

59. The observer from FIM noted that it was not only by revising the Rome Convention that the problems under discussion would be improved. The Rome Convention provided an absolute minimum of protection and improvements should therefore be sought at the national level without waiting for a revision of the Convention.

60. In reply to a request by the delegate of Czechoslovakia for information concerning the administration of rights and practical aspects related to cable and satellite technology, the observer from INTERGU suggested that non-governmental orga-

nizations would be a very willing source of such information. The delegate of Czechoslovakia noted that such information should be addressed to the Secretariat since it could be of interest to all countries. Information on the problems arising from transmission by cable and by satellite should be elicited in the circular letter that the Committee had decided should be sent out as a preliminary to updating its study on the Rome Convention.

Adoption of the Report

61. During the discussion of the report the observer from the Soviet Union who had been unable to be present for the item concerning membership of the Rome Convention informed the Committee of a draft revision of copyright legislation in the Soviet Union which, for the first time in the history of that country, recognized the rights of performers and producers of phonograms and videograms. Recalling that the rights of broadcasting organizations were already protected under existing legislation, she stated that the draft law, if adopted, would enable her country to adhere to the Rome Convention.

62. The delegate of the Federal Republic of Germany informed the Committee that it had been proposed to Parliament that a method might be introduced to remunerate performers and phonogram producers for the rental of audio- and audiovisual works.

63. With these additions, the Committee unanimously adopted this report.

Closing of the Session

64. After the usual thanks, the Chairman declared the session closed.

LIST OF PARTICIPANTS

I. Member States of the Committee

Austria: R. Dittrich; T.M. Baier. **Brazil:** T. da Silva Nunes. **Czechoslovakia:** J. Karhanová; M. Jelinek. **Finland:** M. Könkkölä; R. Wikstrom. **Germany (Federal Republic of):** M. Möller. **Italy:** G. Aversa; A. Caracciolo. **Mexico:** J.M. Morfin Patraca; V. Blanco Labra. **Norway:** J. Holland. **Sweden:** M. Goransson; A. Rodin. **United Kingdom:** N. Steinitz.

II. Observers

(a) States Party to the Convention Which Are Not Members of the Committee

Cbile: P. Romero. **Colombia:** J.M. Cano Varon. **Deomark:** N. Yde. **Ecuador:** I. Salvador-Crespo. **France:** P. Florenson; C. Devillers; N. Renaudin; H. Ladsous. **Panama:** M. Saavedra Polo. **Peru:** R. Leon. **Pbilippines:** D.M. Rosal; L.J. Palma. **Uruguay:** R. Gonzalez Arenas.

(b) Other States

Argentina: A. Trombetta. **Australia:** C. Creswell. **Belgium:** F. Jacquet. **Cameroon:** F.-X. Ngoubeyou; E. Boum. **Côte d'Ivoire:** N'Cho A. N'Takpe. **Cuba:** M. Ferriol Ecbevarria. **Egypt:** N. Gabr. **Gabon:** L. Lekounda-Boumy; M. Nziengui. **India:** K.J. Mathew. **Iran (Islamic Republic of):** M.S. Nabian; H.R. Khazai. **Japan:** M. Kitani. **Nigeria:** G.E. Okafor. **Poland:** H. Walkus-Gieralt. **Portugal:** A. Queiros Ferreira. **Senegal:** S.A.M. Sy. **Soviet Union:** L. Sevastianova. **Spain:** E. de la Puente Garcia. **Syria:** K. Atassi. **Turkey:** A. Algan. **Zambia:** D.T. Nkhata; D.P. Kapaya. **Zimbabwe:** V. Mhizha-Murira; G. Mararike.

(c) International Non-Governmental Organizations

European Broadcasting Union (EBU): M. Burnett. **International Association of Broadcasting (IAB):** J.C. Muller Chaves. **International Bureau of Societies Administering the Rights of Mechanical Recording and Reproduction (BIEM):** A. Vacher-Desvernaix. **International Confederation of Societies of Authors and Composers (CISAC):** A. Vacher-Desvernaix. **International Copyright Society (INTERGU):** V. Movsessian. **International Federation of Actors (FIA):** R. Rembe. **International Federation of Film Producers Associations (FIAPF):** A. Chaubeau. **International Federation of Musicians (FIM):** J. Morton; Y. Burckhardt. **International Federation of the Phonographic Industry (IFPI):** I.D. Thomas; G. Davies; E. Thompson; T. Percy; P. Ficbet. **International Secretariat for Arts, Mass Media and Entertainment Trade Unions (ISETU-FIET):** I. Robadey; J.W. Wilson. **International Writers Guild (IWG):** J.-C. Chesnais.

III. Secretariat

International Labour Organisation (ILO)

H. Sarfati (*Chief, Salaried Employees and Professional Workers Branch, Sectoral Activities Department*); R. Beattie (*Sectoral Specialist, Salaried Employees and Professional Workers Branch, Sectoral Activities Department*); C. Paoli-Pelvey (*Sectoral Specialist, Salaried Employees and Professional Workers Branch, Sectoral Activities Department*).

United Nations Educational, Scientific and Cultural Organization (UNESCO)

E. Guerassimov (*Legal Officer, Copyright Division*).

World Intellectual Property Organization (WIPO)

M. Ficsor (*Director, Copyright Law Division*); C. Fernández Balasteros (*Director, Developing Countries Division (Copyright)*); P. Masouyé (*Legal Officer, Copyright Law Division*).

**International Convention for the Protection of Performers,
Producers of Phonograms and Broadcasting Organizations
(Rome Convention, 1961)**

**Election Meeting of Representatives of the Contracting States
to Elect the Members of the Intergovernmental Committee**

(Geneva, July 7, 1989)

REPORT OF THE TELLERS

1. In accordance with the revised Rules of Procedure adopted by the Intergovernmental Committee at its fourth session (1973), the Directors General of the International Labour Office (ILO), the United Nations Educational, Scientific and Cultural Organization (UNESCO) and the World Intellectual Property Organization (WIPO) convened a meeting of all the States party to the International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations on July 7, 1989, in order to elect the members of the Intergovernmental Committee established by Article 32 of the Convention.

2. The representatives of the following Contracting States were present and took part in the election: Austria, Brazil, Chile, Colombia, Czechoslovakia, Denmark, Ecuador, Finland, France, Germany (Federal Republic of), Italy, Mexico, Norway, Panama, Peru, Philippines, Sweden, United Kingdom and Uruguay. Total: 19 States.

3. The meeting was chaired by Mr. Steinitz (United Kingdom), the Chairman of the Intergovernmental Committee.

4. The meeting had at its disposal documents ILO/UNESCO/WIPO/RCEM/89/1 and ILO/UNESCO/WIPO/RCEM/89/2 containing the agenda and a note drawn up by the Secretariat on the election procedure.

5. In accordance with Rule 31 of the Rules of Procedure, a nominations committee was established, consisting of the Chairman and the two

Vice-Chairmen, Mr. Jelinek (Czechoslovakia) and Mr. Morfin Patraca (Mexico). A list of 12 States for membership of the Intergovernmental Committee was proposed by the Nominations Committee. As 10 States voted in favor and nine States voted against, the proposed list did not obtain the two-thirds majority required under Rule 31.

6. The election proceeded in accordance with Rule 32 of the Rules of Procedure. The results of the first stage of voting, in which eight of the seats were to be filled from among all eligible Contracting States, were as follows: Brazil, Finland, Germany (Federal Republic of), Mexico, Niger, United Kingdom—10 votes each; Austria, Chile, Colombia, Congo, Czechoslovakia, Denmark, France, Italy, Norway, Philippines—nine votes each; Ecuador, Uruguay—one vote each. The States obtaining 10 votes were declared elected. In accordance with Rule 32, lots were drawn among the States which had obtained nine votes, as a result of which Chile and France were elected.

7. The results of the second stage of voting, in which the remaining four seats were to be filled from among eligible Contracting States not elected as members at the last election, were as follows: Philippines—18 votes; Denmark—10 votes; Burkina Faso, Colombia, Uruguay—nine votes each. Lots were drawn among the States which had obtained nine votes, as a result of which Colombia and Uruguay were elected.

8. The Chairman accordingly announced that the membership of the Intergovernmental Committee was: Brazil, Chile, Colombia, Denmark, Finland, France, Germany (Federal Republic of), Mexico, Niger, Philippines, United Kingdom and Uruguay.

Hedva Sarfati
Chief
Salaried Employees and
Professional Workers Branch
ILO

Evgueni Guerassimov
Legal Officer
Copyright Division
UNESCO

Mihály Ficsor
Director
Copyright Law Division
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Studies

The Economic Significance of Copyright

Ulrich UCHTENHAGEN*

In the "Green Paper on Copyright and the Challenge of Technology"—which we shall be referring to below as "the Green Paper"—the Commission of the European Communities observes that copyright is taking on growing significance for industry and trade.¹ Copyright is also spoken of in the GATT negotiations on the future of world trade. In recent times there have been more and more announcements of well-known publishing houses merging or being taken over; cautious estimates have put the value of these transactions at more than a billion dollars. It is fair to conclude from these indications that the economic significance of copyright is rapidly increasing.

The Trend Towards Communication

The pressure for personal freedom, which has characterized the history of most nations, has always been associated with demands for greater involvement in intellectual life and—hand in hand with it—for schooling and further education. The only route towards attainment of these objectives is the communication route. The same applies to the form of democratic government corresponding to the personal freedom sought: it presupposes that citizens caught up in political events be given timely knowledge of the various opinions involved, and be allowed to express their own views on them.

A series of inventions have played a decisive role in facilitating and promoting communication. They have provided nations with new communication media whenever the demand for them has become particularly strong. As an example of this one might mention that the invention of printing occurred at the end of the Middle Ages, and that the first book printed—the Bible—afforded a clear indication of the area in which communication was going to put

an end to obscurity. Likewise the accumulation of communication breakthroughs with the invention of the phonograph and phonograph records, the telegraph and the telephone in the United States of America during the second half of the last century may be connected with the need for mutual understanding in the building up of that great democracy.

Faced with the possibilities offered today by storage, transmission and distribution technology, many countries are developing more and more into communication societies. In the opinion of John Naisbitt, this development is one of the "megatrends" of the future.² Communication societies are progressively spreading, with the involvement of telecommunication satellites, to an international and indeed intercontinental public and leading towards the concept devised by Marshall McLuhan of the "global village" of the family of mankind.³ The incipient age of direct transmission satellites—that is, satellites whose broadcasts can be received by anyone throughout whole continents, without any amplification or relaying by ground stations—is bringing the "global village" within sight.

The Economic Value of Communication

Communication is of the utmost economic importance. For one thing it is to a considerable degree dependent on human work; the entire content of communication is the product of human activities. Extensive research has led to the—at first surprising—realization that today more people are engaged in communication in industrialized countries than in the production of industrial goods.⁴

² John Naisbitt, *Megatrends, Ten New Directions Transforming Our Lives*, 1982, Warner Books, Inc., New York.

³ Marshall McLuhan, *Die Gutenberg-Galaxis*, 1968, Econ-Verlag GmbH, Dusseldorf and Vienna, p. 47.

⁴ John Naisbitt, *op. cit.*, p. 2: "In 1956, for the first time in American history, white-collar workers in technical, managerial and clerical positions outnumbered blue-collar workers. Industrial America was giving way to a new society, where, for the first time in history, most of us worked with information rather than producing goods."

* Former Director General, Swiss Society for Authors' Rights in Musical Works (SUISA).

¹ Document of August 23, 1988, reference COM (88) 172.

Another thing is the expenditure on communication media. It has been increasing steadily, above all since satellites became involved. The Green Paper observes in this connection that there has been heavy investment in the service sector, in which the information and entertainment industry has a large share, owing to its better growth potential.⁵

Over and above the associated costs, communication has also to be considered a prime factor in the economy because it can be used to influence the consumption patterns of a population. It is the medium in which economic competition is carried on, so that it comes as no surprise that advertising occupies such a large and often predominant place in the communication field.

According to John Naisbitt, the economic significance of communication may be equated with the price that nations pay for it.⁶ This price should be understood as including not only the direct outlays made by individuals in order to participate in the communication—in other words the purchase price of books and records, subscriptions to newspapers and magazines, license fees and charges for radio and television reception, the purchase of the necessary apparatus, and so on—but also the moneys that are taken from advertising or from government funds to cover the cost of communication.

Copyright and Communication

Every transaction involving goods presupposes that those goods are in the possession of persons who have control over them and can protect them against third-party appropriation. The purchase of merchandise is in all legislation conditional on the joint consent of two persons to transfer ownership of the object of the purchase in exchange for payment of a price. To put it in philosophical terms, "persons are tied to each other as property through the intermediacy of things."⁷

Communication too lives on the fact that the content it conveys can constitute property and therefore be protected against third-party appropriation. After the invention of printing, the ruling powers of the time introduced privileges to provide protection against copying, and thereby ensured the continuing existence of communication. Out of this, in the course of time, copyright as we now know it evolved. The focal point of this area of law,

by virtue of a "paradigm reversal" described by Adolf Dietz,⁸ is the protection of the author. This setting of an objective should not however lead to the assumption that in the case of communication the protection of the imparted content should in some way have become unnecessary. Copyright much more guarantees an ownership of the imparted content that is indispensable for communication.

If one were now to enquire as to the economic significance of copyright, the answer would have to be that the value of copyright corresponds to the investment in and yield from the entire communication world, in the same way as the value of material property would be measured as the sum of all capital assets and transactions involving those assets. To my way of thinking, then, the economic value of copyright is situated far above all calculations that have been made hitherto, for the purposes of which—either indirectly or directly—the criterion used has been the proportion of the funds set aside for communication that has actually been passed on to authors.

Copyright and the Communication Industry

When the communication industry wanted to secure ownership of the material supplied to it, it was compelled to acquire the rights in that material from the authors, as after the lapse of the privileges there was no other protection available. The history of copyright is thus also the history of the efforts made by the communication industry, for the sake of its own survival, to secure as comprehensive a hold as possible on the author's property rights in the imparted content.

Adolf Dietz gives an account of the action taken by publishers until well into the 20th century to acquire, in respect of the works published, by means of the so-called "copyright certificate,"

...whole copyright in the broader sense for all areas and countries of the earth, for all editions and reprints and for all time, both in the original and in such revised forms as might be made.⁹

Similar contracts are still to be found today in broadcasting organizations. Authors working in the communication industry are also done out of their rights—either with or without help from legislation—by the terms of their employment contracts.

The International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations, concluded in Rome on

⁵ *Op. cit.* in note 1, p. 3, under 1.3.2.

⁶ John Naisbitt, *op. cit.*, p. 31.

⁷ Gerhard Luf, "Philosophische Strömungen in der Aufklärung und ihr Einfluss auf das Urheberrecht," published in *Oesterreichische Schriftenreihe zum gewerblichen Rechtsschutz, Urheber- und Medienrecht*, No. 7, 1988, Manz Verlag, Vienna, p. 11.

⁸ Adolf Dietz, "Urheberrecht im Wandel. Paradigmenwechsel im Urheberrecht?" published in *Oesterreichische Schriftenreihe zum gewerblichen Rechtsschutz, Urheber- und Medienrecht*, No. 7, 1988, Manz Verlag, Vienna, pp. 200 *et seq.*

⁹ *Ibid.*, p. 203.

October 26, 1961, was the first attempt ever to be made to protect the subject matter of communication outside the framework of copyright. The connection with the protection of performers—which in substantive terms was not apparent—took some of the impetus out of this sudden advance, however. Later, the Convention of October 29, 1971, for the Protection of Producers of Phonograms Against Unauthorized Duplication of Their Phonograms, and the Convention of May 21, 1974, Relating to the Distribution of Programme-Carrying Signals Transmitted by Satellite did not achieve more than initial successes. Consequently copyright remains for the foreseeable future the main arena for the debate that has been going on over the ownership of the content of communication.

*Is the Future of Copyright Affected by
Its Economic Significance?*

The rapid development that we have described, with communication societies growing closer to the "global village" concept, has not made the position of authors any stronger. Indeed there are a growing number of voices claiming that it is intolerable or at least anachronistic to continue to contemplate protecting the content of communication only in the form of author's rights, even with the possibility of their being extended. The signs are clear: neither the GATT negotiations nor the Green Paper pay any heed to author's concerns. One would like to give the content of communication better protection—for instance against piracy—and for want of other legal expedients one has perforce to consider encroaching on the rights of authors. The Green Paper makes it quite clear that

...the Community should [in connection with copyright goods and services] develop policies that will improve the competitiveness of its economy in relation to its trading partners, particularly in areas of potential growth such as the media and information.¹⁰

There are fears in professional copyright circles that the demands for greater protection for the content of communication could lead to a situation where the property rights of authors were restricted

and the legal position of the communication industry was strengthened. Adolf Dietz sums up this alienation of copyright in his "paradigm reversal" concept and concerns himself with the prospects for modelling copyright on industrial property, or bringing it closer to labor law.¹¹

In order to contend with such a deflection of intellectual property away from the author—which in view of the economic significance of communication is to be taken very seriously—Adolf Dietz proposes that copyright be conceived "as the professional and social law of intellectually creative people, and not merely a protective insurance system for the copyright industries."¹²

Such an objective is obviously to be welcomed. Quite apart from that, however, one should wonder whether it is not time to work on a protective insurance system for copyright industries that does not hang on the single nail of copyright, which is hardly able to bear such loads for any length of time, but rather stands on its own feet.

Allowing the communication industry independent protection for the content that it imparts would not, in my opinion, do the author's rights any harm. His intellectual property is going to be just as well looked after when a given communication content is also protected according to other criteria as it is with a communication that he can only protect by the exercise of his rights.

By way of conclusion it could therefore be said that the economic significance of copyright is far greater than its value to the author, as the communication industry makes use of copyright for the protection of the imparted content—and until further notice must continue to do so. It would be an advantage not only for the industry but also for the author himself if the content of communication were to be given special protection and copyright thereby kept apart from the competitive struggles of the media. The way would then be free for a more peaceable upward and outward development of copyright into what Adolf Dietz described as the professional and social law of intellectually creative people.

(WIPO translation)

¹⁰ *Op. cit.* in note 1, p. 4, under 1.3.3.

¹¹ Adolf Dietz, *op. cit.*, pp. 205 *et seq.*

¹² *Ibid.*, pp. 209 *et seq.*

Calendar of Meetings

WIPO Meetings

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

1989

- 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.

November 27 to December 1 (Geneva) **Committee of Experts on the Harmonization of Laws for the Protection of Marks (First Session)**

The Committee will examine draft treaty provisions on the harmonization of laws for the protection of marks and will consider the proposed further contents of the draft treaty.

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

October 17 to 20 (Rome) **International Federation of Reproduction Rights Organisations (IFRRO): Annual General Meeting**

1990

May 14 to 18 (Groningen) **International Confederation of Societies of Authors and Composers (CISAC): Legal and Legislative Committee**

October 8 to 14 (Budapest) **International Confederation of Societies of Authors and Composers (CISAC): Congress**